Mayor
Ken Miyagishima

Mayor Pro Tem
Kasandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores

CITY COUNCIL AGENDA

Monday, August 15, 2022 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.

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 Abeyta.

1.2. Pets of the Week.

1.3. Jobs of the Week.

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

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 August 1, 2022 Closed Meeting Statement into the record.

5. ACCEPTANCE OF AGENDA

6. CITY COUNCIL MINUTES

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

7.1. RESOLUTION NO. 23-018: A RESOLUTION TO AWARD CONTRACTS FOR STRUCTURAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS TO BOHANNON HUSTON, INC., MILLER ENGINEERS, INC. DBA SOUDER, MILLER & ASSOCIATES, AND STUBBS ENGINEERING, INC., IN AN AMOUNT NOT TO EXCEED $500,000.00 ANNUALLY FOR EACH, FOR A PERIOD OF ONE (1) 4 - 46

YEAR WITH THE OPTION TO EXTEND FOR THREE (3) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 21-22-066).

Resolution No. 23-018 - Pdf

7.2. RESOLUTION NO. 23-019: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO SUBMIT A GRANT APPLICATION AND APPROVE A CASH MATCH COMMITMENT FOR THE FOLLOWING: OUTDOOR RECREATION TRAILS PLUS GRANT COMPETITIVE PROGRAM OPPORTUNITY; PROJECT NAME: DA MOVE TRAIL PROJECT; GRANTING AGENCY: NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT (NMEDD) OUTDOOR RECREATION DIVISION; GRANT REQUEST AMOUNT: UP TO $500,000; CASH MATCH REQUIRED: 1:1 OR UP TO $500,000; TOTAL REQUEST AMOUNT UP TO $1,000,000. 47 - 53

Resolution No. 23-019 - Pdf

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

8.1. RESOLUTION NO. 23-020: A RESOLUTION TO AWARD CONTRACTS FOR ELECTRICAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS TO BOHANNAN HUSTON, INC. AND MOLZEN-CORBIN & ASSOCIATES, INC., IN AN AMOUNT NOT TO EXCEED $500,000.00 ANNUALLY FOR EACH, FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR THREE (3) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 21-22-068). 54 - 83

Resolution No. 23-020 - Pdf

8.2. RESOLUTION NO. 23-021: A RESOLUTION ADOPTING THE MESILLA VALLEY COMMUNITY OF HOPE CAMPUS MASTER PLAN. 84 - 189

Resolution No. 23-021 - Pdf

8.3. RESOLUTION NO. 23-022: A RESOLUTION IN SUPPORT OF NEW MEXICO LEGISLATION TO PROTECT TENANTS FROM INCOME DISCRIMINATION BY LANDLORDS. 190 - 194

Resolution No. 23-022 - Pdf

8.4. RESOLUTION NO. 23-023: A RESOLUTION SELECTING CHELSEA INVESTMENT CORP. AS THE LIHTC DEVELOPMENT PLANNING PARTNER FOR 1101 W AMADOR. 195 - 314

Resolution No. 23-023 - Pdf

8.5. RESOLUTION NO. 23-024: A RESOLUTION AMENDING THE FY2023-2028 CAPITAL IMPROVEMENT PROGRAM. 315 - 330

Resolution No. 23-024 - Pdf

8.6. COUNCIL BILL NO. 23-001; ORDINANCE NO. 3007: AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 331 - 447

2022 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $5,000,000 FOR THE ACQUISITION OF FIRE ENGINES, AERIAL FIRE TRUCKS, AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.

Ordinance No. 3007 - Pdf

8.7. COUNCIL BILL NO. 23-002; ORDINANCE NO. 3008: AN ORDINANCE APPROVING A ZONE CHANGE FROM R-1A (SINGLE FAMILY MEDIUM DENSITY) TO R-2 (MULTI-DWELLING LOW DENSITY) FOR A PROPERTY ENCOMPASSING 2.68 + ACRES LOCATED AT 5600 MCGUFFEY STREET. SUBMITTED BY THE FORT CONSTRUCTION, REPRESENTATIVE. 448 - 537

Ordinance No. 3008 - Pdf

9. BOARD APPOINTMENTS

10. NOTICE OF PROPOSED ORDINANCE(S)

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

10.1. COUNCIL BILL NO. 23-003; ORDINANCE NO. 3009: AN ORDINANCE SUPPORTING INVESTMENT OF $235,000 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORDANCE WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, AUTHORIZING A PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND ELECTRONIC CAREGIVER, INC., AND ENTERING INTO AN AGREEMENT TO SERVE AS FISCAL AGENT FOR THE STATE OF NEW MEXICO'S PARTICIPATION NOT TO EXCEED $1,000,000 IN THE PROJECT. 538 - 642

Ordinance No. 3009 - Pdf

10.2. COUNCIL BILL NO. 23-004; ORDINANCE NO. 3010: AN ORDINANCE TO REPEAL AND REPLACE NOISE ORDINANCE OF THE LAS CRUCES MUNICIPAL CODE 1998, AS AMENDED, CHAPTER 19, ARTICLE III, DIVISION 2, SECTIONS 19-121 THROUGH 19-136. 643 - 651

Ordinance No. 3010 - Pdf

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

12. CITY MANAGER REPORT

13. ADJOURNMENT

23-018

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	**☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A**		
1st Reading:		**Adopted:**	August 15, 2022
Drafter:	Dave Duncan	**Department:**	Financial Services
Program:	Procure to Pay	**Line of Business:**	Purchasing

Title: **A RESOLUTION TO AWARD CONTRACTS FOR STRUCTURAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS TO BOHANNON HUSTON, INC., MILLER ENGINEERS, INC. DBA SOUDER, MILLER & ASSOCIATES, AND STUBBS ENGINEERING, INC., IN AN AMOUNT NOT TO EXCEED $500,000.00 ANNUALLY FOR EACH, FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR THREE (3) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 21-22-066).**

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

PURPOSE(S) OF ACTION:

To award contracts for structural engineering services.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On March 18, 2022, the Project Development Section of the Public Works Department requested proposals for structural engineering services. The Purchasing Section received three (3) proposals that were evaluated and scored by the Selection Advisory Committee (SAC). The SAC is recommending award to all three (3) rated firms as follows:

1. Bohannon Huston, Inc. – Las Cruces, New Mexico
2. Miller Engineers, Inc. DBA Souder, Miller & Associates – Las Cruces, New Mexico
3. Stubbs Engineering, Inc. – Las Cruces, New Mexico

These services are required to perform design functions that include, but are not limited, to the following: design of buildings and additions, retaining walls, and drainage structures, such as box culverts, channels, and wing walls, determining structural integrity of existing materials, equipment, and facilities. The purpose of the structural engineering services Request for Proposals is to pre-qualify multiple engineering firms that can provide these specialized engineering services.

These proposed service agreements will be used on an as-needed basis for a period of up to four (4) years, subject to annual renewals and approved budget appropriations. It is advantageous for the City to have a pre-qualified list of structural engineers from which to select, in order to get budgeted projects completed. All departments from the City will be able to enter into individual Project Assignment Agreements with these engineering firms on an as-needed basis. The Public Works Department has numerous projects budgeted throughout upcoming fiscal years. There are also times when special funding (e.g. Legislative appropriations, New Mexico Department of Transportation, etc.) is made available to the City for specific projects. The funding sources often give strict timeframes within which improvements must be designed and constructed in order to

secure the funding. By having a pre-qualified list of engineers, it will not be necessary to go through individual Requests for Proposals in order to contract the necessary work for each individual project. These agreements will allow Public Works to contract with any one of the three (3) pre-qualified firms. As a result, valuable time is saved in the design of each project and staff time can be used on other projects and in other capacities.

SUPPORT INFORMATION:

Exhibit A - 21-22-066 - Structural Engineering Services - BHI
Exhibit B - 21-22-066 - Structural Engineering Services - SMA
Exhibit C - 21-22-066 - Structural Engineering Services - Stubbs

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

SAC

ANNUAL BUDGET APPROVAL:

☒ Yes
☐ No
☐ N/A

BUDGET / FISCAL IMPACT:

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

Additional Budgetary Information:
40255004-802000-120* (VARIOUS)

Funding Source(s):
Accounts will be assigned on an as-needed basis as projects are identified. Structural engineering services will be limited to approved budgets.

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

☐ Yes
☒ No
☐ N/A

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No
☐ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and award contracts to the three (3) selected pre-qualified firms, to provide structural engineering services for the City on an as-needed basis, to each firm for an amount up to $500,000.00 annually, for the next four years subject to annual renewals and approved budget appropriations.
2. Vote "No"; this will not approve the Resolution, and City Council will need to provide staff with alternative direction.
3. Vote to "Amend"; this could modify the Resolution based on City Council direction to staff.
4. Vote to "Table"; this could delay awarding contracts for structural engineering services and prevent completion of budgeted projects.

REFERENCE INFORMATION:

Attachment “A”, SAC Evaluation Score Sheet

RESOLUTION 23-018

A RESOLUTION TO AWARD CONTRACTS FOR STRUCTURAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS TO BOHANNON HUSTON, INC., MILLER ENGINEERS, INC. DBA SOUDER, MILLER & ASSOCIATES, AND STUBBS ENGINEERING, INC., IN AN AMOUNT NOT TO EXCEED $500,000.00 ANNUALLY FOR EACH, FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR THREE (3) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 21-22-066).

The City Council is informed that:

WHEREAS, Project Development Section of the Public Works Department requested proposals for structural engineering services in March of 2022; and

WHEREAS, these services are required to perform design functions that include, but are not limited, to the following: design of buildings and additions, retaining walls, and drainage structures, such as box culverts, channels, and wing walls, determining structural integrity of existing materials, equipment, and facilities; and

WHEREAS, the purpose of the structural engineering services Request for Proposals is to pre-qualify multiple engineering firms that can provide these specialized engineering services; and

WHEREAS, these agreements will be used on an as-needed basis for a period of up to four (4) years, subject to annual renewals and approved budget appropriations; and

WHEREAS, the Purchasing Section received three (3) proposals that were evaluated and scored by the Selection Advisory Committee (SAC); and

WHEREAS, the SAC is recommending award to all three (3) rated firms as follows: Bohannon Huston, Inc., Miller Engineers, Inc. DBA Souder, Miller & Associates, and Stubbs Engineering, Inc., of Las Cruces, New Mexico.

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

(I)

THAT the contracts for structural engineering services are hereby awarded to Bohannon Huston, Inc., Miller Engineers, Inc. DBA Souder, Miller & Associates, and Stubbs Engineering, Inc., of Las Cruces, New Mexico, as shown in Exhibits “A” through “C”, respectively, attached hereto and made part of this Resolution.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this ____ day of July, 2022 by and between the City of Las Cruces, New Mexico, hereinafter called “CITY” and Bohannon Huston, Inc., of 425 South Telshor Blvd, Suite C-103, Las Cruces, NM 88011, hereinafter called “ENGINEER”.

1. PROJECT DESCRIPTION
On Call Structural Engineering Services on an as needed basis via Project Assignment Agreements (Attachment A) during the term of this agreement.

2. SCOPE OF SERVICES
In a satisfactory and proper manner, the ENGINEER shall perform SERVICES, as proposed in response to the CITY’S RFP No. 21-22-066, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

The CONTRACTOR is authorized to extend the same terms and conditions of this Agreement to other governmental entities conditioned upon the procurement laws and regulations of those entities. The CITY shall not be a party nor have any liability relating to such extensions.

3. APPROPRIATIONS
The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to ENGINEER. The CITY’S decision as to whether sufficient appropriations and authorizations exist shall be accepted by ENGINEER and shall be final.

4. COMPENSATION
The CITY shall compensate ENGINEER for the performance of SERVICES under this Agreement an amount agreed to for each assigned project, plus applicable taxes. ENGINEER shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

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

5. DEVOTION OF ADEQUATE TIME
ENGINEER will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE
This Agreement shall become effective on August 1, 2022 for a term of one year through July 31, 2023 and, pending mutual written agreement, may be extended annually thereafter for up to three (3) additional one (1)-year terms.

ENGINEER shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and ENGINEER in as agreed to for each project assigned under the terms of this Agreement.

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

8. CHANGES AND EXTRA SERVICES BY THE CITY
The CITY may make changes within the general scope of the SERVICES plus may also request ENGINEER to perform other extra services not incorporated within the Services set forth in this Agreement. If the ENGINEER is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, ENGINEER shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the ENGINEER within five (5) business work days from the date of receipt of ENGINEER written notification.

9. CHANGES AND EXTRA SERVICES BY THE ENGINEER
In the event a condition is identified by the ENGINEER which, in the opinion of the ENGINEER, changes the services, costs, and/or time required for performance under this Agreement, the ENGINEER shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of ENGINEER'S notification.

10. DELAYS
In the event that performance of SERVICES is delayed by causes beyond reasonable control of ENGINEER, and without the fault or negligence of ENGINEER, the time and total compensation for the performance of the SERVICES may be equitably adjusted by

written agreement to reflect the extent of such delay. ENGINEER shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by ENGINEER to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

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

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

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

12. RECORDS AND AUDITS

ENGINEER will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY’S right to recover excessive or illegal payments. ENGINEER will retain records for five (5) years after the completion of the project.

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

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

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

14. INDEPENDENT CONTRACTOR

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

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

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

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

15. NO JOINT VENTURE OR PARTNERSHIP

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

16. ASSIGNMENT

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

17. INSURANCE
ENGINEER shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. General Liability Insurance
   a. $1,000,000 per occurrence / $2,000,000 aggregate
   b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
   c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
   d. Coverage must be primary and non-contributory.
   e. Coverage must be per project or per location.
   f. Coverage must be on an occurrence form.
   g. Subrogation must be waived.
2. Commercial Auto Liability
   a. $1,000,000 per occurrence
   b. Coverage must be for “owned, leased, hired, and non-owned autos” or “any autos.”
3. Workers Compensation and Employers Liability
   a. Statutory Limits
   b. Employer liability – $1,000,000 each accident, $1,000,000 each employee by disease, $1,000,000 policy limit
   c. Subrogation must be waived.
4. Professional Liability: $1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

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

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

19. APPLICABLE LAW
This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between

New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

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

20. BREACH
In the event ENGINEER breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give ENGINEER written notice of such breach. In the event ENGINEER fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy ENGINEER'S breach and recover any and all costs and expenses in so doing from ENGINEER.

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

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

TO CITY:	City of Las Cruces PO Box 20000 Las Cruces, NM 88004 ATTENTION: Tony Trevino, PE CFM, Deputy Director PW
With Copies to:	City Attorney Purchasing Manager
TO ENGINEER:	Bohannon Huston, Inc. 425 South Telshor Blvd, Suite C-103 Las Cruces, NM 88011 ATTENTION: Sean Melville, PE, Sr. Vice President

23. SCOPE OF AGREEMENT
This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

24. SEVERABILITY
The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. CONFLICT OF INTEREST
ENGINEER represents and warrants that ENGINEER has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, ENGINEER shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of ENGINEER'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to ENGINEER; such termination of the Agreement shall be effective upon the receipt of such notice by ENGINEER.

BOHANNON HUSTON, INC.

BY: _____
Sean Melville, PE
Senior Vice President

_____
Date

CITY OF LAS CRUCES

BY: _____
Alfredo R. Pacheco
Interim Purchasing Manager

_____
Date

APPROVED AS TO FORM

for JV 7/8/2022
City Attorney

EXHIBIT A

SERVICES

STRUCTURAL ENGINEERING SERVICES

COST PROPOSAL

RFP# 21-22-066
APRIL 14, 2022



City of Las Cruces®

Bohannan Huston

Bohannan Huston

COST PROPOSAL

Category	Rate	Unit
1. Direct costs	At Cost	
2. Indirect costs	At Cost	
3. Labor (hours) by major tasks		
a. Principal Engineer	$ 245	Hourly
b. Project Engineer/Project Manager	$ 220	Hourly
c. Senior Engineer	$ 185	Hourly
d. Design Engineer	$ 160	Hourly
e. Engineer Intern	$ 125	Hourly
f. Engineer Technician	$ 120	Hourly
g. Drafting Technician	$ 110	Hourly
h. Survey Crew	TBD	Hourly
i. Construction Inspector/Observer	$ 120	Hourly
j. Administrative/Clerical	$ 100	Hourly
k. Field testing & investigations	TBD	Hourly
l. Subcontractor cost markup (percent)	10%	Hourly
4. Materials/Reimbursable Expenses	At Cost	
Travel (Per Diem – per day)	$ 150	
Vehicle Mileage Rate (per mile)	IRS Std 2WD Rate	
Printing/Reproduction	Invoiced at cost	Per copy
5. Equipment	$ 25	Hourly
6. Subcontractors	TBD if needed	
7. Any other proposed costs on a case by case basis		

ATTACHMENT A

PROJECT ASSIGNMENT AGREEMENT

21-22-066 STRUCTURAL ENGINEERING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 21-22-066 dated (insert date of execution), 2022 between the CITY and Bohannon Huston, Inc., (ENGINEER), as amended and incorporated herein by reference, the City and Engineer hereby agree on this _____ day of _____, 20___, as follows:

1. In a satisfactory and proper manner, the ENGINEER shall perform SERVICES as proposed in response to the CITY's RFP No. 21-22-066 and ENGINEER's proposal as set forth in ATTACHMENT A attached hereto.

2. Insurance (select the appropriate clause below, delete the other):
(for non-construction projects)
ENGINEER agrees to maintain a Commercial General Liability policy with limits not less than $1 million per occurrence and $2 million aggregate limits. The City of Las Cruces is to be named as an additional Insured. Evidence of coverage must be on an Acord 25 Certificate of Insurance with attached Additional Insured Endorsement.

   (for construction, maintenance, installation projects)
ENGINEER agrees to maintain a Commercial General Liability policy with limits not less than $1 million per occurrence and $2 million aggregate limits. Coverage must include Premise and Operations, Products and Completed Operation and Personal and Advertising Injury coverage. Aggregate limits must be "per project" or "per location". Coverage must be primary and non-contributory before any other insurance or self-insurance. The City of Las Cruces is to be named as an additional Insured. Evidence of coverage must be on an Acord 25 Certificate of Insurance with attached Additional Insured Endorsement.

3. The estimated completion date is number days after a Notice to Proceed is issued by the CITY to the ENGINEER.

4. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of $ dollars.cents, plus NMGRT. Invoices issued by the ENGINEER shall be made monthly / upon completion of project with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

(SIGNATURE BLOCK FOLLOWS ON NEXT PAGE)

BOHANNON HUSTON, INC.

By: _____
Signature Date

_____
Print Name and Title

Requisition No. XXXXXXXX

CITY OF LAS CRUCES

By: _____
Signature Date

Alfredo R. Pacheco, Interim Purchasing Manager

EXHIBIT B

21-22-066
Structural Engineering Services

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this ____ day of July, 2022 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Miller Engineers, Inc. dba Souder, Miller & Associates, of 3500 Sedona Hills Parkway, Las Cruces, NM 88011, hereinafter called "ENGINEER".

1. PROJECT DESCRIPTION
On Call Structural Engineering Services on an as needed basis via Project Assignment Agreements (Attachment A) during the term of this agreement.

2. SCOPE OF SERVICES
In a satisfactory and proper manner, the ENGINEER shall perform SERVICES, as proposed in response to the CITY'S RFP No. 21-22-066, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

The CONTRACTOR is authorized to extend the same terms and conditions of this Agreement to other governmental entities conditioned upon the procurement laws and regulations of those entities. The CITY shall not be a party nor have any liability relating to such extensions.

3. APPROPRIATIONS
The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to ENGINEER. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by ENGINEER and shall be final.

4. COMPENSATION
The CITY shall compensate ENGINEER for the performance of SERVICES under this Agreement an amount agreed to for each assigned project, plus applicable taxes. ENGINEER shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

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

5. DEVOTION OF ADEQUATE TIME
ENGINEER will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE
This Agreement shall become effective on August 1, 2022 for a term of one year through July 31, 2023 and, pending mutual written agreement, may be extended annually thereafter for up to three (3) additional one (1)-year terms.

ENGINEER shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and ENGINEER in as agreed to for each project assigned under the terms of this Agreement.

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

8. CHANGES AND EXTRA SERVICES BY THE CITY
The CITY may make changes within the general scope of the SERVICES plus may also request ENGINEER to perform other extra services not incorporated within the Services set forth in this Agreement. If the ENGINEER is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, ENGINEER shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the ENGINEER within five (5) business work days from the date of receipt of ENGINEER written notification.

9. CHANGES AND EXTRA SERVICES BY THE ENGINEER
In the event a condition is identified by the ENGINEER which, in the opinion of the ENGINEER, changes the services, costs, and/or time required for performance under this Agreement, the ENGINEER shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of ENGINEER'S notification.

10. DELAYS
In the event that performance of SERVICES is delayed by causes beyond reasonable control of ENGINEER, and without the fault or negligence of ENGINEER, the time and total compensation for the performance of the SERVICES may be equitably adjusted by

written agreement to reflect the extent of such delay. ENGINEER shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by ENGINEER to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

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

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

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

12. RECORDS AND AUDITS

ENGINEER will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY’S right to recover excessive or illegal payments. ENGINEER will retain records for five (5) years after the completion of the project.

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

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

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

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

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

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

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

15. NO JOINT VENTURE OR PARTNERSHIP
Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between ENGINEER and CITY. Except as otherwise specifically set forth herein, neither ENGINEER nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

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

17. INSURANCE
ENGINEER shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. General Liability Insurance
   a. $1,000,000 per occurrence / $2,000,000 aggregate
   b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
   c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
   d. Coverage must be primary and non-contributory.
   e. Coverage must be per project or per location.
   f. Coverage must be on an occurrence form.
   g. Subrogation must be waived.
2. Commercial Auto Liability
   a. $1,000,000 per occurrence
   b. Coverage must be for “owned, leased, hired, and non-owned autos” or “any autos.”
3. Workers Compensation and Employers Liability
   a. Statutory Limits
   b. Employer liability – $1,000,000 each accident, $1,000,000 each employee by disease, $1,000,000 policy limit
   c. Subrogation must be waived.
4. Professional Liability: $1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

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

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

19. APPLICABLE LAW
This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between

New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

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

20. BREACH
In the event ENGINEER breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give ENGINEER written notice of such breach. In the event ENGINEER fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy ENGINEER'S breach and recover any and all costs and expenses in so doing from ENGINEER.

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

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

TO CITY:	City of Las Cruces PO Box 20000 Las Cruces, NM 88004 ATTENTION: Tony Trevino, PE CFM, Deputy Director PW
With Copies to:	City Attorney Purchasing Manager
TO ENGINEER:	Miller Engineers, Inc. dba Souder, Miller & Associates 3500 Sedona Hills Parkway Las Cruces, NM 88011 ATTENTION: Karl E. Tonander, P.E., P.G., CEO

23. SCOPE OF AGREEMENT
This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

24. SEVERABILITY
The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. CONFLICT OF INTEREST
ENGINEER represents and warrants that ENGINEER has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, ENGINEER shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of ENGINEER'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to ENGINEER; such termination of the Agreement shall be effective upon the receipt of such notice by ENGINEER.

MILLER ENGINEERS, INC. dba
SOUDER, MILLER & ASSOCIATES

BY: _____
Karl E. Tonander, P.E., P.G.,
CEO

_____
Date

CITY OF LAS CRUCES

BY: _____
Alfredo R. Pacheco
Interim Purchasing Manager

_____
Date

APPROVED AS TO FORM

for JV 7/8/2022
City Attorney

Revised: January 2022

EXHIBIT A

SERVICES

Structural Engineering Services

City of Las Cruces — Rate Schedules

RFP No. 21-22-066 | April 14, 2022 | 4:00 PM



Submitted by:
Souder, Miller & Associates
3500 Sedona Hills Parkway
Las Cruces, NM 88011

Souder, Miller & Associates
Engineering ♦ Environmental ♦ Surveying

www.soudermiller.com

PREFERRED PROFESSIONAL FEE SCHEDULE - *EFFECTIVE JANUARY 2021*

PROFESSIONAL SERVICES

Professional Staff		
Principal	$ 230.00	per hour
Senior Manager III	$ 220.00	per hour
Senior Manager II	$ 200.00	per hour
Senior Manager I	$ 190.00	per hour
Senior Engineer/Scientist/Surveyor III	$ 180.00	per hour
Senior Engineer/Scientist/Surveyor II	$ 165.00	per hour
Senior Engineer/Scientist/Surveyor I	$ 150.00	per hour
Project Engineer/Scientist/Surveyor III	$ 140.00	per hour
Project Engineer/Scientist/Surveyor II	$ 130.00	per hour
Project Engineer/Scientist/Surveyor I	$ 120.00	per hour
Staff EIT/Scientist/LSIT III	$ 120.00	per hour
Staff EIT/Scientist/LSIT II	$ 110.00	per hour
Staff EIT/Scientist/LSIT I	$ 100.00	per hour
Technical Staff		
Engineering/Design/Survey/Field Tech VIII	$ 165.00	per hour
Engineering/Design/Survey/Field Tech VII	$ 145.00	per hour
Engineering/Design/Survey/Field Tech VI	$ 125.00	per hour
Engineering/Design/Survey/Field Tech V	$ 110.00	per hour
Engineering/Design/Survey/Field Tech IV	$ 95.00	per hour
Engineering/Design/Survey/Field Tech III	$ 80.00	per hour
Engineering/Design/Survey/Field Tech II	$ 70.00	per hour
Engineering/Design/Survey/Field Tech I	$ 60.00	per hour
Technical Intern II	$ 60.00	per hour
Technical Intern I	$ 50.00	per hour
Construction Observer IV	$ 110.00	per hour
Construction Observer III	$ 90.00	per hour
Construction Observer II	$ 75.00	per hour
Construction Observer I	$ 60.00	per hour
Support Staff		
Project Financial/Manager Assistant II	$ 90.00	per hour
Project Financial/Manager Assistant I	$ 70.00	per hour
Administrative Assistant IV	$ 110.00	per hour
Administrative Assistant III	$ 90.00	per hour
Administrative Assistant II	$ 70.00	per hour
Administrative Assistant I	$ 50.00	per hour

EXPENSES

All project-related expenses will be billed at rates determined with respect to current market pricing; *a complete list of expense rates is available upon request.*

OTHER SERVICES

Telephone/facsimile/postage @ actual cost
Mileage @ $0.56 per mile (or current IRS rate)
Per diem $151.00 per day (or max per-diem rate per USGSA)
Other travel (car rental, air, etc.) @ actual cost

SUBCONTRACTED SERVICES

Subconsultants, analytical laboratories, drilling services & general subcontractors @ cost+10%

Applicable tax applies to all billable hours, expenses and other charges for which such tax has not previously been paid. Overtime will be charged at a rate of 1.5x on time & materials contracts with prior written acknowledgement of the client for services in excess of 8 hours in a day, on weekends or holidays. A 1.5% interest charge per month will be applied to all invoices not paid within 30 days.

EXPENSE FEE SCHEDULE - *EFFECTIVE JANUARY 2021*

Survey Equipment

High Precision GPS	$20/hour
UAV Rotary	$325/day
UAV Fixed Wing	$400/day
UAV Post Processing	$50/hour
Auto-Reading Level	$20/hour
Robotic Total Station	$20/hour
Terrestrial Laser Scanner	$40/hour

GIS Hosting & Resource Grade Data Collection

ArcGIS Online	$1,500/year
Additional ArcGIS Online Account	$1,000/year
Bad Elf GNSS Surveyor	$250/m

Sampling Collecting Equipment

Slide Hammer & Probe	$25/day
Soil Auger - Hand	$10/day
Soil Auger- Power	$40/day
Quart Mason Jars	$1/each
Disposable Bailer	$10/each
Tedlar Bags	$15/each
VOC Samplers	$1/each
2" x 6" Soil Samplers	$5/each

Health & Safety Equipment

Respirator	$20/day
Respirator Cartridges	$6/each
Latex/Nitrile Gloves	$1/pair
Tyvek Jumpsuit	$20/suit
Tyvek Boot Covers	$5/pair
Level D PPE (alternative to itemization)	$20/day
Level C PPE	$60/day
Level C PPE (Mercury Cleanup)	$75/day
Level B PPE	$100/day
Personal H2S Monitor	$25/day
Personal 4-Gas Monitor	$35/day
db Meter w/ Data Logger	$75/day

Vapor Sampling Equipment

PID	$75/day
3- or 4-Gas Meter	$75/day
Explosimeter	$40/day
MSA (Draeger) Detector Tubes	$5/tube
Tedlar Bags	$15/each
SVE Pilot Test Unit	$1,500/day

Water Testing Equipment

pH Meter	$10/day
eH Meter	$10/day
TDS Meter	$10/day
Conductivity Meter	$10/day
Multi-Parameter Water Meter	$40/day
D. O. Meter	$55/day
Chloride-4500 Titration Test	$15/sample
Hach DO Samples	$3/each
Hach SO4 Samples	$3/each
Hach Fe Samples	$3/each
Hach NO3 Samples	$3/each
Hach PO4 Samples	$3/each
Product Interface Probe	$65/day
Well Sounder	$65/day
Hermit Data Logger	$85/d $460/w $1,200/m
Transducer w/ 350' cable	$40/d $185/w $570/m
Transducer w/ 500' cable	$60/d $260/w $980/m
Grundfos Pump	$200/day
Watera Pump	$65/day
Geotech (Peristaltic) Geopump	$35/d $85/w
Geopump Filters	$12/each
DC Purge Pump (High Capacity)	$45/day
DC Purge Pump (Low Capacity)	$15/day
Flexible Tubing	$1.50/foot
Foot Valve (Nylon)	$20/each
Foot Valve (Stainless Steel)	$40/each

Miscellaneous Support Equipment

Generator	$100/day
Magnehelic Gauges (set)	$20/day
Padlock (P812)	$10/each
Drums (55 Gallon)	$35/each
HazCat Kit	$100/day
HazCat Reagents	$35/sample
Mercury Recovery Kit	$30/unit
Mercury Vapor Monitor	$175/day
PetroFlag Kit	$75/day
PetroFlag Reagents	$20/sample
Digital Camera	$20/day
Reciprocating Saw	$80/day
Steam Cleaner	$60/day
Cordless Drill	$20/day
Pipe Locator	$30/day
All-Terrain Vehicle w/ Trailer	$100/day
525 Gallon Tank	$40/day
Equipment Trailer	$40/day
Utility Locator (Metrotech 810 or equal)	$100/day

ATTACHMENT A

PROJECT ASSIGNMENT AGREEMENT

21-22-066 STRUCTURAL ENGINEERING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 21-22-066 dated (insert date of execution), 2022 between the CITY and Miller Engineers, Inc. dba Souder, Miller & Associates, (ENGINEER), as amended and incorporated herein by reference, the City and Engineer hereby agree on this _____ day of _____, 20___, as follows:

1. In a satisfactory and proper manner, the ENGINEER shall perform SERVICES as proposed in response to the CITY's RFP No. 21-22-066 and ENGINEER's proposal as set forth in ATTACHMENT A attached hereto.

2. Insurance (select the appropriate clause below, delete the other):
(for non-construction projects)
ENGINEER agrees to maintain a Commercial General Liability policy with limits not less than $1 million per occurrence and $2 million aggregate limits. The City of Las Cruces is to be named as an additional Insured. Evidence of coverage must be on an Acord 25 Certificate of Insurance with attached Additional Insured Endorsement.

   (for construction, maintenance, installation projects)
ENGINEER agrees to maintain a Commercial General Liability policy with limits not less than $1 million per occurrence and $2 million aggregate limits. Coverage must include Premise and Operations, Products and Completed Operation and Personal and Advertising Injury coverage. Aggregate limits must be "per project" or "per location". Coverage must be primary and non-contributory before any other insurance or self-insurance. The City of Las Cruces is to be named as an additional Insured. Evidence of coverage must be on an Acord 25 Certificate of Insurance with attached Additional Insured Endorsement.

3. The estimated completion date is number days after a Notice to Proceed is issued by the CITY to the ENGINEER.

4. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of $ dollars.cents, plus NMGRT. Invoices issued by the ENGINEER shall be made monthly / upon completion of project with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

(SIGNATURE BLOCK FOLLOWS ON NEXT PAGE)

MILLER ENGINEERS, INC. dba SOUDER, MILLER & ASSOCIATES	CITY OF LAS CRUCES
By:	By:
Signature Date	Signature Date
	Alfredo R. Pacheco, Interim Purchasing Manager
Print Name and Title	

Requisition No. XXXXXXXX

EXHIBIT C

21-22-066
Structural Engineering Services

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this ____ day of July, 2022 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Stubbs Engineering, Inc., of 277 E. Amador, Suite 200, Las Cruces, NM 88001, hereinafter called "ENGINEER".

1. PROJECT DESCRIPTION
On Call Structural Engineering Services on an as needed basis via Project Assignment Agreements (Attachment A) during the term of this agreement.

2. SCOPE OF SERVICES
In a satisfactory and proper manner, the ENGINEER shall perform SERVICES, as proposed in response to the CITY'S RFP No. 21-22-066, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

The CONTRACTOR is authorized to extend the same terms and conditions of this Agreement to other governmental entities conditioned upon the procurement laws and regulations of those entities. The CITY shall not be a party nor have any liability relating to such extensions.

3. APPROPRIATIONS
The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to ENGINEER. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by ENGINEER and shall be final.

4. COMPENSATION
The CITY shall compensate ENGINEER for the performance of SERVICES under this Agreement an amount agreed to for each assigned project, plus applicable taxes. ENGINEER shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

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

5. DEVOTION OF ADEQUATE TIME
ENGINEER will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE
This Agreement shall become effective on August 1, 2022 for a term of one year through July 31, 2023 and, pending mutual written agreement, may be extended annually thereafter for up to three (3) additional one (1)-year terms.

ENGINEER shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and ENGINEER in as agreed to for each project assigned under the terms of this Agreement.

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

8. CHANGES AND EXTRA SERVICES BY THE CITY
The CITY may make changes within the general scope of the SERVICES plus may also request ENGINEER to perform other extra services not incorporated within the Services set forth in this Agreement. If the ENGINEER is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, ENGINEER shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the ENGINEER within five (5) business work days from the date of receipt of ENGINEER written notification.

9. CHANGES AND EXTRA SERVICES BY THE ENGINEER
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10. DELAYS
In the event that performance of SERVICES is delayed by causes beyond reasonable control of ENGINEER, and without the fault or negligence of ENGINEER, the time and total compensation for the performance of the SERVICES may be equitably adjusted by

written agreement to reflect the extent of such delay. ENGINEER shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by ENGINEER to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

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

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

12. RECORDS AND AUDITS

ENGINEER will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY’S right to recover excessive or illegal payments. ENGINEER will retain records for five (5) years after the completion of the project.

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

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

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

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

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

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

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

15. NO JOINT VENTURE OR PARTNERSHIP
Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between ENGINEER and CITY. Except as otherwise specifically set forth herein, neither ENGINEER nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

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

17. INSURANCE
ENGINEER shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. General Liability Insurance
   a. $1,000,000 per occurrence / $2,000,000 aggregate
   b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
   c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
   d. Coverage must be primary and non-contributory.
   e. Coverage must be per project or per location.
   f. Coverage must be on an occurrence form.
   g. Subrogation must be waived.
2. Commercial Auto Liability
   a. $1,000,000 per occurrence
   b. Coverage must be for “owned, leased, hired, and non-owned autos” or “any autos.”
3. Workers Compensation and Employers Liability
   a. Statutory Limits
   b. Employer liability – $1,000,000 each accident, $1,000,000 each employee by disease, $1,000,000 policy limit
   c. Subrogation must be waived.
4. Professional Liability: $1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

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

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

19. APPLICABLE LAW
This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between

New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

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

20. BREACH
In the event ENGINEER breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give ENGINEER written notice of such breach. In the event ENGINEER fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy ENGINEER'S breach and recover any and all costs and expenses in so doing from ENGINEER.

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

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

TO CITY:	City of Las Cruces PO Box 20000 Las Cruces, NM 88004 ATTENTION: Tony Trevino, PE CFM, Deputy Director PW
With Copies to:	City Attorney Purchasing Manager
TO ENGINEER:	Stubbs Engineering, Inc. 277 E. Amador, Suite 200 Las Cruces, NM 88001 ATTENTION: Michael A. Stubbs, President

23. SCOPE OF AGREEMENT
This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

24. SEVERABILITY
The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. CONFLICT OF INTEREST
ENGINEER represents and warrants that ENGINEER has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, ENGINEER shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of ENGINEER'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to ENGINEER; such termination of the Agreement shall be effective upon the receipt of such notice by ENGINEER.

STUBBS ENGINEERING, INC.

BY: _____
Michael A. Stubbs
President

_____
Date

CITY OF LAS CRUCES

BY: _____
Alfredo R. Pacheco
Interim Purchasing Manager

_____
Date

APPROVED AS TO FORM

fw JV 1/8/2022
City Attorney

EXHIBIT A

SERVICES

Cost Proposal RFP# 21-22-066
STRUCTURAL ENGINEERING SERVICES
Stubbs Engineering, Inc.

ITEM	DIRECT LABOR/CLASSIFICATION	HOURLY RATE
1	Principal Engineer	$ 270.00
2	Project Engineer/ Project Manager	$ 135.00
3	Senior Engineer	$ 110.00
4	Design Engineer	NA
5	Engineer Intern	$ 90.00
6	Engineering Technician	NA
7	Drafting Technician	$ 80.00
8	Survey Crew	Subcontractors Rate
9	Construction Inspector/ Observer	NA
10	Administrative/ Clerical	$ 70.00
11	Field Testing and Investigations	Subcontractors Rate
12	Subcontarctor Cost Markup	10%

ITEM	MATERIALS/REIMBURSEABLE EXPENSES	RATE
	Travel	
13	Per Diem- Pre Approval Required	City of Las Cruces Rate
14	Vehicle Mileage Rate	Current IRS Rate
	Reproduction Services	
15	Black and White Copies (per copy)	No Charge
16	Color Copies (per copy)	No charge
17	Prints 24x36 (per sheet)	$ 1.25
18	Mylars 24x36 (per sheet)	$ 10.00
19	Photo Quality Plots (per plot)	$ 40.00
	Miscellaneous	
20	Any other costs incurred	Case by Case Basis

ATTACHMENT A

PROJECT ASSIGNMENT AGREEMENT

21-22-066 STRUCTURAL ENGINEERING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 21-22-066 dated (insert date of execution), 2022 between the CITY and Stubbs Engineering, Inc., (ENGINEER), as amended and incorporated herein by reference, the City and Engineer hereby agree on this _____ day of _____, 20___, as follows:

1. In a satisfactory and proper manner, the ENGINEER shall perform SERVICES as proposed in response to the CITY's RFP No. 21-22-066 and ENGINEER's proposal as set forth in ATTACHMENT A attached hereto.

2. Insurance (select the appropriate clause below, delete the other):
(for non-construction projects)
ENGINEER agrees to maintain a Commercial General Liability policy with limits not less than $1 million per occurrence and $2 million aggregate limits. The City of Las Cruces is to be named as an additional Insured. Evidence of coverage must be on an Acord 25 Certificate of Insurance with attached Additional Insured Endorsement.

   (for construction, maintenance, installation projects)
ENGINEER agrees to maintain a Commercial General Liability policy with limits not less than $1 million per occurrence and $2 million aggregate limits. Coverage must include Premise and Operations, Products and Completed Operation and Personal and Advertising Injury coverage. Aggregate limits must be "per project" or "per location". Coverage must be primary and non-contributory before any other insurance or self-insurance. The City of Las Cruces is to be named as an additional Insured. Evidence of coverage must be on an Acord 25 Certificate of Insurance with attached Additional Insured Endorsement.

3. The estimated completion date is number days after a Notice to Proceed is issued by the CITY to the ENGINEER.

4. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of $ dollars.cents, plus NMGRT. Invoices issued by the ENGINEER shall be made monthly / upon completion of project with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

(SIGNATURE BLOCK FOLLOWS ON NEXT PAGE)

STUBBS ENGINEERING, INC.	CITY OF LAS CRUCES
By: _____	By: _____
Signature Date	Signature Date
_____	Alfredo R. Pacheco Interim Purchasing Manager
Print Name and Title	

Requisition No. XXXXXXXX

23-019

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	☐ 1 ☒ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:		**Adopted:**	August 15, 2022
Drafter:	Amy Noll	**Department:**	Financial Services
Program:	Grants	**Line of Business:**	Fiscal Management

Title: **A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO SUBMIT A GRANT APPLICATION AND APPROVE A CASH MATCH COMMITMENT FOR THE FOLLOWING: OUTDOOR RECREATION TRAILS PLUS GRANT COMPETITIVE PROGRAM OPPORTUNITY; PROJECT NAME: DA MOVE TRAIL PROJECT; GRANTING AGENCY: NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT (NMEDD) OUTDOOR RECREATION DIVISION; GRANT REQUEST AMOUNT: UP TO $500,000; CASH MATCH REQUIRED: 1:1 OR UP TO $500,000; TOTAL REQUEST AMOUNT UP TO $1,000,000.**

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

PURPOSE(S) OF ACTION:

To approve a grant application submission and match funding.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) relies on grant funding for many of the programs and projects provided each year for the residents of Las Cruces. As per the Grant Policy approved by City Council on May 7, 2018; the Council will be presented with a Resolution to approve cash match requests for grant applications in excess of $250,000.

The New Mexico Economic Development Department (NMEDD) Outdoor Recreation Division opened the current 2022 grant cycle this spring and applications will be accepted on a rolling basis through December 2022 or until the allocated $7 million in funding is exhausted. This request will allow for the grant application to be submitted by August 31, 2022; with the grant period to begin in January 2023, should the project be selected for award.

The City will be submitting a grant application to the NMEDD, Outdoor Recreation Division Trails Plus competitive opportunity, which allows grant awards from over $100,000 up to $500,000. It has a required 1:1 match, or up to $500,000. The City will request a grant in the amount $500,000, with a required match amount of $500,000, for a total grant project of $1,000,000. The required cash match will be up to $500,000, with $350,000 from Paso del Norte Health Foundation (PDNHF) Challenge Grant #2203, and the remaining $150,000 from the City's Park Impact Fee Fund.

The Parks & Recreation Department (P&R) is in the process of expanding recreational trails across the City with a variety of funding sources. The City received a grant from PDNHF on November 4, 2019, which had a challenge component of 1:1. The challenge requirement was met in 2020 through the City Grant Match Fund and State Legislative Appropriations in 2020: the DA MOVE Trail appropriation in the amount of $290,000 and the Tortugas Trail appropriation in the amount of $75,000. Obstacles experienced with the previously proposed trail alignment for the DA MOVE Trail led to delays and a need to re-scope the project. PDNHF approved the proposed change in project scope in early 2022 in collaboration with P&R.

The trail location was moved to link with the University Lateral Trail route funded by New Mexico Department of Transportation through the Recreational Trail Program (RTP), and to continue south from University Avenue to Union Avenue and east to Tortugas Drive. The scope of work with this request is to provide for the unfunded portion of the trail construction, traffic studies for pedestrian interventions on University Avenue and Union Avenue, construction and installation of recommended pedestrian interventions, and various trail amenities along the 1.08-mile trail route.

The request for City Council is to: 1) authorize submission of the grant application, and 2) approve the cash match request of up to $500,000 as shown on the Proposed Matching Source Fund Summary for the City's FY2023, Exhibit "A". Once the grant is awarded, the City Council will be presented with a budget adjustment to accept the award and budget the cash match in the appropriate fiscal year.

SUPPORT INFORMATION:
Exhibit "A" - Proposed Match Summary

PLAN(S):
Elevate Las Cruces

COMMITTEE/BOARD REVIEW:
Parks & Rec

ANNUAL BUDGET APPROVAL:
☒ Yes
☐ No
☐ N/A

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: $500,000 **AVAILABLE AMOUNT:** $500,000 **EXPENDITURE AMOUNT:** $500,000

Additional Budgetary Information:

Funding Source(s):
Match is budgeted in: Fund 4106 : $150,000 and Fund 4100 : $350,000

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

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

OPTIONS / ALTERNATIVES:
1. Vote "Yes"; this will approve the Resolution to approve the grant application submittal and acknowledge the requisite cash match in order for the City to pursue this grant opportunity.
2. Vote "No"; this will not approve the Resolution, nor the grant application submittal and acknowledge the requisite cash match in order for the City to pursue this grant opportunity.
3. Vote to "Amend"; this may delay the process of applying for the grant opportunity and will require Council direction to staff.

4. Vote to "Table"; this will delay the process of applying for the grant opportunity.

RESOLUTION 23-019

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO SUBMIT A GRANT APPLICATION AND APPROVE A CASH MATCH COMMITMENT FOR THE FOLLOWING: OUTDOOR RECREATION TRAILS PLUS GRANT COMPETITIVE PROGRAM OPPORTUNITY; PROJECT NAME: DA MOVE TRAIL PROJECT; GRANTING AGENCY: NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT (NMEDD) OUTDOOR RECREATION DIVISION; GRANT REQUEST AMOUNT: UP TO $500,000; CASH MATCH REQUIRED: 1:1 OR UP TO $500,000; TOTAL REQUEST AMOUNT UP TO $1,000,000.

The City Council is informed that:

WHEREAS, the City is committed to implementing the Parks & Recreation Master Plan previously approved by City Council; and

WHEREAS, the City is constructing a trail system around the City to benefit the region with funding from various sources; and

WHEREAS, the New Mexico Economic Development Department, Outdoor Recreation Division opened the Outdoor Recreational Trails Plus Competitive 2022 Grant Cycle, with applications accepted on a rolling basis through the end of 2022, or until the allocated $7 million in funding is exhausted; and

WHEREAS, the City desires to submit a grant application for augmenting the existing DA MOVE Trail Project (Project), which has been planned to provided regional benefits to underserved areas of the community; and is under design along University Ave. and Union Ave. to Tortugas Dr.; and will be submitted by August 31, 2022; and

WHEREAS, the scope of work will be to complete the unfunded portion of the trail construction, conduct traffic studies and construct or install pedestrian interventions, and install trail amenities along the trail route as funding allows; and

WHEREAS, the grant request amount will be up to $500,000 with a 1:1 required match, or up to $500,000, for a total grant project of $1,000,000.

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

(I)

THAT the City Council of Las Cruces demonstrates its backing and support for the DA MOVE Trail Project, and approves the submittal of a grant application of up to $500,000, by August 31, 2022, to augment the existing funding for the Project.

(II)

THAT the City hereby approves the required match amount of up to $500,000, from the previously received Paso del Norte Health Foundation grant funding for the DA MOVE Trail Project, and the Park Impact Fees Funds, as shown in the Proposed Source of Matching Funds Summary, Exhibit "A", attached hereto and made a part of this Resolution.

(III)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

EXHIBIT "A"

PROPOSED SOURCE OF MATCHING FUNDS

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO SUBMIT A GRANT APPLICATION AND APPROVE A CASH MATCH COMMITMENT FOR THE FOLLOWING: OUTDOOR RECREATION TRAILS PLUS GRANT COMPETITIVE PROGRAM OPPORTUNITY; PROJECT NAME: DA MOVE TRAIL PROJECT; GRANTING AGENCY: NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT (NM EDD) OUTDOOR RECREATION DIVISION; GRANT REQUEST AMOUNT: UP TO $500,000; CASH MATCH REQUIRED: UP TO $500,000, OR 1:1; TOTAL REQUEST AMOUNT UP TO $1,000,000.

Description	Fund	Object	Project	Object Name	$ Amount
State Grant Revenue	4100	599200		STATE GRANTS	500,000
State Grant Expense	4100	805000		PARK	500,000
Match	4106	805000		PARK	150,000
Match	4100	805000		PARK	350,000

** Project number to be determined*

23-020

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	**☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A**		
1st Reading:		**Adopted:**	August 15, 2022
Drafter:	Dave Duncan	**Department:**	Financial Services
Program:	Procure to Pay	**Line of Business:**	Purchasing

Title: **A RESOLUTION TO AWARD CONTRACTS FOR ELECTRICAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS TO BOHANNAN HUSTON, INC. AND MOLZEN-CORBIN & ASSOCIATES, INC., IN AN AMOUNT NOT TO EXCEED $500,000.00 ANNUALLY FOR EACH, FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR THREE (3) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 21-22-068).**

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

PURPOSE(S) OF ACTION:

To award contracts for electrical engineering services.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On March 18, 2022, the Project Development Section of the Public Works Department requested proposals for electrical engineering services. The Purchasing Section received two (2) proposals that were evaluated and scored by the Selection Advisory Committee (SAC). The SAC is recommending award to both rated firms as follows:

1.Bohannon Huston, Inc. – Las Cruces, New Mexico
2.Molzen-Corbin & Associates, Inc. – Las Cruces, New Mexico

These services are required to perform design functions that include, but are not limited, to the following: electrical system design for buildings, booster stations, lift stations, and odor control stations. The purpose of the electrical engineering services Request for Proposals is to pre-qualify multiple engineering firms that can provide these specialized engineering services.

These proposed service agreements will be used on an as-needed basis for a period of up to four (4) years, subject to annual renewals and approved budget appropriations. It is advantageous for the City to have a pre-qualified list of electrical engineers from which to select, in order to get budgeted projects completed. All departments from the City will be able to enter into individual Project Assignment Agreements with these engineering firms on an as-needed basis. The Public Works Department has numerous projects budgeted throughout upcoming fiscal years. There are also times when special funding (e.g. Legislative appropriations, New Mexico Department of Transportation, etc.) is made available to the City for specific projects. The funding sources often give strict timeframes within which improvements must be designed and constructed in order to secure the funding. By having a pre-qualified engineers, it will not be necessary to go through individual Requests for Proposals in order to contract the necessary work for each individual project. These agreements will allow

Public Works to contract with either of the pre-qualified firms. As a result, valuable time is saved in the design of each project and staff time can be used on other projects and in other capacities.

SUPPORT INFORMATION:

Exhibit A - 21-22-068 - Electrical Engineering Services - BHI
Exhibit B - 21-22-068 - Electrical Engineering Services - MCA

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

SAC

ANNUAL BUDGET APPROVAL:

☒ Yes
☐ No
☐ N/A

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:

Additional Budgetary Information:
40255004-802000-120* (VARIOUS)

Funding Source(s):
Accounts will be assigned on an as-needed basis as projects are identified. Electrical engineering services will be limited to approved budgets.

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

☐ Yes
☐ No
☒ N/A

Does this action align with Elevate Las Cruces?

☐ Yes
☐ No
☒ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and award contracts to the two (2) selected pre-qualified firms, to provide electrical engineering services for the City on an as-needed basis, to each firm for an amount up to $500,000.00 annually, for the next four years subject to annual renewals and approved budget appropriations.
2. Vote "No"; this will not approve the Resolution, and City Council will need to provide staff with alternative direction.
3. Vote to "Amend"; this could modify the Resolution based on City Council direction to staff.
4. Vote to "Table"; this could delay awarding contracts for electrical engineering services and prevent completion of budgeted projects.

REFERENCE INFORMATION:

RESOLUTION 23-020

A RESOLUTION TO AWARD CONTRACTS FOR ELECTRICAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS TO BOHANNAN HUSTON, INC. AND MOLZEN-CORBIN & ASSOCIATES, INC., IN AN AMOUNT NOT TO EXCEED $500,000.00 ANNUALLY FOR EACH, FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR THREE (3) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 21-22-068).

The City Council is informed that:

WHEREAS, the Project Development Section of the Public Works Department requested proposals for Electrical engineering services in March of 2022; and

WHEREAS, these services are required to perform design functions that include, but are not limited, to the following: electrical system design for buildings, booster stations, lift stations, and odor control stations; and

WHEREAS, the purpose of the electrical engineering services Request for Proposals is to pre-qualify multiple engineering firms that can provide these specialized engineering services; and

WHEREAS, these agreements will be used on an as-needed basis for a period of up to four (4) years, subject to annual renewals and approved budget appropriations; and

WHEREAS, the Purchasing Section received two (2) proposals that were evaluated and scored by the Selection Advisory Committee (SAC); and

WHEREAS, the SAC is recommending award to both firms as follows: Bohannan Huston, Inc. and Molzen-Corbin & Associates, Inc. of Las Cruces, New Mexico.

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

(I)

THAT the contracts for electrical engineering services are hereby awarded to Bohannan Huston, Inc. and Molzen-Corbin & Associates, Inc. of Las Cruces, New Mexico, as shown in Exhibits “A” and “B”, respectively, attached hereto and made part of this resolution.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this ____ day of July, 2022 by and between the City of Las Cruces, New Mexico, hereinafter called “CITY” and Bohannon Huston, Inc., of 425 South Telshor Blvd, Suite C-103, Las Cruces, NM 88011, hereinafter called “ENGINEER”.

1. PROJECT DESCRIPTION
On Call Electrical Engineering Services on an as needed basis via Project Assignment Agreements (Attachment A) during the term of this agreement.

2. SCOPE OF SERVICES
In a satisfactory and proper manner, the ENGINEER shall perform SERVICES, as proposed in response to the CITY’S RFP No. 21-22-068, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

The CONTRACTOR is authorized to extend the same terms and conditions of this Agreement to other governmental entities conditioned upon the procurement laws and regulations of those entities. The CITY shall not be a party nor have any liability relating to such extensions.

3. APPROPRIATIONS
The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to ENGINEER. The CITY’S decision as to whether sufficient appropriations and authorizations exist shall be accepted by ENGINEER and shall be final.

4. COMPENSATION
The CITY shall compensate ENGINEER for the performance of SERVICES under this Agreement an amount agreed to for each assigned project, plus applicable taxes. ENGINEER shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

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

5. DEVOTION OF ADEQUATE TIME
ENGINEER will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE
This Agreement shall become effective on August 1, 2022 for a term of one year through July 31, 2023 and, pending mutual written agreement, may be extended annually thereafter for up to three (3) additional one (1)-year terms.

ENGINEER shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and ENGINEER in as agreed to for each project assigned under the terms of this Agreement.

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

8. CHANGES AND EXTRA SERVICES BY THE CITY
The CITY may make changes within the general scope of the SERVICES plus may also request ENGINEER to perform other extra services not incorporated within the Services set forth in this Agreement. If the ENGINEER is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, ENGINEER shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the ENGINEER within five (5) business work days from the date of receipt of ENGINEER written notification.

9. CHANGES AND EXTRA SERVICES BY THE ENGINEER
In the event a condition is identified by the ENGINEER which, in the opinion of the ENGINEER, changes the services, costs, and/or time required for performance under this Agreement, the ENGINEER shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of ENGINEER'S notification.

10. DELAYS
In the event that performance of SERVICES is delayed by causes beyond reasonable control of ENGINEER, and without the fault or negligence of ENGINEER, the time and total compensation for the performance of the SERVICES may be equitably adjusted by

written agreement to reflect the extent of such delay. ENGINEER shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by ENGINEER to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

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

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

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

12. RECORDS AND AUDITS

ENGINEER will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY’S right to recover excessive or illegal payments. ENGINEER will retain records for five (5) years after the completion of the project.

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

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

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

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

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

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

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

15. NO JOINT VENTURE OR PARTNERSHIP
Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between ENGINEER and CITY. Except as otherwise specifically set forth herein, neither ENGINEER nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

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

17. INSURANCE
ENGINEER shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. General Liability Insurance
   a. $1,000,000 per occurrence / $2,000,000 aggregate
   b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
   c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
   d. Coverage must be primary and non-contributory.
   e. Coverage must be per project or per location.
   f. Coverage must be on an occurrence form.
   g. Subrogation must be waived.
2. Commercial Auto Liability
   a. $1,000,000 per occurrence
   b. Coverage must be for “owned, leased, hired, and non-owned autos” or “any autos.”
3. Workers Compensation and Employers Liability
   a. Statutory Limits
   b. Employer liability – $1,000,000 each accident, $1,000,000 each employee by disease, $1,000,000 policy limit
   c. Subrogation must be waived.
4. Professional Liability: $1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

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

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

19. APPLICABLE LAW
This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between

New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

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

20. BREACH
In the event ENGINEER breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give ENGINEER written notice of such breach. In the event ENGINEER fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy ENGINEER'S breach and recover any and all costs and expenses in so doing from ENGINEER.

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

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

TO CITY:	City of Las Cruces PO Box 20000 Las Cruces, NM 88004 ATTENTION: Tony Trevino, PE CFM, Deputy Director PW
With Copies to:	City Attorney Purchasing Manager
TO ENGINEER:	Bohannon Huston, Inc. 425 South Telshor Blvd, Suite C-103 Las Cruces, NM 88011 ATTENTION: Matthew Thompson, PE, Sr. Vice President

23. SCOPE OF AGREEMENT
This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

24. SEVERABILITY
The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. CONFLICT OF INTEREST
ENGINEER represents and warrants that ENGINEER has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, ENGINEER shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of ENGINEER'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to ENGINEER; such termination of the Agreement shall be effective upon the receipt of such notice by ENGINEER.

BOHANNON HUSTON, INC.

BY: _____
Matthew Thompson, PE
Senior Vice President

_____
Date

CITY OF LAS CRUCES

BY: _____
Alfredo R. Pacheco
Interim Purchasing Manager

_____
Date

APPROVED AS TO FORM

for JV 7/11/22
City Attorney

EXHIBIT A

SERVICES

ELECTRICAL ENGINEERING SERVICES

COST PROPOSAL

RFP# 21-22-068
APRIL 14, 2022



City of Las Cruces®

Bohannan Huston

Bohannan Huston

Cost Proposal

Category	Rate	Unit
1. Direct costs	At Cost	
2. Indirect costs	At Cost	
3. Labor (hours) by major tasks		
a. Principal Engineer	$ 245	Hourly
b. Project Engineer/Project Manager	$ 220	Hourly
c. Senior Engineer	$ 185	Hourly
d. Design Engineer	$ 160	Hourly
e. Engineer Intern	$ 125	Hourly
f. Engineer Technician	$ 120	Hourly
g. Drafting Technician	$ 110	Hourly
h. Survey Crew	TBD	Hourly
i. Construction Inspector/Observer	$ 120	Hourly
j. Administrative/Clerical	$ 100	Hourly
k. Field testing & investigations	TBD	Hourly
l. Subcontractor cost markup (percent)	10%	Hourly
4. Materials/Reimbursable Expenses	At Cost	
Travel (Per Diem – per day)	$ 150	
Vehicle Mileage Rate (per mile)	IRS Std 2WD Rate	
Printing/Reproduction	Invoiced at cost	Per copy
5. Equipment	$ 25	Hourly
6. Subcontractors	TBD if needed	
7. Any other proposed costs on a case by case basis		

ATTACHMENT A

PROJECT ASSIGNMENT AGREEMENT

21-22-068 ELECTRICAL ENGINEERING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 21-22-068 dated (insert date of execution), 2022 between the CITY and Bohannon Huston, Inc., (ENGINEER), as amended and incorporated herein by reference, the City and Engineer hereby agree on this _____ day of _____, 20___, as follows:

1. In a satisfactory and proper manner, the ENGINEER shall perform SERVICES as proposed in response to the CITY's RFP No. 21-22-068 and ENGINEER's proposal as set forth in ATTACHMENT A attached hereto.

2. Insurance (select the appropriate clause below, delete the other):
(for non-construction projects)
ENGINEER agrees to maintain a Commercial General Liability policy with limits not less than $1 million per occurrence and $2 million aggregate limits. The City of Las Cruces is to be named as an additional Insured. Evidence of coverage must be on an Acord 25 Certificate of Insurance with attached Additional Insured Endorsement.

   (for construction, maintenance, installation projects)
ENGINEER agrees to maintain a Commercial General Liability policy with limits not less than $1 million per occurrence and $2 million aggregate limits. Coverage must include Premise and Operations, Products and Completed Operation and Personal and Advertising Injury coverage. Aggregate limits must be "per project" or "per location". Coverage must be primary and non-contributory before any other insurance or self-insurance. The City of Las Cruces is to be named as an additional Insured. Evidence of coverage must be on an Acord 25 Certificate of Insurance with attached Additional Insured Endorsement.

3. The estimated completion date is number days after a Notice to Proceed is issued by the CITY to the ENGINEER.

4. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of $ dollars.cents, plus NMGRT. Invoices issued by the ENGINEER shall be made monthly / upon completion of project with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

(SIGNATURE BLOCK FOLLOWS ON NEXT PAGE)

BOHANNON HUSTON, INC.

By: _____
Signature Date

_____
Print Name and Title

Requisition No. XXXXXXXX

CITY OF LAS CRUCES

By: _____
Signature Date

Alfredo R. Pacheco, Interim Purchasing Manager

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this ____ day of July, 2022 by and between the City of Las Cruces, New Mexico, hereinafter called “CITY” and Molzen Corbin & Associates, Inc., of 1155 Commerce Drive, Suite F, Las Cruces, NM 88011, hereinafter called “ENGINEER”.

1. PROJECT DESCRIPTION
On Call Electrical Engineering Services on an as needed basis via Project Assignment Agreements (Attachment A) during the term of this agreement.

2. SCOPE OF SERVICES
In a satisfactory and proper manner, the ENGINEER shall perform SERVICES, as proposed in response to the CITY’S RFP No. 21-22-068, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

The CONTRACTOR is authorized to extend the same terms and conditions of this Agreement to other governmental entities conditioned upon the procurement laws and regulations of those entities. The CITY shall not be a party nor have any liability relating to such extensions.

3. APPROPRIATIONS
The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to ENGINEER. The CITY’S decision as to whether sufficient appropriations and authorizations exist shall be accepted by ENGINEER and shall be final.

4. COMPENSATION
The CITY shall compensate ENGINEER for the performance of SERVICES under this Agreement an amount agreed to for each assigned project, plus applicable taxes. ENGINEER shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

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

5. DEVOTION OF ADEQUATE TIME
ENGINEER will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE
This Agreement shall become effective on August 1, 2022 for a term of one year through July 31, 2023 and, pending mutual written agreement, may be extended annually thereafter for up to three (3) additional one (1)-year terms.

ENGINEER shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and ENGINEER in as agreed to for each project assigned under the terms of this Agreement.

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

8. CHANGES AND EXTRA SERVICES BY THE CITY
The CITY may make changes within the general scope of the SERVICES plus may also request ENGINEER to perform other extra services not incorporated within the Services set forth in this Agreement. If the ENGINEER is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, ENGINEER shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the ENGINEER within five (5) business work days from the date of receipt of ENGINEER written notification.

9. CHANGES AND EXTRA SERVICES BY THE ENGINEER
In the event a condition is identified by the ENGINEER which, in the opinion of the ENGINEER, changes the services, costs, and/or time required for performance under this Agreement, the ENGINEER shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of ENGINEER'S notification.

10. DELAYS
In the event that performance of SERVICES is delayed by causes beyond reasonable control of ENGINEER, and without the fault or negligence of ENGINEER, the time and total compensation for the performance of the SERVICES may be equitably adjusted by

written agreement to reflect the extent of such delay. ENGINEER shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by ENGINEER to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

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

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

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

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ENGINEER will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY’S right to recover excessive or illegal payments. ENGINEER will retain records for five (5) years after the completion of the project.

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

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

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

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

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

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

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

15. NO JOINT VENTURE OR PARTNERSHIP
Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between ENGINEER and CITY. Except as otherwise specifically set forth herein, neither ENGINEER nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

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

17. INSURANCE
ENGINEER shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. General Liability Insurance
   a. $1,000,000 per occurrence / $2,000,000 aggregate
   b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
   c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
   d. Coverage must be primary and non-contributory.
   e. Coverage must be per project or per location.
   f. Coverage must be on an occurrence form.
   g. Subrogation must be waived.
2. Commercial Auto Liability
   a. $1,000,000 per occurrence
   b. Coverage must be for “owned, leased, hired, and non-owned autos” or “any autos.”
3. Workers Compensation and Employers Liability
   a. Statutory Limits
   b. Employer liability – $1,000,000 each accident, $1,000,000 each employee by disease, $1,000,000 policy limit
   c. Subrogation must be waived.
4. Professional Liability: $1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

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

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

19. APPLICABLE LAW
This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between

New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

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

20. BREACH
In the event ENGINEER breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give ENGINEER written notice of such breach. In the event ENGINEER fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy ENGINEER'S breach and recover any and all costs and expenses in so doing from ENGINEER.

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

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

TO CITY:	City of Las Cruces PO Box 20000 Las Cruces, NM 88004 ATTENTION: Tony Trevino, PE CFM, Deputy Director PW
With Copies to:	City Attorney Purchasing Manager
TO ENGINEER:	Molzen Corbin & Associates, Inc. 1155 Commerce Drive, Suite F Las Cruces, NM 88011 ATTENTION: Kevin Eades, PE, President & CEO

23. SCOPE OF AGREEMENT
This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

24. SEVERABILITY
The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. CONFLICT OF INTEREST
ENGINEER represents and warrants that ENGINEER has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, ENGINEER shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of ENGINEER'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to ENGINEER; such termination of the Agreement shall be effective upon the receipt of such notice by ENGINEER.

MOLZEN CORBIN & ASSOCIATES, INC.

BY: _____
Kevin Eades, PE
President & CEO

_____
Date

CITY OF LAS CRUCES

BY: _____
Alfredo R. Pacheco
Interim Purchasing Manager

_____
Date

APPROVED AS TO FORM

for JV 7/11/22
City Attorney

EXHIBIT A

SERVICES

City of Las Cruces
MOUNTAINS OF OPPORTUNITY

Cost Proposal

Electrical Engineering Services
RFP No. 21-22-068

April 14, 2022



MOLZENCORBIN
ENGINEERS | ARCHITECTS | PLANNERS

MOLZEN-CORBIN & ASSOCIATES
STANDARD BILLING RATES
AS OF JUNE 1, 2021

DEPARTMENT	BILLING CATEGORIES	RATE
Architectural	Senior Principal Architect	$240
	Principal Architect	$220
	Senior Architect	$180
	Project Architect	$145
	Registered Architect	$125
	Intern Architect 2	$100
	Intern Architect 1	$80
	Senior Architectural Designer	$120
	Architectural Designer I	$110
	Planner	$90
	Landscape/Irrigation Designer	$90
Civil Engineering	Senior Principal Engineer	$240
	Principal Engineer	$220
	Senior Engineer	$200
	Project Engineer	$155
	Professional Engineer	$135
	Engineering Intern II	$115
	Engineering Intern I	$105
	Senior Civil Design Specialist	$145
	Engineering Design Specialist	$130
	Senior Enginerring Design Tech	$125
	Engineering Design Tech	$110
	Associate Engineering Design Tech	$85
Electrical Engineering	Senior Principal Engineer	$240
	Principal Engineer	$220
	Senior Engineer	$200
	Project Engineer	$160
	Professional Engineer	$140
	Engineering Intern II	$120
	Engineering Intern I	$110
	Engineering Design Specialist	$130
	Engineering Design Tech	$110
	Associate Engineering Design Tech	$85
Mechanical	Senior Mechanical Engineer	$165
Water Resource Engineering	Senior Principal Engineer	$240
	Principal Engineer	$220
	Senior Engineer	$200
	Project Engineer	$155
	Professional Engineer	$135
	Engineering Intern II	$115
	Engineering Intern I	$105
	Sr. Engineering Design Specialist	$145
	Engineering Design Specialist	$130
	Engineering Design Tech	$110
	O & M Specialist	$100
	Associate Engineering Design Tech	$85
CADD / Survey	CADD Operator II	$75
	CADD Operator I	$65
	Survey Technician	$90
	Two Person Survey Crew	$180
	Two Person GPS Survey Crew	$205
	Licensed Surveyor	$205
Construction Observation	Senior Observer/Manager	$100
	Senior Observer	$95
	Observer	$85
Administration	Administrative Aide II	$65
	Administrative Aide I	$45
	Administrative Support	$95
	Grants/Technical Administrator	$95
	Computer Technician	$105
	Senior Technical Writer / Editor	$80

Miscellaneous Expenses

Copies	Per Copy	$0.11
Color Copies	Per 8 1/2 x 11 Copy	$1.00
Color Copies	Per 11 x 17 Copy	$2.00
Mileage	Per Mile (per IRS)	
Prints/Plots(24x36)	Per Sheet	$3.00
Sub-Consultants	Cost x 1.1	

ATTACHMENT A

PROJECT ASSIGNMENT AGREEMENT

21-22-068 ELECTRICAL ENGINEERING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 21-22-068 dated (insert date of execution), 2022 between the CITY and Molzen Corbin & Associates,, Inc., (ENGINEER), as amended and incorporated herein by reference, the City and Engineer hereby agree on this _____ day of _____, 20___, as follows:

1. In a satisfactory and proper manner, the ENGINEER shall perform SERVICES as proposed in response to the CITY's RFP No. 21-22-068 and ENGINEER's proposal as set forth in ATTACHMENT A attached hereto.

2. Insurance (select the appropriate clause below, delete the other):
(for non-construction projects)
ENGINEER agrees to maintain a Commercial General Liability policy with limits not less than $1 million per occurrence and $2 million aggregate limits. The City of Las Cruces is to be named as an additional Insured. Evidence of coverage must be on an Acord 25 Certificate of Insurance with attached Additional Insured Endorsement.

   (for construction, maintenance, installation projects)
ENGINEER agrees to maintain a Commercial General Liability policy with limits not less than $1 million per occurrence and $2 million aggregate limits. Coverage must include Premise and Operations, Products and Completed Operation and Personal and Advertising Injury coverage. Aggregate limits must be "per project" or "per location". Coverage must be primary and non-contributory before any other insurance or self-insurance. The City of Las Cruces is to be named as an additional Insured. Evidence of coverage must be on an Acord 25 Certificate of Insurance with attached Additional Insured Endorsement.

3. The estimated completion date is number days after a Notice to Proceed is issued by the CITY to the ENGINEER.

4. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of $ dollars.cents, plus NMGRT. Invoices issued by the ENGINEER shall be made monthly / upon completion of project with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

(SIGNATURE BLOCK FOLLOWS ON NEXT PAGE)

MOLZEN CORBIN & ASSOCIATES, INC.	CITY OF LAS CRUCES
By:	By:
Signature Date	Signature Date
	Alfredo R. Pacheco, Interim Purchasing Manager
Print Name and Title	

Requisition No. XXXXXXXX

23-021

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	**☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ 6 ☐ N/A**		
1st Reading:		**Adopted:**	August 15, 2022
Drafter:	Natalie Green	**Department:**	Economic Development
Program:	HOUSING AND NEIGHBORHOOD SERVICES	**Line of Business:**	HOUSING AND NEIGHBORHOOD SERVICES

Title: **A RESOLUTION ADOPTING THE MESILLA VALLEY COMMUNITY OF HOPE CAMPUS MASTER PLAN.**

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

PURPOSE(S) OF ACTION:
Adopt Master Plan

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
On May 3, 2021, the City of Las Cruces contracted with Huitt-Zollars, Inc. of Las Cruces, New Mexico to develop a master plan for the Mesilla Valley Community of Hope. In addition to the master plan, an evaluation of the facilities and recommendations for the management structure was included.

The City-owned property at 999 W. Amador, Las Cruces, NM, is leased to and managed by the non-profit organization Mesilla Valley Community of Hope (MVCH). Through this arrangement, services are provided to the homeless and near homeless indigent population. Sub-contracted agencies currently at the location include MVCH Administration, intake, and social services (including Camp Hope); Amador Health Center (medical services); El Caldito Soup Kitchen (lunch meals); Jardin de Los Ninos (child daycare), and Casa de Peregrinos (food bank and distribution center).

All organizations have identified a need for expansion and/or improvements, the Master Plan, defines the ultimate buildout at the site and takes into consideration the City's goals of how services are supported at the site, along with being reflective of the future plans each non-profit has as individual stakeholders.

Highlights of the Master Plan include:

- Preferred Site Plan
- Recommendations for Infrastructure and Facility
- FTE for Campus Maintenance
- Amendments to leases/subleases
- Improved work order and maintenance request process
- Re-Plat & Zoning updates
- Standardized reporting forms

The Master plan was reviewed and approved by the Development Review Committee on June 6, 2022. The Development Review Committee is a workgroup made up of representatives from Public Works, Community Development, Utilities, Fire Department, Facilities, MPO, Parks and Rec. and Transit.

SUPPORT INFORMATION:

Exhibit "A" MVCH Final Report

PLAN(S):

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

COMMITTEE/BOARD REVIEW:

DRC

ANNUAL BUDGET APPROVAL:

☐ Yes

☐ No

☒ N/A

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

☐ Yes

☒ No

☐ N/A

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

☐ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and the Master Plan for the Mesilla Valley Community of Hope will be adopted.
2. Vote "No"; this will not approve the Resolution and the Master Plan for the Mesilla Valley Community of Hope will not be adopted.
3. Vote to "Amend"; this will require direction from City Council to staff.
4. Vote to "Table"; this could delay pending projects and the implementation of the Master Plan for the Mesilla Valley Community of Hope.

REFERENCE INFORMATION:

1. Resolution No. 21-163

RESOLUTION 23-021

A RESOLUTION ADOPTING THE MESILLA VALLEY COMMUNITY OF HOPE CAMPUS MASTER PLAN.

The City Council is informed that:

WHEREAS, the City of Las Cruces contracted with Huitt-Zollars, Inc. of Las Cruces, New Mexico to develop a master plan for the Mesilla Valley Community of Hope; and

WHEREAS, the master plan included an evaluation of the facilities and recommendations for the management structure; and

WHEREAS, the Mesilla Valley Community of Hope subleases to Amador Health Center (medical services), El Caldito Soup Kitchen (lunch meals), Jardin de los Ninos (child daycare), and Casa de Peregrinos; and

WHEREAS, all organizations have identified a need for expansion and/or improvements; and

WHEREAS, the Master Plan, defines the ultimate buildout at the site and takes into consideration the City's goals of how services are supported at the site.

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

(I)

THAT the Mesilla Valley Community of Hope Master Plan, as shown in Exhibit "A" , attached hereto, be adopted.

(II)

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

DONE AND APPROVED this day of

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by:

Seconded by:

AYES

NAYS

City of Las Cruces®

Mesilla Valley Community of Hope

Master Plan & Management Structure Recommendations

Final March 2022

HUITT-ZOLLARS With:

Architectural Research Consultants, Incorporated

REA REAL ESTATE ADVISORS

4906 Alameda Blvd. NE, Suite A, Albuquerque, New Mexico 87113 505-842-1254 https://www.arcplanning.com

Acknowledgements

City of Las Cruces Mayor and City Council

Ken Miyagishima, *Mayor*
Kasandra Gandara, *District 1*
Tessa Abeyta, *District 2*
Becki Graham, *District 3*
Johana Bencomo, *District 4*
Becky Corran, *District 5*
Yvonne Flores, *District 6*

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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

Michelle Saenz-Adames, PHD, *CEO*
Christina Rigtrup, *President, Board of Directors*
Melinda Shane, PhD, *Past President, Board of Directors*

Huitt-Zollars

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Architectural Research Consultants, Incorporated

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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 Condtioning
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

- 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

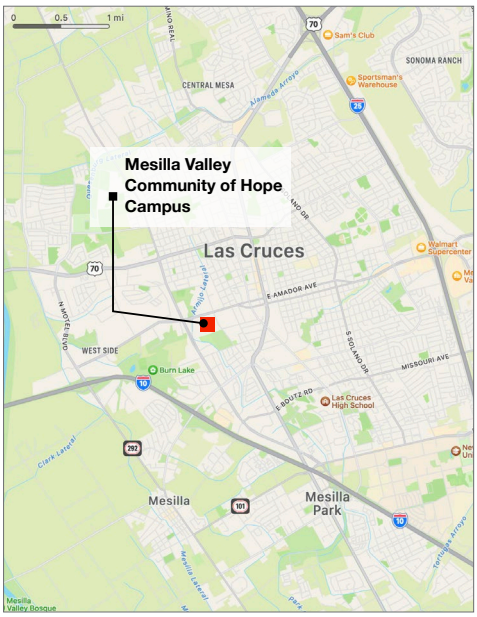
Background

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***

Exhibit 01: *MVCH Location*



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.

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.

See ***Appendix 4*** *for a site plan of the relocated facility*

- 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.

Site Context

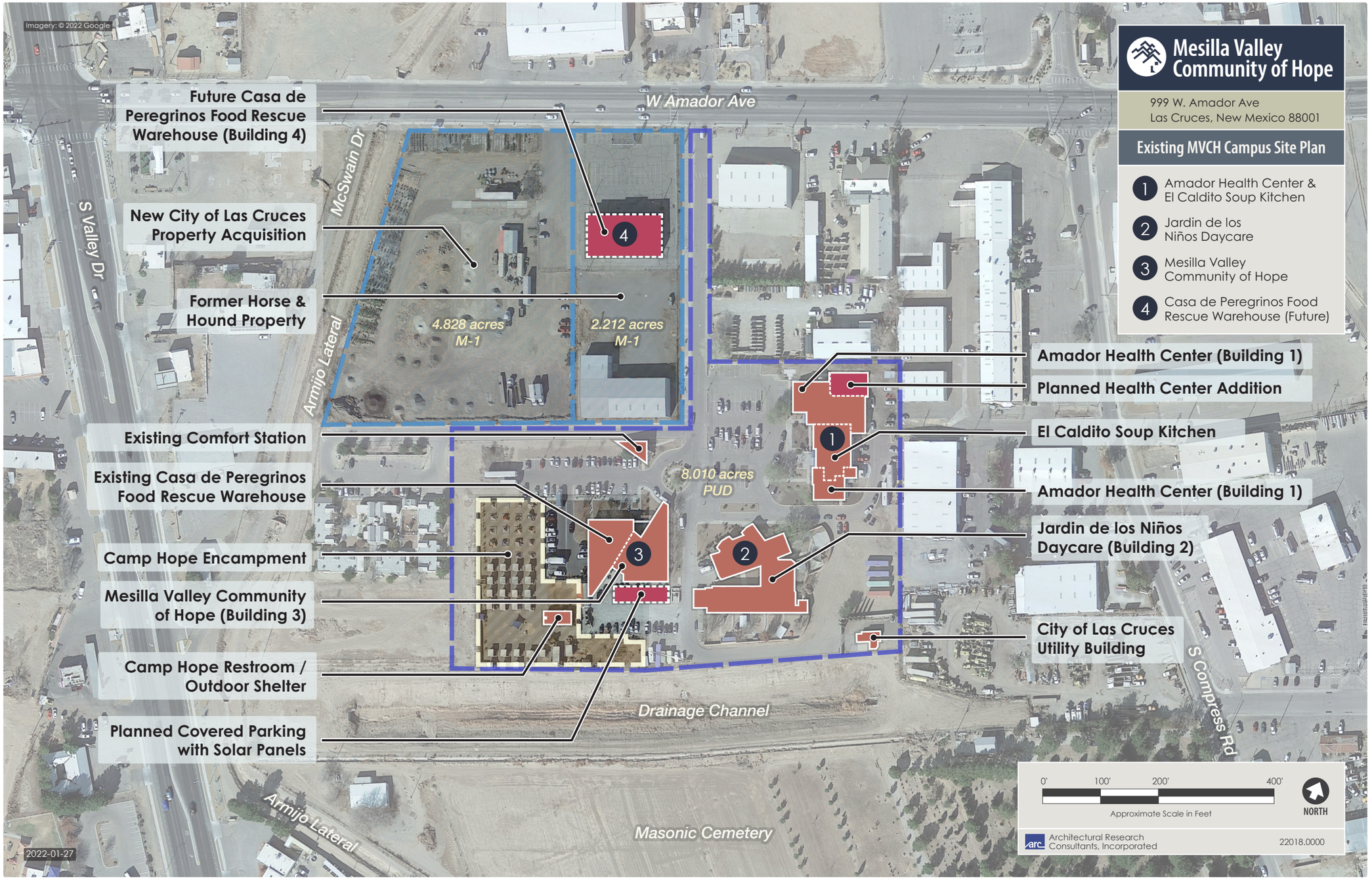
The campus is bounded on the north by W. Amador Ave., a mix of industrial properties to the east and northeast, a drainage channel to the south beyond which is the Masonic Cemetery, and to the west by the YDI multi-family housing complex, and the two vacant recently acquired industrial properties. To 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:

*See **Appendix 2** for floor plans of campus 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.

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:

- 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 is meal service offerings significantly since it moved into the current facility, and has outgrown the existing space. It's 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*

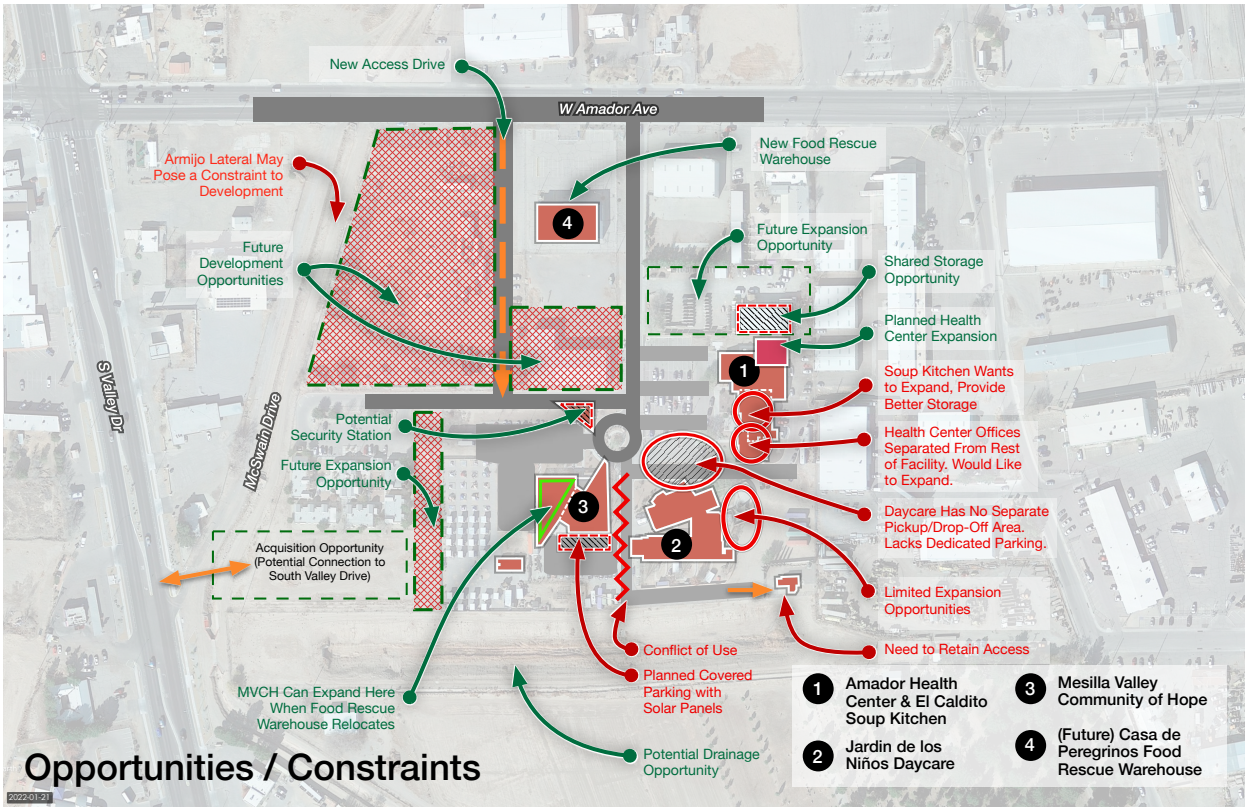


Exhibit 04: *Option 1*

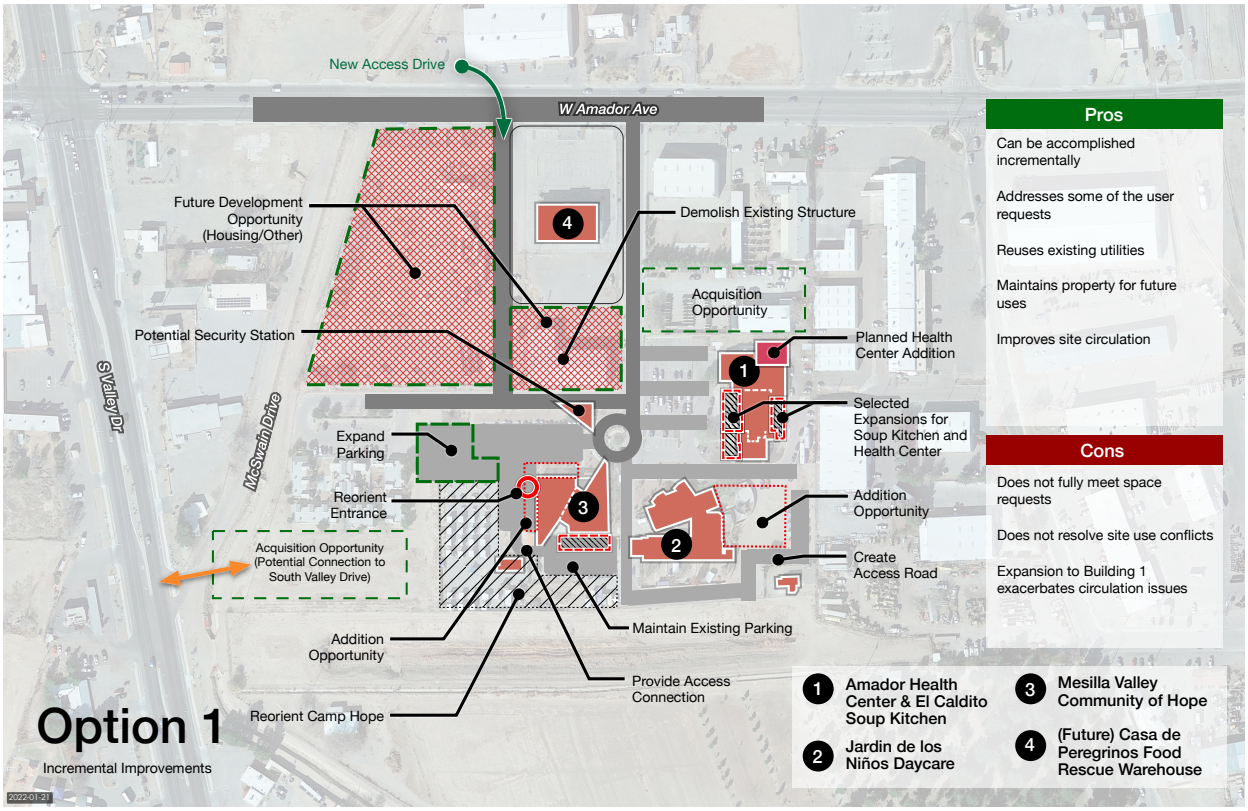


Exhibit 05: *Option 2*

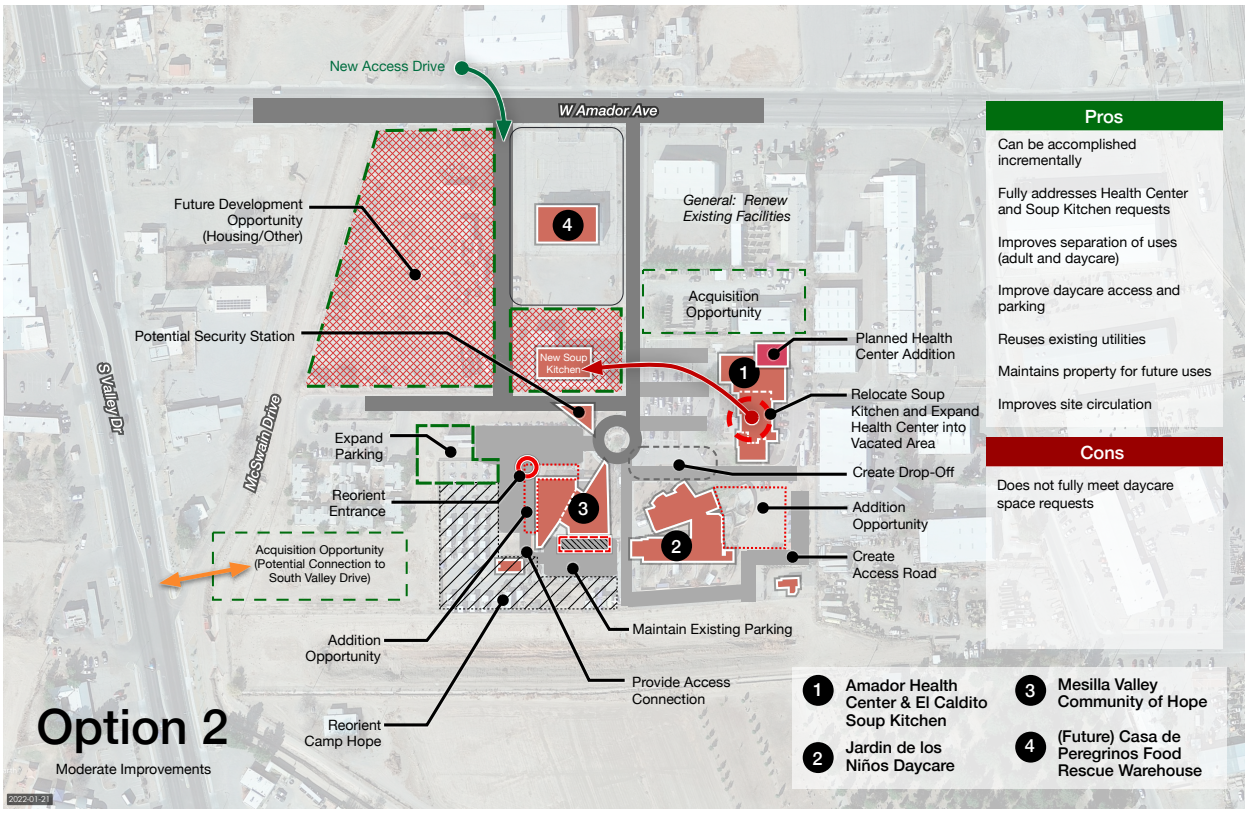
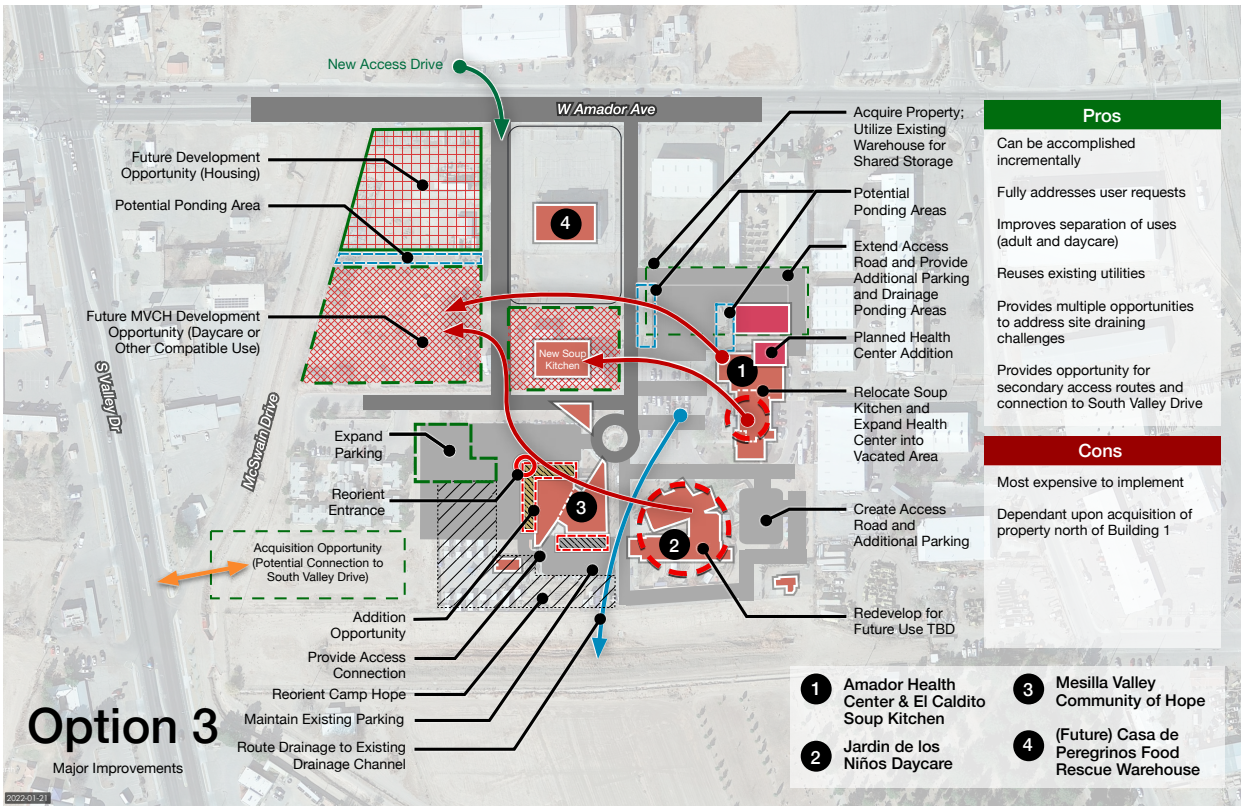


Exhibit 06: *Option 3*



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).

*See **Exhibit 07** for a conceptual site development pan*

- Building 1 Area (Existing Amador Health Center and Soup Kitchen):
  - Relieve existing building space crowding by relocating the El Cadito 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.

- 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

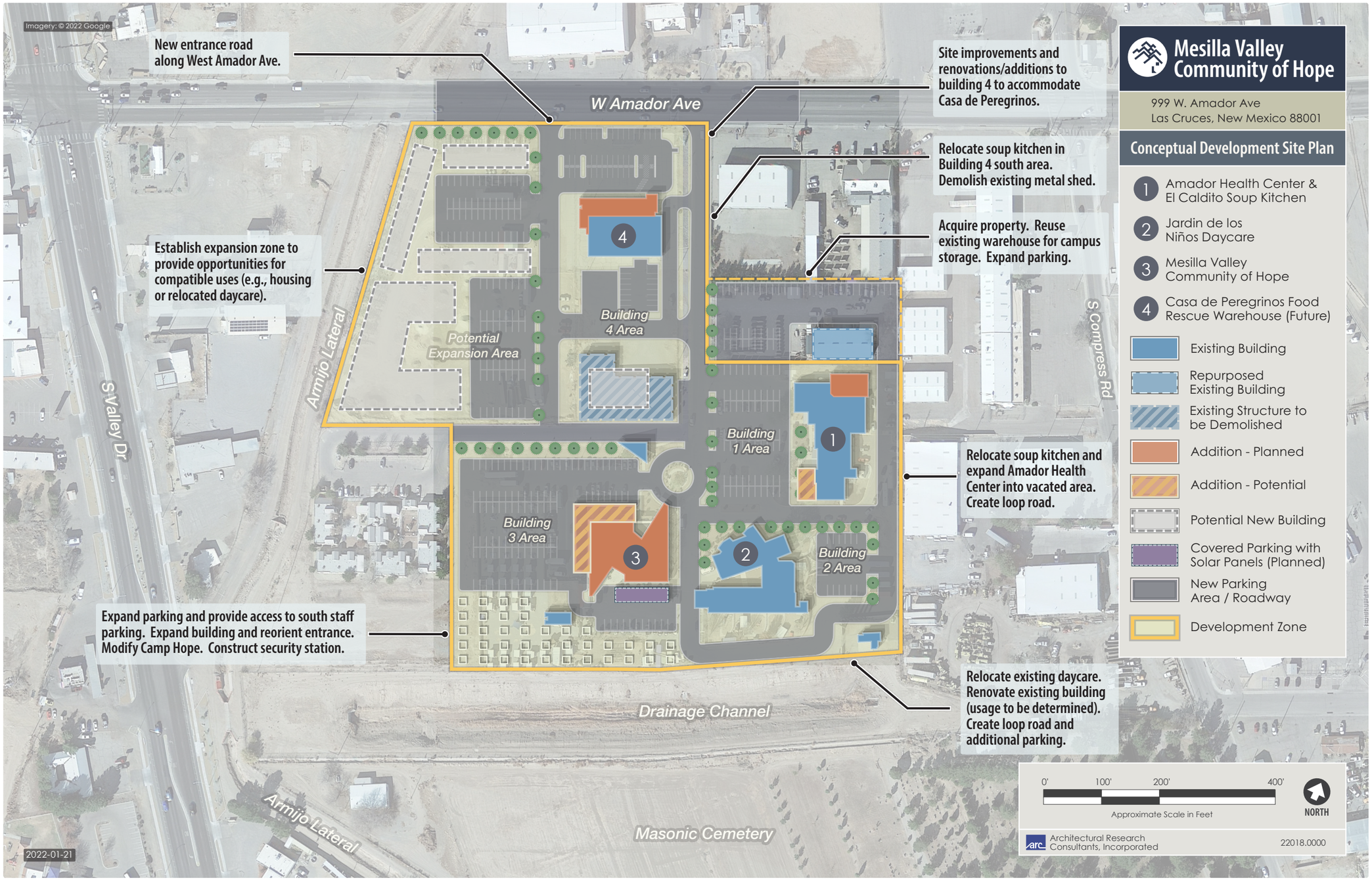
  This zone provides development opportunities for compatible uses to the MVCH campus for possibly housing, a relocated daycare, or other compatible uses.

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 allottments 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 acquistion 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 vender 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.

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:

Renewal Options: Yes ☐ No ☑

Tenant excercised its option to renew for that period from 12/1/21 thru 11/30/25. Tenant has no other renewal rights.

Sublease 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 responsiblities as stated herein are passed through as

Expansion Options: Yes ☐ No ☑

Parking: (noted in lease) 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. Lesseee must accomidate parking needs as a result of expansion to meet code.

Percentage Rent: Yes ☐ No ☑

Percentage:

Breakpoints:

Offsets: Yes ☐ No ☐

Outstanding LC's or TI's: Yes ☐ No ☑

Exhibit A: *Lease Abstract (Continued)*

Lease Abstract

Prepared by:	**Real Estate Advisors LLC**			Date:	**2/8/2022**
Tenant:	**St. Luke's Health Care Clinic aka Amador Health Clinic**			Property:	**999 West Amador Ave.**
Commencement Date:	07/01/15	St. Lukes Health Care Clinic			
Expiration Date:	06/30/26	Suite A		% total project	18.28%
Term (months):	66 months	Suite D		% total project	5.65%
Tenant Premises:	8,900 sf				
Land Size (if stated):	8 acre				

Rent Schedule: Annual ☑ Monthly ☐ PSF/Year ☐

Date: 07/01/15 $ 90,922.44

In lieu of $90,922.44 market rental payment, and beginning on July 1, 2015, the Sublessee 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 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:

Renewal Options: Yes ☐ No ☑

Tenant excercised it option to renew for that period from 12/1/21 thru 6/30/26. Tenant has no other renewal rights.

Sublease 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 responsiblities as stated herein are passed through as

Expansion Options: Yes ☐ No ☑

Parking: (noted in lease) 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. Lesseee must accomidate parking needs as a result of expansion to meet code.

Percentage Rent: Yes ☐ No ☑

Percentage:

Breakpoints:

Offsets: Yes ☐ No ☐

Outstanding LC's or TI's: Yes ☐ No ☑

	Com Date	Exp Date
1st Amend	12/1/2020	6/30/2026
Lease	12/1/2015	11/30/2020

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 addtional 5 Years on December 1, 2020, the Sublessee provideds 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:

Renewal Options: Yes ☐ No ☑

Tenant excercised it option to renew for that period from 12/1/20 thru 12/30/25. Tenant has no other renewal rights.

Sublease 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 responsiblities as stated herein are passed through as

Expansion Options: Yes ☐ No ☑

Parking: (noted in lease) 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. Lesseee must accomidate parking needs as a result of expansion to meet code.

Percentage Rent: Yes ☐ No ☑

Percentage:

Breakpoints:

Offsets: Yes ☐ No ☐

Outstanding LC's or TI's: Yes ☐ No ☑

	Com Date	Exp Date
1st Amend	12/1/2020	12/30/2025
Lease	12/1/2015	11/30/2020

Exhibit A: *Lease Abstract (Continued)*

Lease Abstract

Prepared by:	**Real Estate Advisors LLC**		Date:	**2/8/2022**	
Tenant:	**El Caldito Soup Kitchen**		Property:	**999 West Amador Ave.**	
Commencement Date:	07/01/15	El Caldito Soup Kitchen	Size:	13.98%	
Expiration Date:	12/30/25		Size:		
Term (months):	60 Months		Size:		
Tenant Premises:	5,200 sf		Size:		
Land Size (if stated):	8 acre		Size:		

Rent Schedule: Annual ☑ Monthly ☐ PSF/Year ☐

Date: 07/01/15 $ 53,487.42

In lieu of $53,487.42 market rental payment, and beginning on July 1, 2015, the Sublessee 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 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:

Renewal Options: Yes ☑ No ☐

Tenant excercised it option to renew for that period from 12/1/20 thru 12/30/25. Tenant has no other renewal rights.

Sublease 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 responsiblities as stated herein are passed through as

Expansion Options: Yes ☐ No ☑

Parking: (noted in lease) 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. Lesseee must accomidate parking needs as a result of expansion to meet code.

Percentage Rent: Yes ☐ No ☑

Percentage:

Breakpoints:

Offsets: Yes ☐ No ☐

Outstanding LC's or TI's: Yes ☐ No ☑

	Com Date	Exp Date
1st Amend	12/1/2020	12/30/2025
Lease	12/1/2015	11/30/2020

Exhibit A: *Lease Abstract (Continued)*

Lease Abstract

Prepared by:	**Real Estate Advisors LLC**	Date:	**2/8/2022**
Tenant:	**Jardin de los Ninos Inc.**	Property:	**999 West Amador Ave.**

Commencement Date:	07/01/15	Jardin De Los Ninos	%	32.80%
Expiration Date:	12/30/25			
Term (months):	60 Months			
Tenant Premises:	12,200 sf			
Land Size (if stated):	8 acre			

Rent Schedule: Annual ☑ Monthly ☐ PSF/Year ☐

Date: 07/01/15 $ 144,060.00

In lieu of $144,060 market rental payment, and beginning on July 1, 2015, the Sublessee 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 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:

Renewal Options: Yes ☑ No ☐

Tenant excercised it option to renew for that period from 12/1/20 thru 12/30/25. Tenant has no other renewal rights.

Sublease 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 responsiblities as stated herein are passed through as

Expansion Options: Yes ☐ No ☑

Parking: (noted in lease) 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. Lesseee must accomidate parking needs as a result of expansion to meet code.

Percentage Rent: Yes ☐ No ☑

Percentage:

Breakpoints:

Offsets: Yes ☐ No ☐

Outstanding LC's or TI's: Yes ☐ No ☑

	Com Date	Exp Date
1st Amend	12/1/2020	12/30/2025
Lease	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

ACH'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

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.

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 Pelegrinos (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

Program1

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.

- 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.

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.

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*

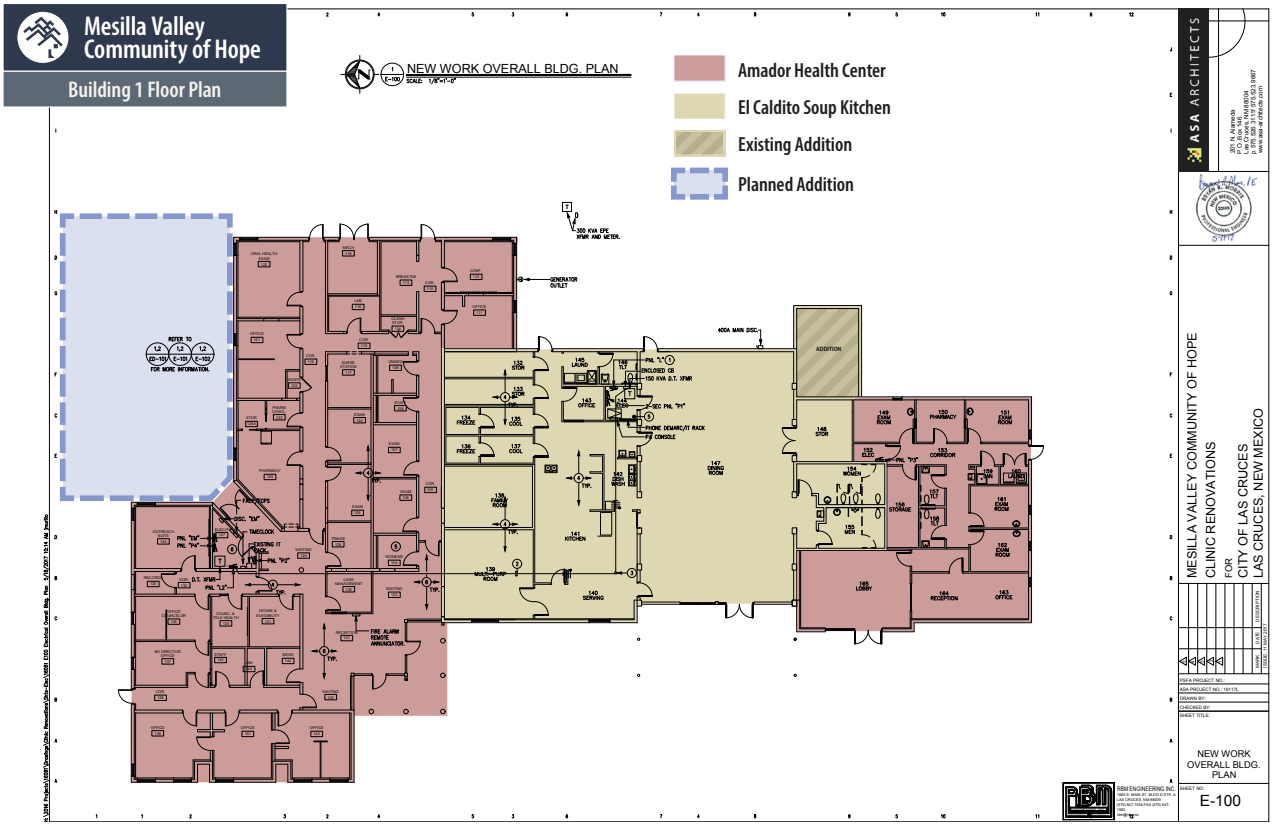


Exhibit 10: *Building 2 Floor Plan*



Exhibit 11: *Building 3 Floor Plan*

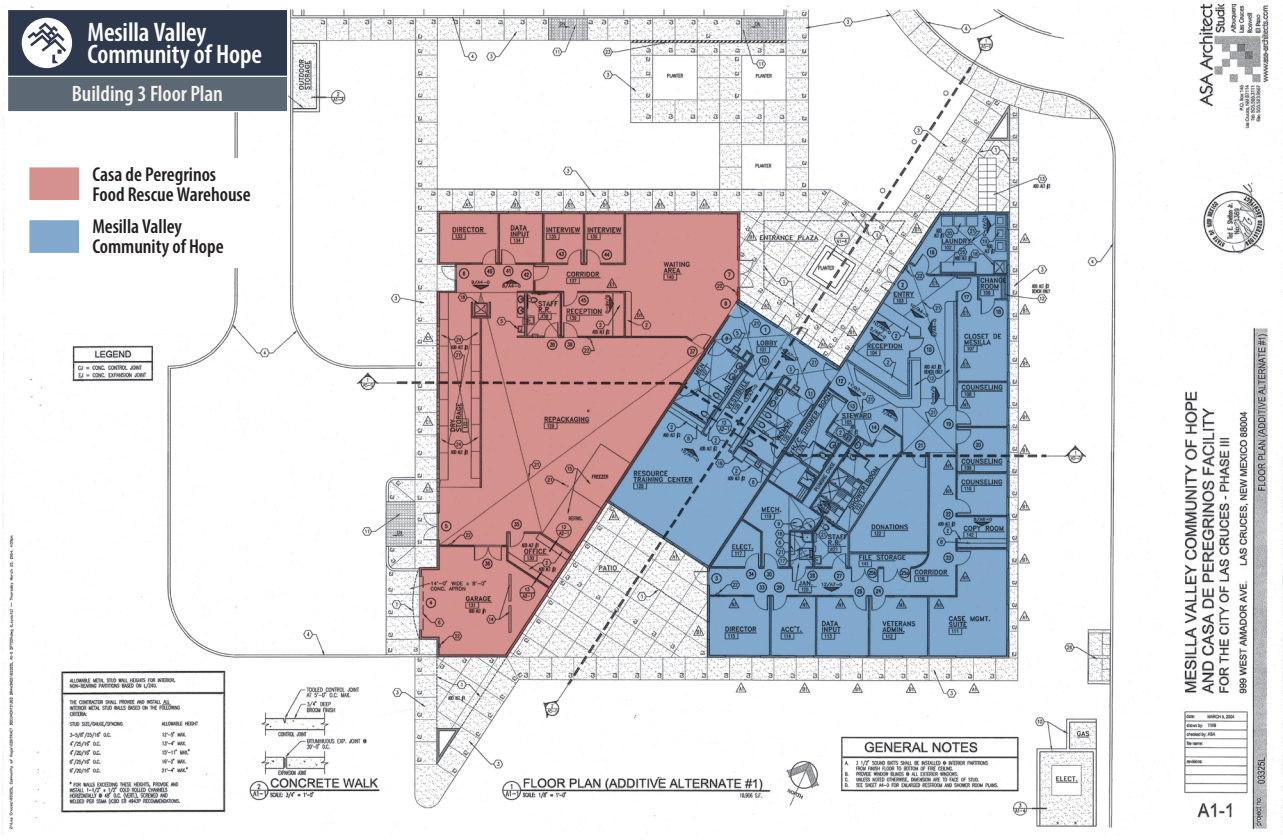
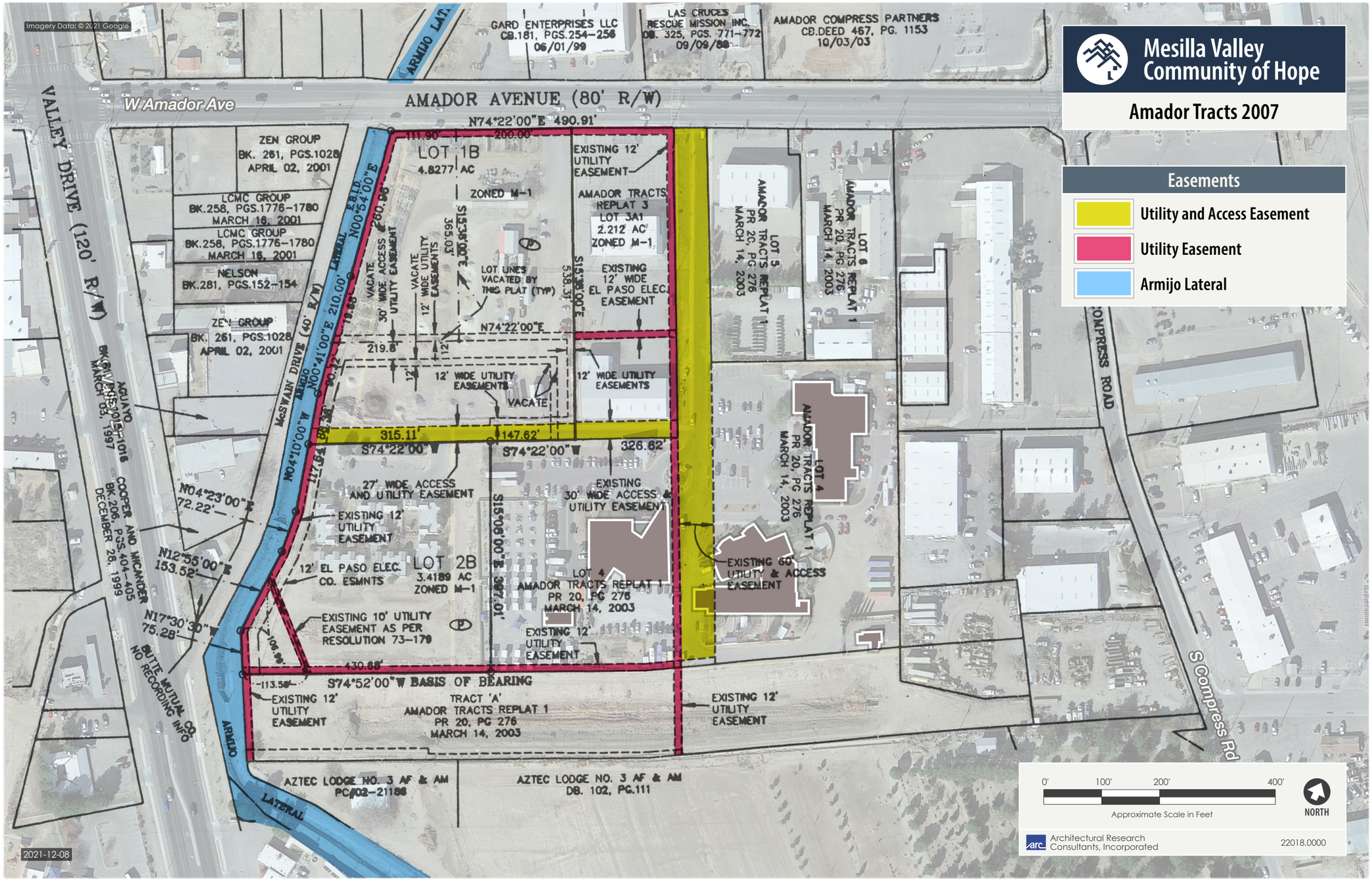
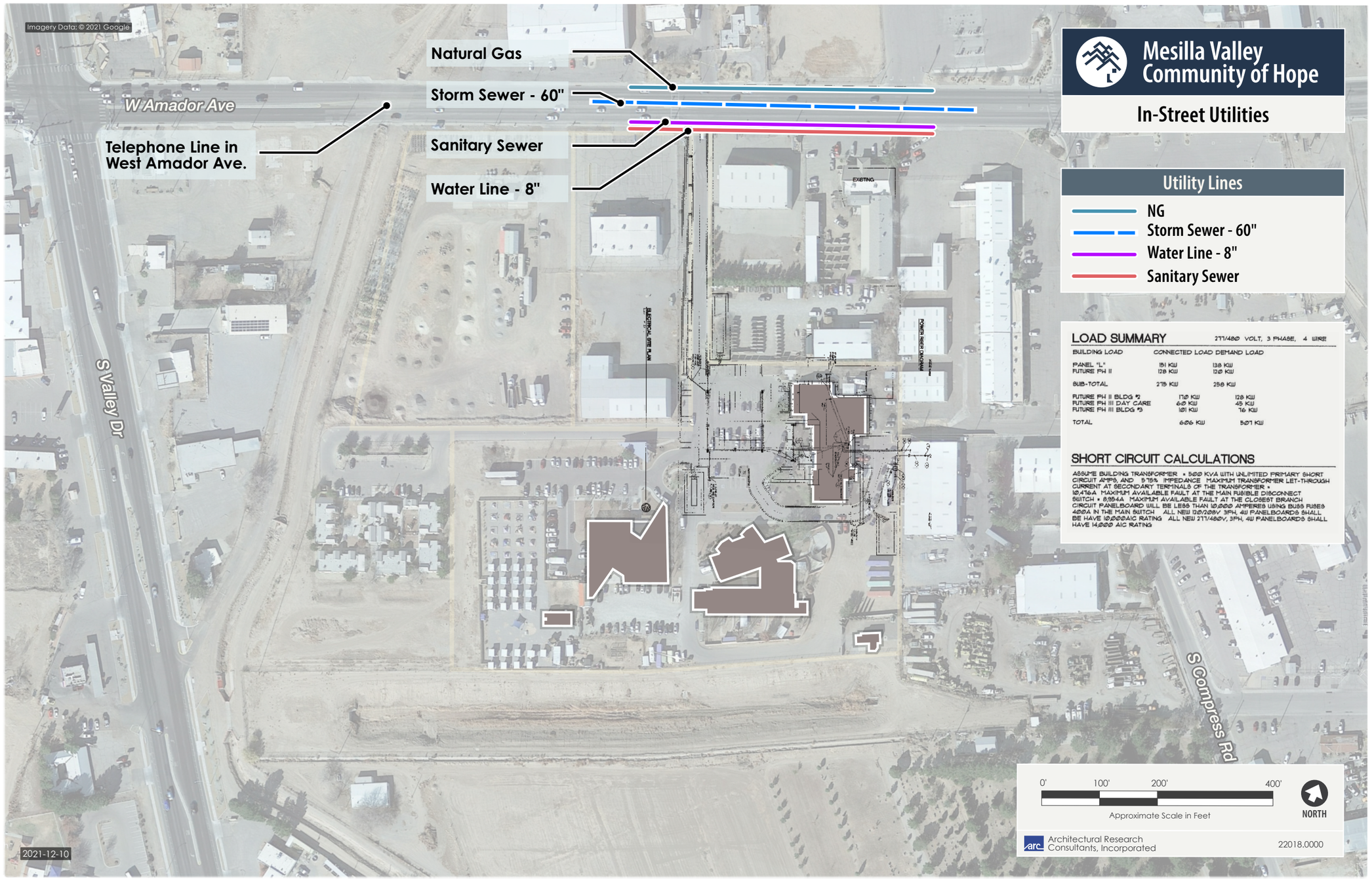


Exhibit 12: *Utility Easements*



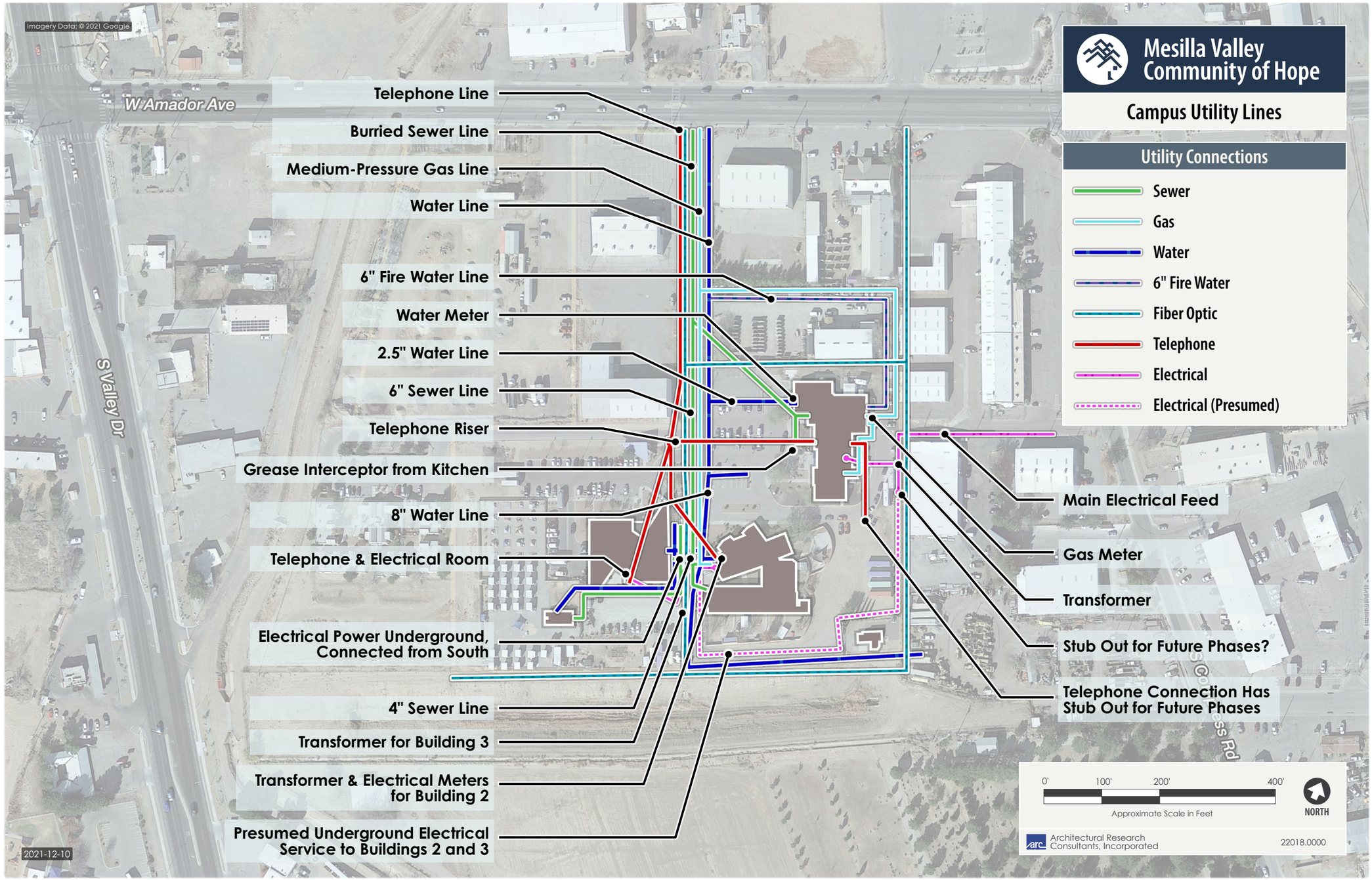
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Exhibit 13: *In-Street Utilities*



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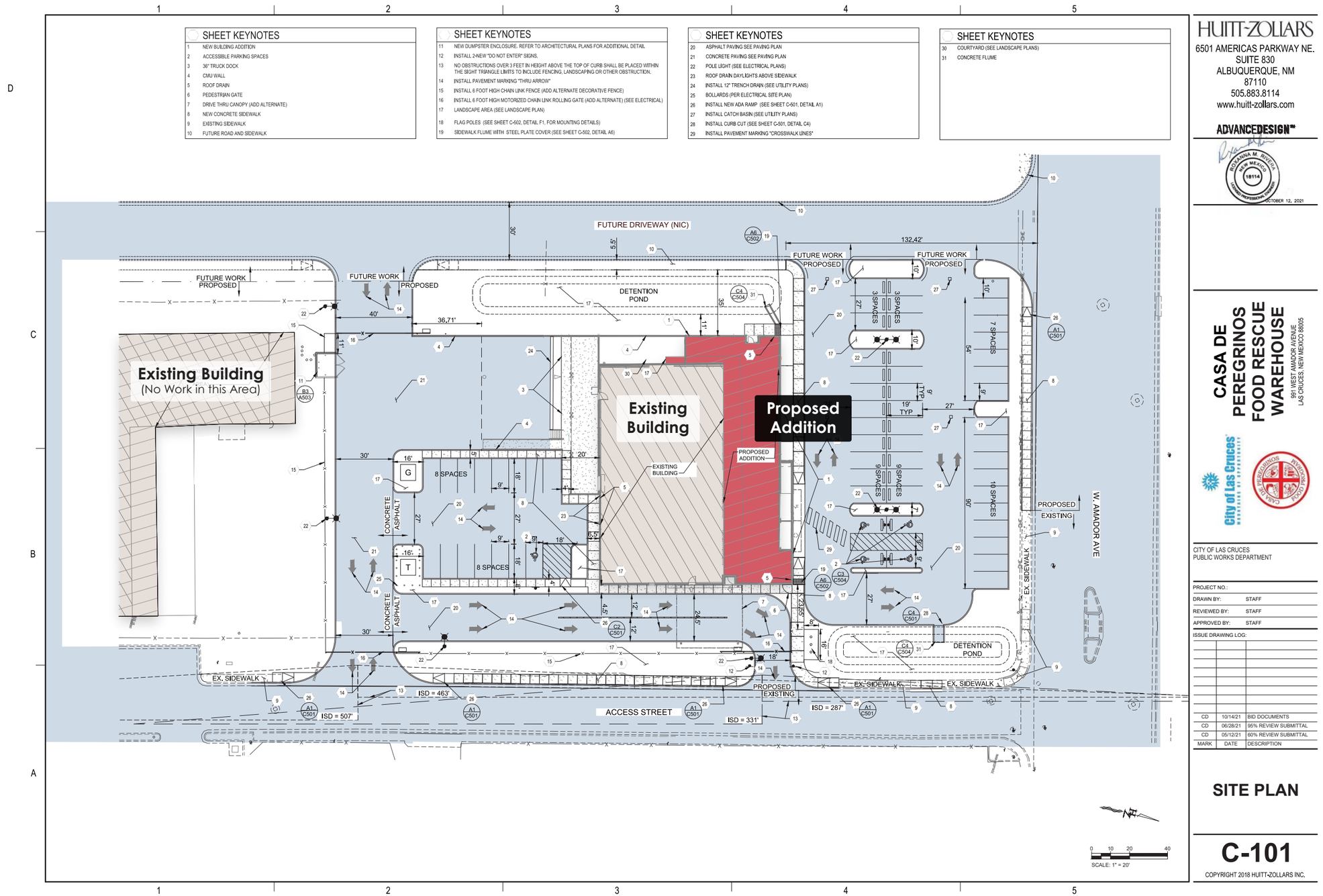
Exhibit 14: *Utility Line Notes*



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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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OCTOBER 12, 2021

CASA DE PEREGRINOS FOOD RESCUE WAREHOUSE
991 WEST AMADOR AVENUE
LAS CRUCES, NEW MEXICO 88005

CITY OF LAS CRUCES
PUBLIC WORKS DEPARTMENT

PROJECT NO.:	
DRAWN BY:	STAFF
REVIEWED BY:	STAFF
APPROVED BY:	STAFF

ISSUE DRAWING LOG:

CD	10/14/21	BID DOCUMENTS
CD	06/28/21	95% REVIEW SUBMITTAL
CD	05/12/21	60% REVIEW SUBMITTAL
MARK	DATE	DESCRIPTION

SITE PLAN

C-101

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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

- 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.

Exhibit 16: *Facility Condition Index Scoring*

$$\text{Facility Condition Index (FCI)} = \frac{\text{Total Repairs}}{\text{Replacement cost}}$$

Facility Condition Index (FCI)		
Condition	**Definition**	**Percentage Value**
Good	In new or well-maintained condition with no visual evidence of wear, soiling or other deficiencies	0% to 5%
Fair	Subjected to wear and soiling but is still in serviceable and functioning condition	Greater than 5% to 10%
Poor	Subjected to hard or long-term wear. Nearing the end of its useful or serviceable life.	Greater than 10% to 60%
Very Poor	Subjected to hard or long-term wear Has reached the end of its useful or serviceable life. Renewal is now necessary.	Greater than 60%

Exhibit 17:
ARC Capital Improvement Project (CIP) Codes

Category Code	
1	Health and Safety
2	Code Compliance
3	ADA Compliance
4	Facility Renewal
5	Growth
6	Programmatic
7	Operational Support
8	Demolition / Removal
9	Maintenance
10	Sustainability
11	Master Plan Phase

Type 1	
00	Alternative Solution
01	New Facility
02	Addition
03	Portable / Modular
04	Renovation
05	Refurbishment
06	Site Improvement
07	Special Projects
08	Cyclical Renewal
09	Replacement Facility
10	Closure
11	Site Acquisition
12	Planning / Design
13	Engineering Studies
14	Tech. Infrastructure
15	Other

Type 2					
A. Code Issues		D. Systems		F. Programmatic	
A01	General	D01	General	F01	Education- General
A02	Hazardous Materials	D02	Structural	F01.1	Ed. Core Program
A03	Arch. Barriers - General	D03	Mechanical	F01.2	Ed. Special Program
A03.1	Arch. Barriers - Site	D04	Electrical	F01.3	Ed. Fine Arts
A03.2	Arch. Barriers - Restrooms	D05	Pllumbing	F01.4	Ed. Vocational / Occupationsl
A03.3	Arch. Barriers - Building	D06	Security	F01.5	Ed. P/E Athletics
A04	Other	D07	Computer	F01.6	Ed. Support
B. Site		D08	Energy	F01.7	Ed. Other
B01	General	D09	Emergency (Fire)	F02	Administration
B02	Landscaping	D10	Other	F03	Detention
B03	Paving / Parking	E. Interior		F04	Exhibition
B04	Fences / Walls	E01	General	F05	Fire
B05	Drainage	E02	Floors	F06	Housing
B06	Site Utilities	E03	Walls	F07	Judicial
B07	Portable/Modular Infrastructure	E04	Ceilings	F08	Maintenance
B08	Playground	E05	Lighting	F09	Medical
B09	Athletic Field	E06	Finishes	F10	Police / Sheriff
B10	Surfaced Tracks	E07	Doors	F11	Recreational
B11	Recreational Areas	E08	Windows	F12	Shared
B12	Other	E09	Furnishings	F13	Support Services
C. Exterior		E10	Hardware	F14	Other
C01	General	E11	Restrooms	G. Miscellaneous	
C02	Surfaces	E12	Fixtures	G01	Various Indoor / Outdoor
C03	Openings	E13	Other		
C04	Canopies				
C05	Roofs				
C06	Other				

Priority Class	
1	Immediate
2	Critical (1-2 years)
3	Necessary, not yet critical (3-5 years)
4	Recommended - Short-Term (6-10 years)
5	Recommended - Long-Term (10+ years)
6	Reasonable Accommodation

FCA Class	
1	Plant Adaptation
2	Routine Maintenance
3	Deferred Maintenance
4	Capital Renewal
5	Energy Conservation
6	Design Construction Defects

Difficulty Level	
1	Readily Achievable
2	Achievable - Moderate Cost
3	Difficult - High Cost

Note: *CIPs can be sorted, or reporting by any combination of these codes. On the right is an example of a typical project code*

CIP Coding						
Project Identification			**Project Code**			
Building ID	**Project Number**	**Sub-Number**	**Category**	**Type 1**	**Type 2**	**Priority**
01-001-00004	101	2001	1.	.15	..D09	.1

- 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
Starred (*) year built and facility age numbers are approximates.			

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.

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

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

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

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

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

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

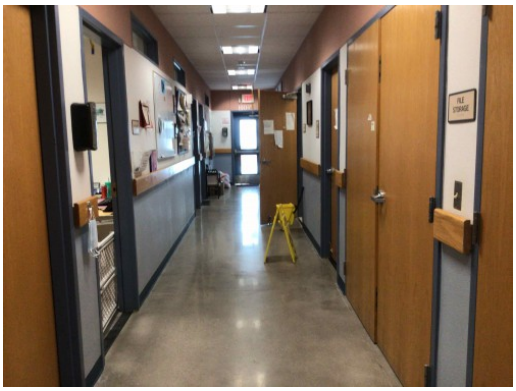
filters show rust and damage. Zones and thermostats are not well coordinated. Large warehouse spaces are difficult to heat and cool, and control of temperatures is a challenge for staff. Electrical outlets throughout the building are insufficient in quantity. No fire suppression system serves the building. 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

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

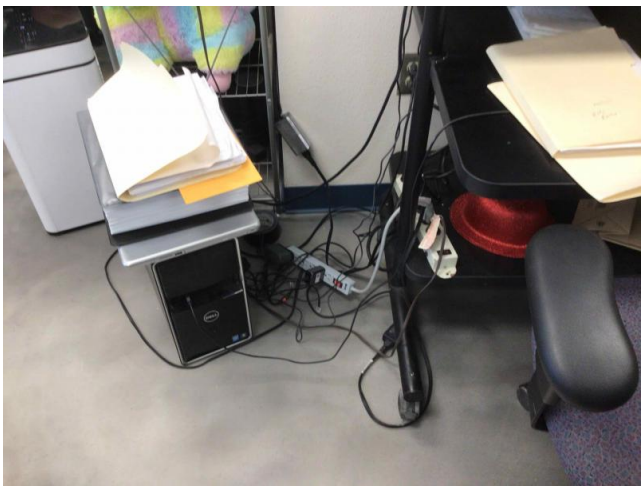
Flat roofs over Buildings 1, 2, and 3 exhibit soft spots, noise, and when tread upon, show movement. Outdated and abandoned mechanical equipment sits on rusted supports, and gas lines are unpainted. Water sits beneath combined heating and cooling units, and ducts show repaired seam separations with dried 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.

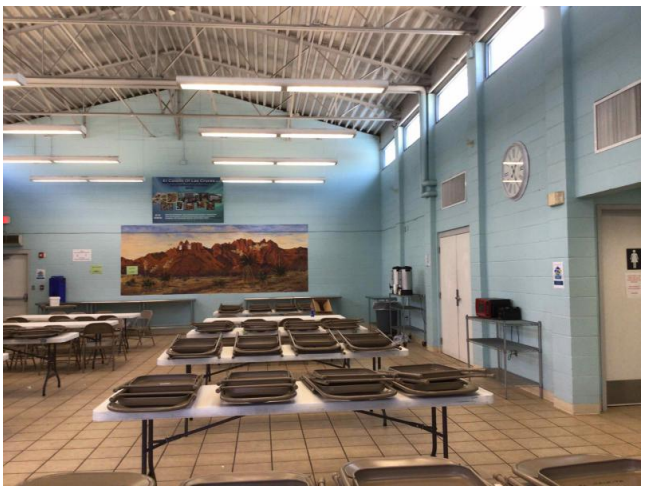
Replace storefront systems on the central and south portions of Building 1, including doors. Replace casement style and fixed pane windows and exterior metal doors. Renovate the kitchen. Refurbish the dining room, including new lighting. Renovate the restrooms in the El Caldito Soup Kitchen. Renovate 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

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.

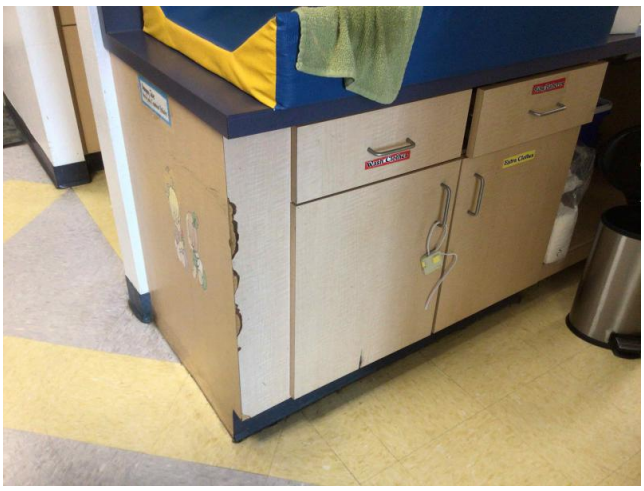
The cost for a 9,000 SF replacement building for El Caldito is $3,366,000 MACC / $4,022,370 TPC
The cost to renovate El Caldito and Suite D for Health Center use (7,300 sf general renovation) is $840,303 MACC / $1,004,162 TPC

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

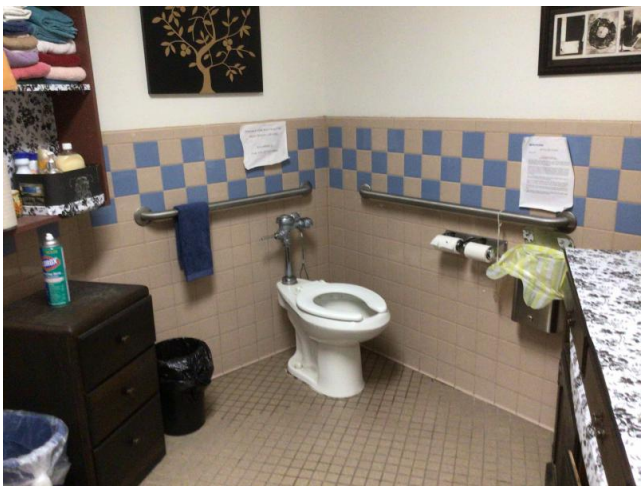
Many mechanical units throughout the campus are aging and function poorly. Some units do not function. Temperature control is challenging in all buildings.

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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23-022

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:		**Adopted:**	August 15, 2022
Drafter:	Sergio Ruiz	**Department:**	City Manager's Office
Program:	Council and Community Support	**Line of Business:**	Council and Community Support

Title: **A RESOLUTION IN SUPPORT OF NEW MEXICO LEGISLATION TO PROTECT TENANTS FROM INCOME DISCRIMINATION BY LANDLORDS.**

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

PURPOSE(S) OF ACTION:

Support tenant protection from income discrimination.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Legislation and municipal ordinances need to be established that would prohibit landlords from discriminating against tenants, based upon their economic status.

It is an unlawful discriminatory practice to deny, directly or indirectly, any individuals the full and equal enjoyment of housing, including the rental of a dwelling, services, facilities, and privileges, based on the source of income of the individual; and the legislation shall prohibit discrimination against tenants who are recipients of social security income, disabled, veterans, or recipients of Section 8 housing vouchers.

Source of income (SOI) discrimination contributes to the perpetuation of racially segregated communities and neighborhoods with concentrated poverty.

The legislation shall develop programs to recruit landlords and assist low-income tenants in finding units in high opportunity areas; and once tenancy begins, the landlord must keep the unit in habitable condition by complying with housing codes materially affecting health and safety, making repairs necessary to keep the premises safe, and other obligations.

Security deposits cannot be charged more than one month's rent if the rental period is for less than one year. If it is over a year and the security deposit is more than one month's rent, the landlord must pay annual interest on the amount. At the end of the tenancy, the landlord has 30 days to return the deposit along with a written list of deductions taken out; and a landlord may not raise rent during lease term (1 year lease) unless lease allows.

A landlord may not retaliate against a tenant for exercising tenant rights; and the owner shall provide a written rental agreement to each resident prior to the beginning of occupancy.

Housing agencies, advocates, and enforcement agencies should play a key role in ongoing, repeated communication about the law's requirements to landlords and tenants; and there needs to be increased efforts

to combat income discrimination through aggressively investigating and prosecuting landlords who refuse to rent to tenants.

The City Council calls on the New Mexico legislature to develop landlord/tenant reform that allows for the protection of tenants from landlord income discrimination.

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

ANNUAL BUDGET APPROVAL:

☐ Yes

☐ No

☒ N/A

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

☐ Yes

☐ No

☒ N/A

Does this action align with Elevate Las Cruces?

☐ Yes

☐ No

☒ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution in support of the New Mexico legislation to protect tenants from landlord income discrimination.
2. Vote "No"; this will not approve the Resolution in support of the New Mexico legislation to protect tenants from landlord income discrimination.
3. Vote to "Amend"; this could amend the Resolution based on direction from Council to staff.
4. Vote to "Table"; this could delay the adoption of the Resolution in support of the New Mexico legislation to protect tenants from landlord income discrimination.

RESOLUTION 23-022

A RESOLUTION IN SUPPORT OF NEW MEXICO LEGISLATION TO PROTECT TENANTS FROM INCOME DISCRIMINATION BY LANDLORDS.

The City Council is informed that:

WHEREAS, legislation and municipal ordinances need to be established that would prohibit landlords from discriminating against tenants, based upon their economic status; and

WHEREAS, it is an unlawful discriminatory practice to deny, directly or indirectly, any individuals the full and equal enjoyment of housing, including the rental of a dwelling, services, facilities, and privileges, based on the source of income of the individual; and

WHEREAS, the legislation shall prohibit discrimination against tenants who are recipients of social security income, disabled, veterans, or recipients of Section 8 housing vouchers; and

WHEREAS, source of income (SOI) discrimination contributes to the perpetuation of racially segregated communities and neighborhoods with concentrated poverty; and

WHEREAS, the legislation shall develop programs to recruit landlords and assist low-income tenants in finding units in high opportunity areas; and

WHEREAS, once tenancy begins, the landlord must keep the unit in habitable condition by complying with housing codes materially affecting health and safety, making repairs necessary to keep the premises safe, and other obligations; and

WHEREAS, security deposits cannot be charged more than one month's rent if the rental period is for less than one year. If it is over a year and the security deposit is more than one month's rent, the landlord must pay annual interest on the amount. At the end of the tenancy, the landlord has 30 days to return the deposit along with a written list of deductions taken out; and

WHEREAS, a landlord may not raise rent during lease term (1 year lease) unless lease allows; and

WHEREAS, a landlord may not retaliate against a tenant for exercising tenant rights; and

WHEREAS, the owner shall provide a written rental agreement to each resident prior to the beginning of occupancy; and

WHEREAS, housing agencies, advocates, and enforcement agencies should play a key role in ongoing, repeated communication about the law's requirements to landlords and tenants; and

WHEREAS, there needs to be increased efforts to combat income discrimination through aggressively investigating and prosecuting landlords who refuse to rent to tenants; and

WHEREAS, the City Council calls on the New Mexico legislature to develop landlord/tenant reform that allows for the protection of tenants from landlord income discrimination.

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

(I)

THAT the City Council affirms its support for landlord/tenant policies to include source of income as a "protected class", ensuring that landlords and other housing providers cannot discriminate against renters in making housing decisions based on their use of a voucher or a rental subsidy. The law shall cover the use of vouchers and rental subsidies, as well as social security income, disability benefits, veterans' benefits, child support, alimony, and other legal non-wage income. The law shall require housing providers to treat individuals equally regardless of their source of income, and

(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

23-023

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:		**Adopted:**	August 15, 2022
Drafter:	Natalie Green	**Department:**	Economic Development
Program:	Housing and Development	**Line of Business:**	Housing and Development

Title:	**A RESOLUTION SELECTING CHELSEA INVESTMENT CORP. AS THE LIHTC DEVELOPMENT PLANNING PARTNER FOR 1101 W AMADOR.**

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

PURPOSE(S) OF ACTION:
Select development planning partner

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
In 2021 the City purchased a vacant 4.8277-acre property known as Lot 1B Amador Tracts Replat No. 4 ("Brewers"), with the intention of developing affordable rental housing including supportive and/or special needs affordable rental housing to meet the City's goals outlined in various adopted City policy documents. Goals for supportive affordable housing opportunities are included within the City of Las Cruces Affordable Housing Plan 2017 (AHP), Elevate Las Cruces (Elevate), City Council Strategic Plan (CSP), 2021-2025 Consolidated Plan (Con Plan), and the Mesilla Valley Community of Hope Master Plan (Master Plan).

The Economic Development department issued a Request for Qualification (RFQ) on May 25, 2022. The RFQ closed on June 30, 2022, which resulted in four inquiries and one respondent. The RFQ submission was reviewed by a selection committee made up of subject matter experts, City and Mesilla Valley Community of Hope staff, and a representative from the Affordable Housing Land Bank and Trust Fund Advisory Committee. The Committee recommended Chelsea Investment Corporation (Chelsea.)

Chelsea is an experienced Low Income Housing Developer and a Qualified Grantee in conformance with the State of New Mexico Affordable Housing Act (Act), the New Mexico Mortgage Finance Authority Affordable Housing Act Rules, the City of Las Cruces Affordable Housing General Oversight Ordinance, and the adopted Affordable Housing Land Bank and Trust Fund Policies and Procedures.

The objectives the City and Chelsea seek to achieve through this partnership are to:

- Evaluate and explore the development of permanent supportive affordable housing on 1101 W. Amador Lot 1B Amador Tracts, Replat No. 4, City of Las Cruces, Dona Ana County, NM.
- Work collaboratively to create a quality, innovative, affordable housing development that will be conscious of the surrounding Campus, clients, and services and will meet the needs and desires of the City.
- Partner with Mesilla Valley Community of Hope in the design and use of the project
- Determine the most viable unit size and bedroom mix based on costs and financing and Pro forma.
- Determine through market study and proformas the most viable development and bedroom mix.
- Prepare a Low-income Housing Tax Credit application (4% or 9%)

- Evaluate and or apply for other financing and funding mechanisms as applicable

The development planning partnership provides the most flexible framework between the City and Chelsea to explore the development of an affordable housing project near the Mesilla Valley Community of Hope and provide opportunities to meet the City's affordable housing goals. If necessary this resolution also authorizes staff to develop and execute a cooperation agreement without further council consideration.

SUPPORT INFORMATION:
ATTACHMENT "A" CHELSEA RFQ

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

COMMITTEE/BOARD REVIEW:
Affordable Housing Committee

ANNUAL BUDGET APPROVAL:
☐ Yes
☐ No
☒ N/A

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

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

OPTIONS / ALTERNATIVES:
1. Vote "Yes"; this will approve the Resolution and establish a development planning partnership between the City and Chelsea.
2. Vote "No"; this will reject the Resolution and not authorize a development planning partnership between the City and Chelsea.
3. Vote to "Amend"; this will require direction from City Council to staff.
4. Vote to "Table"; this will require direction from City Council to staff and could delay the ability to apply for grant funding opportunities in 2023.

RESOLUTION 23-023

A RESOLUTION SELECTING CHELSEA INVESTMENT CORP. AS THE LIHTC DEVELOPMENT PLANNING PARTNER FOR 1101 W AMADOR.

The City Council is informed that:

WHEREAS, a non-binding partnership between the City of Las Cruces ("City") and Chelsea Investment Corporation ("Chelsea") establishes a mutually beneficial working relationship with the aim of cooperating in the development of a new affordable housing community to be developed on 1101 W. Amador Avenue adjacent to the Mesilla Valley Community of Hope Campus; and

WHEREAS, the City purchased a vacant 4.8277-acre property known as Lot 1B Amador Tracts Replat No. 4 (“Brewers”) in 2021, with the intention of developing affordable rental housing including supportive and/or special needs affordable rental housing to meet the City’s goals outlined in various adopted City policy documents; and

WHEREAS, the parties’ common objectives are to work collaboratively to create a quality, innovative, affordable housing development that will be conscious of the surrounding Campus, clients and services and will meet the needs and desires of the City and submit a competitive application for Low Income Housing Tax Credit; and

WHEREAS, this development planning partnership provides a flexible framework between the City and Chelsea to explore the development of an affordable housing project near the Mesilla Valley Community of Hope and provide opportunities to meet the City's affordable housing goals.

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

(I)

THAT the City selects Chelsea Investment Corp. as the LIHTC development planning partner for 1101 W Amador.

(II)

THAT the staff is hereby authorized to develop and execute a cooperation agreement as necessary with Chelsea Investment Corp without further council consideration.

(III)

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

DONE AND APPROVED this day of

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by:

Seconded by:

AYES

NAYS

Attachment "A"

Finance
Development
Management

6339 Paseo del Lago
Carlsbad, CA 92011
Tel (760) 456-6000
www.chelseainvestco.com

June 24, 2022

Natalie Green
Housing and Neighborhood Services Manager
City of Las Cruces
PO Box 20000
Las Cruces, NM 880004

(Via Email Only)

Re: Request for Qualifications (RFQ) for Development Partner for Supportive Affordable Housing Project (The Mesilla Valley Community of Hope Expansion, 1101 W. Amador Avenue) Application

Dear Ms. Green:

Chelsea Investment Corporation is pleased to respond to the City of Las Cruces Request for Qualifications (RFQ) for development partner for a supportive affordable housing project at 1101 W. Amador Avenue in Las Cruces. Please find attached the completed application with supporting documents in response to the RFQ.

Chelsea has a record of excellent relationships with its non-profit service partners, and if selected, we look forward to working with Mesilla Valley. Chelsea's commitment to developing quality affordable housing and Mesilla Valley's commitment to and success in providing supportive services to the residents would be a win-win for all parties.

If you have any questions and/or need adiditonal information, do not hesitate to contact me. We are also available by video conference call, and if you prefer an in-person interview.

Sincerely,

Tim Baker
Senior Development Executive

City of Las Cruces
Request for Qualifications (RFQ) for
Development Supportive Affordable Housing Project
The Mesilla Valley Community od Hope (MVCH)
Las Cruces, NM

Tab 1

Las Cruces RFQ Application

- **City of Las Cruces Request for Qualifications (RFQ) for Development Supportive Affordable Housing Project**

REQUEST FOR QUALIFICATIONS (RFQ)
FOR DEVELOPMENT PARTNER FOR
SUPPORTIVE AFFORDABLE HOUSING PROJECT
RE: THE MESILLA VALLEY COMMUNITY OF HOPE (MVCH)
EXPANSION 1101 W AMADOR AVENUE

DUE: JUNE 30, 2022

The City of Las Cruces ("City") in partnership with the Mesilla Valley Community of Hope ("MVCH") is requesting qualifications and proposals for participation in the development of a new affordable housing community to be developed on 1101 W. Amador Avenue adjacent to the Mesilla Valley Community of Hope Campus.

The Mesilla Valley Community of Hope Campus is a unique and highly successful consortium of non-profit organizations that provide essential services on City owned property and buildings located at 999 W. Amador Avenue, Las Cruces, NM 88005 to people experiencing homelessness and persons living in the crisis of poverty. Five of these non-profits have formed an Alliance and operate in close proximity to each other on the 7.3 acres of land on a cul-de-sac street.

In 2020-2021, the City of Las Cruces purchased two adjacent parcels. The 2.212-acre property known as Lot 3A1 Amador Tracts Replat No. 3 ("Horse n' Hound") addressed as 991 W. Amador Avenue is under renovation for a new food pantry facility. The 4.8277-acre property known as Lot 1B Amador Tracts Replat No. 4 ("Brewers") and addressed as 1101 W Amador Avenue was purchased for the development of affordable housing.

The City of Las Cruces is seeking proposals from experienced Low-Income Housing Tax Credit ("LIHTC") firms, and specifically those experienced with mixed income and supportive housing, to be the developer, and/or property manager, and/or owner of this affordable housing development (the "Development Partner"). The City and MVCH desire to collaboratively partner in the design and use of the project. It is anticipated that redevelopment of the existing site could result in a new building/s containing up to 60-150 mixed income rental units. The housing should qualify for, and use, LIHTCs as a primary funding source.

Submission of Initial Proposals

Proposals must be e-delivered to the City of Las Cruces no later than 4:30 p.m. Mountain Time on June 30, 2022. Proposals should be addressed to Natalie Green, Housing and Neighborhood Services Manager who can be reached at 575-528-3086 or via email at ngreen@las-cruces.org.

Project Parameters

Size: Ideally 60-150 units, appropriate programming and administrative space as well as designated supportive services space, with final site plans and layout negotiable based on costs and financing.

Location: 1101 W. Amador Lot 1B Amador Tracts, Replat No. 4, City of Las Cruces, Dona Ana County, NM

Bedroom Mix: Based on market study but at least 30 units at 0%-30% AMI designated as permanent supportive housing, including a mix of studios and 1-bedroom apartments or larger with exact layout to be determined.

Land Ownership Structure: Land will be included as part of development agreement with specific structuring of ownership and/or long-term lease to be determined.

Tax Credit Availability: The City of Las Cruces believes that this site has excellent potential for accessing tax credits; however, allocations are subject to the state's competitive process.

Partnership Structure: The City of Las Cruces anticipates the Development Partner will participate as a general partner with and develop additional partnerships as necessary with the MVCH Alliance partners.

Public Approvals and Subsidy Financing: The City of Las Cruces will assist the Development Partner in obtaining approvals and subsidies (if available) from public and private agencies.

Future Disposition: To be determined upon conclusion of the 15-year LIHTC compliance period and/or as negotiated in the development agreement.

Qualifications, Experience, and Intentions

1. Threshold Criteria

The Development Partner must meet all of these criteria:

1. Industry references- Good financial and business references of the proposer and principals of the firm(s) making the proposal.
2. General partner role- Willingness to be the General Partner and accept MVCH Alliance agencies as supportive services partners. The City also requests a right of first refusal on the property at the end of the compliance period.
3. Financial commitment and available equity- Willingness to invest own funds in project.
4. Experienced property manager- Willingness to property manage this development working closely with MVCH Alliance agencies and their case management staff.
5. Energy efficient design – The proposed project must meet Energy efficient/ Sustainability Criteria (SWEEP 2018 IECC, Enterprise Green Communities or other industry-accepted standard). Final building plans and Energy efficiency/sustainable features negotiable based on costs and financing.

6. Low income and special needs rental development experience – The proposer must have successfully completed the development of multiple other projects with a mix of supportive housing units that have been a success in terms of upkeep, occupancy rates, net cash flow, resident satisfaction, regulatory compliance.
7. Provision of support services – The proposer must have the capacity and experience to facilitate and partner for the provision of support services for the project
8. Long-term affordability covenants –The proposer must provide a long-term affordability plan for the project.

Ranking Criteria

Proposals that meet the threshold requirements will be evaluated on the following criteria:

Criteria		**Maximum Points**
1.	Experience, capability and completeness of development team	20
2.	Experience with supportive housing	20
3.	Quality and design of developer's recent project(s)	20
4.	Providing affordable housing for population being served	20
5.	Commitment to sustainability and energy efficiency	5
Total possible points		**85**

Background

This RFQ is being issued in conformance with the State of New Mexico Affordable Housing Act (Act), the New Mexico Mortgage Finance Authority Affordable Housing Act Rules, the City of Las Cruces Affordable Housing General Oversight Ordinance, and the adopted Affordable Housing Land Bank and Trust Fund Policies and Procedures.

The City of Las Cruces (City) currently has an opportunity to develop a vacant 4.8277-acre property known as Lot 1B Amador Tracts Replat No. 4 ("Brewers"). In 2021, the City purchased the property from the Brewer Oil Company as part of a mutually beneficial agreement. City staff evaluated the property, conducted due diligence (including a Phase I), and determined the site to be the preferred location for the future expansion of the Mesilla Valley Community of Hope (MVCH) campus.

Several adopted City policy documents support affordable housing opportunities within the corporate limits including the City of Las Cruces Affordable Housing Plan 2017 (AHP), Elevate Las Cruces (Elevate), City Council Strategic Plan (CSP), 2021-2025 Consolidated Plan (Con Plan) and the Mesilla Valley Community of Hope Master Plan (Master Plan). The latest Con Plan estimates a need for 5,600 affordable rental housing including supportive and/or special needs affordable rental housing. The development of this property as affordable housing will assist the City with these existing needs.

The supporting goals and actions in the AHP that will assist in facilitating affordable housing for the MVCH Campus are:

1. Goal 2: Increase affordability of rental housing for low-income households and special needs populations that have difficulty competing in the housing market.
    a. Action 2.2: The City, through its affordable housing policies and budget allocations (including impact fee waivers) will incent public/private partnerships to build new affordable rental housing. Production target: 150 units

2. Goal 4: Reduce Homelessness
    a. Action 4.2 The Administering Department will coordinate the efforts to formulate plans and projects to expand the supply of permanent, accessible, rental housing units with supportive services attached. Production target: 55 rental units

    b. Action 4.3 The City will continue to provide support through federal and local funds to agencies providing emergency housing and supportive services to the homeless population of Las Cruces. Production target: 6,000 persons assisted.

3. Goal 5: Create Innovative Partnerships Between Government and the Private Sector by Creating Ordinances, Plans and Policies that Expand Housing Opportunities and Support Economic Diversity
    a. Action 5.5 The City will sponsor and advocate for funding applications to other state and federal agencies that can assist in financing affordable housing projects and programs that meet the needs identified in this Plan.

The targeted population for this project is low to moderate income households earning up to 120% of area median income. Any use of federal funding for the project will limit household income up to 80% of area median income. Cost-burdened is defined as households paying more than 30% of their income towards housing expenses and may have difficulty affording necessities such as food, clothing, transportation, and medical care. Severe rent burden is defined as paying more than 50% of one's income on rent.

The Elevate Las Cruces and City's Council's Strategic Plan also encourage the development of affordable housing. As noted by the following list of goals and policies:

1. CP-7 Attainable Housing: Provide affordable, clean, and safe housing options for all residents regardless of income
2. CP-8 Special Housing Needs: Ensure that the housing needs of traditionally underserved populations are met.
3. CP-9 Housing Diversity: Provide a diverse range of housing options to accommodate residents at all stages in life.
4. CP-11 Underserved Populations: Develop and support programs that provide assistance to traditionally underserved populations.

The Mesilla Valley Community of Hope Master Plan provides some guidance for the development of this parcel to create a quality, innovative, affordable housing development that will be conscious of the surrounding Campus, clients and services and will meet the needs and desires of the City.

The construction of affordable housing on the MVCH Campus must contribute to addressing these goals and the community's needs. The City is seeking qualifications from eligible applicants, as defined by the General Oversight Ordinance, to develop affordable housing on

MVCH Campus Tract.

The following individuals or entities (applicants) are eligible under the Ordinance to apply for affordable housing funds or a housing assistance grant to provide housing or related services to persons of low or moderate income in their community:

1. All individuals who are qualified to receive assistance pursuant to the City's Affordable Housing Ordinance;
2. All regional housing authorities, tribal governments, tribal housing agencies, and any governmental housing agencies;
3. All for-profit organizations, including any corporation, limited liability company, partnership, joint venture, syndicate, or association or a nonprofit organization; or
4. Nonprofit organizations are eligible to apply if the following requirements are met:
    a. A primary mission of the nonprofit organization must be to provide housing or housing-related services to persons of low or moderate income; and
    b. The nonprofit organization must have received its 501(c)(3) designation prior to submitting an application.
    c. If a nonprofit organization, have no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
5. For any nonindividual applicant to be eligible to receive funds, grants, lands, buildings and infrastructure, it must also:
    a. Be organized under state, local, or tribal laws and can provide proof of such organization;
    b. Have a functioning accounting system that is operated in accordance with generally accepted accounting principles or has designated an entity that will maintain such an accounting system consistent with generally accepted accounting principles;
    c. Have among its purposes significant activities related to providing housing or services to persons or households of low or moderate income; and
    d. Have no significant outstanding or unresolved monitoring findings from the city, the MFA, or its most recent independent financial audit, or if it has any such findings, it has a certified letter from the city, the MFA, or auditor stating that the findings are in the process of being resolved.

The applicant must qualify & be certified by MFA as a Qualified Grantee (See Attachment "D").

An RFQ selection advisory committee with subject matter experts will review submitted qualifications from qualified entities. Should an applicant's organization/business have members that serve on the advisory committee, that advisory committee member shall disclose the conflict and recuse him/herself from reviewing the RFQs. Failure to disclose such Conflict of Interest will result in the disqualification of the qualification from the selection process. (Reference Attachment "A" for more information)

The City will consider the needs of the project, the experience of the developer and any associated qualifications, competencies, ability to implement the project, and to limit risk to the

City while working to ensure success of the project. Interviews with representatives of some or all qualified entities submitting qualifications may be requested. Recommendations will be submitted to City Council for approval. City Council selection is final.

Support Offered by the City of Las Cruces and the Mesilla Valley Community of Hope Teams
From the proposals received, the City of Las Cruces will select one development team to enter into a development agreement with that partner, and to offer the following support:

1. Endorsement of the developer's application for federal funding sources in a timeline deemed most appropriate.
2. Assistance with obtaining approvals and subsidies like impact fee waivers or soft funding from the City's Affordable Housing Trust Fund, which would be passed through as a low interest "soft second" mortgage for construction and/or permanent financing – due only on sale of the property or termination of rent and income restrictions.
3. Partial and/or total provision of the 4.8277 acres of land zoned as M-1 currently controlled by The City of Las Cruces with negotiable terms for final ownership.
4. Assistance with Rezoning the Parcel (as needed).
5. Assistance with identifying supportive services partners and developing a services plan

No Obligation
This RFQ imposes no obligations on any party including the City of Las Cruces and/or Mesilla Valley Community of Hope Agencies and can be cancelled at any time with The City of Las Cruces retaining full discretion throughout the selection process. The RFQ does not represent any obligation or agreement which may only be incurred or entered into by a written agreement which has been approved by the City Council. can be cancelled at any time with The City of Las Cruces retaining full discretion throughout the selection process.

This RFQ may be withdrawn or the selection process terminated at any time and any and all submittals may be rejected in whole or in part prior to final execution of a Development Agreement if the City of Las Cruces determines such action to be in its best interest.

The City of Las Cruces reserves the sole right to determine responsible respondents and responsive qualifications, reject at any time any or all submissions and/or withdraw this RFQ in whole or in part, or to negotiate with one or more Applicants. The City of Las Cruces reserves the right, at any time, to waive compliance with, or change any of the terms and conditions of this RFQ, and to entertain modifications and additions to the applications of Applicants.

This RFQ and any agreement or other documents resulting there from are subject to all applicable laws, rules and regulations promulgated by any Federal, State or municipal authority having jurisdiction over the subject matter thereof, as the same may be amended from time to time.

FORM A
COMPLETENESS CHECKLIST

Completeness Checklist (Form A)	
Application Cover (Form B)	
Residential Development Experience Chart (Form C)	
Residential Development Experience Narrative (Form D)	
Service Experience (Form E)	
Qualified Grantee Application or letter of certification (Form F)	
Asset Management and Ownership Experience (Form G)	
Community Outreach (Form H)	
Assets Statements and Financial Letters of Support (Form I)	
Assets Statements (provided by Applicant)	
Financial Letters of Support (provided by Applicant)	

A WORD DOCUMENT (.DOCX) CAN BE PROVIDED UPON REQUEST TO FOR EASE OF FILLING OUT FORMS FOR SUBMISSION

FORM B
COVER FORM

A. PROPOSED TEAM, QUALIFICATIONS AND EXPERIENCE

1. Principal organization making this proposal (the entity that will be the general partner or manager of a to-be-formed general partner entity):

   Name of organization: _____

   Form of organization (check one):
   ___ Non-profit ___For-profit Corporation or LLC ___Partnership ___Sole proprietor

   Incorporated or registered in (state):_____

   Website address: _____

   Principal(s) (President, CEO, partners, general partner, or sole proprietor):

Name	Title/Role	Years of Experience	Phone number	Email address

2. Applicant's principal contact person with to discuss this proposal:

   Name:
   Firm Name:
   Mailing Address:
   Phone:
   Email Address:

3. Qualifications and experience

   a. Primary Bank Reference

Contact person	Firm	City/state	Phone number	Email address

   b. Federal/state housing compliance references

Contact person	Firm	City/state	Phone number	Email address

c. Three business references

Contact person	Firm	City/state	Phone number	Email address

Form C
Development Experience Chart

Name of Applicant: _____
Principal whose experience is described below: _____

List below residential properties developed with similar scope within the preceding seven (7) years preceding the deadline submission *use additional pages or attachments as needed.

Project Name	Address	Type of Construction	Current Status	Total # of Units	Supportive Housing Populations (s)	Total Development Cost	Year Completed	Were you the Service Provide?	Were you the management agency	Major Capital Source
			Sum of Units:	0						

FORM D
RESIDENTIAL DEVELOPMENT NARRATIVE

Name of Applicant: _____

Please answer the following questions with short narratives. Use additional sheets, as necessary.

1. Provide a brief description of your organization, including the year it was founded, its mission, major accomplishments and other information that demonstrates your capacity to carry out development of a supportive housing project.

2. Describe the Applicant's experience, if any, in the following categories. Please provide specific examples in your narrative answers.

    a. Cost efficiency and demonstrated ability to build a project on time and within budget

    b. Quality of construction and design

    c. Green Building and Energy Efficiency

    d. Working with the City of Las Cruces

    e. Working with New Mexico Mortgage Finance Authority

3. Describe your current and planned development projects and how your agency has the capacity to undertake this project.

FORM E
SERVICE EXPERIENCE

Name of Applicant: _____

Please answer the following questions with short narratives. Use additional sheets, as necessary.

Indicate if Applicant has significant experience in providing services for any of the populations listed below by selecting the checkbox next to "Yes" under Directly. If the Applicant has experience partnering with other social service providers to provide services to the listed population, indicate "Yes" under In Partnership.

	Populations	Directly	In Partnership
A	Individuals with Mental Illness	Yes ☐	Yes ☐
B	Youth Aging out of Foster Care	Yes ☐	Yes ☐
C	Substance Abusers	Yes ☐	Yes ☐
D	Families	Yes ☐	Yes ☐
E	People with HIV/AIDS	Yes ☐	Yes ☐
F	Veterans	Yes ☐	Yes ☐
G	Senior Citizens	Yes ☐	Yes ☐
H	Domestic Violence Survivors	Yes ☐	Yes ☐
I	High Users of Medicaid	Yes ☐	Yes ☐
J	Housing Authority Waitlists	Yes ☐	Yes ☐
K	People existing the Incarceration system	Yes ☐	Yes ☐
L	Other (Please Provide Brief Explanation)	Yes ☐	Yes ☐

2. If Applicant selected "Yes" to any of the above, please provide a brief narrative for the population(s) elaborating on Applicant's service approach and current supportive housing programs that Applicant operates. Please specify the geographic location of the program the program is funded, what services are provided, and achievements in housing stability. – OR– **If the Applicant has experience working in partnership with other social service agencies to provide the on-site social services, please provide a brief narrative describing the partnerships, supportive housing programs, and method of collaborating with service providers**. ***use additional pages or attachments as needed.**

FORM F

Qualified Grantee

Are you currently certified as a Qualified Grantee as defined by Las Cruces Affordable Housing General Oversight Ordinance? _____

If not, please submit the Qualified Grantee Application (Attachment D) and all applicable documentation requested in the application with your Request for Qualifications.

FORM G

ASSET MANAGEMENT AND OWNERSHIP EXPERIENCE

Name of Applicant: _____

Please answer the following questions with short narratives. *Use additional sheets as or attachments as necessary.

1. Describe the Applicants experience managing properties, especially those with Section 8, Continuum of Care, or other rental assistance programs (please specify other).

2. Is the Applicant or any affiliate of the Applicant in arrears on loans from any lenders? If so, please provide name of lender, amount of arrears, and an explanation for arrears.

3. Do any properties managed by the Applicant, or any affiliate of the Applicant have building code violations? If yes, please explain in detail.

4. Provide a description of the Applicant's system for supervising ongoing maintenance, responding to tenant complaints, tracking and completing repairs.

5. List any instances of noncompliance with LIHTC or HOME regulations and provide explanation.

FORM H
COMMUNITY OUTREACH

Please answer the following questions with short narratives. *Use additional sheets or attachments as necessary.

1. Describe the Applicant's strategy and past success in obtaining community support.

2. Describe how the Applicant seeks community feedback and incorporates community uses into buildings.

FORM I
ASSETS STATEMENT AND FINANCIAL LETTERS OF SUPPORT

Name of Applicant:

Please answer the following questions with short narratives. *Use additional sheets or attachments as necessary.

1. Provide a written explanation; referencing the Applicants attached financial statements, regarding your ability to provide the financial guarantees necessary to develop a housing project. Please describe the guarantees, including amount, previously successfully secured.

2. Provide a written explanation; referencing the Applicants attached financial statements, regarding the Applicant's capacity to secure construction and permanent financing, meet construction lender's equity requirements, absorb any cost overruns, and commence and complete construction of Applicant's Project in a timely manner.

ATTACHMENTS

Asset Statements
Not-for-Profits: Please attach 2 years of audited financials.

Principals of For-profit Partners (if applicable): Please submit audited or reviewed financial statements describing in detail the Principal's financial status in the two (2) most recent fiscal years preceding the deadline for the submission of Proposals in response to this RFQ.

Financial Letters of Support
Attach letters of reference from banks, syndicators, or investors with whom the Applicant has worked in the past that will speak to the Applicant's successful development experience.

ATTACHMENT A: GENERAL CONDITIONS, SELECTION PROCESS AND APPEALS

1. Inquiries and Related Addenda:

Except for communications during any informational meeting conducted by the City for this solicitation and to ensure information is consistent to all prospective respondents, any direct or indirect contact with City elected officials or staff other than the RFQ Selection Manager relating to this solicitation is strictly prohibited throughout the duration of the solicitation and evaluation process, and, upon such finding, will render a respondent and/or related qualification non-compliant.

a. Any and all inquiries must be submitted by the prospective respondent to the **RFQ Selection Manager** no later than one week before the due date/time unless otherwise specified in the solicitation documents. Inquiries received after the deadline may not be considered. **For the purposes of this RFQ the RFQ Selection Manager will be Natalie Green, Housing and Neighborhood Services Manager** who can be reached at 575-528-3086 or via email at ngreen@las-cruces.org.

Request for Qualifications must be submitted by the due date/time to:

If Mailed (U.S. Postal Service):
City of Las Cruces
ATTN: Natalie Green
P.O. Box 20000
Las Cruces, NM 88004

If Hand Delivered (FedEx; UPS, etc):
City of Las Cruces
ATTN: Natalie Green
700 N. Main St. Suite 1100
Las Cruces, NM 88001
Phone 575-528-3086

If Emailed: ngreen@las-cruces.org , RE: MVCH AH RFQ

a. Please note, items mailed Certified or Registered to the post office box may be delayed up to three days and will subject response to rejection in the event it is received by the RFQ Selection Manager after due date/time.

b. Qualifications delivered after the closing date and time will not be accepted and will be returned unopened.

c. Faxed qualifications will not be accepted.

- The RFQ Selection Advisory Committee members will be compromised of City staff and MVCH stakeholders.
- Committee members will complete Confidentiality and Conflict of interest forms prior to review of RFQs.
- All eligible RFQ will be scored as outlined in the Ranking Criteria.

- The RFQ Selection Advisory Commitee will consider the needs of the project, the experience of the developer and any associated qualifications, competencies, ability to implement the project, and to limit risk to the City while working to ensure success of the project.
- Interviews with representatives of some or all qualified entities submitting qualifications may be requested.
- The RFQ Selection Advisory Commitee will recommend to City Council the highest and best ranking firm to meet its need for services based upon the criteria herein.
- Recommendations will be submitted to City Council for approval. City Council selection is final.

Any Appeals and Protests will be conducted as outlined in Chapter 24 ARTICLE VII. - APPEALS AND REMEDIES (https://library.municode.com/nm/las_cruces/codes/code_of_ordinances?nodeId=PTIIMUCO_CH24PRCO_ARTVIIAPRE)

Tentative timeline

Date	Target/Objective
May 25, 2022	RFQ Open
June 30, 2022	RFQ Close
July 1-7 2022	RFQ Advisory Committee Review
July 18 or August 1, 2022	Council Approval
August to December 2022	Tentative Planning Period
January 2023	MFA LIHTC Submission

ATTACHMENT B: Vicinity Map



ATTACHMENT C: DRAFT MVCH MASTER PLAN

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Tab 2

FORM A
COMPLETENESS CHECKLIST

FORM A
COMPLETENESS CHECKLIST

Completeness Checklist (Form A)	Included-RAP
Application Cover (Form B)	Included-RAP
Residential Development Experience Chart (Form C)	Included-RAP
Residential Development Experience Narrative (Form D)	Included-RAP
Service Experience (Form E)	Included-RAP
Qualified Grantee Application or letter of certification (Form F)	Included-RAP
Asset Management and Ownership Experience (Form G)	Included-RAP
Community Outreach (Form H)	Included-RAP
Assets Statements and Financial Letters of Support (Form I)	Included-RAP
Assets Statements (provided by Applicant)	Included-RAP
Financial Letters of Support (provided by Applicant)	Included-RAP

A WORD DOCUMENT (.DOCX) CAN BE PROVIDED UPON REQUEST TO FOR EASE OF FILLING OUT FORMS FOR SUBMISSION

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Tab 3

FORM B
COVER FORM

FORM B
COVER FORM

A. PROPOSED TEAM, QUALIFICATIONS AND EXPERIENCE

1. Principal organization making this proposal (the entity that will be the general partner or manager of a to-be-formed general partner entity):

   Name of organization: Chelsea Investment Corporation

   Form of organization (check one):
   ___ Non-profit __X__ For-profit Corporation or LLC ___ Partnership ___ Sole proprietor

   Incorporated or registered in (state): California

   Website address: www.chelseainvestco.com

   Principal(s) (President, CEO, partners, general partner, or sole proprietor):

Name	Title/Role	Years of Experience	Phone Number	Email Address
James J. Schmid	CEO/Founder	38	760-456-6000	jim@chelseainvestco.com
Cheri Hoffman	President	28	760-456-6000	cherihoffman@chelseainvestco.com
Charles Schmid	COO	36	760-456-6000	charlesschmid@chelseainvestco.com
Jim Andersen	CFO	30	760-456-6000	jandersen@chelseainvestco.com

2. Applicant's principal contact person with to discuss this proposal:

   Name: Tim Baker
   Firm Name: Chelsea Investment Corporation
   Mailing Address: 6309 Paseo Del Lago, Carlsbad, CA 92001
   Phone: 760- 456-6000
   Email Address: tbaker@chelseainvestco.com

3. Qualifications and experience

   a. Primary Bank Reference

Contact person	Firm	City/state	Phone number	Email address
Nicholas Berger	Rocky Mountain Community Reinvestment Corporation	Salt Lake City, Utah	801-833-0009	nberger@rmcrc.org

b. Federal/state housing compliance references

Contact person	Firm	City/state	Phone number	Email address
Kathryn Turner	NM MFA	Albuquerque, NM	505-843-6880	kturner@housingnm.org

c. Three business references

Contact person	Firm	City/state	Phone number	Email address
Johnny Hamilton	Monarch Properties Inc.	Albuquerque, NM	505-938-1471	jhamilton@monarchnm.com
Dave Hickman	Jeebs & Zuzu, LLC Architects	Albuquerque, NM	505-797-1318	dave@jeebsandzuzu.com
Ryan Moore	Green Insight, LLC	Albuquerque, NM	505-270-8369	rmoore@thegreeninsight.com

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Tab 4

Form C
Development Experience Chart

Form C
Development Experience Chart

Name of Applicant: Chelsea Investment Corporation
Principal whose experience is described below: James J. Schmid

List below residential properties developed with similar scope within the preceding seven (7) years preceding the deadline submission *use additional pages or attachments as needed.

Project Name	Address	Type of Construction	Current Status	Total # of Units	Supportive Housing Populations (s)	Total Development Cost	Year Completed	Were you the Service Provider?	Were you the management agency	Major Capital Source
Versa at Civita	2355 Via Alta Drive San Diego, CA 92108	New Construction	Stabilized	150	Senior Disabled	56,635,792	2015	No	Yes	LIHTC
Independence Point	327 Willie James Jones San Diego, CA 92113	New Construction	Stabilized	32	Special Needs Developmentally Disabled	13,418,899	2015	No	Yes	LIHTC
Mill Creek Courtyard	1303 S St Bakersfield, CA 93301	New Construction	Stabilized	62	Senior Disabled	16,705,820	2015	No	Yes	City HOME
Villa Primavera	1060 Meadows Dr. Calexico, CA 92231	New Construction	Stabilized	48	Special Needs Developmentally Disabled	13,312,518	2015	No	Yes	City HOME
			Subtotal	292						

Project Name	Address	Type of Construction	Current Status	Total # of Units	Supportive Housing Population (s)	Total Development Cost	Year Completed	Were you the Service Provider?	Were you the management agency	Major Capital Source
Westminster Manor	1730 3rd St San Diego, CA 92101	Acquisition/ Rehabilitation	Stabilized	152	Senior Disabled	53,574,906	2015 (Rehab)	No	Yes	Seller Note
Mill Creek Village	508 18th St Bakersfield, CA 93301	New Construction	Stabilized	63	Senior Disabled	22,255,471	2016	No	Yes	City HOME, HCD, IIG
Alpha Square	550 14th St San Diego, CA 92101	New Construction	Stabilized	203	Special Needs Homeless Vets Homeless Disabled	43,798,676	2016	No	No	LIHTC
Parkside Terrace	300 E. White St Hobbs, NM 88240	New Construction	Stabilized	65	Special Needs Disabled Homeless	14,774,479	2017	No	No	LIHTC
Roselawn Manor	800 S. Roselawn Ave. Artesia, NM 88210	New Construction	Stabilized	63	Special Needs Disabled Homeless	14,692,727	2017	No	No	LIHTC
Fairbanks Terrace	6595 Paseo del Sur San Diego, CA 92127	New Construction	Stabilized	83	Senior Disabled	24,416,988	2017	No	Yes	LIHTC
			Subtotal	629						

Project Name	Address	Type of Construction	Current Status	Total # of Units	Supportive Housing Population (s)	Total Development Cost	Year Completed	Were you the Service Provider?	Were you the management agency	Major Capital Source
Volta	11734 Solstice Avenue Chula Vista, CA 91913	New Construction	Stabilized	123	Senior Disabled	31,022,945	2018	No	Yes	LIHTC
The Lofts at Normal Heights	3803 El Cajon Blvd. San Diego, CA 92105	New Construction	Stabilized	52	Special Needs Homeless Vets Disabled	19,506,641	2019	No	No	LIHTC
Schmale Family Senior	430 16th St Ramona, CA 92065	New Construction	Stabilized	62	Senior Disabled	22,968,836	2019	No	Yes	LIHTC
Mission La Posada	805 Hueco St Carlsbad, NM 88220	Acquisition/ Rehabilitation	Stabilized	80	Special Needs Elderly Disabled	15,773,593	2019	No	No	LIHTC
Sienna Seniors	2350 Russell Parkway San Diego, CA 92018	New Construction	Stabilized	103	Senior Disabled	45,527,385	2021	No	Yes	LIHTC
			Subtotal	420						

Project Name	Address	Type of Construction	Current Status	Total # of Units	Supportive Housing Population (s)	Total Development Cost	Year Completed	Were you the Service Provider?	Were you the management agency	Major Capital Source
Fairbanks Terrace II	16361 Paseo Del Sur San Diego, CA 92127	New Construction	Stabilized	31	Senior Disabled	11,379,205	2021	No	Yes	LIHTC
Poway Commons	13098 Poway Rd Poway, San Diego, CA 92064	New Construction	Stabilized	44	Senior Vets	14,214,876	2021	No	Yes	LIHTC
St. Theresa at Calcutta	1402 Commercial St San Diego, CA 92101	New Construction	Stabilized	407	Chronically Homeless Vets Disabled Mental Disorders Homeless Exiting Institutions/ Incarceration	185,346,812	2021	No	No	LIHTC
East Block Seniors	4320 44th St San Diego, CA 92115	New Construction	Under Construction	117	Senior Disabled	49,116,489	2022	No	Yes	LIHTC
			Subtotal	599						

Project Name	Address	Type of Construction	Current Status	Total # of Units	Supportive Housing Population (s)	Total Development Cost	Year Completed	Were you the Service Provider?	Were you the management agency	Major Capital Source
Weingart Tower	555 Crocker St Los Angeles, CA 90013	New Construction	Under Construction	278	Chronically Homeless Vets Disabled Mental Disorders Homeless	176,000,000	2023	No	No	LIHTC
			Subtotal	278						
			Sum of All Units:	**2,218**						

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Tab 5

FORM D
RESIDENTIAL DEVELOPMENT NARRATIVE

FORM D
RESIDENTIAL DEVELOPMENT NARRATIVE

Name of Applicant: Chelsea Investment Corporation (CIC)

Please answer the following questions with short narratives. Use additional sheets, as necessary.

1. Provide a brief description of your organization, including the year it was founded, its mission, major accomplishments and other information that demonstrates your capacity to carry out development of a supportive housing project.

Brief Description:

Formed in 1984, Chelsea Investment Corporation is focused on creating and preserving high quality affordable rental homes. We take special pride in our ability to structure creative financing solutions that result in the development of award-winning housing that complements the surrounding neighborhood. Our highly experienced team of professionals consider each project's unique attributes and identify and implement timely and cost-effective solutions to the many challenges of this market niche. From site selection through feasibility analysis, to construction and re-syndication, our services are available on a targeted or turnkey basis.

Having developed over 130 affordable communities (12,500 units) throughout the western United States at a cost in excess of $3 billion, Chelsea meets and exceeds the level of experience necessary to develop affordable housing. Chelsea has developed infill, rural, farm labor, inclusionary, special needs, senior, Permanent Supportive Housing and mixed-use projects with a variety of non-profit partners such as Father Joe's Village, Alpha Project, CC Housing, Eastern Regional Housing Authority, Lea County Housing, Inc, Southern California Housing Collaborative, Serving Seniors, Housing Development Partners, and Weingart Center Association.

Of the rental homes completed, approximately 2,500 are in urban infill sites, 4,000 are located in suburban locations, and 2,000 are in rural areas. Approximately 3,500 have satisfied inclusionary obligations, 2,000 units are senior housing, and 1,100 units are supportive housing.

Additionally, while Chelsea has primarily focused on new construction projects, the company has developed about 1,000 units through acquisition and rehabilitation. Virtually all projects have been developed with soft residual receipts loans through public-private partnerships with the federal, state, or local government.

Chelsea has successfully integrated AHP, AHSC, MHP, CDBG, HOME, IIG, TOD, MHSA, HOME, NHTF, and redevelopment housing set-aside funds into many projects, in addition to the 4% and 9% low-income housing tax credits and tax-exempt bond

financing. In one project alone, Chelsea utilized loan and grant subsidies from fourteen (14) different funding sources.

Our portfolio includes 3,500 inclusionary units in Southern California, developed at a cost of over $800 million. Our spotless record of completing projects on time, on budget, and in line with each client's requirements demonstrates our commitment to providing superior solutions for affordable housing.

Accomplishments:

- To date, Chelsea has developed over 130 affordable communities throughout California, New
- Mexico and Arizona.
- Total tax credit equity of over $1 billion.
- Total permanent loan and tax-exempt bond proceeds of over $329 million.
- Ranked as 19th in Affordable Housing Finance Magazine's Top 50 Affordable Housing Developers in the country.
- 2015 and 2018 Builder of the Year - Building Industry Association of San Diego.
- Chelsea and its communities are consistently recognized in many categories, including awards for design excellence, preservation of affordable housing, housing for the developmentally disabled, and supportive housing.

2. Describe the Applicant's experience, if any, in the following categories. Please provide specific examples in your narrative answers.
   a. Cost efficiency and demonstrated ability to build a project on time and within budget

Upfront actions are taken to determine the site conditions for any proposed project to prepare the scope of work for the new construction and/or acquisition rehab to determine the cost estimates for the project. Typically, the architect, proposed general contractor and a representative of the Chelsea development team visit the site and the architect will prepare the scope of work. Discussions are held with the Chelsea and the non-profit general partner development team to determine the design, construction components and amenities to include in the cost estimates. The architect prepares the scope of work, and the general contractor prepares the estimate for the new construction and/or renovation costs. Value engineering is incorporated in the cost estimates to provide the most reasonable costs based on the new construction/renovation design, construction components and amenities required for the project and ensuring that the MFA Design Standards (in New Mexico) and HERS requirements are met. The extensive affordable housing development, construction and renovation experience of the Chelsea development team provides insight into the cost reasonableness and cost containment measures. Chelsea works with very experienced architects with affordable housing development experience and familiarity with costs to create design features that make the project costs more reasonable. The development, construction and management team have weekly conference calls to discuss any issues that

might impact the project costs and the projected budget. Monthly onsite meetings with site inspections and cost discussions are also held. This communication and oversight by CIC enhances the monitoring of the costs. No changes to the scope of work and/or budget costs can be made without review and approval by CIC.

b. Quality of construction and design

Chelsea makes a long-term commitment to maintain its projects as affordable housing when developing them. The commitments are anywhere from 35 to 55 years. To date, Chelsea has not disposed of any of the projects it developed and has re-syndicated the ones coming out of their initial tax credit period. The goal has always been to construct and maintain the projects in such a way they will continue to be an asset to the community and safe, decent, quality housing for the residents. With this in mind, Chelsea collaborates with its architects and general contractors to design and construct/renovate projects that are sustainable, energy-efficient, and environmentally sound. Weather conditions and location of the projects are taken into consideration in the design to ensure building materials and other products are conducive to long-term viability. CIC asset managers provide oversight for the management agents, so they provide structured programs for general, corrective and preventive maintenance to further extend the life expectancy of the projects.

c. Green Building and Energy Efficiency

Chelsea is committed to incorporating sustainable elements into all of our projects, resulting in healthier, environmentally conscious homes for our residents. It is well versed in energy savings with a record in developing projects that are very efficient with LEED Platinum LEED Silver and LEED Gold certifications and exceeding standard Home Energy Rating System (HERS) ratings. Chelsea has developed nearly twenty LEED Gold or LEED Platinum apartment communities throughout California and New Mexico. Three of the six projects developed in New Mexico achieved the LEED Platinum Certification and the others have met and/or exceeded the HERS requirements. Every project design incorporates energy saving design elements reducing the energy costs while providing comfort for its residents, promoting energy savings for long term financial feasibility of the project and sustainability. Chelsea has incorporated solar hot water and lighting in projects in California. Energy Star appliances and HVAC equipment, energy saving LED lighting and timers, water-saving devices in plumbing fixtures, motion detectors for common area for lighting, controlled thermostats, performance windows and doors, increase air duct and building envelope sealing, exterior insulation packages for the walls, ceilings and roofs, and other energy saving devises have been used in all of the Chelsea projects. Awnings and other shade structures have been used for reducing solar heat. Exterior building colors are considered as well. Zeriscape plants and other landscaping and drip irrigation systems with timers are used to further enhance water savings and reduce water consumption. Resident education also promotes energy-savings.

d. Working with the City of Las Cruces

CIC has developed an excellent relationship with the city of Las Cruces and its City Council. The city supported Chelsea's application to NM MFA in the 2022 MFA tax credit allocation round for The Three Sisters affordable housing project in Las Cruces. The City Council approved Resolution 22-072 contributing a $2.4 million loan to the development costs. The city's funding assistance helped the project obtain a LIHTC allocation award in the February 2022. With the successful consideration of this RFQ response as well as responses to other RFP's and RFQ's, Chelsea hopes to continue to work in partnership with the city to build adiditonal affordable housing projects. There have been ongoing positive discussions pertaining to future potential opportunities. Chelsea is a Qualified Grantee. The Chelsea team works to develop and maintain strong, positive working partnerships with all federal, county, state, and local officials.

e. Working with New Mexico Mortgage Finance Authority:

Chelsea is in good standing with the New Mexico Mortgage Finance Authority and has excellent relationships with the MFA staff members. Since 2012, CIC has successfully developed affordable housing projects (both new construction and acquisition/rehab) in New Mexico working with NM MFA. Using LIHTC awards from MFA, CIC has developed six projects (two new construction and four acquisition/rehab) for a total of 472 units. Two additional projects (totally 115 units) awarded New Mexico tax credit allocations in 2021 are in the closing process and two new projects (totally 135 units) were awarded tax credits in the February 2022 NM MFA round and are in the predevelopment stage. In addition to the tax credit awards, MFA has also awarded CIC projects HOME, National Housing Trust and/or Risk Share funding. In 2013, Park Place (aka Casa Hermosa) in Hobbs, NM, won the Housing Preservation of the Year Award sponsored by MFA. NM MFA recently visited Sunray Lobo Canyon in Grants, New Mexico and congratulated Chelsea on the transformation and substantial renovations completed for the project. MFA visits to all of Chelsea's projects in New Mexico have been complimentary and the projects have been found to be compliant with the tax credit, HOME, Special Needs, and other housing programs. CIC maintains inhouse asset management and development personnel permanently in New Mexico who participate in MFA panel discussions relating to affordable housing, Developer Forums, focus group discussions, MFA annual QAP and other training, MFA summits, open houses, and other MFA-sponsored events. Some of these are by invitation and some are open to the affordable developers and others.

2. Describe your current and planned development projects and how your agency has the capacity to undertake this project.

In New Mexico, there are two projects, one in Belen and one in the Village of Taos in the closing process. These are expected to close in August 2022 with immobilization of construction/rehabilitation to begin shortly thereafter with the Notice to Proceed. Belen Vista is a 57-unit existing project that will undergo a substantial renovation. The renovation is

anticipated to take twelve months to complete. The project will continue the HUD Project Based Section 8 Voucher program providing much needed rental subsidy. The project will target households with children with a preference for veterans and active military personnel. Mariposa Is a 52-unit existing project that will undergo a substantial renovation. There will also be 6 newly constructed units added to the site. The completion date is estimated to be twelve months. These two projects will be renovated concurrently. A third-party general contractor will be used for the renovations. There will be Enrichment Services Programs with an onsite Service Coordinator for both projects. CC Housing, Inc., an affiliate of Catholic Charities of Albuquerque, is Chelsea's non-profit partner and will provide these services.

In addition to these two projects, it is anticipated that Chelsea will also close on two new construction projects this year in November 2022. These projects are in Rio Rancho and Las Cruces. The Rio Rancho project, Felician Villa, will be a senior project with 66 units. The new construction is projected to begin the first quarter of 2023 and will take twelve months to complete. The project in Las Cruces, The Three Sisters, will consist of 69 newly constructed units targeting families with children. The construction is projected to begin the first quarter of 2023 and will take twelve months to complete. There will be Enrichment Services Programs with an onsite Service Coordinator for both projects. CC Housing, Inc., an affiliate of Catholic Charities of Albuquerque, is Chelsea's non-profit partner and will provide these services.

In California, Chelsea has ten + projects in various stages of construction. The development staff is also working on many more potential projects to develop in the future pending the successful awards of tax credits and other gap funding applications. Chelsea's' excellent reputation in its development areas facilitate an ongoing supply of projects to develop, thus achieving its mission to provide quality affordable rental housing.

As mentioned previously, Chelsea's highly experienced team of professionals consider each project's unique attributes and identify and implement timely and cost-effective solutions to the many challenges of this market niche. From site selection through feasibility analysis, to construction and re-syndication, its employees have the knowledge, skills, and motivation to successfully deliver projects of quality construction in a timely manner, under budget and an asset to the neighborhood. Chelsea has benefited from forming an affiliate construction company, Emmerson Construction. With the exception of one or two projects, Emmerson has built all the projects in California. While in New Mexico, third-party construction companies have provided the construction/renovation services, Emmerson Construction has provided invaluable construction consulting and supervision to ensure Chelsea's construction standards and other related construction issues are met. Just the volume of affordable housing built by Chelsea is a testament to its ability to successfully develop and manage its projects, regardless of the number in any one year.

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Tab 6

FORM E
SERVICE EXPERIENCE

FORM E
SERVICE EXPERIENCE

Name of Applicant: Chelsea Investment Corporation

Please answer the following questions with short narratives. Use additional sheets, as necessary.

Indicate if Applicant has significant experience in providing services for any of the populations listed below by selecting the checkbox next to "Yes" under Directly. If the Applicant has experience partnering with other social service providers to provide services to the listed population, indicate "Yes" under In Partnership.

	Populations	Directly	In Partnership
A	Individuals with Mental Illness	Yes ☐	Yes ☒
B	Youth Aging out of Foster Care	Yes ☐	Yes ☐
C	Substance Abusers	Yes ☐	Yes ☒
D	Families	Yes ☒	Yes ☒
E	People with HIV/AIDS	Yes ☐	Yes ☐
F	Veterans	Yes ☐	Yes ☒
G	Senior Citizens	Yes ☒	Yes ☒
H	Domestic Violence Survivors	Yes ☐	Yes ☐
I	High Users of Medicaid	Yes ☐	Yes ☐
J	Housing Authority Waitlists	Yes ☒	Yes ☒
K	People existing the Incarceration system	Yes ☐	Yes ☒
L	Other (Please Provide Brief Explanation)	Yes ☐	Yes ☒

Other-CIC and its non-profit partners also provide services and housing for individuals and families with developmental disabilities, those experiencing homelessness and those at risk of homelessness. There are housing and supportive service targeting veterans.

1. If Applicant selected "Yes" to any of the above, please provide a brief narrative for the population(s) elaborating on Applicant's service approach and current supportive housing programs that Applicant operates. Please specify the geographic location of the program the program is funded, what services are provided, and achievements in housing stability. –OR– **If the Applicant has experience working in partnership with other social service agencies to provide the on-site social services, please provide a brief narrative describing the partnerships, supportive housing programs, and method of collaborating with service providers**. ***use additional pages or attachments as needed.**

CIC Management works closely with a non-profit partner to provide supportive, workforce and other resident services such as assistance with and referrals for SNAP applications; a daily youth summer food program when school is not in session and an after-school snack program when school is in session; health, wellness and nutrition education; blood pressure or other health screening; computer training; job training, search assistance, and/or placement services; youth character building training; financial literacy; CPR training; case work referrals; ESL classes; and other services as deemed of interest and needed by the project residents. These supportive and workforce training services are critical to improving the lives and well-being of the residents served. All services are offered free of charge to the residents of the project.

Prior to beginning the supportive services at a project, CIC will host a Program Orientation and Training meeting with the site staff, supervisors, and others working on the project, as well as the Service Provider to review the supportive service requirements, guidelines, and implementation. This ensures all parties are on the same "page" to successfully implement and continue the services to the benefit of the residents. The onsite staff is trained to collaborate with caregivers, social workers, and others to prevent homelessness for vulnerable households. Site meetings and/or virtual meetings are regularly held with the management staff and the supportive service provider to discuss any resident and/or program concerns. Commitments made for supportive services are closely monitored by the CIC Asset Manager to make sure the project is providing the correct services and is compliant with the tax credit and other affordable housing program commitments made by the owner. Both the site Property Manager and the Service Provider are required to maintain documentation of the services offered, the communication and notification to the residents, attendance records and a brief description of the services offered. A monthly calendar is prepared as part of the communication to the residents and to organize the services.

When CIC designs its projects, the design includes a community building or space with a leasing and management office as well as an office for the Service Provider. This allows the Service Provider a private space to personally meet with residents and discuss their needs and/or concerns. It provides a private area for medical screening such as blood pressure checks. The community areas also include space for tables, group meetings and seminars/educational programs to further provide social service opportunities and participation by the residents. A computer center is located in the community area to permit use by residents as well as computer training. The Service Provider's office is equipped with a copier, scanner, computer, and Internet so he/she can assist residents in preparing and submitting resumes, applications for assistance such as SNAP, obtaining social security information, etc. The location of the leasing/management and Service Providers offers plenty of opportunity for frequent and effective communication.

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Tab 7

FORM F
QUALIFIED GRANTEE

FORM F

Qualified Grantee

Are you currently certified as a Qualified Grantee as defined by Las Cruces Affordable Housing General Oversight Ordinance? Yes

If not, please submit the Qualified Grantee Application (Attachment D) and all applicable documentation requested in the application with your Request for Qualifications.

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Tab 8

FORM G
ASSET MANAGEMENT AND OWNERSHIP EXPERIENCE

FORM G

ASSET MANAGEMENT AND OWNERSHIP EXPERIENCE

Name of Applicant: Chelsea Investment Corporation

Please answer the following questions with short narratives. *Use additional sheets as or attachments as necessary.

1. Describe the Applicants experience managing properties, especially those with Section 8, Continuum of Care, or other rental assistance programs (please specify other).

   Formed in 2003, CIC Management (CICM) has a strong history and excellent record of accomplishments successfully managing affordable housing projects. It is specifically qualified to manage the proposed project based on our experience managing projects dedicated for tenant populations including farmworkers, seniors, large families, veterans, developmentally disabled, individuals with mental illness, homeless and at risk of being homeless and permanent supportive services. CICM is a full-service professional property manager with extensive, well-rounded experience in the day-to-day operations of tax-exempt bond financed, Multi-Family Housing Program (MHP), Affordable Housing Program (AHP), HUD Project Based Section 8 Subsidy, VASH vouchers, IRS Section 42 Tax-Credit, HOME, Joe Serna Farm Labor, and USDA Rural Development (including Rental Assistance programs) affordable housing apartment communities. Chelsea and/or its third-party managing agents work with local housing authorities to successfully recruit and house Choice Voucher applicants. In New Mexico, CIC will use a third-party managing agent experienced in affordable housing programs and will provide oversight for the agent. CICM feels mindfulness and proactivity are critical to successfully managing the project. It relies heavily on these two principles.

2. Is the Applicant or any affiliate of the Applicant in arrears on loans from any lenders? If so, please provide name of lender, amount of arrears, and an explanation for arrears.

   Neither Chelsea nor its affiliates are in arrears on loans from lenders.

3. Do any properties managed by the Applicant, or any affiliate of the Applicant have building code violations? If yes, please explain in detail.
   There are no buildings managed by Chelsea and/or its third-party managing agents with building code violations.

4. Provide a description of the Applicant's system for supervising ongoing maintenance, responding to tenant complaints, tracking and completing repairs.

   CIC Management Inc. and/or its third-party managing agents will implement a very structured maintenance service program for the project. It will include general, corrective, emergency, and preventive maintenance procedures specific to the requirements of the

project. Every effort will be made to maintain the community in decent, safe, and sanitary condition to provide an attractive, safe, and sustainable project and environment for the residents. During the initial warranty period, all repairs and service requests, if under warranty, will be referred on a written work request form to the appropriate vendor contracted by the general contractor of the community. The as-built plans and specifications for the community as provided by the Owner/general contractor will be maintained in the leasing/management office and used as a training resource for the maintenance staff as well as the administrative staff. The site Property Manager will be responsible for these to ensure they remain at the site. If modifications are required, he/she will be responsible for communicating and maintaining these changes with the original plans. CIC Management, Inc. and/or its third-party managing agents have written policies and procedures for out of warranty service requests. Site personnel and supervisors are trained in these.

Service requests are in writing and input in a computer software program to ensure tracking, completion, and documentation. It is Management's general policy to respond to all service requests within a 48-hour period unless it is an emergency. Emergency repairs are given priority and immediately handled. Turnover maintenance guidelines as well as other maintenance are provided to the onsite staff. To maintain the project in excellent condition, to prevent obsolescence, and to prepare a more accurate annual operating budget, each year (approximately 120 days from the end of the fiscal year), the site Property Manager and the Regional Property Supervisor will inspect the entire project including its equipment. A preliminary capital needs and major/non-recurring maintenance repair budget will be prepared and submitted to the CIC Management Asset Manager for review and approval. A site inspection is performed to determine the repair and capital needs for the project as part of the process. Preliminary bids are submitted for the capital expenses and other major expenses. These are used to prepare the budget.

The CIC Asset Manager will perform site visits not less than once every six months to ensure the management team is serving the residents and maintaining the asset in quality condition required by CIC.

5. List any instances of noncompliance with LIHTC or HOME regulations and provide explanation.

   There have only been minor corrections required. Occasionally a document is not found in the file. CICM and its third-party managing agents have been able to correct them without penalty.

City of Las Cruces
Request for Qualifications (RFQ) for
Development Supportive Affordable Housing Project
The Mesilla Valley Community od Hope (MVCH)
Las Cruces, NM

Tab 9

FORM H
COMMUNITY OUTREACH

FORM H
COMMUNITY OUTREACH

Please answer the following questions with short narratives. *Use additional sheets or attachments as necessary.

1. Describe the Applicant's strategy and past success in obtaining community support.

   CIC believes the neighboring community of the project is integral to the project's success and seeks to have community involvement to the extent possible. CIC's "open door" policy and ongoing neighborhood communication, outreach and interaction will enhance neighborhood relationships creating enduring partnerships. CIC has utilized various strategies to obtain community support. Some of the strategies are as follows:

   - Create flyers with renderings and project information. Go door to door within a one mile or more radius to make personal contact with the neighbors to explain the project and to answer their questions and concerns (if any).
   - Mail flyers to neighborhood residents residing within a certain radius of the project.
   - Send/deliver invitations to the surrounding community to the groundbreaking for the project.
   - Publish announcements in local newspapers.
   - Promote an open-door policy in flyers and other media sources with contact name, e-mail address and telephone number.
   - Offer tours of the finished project upon completion.
   - Use Facebook, You Tube and other internet media sources to promote the project and provide information.
   - Hold virtual community meetings.
   - Hold in-person Town Meetings,
   - Design the project to be compatible with and to change the character of the neighborhood for the benefit of all, improving it so the project receives positive neighborhood acceptance.

2. Describe how the Applicant seeks community feedback and incorporates community uses into buildings.

   Prior to embarking on any project development, the Chelsea development team contacts the city officials to determine if they feel the project is needed in their jurisdiction and works to obtain the support of the city. Chelsea's goal is to become a partner with the jurisdiction to ensure, we are meeting the needs of the jurisdiction and any designs that would better suit the neighborhood. These initial discussions are extremely helpful to Chelsea's approach to the community.

   As described in response #1 in this section, CIC employs a variety of strategies to obtain community support and provide information to the neighborhood residents about the proposed project. A considerable amount of this strategy involves engaging g the community with personal contact allowing the CIC development team to get to personally know some of the residents, business owners and agency/organization representatives to assess their

concerns, engage in conversation to determine what they feel is needed and to respond to them in an open and transparent manner. In person town and virtual meetings are hosted by Chelsea and offer opportunity for questions and answers. Chelsea utilizes renderings, floor plans, site maps and other information in these meetings to fully disclose e proposed plans for the project. Along the way, if there are any objections, CIC will listen and respond to them. New ideas for the project are welcomed and will be taken into consideration. In some instances, the implementation of these ideas may not be feasible, Chelsea will take the time to explain why these are not feasible.

The project will be designed with onsite community space. This space will be available for use by groups in the community to hold meetings, special events and other uses. As part of the Supportive Services Program, neighborhood agencies will be given an opportunity to promote their services available to the residents. The community spaces can be used for job and health fairs where local employers and health service companies can promote their companies and services.

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Tab 10

FORM I
ASSETS STATEMENT AND FINANCIAL LETTERS OF SUPPORT

- **Written Explanations**
- **Asset Statements**
- **Financial Letters of Support**

City of Las Cruces
Request for Qualifications (RFQ) for
Development Supportive Affordable Housing Project
The Mesilla Valley Community od Hope (MVCH)
Las Cruces, NM

Tab 10

FORM I WRITTEN EXPLANATIONS

FORM I
ASSETS STATEMENT AND FINANCIAL LETTERS OF SUPPORT

Name of Applicant: Chelsea Investment Corporation (CIC)

Please answer the following questions with short narratives. *Use additional sheets or attachments as necessary.

1. Provide a written explanation; referencing the Applicants attached financial statements, regarding your ability to provide the financial guarantees necessary to develop a housing project. Please describe the guarantees, including amount, previously successfully secured.

   Having developed over 12,500 units throughout the western United States at a cost in excess of $3 billion, Chelsea meets and exceeds the level of experience necessary to develop affordable housing. While 4% and 9% tax exempt bonds and tax credits make up the largest funding sources for the CIC projects to be developed, Chelsea's development team has been able to obtain gap funding from numerous sources for its projects. Its excellent record and reputation with lenders and equity investors as well as its ability to deliver projects on time and within budget, enhance Chelsea's ability to receive commitments for funding. As part of the development sources of funding, Chelsea will defer apportion of its development fee to make the deal feasible. Chelsea is liable for guarantees of funding at various operating projects in the event that operating deficits occur. These guarantees, if required, are satisfied by making loans to such projects. CIC has committed to third party Investor Limited Partners and lenders, in connection with their investments made and bank construction loans guaranteed for various projects, to maintain certain net worth and net liquidity requirements. As of December 31, 2021, the Chelsea's most restrictive commitment was to maintain a net worth of not less than $5,000,000 and liquid assets of not less than $4,000,000 at all times that any portion of the guaranteed bank construction loan is outstanding. As of December 31, 2021, Chelsea was in compliance with these covenants.

2. Provide a written explanation; referencing the Applicants attached financial statements, regarding the Applicant's capacity to secure construction and permanent financing, meet construction lender's equity requirements, absorb any cost overruns, and commence and complete construction of Applicant's Project in a timely manner.

   As reported in the attached financial reports, CIC has committed to third party Investor Limited Partners and lenders, in connection with their investments made and bank construction loans guaranteed for various projects, to maintain certain net worth and net liquidity requirements. As of December 31, 2021, the Chelsea's most restrictive commitment was to maintain a net worth of not less than $5,000,000 and liquid assets of not less than $4,000,000 at all times that any portion of the guaranteed bank construction loan is outstanding. As of December 31, 2021, Chelsea was in compliance

with these covenants. This commitment and CIC's operating deficit guarantees enhance Chelsea's capacity to secure construction and permanent financing, meet construction lender's equity requirements, and absorb any cost overruns. In addition, Chelsea has never defaulted on a loan or guarantee. When developing the construction/renovation budget, contingency funds are included to ensure funds are available to complete the project in the event of overruns. Chelsea also promotes long-term relationship with equity investors and lenders (both permanent and construction financing).

Chelsea works with its affiliate construction company, Emmerson Construction, and other general contractors who have the capability, experience and working knowledge constructing affordable multifamily housing projects. Through excellent communication and pre-planning meetings and site inspections, Chelsea is able to commit to the commencement and timely completion of the project. Ongoing weekly meetings further promote the successful completion of the project by quickly discussing and resolving any issues that might delay the project. Chelsea uses its previous experience developing and constructing/renovating projects, the number of projects and the various types of projects developed as reference when working on other developments.

ATTACHMENTS
Asset Statements
Not-for-Profits: Please attach 2 years of audited financials.

Principals of For-profit Partners (if applicable): Please submit audited or reviewed financial statements describing in detail the Principal's financial status in the two (2) most recent fiscal years preceding the deadline for the submission of Proposals in response to this RFQ.

Chelsea's audited financial statements are attached for 2020 and 2021.

Financial Letters of Support
Attach letters of reference from banks, syndicators, or investors with whom the Applicant has worked in the past that will speak to the Applicant's successful development experience.

The following Letters of Interest are attached to confirm Chelsea's ability to obtain permanent and construction financing as well as commitments from an equity investor, Chelsea has developed long-term working relationships with the funders, and they participate in other Chelsea projects. This further demonstrates Chelsea's ability to meet its commitments in the delivery of projects from construction/renovation and delivery of tax credits.

Three letters of support are attached as follows:

- Equity Letter of Interest-The Richman Group Affordable Housing Corp.
- Permanent Financing Letter of Interest-Rocky Mountain Community Reinvestment Corporation (RMCRC)
- Construction Financing Letter of Intent-Key Bank Real Estate Equity Capital

City of Las Cruces
Request for Qualifications (RFQ) for
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Tab 10

ASSET STATEMENTS

CHELSEA INVESTMENT CORPORATION
2020 AUDITED FINANCIAL STATEMENTS

NOVOGRADAC & COMPANY LLP®

Chelsea Investment Corporation and Subsidiaries

Consolidated Financial Statements with Report of Independent Auditors
December 31, 2020

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NOVOGRADAC & COMPANY LLP®

Report of Independent Auditors

To the Stockholder of
Chelsea Investment Corporation and Subsidiaries

Report on the Consolidated Financial Statements

We have audited the accompanying consolidated financial statements of Chelsea Investment Corporation and Subsidiaries, which comprise the consolidated balance sheet as of December 31, 2020, and the related consolidated statements of operations, stockholder's equity, and cash flows for the year then ended, and related notes to the consolidated financial statements.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditors consider internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Chelsea Investment Corporation and Subsidiaries as of December 31, 2020, and the results of their operations and their cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Novogradac & Company LLP

Long Beach, California
April 22, 2021

CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEET
December 31, 2020

ASSETS		
Current assets:		
Cash and cash equivalents	$	8,445,013
Marketable securities, net		2,396,910
Due from related parties		1,576,814
Prepaid expenses and deposits		130,217
Current portion of developer fees receivable - related parties		7,974,708
Current portion of project cost advances - related parties		2,966,650
Note receivable - related party		31,497
Total current assets		23,521,809
Fixed assets:		
Property and equipment		662,412
Leasehold improvements		224,469
Accumulated depreciation		(683,616)
Fixed assets, net		203,265
Other assets:		
Developer fees receivable - related parties, less current portion		3,503,890
Project cost advances - related parties, less current portion		1,724,224
Total other assets		5,228,114
Total assets	$	28,953,188
LIABILITIES AND STOCKHOLDER'S EQUITY		
Current liabilities:		
Accounts payable	$	44,851
Accrued expenses		346,947
Rent payable		135,492
Line of credit		2,000,000
Due to related parties		112,904
Total current liabilities		2,640,194
Long-term liabilities:		
Note payable		6,950,000
Nonqualified deferred compensation plan liability		445,000
Total long-term liabilities		7,395,000
Total liabilities		10,035,194
Stockholder's equity:		
Controlling interest		
Common stock, no par value		
1,000 shares authorized		
100 shares issued and outstanding		100
Additional paid in capital		2,177,038
Retained earnings		16,740,757
Total controlling interest		18,917,895
Non-controlling interest		99
Total stockholder's equity		18,917,994
Total liabilities and stockholder's equity	$	28,953,188

see accompanying notes

CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF OPERATIONS

For the year ended December 31, 2020

REVENUES		
Developer fees	$	10,803,087
Management fees		143,360
Sublease income		468,556
PPP loan forgiveness		915,809
Total revenues		12,330,812
OPERATING EXPENSES		
Compensation and benefits		5,691,439
Insurance		904,435
Bad debt expense		700,309
Consulting and professional fees		544,475
Payroll taxes		450,521
Rent		395,383
General and administrative		346,379
Utilities		119,971
Deferred compensation		75,000
Office expenses		74,793
Depreciation expense		73,990
Advertising		65,610
Repairs and maintenance		46,003
Real estate taxes		42,995
Other expenses		30,984
Meals and entertainment		12,041
Travel		11,352
Total operating expenses		9,585,680
Operating income		2,745,132
OTHER INCOME (EXPENSES)		
Investment and interest income		519,920
Gain on marketable securities		97,087
Interest expense		(228,082)
Net other income and (expenses)		388,925
INCOME BEFORE PROVISION FOR INCOME TAXES		3,134,057
Provision for income taxes		39,957
NET INCOME	$	3,174,014

see accompanying notes

CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF STOCKHOLDER'S EQUITY
For the year ended December 31, 2020

	Controlling Interest						
	Common Stock		Additional Paid-in	Retained	Total Controlling	Non-controlling	Total Stockholder's
	Shares	Amount	Capital	Earnings	Interest	Interest	Equity
BALANCE, JANUARY 1, 2020	100	$ 100	$ 2,967,000	$ 13,566,743	$ 16,533,843	$ 99	$ 16,533,942
Stockholder contributions	-	-	180,000	-	180,000	-	180,000
Stockholder distributions	-	-	(969,962)	-	(969,962)	-	(969,962)
Net income	-	-	-	3,174,014	3,174,014	-	3,174,014
BALANCE, DECEMBER 31, 2020	100	$ 100	$ 2,177,038	$ 16,740,757	$ 18,917,895	$ 99	$ 18,917,994

see accompanying notes

CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF CASH FLOWS

For the year ended December 31, 2020

CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	$	3,174,014
Adjustments to reconcile net income to net cash provided by operating activities:		
PPP loan forgiveness		(915,809)
Gain on marketable securities		(97,087)
Depreciation expense		73,990
Bad debt expense		700,309
(Increase) decrease in operating assets		
Marketable securities		(18,199)
Developer fees receivable - related parties		889,120
Management fees receivable		(120,898)
Prepaid expenses and deposits		74,022
Increase (decrease) in operating liabilities		
Accounts payable		(282,209)
Accrued expenses		3,222
Nonqualified deferred compensation plan liability		75,000
Rent payable		586
Net cash provided by operating activities		3,556,061
CASH FLOWS FROM INVESTING ACTIVITIES		
Funding of notes receivable - related parties		(2,497)
Purchase of property and equipment		(16,372)
Purchase of leasehold improvements		(6,750)
Advances from related parties		112,904
Payment of project cost advances - related parties		(457,772)
Net cash used in investing activities		(370,487)
CASH FLOWS FROM FINANCING ACTIVITIES		
Contributions from sole stockholder		180,000
Distributions to sole stockholder		(969,962)
Proceeds from PPP loan		915,809
Advances to related parties		(402,683)
Proceeds from note payable		6,950,000
Payment of note payable - related party		(1,950,000)
Net cash provided by financing activities		4,723,164
Net change in cash, cash equivalents and restricted cash		7,908,738
Cash, cash equivalents and restricted cash at beginning of year		536,275
Cash, cash equivalents and restricted cash at end of year	$	8,445,013
Cash and cash equivalents	$	8,445,013
Restricted cash		-
Total cash, cash equivalents and restricted cash	$	8,445,013
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Cash paid for interest during the year	$	228,082

see accompanying notes

CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2020

NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

Organization and purpose
Chelsea Investment Corporation (the "Company") was established in February 2004, as a real estate company focusing on the financing and development of affordable housing in Arizona, California and New Mexico. The Company provides financial engineering, development, asset management, and property management services, as well as legal and labor services to its development and investment partners and clients.

Basis of accounting
The Company prepares its consolidated financial statements on the accrual basis of accounting consistent with accounting principles generally accepted in the United States of America.

Principles of consolidation
The accompanying consolidated financial statements include the assets, liabilities, and financial activities of the Company and its wholly-owned subsidiaries CIC Calipatria, LLC, CIC Heber, LLC, CIC Beachwind, LLC, and Ajax-Natomas, LLC. In addition, the Company is required to consolidate the financial statements of 15th Investment CIC, LLC, as the Company is deemed to have control. All inter-company accounts and transactions have been eliminated in consolidation.

Estimates
The preparation of consolidated financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

Economic concentrations
The Company develops property for the affordable rental housing market. Future operations could be affected by changes in economic or other conditions in the Company's geographical area or by changes in the demand for housing.

Cash and cash equivalents
Cash and cash equivalents include all cash balances on deposit with financial institutions and highly liquid investments with a maturity of three months or less at the date of acquisition.

Concentration of credit risk
The Company maintains its cash in bank deposit accounts which at times may exceed the federally insured limits. The Company has not experienced any losses in such accounts. The Company believes it is not exposed to any significant credit risk on cash and cash equivalents.

Investments in securities
The Company's investments in marketable securities are recorded at fair value measured at each reporting period. The fair value of the investments is based on quoted prices in active markets, and any gain or loss is reported on the statement of operations. The cost of securities sold is based on the specific identification method. Interest on marketable securities is included in investment and interest income on the accompanying consolidated statement of operations.

NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Fair value measurements

The Company applies the accounting provisions related to fair value measurements. Accounting Standards Codification (ASC) 820 defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. As prescribed in ASC 820, fair value is the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. This accounting guidance establishes a fair value hierarchy about the assumptions used to measure fair value and clarifies assumptions about risk and the effect of a restriction on the sale or use of an asset.

Financial assets and liabilities carried at fair value will be classified and disclosed in one of the following three levels of the fair value hierarchy: (1) the fair value is based on quoted prices (unadjusted) for identical assets or liabilities in active markets that the entity has the ability to access as of the measurement date; (2) the fair value is based on significant other observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data; and (3) the fair value is based on significant unobservable inputs that reflect the Company's own assumptions about the assumptions that market participants would use in pricing an asset or liability.

Accounts receivable

Accounts receivable is stated at the amount management expects to collect from outstanding balances. Management closely monitors outstanding balances and provides for probable uncollectible amounts through a charge to earnings and a credit to a valuation allowance based on its assessment of the current status of individual accounts. Balances that remain outstanding after management has used reasonable collection efforts are generally written off through a charge to the valuation allowance and a credit to trade accounts receivable. As of December 31, 2020, the balance of the partnership management fees receivable and the allowance for doubtful accounts for partnership management fees receivable was $1,326,937. Bad debt expense for the year ended December 31, 2020 was $700,309.

Fixed assets

The Company records all depreciable assets at cost. Property and equipment are depreciated on a straight-line method over their estimated useful lives of five to seven years. Leasehold improvements are depreciated on a straight-line method over their estimated useful lives of fifteen years.

Loans receivable and allowance for loan losses

Loans receivable are stated at unpaid principal balances, less an allowance for loan losses.

The allowance is increased by a provision for loan losses, which is charged to expense, and reduced by charge-offs, net of recoveries. Management's periodic evaluation of the adequacy of the allowance is based on the Company's past loan loss experience, known and other risks inherent in the portfolio, specific impaired loans, and adverse situations. Although management uses available information to recognize losses on loans, because of uncertainties associated with local economic conditions, collateral values, and future cash flows on impaired loans, it is reasonably possible that a material change could occur in the allowance for loan losses in the near term. However, the amount of the change that is reasonably possible cannot be estimated.

NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Loans receivable and allowance for loan losses (continued)
The Company considers a loan impaired when based on current information or factors, it is probable that the Company will not collect the principal and interest payments according to the loan agreement. Management considers many factors in determining whether a loan is impaired, such as payment history and value of collateral. Loans that are contractually delinquent less than 90 days are generally not considered impaired, unless the borrower has claimed bankruptcy or the Company has received specific information concerning the loan impairment. The Company reviews delinquent loans to determine impaired accounts. The Company measures impairment on a loan-by-loan basis by either using the fair value of collateral or the present value of expected cash flows. Substantially all of the Company loans that are identified as impaired have been measured using the fair value of the collateral.

The Company's key credit quality indicator is a loan's performance status, defined as accruing or non-accruing. Performing loans are considered to have a lower risk of loss, while nonaccrual loans are those which the Company believes have a higher risk of loss. Loans that are 90 days or more past due, based on the contractual terms of the loan, are classified on nonaccrual status. Loans may also be placed on nonaccrual status when management believes, after considering economic conditions, business conditions, and collection efforts, that the loans are impaired or collection of interest is doubtful. Uncollectible interest previously accrued is charged off, or an allowance is established by a charge to interest income. Interest income on nonaccrual loans is recognized only to the extent cash payments are received and the principal balance is believed to be collectible.

A loan previously classified on nonaccrual status will resume accruing interest based on the contractual terms of the loan when payments on the loan become current. Loans may also resume accruing interest if management no longer believes a loan is impaired or the collection of principal and interest is no longer in doubt.

Partnership investments
The consolidated wholly-owned subsidiaries of the Company hold co-general partner interests in affiliated affordable housing limited partnerships. These co-general partner interests are recorded at cost pursuant to the measurement alternative provided by FASB ASC 321. The fair value of the investments is not estimated if there are no identified changes that may have a significant adverse effect on the fair value of the investments. As of December 31, 2020, the investment of the subsidiaries in the affiliated affordable housing limited partnerships was $0.

Non-controlling interest in subsidiary
The non-controlling interest represents the aggregate positive balance of the other members' interest in 15th Investment CIC, LLC, and is reported in the aggregate on the consolidated balance sheet within equity and on the consolidated statement of stockholder's equity, separately from the Company's equity.

NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Impairment of long-lived assets

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. Recoverability is measured by a comparison of the carrying amount of the asset to the future net undiscounted cash flows expected to be generated and any estimated proceeds from the eventual disposition. If the long-lived assets are considered to be impaired, the impairment to be recognized is measured at the amount by which the carrying amount of the asset exceeds the fair value as determined from an appraisal, discounted cash flow analysis, or other valuation technique. There were no impairment losses recognized during 2020.

Income taxes

By consent of the stockholder, the Company elected to be taxed as an S corporation beginning with the year ended December 31, 2004. Federal and state income taxes on the earnings of an S corporation are payable by the sole stockholder. However, California assesses an additional tax of 1.50% on the taxable income, net of certain credits.

The preparation of consolidated financial statements in accordance with accounting principles generally accepted in the United States of America requires the Company to report information regarding its exposure to various tax positions taken by the Company. Management has determined whether any tax positions have met the recognition threshold and has measured the Company's exposure to those tax positions. Management believes that the Company has adequately addressed all relevant tax positions and that there are no unrecorded tax liabilities. Federal and state tax authorities generally have the right to examine and audit the previous three years of tax returns filed. Any interest or penalties assessed to the Company are recorded in operating expenses. No interest or penalties from federal or state tax authorities were recorded in the accompanying financial statements.

Lease expenses

Expenses resulting from leases are recognized when incurred. Lease expense from an operating lease is incurred on a straight-line basis over the lease term. Interest expense is incurred on a capital lease obligation to produce a constant periodic rate of interest on the remaining balance of the obligation.

Lease classifications

The Company considers multiple factors in determining the classification of leases as either capital or operating leases, such as ownership at the end of the lease term, bargain purchase options, lease term, present value of minimum lease payments, fair value and useful life of the underlying asset(s), and whether there is significant uncertainty regarding future costs or collectability of lease payments. See Notes 4 and 7 for further discussion of the Company's lease transactions.

Revenue recognition

The Company recognizes revenue when it is realized or realizable and earned. Revenue consists of the income from various partnerships, including incentive management fees, partnership administration fees, and consulting fees. The Company considers revenue realized or realizable and earned when it has persuasive evidence of an arrangement, the services have been provided and collectability is reasonably assured.

NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Revenue from contracts with customers

Revenue from contracts with customers consists of fees earned for construction and development services provided. The Company considers revenue from contracts with customers realized or realizable and earned when it has satisfied certain performance obligations pursuant to such contracts. Performance obligations are satisfied over time as services are rendered and revenue is recognized based on the estimated percentage of time incurred for each performance obligation. The Company records contract assets for revenue recognized in excess of the amount billed to and received from the customer, which are included in developer fees receivable on the accompanying consolidated balance sheet.

Deferred compensation expenses

The costs of deferred compensation arrangements are accrued over the period of employees' service to which they relate.

Advertising

Advertising costs are expensed as incurred. For the year ended December 31, 2020, the Company incurred $65,610 in advertising costs.

Subsequent events

Subsequent events have been evaluated through April 22, 2021, which is the date the financial statements were available to be issued, and there are no subsequent events requiring disclosure.

NOTE 2 – MARKETABLE SECURITIES

Marketable securities held by the Company consist of investments purchased at an aggregate cost of $2,246,504. As of December 31, 2020, the fair market value of the marketable securities was $2,396,910. Gains and losses are reported in net income on the accompanying consolidated statement of operations. During 2020, the gain on marketable securities was $97,087.

NOTE 3 – FIXED ASSETS

Fixed assets consist of the following as of December 31, 2020:

Property and equipment, at cost	$	662,412
Leasehold improvements, at cost		224,469
Accumulated depreciation		(683,616)
Total fixed assets, net	$	203,265

Depreciation expense for the year ended December 31, 2020 was $73,990.

NOTE 4 – RELATED PARTY TRANSACTIONS

Notes receivable

Notes receivable with related parties consist of the following as of December 31, 2020:

	Amount
The Company has a promissory note with a related entity for $72,774. This note bears no interest and is payable in whole or in part any time with no penalty. As of December 31, 2020, the balance on this promissory note was $31,497.	$ 31,497
Total notes receivable – related parties	$ 31,497

Project cost advances

The Company and its affiliates have expended certain amounts for projects that it expects will be funded and completed in the future. These amounts are capitalized as the Company expects they will be reimbursed in the future. Any costs associated with projects that cease being feasible for future development are expensed, when the determination is made that feasibility is no longer assured.

Project costs advances consist of the following as of December 31, 2020:

Total project cost advances – related parties	$ 4,690,874
Less: current portion of project costs advances – related parties	(2,966,650)
Project cost advances – related parties, less current portion	$ 1,724,224

Developer fees

Developer fees are fees the Company receives for providing development and construction services to associated projects, which are based on contracts with various project developer entities associated with the Company. Balances are recorded at amounts expected to be realized as performance obligations are satisfied under the contracts, as further discussed in Note 1. For the year ended December 31, 2020, developer fees earned were $10,803,087.

The developer fees receivable balance is recorded at amounts expected to be realized in excess of the amount billed to and received from the customer. Payments for developer fees are due upon scheduled equity installments which correspond to certain milestones achieved for each project. These milestone payments typically begin upon the start of construction and end upon the receipt of IRS Form 8609s by each project. As of December 31, 2020, management estimated no allowance for uncollectible developer fees receivable.

As of December 31, 2020, the contract assets balance is as follows:

Beginning balance	$ 12,367,718
Revenue recognized	10,803,087
Revenue received	(11,692,207)
Ending balance	$ 11,478,598

NOTE 4 – RELATED PARTY TRANSACTIONS (CONTINUED)

Developer fees (continued)
Developer fees receivable consist of the following as of December 31, 2020:

Total developer fees receivable – related parties	$ 11,478,598
Less: current portion of developer fees receivable – related parties	(7,974,708)
Developer fees receivable- related parties, less current portion	$ 3,503,890

Partnership management fees
The Company receives partnership management fees from associated properties after they have been completed. The management fees are accrued on the Company's books as services are rendered and are paid out of available cash flow, if any, of the partnerships. For the year ended December 31, 2020, partnership management fees of $120,898 were earned and are included in management fees revenue on the consolidated statement of operations. During 2020, an allowance of $120,898 was reserved for the partnership management fees receivable which is included in bad debt expense on the accompanying consolidated statement of operations.

Partnership management fees receivable consist of the following as of December 31, 2020:

Total partnership management fees receivable – related parties	$ 1,326,937
Less: reserve for allowance for doubtful accounts	(1,326,937)
Partnership management fees receivable – related parties, net	$ -

Incentive management fee
Pursuant to an incentive management fee agreement between the Company and CIC PHR, LP ("PHR") dated September 1, 2002, an incentive management fee equal to 5.4% of gross revenues or 76.5% of remaining cash flow from PHR, shall be earned by the Company for consultative services. For the year ended December 31, 2020, there was no management fee earned or paid.

Pursuant to an incentive management fee agreement between the Company and CIC Villas II, LP ("Villa Glen") dated June 1, 2002, an incentive management fee equal to 5.4% of gross revenues or 76.5% of remaining cash flow from Villa Glen, shall be earned by the Company for consultative services. For the year ended December 31, 2020, a management fee of $19,962 was earned and paid, and is included in management fees revenue on the accompanying consolidated statement of operations.

Operating lease
The Company leases certain building space from a related party under a non-cancelable operating lease that will expire December 31, 2026. This agreement requires aggregate monthly payments of $23,430 plus the proportionate share of common area maintenance expenses, with monthly payments increasing 3% annually every January. Rent expense, which includes common area expenses, for the year ended December 31, 2020 was $395,383. As of December 31, 2020, accrued rent payable was $135,492.

NOTE 4 – RELATED PARTY TRANSACTIONS (CONTINUED)

Operating lease (continued)
Future minimum lease payments, by year end and in the aggregate, under the non-cancelable lease, consist of the following as of December 31, 2020:

2021	$ 316,448
2022	325,941
2023	335,720
2024	345,791
2025	356,165
Thereafter	366,850
Total	$ 2,046,915

Operating lease – sublease
The Company subleases certain building space under non-cancelable operating leases with CIC Management Inc. ("CICM") and Emmerson Construction, Inc. ("Emmerson") that will expire December 31, 2028. Under the sub-lease with CICM, CICM subleases 10% of the office space for a monthly payment of $2,486, with monthly payments increasing 3% annually every January. Under the sublease with Emmerson, Emmerson subleases 40% of the office space for a monthly payment of $9,943, with monthly payments increasing 3% annually every January. Sublease income, which includes reimbursements for common area expenses, for the year ended December 31, 2020 was $468,556. As of December 31, 2020, sublease rent receivable was $118,515, which is included in due from related parties on the accompanying consolidated balance sheet.

Future minimum lease payments receivable, by year end and in the aggregate, under the non-cancelable lease, consist of the following as of December 31, 2020:

2021	$ 158,224
2022	162,971
2023	167,860
2024	172,896
2025	178,083
Thereafter	566,954
Total	$ 1,406,988

Advances due from related parties
The Company has advanced funds to certain related parties that it expects will be reimbursed. Such advances do not bear interest. As of December 31, 2020, the outstanding amount of advances due from related parties was $1,458,299, which is included in due from related parties on the accompanying consolidated balance sheet.

Advances due to related parties
The Company was advanced funds from certain related parties. Such advances are payable and do not bear interest. As of December 31, 2020, the outstanding amount of advances due to related parties was $112,904.

NOTE 4 – RELATED PARTY TRANSACTIONS (CONTINUED)

Note payable

On April 17, 2019, the Company entered into a promissory note with a related party for $1,950,000. The note bore interest at 6.00% per annum and interest payments were due in monthly installments commencing the month following the execution of the note through April 17, 2020 (the "Maturity Date"). The entire unpaid principal balance and any interest accrued were due on the Maturity Date. As of December 31, 2020, the outstanding balance was paid in full.

NOTE 5 – LINE OF CREDIT

The Company has a line of credit agreement with Banner Bank, with an available credit line of $3,000,000, which is scheduled to mature on September 25, 2021. The line of credit bears interest at a variable interest rate. As of December 31, 2020, the interest rate was 5.00%. As of December 31, 2020, the outstanding balance on the line of credit was $2,000,000.

The line of credit agreement contains certain financial covenants, which if not met, could make the debt callable. The Company is in compliance with all covenants at December 31, 2020.

NOTE 6 – NOTE PAYABLE

On November 25, 2020, the Company entered into an unsecured promissory note with Banner Bank under the Main Street Lending Program ("MSLP") in the amount of $6,950,000. The note bears interest at annual interest rate equal to the LIBOR rate plus 3.00% commencing on the funding date of the loan. Interest payments are due in monthly installments commencing on December 25, 2021 through November 25, 2025 (the "MSLP Maturity Date"). All accrued and unpaid interest outstanding as of November 25, 2021 will be added to the outstanding principal balance of the note (the "Capitalized Interest"). On November 25, 2023 and November 25, 2024, principal payments of $1,042,500 plus an amount equal to 15% of any Capitalized Interest are due. The entire unpaid principal balance and any interest accrued are due on the MSLP Maturity Date. The loan is subject to certain certifications and covenants, which if not met, could make the debt callable. As of December 31, 2020, the outstanding principal balance was $6,950,000 and there was no accrued interest.

Minimum future principal payments consist of the following as of December 31, 2020:

2021	$ -
2022	-
2023	1,042,500
2024	1,042,500
2025	4,865,000
Total	$ 6,950,000

NOTE 7 – CAPITAL LEASE

The Company leases two copy machines under a non-cancelable capital lease that expired on July 12, 2020. This agreement required monthly payments of $4,424, plus applicable charges and taxes. As of December 31, 2020, the outstanding lease liability was $0.

NOTE 8 – COMMITMENT AND CONTINGENCIES

The Company is a party to certain payment and completion guarantees in connection with bank construction loans made for twelve projects as of December 31, 2020 in the aggregate amount of $133,434,694. All twelve projects are currently on schedule and are expected to be completed in 2021 and 2022. As of December 31, 2020, the Company expects that it will not be liable for any amount under the guarantees for these twelve projects.

The Company is liable for guarantees of funding at various operating projects in the event that operating deficits occur. These guarantees, if required, are satisfied by making loans to such projects. The obligations to fund the operating deficits expire between 3 and 5 years after the projects convert to permanent financing. As of December 31, 2020, the Company has made an operating deficit loan in the amount of $31,497, as shown in Note 4.

The Company has committed to third party Investor Limited Partners and lenders, in connection with their investments made and bank construction loans guaranteed for various projects, to maintain certain net worth and net liquidity requirements. As of December 31, 2020, the Company's most restrictive commitment was to maintain a net worth of not less than $5,000,000 and net unencumbered liquid assets of not less than $2,500,000 at all times that any portion of the guaranteed bank construction loan is outstanding. As of December 31, 2020, the Company was in compliance with these covenants.

NOTE 9 – PROVISION FOR INCOME TAXES

The Company is a California S Corporation and pays California a tax of 1.5%, a minimum of $800 each year, on its apportioned taxable income, net of credits. The consolidated subsidiaries are primarily California limited liability companies that pay a California annual minimum tax of $800.

The provision for income taxes consisted of the following for the year ended December 31, 2020:

Current income tax provision – state	$ (39,957)

NOTE 10 – EMPLOYEE RETIREMENT PLAN

On August 16, 2006, the Company adopted a 401(k) plan and profit sharing plan covering substantially all employees of the Company. Annual discretionary employer matching contributions, if any, are equal to a safe harbor matching contribution provided by the Company to employees who elect the salary deferral. For the year ended December 31, 2020, the matching contributions paid by the Company were $48,659, which is included in general and administrative expense on the accompanying consolidated statement of operations.

NOTE 11 – NONQUALIFIED DEFERRED COMPENSATION PLAN

On December 1, 2014, the Company adopted an unfunded nonqualified deferred compensation plan (the "Plan") for certain eligible employees of the Company. Pursuant to the Plan, a discretionary contribution is made each year for each active participant. The participant is fully vested in a contribution for a given year upon remaining continuously employed by the Company for a duration of five years following the end of the year for which the contribution is made while active in the Plan. A rate of return of 3% is earned on the beginning balance of active participant accounts at the end of each year. During 2020, the expense for deferred compensation was $75,000. As of December 31, 2020, the outstanding Plan liability was $445,000.

The Plan assets consisted of the following during 2020:

Beginning balance, January 1, 2020	$	639,486
Company contributions during 2020		-
Forfeitures during 2020		(187,319)
Earnings accrued during 2020		13,565
Ending balance, December 31, 2020	$	465,732

As of December 31, 2020, the balance fully vested to employees under the plan was $29,851.

NOTE 12 – PAYCHECK PROTECTION PROGRAM LOAN

During 2020, the Company received a forgivable loan from Banner Bank under the Paycheck Protection Program (the "PPP Loan") in the amount of $915,809. The Company may apply for forgiveness of the PPP Loan after incurring certain qualified costs, as specified in the loan agreement. As of December 31, 2020, management believes the Company had incurred sufficient costs to qualify for forgiveness; however, the forgiveness application had not yet been submitted. For the year ended December 31, 2020, the Company recognized loan forgiveness income of $915,809.

CHELSEA INVESTMENT CORPORATION
2021 AUDITED FINANCIAL STATEMENTS

NOVOGRADAC & COMPANY LLP®

Chelsea Investment Corporation and Subsidiaries

Consolidated Financial Statements with Report of Independent Auditors
December 31, 2021

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NOVOGRADAC & COMPANY LLP®

Report of Independent Auditors

To the Stockholder of
Chelsea Investment Corporation and Subsidiaries

Opinion

We have audited the accompanying consolidated financial statements of Chelsea Investment Corporation and Subsidiaries, which comprise the balance sheet as of December 31, 2021, and the related consolidated statements of operations, changes in stockholder's equity, and cash flows for the year then ended, and the related notes to the financial statements.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Chelsea Investment Corporation and Subsidiaries as of December 31, 2021, and the results of its operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Consolidated Financial Statements section of our report. We are required to be independent of Chelsea Investment Corporation and Subsidiaries and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Chelsea Investment Corporation and Subsidiaries' ability to continue as a going concern within one year after the date that the consolidated financial statements are available to be issued.

Auditors' Responsibilities for the Audit of the Consolidated Financial Statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Chelsea Investment Corporation and Subsidiaries' internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Chelsea Investment Corporation and Subsidiaries' ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

Novogradac & Company LLP

Long Beach, California
April 28, 2022

CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEET
December 31, 2021

ASSETS		
Current assets:		
Cash and cash equivalents	$	6,977,449
Marketable securities, net		2,386,609
Due from related parties		2,308,382
Prepaid expenses and deposits		155,281
Current portion of developer fees receivable - related parties		5,209,046
Current portion of project cost advances - related parties		5,411,450
Total current assets		22,448,217
Fixed assets:		
Property and equipment		315,942
Leasehold improvements		224,469
Accumulated depreciation		(388,419)
Fixed assets, net		151,992
Other assets:		
Developer fees receivable - related parties, less current portion		8,010,593
Total other assets		8,010,593
Total assets	$	30,610,802
LIABILITIES AND STOCKHOLDER'S EQUITY		
Current liabilities:		
Accounts payable	$	84,456
Accrued expenses		1,562,806
Rent payable		145,295
Line of credit		4,536
Accrued interest		18,473
Due to related parties		112,904
Total current liabilities		1,928,470
Long-term liabilities:		
Note payable, net of unamortized debt issuance costs		7,035,658
Nonqualified deferred compensation plan liability		360,000
Total long-term liabilities		7,395,658
Total liabilities		9,324,128
Stockholder's equity:		
Controlling interest		
Common stock, no par value		
1,000 shares authorized		
100 shares issued and outstanding		100
Additional paid in capital		2,967,000
Retained earnings		18,319,475
Total controlling interest		21,286,575
Non-controlling interest		99
Total stockholder's equity		21,286,674
Total liabilities and stockholder's equity	$	30,610,802

see accompanying notes

CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF OPERATIONS
For the year ended December 31, 2021

REVENUES		
Developer fees	$	9,908,837
Management fees		141,162
Sublease income		-
Other income		22,000
Total revenues		10,071,999
OPERATING EXPENSES		
Compensation and benefits		6,066,072
Insurance		835,699
General and administrative		457,481
Consulting and professional fees		480,341
Rent		224,722
Bad debt expense		251,505
Payroll taxes		228,459
Depreciation expense		51,273
Office expenses		32,887
Advertising		35,884
Utilities		24,140
Repairs and maintenance		17,944
Other expenses		23,194
Meals and entertainment		22,726
Real estate taxes		20,163
Travel		1,830
Total operating expenses		8,774,320
Operating income		1,297,679
OTHER INCOME (EXPENSES)		
PPP loan forgiveness		915,807
Investment and interest income		554,392
Loss on marketable securities		(52,391)
Interest expense		(286,193)
Net other income and (expenses)		1,131,615
INCOME BEFORE PROVISION FOR INCOME TAXES		2,429,294
Provision for income taxes		(38,614)
NET INCOME	$	2,390,680

see accompanying notes

CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF STOCKHOLDER'S EQUITY
For the year ended December 31, 2021

	Controlling Interest						
	Common Stock		Additional Paid-in	Retained	Total Controlling	Non-controlling	Total Stockholder's
	Shares	Amount	Capital	Earnings	Interest	Interest	Equity
BALANCE, JANUARY 1, 2021	100	$ 100	$ 2,967,000	$ 15,950,795	$ 18,917,895	$ 99	$ 18,917,994
Stockholder distributions	-	-	-	(22,000)	(22,000)	-	(22,000)
Net income	-	-	-	2,390,680	2,390,680	-	2,390,680
BALANCE, DECEMBER 31, 2021	100	$ 100	$ 2,967,000	$ 18,319,475	$ 21,286,575	$ 99	$ 21,286,674

see accompanying notes

CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF CASH FLOWS
For the year ended December 31, 2021

CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	$	2,390,680
Adjustments to reconcile net income to net cash provided by operating activities:		
PPP loan forgiveness		(915,807)
Loss on marketable securities		52,391
Depreciation expense		51,273
Interest expense - debt issuance costs		29,800
Bad debt expense		251,505
(Increase) decrease in operating assets		
Marketable securities		(42,090)
Developer fees receivable - related parties		(1,741,041)
Management fees receivable		(62,219)
Prepaid expenses and deposits		(25,064)
Increase (decrease) in operating liabilities		
Accounts payable		39,605
Accrued expenses		1,215,859
Rent payable		9,803
Accrued interest		18,473
Nonqualified deferred compensation plan liability		(85,000)
Net cash provided by operating activities		1,188,168
CASH FLOWS FROM INVESTING ACTIVITIES		
Repayment of notes receivable - related parties		31,497
Advances to related parties		(731,568)
Funding of project cost advances - related parties		(909,862)
Net cash used in investing activities		(1,609,933)
CASH FLOWS FROM FINANCING ACTIVITIES		
Distributions to sole stockholder		(22,000)
Proceeds from note payable		204,858
Payment of line of credit		(2,000,000)
Proceeds from line of credit		4,536
Payment of debt issuance costs		(149,000)
Proceeds from PPP Loan		915,807
Net cash used in financing activities		(1,045,799)
Net change in cash, cash equivalents and restricted cash		(1,467,564)
Cash, cash equivalents and restricted cash at beginning of year		8,445,013
Cash, cash equivalents and restricted cash at end of year	$	6,977,449
Cash and cash equivalents	$	6,977,449
Restricted cash		-
Total cash, cash equivalents and restricted cash	$	6,977,449
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Cash paid for interest during the year	$	237,920

see accompanying notes

CHELSEA INVESTMENT CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2021

NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

Organization and purpose
Chelsea Investment Corporation (the "Company") was established in February 2004, as a real estate company focusing on the financing and development of affordable housing in Arizona, California and New Mexico. The Company provides financial engineering, development, asset management, and property management services, as well as legal and labor services to its development and investment partners and clients.

Basis of accounting
The Company prepares its consolidated financial statements on the accrual basis of accounting consistent with accounting principles generally accepted in the United States of America.

Principles of consolidation
The accompanying consolidated financial statements include the assets, liabilities, and financial activities of the Company and its wholly-owned subsidiaries CIC Calipatria, LLC, CIC Heber, LLC, CIC Beachwind, LLC, and Ajax-Natomas, LLC. In addition, the Company is required to consolidate the financial statements of 15th Investment CIC, LLC, as the Company is deemed to have control. All inter-company accounts and transactions have been eliminated in consolidation.

Estimates
The preparation of consolidated financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

Economic concentrations
The Company develops property for the affordable rental housing market. Future operations could be affected by changes in economic or other conditions in the Company's geographical area or by changes in the demand for housing.

Cash and cash equivalents
Cash and cash equivalents include all cash balances on deposit with financial institutions and highly liquid investments with a maturity of three months or less at the date of acquisition.

Concentration of credit risk
The Company maintains its cash in bank deposit accounts which at times may exceed the federally insured limits. The Company has not experienced any losses in such accounts. The Company believes it is not exposed to any significant credit risk on cash and cash equivalents.

Investments in securities
The Company's investments in marketable securities are recorded at fair value measured at each reporting period. The fair value of the investments is based on quoted prices in active markets, and any gain or loss is reported on the statement of operations. The cost of securities sold is based on the specific identification method. Interest on marketable securities is included in investment and interest income on the accompanying consolidated statement of operations.

NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Fair value measurements

The Company applies the accounting provisions related to fair value measurements. Accounting Standards Codification (ASC) 820 defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. As prescribed in ASC 820, fair value is the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. This accounting guidance establishes a fair value hierarchy about the assumptions used to measure fair value and clarifies assumptions about risk and the effect of a restriction on the sale or use of an asset.

Financial assets and liabilities carried at fair value will be classified and disclosed in one of the following three levels of the fair value hierarchy: (1) the fair value is based on quoted prices (unadjusted) for identical assets or liabilities in active markets that the entity has the ability to access as of the measurement date; (2) the fair value is based on significant other observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data; and (3) the fair value is based on significant unobservable inputs that reflect the Company's own assumptions about the assumptions that market participants would use in pricing an asset or liability.

Accounts receivable

Accounts receivable is stated at the amount management expects to collect from outstanding balances. Management closely monitors outstanding balances and provides for probable uncollectible amounts through a charge to earnings and a credit to a valuation allowance based on its assessment of the current status of individual accounts. Balances that remain outstanding after management has used reasonable collection efforts are generally written off through a charge to the valuation allowance and a credit to trade accounts receivable. As of December 31, 2021, the balance of the partnership management fees receivable and the allowance for doubtful accounts for partnership management fees receivable was $1,389,156. Bad debt expense for the year ended December 31, 2021 was $251,505.

Fixed assets

The Company records all depreciable assets at cost. Property and equipment are depreciated on a straight-line method over their estimated useful lives of five to seven years. Leasehold improvements are depreciated on a straight-line method over their estimated useful lives of fifteen years.

Loans receivable and allowance for loan losses

Loans receivable are stated at unpaid principal balances, less an allowance for loan losses.

The allowance is increased by a provision for loan losses, which is charged to expense, and reduced by charge-offs, net of recoveries. Management's periodic evaluation of the adequacy of the allowance is based on the Company's past loan loss experience, known and other risks inherent in the portfolio, specific impaired loans, and adverse situations. Although management uses available information to recognize losses on loans, because of uncertainties associated with local economic conditions, collateral values, and future cash flows on impaired loans, it is reasonably possible that a material change could occur in the allowance for loan losses in the near term. However, the amount of the change that is reasonably possible cannot be estimated.

NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Loans receivable and allowance for loan losses (continued)
The Company considers a loan impaired when based on current information or factors, it is probable that the Company will not collect the principal and interest payments according to the loan agreement. Management considers many factors in determining whether a loan is impaired, such as payment history and value of collateral. Loans that are contractually delinquent less than 90 days are generally not considered impaired, unless the borrower has claimed bankruptcy or the Company has received specific information concerning the loan impairment. The Company reviews delinquent loans to determine impaired accounts. The Company measures impairment on a loan-by-loan basis by either using the fair value of collateral or the present value of expected cash flows. Substantially all of the Company loans that are identified as impaired have been measured using the fair value of the collateral.

The Company's key credit quality indicator is a loan's performance status, defined as accruing or non-accruing. Performing loans are considered to have a lower risk of loss, while nonaccrual loans are those which the Company believes have a higher risk of loss. Loans that are 90 days or more past due, based on the contractual terms of the loan, are classified on nonaccrual status. Loans may also be placed on nonaccrual status when management believes, after considering economic conditions, business conditions, and collection efforts, that the loans are impaired or collection of interest is doubtful. Uncollectible interest previously accrued is charged off, or an allowance is established by a charge to interest income. Interest income on nonaccrual loans is recognized only to the extent cash payments are received and the principal balance is believed to be collectible.

A loan previously classified on nonaccrual status will resume accruing interest based on the contractual terms of the loan when payments on the loan become current. Loans may also resume accruing interest if management no longer believes a loan is impaired or the collection of principal and interest is no longer in doubt.

Partnership investments
The consolidated wholly-owned subsidiaries of the Company hold co-general partner interests in affiliated affordable housing limited partnerships. These co-general partner interests are recorded at cost pursuant to the measurement alternative provided by FASB ASC 321. The fair value of the investments is not estimated if there are no identified changes that may have a significant adverse effect on the fair value of the investments. As of December 31, 2021, the investment of the subsidiaries in the affiliated affordable housing limited partnerships was $0.

Non-controlling interest in subsidiary
The non-controlling interest represents the aggregate positive balance of the other members' interest in 15th Investment CIC, LLC, and is reported in the aggregate on the consolidated balance sheet within equity and on the consolidated statement of stockholder's equity, separately from the Company's equity.

NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Impairment of long-lived assets

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. Recoverability is measured by a comparison of the carrying amount of the asset to the future net undiscounted cash flows expected to be generated and any estimated proceeds from the eventual disposition. If the long-lived assets are considered to be impaired, the impairment to be recognized is measured at the amount by which the carrying amount of the asset exceeds the fair value as determined from an appraisal, discounted cash flow analysis, or other valuation technique. There were no impairment losses recognized during 2021.

Income taxes

By consent of the stockholder, the Company elected to be taxed as an S corporation beginning with the year ended December 31, 2004. Federal and state income taxes on the earnings of an S corporation are payable by the sole stockholder. However, California assesses an additional tax of 1.50% on the taxable income, net of certain credits.

The preparation of consolidated financial statements in accordance with accounting principles generally accepted in the United States of America requires the Company to report information regarding its exposure to various tax positions taken by the Company. Management has determined whether any tax positions have met the recognition threshold and has measured the Company's exposure to those tax positions. Management believes that the Company has adequately addressed all relevant tax positions and that there are no unrecorded tax liabilities. Federal and state tax authorities generally have the right to examine and audit the previous three years of tax returns filed. Any interest or penalties assessed to the Company are recorded in operating expenses. No interest or penalties from federal or state tax authorities were recorded in the accompanying financial statements.

Lease expenses

Expenses resulting from leases are recognized when incurred. Lease expense from an operating lease is incurred on a straight-line basis over the lease term. Interest expense is incurred on a capital lease obligation to produce a constant periodic rate of interest on the remaining balance of the obligation.

Lease classifications

The Company considers multiple factors in determining the classification of leases as either capital or operating leases, such as ownership at the end of the lease term, bargain purchase options, lease term, present value of minimum lease payments, fair value and useful life of the underlying asset(s), and whether there is significant uncertainty regarding future costs or collectability of lease payments. See Notes 4 and 7 for further discussion of the Company's lease transactions.

Revenue recognition

The Company recognizes revenue when it is realized or realizable and earned. Revenue consists of the income from various partnerships, including incentive management fees, partnership administration fees, and consulting fees. The Company considers revenue realized or realizable and earned when it has persuasive evidence of an arrangement, the services have been provided and collectability is reasonably assured.

Reclassifications

Certain reclassifications have been made to the prior year financial statements to conform to the current year presentation.

NOTE 1 – ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Revenue from contracts with customers

Revenue from contracts with customers consists of fees earned for construction and development services provided. The Company considers revenue from contracts with customers realized or realizable and earned when it has satisfied certain performance obligations pursuant to such contracts. Performance obligations are satisfied over time as services are rendered and revenue is recognized based on the estimated percentage of time incurred for each performance obligation. The Company records contract assets for revenue recognized in excess of the amount billed to and received from the customer, which are included in developer fees receivable on the accompanying consolidated balance sheet.

Deferred compensation expenses

The costs of deferred compensation arrangements are accrued over the period of employees' service to which they relate.

Subsequent events

Subsequent events have been evaluated through April 28, 2022, which is the date the financial statements were available to be issued, and there are no subsequent events requiring disclosure.

NOTE 2 – MARKETABLE SECURITIES

Marketable securities held by the Company consist of investments purchased at an aggregate cost of $2,341,915. As of December 31, 2021, the fair market value of the marketable securities was $2,386,609. Gains and losses are reported in net income on the accompanying consolidated statement of operations. During 2021, the loss on marketable securities was $52,391.

NOTE 3 – RELATED PARTY TRANSACTIONS

Notes receivable

The Company had a promissory note from a related entity. This loan bore no interest and was fully repaid during 2021.

Project cost advances

The Company and its affiliates have expended certain amounts for projects that it expects will be funded and completed in the future. These amounts are capitalized as the Company expects they will be reimbursed in the future. Any costs associated with projects that cease being feasible for future development are expensed, when the determination is made that feasibility is no longer assured.

Project costs advances consist of the following as of December 31, 2021:

Total project cost advances – related parties	$ 5,411,450
Less: current portion of project costs advances – related parties	(5,411,450)
Project cost advances – related parties, less current portion	$ -

Developer fees

Developer fees are fees the Company receives for providing development and construction services to associated projects, which are based on contracts with various project developer entities associated with the Company. Balances are recorded at amounts expected to be realized as performance obligations are satisfied under the contracts, as further discussed in Note 1. For the year ended December 31, 2021, developer fees earned were $9,908,837.

NOTE 3 – RELATED PARTY TRANSACTIONS (CONTINUED)

Developer fees (continued)
The developer fees receivable balance is recorded at amounts expected to be realized in excess of the amount billed to and received from the customer. Payments for developer fees are due upon scheduled equity installments which correspond to certain milestones achieved for each project. These milestone payments typically begin upon the start of construction and end upon the receipt of IRS Form 8609s by each project. As of December 31, 2021, management estimated no allowance for uncollectible developer fees receivable.

As of December 31, 2021, the contract assets balance is as follows:

Beginning balance	$ 11,478,598
Revenue recognized	9,908,837
Revenue received	(8,167,796)
Ending balance	$ 13,219,639

Developer fees receivable consist of the following as of December 31, 2021:

Total developer fees receivable – related parties	$ 13,219,639
Less: current portion of developer fees receivable – related parties	(5,209,046)
Developer fees receivable- related parties, less current portion	$ 8,010,593

Partnership management fees
The Company receives partnership management fees from associated properties after they have been completed. The management fees are accrued on the Company's books as services are rendered and are paid out of available cash flow, if any, of the partnerships. For the year ended December 31, 2021, partnership management fees of $73,012 were earned and are included in management fees revenue on the consolidated statement of operations. During 2021, an allowance of $62,219 was reserved for the partnership management fees receivable which is included in bad debt expense on the accompanying consolidated statement of operations.

Partnership management fees receivable consist of the following as of December 31, 2021:

Total partnership management fees receivable – related parties	$ 1,389,156
Less: reserve for allowance for doubtful accounts	(1,389,156)
Partnership management fees receivable – related parties, net	$ -

Incentive management fee
Pursuant to an incentive management fee agreement between the Company and CIC PHR, LP ("PHR") dated September 1, 2002, an incentive management fee equal to 5.4% of gross revenues or 76.5% of remaining cash flow from PHR, shall be earned by the Company for consultative services. For the year ended December 31, 2021, a management fee of $68,150 was earned and paid, and is included in management fees revenue on the accompanying consolidated statement of operations.

Pursuant to an incentive management fee agreement between the Company and CIC Villas II, LP ("Villa Glen") dated June 1, 2002, an incentive management fee equal to 5.4% of gross revenues or 76.5% of remaining cash flow from Villa Glen, shall be earned by the Company for consultative services. For the year ended December 31, 2021, there was no management fee earned or paid.

NOTE 3 – RELATED PARTY TRANSACTIONS (CONTINUED)

Operating lease

The Company leases certain building space from a related party under a non-cancelable operating lease that will expire December 31, 2028. This agreement requires aggregate monthly payments of $23,430 plus the proportionate share of common area maintenance expenses, with monthly payments increasing 3% annually every January. Rent expense, which includes common area expenses, for the year ended December 31, 2021 was $224,722. As of December 31, 2021, accrued rent payable was $145,295.

Future minimum lease payments, by year end and in the aggregate, under the non-cancelable lease, consist of the following as of December 31, 2021:

2022	$ 325,941
2023	335,720
2024	345,791
2025	356,165
2026	366,850
Thereafter	767,047
Total	$ 2,497,514

Operating lease – sublease

The Company subleases certain building space under non-cancelable operating leases with CIC Management Inc. ("CICM") and Emmerson Construction, Inc. ("Emmerson") that will expire December 31, 2028. Under the sub-lease with CICM, CICM subleases 10% of the office space for a monthly payment of $2,486, with monthly payments increasing 3% annually every January. Under the sublease with Emmerson, Emmerson subleases 40% of the office space for a monthly payment of $9,943, with monthly payments increasing 3% annually every January. Sublease income, which includes reimbursements for common area expenses, for the year ended December 31, 2021 was $416,132. As of December 31, 2021, sublease rent receivable was $111,116, which is included in due from related parties on the accompanying consolidated balance sheet.

Future minimum lease payments receivable, by year end and in the aggregate, under the non-cancelable lease, consist of the following as of December 31, 2021:

2022	$ 162,971
2023	167,860
2024	172,896
2025	178,083
2026	183,431
Thereafter	383,523
Total	$ 1,248,764

Advances due from related parties

The Company has advanced funds to certain related parties that it expects will be reimbursed. Such advances do not bear interest. As of December 31, 2021, the outstanding amount of advances due from related parties was $2,197,266, which is included in due from related parties on the accompanying consolidated balance sheet.

NOTE 3 – RELATED PARTY TRANSACTIONS (CONTINUED)

Advances due to related parties

The Company was advanced funds from certain related parties. Such advances are payable and do not bear interest. As of December 31, 2021, the outstanding amount of advances due to related parties was $112,904.

NOTE 4 – LINE OF CREDIT

The Company had a line of credit agreement with Banner Bank, with an available credit line of $3,000,000 which bore interest at a variable rate and matured on September 25, 2021. As of December 31, 2021, the line of credit was paid in full.

On November 2, 2021, the Company entered into a new credit agreement with Banner Bank with an available credit line of $5,000,000, which is scheduled to mature on December 25, 2023. The line of credit bears interest at a variable rate. As of December 31, 2021, the interest rate was 3.25%. As of December 31, 2021, the outstanding balance on the line of credit was $4,536.

The line of credit agreement contains certain financial covenants, which if not met, could make the debt callable. The Company is in compliance with all covenants at December 31, 2021.

NOTE 5 – NOTE PAYABLE

On November 25, 2020, the Company entered into an unsecured promissory note with Banner Bank under the Main Street Lending Program ("MSLP") in the amount of $6,950,000. The note bears interest at annual interest rate equal to the LIBOR rate plus 3.00% commencing on the funding date of the loan. Interest payments are due in monthly installments commencing on December 25, 2021 through November 25, 2025 (the "MSLP Maturity Date"). All accrued and unpaid interest outstanding as of November 25, 2021 will be added to the outstanding principal balance of the note (the "Capitalized Interest"). During 2021, Capitalized Interest of $204,858 was added to the outstanding principal balance. On November 25, 2023 and November 25, 2024, principal payments of $1,042,500 plus an amount equal to 15% of any Capitalized Interest are due. The entire unpaid principal balance and any interest accrued are due on the MSLP Maturity Date. The loan is subject to certain certifications and covenants, which if not met, could make the debt callable. As of December 31, 2021, the Company was in compliance with all covenants. As of December 31, 2021, the outstanding principal balance was $7,154,858, and accrued interest was $18,473.

Note payable consists of the following as of December 31, 2021:

Principal balance	$ 7,154,858
Less: unamortized debt issuance costs	(119,200)
Note payable, net of unamortized debt issuance costs	$ 7,035,658

Debt issuance costs are being amortized to interest expense over the term of the loan. For the year ended December 31, 2021, the effective interest rate was 3.59%. During 2021, interest expense for debt issuance costs was $29,800, which is included in interest expense in the accompanying Statement of Operations.

NOTE 5 – NOTE PAYABLE (CONTINUED)

Minimum future principal payments consist of the following as of December 31, 2021:

2022	$ -
2023	1,073,229
2024	1,073,229
2025	5,008,400
Total	$ 7,154,858

NOTE 6 – COMMITMENT AND CONTINGENCIES

The Company is a party to certain payment and completion guarantees in connection with bank construction loans made for eighteen projects as of December 31, 2021 in the aggregate amount of $260,708,814. All eighteen projects are currently on schedule and are expected to be completed in 2022 and 2023. As of December 31, 2021, the Company expects that it will not be liable for any amount under the guarantees for these eighteen projects.

The Company is liable for guarantees of funding at various operating projects in the event that operating deficits occur. These guarantees, if required, are satisfied by making loans to such projects. The obligations to fund the operating deficits expire between 3 and 5 years after the projects convert to permanent financing. As of December 31, 2021, the Company has no outstanding operating deficit loans.

The Company has committed to third party Investor Limited Partners and lenders, in connection with their investments made and bank construction loans guaranteed for various projects, to maintain certain net worth and net liquidity requirements. As of December 31, 2021, the Company's most restrictive commitment was to maintain a net worth of not less than $5,000,000 and liquid assets of not less than $4,000,000 at all times that any portion of the guaranteed bank construction loan is outstanding. As of December 31, 2021, the Company was in compliance with these covenants.

NOTE 7 – PROVISION FOR INCOME TAXES

The Company is a California S Corporation and pays California a tax of 1.5%, a minimum of $800 each year, on its apportioned taxable income, net of credits. The consolidated subsidiaries are primarily California limited liability companies that pay a California annual minimum tax of $800.

The provision for income taxes consisted of the following for the year ended December 31, 2021:

Current income tax provision – federal and state	$ 38,614

NOTE 8 – EMPLOYEE RETIREMENT PLAN

On August 16, 2006, the Company adopted a 401(k) plan and profit sharing plan covering substantially all employees of the Company. Annual discretionary employer matching contributions, if any, are equal to a safe harbor matching contribution provided by the Company to employees who elect the salary deferral. For the year ended December 31, 2021, the matching contributions paid by the Company were $75,891, which is included in general and administrative expense on the accompanying consolidated statement of operations.

NOTE 9 – NONQUALIFIED DEFERRED COMPENSATION PLAN

On December 1, 2014, the Company adopted an unfunded nonqualified deferred compensation plan (the "Plan") for certain eligible employees of the Company. Pursuant to the Plan, a discretionary contribution is made each year for each active participant. The participant is fully vested in a contribution for a given year upon remaining continuously employed by the Company for a duration of five years following the end of the year for which the contribution is made while active in the Plan. A rate of return of 3% is earned on the beginning balance of active participant accounts at the end of each year. During 2021, the expense for deferred compensation was $0. As of December 31, 2021, the outstanding Plan liability was $360,000.

The Plan assets consisted of the following during 2021:

Beginning balance, January 1, 2021	$	465,732
Company contributions during 2021		-
Forfeitures during 2021		-
Earnings accrued during 2021		13,972
Ending balance, December 31, 2021	$	479,704

As of December 31, 2021, the balance fully vested to employees under the plan was $120,301.

NOTE 10 – PAYCHECK PROTECTION PROGRAM LOAN

During 2021, the Company received a forgivable loan from Banner Bank under the Paycheck Protection Program (the "PPP Loan") in the amount of $915,807. On December 3, 2021, the PPP Loan was fully forgiven. For the year ended December 31, 2021, the Company recognized loan forgiveness income of $915,807. Income from loan forgiveness is included in other income on the accompanying consolidated statement of operations.

City of Las Cruces
Request for Qualifications (RFQ) for
Development Supportive Affordable Housing Project
The Mesilla Valley Community od Hope (MVCH)
Las Cruces, NM

Tab 10

FINANCIAL LETTERS OF SUPPORT

KEY BANK REAL ESTATE CAPITAL
LETTER OF SUPPORT
CONSTRUCTION FINANCING

KeyBank
Real Estate Capital

January 26, 2022

Cheri Hoffman, President
Chelsea Investment Corporation
6339 Paseo Del Lago
Carlsbad, CA 92100

Sent via electronic communication

Re: **Three Sisters Apts, Las Cruses, NM (Dona Ana County)**

Dear Cheri:

Thank you for the opportunity to provide you with the following terms pertaining to the construction and perm financing of Three Sisters Apartments, a property located at 130 N. Walnut Street, Las Cruces, NM 88001 (Dona Ana County). Three Sisters is a new 69 unit 9% affordable housing deal serving families at or below 60% AMI undertaken in a joint venture between Chelsea Investment Corp and CC Housing, Inc

KeyBank Real Estate Capital has a strong interest in providing the financing for this property and we appreciate your consideration. Based upon our preliminary review of the Proforma Budget, and the balance of the information submitted, we find that your financing needs are best accommodated by executing with KeyBank to utilize our Construction Debt.

A summary of the proposed construction and perm loan for Three Sisters Apts are as follows:

Construction Loan:

Borrower:	An entity TBD. The Borrower must be a single-asset entity. The Borrower and Managing Member are subject to approval of the Bank.
Guaranty:	Payment and Performance Guaranty to be provided during the term of construction by Chelsea Investment Corp and CC Housing, Inc or any additional joint venture parties subject to the approval of the Bank. 100% Guaranty of Completion and 25% Repayment to be provided during the term of the Loan
Financial Covenants:	Guarantor financial covenants to be determined and generally include a minimum level of unrestricted liquidity and net assets. This will be determined during due diligence.

Construction Loan Amount:	Up to $10,500,000 Construction Loan and or as otherwise approved by the Bank.
Term:	Borrower may select a term of 24 months with one 6-month extension option.
Extension Terms:	Provided no event of default and no event or circumstance which would constitute an event of default if not cured within the time allowed has occurred under the Loan Documents (as hereinafter defined), Borrower may extend the Maturity Date of the Loan for one additional 6-month extension period subject to the following conditions: a) Borrower delivers written notice to the Bank requesting the extension not more than 60 days or less than 30 days before the original or extended Maturity Date. b) Borrower has paid to Lender an Extension Fee of 50 basis points. c) Construction of the Improvements has been completed in accordance with all the requirements of the Loan Agreement, including without limitation the issuance of a final certificate of occupancy. d) There are sufficient interest reserves, Guarantor cash, or Operating Cash Flow to cover interest carrying cost. e) Project is at least 80% occupied. f) The Bank receives each Guarantor's and Borrower's current financial statements, certified as correct by Borrower and by each Guarantor. There must be no material adverse change in Borrower's or any Guarantor's financial condition. All references herein to the "Maturity of the Loan" or the "Maturity Date" shall mean the original Maturity Date or, the last day of the Extension Period as the context requires.
Interest Rate:	The all-in SOFR rate would be 3.00%. This is calculated as a 25bps floor + 275, or 300. The current rate for 30 Day Average SOFR is 0.05 basis point as of Jan 21, 2022. As you are likely aware, the banking industry is moving away from using LIBOR as a floating rate for construction loans. In 2017, plans were announced to retire LIBOR and to no longer publish LIBOR after the end of 2021. As a result, Key Bank, like most of the banking industry, is moving towards using SOFR (Secured Overnight Funding Rate) as our floating benchmark rate. SOFR is a broad measure of the cost of borrowing cash overnight collateralized by Treasury securities. It must be noted that SOFR represent secured funds and LIBOR did not, which means LIBOR represents a little more risk, and thus a higher interest rate. Typically, SOFR would trade approximately 5-10 basis points lower than LIBOR. Thus, when we price SOFR, our spread will be approximately 5 basis points higher than it would be if this were a LIBOR deal. For more information, please check out the LIBOR page of

	the Key Bank website www.key.com/about/company-information/libor-transition.jsp Prior to the Maturity Date, advances of the proceeds of the Loan shall bear interest at an annual rate equal to the 30 Day SOFR Rate plus 275 basis points, rounded upward to the nearest 1/16th as it may vary based upon a 360 day year for the actual number of days elapsed. The SOFR option will include an interest rate floor of 25 basis points tied to the underlying SOFR index. Where the SOFR Rate is at or above the floor, there is no change to the calculation of the interest rate indicated above. Where the SOFR rate is less than the indicated floor, the floor will be used in place of the SOFR index and then the margin will be added to the floor to produce the applicable interest rate for the Construction Loan. In the event SOFR is discontinued or no longer deemed an appropriate reference rate, SOFR will be replaced with an alternative thereto, including any necessary adjustment to normalize the new reference rate, in accordance with customary SOFR discontinuation language to be included in the loan documentation. Lender does not warrant or accept any responsibility for and shall not have any liability with respect to the (1) SOFR determination, (2) the occurrence of a trigger away from SOFR, or (3) the adequacy of any replacement of SOFR. Any replacement of SOFR with an alternative as discussed above will also have a commensurate floor, normalized to the new rate.
Origination Fee:	100 basis.
Repayment:	Prior to the maturity date, interest on the outstanding principal balance of the Loan shall be due and payable monthly beginning on the first day of the first calendar month following Loan Closing and shall continue through the Completion Date. If not sooner repaid, the entire principal balance outstanding, together with all unpaid interest and fees thereon, shall be due and payable in full on the last day of the 30th consecutive calendar month following the Date of Closing (“Maturity Date”) unless the six-month extension option is exercised.
Late Fee:	For any payment of principal or interest not made within 10 days of when due, Borrower shall pay a late fee equal to the greater of 5.0% of the amount of such payment or $50.00.
Prepayment Penalty:	Borrower may prepay this Loan in whole or in part at any time without penalty.
Accounts:	Maintenance of primary deposit accounts related to the Project shall be held at KeyBank N.A. The accounts are to be opened prior to or concurrent with Loan Closing.

Appraisal:	Bank shall receive prior to Date of Closing a written appraisal satisfactory to the Bank in all respects including, but not limited to, a prospective market valuation of the Project and the Low-Income Housing Tax Credits. The report shall be acceptable to the Bank in its sole discretion.
Environmental Assessment:	Borrower shall provide evidence (including a Phase I environmental assessment prepared for and certified to Bank) indicating the Land is free from risk in the Bank's sole judgement from all hazardous substances, toxic substances or hazardous waste as defined by any Federal, state or local law, statute, ordinance or regulation, and is free of all other contamination which, even if not so regulated, is known to pose a hazard to the health of any person on or about the Land, and that the Land is not in a "wetlands" or "flood plain" area, and contains no underground storage tanks or oil or gas wells. The Bank reserves the right, at the Borrower's expense, to retain an independent consultant to review any such evidence submitted by Borrower or to conduct its own investigation of the Land.
Disbursement Procedures:	All funds disbursed under the Loan shall be subject to the Bank's Construction Loan Agreement, which shall contain such terms, covenants, and conditions as shall be satisfactory to the Bank as set forth herein.
Insurance:	Borrower shall obtain and maintain insurance coverage satisfactory to the Bank. The initial policies shall be prepared and certificates of insurance shall be delivered to the Bank prior to Loan Closing. All renewal policies shall be prepaid and certificates of insurance delivered to the Bank as evidence of such insurance on or prior to the policy expiration date.
Construction Period Interest:	An interest reserve will not be required. Interest payments may be funded through the monthly construction draw process. Sufficient interest for the construction period should be included as a line item in the construction budget.
LTV:	Not to exceed 80% of appraised value of property, as stabilized, with restrictions plus value of the low-income housing tax credits
Equity:	Borrower will be required to provide a minimum of 15% equity during the construction period based on construction budget costs. Tax Credit Equity, and other soft debt sources that are 1) not must pay and 2) that are in lien position behind Key's loan will be considered as sources of equity if received during the construction period. Sufficient sources required to pay off the construction loan at conversion.
Special Conditions:	Pricing and terms are subject to change if the construction loan is not paired with the permanent loan in this proposal letter.

Private Placement Permanent Loan

Perm Loan Amount:	Permanent loan up to $1,390,000 provided by Rocky Mountain CRC.
Term:	16 years
Amortization:	40 years (480 months)
Interest Rate:	4.75%
Collateral:	1st DOT
Loan Documentation:	Documented terms shall be acceptable to KeyBank
Insurance Requirements:	Standard insurance requirements provided when the due diligence period is initiated
Conversion Requirements:	a) Project receipt of Certificate of Occupancy b) 90% occupancy for 90 days c) 1.15 DSCR d) Equity installment necessary to payoff construction loan
Escrow Requirements:	Tax, Insurance and Replacement Reserves are required. Reserves are required to be funded at an amount determined at Conversion. No debt service reserves are contemplated at this time.
Special Conditions:	Final Loan Amount is subject to Appraisal and its Restricted Valuation for the Subject Property. Pricing is conditioned upon the expansion of the deposit/treasury management relationship with KeyBank, including property-level and operating-level accounts.
Timing:	Loan process timing from executed Commitment to initial closing is estimated to be 125 days.

General Terms and Conditions:

Loan Documents & Security:	The Construction Loan shall be evidenced by a promissory note (the "Note") for the Construction Loan Agreement, and shall be secured by a Deed of Trust and Security Agreement (the "Mortgage") which Mortgage shall convey to Bank (i) a first leasehold to the Land and the Improvements and easements and rights of way appurtenant thereto, which Land shall be more fully described in a legal description to be provided by the Borrower to satisfaction of the Bank, and (ii) a first lien and security interest in all fixtures and personal property owned by Borrower and relating to or located on the Project and such other collateral documents and legal opinions as the Bank and its legal counsel shall require, all in form and substance acceptable to the Bank.

General Contractor: Prior to the Date of Closing, Borrower shall furnish to Bank an executed fixed price or guaranteed maximum price construction contract from a general contractor acceptable to Bank. The General Contractor will be required to provide an acceptable workman's compensation insurance policy, a payment and performance bond (this requirement is waived if contractor is same general contractor that the Borrower's Developer has worked with consistently on past similar size and types of development), and three years financial statements.

In addition, if requested, Borrower shall furnish copies of contracts with any and all major subcontractors to be reviewed and accepted by the Bank in its discretion.

Additional Loan Conditions: 1. Prior to commencement of construction of the improvements, and prior to any disbursement for construction hard costs, Borrower shall furnish to Bank the following documentation, all in form, substance and execution satisfactory to Bank:

a A complete set of final plans and specifications related to the construction of the Project and evidence of compliance with the Americans with Disabilities Act. Bank shall retain an independent engineer, architect or consultant to conduct such review, and Borrower agrees to bear the cost and expenses thereof
b. A cost breakdown and itemization of all hard and soft costs for the Project. This itemization shall include (i) a summary page indicating costs of land, site work, construction and soft costs on an AIA G703 form and (ii) detailed schedules supporting the site work and construction costs shown on the AIA G703 form according to Construction Standards Institute (CSI) Division.
c. Evidence of all building permits and governmental approvals necessary for the Project as reasonably determined by KeyBank. A "Permit Ready" letter is generally acceptable.
d. The General Contractor's contract and all other contracts of $1,000,000 or greater related to construction of the Project.
e. A list of all known and contemplated contractors used for development of the Project with a contract amount of $1,000,000 or greater.
f. A Project development schedule provided by Borrower and development supervisor setting forth the approximate start and finish dates of all major stages of the Project; such schedule shall provide that the development of the Project shall commence on or before 60 days after loan closing.
g. A full bond on the GC contract, in an amount and terms acceptable to KeyBank

2. Development of the Project shall be completed (Certificates of Substantial Completion issued) within 24 months after commencement

of Project development. Project development shall begin after closing but no later than 60 days after closing.

3. Upon completion of all development and prior to disbursement of the retainage, Borrower shall submit evidence of completion of the Project, consisting of (i) a certificate of the supervising architect or General Contractor certifying that the Project has been completed in accordance with the final plans and specifications as approved by the Bank, and (ii) a certificate of use and occupancy and any other certificates required by the local municipality or by any other applicable governmental department, agency or unit, and (iii) if requested, an "As-Built" ALTA/ACSM final survey of the Project.

4. Borrower shall submit to Bank annual financial statements, rent rolls, income and operating statements for the Project and other periodic financial statements as reasonably requested by the Bank.

5. Bank shall be entitled to erect a sign on the Land at Borrower's expense or as part of Borrower's signage indicating that the Bank is the source of financing for the Project and to use the Loan Amount, Borrower's name and Project location in any advertisement.

6. Provided no default exists in the covenants, terms and conditions of any Loan Documents at any time while the Loan remains unpaid, the Bank will permit Borrower to pay the Property insurance premiums and real estate taxes related to the Project outside of escrow during the term of the Loan. Borrower shall furnish to the Bank evidence that the insurance premiums are paid, at least 5 days prior to the last date for payment of such amounts before termination of the insurance policy.

7. Until the Loan is paid in full, the Borrower, without the prior written consent of the Bank, shall not create, effect, consent to, attempt, contract for, agree to make, suffer or permit any conveyance (other than conveyances of leasehold estates in the ordinary course of business), sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation of the Project, or the Borrower, or any interest in or portion of the Project, or the Borrower, which is effected directly, indirectly, voluntarily, involuntarily, or by operation of law or otherwise.

Construction Disbursement Funding:

All funds disbursed under the Loan shall be subject to the Bank's Construction Loan Agreement, which shall contain such terms, covenants, and conditions as shall be satisfactory to the Bank, including without limitation, the following:

Other Funding Sources: All other construction funding sources shall be disbursed in accordance with the Equity/Sub-Debt/Deferred Cost Requirement Section outlined in this Proposal. These include $2,400,000 from City of Los Cruses HOME funds, $360,000 from MFA NHTF, $900,000 from MFA in CHDO HOME funds, $1,172,889 deferred costs during construction and $1,050,000 in deferred fee.

Draw Request: All requests for disbursement of funds shall be in writing and shall be submitted on a Standard AIA Form G702 and G703 and shall be for costs consistent with the final Project cost breakdown accepted by the Bank in aggregate total and itemization. Draw requests should not be made more frequently than once per month. No disbursements will be made for stored materials unless properly secured and insured in a manner satisfactory to the Bank or its agent. Each draw request shall be signed by the Borrower and approved in writing by the supervising architect.

Inspections: All inspections shall be completed by an agent for the Bank who will require all lien waivers and may require further information, including, but not limited to, documents such as contracts and invoices, to complete the analysis of the Draw Request. The cost of these inspections shall be paid directly by the Borrower.

Affidavits/Lien Waivers: The Borrower shall submit with all Draw Requests copies of affidavits signed by the general contractor certifying all outstanding balances due but unpaid for work in place for the Project. With each Draw Request, Borrower shall deliver to Bank and Bank's construction inspector copies of waivers of liens from contractors in the respective sum received by each such contractor for all of the preceding Draw Requests.

Title Insurance: Borrower shall furnish to the Bank an ALTA Loan Policy of Title Insurance, by a title company satisfactory to the Bank, in the Loan Amount, insuring the Bank that it has a first lien upon the Project including customary insurance against mechanic's and material men's liens and encroachments by or upon the Project.

Disbursements: All disbursements shall be made approximately ten (10) days after receipt of all information required by the Bank to approve the requested disbursements. Funds will be disbursed directly into a demand deposit account maintained by Borrower at the Bank specifically for the Project; provided, however, the Bank reserves the right to pay individual contractors directly or by check jointly payable to Borrower and any such contractor should circumstances warrant in Bank's sole opinion.

Interest Reserve: The Bank shall set aside an amount from the loan proceeds to be used as an interest reserve; this amount will be determined

before construction loan closing and will be in an amount sufficient to cover all interest payments with a “cushion” in the event rates increase. Funds from the reserve are to be used solely to pay interest during construction and are not be used to fund hard costs.

In Balance: The Loan shall remain ‘in balance” at all times. The Loan shall be determined to be “in balance” only at such times as Bank determines, in its reasonable discretion, that the then undisbursed portion of the Loan, together with such construction-period equity as Bank deems appropriate for inclusion, equals or exceeds the amount necessary to pay all work done and not theretofore paid for or to be done in connection with the completion of the construction of the Project in accordance with the plans and specifications or otherwise to be incurred in connection with completion of the Project.

If the Bank determines that the Loan is not “in balance”, Borrower shall within 30 days after written request by Bank deposit the amount of the deficiency with Bank, which shall then be disbursed before any further disbursements of Loan proceeds. Bank shall not be obligated to make any disbursements of the Loan at any time that the Loan is not in balance. Key will calculate the construction term and the amount of loan outstanding during that period to determine a reasonable amount required for a construction interest reserve. Key uses an interest rate cushion to ensure there are adequate reserves.

Rental Subsidy Contracts:	Rental Subsidy contracts that be provided to the Bank and be approved and deemed acceptable by the Bank in terms as identified for term of the private placement perm loan
Low Income Housing Tax Credits:	The closing of the loan is conditioned upon the Project obtaining a reservation of Federal Low-Income Housing Tax Credits under Section 42 of the Internal Revenue Code in amounts satisfactory to Bank. Borrower shall satisfy all conditions required to maintain the qualifications of the Tax Credits throughout the term of the loan. Estimated LIHTC equity as identified is $11,941,882 with $2,388,364 paid in at construction loan closing
Developer Fee:	The Developer Fee schedule outlined in the final Limited Partnership Agreement shall be reviewed and accepted by Bank.
Approval of LLLP Agreement:	The closing of the Construction Loan is conditioned upon the Bank approving the limited partnership agreement of the Borrower, including (without limitation) all terms and provisions concerning the admission of the Managing Member and the Investor Member, and the amount, timing and means of payment

of the capital contributions to be received from the Investor Member, and all related documentation.

Bank Participation: Borrower acknowledges that the Bank reserves the right to syndicate and/or participate its interest in the Loan and Borrower agrees to, at Bank's request, execute such additional promissory notes and other instruments as may be appropriate to evidence its obligation under the Loan to such syndicate banks as may commit, in the future, to fund a portion of the Loan Amount according to the terms of the Construction Loan Agreement.

Indemnification: The Borrower agrees to indemnify and to defend and hold the Bank harmless against (i) any brokerage commissions or finder's fees claimed by any broker or other party in connection with the transactions contemplated hereby and (ii) any loss, costs, damages or expenses that the Bank may incur, directly or indirectly, as a result of or in connection with the assertion against the Bank of any claims relating to the presence or removal of any environmental contamination on the Land or any adjacent property

Confidentiality: This Proposal is delivered to you with the understanding that neither this term sheet nor any of its terms or substance shall be disclosed, directly or indirectly to any other person except (i) your employees, agents and advisors who are directly involved in the consideration of this matter or (ii) as disclosure may be compelled in a judicial or administrative proceeding or as otherwise required by law.

Legal and Other Fees: Borrower will be responsible for all legal fees and third-party fees, including but not limited to: Appraisal, Phase I ESA, Survey, Title and all closing costs related to the loan. Legal counsel will be identified at the time of acceptance of this proposal.

Construction loan legal expenses are estimated to be $45,000.

Third Party Report Deposit: $12,000 due at application for third party reports including appraisal, environmental, physical needs assessment, zoning, and other required reports. The actual cost of third-party reports will be billed at closing. ($5,000 additional deposit will be required for Legal Costs).

Non-Assignability of Proposal: This Proposal is made exclusively to the Borrower and is not assignable nor transferable voluntarily or involuntarily by the Borrower and any such assignment or transfer or attempted assignment, or transfer shall be null and void and shall result in this Proposal being automatically and simultaneously terminated.

Good Faith Deposit: If the foregoing terms and conditions meet with your approval, please send a signed copy of this letter, along with a Good Faith Deposit ("Deposit") of $12,000. Borrower is responsible to reimburse Bank for expenses incurred

which exceed the Deposit. However, this Deposit is non-refundable if the Bank approves the Loan on substantially the same terms and conditions as provided herein. If no such approval is granted, said deposit (less the Bank's out-of-pocket expenses) shall be refunded to Borrower. If the Loan is closed, the application fee will be credited towards the cost of third-party reports and legal fees, if applicable.

Proposal Expiration: These proposed terms herein are open for acceptance by the Borrower until 5:00 PM on July 8, 2022. If it is not accepted and returned to the Bank at the address below by said date, the Proposal shall immediately become null and void without further notice.

We very much look forward to working with Chelsea Investment Corp and CC Housing Inc on this transaction.

Many thanks,

Matthew Haas
Senior Vice President & Senior Banker
Senior Relationship Manager
Key Bank Real Estate Capital
Community Development Lending & Investing

[Borrower Acknowledgement on following page]

ACKNOWLEDGED BY:

BORROWER:

Chelsea Investment Corporation

By: Cheri Hoffman

Its: President

Date: 01/26/2022

CC Housing, Inc

By: Adam Saber

Its: Executive VP & COO

Date: 01/26/2022

PLEASE NOTE: This Term Sheet is provided for application to NMHFA and discussion purposes only. It does not constitute a commitment to lend or an agreement to issue a commitment on these or any other terms. It shall not create a binding or legally enforceable contractual obligation on KeyBank in any way. The terms contained herein are not all-inclusive. Additions and changes may be made as KeyBank and its counsel deems necessary, prudent or desirable. No agreement (oral or otherwise) that may be reached during negotiations shall be binding upon the parties until a final commitment letter has been issued by KeyBank and accepted by the obligor. This Term Sheet shall be kept confidential, not be reproduced or disclosed, and shall not be used by the obligor or any party other than in

connection with evaluating and negotiating the transaction described herein.

Additional Required Information

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING ACCOUNTS AT KEY

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each customer who opens an account. Therefore, all new and existing customers are subject to the identity verification requirements.

When a customer opens an account with any entity within the KeyCorp family of companies, we will ask for the customer's name, address and identification number, and in the case of an individual, his or her date of birth. For business accounts, we may also obtain this information for individuals associated with the business. We may also request to see a valid driver's license or other approved identifying documents. In all cases, Key is committed to protecting the privacy and identity of each of its customers.

LIBOR REPLACEMENT

Notwithstanding the above, be advised that after 2021 (or perhaps sooner) LIBOR is likely to be discontinued or may no longer be deemed an appropriate reference rate. The Alternative Reference Rates Committee ("ARRC") has been convened by the Federal Reserve Board and the Federal Reserve Bank of New York to assist with transition from (USD LIBOR) to a more robust reference rate and maintains a public website at: https://www.newyorkfed.org/arrc. In the event LIBOR is discontinued or no longer deemed an appropriate reference rate, LIBOR will be replaced with an alternative thereto, including any necessary adjustment to normalize the new reference rate to the discontinued LIBOR reference rate, in accordance with customary LIBOR discontinuation language to be included in the Construction Loan documentation. Lender does not warrant or accept any responsibility for and shall not have any liability with respect to the (i) LIBOR determination, (2) the occurrence of a trigger to cause transition away from LIBOR, or (3) the adequacy of any replacement of LIBOR.

CREDIT INFORMATION

Borrower authorizes KeyBank, its employees, agents, successors, assigns and affiliates to a) make whatever investigation KeyBank deems appropriate concerning Borrower, Guarantor, principals of Guarantor, Borrower's request for credit, and in the collection and periodic review of the Construction Loan, and, b) to share the information obtained with prospective purchasers of assignments and participations in the Construction Loan and as otherwise permitted by law. Without limiting the foregoing, KeyBank may obtain credit reports and other information regarding Borrower's deposit accounts, income and banking credit, business, and employment relationships and may verify such information. If Borrower or Guarantor is married and lives in a community property state, this authorization is also made on behalf of Borrower or Guarantor's spouse, even if he or she is not a Co-Borrower or Guarantor.

ADVERTISING

Borrower authorizes KeyBank to publicly use, at our discretion, the name of the Property, photographs of the Property, and/or other basic transaction information relating to the Construction Loan in marketing press releases and/or advertising materials.

ROCKY MOUNTAIN COMMUNITY REINVESTMENT CORPORATION (RMCRC)
LETTER OF SUPPORT
PERMANENT FINANCING

ROCKY MOUNTAIN COMMUNITY REINVESTMENT CORPORATION
-Your Premier Affordable Housing Lender Partnering with Utah Banks

ROCKY MOUNTAIN CRC
www.rmcrc.org

January 21, 2022

Tim Baker
Senior Project Manager
Chelsea Investment Corp.
6339 Paseo Del Lago
Carlsbad, CA 92011

Subject: Letter of Interest. Term financing for the proposed LIHTC multifamily housing 69-unit rent and income restricted The Three Sisters Apartments (the "Project"), located in

Las Cruces, Dona Ana County, New Mexico

Dear Tim,

Rocky Mountain Community Reinvestment Corporation ("RMCRC") is pleased to provide this Letter of Interest ("Letter") in connection with your Low Income Housing Tax Credit Application for the Project.

Based on RMCRC's current understanding of the Project from the preliminary information provided by you, the general terms, assumptions, conditions, and requirements of the proposed financing being sought are summarized as follows:

Purpose of Loan:	Provide a 24-month forward commitment and term financing for residential rental property restricted to serve low or moderate-income tenants with incomes ranging from 30% to 60% of AMI.
Affordability Requirements:	LIHTC Program restrictions as determined by the State Allocating Agency.
Projected Total Project Cost:	$16,466,966
Estimated Annual Debt Service:	RMCRC Debt: $ 72,328 Subordinate "hard" debt: $ 12.500 Total: $ 84,828
Proposed Borrower:	TBD, single asset entity ("Borrower").
Projected Loan Amount:	$1,390,000
Loan Maturity:	16 Years
Initial Fixed Rate Period:	16 Years

Loan Amortization:	40 Years
Projected Maximum Loan Rate:	Approximately 4.25%. The Projected Maximum Loan Rate is equal to the current Base Rate, plus the Spread, plus the applicable Forward Lock Margin. The Base Rate is equivalent to the corresponding Constant Maturity Treasury (Daily Treasury Yield Curve) rate (interpolated as required) as published by the U.S. Department of the Treasury, with a floor of 1%.
Loan Fees and Costs:	Origination Fee of 1.25% of Loan Amount. Borrower acknowledges that it is responsible for all applicable fees and Lender's fees and expenses (including attorneys' fees) incurred in connection with loan origination, negotiation, documentation and enforcement, including but not limited to the Origination Fee set forth above, tri-party processing fee of $1,500 (only applicable if a tri-party agreement is required by construction lender), Appraisal fee, Appraisal review fee of $1,500 and all other third-party fees and Lender's expenses. Legal fees are estimated at $7,500.
Loan-To-Value (LTV):	Not to exceed 80% based upon a current appraisal acceptable to RMCRC.
Minimum Debt Coverage Ratio:	RMCRC debt 1.20:1 All RMCRC and subordinate "hard" debt 1.15:1
Capital Replacement Reserve:	To be held and controlled by RMCRC in an amount determined by RMCRC at time of underwriting.
Debt Service and Operating Reserve:	To be held and controlled by RMCRC and capitalized in the amount equal to the greater of $25,000 or 6 months of Debt Service. The Debt Service and Operating Reserve held by RMCRC will be waived as long as the Borrower certifies in writing to RMCRC annually, that the investor member is holding at least the same amount for the same purposes as required hereby. RMCRC may require additional reserves depending on market conditions and transaction features.
General Requirements:	
Security:	First lien position on all real estate taken as collateral for the loan; assignment of rents; leases and contracts; security interest in all required reserves.
Recourse:	Non-recourse, except for certain "carve out" provisions.
Pre-payment:	Yield maintenance. Open prepayment occurring within 6 months prior to the scheduled Loan Maturity.
Subordinate Financing:	Allowed, subject to minimum debt service coverage requirements.

Underwriting Assumptions:

- Minimum underwriting vacancy assumption of 5.0% to 7.0%.
- Underwritten rents for restricted units shall not exceed the restricted rent revenues.

Stabilization Condition: For not less than 3 consecutive months the Project has been physically occupied at 90% or more and the Minimum Debt Coverage Ratio (DCR) has been achieved.

This Letter shall not constitute a commitment to lend, but rather is an indication of RMCRC's general interest in providing financing for the Project. Accordingly, the terms indicated herein, while reflecting RMCRC's current practices and policies, are not binding upon RMCRC and are subject to change. Further consideration of Project financing is subject to, without limitation, receipt and analysis of the market study, appraisal, environmental report, environmental questionnaire, zoning and municipal approvals, title report, survey, pro-forma development and operating budgets, additional requested due diligence, approval of RMCRC's loan committee and payment of applicable fees. The Projected Maximum Loan Rate above is subject to changes in market conditions or other factors, and is not established until the execution of a loan commitment between RMCRC and the Borrower.

Please contact Nicholas Berger at (801) 833-0009 or nberger@rmcrc.org if you have any questions or comments.

Sincerely,

Nicholas Berger
Chief Lending Officer

THE RICHMAN GROUP AFFORDABLE HOUSING CORP.
LETTER OF SUPPORT
TAX CREDIT EQUITY

THE RICHMAN GROUP AFFORDABLE HOUSING CORP.

707 SW Washington Street, Suite 1510 Portland, Oregon 97205 | 503.459.8741

January 23, 2022

Via Email

Ms. Cheri Hoffman
President
Chelsea Investment Corporation
5993 Avenida Encinas, Suite 101
Carlsbad, CA 92008

Re: Three Sisters Apartments
Las Cruces, New Mexico
69 Units

Dear Ms. Hoffman:

The purpose of this letter is to confirm The Richman Group Affordable Housing Corporation's interest in providing equity for Three Sisters Apartments located in Las Cruces, NM (the "Project"). This proposal is based on information you have provided including estimated project costs, debt financing, and project income and expenses.

The Richman Group Affordable Housing Corporation (together with its affiliates, "TRGAHC") is a multi-faceted real estate organization specializing in affordable housing, with expertise in investment banking, development, asset management and property management. TRGAHC has been a program sponsor, property manager, asset manager, and developer in the affordable housing industry since 1979.

TRGAHC is one of the nation's leading sponsors of low income credit ("Housing Tax Credit") programs. Since the creation of the Housing Tax Credit in 1986, TRGAHC has sponsored both public and institutional Housing Tax Credit funds, which have raised in excess of $10 billion in equity capital and have invested in approximately 1,500 Housing Tax Credit properties.

A summary of the terms and conditions under which TRGAHC will acquire the limited partnership (or equivalent) interest in the Project:

1. TRGAHC as limited partner (the "Investor") will have an interest equal to 99.99% and will be allocated 99.99% of the available tax credits.
2. It is assumed the limited partnership will receive annually $1,341,912 in Federal Low-Income Housing Tax Credits.
3. The investment of the Investor will equal approximately $11,941,822 or $0.89 cents per dollar of credits going to the Project at current pricing.
4. Pay-in schedule of the equity will be based on the needs of the Project, while maintaining the investor's yield requirements.

Equity Installment Schedule			
	Date	**Percentage**	**Amount**
Initial Installment	Closing	20%	$2,388,364
2nd Installment	Conversion	75%	$8,956,367
3rd Installment	8609	5%	$597,091

5. Income is trended at 2% and expenses are trended at 3%. There will be a minimum debt service coverage (DSCR) of 1.15x.
6. Replacement reserve deposits will be $304 PUPA.
7. It is assumed that there will be $0 capitalized and a $3,000 cash flow investor services fees.
8. The Operating Reserve is required to fund 6 months of operating expenses, replacement reserve, and debt service.

Please note TRGAHC's equity participation is subject to the terms and conditions hereof and also subject to (i) investment committee approval (ii) negotiation and execution of documentation acceptable to both parties and (iii) receipt of opinions of counsel (including corporate, tax and real estate) acceptable to the Investor.

Upon notification that you have received the appropriate tax credit allocation, TRGAHC will send a more detailed letter of interest at which time TRGAHC will proceed with its final underwriting. Upon the execution of this letter TRGAHC will commence its due diligence review and will designate an investor to acquire the limited partnership interest.

The investment of the Investor set forth in paragraph 3 of the summary of terms and conditions above may be recalculated or changed prior to the Closing to reflect rising interest rates or other changing market conditions and the Investor's then – current yield requirements. This letter shall be governed by and construed in accordance with the internal laws of the State of Connecticut. This agreement shall not create any liability on the part of TRG or the Investor. All rights and obligation of the Investor shall be set forth in the Partnership Agreement and shall not be binding on the Investor until the Investor delivers a fully executed copy of the Partnership Agreement to the General Partner.

We look forward to working with you on this project as you move forward with your tax credit and financing commitment. Please let us know if you need any additional information.

Sincerely,



Terry A. Gentry
Executive Vice President

23-024

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:		**Adopted:**	August 15, 2022
Drafter:	Sarah Cundiff	**Department:**	Public Works
Program:	Office of the Director	**Line of Business:**	Administration

Title:	**A RESOLUTION AMENDING THE FY2023-2028 CAPITAL IMPROVEMENT PROGRAM.**

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

PURPOSE(S) OF ACTION:
To amend the Capital Improvement Program (CIP) for Fiscal Year (FY) 2023 through FY2028.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City Council adopted the FY 2023-2028 Capital Improvement Plan (CIP) on May 16, 2022. The proposed amendment to the CIP contains updated project information including funding sources and amounts.

The *Cocina de Peregrinos* project is being identified as a Future Project on the CIP, as the New Mexico Department of Finance & Administration Local Government Division Infrastructure Capital Improvement Plan (ICIP) Guidelines require a Resolution of Approval for ICIP submission.

The proposed amendment does not change the adopted FY2023 Budget.

SUPPORT INFORMATION:
Exhibit A

PLAN(S):
None

COMMITTEE/BOARD REVIEW:
None

ANNUAL BUDGET APPROVAL:
☐ Yes
☐ No
☒ N/A

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

☐ N/A

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

☐ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will amend the City of Las Cruces FY2023 through FY2028 CIP.
2. Vote "No"; this will not amend the City of Las Cruces FY2023 through FY2028 CIP.
3. Vote "Amend"; this could potentially amend the City of Las Cruces FY2023 through FY2028 CIP, requiring pages in the program document be added, deleted, or modified.
4. Vote "Table"; this will delay the requirements for submittal to the New Mexico Department of Finance and Administration for the 2023 Legislative Session.

RESOLUTION 23-024

A RESOLUTION AMENDING THE FY2023-2028 CAPITAL IMPROVEMENT PROGRAM.

The City Council is informed that:

WHEREAS, the Capital Improvements Program (CIP) is a six year program that identifies capital projects which address capital needs to build, replace, expand, and improve infrastructure and systems; and

WHEREAS, pursuant to Article V. Section 5.08 of the City Charter, Council may supplement, reduce, or transfer appropriations; and

WHEREAS, the New Mexico Department of Finance & Administration Local Government Division Infrastructure Capital Improvement Plan (ICIP) Guidelines requires a Resolution of Approval for ICIP submission.

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

(I)

THAT the Capital Improvements Program for FY 2023 through FY 2028, attached hereto and made part of this Resolution as Exhibit "A", is hereby approved and authorized to be the basis for submission to the "Infrastructure Capital Improvement Plan" of the State of New Mexico Department of Finance and Administration.

(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

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Exhibit A

Amended as of 8/15/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
ECONOMIC DEVELOPMENT							
Economic Development - Newly Funded Projects							
Downtown Callecitas Shade Structure	100,000						**TIDD**
Downtown Parking Lots Renovation 1 - Parking Lot 9/10 2 - Parking Lot at Campo & Hadley	500,000	350,000	255,000	255,000	255,000	255,000	Grants, **TIDD**
Economic Development - Total Newly Funded Projects	**$ 600,000**	**$ 350,000**	**$ 255,000**	**$ 255,000**	**$ 255,000**	**$ 255,000**	
Economic Development - Carryover Projects							
Cinematic Infrastructure & Soundstage *2022 Legislative Appropriation* *2022 Legislative Appropriation*	2,933,085	*511,035* *388,561*					**Bonds, Grants, Taxes**
Downtown Plaza Shade Structures	160,014						**Bonds**
Gateway Entry Points Signage	250,000						**Bonds**
Parking Lot 7 and Bathrooms	417,921						**TIDD**
Economic Development - Total Carryover Projects	**$ 3,761,020**	**$ 899,596**	**$ -**	**$ -**	**$ -**	**$ -**	
Economic Development - Future Projects							
LCIIP Infrastructure Improvements		16,000,000					Bonds, Grants
Santa Teresa to LCIIP Bypass		16,000,000					Bonds, Grants
MV Community of Hope - Campus Extension		5,000,000					Grants
MV Community of Hope - Master Plan Implementation		2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	Grants
Paseos Verdes		2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	Grants
Transit Loop Road		1,661,000	7,800,000	7,800,000			Grants, Taxes
Rocket Drive Expansion		820,000	7,173,000				Grants, Taxes
LCIIP Gateway Signage & Pocket Park		480,000	25,000	25,000	25,000	25,000	Grants, Taxes
Downtown Video Security		100,000					Grants, Taxes, TIDD
Economic Development - Total Future Projects	**$ -**	**$ 44,061,000**	**$ 18,998,000**	**$ 11,825,000**	**$ 4,025,000**	**$ 4,025,000**	
Total Economic Development	**$ 4,361,020**	**$ 45,310,596**	**$ 19,253,000**	**$ 12,080,000**	**$ 4,280,000**	**$ 4,280,000**	
FACILITIES MANAGEMENT							
Facilities Management - Newly Funded Projects							
Facility Parking Lot Program 1 - Munson Center 2 - Henry R Benavidez Community Center 3 - Train Depot	200,000	250,000	250,000	250,000	250,000	250,000	**Taxes**
Facilities Management - Total Newly Funded Projects	**$ 200,000**	**$ 250,000**	**$ 250,000**	**$ 250,000**	**$ 250,000**	**$ 250,000**	
Facilities Management - Carryover Projects							
Energy Efficiency Program - IGA	2,688,182						**Bonds, Taxes**
Gateway Entry Points Signage Maintenance	50,000		50,000	50,000	50,000	50,000	**Taxes**
Facilities Management - Total Carryover Projects	**$ 2,738,182**	**$ -**	**$ 50,000**	**$ 50,000**	**$ 50,000**	**$ 50,000**	

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 8/15/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
Facilities Management - Annual Projects							
General Facilities Improvements 1 - La Casa Maintenance 2 - Jardin de Espernazas 3 - WIA Rehabilitation 4 - Arc Flash Plan 5 - City Hall Furnishings 6 - Surveillance Camera Upgrades 7 - Records Center Improvements 8 - Branigan Library Exterior Re-Stucco 9 - Frank O'Brien Papen Community Center 10 - City Hall Building Operations Storage	146,500	500,000	500,000	500,000	500,000	500,000	**Taxes**
Generator Buffer Program Fire Stations	80,000	50,000	50,000	50,000	50,000	50,000	**Taxes**
Refuse & Recycling Buffer Program Henry R Benavidez Community Center	50,000	50,000	50,000	50,000	50,000	50,000	**Taxes**
Roof Replacement Program 1 - Police Department Main Building 2 - Roof Inspections 3 - WIA Building 4 - Police Department Academy 5 - Municipal Court	349,134	375,000	375,000	375,000	375,000	375,000	**Taxes**
Safety, Health, Environmental & Emergency 1 - City Hall Security Upgrades 2 - Parks Sidewalk Replacement 3 - Pool Hoist 4 - Fire Alarm & Security Upgrades 5 - Pigeon Abatement	221,585						**Taxes**
Facilities Management - Total Annual Projects	**$ 847,219**	**$ 975,000**	**$ 975,000**	**$ 975,000**	**$ 975,000**	**$ 975,000**	
Facilities Management - Future Projects							
HVAC Upgrade Program		200,000	200,000	200,000	200,000	200,000	**Taxes**
Generator Replacement Program		35,000	35,000	35,000	35,000	35,000	**Taxes**
ADA Compliance		25,000	25,000	2,500	25,000	25,000	**Taxes**
Facilities Management - Total Future Projects	**$ -**	**$ 260,000**	**$ 260,000**	**$ 237,500**	**$ 260,000**	**$ 260,000**	
Total Facilities Management	**$ 3,785,401**	**$ 1,485,000**	**$ 1,535,000**	**$ 1,512,500**	**$ 1,535,000**	**$ 1,535,000**	
LAS CRUCES AIRPORT							
Las Cruces Airport - Newly Funded Projects							
LRU Pavement Maintenance Program	120,000	125,000	125,000	125,000	125,000	125,000	**Taxes, Other**
Las Cruces Airport - Total Newly Funded Projects	**$ 120,000**	**$ 125,000**	**$ 125,000**	**$ 125,000**	**$ 125,000**	**$ 125,000**	
Las Cruces Airport - Carryover Projects							
LRU Airport Infrastructure Improvements *2022 Legislative Appropriation*	409,774	*500,000*					Grants, **Taxes, Other**
LRU Passenger Terminal *2022 Legislative Appropriation*	400,000	*632,890*	12,500,000		1,850,000	3,500,000	Grants, **Taxes, Other**
LRU Runway 8/26 Extension 1 - Environmental Assessment 2 - Design 3 - Construction	340,700	4,200,000	8,400,000				Grants, **Taxes, Other**

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LRU Runway 12/30 Extension 1 - Environmental Assessment 2 - Design 3 - Construction	434,561			13,500,000			Grants, **Taxes, Other**
LRU Taxilane Improvements	300,000						Grants, **Taxes, Other**
Las Cruces Airport - Total Carryover Projects	**$ 1,885,035**	**$ 5,332,890**	**$ 20,900,000**	**$ 13,500,000**	**$ 1,850,000**	**$ 3,500,000**	
Las Cruces Airport - Annual Projects							
LRU Striping and Marking Maintenance Program	136,000	75,000	75,000	75,000	75,000	75,000	**Taxes, Other**
Las Cruces Airport - Total Annual Projects	**$ 136,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	
Las Cruces Airport - Future Projects							
LRU Passenger Air Service Infrastructure Revitalization		37,500,000					Grants, Taxes, Other
LRU Maintenance Facility Design-Construct		1,700,000					Grants, Taxes, Other
LRU ARFF Index B Equipment Upgrades		1,600,000					Grants, Taxes, Other
LRU Runway 4/22 Rehabilitation		1,500,000					Grants, Taxes, Other
LRU Passenger Terminal Parking		1,000,000					Grants, Taxes, Other
LRU Airport Maintenance Equipment		850,000					Bonds, Grants, Taxes, Other
LRU Enhanced Broadband Access		450,000					Bonds, Grants, Taxes, Other
LRU Utility Infrastructure Improvements			4,500,000				Bonds, Grants, Taxes, Other
LRU Airline Ground Support Equipment Facilities			750,000				Grants, Taxes, Other
LRU Fuel Farm Relocation and Expansion				1,900,000			Grants, Taxes, Other
LRU Taxilane Extensions					3,400,000		Grants, Taxes, Other
LRU Commercial Hangar Design and Construct					2,800,000		Grants, Taxes, Other
LRU Multi-Modal Public Passenger Transit Facility					2,500,000		Grants, Taxes, Other
LRU East Perimeter Road						11,200,000	Grants, Taxes, Other
LRU Apron West Hangar Rehabilitation						70,000	Grants, Taxes, Other
LRU Apron West Rehabilitation						70,000	Grants, Taxes, Other
Las Cruces Airport - Total Future Projects	**$ -**	**$ 44,600,000**	**$ 5,250,000**	**$ 1,900,000**	**$ 8,700,000**	**$ 11,340,000**	
Total Las Cruces Airport	**$ 2,141,035**	**$ 50,132,890**	**$ 26,350,000**	**$ 15,600,000**	**$ 10,750,000**	**$ 15,040,000**	
NON-PROFIT ORGANIZATIONS							
Non-Profit Organizations - Carryover Projects							
Arts and Cultural District Improvements	1,734,241						**Grants**
Children's Museum Facility	742,500	100,000	400,000	5,500,000			Bonds, **Grants**
La Clinica de Familia - Behavioral Health Facility	943,809						**Grants**
MV Community of Hope - Casa de Peregrinos Food Rescue Warehouse	6,654,736	1,847,000					**Grants, Other**
MV Community of Hope - Flooring	10,317						**Grants**
MV Community of Hope - Health Facility Improvements *2022 Legislative Appropriation* *2022 Legislative Appropriation*	826,661	 *760,000* *169,682*					**Grants**
MV Community of Hope - Solar Parking	30,303						**Grants, Taxes**
Non-Profit Organizations - Total Carryover Projects	**$ 10,942,567**	**$ 2,876,682**	**$ 400,000**	**$ 5,500,000**	**$ -**	**$ -**	

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Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
Non-Profit Organizations - Future Projects							
MV Community of Hope - Cocina de Peregrinos		1,500,000	7,500,000	2,700,000			**Grants**
MV Community of Hope - Jardin de los Niños Re-Roof			250,000				Grants
MV Community of Hope - El Caldito Upgrade			150,000				Grants
MV Community of Hope - Building 1, Solar Project				600,000			Grants
MV Community of Hope - Expansion Remodel				250,000			Grants
MV Community of Hope - Jardin de los Niños Security Improvements				200,000			Grants
MV Community of Hope - Patio to Office Remodel				200,000			Grants
Non-Profit Organizations - Total Future Projects	**$ -**	**$ 1,500,000**	**$ 7,900,000**	**$ 3,950,000**	**$ -**	**$ -**	
Total Non-Profit Organizations	**$ 10,942,567**	**$ 4,376,682**	**$ 8,300,000**	**$ 9,450,000**	**$ -**	**$ -**	
PARKS & RECREATION							
Parks & Recreation - Newly Funded Projects							
JCP Learning Center Exterior Repairs *2022 Legislative Appropriation*	75,000	*220,000*					Grants, **Taxes**
Las Cruces Regional Aquatic Center HVAC & Dehumidifier	75,000						**Taxes**
Meerscheidt Recreation Center Improvements	85,000	110,000					Grants, **Taxes**
Parks & Recreation - Total Newly Funded Projects	**$ 235,000**	**$ 330,000**	**$ -**	**$ -**	**$ -**	**$ -**	
Parks & Recreation - Carryover Projects							
A. Fielder Memorial Safe Haven Renovations	175,000						**Taxes**
Albert Johnson Park Master Plan	23,509						**Taxes**
Apodaca Park Aquatic Playground and Multi-Use Path	750,000	509,479	240,521				**PIF**
Aquatic Center Solar	180,312						**Grants**
Ballfield/Soccer Field Renovations & Upgrades	856,000	834,600	144,000	3,200,000			**Grants**
Burn Lake/Esslinger Community Park Improvements	228,800			3,200,000			Bonds, Grants, **Taxes**
Butterfield Shooting Range ADA Improvements	29,000		200,000	2,000,000			Bonds, Grants, **Taxes**
Chandler Tank Park	641,704						**Bonds, Taxes**
Dona Ana Move Trail	690,000						**Grants, Taxes**
East Mesa Public Safety Area Park	100,000	100,000		100,000		100,000	Grants, **PIF**
Gallagher Park Improvements	150,000						**Taxes**
Highland Park	1,000,000	510,850					Grants,**PIF, Taxes**
Las Cruces Lateral RTP Trail	74,129	483,410					**Grants**
Median Landscaping	1,400,634	200,000	200,000	200,000	200,000	200,000	**Grants, Loans, Taxes**
Metro Verde Neighborhood Parks	602,201	500,000	500,000	500,000	500,000	500,000	**PIF**
New Skate Park - Plan & Design *2022 Legislative Appropriation*	100,000	*450,000*	550,000	250,000			**Grants**
Parks Parking Lots BMX Track Parking Lot & ADA Improvements Paz Ball Field Parking Lot Improvements Tony Gomez Park Parking Lot Improvements	2,125,000						**Bonds**
Parks Security and Lighting	105,700	82,637					**Grants**
Parks Shade Structures	24,000						**Taxes**
Parks Smart Controllers & Pumps	92,954						**Grants, Taxes**
Pioneer Women's Park Gazebo Improvements	194,324	600,000	600,000	600,000	600,000	600,000	**Grants**
Regional Rec & Aquatic Cntr - Ph II - Competitive Pool Construction	6,586,617						**Bonds, PIF, Taxes**
Regional Rec & Aquatic Cntr - Ph II - Competitive Pool Enclosure	9,654,633						**Bonds, Taxes**
Skate Park Renovation & Improvements	1,095,000		836,500	1,650,000	500,000		**Grants, PIF**
Tony Gomez Park Master Plan	40,000						**Taxes**

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Tortugas Trail	75,000						**Grants**
Veterans' Park Parking Lot	301,773						**Bonds**, Grants, **Taxes**
2022 Legislative Appropriation		*250,000*					
Wayfinding Signage	215,000						**Grants, PIF**
Parks & Recreation - Total Carryover Projects	**$ 27,511,290**	**$ 4,520,976**	**$ 3,271,021**	**$ 11,700,000**	**$ 1,800,000**	**$ 1,400,000**	
Parks & Recreation - Annual Projects							
Land Acquisition, Planning, and Design for Parks	100,000	500,000	500,000	500,000	500,000	500,000	**PIF**
Neighborhood Parks	500,000	600,000	500,000	500,000	500,000	500,000	**PIF**
Parks & Recreation - Total Annual Projects	**$ 600,000**	**$ 1,100,000**	**$ 1,000,000**	**$ 1,000,000**	**$ 1,000,000**	**$ 1,000,000**	
Parks & Recreation - Future Projects							
Parks Parking Lot Program: Apodaca Park East Mesa Recreation Center Maag Ball Park Skate Park		907,500	252,500	272,700	272,700	272,700	Bonds, Grants
Veterans' Memorial Park Enhancements		662,500	662,500	662,500	662,500		Bonds, Grants
Trail Renovations		580,000	500,000	500,000	500,000	500,000	Bonds, Grants
Various Park Restroom Replacement/Repairs & Upgrades		360,000					Grants
Meerscheidt Recreation Center - Remodel/Expansion		200,000	1,800,000				Grants, Taxes
Indoor/Outdoor Aquatic Amenities		195,000					Grants, Taxes
East Mesa Bataan Memorial Pool - Shade Structure		195,000					Grants, Taxes
Klein Park Improvements		126,750					Grants, Taxes
East Mesa Bataan Memorial Pool - HVAC Replacement		100,000	700,000				Grants
Albert Johnson Park Electrical Improvements		78,000					Grants, Taxes
Park Drinking Fountains		70,000					Grants, PIF, Taxes
Parks and Recreational Facilities Structural Renovations		55,000					Grants, Taxes
Benavidez Park			685,000	125,000			Grants
Veterans' Memorial Park Restroom Plumbing Repairs and Upgrades			500,000				Grants, PIF
Valley View Park - Heske Garden Lighting Replacement			134,000				Grants, Taxes
Laabs Pool - HVAC Replacement			80,000				Grants, Taxes
Hadley Complex Recreation Rehabilitation			78,000				Grants, Taxes
Multi-Use Recreation Center			31,500	318,500			Bonds, Grants
Four Field Baseball/Softball Complex				10,000,000			Bonds, Grants, PIF
Laabs Pool - Shade Structures				97,500			Bonds, Grants, PIF
New Sand Volleyball Courts					40,000		Grants, PIF
Waterfalls Park						1,200,000	Grants, PIF
Parks & Recreation - Total Future Projects	**$ -**	**$ 3,529,750**	**$ 5,423,500**	**$ 11,976,200**	**$ 1,475,200**	**$ 1,972,700**	
Total Parks & Recreation	**$ 28,346,290**	**$ 9,480,726**	**$ 9,694,521**	**$ 24,676,200**	**$ 4,275,200**	**$ 4,372,700**	

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PUBLIC SAFETY							
Public Safety - Carryover Projects							
Fire Station 2 Replacement 1 - Land Acquisition 2 - Plan, Design, Construct, and FF&E 3 - Demolition	85,000				5,165,000		**Taxes**, Grants
Fire Department Equipment *2022 Legislative Appropriation*	74,798	*330,000*	720,000	500,000	500,000		**Grants**
Police Department Building Renovations *2022 Legislative Appropriation*	13,696	*50,000*	150,000				**Grants, Taxes**
Police Department Evidence Building	271,883						**Taxes**
Public Safety Regional Radio Communication System	515,000						**Grants, Taxes**
Public Safety - Total Carryover Projects	**$ 960,377**	**$ 380,000**	**$ 870,000**	**$ 500,000**	**$ 5,665,000**	**$ -**	
Public Safety - Future Projects							
Downtown Public Safety Complex		57,000,000					Bonds, Grants
Fire Department Station 9		5,165,000					Bonds, Grants, Taxes, Other
Police Department Mobile Operations Command Vehicle		500,000					Grants
Public Safety Vehicles - Bearcat		400,000					Grants
Public Safety Vehicles - Rook		400,000					Grants
Fire Department CIT and MIH Building		365,000	3,420,315				Grants, Taxes, Other
Fire Station 5 North/South Aprons and Parking Lot Replacement		314,000	230,000				Bonds, Grants, Taxes, Other
Police Parking Lot Resurfacing		276,000					Grants, Taxes
Fire Department Training tower		200,000	19,000				Grants, Taxes
Fire Dept. Administration Building Lobby Remodel *2022 Legislative Appropriation*		*200,000*	350,000	193,400			Grants, Other
Police Department Equipment - Mobile Data Terminals *2022 Legislative Appropriation*		*160,000*					Grants
Fire Stations 4 & 5 Security Fencing and Gates		130,000					Grants, Taxes
Public Safety Vehicles - Critical Incident Command Vehicle		100,000					Grants
Fire Station 4 Restroom Remodel		90,000					Grants, Taxes, Other
Fire Station 2 Bay Remodel		45,000					Grants
Police Department Equipment - Axon Body Cameras		40,000					Grants
Police North Parking Lot Fencing		20,000					Grants
Fire Station 6 Repairs			70,000				Grants
Fire-Energy Efficiency and Sustainability				334,000	330,000	270,000	Grants
Police/Fire Training Facility - Design & Construct						6,900,000	Grants
Police/Fire Training Facility - Furniture, Fixtures, & Equipment						2,100,000	Grants
Public Safety - Total Future Projects	**$ -**	**$ 65,405,000**	**$ 4,089,315**	**$ 527,400**	**$ 330,000**	**$ 9,270,000**	
Total Public Safety	**$ 960,377**	**$ 65,785,000**	**$ 4,959,315**	**$ 1,027,400**	**$ 5,995,000**	**$ 9,270,000**	

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PUBLIC WORKS							
Public Works - Carryover Projects							
Amador Hotel *2022 Legislative Appropriation*	2,144,425	*200,000*	2,950,000	2,950,000	2,950,000		Grants, TIDD
Avenida Blanco - South Valley Drive to Calle del Encanto	450,000						Bonds
Bellamah Drive - Lees Drive to Luna Street	825,000						Taxes
Brown Farm Ponding Improvements	155,675						Bonds
Campo Street Design and Reconstruct	460,026	2,600,000					TIDD
Drainage Infrastructure Improvements EBID Drains & Laterals Land Acquisition Other Improvements	2,837,986						Loans, Taxes
East Mesa Recreation Complex Roads	2,255,825						Bonds
East Mesa Roads and Drainage *2022 Legislative Appropriation*	1,634,000	*100,000*	900,000				Bonds, Grants
GO Bonds - ARPA Funding	4,128,725						ARPA
GO Bond Q1 - Park & Sport Field Improvements & Additions	9,314,230						GO Bonds, PIF
GO Bond Q2 - New Animal Shelter Facility	5,652,897						GO Bonds
GO Bond Q3 - New Fire Station No. 3 Building	1,087,978						GO Bonds
GO Bond Q4 - Walking, Jogging, Biking Trails Improvements & Additions	176,635						GO Bonds
Madrid Ave Extension - Martha Dr to N Triviz Dr	1,900,000						Grants, Taxes
Magdalena Drive Storm Repairs	203,522						Taxes, Other
McClure Drainage Improvements	100,000						Bonds
McFie - Valley to First	1,093,176						Grants, Taxes
Mesquite/Tornillo Drainage Improvements	184,773						Bonds
Picacho Ave HAWK System	249,793						Grants, Taxes
South Main St - Avenida de Mesilla to Boutz	3,300,000						Bonds
Storm Water System Mapping	100,000						Taxes
Tashiro Rd Improvements - Valley Dr to Motel Blvd	190,741						Bonds
Traffic Signals Roadrunner Parkway & Sonora Springs Sonoma Ranch Blvd & Northrise	1,288,155						Bonds
Voluntary Assessment District Phase I Sanitary Sewer Infrastructure Sonoma Ranch Blvd Mile 2: Peachtree to Arroyo Red Hawk Golf Rd: N.Bound Metro Verde S.P1E to Arroyo Rd Regional Drainage Phase 1	236,956						Bonds
Voluntary Assessment District Phase II Peachtree Hills Rd. East & West Regional Drainage Sonoma Ranch Blvd to Engler, Mile 1, Mile 2, Mile 3, & Roundabout Sonoma Ranch Blvd Landscaping to Engler, Mile 1, Mile 2, & Mile 3	7,670,585						Bonds
Villa Mora Dam Park Study	623,000						Grants, Taxes
Walnut-Madrid TAP Bike/Pedestrian Improvements	1,323,660						Bonds, Grants
Public Works - Total Carryover Projects	**$ 49,587,763**	**$ 2,900,000**	**$ 3,850,000**	**$ 2,950,000**	**$ 2,950,000**	**$ -**	

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Public Works - Annual Projects							
Active Transportation Plan - Sidewalk Gaps	173,514	200,000	200,000	200,000	200,000	200,000	**Bonds, Taxes**
ADA Sidewalk Program	110,000	150,000	150,000	150,000	150,000	150,000	**Taxes**
Chip Seal Program	238,750	200,000	200,000	200,000	200,000	200,000	**Taxes**
CO-OP Match	80,000	75,000	75,000	75,000	75,000	75,000	**Taxes**
Land Acquisition - Public Works Flood Control Rights of Way East Mesa Other	200,000	250,000	250,000	250,000	250,000	250,000	**Taxes**
M.A.P. Match	165,000	150,000	150,000	150,000	150,000	150,000	**Taxes**
Materials Testing	240,000	250,000	250,000	250,000	250,000	250,000	**Taxes**
Neighborhood Traffic Calming Program	60,000	60,000	60,000	60,000	60,000	60,000	**Taxes**
Pavement Condition Index Improvements Pavement Overlays Pavement Replacement Pavement Treatment	9,634,703	6,300,000	6,300,000	6,300,000	6,300,000	6,300,000	**Taxes**
Pavement Marking Program	169,000	500,000	250,000	500,000	250,000	500,000	**Taxes**
Roadway Maintenance Program	1,013,819	700,000	700,000	700,000	700,000	700,000	**Taxes**
Street Lighting & Traffic Signal Maintenance Program	1,096,291	500,000	500,000	500,000	500,000	500,000	**Taxes**
Traffic Signal Program	714,334	500,000	500,000	500,000	500,000	500,000	**Taxes**
Transportation System Modernization ITS	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	**Taxes**
Unpaved Roads	250,000	250,000	250,000	250,000	250,000	250,000	**Taxes**
Weed Control & Maintenance Program City Rights of Way Las Cruces Dam Ponds	95,000	100,000	100,000	100,000	100,000	100,000	**Taxes**
Public Works - Total Annual Projects	**$ 15,240,411**	**$ 11,185,000**	**$ 10,935,000**	**$ 11,185,000**	**$ 10,935,000**	**$ 11,185,000**	
Public Works - Future Projects							
HWY 70 and Elks/Triviz Intersection Improvements		25,000,000					Grants
Flood Control Infrastructure		1,500,000					Bonds
Municipal Services Center		1,400,000	7,000,000	7,000,000	11,200,000		Bonds
South Main/Valley Drainage Pond		1,000,000					Bonds
Municipal Court		700,000	6,000,000				Bonds
Telshor Spruce Intersection Improvements *2022 Legislative Appropriation*		*650,000*	850,000				Grants
Midway Ave - Gas Line Rd to Mesa Dr		240,000					Taxes, Grants
Melendres Ave - Hadley to Picacho			750,000				Bonds
Evelyn St - Madrid Ave to Ash Ave			655,000				Taxes
Johnson St - Rouault Ave to Topley Dr			625,000				Bonds
Ethel Ave - Alameda Blvd to Miranda, and Houma			550,000				Taxes
South Valley Dr Reconstruction - Avenida de Mesilla to Boutz				2,920,000			Bonds
Lohman at Walnut and Walton Signal Improvements				1,000,000			Bonds, Grants
Calle de Sol - Avenida Blanco to Avenida de Mesilla				500,000			Bonds
Mountain Ave - Melendres St to Armijo St				475,000			Bonds
Mid Park Ave - Idaho to Perkins Ave				390,000			Bonds
Armijo St - Picacho Ave to Parker Rd				260,000			Bonds
Armijo St - Organ Ave to Mountain Ave					675,000		Bonds
Kilmer St - Spruce Ave to Ash Ave					500,000		Bonds
Street Lighting Management System					500,000		Taxes
Rigsby Rd - Barker to Valley Dr					295,000		Taxes
Poplar Ave - Mesquite St to Santa Fe St					260,000		Bonds

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Sammy Burke Youth Boxing Center - Rehab Design					250,000		Grants, Taxes
Willow St - Palomas Ave to San Juan					250,000		Bonds
Sweet St - Hadley Ave to Hayner St					207,000		Taxes
Guthrie Place- Thomas Dr to Cul de Sac					200,000		Bonds
Pavement Management System Road Condition Survey					200,000		Taxes
Pittsburg Ave - Melendres to Cul de Sac					120,000		Bonds
Sequoia Ave - Valley Dr to E.O.P.					100,000		Bonds
Spruce Road Diet - N Main to Triviz						500,000	Bonds
Miranda Ave - Picacho Ave to Court Ave						450,000	Bonds
Amis Ave - Madrid Ave to Hoagland Road						330,000	Bonds
Sacramento St - Ash Ave to Oasis Ave						315,000	Taxes
Westgate St - Amador Ave to Cul de Sac						240,000	Bonds
Amador Ave - Archuleta Road to E.O.P.						210,000	Bonds
La Fonda Dr - Idaho Ave to E.O.P.						200,000	Bonds
Oasis Ave - Mesquite St to Solano Dr						185,000	Bonds
Parkview Dr - Espina St to E.O.P.						175,000	Bonds
6th Street - Hayner Ave to Hadley Ave						150,000	Bonds
Mountain Ave - Water St to Alameda Blvd						130,000	Bonds
Conway Road Maintenance - Design						50,000	Bonds
Engler Road - Design						50,000	Bonds
Hacienda Acres Infrastructure Improvements - Design						50,000	Bonds
Sand Hill Trail - Design						50,000	Taxes
Targeted Road and Lighting Improvements - Design						50,000	Taxes
West Mesa Fiber Optics Improvements - Design						50,000	Taxes
Public Works - Total Future Projects	**$ -**	**$ 30,490,000**	**$ 16,430,000**	**$ 12,545,000**	**$ 14,757,000**	**$ 3,185,000**	
Total Public Works	**$ 64,828,174**	**$ 44,575,000**	**$ 31,215,000**	**$ 26,680,000**	**$ 28,642,000**	**$ 14,370,000**	
QUALITY OF LIFE							
Quality of Life - Carryover Projects							
Branigan Cultural Center Improvements	145,568		93,000	2,000,000	1,200,000		Grants, **Taxes**
Branigan Library - Expansion Phase II/Branch	150,000	2,000,000	1,500,000				Bonds, Grants, **Other**
Munson Center Renovations	964,260		1,629,525				**Grants**
2022 Legislative Appropriation		*666,199*					
Sage Café Expansion	920,700	2,145,550					**Grants**
Senior Programs Kitchen Equipment Eastside Senior Center Henry R Benavidez Center Munson Senior Center	122,228						**Taxes**
Quality of Life - Total Carryover Projects	**$ 2,302,756**	**$ 4,811,749**	**$ 3,222,525**	**$ 2,000,000**	**$ 1,200,000**	**$ -**	
Quality of Life - Annual Projects							
Public Art Program	108,506	100,000	100,000	100,000	100,000	100,000	**Taxes**
Quality of Life - Total Annual Projects	**$ 108,506**	**$ 100,000**	**$ 100,000**	**$ 100,000**	**$ 100,000**	**$ 100,000**	
Quality of Life - Future Projects							
Sage Café Backup Generator		325,000					Bonds, Grants, Taxes
Senior Programs Existing Kitchen Expansion Assessment		200,000					Taxes
Museum System On-site Server		115,000					Bonds, Grants, Taxes
Senior Programs Vehicles			110,000	300,000			Grants
2022 Legislative Appropriation		*110,000*					
Munson Center Bathrooms		106,900					Bonds, Grants, Taxes

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 8/15/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
Frank O'Brien Papen Center - Dining Room Floor *2022 Legislative Appropriation*		*35,000*	12,800				Grants
Museum of Art Improvements		35,000	95,000	200,000	170,000		Bonds, Grants, Taxes
Museum of Art - Gallery Flooring		15,000	20,000	65,000			Bonds, Grants, Taxes
Railroad Museum Reinterpretation		15,000	60,000	150,000	75,000		Bonds, Grants, Taxes
Benavidez Kitchen Expansion			170,000	2,196,000			Bonds, Grants, Taxes
Munson Center Kitchen Expansion			170,000	2,287,000			Bonds, Grants, Taxes
Munson Center Floor			147,150				Bonds, Grants, Taxes
Benavidez Kitchen Floor			52,400				Bonds, Grants, Taxes
Railroad Museum - Exterior Improvements			35,000	50,000	15,000		Bonds, Grants, Taxes
Branigan Library Renovation				200,000	3,500,000		Bonds, Grants, Taxes
Branigan Library - Security System Upgrade				135,000	155,000		Grants, Taxes
Railroad Museum - Reroof				35,000	65,000		Grants, Taxes
Museums Collection Storage Facility					9,500,000		Grants, Taxes
Museum of Nature and Science - Atrium Redesign					10,000	30,000	Grants, Taxes
Museum of Art Relocation/Remodel						5,000,000	Bonds, Grants, Taxes
Quality of Life - Total Future Projects	**$ -**	**$ 956,900**	**$ 872,350**	**$ 5,618,000**	**$ 13,490,000**	**$ 5,030,000**	
Total Quality of Life	**$ 2,411,262**	**$ 5,868,649**	**$ 4,194,875**	**$ 7,718,000**	**$ 14,790,000**	**$ 5,130,000**	
ROADRUNNER TRANSIT							
RoadRUNNER Transit - Carryover Projects							
Municipal Services Center - Transit	26,940,330	8,383,338					**ARPA, Bonds, Grants, Taxes**
RoadRUNNER Transit - Total Carryover Projects	**$ 26,940,330**	**$ 8,383,338**	**$ -**	**$ -**	**$ -**	**$ -**	
RoadRUNNER Transit - Annual Projects							
Transit Facilities Improvement Program	40,000	75,000	75,000	75,000	80,000	185,000	**Grants, Taxes**
RoadRUNNER Transit - Total Annual Projects	**$ 40,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 80,000**	**$ 185,000**	
Total RoadRUNNER Transit	**$ 26,980,330**	**$ 8,458,338**	**$ 75,000**	**$ 75,000**	**$ 80,000**	**$ 185,000**	
SUSTAINABILITY							
Sustainability - Carryover Projects							
Solar Energy Photo Voltaic Projects	794,066						**Taxes**
Sustainability - Total Carryover Projects	**$ 794,066**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	
Sustainability - Future Projects							
DC Fast Chargers for Electric Vehicles		200,000	200,000				Grants, Bonds, Taxes
Public Electric Vehicle Chargers		200,000	200,000				Grants, Bonds, Taxes
Fleet Electric Vehicle Chargers		90,000	90,000	180,000			Grants, Bonds, Taxes
Sustainability - Total Future Projects	**$ -**	**$ 490,000**	**$ 490,000**	**$ 180,000**	**$ -**	**$ -**	
Total Sustainability	**$ 794,066**	**$ 490,000**	**$ 490,000**	**$ 180,000**	**$ -**	**$ -**	

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 8/15/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
UTILITIES							
Utilities - Carryover Projects							
East Lohman Landfill - Waste Area 1	1,000,000						Taxes
JHWWTF East Primary Clarifier	143,274						Bonds
Wastewater Bond Projects - 2015A Bonds	45,060						Bonds
Wastewater Development	3,023	100,000					Other
Wastewater Development New Interceptors	391,525						WWIF
Wastewater NMFA Loan	21,352	360,000					Bonds
Wastewater Septic Systems - NMED Grant *2022 Legislative Appropriation*	1,482,172	*200,000*	1,972,100	1,619,000			Grants
Wastewater Utilities Bond Projects 2020A	488,408	375,000					Bonds
Water Bond Projects 2015A	4,004						Bonds
Water Development	2,882	1,000,000					WIF
Water Miscellaneous	1,200						Bonds
Water NMFA Loan	7,034	100,000					Bonds
Water Rehabilitation - 2006 Bonds	13,061						Bonds
Water Rehabilitation - NMFA	108,614	1,551,091					Bonds
Water Street Improvement Projects - 2015 Bond	18,772						Bonds
Water Utilities Bond Projects 2020A	6,132,615	4,939,151					Bonds
Utilities - Total Carryover Projects	**$ 9,862,996**	**$ 8,625,242**	**$ 1,972,100**	**$ 1,619,000**	**$ -**	**$ -**	
Utilities - Annual Projects							
Gas Admin - Building Improvements Fiberoptic Cable Replacement from Roundtree to JU	321,417	321,667	125,000	125,000	125,000	125,000	Other
Gas Development - Low & High Pressure	1,647,695	17,152,621	1,700,000	1,500,000	300,000	300,000	Other
Gas Rehabilitation - Low & High Pressure	119,966	3,063,189	110,000	110,000	110,000		Other
Gas Rehabilitation - Street Utility Rehabilitation	494,049	1,767,576	1,725,000	1,725,000	1,725,000	1,725,000	Other
Gas SCADA	200,000	50,000	50,000	50,000	50,000	50,000	Other
Solid Waste Building Improvements Fiberoptic Cable Replacement from Roundtree to JU	32,141	321,667	125,000	125,000	125,000	125,000	Other
Wastewater Building Improvements Fiberoptic Cable Replacement from Roundtree to JU	276,940	75,000	75,000	75,000	75,000	75,000	Other
Wastewater Jacob Hands Wastewater Treatment Facility	257,432	3,859,161	5,950,000				Other
Wastewater JHWWTF	100,000	100,000	100,000	100,000	100,000	100,000	Other
Wastewater Lift Station Renovations	100,000	50,000	100,000	50,000	100,000	50,000	Other
Wastewater Rehabilitation - East Mesa Water Reclamation Facility	500,000		400,000				Other
Wastewater Street Utility Rehabilitation	1,132,085	1,738,248	166,650				Other
Wastewater East Mesa Water Reclamation	25,000	25,000	25,000	25,000	25,000	25,000	Other
Water Building Improvements Fiberoptic Cable Replacement from Roundtree to JU	275,838	321,667	125,000	125,000	125,000	125,000	Other
Water Rehabilitation - Line Extension	852,350	1,387,542					Other
Water Rehabilitation - Reservoir Rehabilitation	200,000	7,972,500					Other
Water Rehabilitation - Street Utility Rehabilitation	1,030,259	8,051,257	650,000	550,000	650,000	5,550,000	Other
Water SCADA	200,000	539,596	589,596	539,596	50,000	30,000	Other
Utilities - Total Annual Projects	**$ 7,765,172**	**$ 46,796,691**	**$ 12,016,246**	**$ 5,099,596**	**$ 3,560,000**	**$ 8,280,000**	

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 8/15/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
Utilities - Future Projects							
Gas Rehabilitation - Regulator Stations		600,000					Fees
Wastewater SCADA		279,854	30,000	30,000	30,000	30,000	Fees
Water Rehabilitation - Pump PRV		235,000					Fees
Water Rehabilitation - Pump Station Rehabilitation		175,000	100,000	100,000	100,000	100,000	Fees
Wastewater Development		143,023					Fees
Water NMFA Loan		100,000					Bonds
Wastewater East Mesa Water Reclamation		25,000	25,000	25,000	25,000	25,000	Fees
Gas Rehabilitation Phase I AMR Implementation			250,000	250,000	250,000	250,000	Fees
Utilities - Total Future Projects	**$ -**	**$ 1,557,877**	**$ 405,000**	**$ 405,000**	**$ 405,000**	**$ 405,000**	
Total Utilities	**$ 17,628,168**	**$ 56,979,810**	**$ 14,393,346**	**$ 7,123,596**	**$ 3,965,000**	**$ 8,685,000**	
VISIT LAS CRUCES							
Visit Las Cruces - Carryover Projects							
Convention Center FF&E	150,000						**Taxes**
Visit Las Cruces - Total Carryover Projects	**$ 150,000**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	
Visit Las Cruces - Future Projects							
Convention Center Upgrades and Maintenance		355,000					Grants, Taxes
Visit Las Cruces Building Subflooring		142,000					Taxes
Convention Center Exterior Sign		53,000					Grants, Taxes
Visit Las Cruces - Total Future Projects	**$ -**	**$ 550,000**	**$ -**	**$ -**	**$ -**	**$ -**	
Total Visit Las Cruces	**$ 150,000**	**$ 550,000**	**$ -**	**$ -**	**$ -**	**$ -**	
ALL DEPARTMENTS							
Total Newly Funded Projects	**$ 1,155,000**	**$ 1,055,000**	**$ 630,000**	**$ 630,000**	**$ 630,000**	**$ 630,000**	
Total Carryover Projects	**$ 137,436,382**	**$ 38,730,473**	**$ 34,535,646**	**$ 37,819,000**	**$ 13,515,000**	**$ 4,950,000**	
Total Annual Projects	**$ 24,737,308**	**$ 60,306,691**	**$ 25,176,246**	**$ 18,509,596**	**$ 16,725,000**	**$ 21,800,000**	
Total Future Projects	**$ -**	**$ 193,400,527**	**$ 60,118,165**	**$ 49,164,100**	**$ 43,442,200**	**$ 35,487,700**	
GRAND TOTAL	**$ 163,328,690**	**$ 293,492,691**	**$ 120,460,057**	**$ 106,122,696**	**$ 74,312,200**	**$ 62,867,700**	

Abbreviations and Notes:

Indicates a Change

Pending Legislative Appropriations noted in italic

Current funding sources noted in bold

ARPA - American Rescue Plan Act
Bonds - Includes Bonds and Loans
Grants - Includes Local, State, Federal, or private entity
Other - Includes Fees, State Entitlements, Leases, Developer Contributions, and Donations
PIF - Park Impact Fees
PSIF - Public Safety Impact Fees
TIDD - *Tax Increment Development District*
WIF - *Water Impact Fees*
WWIF - *Wastewater Impact Fees*

3007; Council Bill 23-001

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	July 18, 2022	**Adopted:**	August 15, 2022
Drafter:	Erika Jaquez	**Department:**	Financial Services
Program:	Treasury	**Line of Business:**	Revenue Management

Title: **AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2022 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $5,000,000 FOR THE ACQUISITION OF FIRE ENGINES, AERIAL FIRE TRUCKS, AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.**

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

PURPOSE(S) OF ACTION:

Authorize issuance of debt.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City Charter authorizes City Council to borrow funds. The New Mexico Finance Authority (NMFA) has instituted a program for financing public projects and equipment. As part of the program, City Council is required by NMFA to authorize the submission of the application. The proposed action will allow the Fire Department to finance the acquisition of two fire engines and two aerial fire trucks. The two fire engines and two aerial fire trucks are to replace two fire engines and two aerial fire trucks that have been in service for 15 years or more and have exceeded industry standards for time of service and maintenance costs.

A proposed resolution approved at the July 18, 2022 City Council meeting authorized City staff to submit an application for financial assistance from NMFA for the acquisition of two fire engines and two aerial fire trucks.

Approval of this Ordinance authorizes the execution and delivery of a loan agreement between the City and NMFA. The City would borrow up to $5,000,000 to finance the acquisition of two fire engines, two aerial fire trucks, and pay the related debt issuance costs (Series 2022). The revenue pledged to finance the acquisition of two fire engines and two aerial fire trucks would come from a subordinate lien on the City's state shared gross receipts tax distribution.

Due to timing of the bond approval scheduling by NMFA, at the first reading of this proposed Ordinance, only a sample ordinance (preliminary) and bond purchase 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. Clean and redlined copies of the final bond ordinance

is then provided in the agenda packets for the meeting at which final adoption is scheduled. The final documents and associated attachments are listed below.

SUPPORT INFORMATION:
EXHIBIT "A" Bond Purchase Agreement SSGRT
EXHIBIT "B" Intercept Agreement SSGRT Sub Lien Series 2022 draft
Attachment "A" Ordinance in redlined - legislative 2022

PLAN(S):
Department Strategic Business Plan

COMMITTEE/BOARD REVIEW:
None

ANNUAL BUDGET APPROVAL:
☐ Yes
☐ No
☒ N/A

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

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

OPTIONS / ALTERNATIVES:
1. Vote "Yes"; this will approve the Ordinance and will allow the City to accept the loan from NMFA and proceed with the acquisition of two fire engines and two aerial fire trucks.
2. Vote "No"; this will not approve the Ordinance and will not allow the City to accept the loan from NMFA and use this funding mechanism to finance two fire engines and two aerial fire trucks.
3. Vote to "Amend"; this could delay the execution and delivery of the loan from NMFA and the acquisition of two fire engines and two aerial fire trucks.
4. Vote to "Table"; this could delay the financing opportunity and increase the projected cost of two fire engines and two aerial fire trucks.

REFERENCE INFORMATION:
1. Resolution 23-010
2. Exhibit "A" Bond Purchase Agreement SSGRT 2022
3. Exhibit "B" Intercept Agreement SSGRT 2022 draft
4. Attachment "A" Ordinance in redlined - legislative 2022

ORDINANCE 3007; COUNCIL BILL 23-001

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2022 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $5,000,000 FOR THE ACQUISITION OF FIRE ENGINES, AERIAL FIRE TRUCKS, AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.

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

The City Council is informed that:

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

WHEREAS, pursuant to Section 7-1-6.4 NMSA 1978, the City now receives monthly from the Revenue Division of the New Mexico Taxation and Revenue Department from the statewide gross receipts tax imposed on any person engaging in business in New Mexico, a distribution of the gross receipts tax which is to be in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of 1.225% divided by the tax rate imposed by Section 7-9-4 NMSA 1978, times the net receipts (i.e. the total gross receipts tax less any refunds disbursed in that month) for the month attributable to the gross receipts tax from business locations within the City and other places designated in Section 7-1-6.4 NMSA 1978 (such distributions to the City as further defined herein the ("Pledged Revenues"); and

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

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

WHEREAS, except for the 2011A Bonds, the 2014 Bonds, the 2015 Bonds, the 2016 Subordinate Lien Bonds, 2017 Bonds, the 2017 NMFA Loan, the 2019 Subordinate Lien Bonds, the 2020 Refunding Bonds, the 2020A Bonds, and the 2020B Subordinate Lien Bonds, the Pledged State Shared Gross Receipts Tax Revenues are not pledged to the payment of any bonds or other obligations which are presently outstanding; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its residents that the Series 2022 Bonds be issued with a subordinate lien, but not an exclusive subordinate lien, on the Pledged State Shared Gross Receipts Tax Revenues subordinate to the lien thereon of outstanding Parity Bonds and on parity with the lien thereon of the outstanding Subordinate Obligations; and

WHEREAS, the proposed forms of this Bond Ordinance, the Bond Purchase Agreement and Intercept Agreement have been on deposit with the City Clerk and presented to the City Council; and

WHEREAS, the City Council expects to sell the Series 2022 Bonds in a private placement to the New Mexico Finance Authority (the "Purchaser"), as determined pursuant to the Pricing Certificate supplementing this Bond Ordinance, and to delegate authority to the City Manager or City Financial Services Director to

execute and deliver the Pricing Certificate to the Purchaser, as authorized by Section 6-14-10.2 NMSA 1978, provided that the final terms of the Bonds set forth in the Pricing Certificate be within the parameters set forth in this Ordinance; and

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

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

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

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

"Act" means the general laws of the State, including Sections 3-31-1 to 3-31-12 NMSA 1978, as amended, the home rule powers of the City under the Charter and Article X, Section 6 of the Constitution of the State, and enactments of the City Council relating to the Pledged Revenues and the issuance of the Bonds, including this Bond Ordinance.

"Bond Insurance Policy" means the financial guaranty insurance policy, if any, issued by the Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.

"Bond Ordinance" means this City Ordinance No. 3007 adopted on August 15, 2022, as supplemented by the Pricing Certificate.

"Bond Purchase Agreement" means the agreement between the City and the Purchaser providing for the sale of the Bonds by the City and the purchase of the Bonds by the Purchaser pursuant to the terms set forth therein and in the Pricing Certificate.

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

"Bonds" or "Series 2022 Bonds" or "2022 Bonds" means the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022 authorized by this Bond Ordinance, as supplemented by the Pricing Certificate.

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

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

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

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

"Code" means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations whether proposed, temporary or final, including

regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds, and under the statutory predecessor of the Code and any successor provisions to those sections or regulations.

"Continuing Disclosure Undertaking" means the continuing disclosure agreement with respect to the Bonds to be executed on the day of issuance and delivery of the Bonds to the Purchaser, if required by the Purchaser.

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

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

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

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

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

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

"Hold Harmless Distribution" means any distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the gross receipts tax revenues received pursuant to Section 7-1-6.4 NMSA 1978, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978.

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

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

"Intercept Agreement" means the Intercept Agreement, if any, dated the Closing Date between the City and the New Mexico Finance Authority providing for the direct payment, if required, by the New Mexico Department of Taxation and Revenue to the New Mexico Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest and any other amounts due on the Bonds, and any amendments or supplements to the Intercept Agreement.

"Interest Payment Date" means each June 1 and December 1, commencing December 1, 2022 (or such other date specified in the Pricing Certificate).

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

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

"Notice of Sale" means, if the Bonds are sold in a competitive sale, the official notice of sale of the Bonds.

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

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

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

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

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

"Parity Bonds" or "Parity Obligations" means the 2011A Bonds, the 2014 Bonds, the 2015 Bonds, the 2017 Bonds, the 2017 NMFA Loan, the 2020 Refunding Bonds, the 2020A Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a first lien upon the Pledged Revenues.

"Parity Subordinate Obligations" means the 2016 Subordinate Bonds, the 2019 Subordinate Bonds, the 2020B Bonds, the Series 2022 Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a lien upon the Pledged Revenues subordinate and junior to the lien thereon of the Parity Bonds and on parity with the Parity Subordinate Obligations, as provided in Section 20 of this Bond Ordinance.

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

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

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

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

1.U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership.
2.Farmers Home Administration (FmHA)
Certificates of beneficial ownership
3.Federal Financing Bank

4.Federal Housing Administration Debentures (FHA)
5.General Services Administration
Participation certificates
6.Government National Mortgage Association (GNMA or “Ginnie Mae”)
GNMA - guaranteed mortgage-backed bonds
GNMA - guaranteed pass-through obligations
7.U.S. Maritime Administration
Guaranteed Title XI financing
8.U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. government guaranteed debentures
U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

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

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

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

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

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

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

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

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

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

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

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

1. Repos must be between the City and a dealer bank or securities firm
   a. Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by S&P and Moody's, or
   b. Banks rated “A” or above by S&P and Moody's.
2. The written repo contract must include the following:
   a. Securities which are acceptable for transfer are:
      (1) Direct U.S. governments, or
      (2)Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)
   b. The term of the repo may be up to 30 days
   c. The collateral must be delivered to the City, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).
   d. Valuation of Collateral
      (1) The securities must be valued weekly, marked-to-market at current market price plus accrued interest.
         (a) The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.
3. Legal opinion which must be delivered to the City:
   a. Repo meets guidelines under state law for legal investment of public funds.

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

“Pledged Revenue Fund” means the State Shared Gross Receipts Tax Revenue Fund, continued in Section 16 of this Bond Ordinance.

“Pledged State Shared Gross Receipts Tax Revenues” or “Pledged Revenues” means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to this Bond Ordinance; and provided further that the amount of revenues pledged pursuant to this Bond Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law, and includes the Hold Harmless Distribution to the extent the City receives any Hold Harmless Distribution; and provided further, the City intends

that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Bond Ordinance (the term "Pledged State Shared Gross Receipts Tax Revenues" does not include any local option gross receipts tax income received by the City).

"Preliminary Official Statement" means the initial disclosure document relating to the issuance and sale of the Bonds, if any.

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

"Purchaser" means the New Mexico Finance Authority or such other purchaser as set forth in the Pricing Certificate.

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

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

"Reserve Fund Insurance Policy" means any insurance policy, surety bond or letter of credit deposited in or credited to the Reserve Fund, if any, as provided in the Pricing Certificate in lieu of or in partial substitution for cash or allowable investments on deposit in the Reserve Fund.

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

"State" means the State of New Mexico.

"2011A Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2011A" issued in the original aggregate principal amount of $9,640,000 and authorized by City Ordinance No. 2618 adopted by the City Council on June 8, 2011.

"2014 Bonds" means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2014 issued in an original aggregate principal amount of $10,000,000 and authorized by City Ordinance No. 2718 adopted by the City Council on June 24, 2014.

"2015 Bonds" means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2015 issued in an original aggregate principal amount of $19,195,000 and authorized by City Ordinance No. 2739 adopted by the City Council on December 1, 2014 and Resolution No. 15-140 adopted by the City Council on February 3, 2015.

"2016 Subordinate Bonds" means the "City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2016" authorized in the original aggregate principal amount of $8,585,000 and authorized by City Ordinance No. 2774 adopted by the City Council on February 16, 2016 and Resolution No. 16-18 adopted by the City Council on March 9, 2016.

"2017 Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2017" issued in an original aggregate principal amount of $10,570,000 and authorized by City Ordinance No. 2808 adopted by the City Council on May 1, 2017 and Resolution No. 17-187 adopted by the City Council on May 10, 2017.

"2017 NMFA Loan" means the loan agreement between the City and the New Mexico Finance Authority executed on February 24, 2017 in the original aggregate principal amount of $3,203,527 and authorized by City Ordinance No. 2801 adopted by the City Council on January 17, 2017.

"2019 Subordinate Bonds" means the "City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2019 authorized in the original aggregate principal amount of $8,870,000 and authorized by City Council Ordinance No. 2894 adopted on August 5, 2019.

"2020 Refunding Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2020" authorized in the original aggregate principal amount of $15,435,000 and authorized by City Council Ordinance No. 2912 adopted on February 18, 2020.

"2020A Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020A" authorized in the original aggregate principal amount of $7,190,000 and authorized by City Council Ordinance No. 2925 adopted on May 18, 2020.

"2020B Bonds" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020B" authorized in the original aggregate principal amount of $6,750,000 and authorized by City Council Ordinance No. 2925 adopted on May 18, 2020.

"2022 Acquisition Fund" means the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, Improvement Project Acquisition Fund" established by Section 16 of the Bond Ordinance.

"2022 Debt Service Fund" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, Debt Service Fund" established in Section 16 of this Bond Ordinance.

"2022 Improvement Project" means (1) the acquisition of fire engines, aerial fire trucks, and fire equipment for the City Fire Department and (2) paying Expenses related to the issuance of the Series 2022 Bonds.

"2022 Minimum Reserve" means an amount equal to the least of (i) ten percent of the principal amount of the outstanding Series 2022 Bonds, (ii) the maximum annual debt service on the outstanding Series 2022 Bonds, or (iii) 125% of the average annual debt service on the outstanding Series 2022 Bonds. The Minimum Reserve shall be recalculated every year on or about June 1.

"2022 Reserve Fund" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, Reserve Fund" established by Section 16 of this Bond Ordinance.

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

Section 3.Authorization of the 2022 Improvement Project. The 2022 Improvement Project and the method of financing the 2022 Improvement Project are hereby authorized and ordered at a total cost estimated not to exceed the amount of the Bond proceeds allocated to the Project as set forth in the Pricing Certificate and

any investment earnings thereon, excluding any such cost defrayed or to be defrayed by any source other than Bond proceeds.

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

A.The 2022 Improvement Project is needed to meet the needs of the City and its inhabitants.

B.Moneys available for the 2022 Improvement Project from all sources other than the issuance of Revenue Bonds are not sufficient to defray the cost of the 2022 Improvement Project.

C.The Pledged Revenues may lawfully be pledged to secure the payment and redemption of the Bonds.

D.It is economically feasible to defray, in part, the cost of the 2022 Improvement Project by the issuance of the Bonds.

E.The issuance of the Bonds pursuant to the Act, to provide funds to finance the costs of the 2022 Improvement Project is necessary and in the interest of the public health, safety and welfare of the residents of the City.

F.The City is current in the accumulation of all amounts which are required to have been accumulated in the debt service funds and the reserve funds, if any, for the outstanding Parity Bonds and the Parity Subordinate Obligations.

Section 5.Bonds – Authorization, Parameters and Detail.

A.Authorization. This Bond Ordinance has been adopted by the affirmative vote of at least three-fourths of all of the members of the City Council. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the City, it is hereby declared necessary that the City, pursuant to the Act, issue one series of its negotiable, fully registered, revenue bonds to be designated the “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022” in an aggregate principal amount not to exceed $5,000,000, and the issuance, sale and delivery of the Bonds is hereby authorized.

B.Parameters Authorized; Details of Bonds. There is hereby authorized and created a series of bonds designated as the City of Las Cruces, New Mexico, Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022. The Series 2022 Bonds shall be issued subject to the following parameters:

(i)The Series 2022 Bonds shall be issued in an aggregate principal amount not to exceed $5,000,000 for the 2022 Improvement Project.

(ii)The net effective interest rate on the Series 2022 Bonds shall not exceed 12% per annum.

(iii)The final maturity of the Series 2022 Bonds shall not be later than June 1, 2034.

(iv)The Series 2022 Bonds shall be sold with a maximum underwriting or purchaser’s discount not to exceed 1.00%.

(iv) The Series 2022 Bonds shall be payable solely from, and shall constitute a subordinate lien upon the Pledged Revenues, subordinate to the lien thereon of the Parity Obligations and on a parity with the outstanding Parity Subordinate Obligations.

(v) The Series 2022 Bonds shall be sold to the Purchaser pursuant to private placement with the Purchaser.

(vi)The maximum sale price of the Series 2022 Bonds shall be not more than $5,000,000, exclusive of premium payable in connection with the issuance of the Bonds.

(vii)The Series 2022 Bonds shall be in substantially the form set forth in this Ordinance.

C.The City Manager or City Financial Services Director, is hereby authorized pursuant to this Ordinance to approve the final terms of the Bonds as permitted by Section 6-14-10.2 NMSA 1978, and to execute and deliver the Pricing Certificate and the Bond Purchase Agreement. The forms of the Bond Purchase Agreement and Intercept Agreement submitted with the adoption of this Ordinance are hereby approved with such changes as are approved by the Delegate consistent with the parameters outlined in this Ordinance.

D.The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in such numbers and denominations as may be requested by the Purchaser, but exchangeable for other fully registered Bonds of any denominations which are multiples of $5,000. The Bonds shall be numbered separately and consecutively, shall be dated the date of their delivery to the Purchaser, shall mature on June 1 of each year and shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date, payable semi-annually on June 1 and December 1 in each year commencing on December 1, 2022 (or such other date as specified in the Pricing Certificate) until their respective maturities. The Bonds shall bear the rates of interest, maturities and provisions for redemption prior to maturity as shall be established in the Pricing Certificate.

Section 6. Redemption of Bonds.

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

B.Conditional Redemption. If money or Defeasance Obligations (as defined in Section 31) sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to paragraph A of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit

with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in the manner deemed reasonable and fair by the City and the Registrar shall give notice, in the manner in which the original notice or optional redemption was given, that such money was not received and the information required by paragraph A of this Section. In that event, the Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been optionally redeemed.

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

Section 8.Execution and Authentication of Bonds.

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

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

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

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

to bear interest at the rate or rates designated in, and applicable to, such Bond from time to time. If any Bond is not presented for payment at maturity or redemption when funds available therefor have been deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity or redemption.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Form of Bond)

UNITED STATES OF AMERICA

STATE OF NEW MEXICO COUNTY OF DOÑA ANA

CITY OF LAS CRUCES, NEW MEXICO

SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX

IMPROVEMENT REVENUE BONDS,

SERIES 2022

Bond No. _____$_____

INTEREST RATE MATURITY DATE DATE OF BOND CUSIP

% per annum June 1, _____ , 2022 _____

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____

The City of Las Cruces (the "City"), in the County of Doña Ana and State of New Mexico, a municipal corporation duly organized and existing under the Constitution and laws of the State of New Mexico, for value received, hereby promises to pay, solely from the special funds available for the purpose as hereinafter set forth, to the registered owner named above or registered assigns, on the Maturity Date specified above, upon presentation and surrender hereof at the principal office of the City Treasurer, Las Cruces, New Mexico, as paying agent, or any successor paying agent (the "Paying Agent"), the Principal Amount stated above, in lawful money of the Unites States of America, and to pay from such sources interest on the unpaid principal amount at the Interest Rate on December 1, 2022 and on June 1 and December 1 of each year (each an "Interest Payment Date") thereafter to its maturity, or until redeemed if called for redemption prior to maturity. This bond will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from its date. Interest on this bond is payable by check mailed to the registered owner hereof (or by such other arrangement as may be mutually agreed to by the Paying Agent and the registered owner) as shown on the registration books for this issue maintained by the City Treasurer, Las Cruces, New Mexico, as registrar, or any successor registrar (the "Registrar") at the address appearing therein at the close of business on the fifteenth day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the owner hereof as of the Record Date but shall be payable to the owner hereof at the close of business on a special record date to be fixed by the Paying Agent for the payment of interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to owners of Bonds (defined below) as then shown on the Registrar's registration books not less than ten (10) days prior to the special record date. If, upon presentation at maturity or redemption, payment of this bond is not made as herein provided, interest hereon shall continue at the Interest Rate until the principal hereof is paid in full. The principal, premium, if any, and interest on this bond are payable in lawful money of the United States of America, without deduction for the services of the Paying Agent or the Registrar.

This bond is one of a duly authorized series of fully registered bonds of the City in the aggregate principal amount of $_____ issued in denominations of $5,000 or integral multiples thereof, designated as the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022 (the "Series 2022 Bonds") issued under and pursuant to City Ordinance No. ____, as supplemented by a Pricing Certificate dated _____ , 2022 (as supplemented, the "Bond Ordinance").

The Series 2022 Bonds maturing on and after June 1, ____, are subject to prior redemption at the City's option in one or more units of principal of $5,000 on and after June 1, ____ in whole or in part at any time, in such order of maturities as the City may determine (and by lot if less than all of the Series 2022 Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner considered appropriate and fair), for the principal amount of each $5,000 unit of principal so redeemed plus accrued interest to the redemption date.

Redemption shall be made upon prior notice mailed to each registered owner of each Series 2022 Bond selected for redemption as shown on the registration books kept by the Registrar in the manner and upon the conditions provided in the Bond Ordinance.

Notice of redemption of this bond will be given by providing at least thirty (30) days prior written notice in the manner required by the depository for the Bonds or by first-class postage prepaid mail to the owner hereof at the address shown on the registration books as of the fifth day prior to the mailing of notice as provided in the Bond Ordinance. Notices of redemption will specify the number or numbers and maturity date of the Series 2022 Bonds to be redeemed (if less than all are to be redeemed), the date fixed for redemption, the amount of such Bond to be redeemed (if less than the full amount of any Bond is to be redeemed), and shall further state that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount thereof plus accrued interest to the redemption date and that from and after such date, the redemption amount having been deposited and notice having been given, interest will cease to accrue. Upon any partial prior redemption of this bond, the registered owner, in its discretion, may request the Registrar to authenticate a new bond or to make an appropriate notation on this bond indicating the date and amount of prepayment, except in the case of final maturity, in which case this bond must be presented to the Paying Agent prior to payment.

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

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

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

This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the City, and is payable and collectible solely out of the revenues derived from the revenues from the Pledged Revenues (as such term is defined in the Bond Ordinance) and the bondholders may not look to any other general or other municipal fund for the payment of the interest and principal of this bond. The lien of the Series 2022 Bonds on the Pledged Revenues is an irrevocable and subordinate lien, but not necessarily an exclusive subordinate lien, on the Pledged Revenues. Upon satisfaction of the conditions set forth in the Bond Ordinance, additional bonds may be issued and made payable from the Pledged Revenues having a lien thereon either on parity with or senior to the lien on the Pledged Revenues of the Series 2022 Bonds Amounts and securities held in the 2022 Debt Service Fund and 2022 Reserve Fund (if any), as such terms are defined in the Bond Ordinance, have been exclusively pledged for payment of the principal of, premium, if any, and interest on the 2022 Bonds.

The Series 2022 Bonds are issued to provide funds to defray in part the costs of (1) the acquisition of fire engines, aerial fire trucks, and fire equipment for the City Fire Department and (2) the payment of Expenses related to the issuance of the Series 2022 Bonds.

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

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

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

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

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

CITY OF LAS CRUCES, NEW MEXICO

By_____

Mayor

By_____

City Clerk

(SEAL)

(Form of Registrar's Certificate of Authentication)

Certificate of Authentication

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

Date of Authentication:

City Treasurer of the City of Las Cruces,

New Mexico, as Registrar

By_____

Authorized Officer

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

(Form of Assignment)

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

Social Security or Tax Identification No. of Assignee_____

Dated: _____

Signature Guarantee:

_____

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

(End of Form of Assignment)

(End of Form of Bond)

Section 14.Period of 2022 Improvement Project's Usefulness. It is hereby determined and recited that the period of usefulness of the 2022 Improvement Project financed with the proceeds of the Series 2022 Bonds will not expire prior to the final maturity date of the Series 2022 Bonds.

Section 15.Use of Bond Proceeds and Other Funds; Completion of 2022 Improvement Project. Except as herein otherwise specifically provided, the proceeds derived from the sale of the Bonds, shall be used and paid solely for the valid costs of the 2022 Improvement Project.

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

B.Acquisition Fund. Proceeds derived from the sale of the Series 2022 Bonds in an amount to be specified in the Pricing Certificate shall be deposited promptly upon the receipt thereof in the 2022 Acquisition Fund to be held by the trustee for the Purchaser. Until the completion of the 2022 Improvement Project, the

money in the 2022 Acquisition Fund shall be used and paid out solely for the purpose of the 2022 Improvement Project in compliance with applicable law.

C.Reserve Fund. No deposit of proceeds of the Bonds, Pledged State Shared Gross Receipts Tax Revenues or other City moneys into the 2022 Reserve Fund shall be required on the date of issuance of the Bonds or at any time thereafter, except in the circumstances and on the conditions described in paragraph B of Section 17 of this Bond Ordinance.

D.2022 Improvement Project Completion. As soon as practicable after completion of the 2022 Improvement Project, and in any event not more than 60 days after completion of the 2022 Improvement Project, any proceeds remaining unspent (other than any amount retained by the City for any 2022 Improvement Project costs not then due and payable) shall be transferred and deposited in the 2022 Debt Service Fund and used by the City to pay principal and interest on the Series 2022 Bonds as same become due.

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

F.Bond Insurance Policy and/or Reserve Fund Insurance Policy. A Bond Insurance Policy and/or Reserve Fund Insurance Policy may be obtained in connection with the issuance of each of the Series 2022 Bonds, as may be provided in the Pricing Certificate. The covenants of the City and other provisions required by the issuer of the Bond Insurance Policy and/or Reserve Fund Insurance Policy or otherwise necessary or advisable in connection with the Bond Insurance Policy and/or Reserve Fund Insurance Policy shall be included in the Pricing Certificate.

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

A.2022 Acquisition Fund. The “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, Improvement Project Acquisition Fund” to be maintained by the City or by the trustee for the Purchaser.

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

C.2022 Debt Service Fund. The “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, Debt Service Fund” (the “2022 Debt Service Fund”) to be maintained by the City or by the trustee for the Purchaser.

D.2022 Reserve Fund. The “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, Reserve Fund” (the “2022 Reserve Fund”) to be maintained by the City or by the trustee for the Purchaser.

Section 17.Deposit of Pledged Revenues and Flow of Funds. So long as any of the outstanding obligations payable from the Pledged Revenues shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues.

A.Payment of Parity Obligations. As a first lien on amounts on deposit in the Pledged Revenue Fund, the City shall pay the of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Obligations payable from the Pledged Revenues as required by the ordinances authorizing the issuance of the Parity Obligations. If funds on deposit in the Pledged Revenue Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Obligations, then the available funds in the Pledged Revenue Fund will be used, first, on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity

Obligations, for the payment of principal of and interest on all series of outstanding Parity Obligations and, second, to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Obligations, for the required debt service reserve fund deposits for all series of outstanding Parity Obligations.

B. Payment of Parity Subordinate Obligations. Subsequent to the payments required by the outstanding Parity Obligations, any balance remaining in the Pledged Revenue Fund, after making the payments hereinabove provided, shall be used by the City for the payment of interest on and the principal of the Series 2022 Bonds and all other Outstanding Parity Subordinate Obligations or other obligations, if any, having a lien on any of the Pledged Revenues subordinate to the lien thereon of the Parity Obligations hereafter authorized, issued and payable from the Pledged Revenues, as the same become due. So long as any of the Series 2022 Bonds shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues on a parity with the payments required by the outstanding Parity Subordinate Obligations:

(i)2022 Debt Service Fund Payments. The following amounts shall be withdrawn from the State Shared Gross Receipts Tax Revenue Fund (and on parity with other outstanding Parity Subordinate Obligations), and shall be concurrently credited to the 2022 Debt Service Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(aa)Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2022 Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Series 2022 Bonds, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Series 2022 Bonds then outstanding.

(bb)Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2022 Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the outstanding Series 2022 Bonds and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Series 2022 Bonds then outstanding.

(ii)Credit. In making the deposits required to be made into the 2022 Debt Service Fund, if there are any amounts then on deposit in the 2022 Debt Service Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph (aa) above shall be reduced by the amount available in such fund for such purpose.

(iii)Transfer of Money out of 2022 Debt Service Fund. Each payment of principal and interest becoming due on the Series 2022 Bonds shall be transferred from the 2022 Debt Service Fund to the Paying Agent on or before two Business Days prior to the due date of such payment.

(iv)2022 Reserve Fund and Reserve Fund Insurance Policy. No deposit shall be required in the 2022 Reserve Fund upon the issuance of the 2022 Bonds or any time thereafter except in the event that the City's credit rating for its outstanding Parity State Shared Gross Receipts Tax Revenue Bonds is downgraded to a rating that is below the rating of A/A2 by any of the nationally recognized securities rating agencies identified in this Ordinance. If such downgrade below A/A2 occurs, the City shall promptly notify the Purchaser and shall follow the procedure outlined in either subsection (a) or subsection (b) of this paragraph.

(a) The City shall begin making substantially equal monthly deposits in the 2022 Reserve Fund from the first legally available Pledged State Shared Gross Receipts Tax Revenues so that after 24 months an amount equal to the 2022 Minimum Reserve will be held in the 2022 Reserve Fund.

(b) Alternatively, the City shall deposit in the 2022 Reserve Fund one or more Reserve Fund Insurance Policies approved by the Purchaser which are equal to the 2022 Minimum Reserve. The Reserve Fund Insurance Policies shall continue to be in force until the earlier of (a) the final maturity date of the Series 2022

Bonds (unless such date is extended by agreement of the provider of the policy or surety bond) or (b) the date on which there are sufficient funds on deposit in the Series 2022 Debt Service Fund to pay the principal of and interest due on the Series 2022 Bonds.

After funding the 2022 Reserve Fund in an amount equal to the 2022 Minimum Reserve, no additional payments need be made into the 2022 Reserve Fund so long as the moneys therein shall equal not less than the 2022 Minimum Reserve. The moneys (if any) in the 2022 Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in subparagraph B(v) of this Section 17, only to prevent deficiencies in the payment of the principal of and interest on the Series 2022 Bonds resulting from failure to deposit into the 2022 Debt Service Fund sufficient funds to pay the principal and interest as the same accrue.

(v)Defraying Delinquencies in the 2022 Debt Service Fund and 2022 Reserve Fund. If, on any Interest Payment Date, the amount on deposit in the 2022 Debt Service Fund is insufficient to pay principal of and interest on the 2022 Bonds then due, then an amount shall be paid into the 2022 Debt Service Fund on such date from the 2022 Reserve Fund (if moneys are then on deposit in the 2022 Reserve Fund) equal to the amount of the insufficiency. The money deposited in the 2022 Debt Service Fund from the 2022 Reserve Fund, if any, shall be replaced in the Reserve Fund in 24 substantially equal monthly deposits commencing on the first day of the first month immediately succeeding the draw on the 2022 Reserve Fund. Such accumulation shall be made from the Pledged Revenues second to the payments required by subparagraph I(i)(aa)(1) and (2) of this Section 17. If, in any month, the City shall, for any reason, fail to pay into the 2022 Reserve Fund the full amount required, the difference between the amount paid and the amount so stipulated shall be paid therein from the first Pledged Revenues thereafter received and not required to be otherwise applied. The moneys in the 2022 Reserve Fund shall be used solely and only for the purpose of paying any deficiencies in the payment of the principal of and the interest on the 2022 Bonds; provided, however, that any moneys at any time in excess of the 2022 Minimum Reserve in the 2022 Reserve Fund may be withdrawn therefrom and applied to any other lawful purpose. Cash accumulated in the 2022 Reserve Fund shall not be invested in a manner which could cause the 2022 Bonds to become arbitrage bonds within the meaning of the Code. Any investments held in the 2022 Reserve Fund shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the 2022 Reserve Fund exceeds the 2022 Minimum Reserve, all amounts in excess of the 2022 Minimum Reserve shall be transferred to the 2022 Debt Service Fund and used to pay principal of and interest on the 2022 Bonds.

(vi)Payment of Parity Subordinate Obligations. Concurrently with and on the same priority as the payment of the Pledged Revenues required by subparagraphs B(i), (iv) and (v) of this Section, any amounts on deposit in the Pledged Revenue Fund shall be used by the City for the payment of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Subordinate Obligations payable from the Pledged Revenues, as the same become due. If funds on deposit in the Pledged Revenue Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to the 2022 Bonds and any other outstanding Parity Subordinate Obligations, then the available funds in the Pledged Revenue Fund will be used, first (after payment of the Parity Obligations), on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Subordinate Obligations, for the payment of principal of and interest on all series of outstanding Parity Subordinate Obligations and, second, to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Subordinate Obligations, for the required debt service reserve fund deposits for all series of outstanding Parity Subordinate Obligations.

(vii)Termination Upon Deposits to Maturity. No payment shall be made into the 2022 Debt Service Fund or the 2022 Reserve Fund (if required to be funded) if the amounts in such funds total a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Series 2022 Bonds to their respective maturities or applicable redemption dates, in which case moneys in the 2022 Debt Service Fund and the 2022 Reserve Fund in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in the 2022 Debt Service Fund and the 2022 Reserve Fund may be used as provided below.

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

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

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

B.Investment of Moneys. Moneys in the 2022 Reserve Fund shall be invested in accordance with paragraph C of this Section 18, and moneys in any other fund or account not immediately needed may be invested in any investment permitted by the laws of the State or by the Charter. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The City Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

C.Reserve Fund. Moneys, if any, in the 2022 Reserve Fund may be invested only in Permitted Investments with an average aggregate weighted term to maturity not greater than five years. The City shall annually on or about June 1 of each year, commencing on the first June 1 succeeding funding of the 2022 Reserve Fund, value the 2022 Reserve Fund on the basis of the current fair market value of deposits and investments credited to each of the 2022 Reserve Fund. If, upon any valuation, the value of the 2022 Reserve Fund exceeds the 2022 Minimum Reserve, the excess amount shall be withdrawn and deposited into the 2022 Debt Service Fund; if the value is less than the applicable requirement, the City shall replenish such amounts from the first Pledged Revenues thereafter received not required to be otherwise applied or other monies legally available therefor.

At such time as the Series 2022 Bonds are paid in full or are deemed to be paid in full, the amount on deposit in the 2022 Reserve Fund may be used to pay the final installments of principal and interest on the Series 2022 Bonds and otherwise may be withdrawn and transferred to the City to be used for any lawful purpose, provided that, if such amounts are used for a purpose other than payment of the Series 2022 Bonds, there shall be delivered an opinion of nationally recognized bond counsel that the purpose for which such funds are to be used is a lawful purpose for which such proceeds may be used under the laws of the State of New Mexico and that such use shall not result in the inclusion of interest on any Series 2022 Bonds in gross income of the recipient thereof for federal income tax purposes.

If moneys have been withdrawn from the 2022 Reserve Fund and deposited into the 2022 Debt Service Fund to prevent a default on the Series 2022 Bonds, then the City will pay, from Pledged Revenues or other monies legally available therefor, the full amount so withdrawn or so much as shall be required to restore the 2022 Reserve Fund to the 2022 Minimum Reserve. Such repayment shall be made as required by Section 17 of this Bond Ordinance.

Section 19.Lien on Pledged Revenues. The Pledged Revenues and the amounts and securities on deposit in 2022 Debt Service Fund and the 2022 Reserve Fund, if any, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein for, the payment of the principal of, premium, if any, and interest on the Series 2022 Bonds, subject to the uses thereof permitted by, and the priorities set forth in, this Bond Ordinance. The Series 2022 Bonds constitute an irrevocable and subordinate lien, but not an exclusive subordinate lien on the Pledged Revenues, subordinate to the lien thereon of the outstanding Parity Obligations and additional Parity Obligations, if any, hereafter authorized to be issued and payable from Pledged Revenues, and on parity with the lien thereon of the outstanding Parity Subordinate Obligations and additional Parity Subordinate Obligations, if any, hereafter authorized to be issued and payable from the Pledged Revenues.

Section 20.Additional Obligations Payable from Pledged Revenues.

A.Parity Obligations. This Bond Ordinance shall not prevent the issuance of additional Parity Bonds payable from and constituting a lien upon the Pledged Revenues on parity with the lien of the Parity Obligations in accordance with the ordinances authorizing the issuance of the outstanding Parity Obligations.

B.Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from Pledged Revenues pledged by this Bond Ordinance and having a lien on any of the Pledged Revenues subordinate to the lien of the Series 2022 Bonds.

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

Section 21.Additional Parity Subordinate Obligations Payable from Pledged Revenues.

A.Parity Subordinate Obligation Test. This Bond Ordinance shall not prevent the issuance of additional Parity Subordinate Obligations payable from and constituting a subordinate lien upon the Pledged Revenues on parity with the lien of the Series 2022 Bonds. Before any additional Parity Subordinate Obligations are actually issued, it must be determined that:

(1)The City is then current in the accumulation of all amounts which are then required to be on deposit in 2022 Debt Service Fund and 2022 Reserve Fund, in accordance with Section 17 of this Bond Ordinance; and

(2)The Pledged State Shared Gross Receipts Tax Revenues (not including any Hold Harmless Distribution) received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Subordinate Lien Bonds shall have been sufficient to pay an amount representing at least 150% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Parity Obligations, (2) outstanding Parity Subordinate Obligations, and (3) the Parity Subordinate Obligations proposed to be issued.

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

B.Certification or Opinion Regarding Pledged Revenues. A written certificate or opinion by an Independent Accountant or the City Treasurer or City Financial Services Director, that the Pledged Revenues (not including any Hold Harmless Distribution) are sufficient to pay the required amounts under the test in paragraph A of this Section, shall conclusively determine the right of the City to issue additional Parity

Subordinate Obligations. The Independent Accountant, City Treasurer or City Financial Services Director may utilize the results of any annual audit to the extent it covers the applicable period.

C.Super Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from Pledged Revenues pledged by this Bond Ordinance and having a lien on any of the Pledged Revenues subordinate to the lien of the Series 2022 Bonds.

Section 22.Refunding Bonds. The provisions of Section 20 and Section 21 of this Bond Ordinance are subject to the following exceptions:

A.Privilege of Issuing Refunding Obligations. If at any time the City shall find it desirable to refund any outstanding Parity Obligations, or any part thereof, such obligations may be refunded, but only in accordance with the ordinances authorizing the issuance of such Parity Obligations.

B.Limitation Upon Issuance of Parity Subordinate Refunding Obligations. No refunding obligations shall be issued with a lien on the Pledged Revenues on parity with the lien of the Series 2022 Bonds, unless:

(1)The lien on the Pledged Revenues of the outstanding obligations so refunded is on parity with the lien on the Pledged Revenues of the Series 2022 Bonds; or

(2)The refunding obligations are issued in compliance Section 21 of this Bond Ordinance.

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

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

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

(3)The refunding bonds or other refunding obligations are issued in compliance with Section 20 (in the case of Parity Refunding Obligations) or Section 21 (in the case of Parity Subordinate Refunding Obligations) of this Bond Ordinance.

D.Limitation Upon Issuance of Any Refunding Obligations. Any refunding obligations payable from Pledged Revenues shall be issued with such details as the City Council may provide, subject to the inclusion of any such rights and privileges designated in paragraph B of this Section but without impairing any contractual obligation imposed by any proceedings authorizing any unrefunded portion of any issue or issues, including the Series 2022 Bonds.

Section 23.Equality of Parity Subordinate Obligations. The Parity Subordinate Obligations from time to time outstanding shall not be entitled to any priority one over the other in the application of the Pledged Revenues, regardless of the time or times of their issuance or the date incurred, it being the intention of the City Council that, except as set forth herein, there shall be no priority among Parity Subordinate Obligations regardless of whether they are actually issued and delivered or incurred at different times.

Section 24.Protective Covenants. The City hereby covenants and agrees with each and every holder of the Bonds issued hereunder:

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

B.Payment of Bonds Herein Authorized. The City will promptly pay the principal of and the interest on every Series 2022 Bond at the place, on the date and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

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

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

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

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

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

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

I.Debt Service Fund and Reserve Fund. The 2022 Debt Service Fund and the 2022 Reserve Fund shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in this Bond Ordinance.

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

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

L.Tax Covenants. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Mayor, Mayor Pro Tem and other officers of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, other facts and circumstances relevant to the tax treatment of interest on the Bonds, and making related covenants.

The City covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or

persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments, yield reduction payments or payments of alternative amounts in lieu of rebate to the federal government, if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor, Mayor Pro Tem and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

In furtherance of the covenants set forth above, the City hereby establishes a fund separate from any other funds established and maintained hereunder designated as the Rebate Fund (the "Rebate Fund"). Money and investments in the Rebate Fund shall not be used for the payment of the Bonds, and amounts credited to the Rebate Fund shall be free and clear under any pledge under this Bond Ordinance. Money in the Rebate Fund shall be invested in a manner provided in Section 18 for investment of money, and all amounts on deposit in the Rebate Fund shall be held by the City, or a designated trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The City shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The City shall remit all rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted to the City.

Section 25.Preliminary Official Statement and Continuing Disclosure Undertaking.

A.Preliminary Official Statement. If required by the Purchaser, the preparation of the Preliminary Official Statement is hereby requested and approved for use distribution and use in connection with the sale of the Bonds; provided, that the foregoing shall not be applicable in the event that the Bonds are purchased pursuant to a private placement for which the Preliminary Official Statement is not required.

B.Continuing Disclosure Undertaking. If required by the Purchaser, the officers of the City are authorized to sign such documents and to take such actions in the future with respect to the City's continuing disclosure obligations as are necessary or desirable to comply with the Continuing Disclosure Undertaking and the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended; provided, that the foregoing shall not be applicable in the event that the Bonds are purchased pursuant to a private placement for which the Continuing Disclosure Undertaking is not required. Notwithstanding any other provisions of this Bond Ordinance, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an "event of default" under Section 26 hereof, and holders and beneficial owners of Bonds shall be entitled to exercise only such rights with respect thereto as are provided in the Continuing Disclosure Undertaking.

Section 27.Events of Default. Each of the following events is hereby declared an "event of default":

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

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

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

D.Default of any Provision. Default by the City in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in this Bond Ordinance on its part to be performed (other than a default set forth in subparagraphs A and B of this Section), and the continuance of such

default for thirty (30) days after written notice specifying such default and requiring the same to be remedied has been given to the City by the holders of twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding.

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

Section 27.Remedies Upon Default. Upon the happening and continuance of any of the events of default as provided in Section 26 of this Bond Ordinance, then and in every case, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the City, the City Council and its agents, officers and employees, but only in their official capacities, to protect and enforce the rights of any holder of Bonds under this Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any Bondholder, or to require the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Bonds then outstanding. The failure of any Bondholder so to proceed shall not relieve the City or any of its officers, agents or employees of any responsibility for failure to perform, in their official capacities, any duty. Each right or privilege of such holder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

Section 28.Duties Upon Default. Upon the happening of any of the events of default provided in Section 26 of this Bond Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal of and interest on the Bonds promptly as the same become due. All proceeds derived therefrom, so long as any of the Bonds, either as to principal or interest, are outstanding and unpaid, shall be applied as set forth in Section 17 of this Bond Ordinance. In the event the City fails or refuses to proceed as provided in this Section, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the owners of the Bonds as hereinabove provided.

Section 29.Bonds Not Presented When Due. If any Bonds shall not be duly presented for payment when due at maturity or on the redemption date thereof, and if moneys sufficient to pay such Bonds are on deposit with the Paying Agent for the benefit of the owners of such Bonds, all liability of the City to such owners for the payments of such Bonds shall be completely discharged, such Bonds shall not be deemed to be outstanding and it shall be the duty of the Paying Agent to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of the owners of such Bonds as may be provided in any agreement hereafter entered into between the Paying Agent and an officer of the City.

Section 30.Delegated Powers; Authority to Make Budget Adjustments. The officers of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Bond Ordinance, including, without limiting the generality of the foregoing, the publication of the title and general summary of the Bond Ordinance set out in Section 36 (with such changes, additions and deletions as they may determine), the printing of the Bonds, the preparation, printing, execution and distribution of the Preliminary Official Statement and final Official Statement, and the execution of the Continuing Disclosure Undertaking and of such documents or certificates as may be required by the Purchaser or bond counsel. The officers of the City are hereby authorized and directed to take all action necessary to make the budget adjustments needed to reflect the Bond proceeds.

Section 31.Amendment of Bond Ordinance. This Bond Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained herein. Prior to the date of the initial delivery of the Bonds to the Purchaser, the provisions of this Bond Ordinance may be amended with the written consent of the Purchaser, with respect to any changes which are not inconsistent with the substantive provisions of this Bond Ordinance. In addition, this Bond Ordinance may be amended without receipt by the City of any additional consideration, but with the written consent of the holders of seventy-five percent (75%) of the Bonds then outstanding (not including Bonds which may be held for the account of the City); but no ordinance adopted without the written consent of the holders of all outstanding Bonds shall have the effect of permitting:

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

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

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

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

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

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

Section 32.Defeasance. When all principal and interest in connection with the Bonds hereby authorized have been duly paid, the pledge and lien on the Pledged Revenues for the payment of the Bonds shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of this Bond Ordinance. Payment shall be deemed made with respect to any Bond or Bonds when the City has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Defeasance Obligations, as defined below) to meet all requirements of principal and interest as the same become due to their final maturities or upon designated redemption dates. Any Defeasance Obligations shall become due when needed in accordance with a schedule agreed upon between the City and such bank at the time of the creation of the escrow. Defeasance Obligations within the meaning of this Section shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – “SLGs”), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

Section 33.Bond Ordinance Irrepealable. After any of the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as herein provided, or there has been defeasance of the Bonds as herein provided.

Section 34.Severability Clause. If any Section, paragraph, clause or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 35.Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 36.Effective Date. Upon due adoption of this Bond Ordinance, it shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the signatures of the Mayor or Mayor Pro Tem and City Clerk, and the title and general summary of the subject matter contained in this Bond Ordinance (set out in Section 37 below) shall be published in a newspaper which maintains an office and is of general circulation in the City and this Bond Ordinance shall be in full force and effect in accordance with law.

Section 37.General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Bond Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Las Cruces, New Mexico

Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in an ordinance duly adopted and approved by the City Council of the City of Las Cruces, New Mexico, on August 15, 2022, relating to the authorization and issuance of the City's Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Las Cruces City Hall, 700 North Main Street Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2022 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $5,000,000 FOR THE ACQUISITION OF FIRE ENGINES, AERIAL FIRE TRUCKS, AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.

A general summary of the Ordinance is:

The Ordinance authorizes the issuance and sale of the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, in an aggregate principal amount not to exceed $5,000,000 for (1) the acquisition of fire engines, aerial fire trucks, and fire equipment for the City Fire Department and (2) paying Expenses related to the issuance of the Series 2022 Bonds; provides that the Bonds will be payable and collectible from the revenues derived from the 1.225% pledged state shared gross receipts tax distributed to the City; provides that the maturity dates, interest rates, redemption provisions and other details of each series of the Bonds will be as established in the Pricing Certificate, and delegate authority to the City Manager or Financial Services Director to execute and deliver the Pricing Certificate; provides a form of the Bonds; approves preparation, execution and delivery of certain documents relating to the Bonds; makes covenants for the benefit of owners of the Bonds; ratifies action previously taken in connection with the Bonds; and repeals all action in conflict with the Ordinance.

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

(End of Form of Summary for Publication)

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Draft 6/22/2022

$_____

SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS

SERIES 2022

BOND PURCHASE AGREEMENT

August ___, 2022

City of Las Cruces, New Mexico

Las Cruces, New Mexico

The New Mexico Finance Authority (the "Purchaser") enters into this Bond Purchase Agreement ("Agreement") with the City of Las Cruces, New Mexico (the "City") to purchase the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022 in the aggregate principal amount of $_____ (the "Series 2022 Bonds" or the "Bonds"). The Bonds are issued pursuant to the charter of the City, NMSA 1978, Sections 3-31-1 through 3-31-12, Section 6-14-10.2 and Section 6-21-9, as amended (collectively referred to hereafter as, the "Act"), and Ordinance No. ____ of the City Council of the City (the "City Council") adopted on August 15, 2022, as supplemented by the Sale Certificate executed on _____, 2022 (collectively, the "Ordinance") authorizing the sale of the Series 2022 Bonds at a purchase price of $_____ (the "Series 2022 Purchase Price" or the "Purchase Price"). Capitalized terms in this Agreement (including Exhibits) shall have the same definitions as set forth in the Ordinance, unless the term is defined herein or the context used clearly requires otherwise.

1. Purchase, Sale and Delivery of the Bonds.

A. On the basis of the representations, warranties, covenants and agreements contained in this Agreement, the Ordinance and the Bonds, and subject to the terms and conditions set forth herein and therein, the City agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the City, the Bonds for the Purchase Price as set forth in the form of Delivery, Deposit and Cross-Receipt Certificate attached as Exhibit A to this Agreement. The Bonds shall be in the principal amounts, mature on the dates, bear interest at the rates and have the terms set forth the Ordinance.

B. The date of delivery of and payment for the Bonds is referred to in subparagraph C below in this Agreement as the "Closing Date." The Bonds shall be delivered to the Purchaser in typewritten form on the Closing Date upon receipt of the Purchase Price by the City, and a copy of the Bonds shall be available for examination by the Purchaser prior to the Closing Date.

C. The parties hereto understand and agree that the Closing Date will occur on or about _____, 2022 or such other mutually agreeable date.

D. The net proceeds from the issuance of the Series 2022 Bonds will be used for (1) the acquisition of fire engines, aerial fire trucks, and fire equipment for the City Fire Department and (2)

paying Expenses related to the issuance of the Series 2022 Bonds (the "2022 Improvement Project" or the "Project").

E. Proceeds from the sale of the Bonds in an amount equal to the amount of the deposit into the City's Accounts in the Program Fund (as such term is defined in the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Purchaser and BOKF, NA, as successor trustee (the "Trustee"), and the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Purchaser and the Trustee (collectively, the "Indenture") and as set forth in the form of Delivery, Deposit and Cross-Receipt Certificate attached as Exhibit A to this Agreement shall be available for requisition beginning on the Closing Date, upon receipt of a properly executed requisitions in substantially the same forms attached to this Agreement as Exhibit B.

2. Representations, Warranties and Covenants of the City. By the City's acceptance of this Agreement, the City hereby represents and warrants to, and agrees with, the Purchaser as follows:

A. The City is a political subdivision of the State, duly organized and validly existing under the laws of the State;

B. In connection with the issuance of the Bonds, the City has complied in all respects with the Constitution of the State and the laws of the State, including the Act;

C. The City is authorized to issue the Bonds for the purpose of providing funds for the Improvement Project. The City has the power to enter into the transactions contemplated by, and to carry out its obligations under, this Agreement and the Ordinance. The City Council of the City has duly adopted the Ordinance, which is valid and enforceable against the City and which authorizes the execution and delivery of this Agreement and the execution, issuance, sale and delivery of the Bonds. At or prior to Closing, the City: (i) will have full legal right, power and authority to (A) perform its obligations under and comply with the provisions of the Ordinance and the Act, (B) issue, execute and deliver, and perform its obligations under the Bonds, and (C) carry out and consummate the transactions contemplated by and perform its obligations under this Agreement and the documents delivered in connection with the Ordinance and the Act; and (ii) will have the full legal right, power and authority under the Act to execute and deliver this Agreement and to adopt the Ordinance;

D. The Ordinance and this Agreement constitute legal, valid and binding agreements of the City, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights. The Bonds, when issued, delivered and paid for, in accordance with the Ordinance and this Agreement, will constitute legal, valid and binding obligations of the City entitled to the benefits of the Ordinance and will be enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights; and upon the issuance, authentication and delivery of the Bonds as aforesaid, the Ordinance will provide the legally valid and binding pledge of the revenues it purports to create as set forth in the Ordinance. The "Pledged Revenues" consist of the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently

equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Ordinance; and provided further that the amount of revenues pledged pursuant to the Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Bond Ordinance (the term "Pledged State Shared Gross Receipts Tax Revenues" does not include any local option gross receipts tax income received by the City).

E. The proceeds of the Bonds will be deposited in certain funds and accounts created pursuant to the Ordinance and shall be used by the City only (i) for payment of costs of the Improvement Project, (ii) to pay debt service on the Bonds and (iii) for payment of the City's costs of issuance of the Bonds. The distribution and use of the Bond proceeds will be in compliance with the provisions of the Ordinance;

F. The proceeds of the Bonds will be expended within three (3) years of the Closing Date, unless a longer term is approved by Bond Counsel in writing. Upon completion of the Improvement Project, the City agrees to deliver Certificates of Completion to the Purchaser and the Trustee substantially in the forms attached as Exhibit C to this Agreement stating that, to the best of his or her knowledge, the Improvement Project have been completed and accepted by the City, and all costs have been paid;

G. There is no litigation or proceeding pending or, to the knowledge of the undersigned, after due inquiry, threatened, in any way affecting the existence of the City, or seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds, or in any way contesting or affecting the validity or enforceability of the Bonds, the Ordinance or this Agreement, or contesting the powers of the City or its authority with respect to the Bonds, the Ordinance or this Agreement;

H. The issuance, sale and delivery of the Bonds, the execution and delivery of this Agreement and compliance with the obligations on the part of the City contained in this Agreement and in the Bonds do not conflict with or constitute a breach or default under any administrative regulation, judgment, decree, loan agreement, indenture, note, bond, resolution, ordinance, agreement or other instrument to which the City is a party or to which the City, or any of its properties or other assets, is otherwise subject;

I. Statements contained in any certificate of the City provided to the Purchaser pursuant to this Agreement or in connection with the delivery of the Bonds and delivered to the Purchaser shall be deemed representations and warranties by the City to the Purchaser;

J. The City is not in default, and has not been in default, in the payment of principal of, premium, if any, or interest on, any bonds, notes or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, or interest;

K. Since July 1, 2022, the City has not incurred any material liabilities, direct or contingent, nor has there been any material adverse change in the financial position of the City affecting the Pledged Revenues, whether or not arising from transactions in the ordinary course of business.

At or prior to the Closing Date, except as may be required under the securities law of the State, all approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to any of the actions to be taken by the City with respect to the Bonds prior to the Closing Date will have been obtained and will be in full force and effect;

L. The City agrees to provide continuing disclosure to the Purchaser, as the Purchaser may reasonably 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 debt service on the Bonds by issuance of bonds by the Purchaser pursuant to the Indenture, and notification of any event deemed material by the Purchaser.

M. The City agrees that neither this Agreement nor the Bonds will be amended without the prior written consent of the Purchaser, and, if the Bonds have been pledged under the Indenture, without the prior written consent of the Trustee pursuant to the Indenture.

3. Representations and Warranties of the Purchaser. The Purchaser represents and warrants, and agrees with the City, as follows:

A. The Purchaser is authorized to purchase the Bonds.

B. In connection with the purchase of the Bonds, the Purchaser acknowledges that no offering document or prospectus has been prepared with respect to the sale of the Bonds to the Purchaser, and that the Purchaser is buying the Bonds in a private placement by the City to the Purchaser. The Purchaser has reviewed such information as it deems relevant in making its decision to purchase the Bonds.

C. The Purchaser acknowledges that the Bonds will not be listed on any securities exchanges and that no trading market now exists in the Bonds, and none may exist in the future.

D. The Purchaser is purchasing the Bonds for its own account (and not on behalf of another) and has no present intention of reselling the Bonds; however, the Purchaser reserves the right to sell, pledge, transfer, convey, hypothecate, mortgage, or dispose of the Bonds at some future date determined by the Purchaser, but only to persons who have been provided sufficient information with which to make an informed decision to invest in the Bonds and in compliance with the Securities Act of 1933, as amended and as then in effect, the regulations promulgated thereunder and applicable state securities laws and regulations.

E. The Purchaser intends to reimburse the Public Project Revolving Fund (as defined in the New Mexico Finance Authority Act, NMSA 1978, Sections 6-21-1 *et seq.*) for the amount of the Bonds.

4. Redemption. The Bonds maturing on and after June 1, ___ are subject to optional redemption at the option of the City at any time on and after June 1, ___, in whole or in part, with funds derived from any available and lawful source, and the City shall designate the amount that is to be redeemed, and if less than a whole maturity is to be redeemed, the City shall direct the paying agent/registrar of the Bonds to call by lot Bonds, or portions thereof with such maturity, for redemption (provided that apportion of a Bond may be redeemed only in an integral multiple of $5,000), at the redemption price of par, plus accrued interest to the date fixed for prepayment or redemption.

5. Reasonably Required Reserve Fund. No deposit of proceeds of the Bonds or other City moneys into the 2022 Debt Service Reserve Fund shall be required on the Closing Date or at any time thereafter, except in the event that the City's credit rating for its State Shared Gross Receipts Tax Bonds is downgraded to a rating that is below the rating of A/A2 by any of the nationally recognized securities rating agencies identified in the Ordinance, the City shall promptly notify the Purchaser and shall follow the procedure outlined in subsection (i) or subsection (ii) of this paragraph.

(i) The City shall begin making equal monthly deposits in the 2022 Debt Service Reserve Fund from the first legally available Pledged Revenues so that after 24 months an amount equal to the 2022 Minimum Reserve will be held in the 2022 Debt Service Reserve Fund.

(ii) Alternatively, the City shall deposit with the Trustee one or more Reserve Fund Insurance Policies approved by the Purchaser which are equal to the 2022 Minimum Reserve. The Reserve Fund Insurance Policies shall continue to be in force until the earlier of (a) the final maturity date of the Bonds (unless such date is extended by agreement of the provider of the policy or surety bond) or (b) the date on which there are sufficient funds on deposit in the 2022 Debt Service Fund to pay the principal of and interest due on the Bonds.

The moneys or securities (if any) in the 2022 Debt Service Reserve Fund shall be accumulated and maintained as a continuing reserve to be used only to prevent deficiencies in the payment of the principal of and interest on the Bonds resulting from failure to deposit into the 2022 Debt Service Fund sufficient funds to pay the principal and interest as the same become due. The 2022 Debt Service Reserve Fund is only required to be funded and the Reserve Fund Insurance Policies deposited for so long as the City's credit rating for its State Shared Gross Receipts Tax Bonds is downgraded to a rating that is below the rating of A/A2 by any of the nationally recognized securities rating agencies identified in the Ordinance

6. Limitations Upon Issuance of Additional Bonds. Before any additional Parity Subordinate Obligations are authorized or actually issued (excluding refunding bonds or refunding obligations which refund Parity Subordinate Obligations but including parity refunding bonds and obligations which refund subordinate obligations) it must be determined that the requirements in Section 21 of the Ordinance have been met.

7. Conditions of Closing. The City's obligation to sell and the Purchaser's obligations under this Agreement to purchase and pay for the Bonds shall be subject to the following conditions:

A. The City shall have performed its obligations and agreements to be performed under the Ordinance and this Agreement at or before the Closing Date, and the representations and warranties of the City contained in this Agreement shall be accurate as of the date of this Agreement and as of the Closing Date.

B. This Agreement shall have been duly authorized and executed by the City and the Purchaser and shall be in full force and effect.

C. As determined by the Purchaser in its sole discretion, there shall not have been any material adverse change since the date of this Agreement relating to the City, or its operations, or any material adverse change in the law affecting the validity or tax-exempt status of the Bonds.

D. On the Closing Date, the Purchaser shall receive the following, each in a form satisfactory to the Purchaser:

(1) A written opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A, ("Bond Counsel") dated the Closing Date approving the legality and enforceability of the Bonds and regarding the tax-exempt status of the Bonds, addressed and delivered to the Purchaser;

(2) A written opinion of Sutin, Thayer & Browne A Professional Corporation ("Purchaser's Counsel") that the Bonds may be pledged by the Purchaser as a loan or as securities pursuant to the Indenture as determined by the Purchaser;

(3) A certificate, dated the Closing Date, of an authorized officer of the City to the effect that each of the representations and warranties of the City set forth in this Agreement is true, accurate and complete as of the Closing Date;

(4) A General and No-Litigation Certificate of the City dated the Closing Date of an authorized officer of the City;

(5) An executed Internal Revenue Service Form 8038-G Tax-Exempt Governmental Obligations Return;

(6) Specimen Series 2022 Bond;

(7) An executed Tax Certificate of the City with respect to the Bonds;

(8) A Delivery, Deposit and Cross-Receipt Certificate, in substantially the form attached to this Agreement as Exhibit A or otherwise satisfactory to the Purchaser, providing for the deposit of the Purchase Price as provided in the Ordinance; and

(9) Such additional certificates, opinions or other documents as Bond Counsel, Purchaser, or Purchaser's Counsel may reasonably require to evidence the satisfaction, as of the Closing Date, of the conditions then to be satisfied in connection with the transactions contemplated by the Ordinance and this Agreement.

E. All matters relating to this Agreement, the Bonds, the sale of the Bonds to the Purchaser, the Ordinance and the consummation of the transactions contemplated by this Agreement and the Ordinance shall be mutually satisfactory to and approved by the City and Purchaser.

F. No order, decree or injunction of any court of competent jurisdiction, nor any order, ruling, regulation or administrative proceeding by any governmental body or council, shall have been issued or commenced with the purpose or effect of prohibiting the issuance or sale of the Bonds.

G. As determined by the Purchaser in its sole discretion, there shall not have been any material adverse change since the date of this Agreement relating to the City, or its operations, or any material adverse change in the law affecting the validity or tax-exempt status of the Bonds.

If the City is unable to satisfy the conditions to the obligations of the Purchaser contained in this Agreement, or if the obligations of the Purchaser are terminated for any reason permitted by this

Agreement, this Agreement may be terminated and neither the Purchaser nor the City shall have any further obligations under this Agreement. Payment by the Purchaser to the City of the Purchase Price shall be conclusive evidence that all of the conditions set forth in this section have been satisfied or waived by the Purchaser.

8. The Purchaser's Right to Cancel. The Purchaser shall have the right in its sole discretion to cancel its obligations under this Agreement to purchase the Bonds by notifying the City in writing of its election to do so between the date hereof and the Closing Date, if any of the following events occur prior to the Closing:

A. Legislation not yet introduced in the U.S. Congress shall be enacted or actively considered for enactment by the U.S. Congress, or recommended by the President of the United States of America to the U.S. Congress for passage, or favorably reported for passage to either House of the Congress by any committee of such House to which such legislation has been referred for consideration; a decision by a court of the United States of America or the United States Tax Court shall be rendered; or a ruling, regulation (proposed, temporary or final) or an official statement by or on behalf of the Treasury Department of the United States of America, the Internal Revenue Service or other agency or department of the United States of America shall be made or proposed to be made which has the purpose or effect, directly or indirectly, of imposing federal income taxes upon interest on the Bonds;

B. Any other action or event shall have transpired which has the purpose or effect, directly or indirectly, of materially adversely affecting the federal income tax consequences of any of the transactions contemplated herewith or contemplated by the Ordinance and this Agreement and, in the judgment of the Purchaser, reasonably exercised, materially adversely affects the purchase of the Bonds by the Purchaser;

C. Legislation shall be enacted, or actively considered for enactment by the Congress, with an effective date on or prior to the date of Closing, or a decision by a court of the United States of America shall be rendered, or a ruling or regulation by the Securities and Exchange Commission (the "SEC") or other governmental agency having jurisdiction over the subject matter shall be made, the effect of which is that (1) the Bonds are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and then in effect, or (2) the Ordinance is not exempt from the registration, qualification or other requirements of the Trust Indenture Act of 1939, as amended and then in effect;

D. A stop order, ruling or regulation by the SEC shall be issued or made, the effect of which is that the sale of the Bonds, as contemplated herein, is in violation of any provision of the Securities Act of 1933, as amended and as then in effect, the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect;

E. There shall exist any fact or there shall occur any event which, in the sole judgment of the Purchaser, either (1) makes untrue or incorrect in any material respect any statement or information provided by the City to the Purchaser in connection with the sale of the Bonds by the City to the Purchaser or (2) is not reflected in statements or information provided by the City to the Purchaser in connection with the sale of the Bonds by the City to the Purchaser but should be reflected therein in order to make the statements and information contained therein not misleading in any material respect;

F. There shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Purchaser, impractical or inadvisable to proceed with the purchase of the Bonds;

G. Trading in the City's outstanding securities shall have been suspended by the SEC or trading in securities generally on the New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on such Exchange;

H. A banking moratorium shall have been declared either by Federal, New York or State authorities; or

I. Any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance, sale or delivery of the Bonds or in any way contesting or affecting any authority for or the validity of the Bonds, this Agreement, the Ordinance, the existence or powers of the City, or any of the transactions described herein.

9. Representations and Agreements to Survive Delivery. All representations, warranties, covenants and agreements of the City and the Purchaser set forth in this Agreement and any other documents relating to the issuance of the Bonds shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the City or the Purchaser, and shall survive the delivery of the Bonds to the Purchaser.

10. Payment of Expenses. The Purchaser shall pay the fees, expenses and costs incurred by it, its legal counsel and its financial advisor relating to the preparation, issuance, delivery and sale of the Bonds. The City shall pay the expenses incurred by it, its legal counsel and its financial advisor relating to the preparation, issuance, delivery and sale of the Bonds from the proceeds of the Bonds or other legally available moneys.

11. Parties in Interest. This Agreement is solely for the benefit of the Purchaser and the City and their respective successors and no other person, partnership, association or corporation shall acquire or have any right under or by virtue of this Agreement.

12. Applicable Law; Nonassignability. This Agreement shall be construed in accordance with the laws of the State of New Mexico. This Agreement may not be assigned by the City or the Purchaser.

13. Notices. Any notice or other communication to be given to the Purchaser under this Agreement may be given by mailing or delivering the same in writing to the New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and any notice or other communication to be given to the City under this Agreement may be given by delivering the same in writing to the City, 700 North Main Street, Las Cruces, New Mexico, Attention: Treasurer.

14. Entire Agreement. This Agreement, when accepted by the City in writing as heretofore specified, shall constitute the entire agreement among the City and the Purchaser and is made solely for the benefit of the Purchaser and the City, and no other person shall acquire or have any right hereunder or by virtue hereof.

15. Amendments; Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document. This Agreement may not be effectively amended, changed, modified or altered without the written consent of all the parties hereto, and, if the Bonds have been pledged under the Indenture, without the prior written consent of the Trustee pursuant to the Indenture.

[Remainder of page intentionally left blank]

Please sign and return a duplicate original of this Agreement to the Purchaser. Upon your signing and delivering this Agreement, it will constitute a binding agreement.

NEW MEXICO FINANCE AUTHORITY

By: _____

Marquita D. Russel, Chief Executive Officer

Accepted and confirmed

as of _____, 2022:

CITY OF LAS CRUCES, NEW MEXICO

By: _____

Ifo Pili, City Manager

EXHIBIT A

FORM OF DELIVERY, DEPOSIT AND CROSS-RECEIPT CERTIFICATE

$_____

SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS

SERIES 2022

STATE OF NEW MEXICO	)	
DOÑA ANA COUNTY	) ss:	DELIVERY, DEPOSIT AND
CITY OF LAS CRUCES	)	CROSS-RECEIPT CERTIFICATE

IT IS HEREBY CERTIFIED by the undersigned, the duly chosen, qualified and acting Mayor of the City of Las Cruces, New Mexico (the "City"):

1. On the date of this Certificate, the City executed and delivered, or caused to be delivered, its Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022 in the aggregate principal amount of $_____ (the "Series 2022 Bonds" or the "Bonds") to the New Mexico Finance Authority (the "Finance Authority"), the purchaser of the Bonds, as authorized by the City's Bond Ordinance adopted on August 15, 2022, as supplemented by Pricing Certificate executed on _____, 2022 (collectively, the "Ordinance") relating to the issuance, sale and delivery of the Bonds. Certain amounts relating to the Bonds, are being deposited as set forth below.

2. Such amounts relating to the Bonds will be placed in the funds and accounts created under the Indenture (as defined in the Bond Purchase Agreement), between the Finance Authority and BOKF, NA, as Trustee, and its successors and assigns, and all supplemental indentures thereto and used as set forth below and in the Ordinance:

Series 2022 Bonds:

Program Account Deposit for Acquisition of Project: $

Program Account Deposit for Costs of Issuance:

Debt Service Fund Deposit:

TOTAL: $_____.00

3. Moneys deposited to the Program Account will be made available to the City upon submittal of Requisitions to the Finance Authority in the forms attached to the Bond Purchase Agreement as Exhibit B and will be used as set forth in the Ordinance and the Bond Purchase Agreement.

WITNESS my hand this _____, 2022.

CITY OF LAS CRUCES, NEW MEXICO

By: _____

Ken Miyagishima, Mayor

It is hereby certified by the undersigned, on behalf of the New Mexico Finance Authority, the lawful purchaser of the Bonds, that on this day the Finance Authority received from the City of Las Cruces, New Mexico, its Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, in the aggregate principal amount of $_____.

NEW MEXICO FINANCE AUTHORITY

By: _____

Marquita D. Russel, Chief Executive Officer

EXHIBIT B

FORM OF REQUISITION

SERIES 2022 BONDS REQUISITION
(PAYMENT OF PURCHASE PRICE)

RE: $_____ City of Las Cruces, New Mexico, Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022 –New Mexico Finance Authority Purchase Transaction

TO: BOKF, NA

c/o New Mexico Finance Authority

PPRF@nmfa.net

LOAN NO.: PPRF- CLOSING DATE: ____, 2022

You are hereby authorized to disburse from the Program Account – City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, with regard to the above-referenced Bond Purchase Transaction, the following:

REQUISITION NUMBER: ___

NAME AND ADDRESS OF PAYEE: _____

_____

AMOUNT OF REQUISITION: $_____

PURPOSE OF REQUISITION: _____

The requisition of funds is for the purpose stated above and is a proper charge against the Program Account – City of Las Cruces, New Mexico.

All representations contained in the Bond Purchase 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 Improvement Project is complete or, if not complete, the City of Las Cruces, New Mexico understands its obligation to complete the acquisition of the Improvement Project from other legally available funds.

City of Las Cruces, New Mexico

DATED:_____ By: _____

_____

Print Name and Title

EXHIBIT C

CERTIFICATE OF COMPLETION

SERIES 2022 CERTIFICATE OF COMPLETION

RE: $_____ City of Las Cruces, New Mexico, Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022 – New Mexico Finance Authority Purchase Transaction

TO: New Mexico Finance Authority

207 Shelby Street

Santa Fe, New Mexico 87501

Attn: Accounting

Susen Ellis

Vice President, Corporate Trust

BOKF, NA

100 Sun Avenue NE, Suite 500

Albuquerque, New Mexico 87109

LOAN NO.: PPRF-___ CLOSING DATE: _____, 2022

In accordance with Section 2.F of the Bond Purchase Agreement, the undersigned states, to the best of his or her knowledge, that the acquisition of the Improvement Project has been completed and accepted by the City, 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 Bond Purchase Agreement.

DATED: _____ By:_____

Authorized Officer of City

Title: _____

Print Name and Title

INTERCEPT AGREEMENT

This INTERCEPT AGREEMENT is made and entered into September __, 2022, 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 "City").

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 City, such as the issuance of the $_____ City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022 (the "Bonds") for the purpose of funding the (i) acquisition of fire engines, aerial fire trucks, and fire equipment for the City Fire Department and (ii) paying Expenses related to the issuance of the Bonds (the "Project"); and

WHEREAS, the City has authorized the Bonds through the adoption by the City Council the City of Ordinance No. 3007 on August 15, 2022 and a Pricing Certificate executed as of August __, 2022 (collectively, the "Ordinance"), and Section 3-31-1 through 3-31-12, NMSA 1978, as amended (the "City Act"); and

WHEREAS, pursuant to Sections 6-21-1 through 6-21-31, NMSA 1978, as amended (the "Act"), the Finance Authority and the City are authorized to enter into agreements to purchase and sell the Bonds and to facilitate the financing of the Project as described in the Bond Purchase Agreement by and between the Finance Authority and the City dated August __, 2022 (the "Bond Purchase Agreement"); and

WHEREAS, the City desires to finance the Project and such financing is permitted under the City 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 and refinancing of infrastructure and equipment projects upon the execution of the Bond Purchase Agreement and the assignment of bonds to a trustee (the "Trustee"); and

WHEREAS, the Finance Authority has agreed to purchase the Bonds from the City for the purpose of financing the Project for the City, which bond purchase is to be governed by the Bond Purchase Agreement and the Ordinance; and

WHEREAS, the Act confers upon the Finance Authority the authority to purchase the Bonds from the City to finance the Project, and

WHEREAS, the City is authorized to direct that its distribution of the "Pledged Revenues" consist of the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Ordinance; and provided further that the amount of revenues pledged pursuant to the Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance.

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 Bond Purchase Agreement, the Ordinance and the Indenture, as defined in the Bond Purchase Agreement.

Section 1. Authorization to the Finance Authority. The City hereby recognizes that the Finance Authority has purchased the Bonds to finance the Project. Pursuant to this Intercept Agreement, payment of all principal of and interest on the Bonds made by or on behalf of the City shall be remitted by the City to the Trustee. In the event that the City fails to make timely payment of principal and interest, the City agrees that all payments due on the Bonds from the Pledged Revenues shall be paid by the Distributing State Agency to the Finance Authority or its designee, on behalf of the City, 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 City to the Distributing State Agency to pay to the Finance Authority, on behalf of the City, sums shown on the Intercept Schedule from distributions of the Pledged Revenues pursuant to Sections 7-1-6.13 and 7-1-6.15, NMSA 1978, as amended, to ensure compliance with the Bond Purchase Agreement and payment of the Bonds. 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 Debt Service Reserve Account, if any, established for the City. Any accumulation of the Pledged Revenues in an amount in excess of the next Bond Payment and the Debt Service Reserve Account requirement shall be redirected by the Finance Authority to the benefit of the City on a timely basis.

To the extent applicable and to the extent that the Pledged Revenues are insufficient to meet the debt service requirements due on the Senior Lien Bonds and other Parity Subordinate Lien Obligations now or hereafter issued or incurred, the amounts intercepted under this Intercept Agreement shall be sufficient to allow partial payment on a pro-rata basis of the debt service due

and owing on the Bonds and other Parity Subordinate Lien Obligations after payment of the Senior Lien Bonds. If the City fails to pay the Bond Payments when due, then prior to the commencement of the interception of the Pledged Revenues, City must inform the Finance Authority of any Senior Lien Obligations and Parity Subordinate Lien Obligations then outstanding and any Senior Lien Obligations or Parity Subordinate Lien Obligations issued during the time that the Distributing State Agency is intercepting the Pledged Revenues to ensure that Pledged Revenues are applied in accordance with the lien status of the outstanding obligations payable from the Pledged Revenues.

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 Bonds and this Intercept Agreement have been paid in full. Nothing herein shall be deemed in any way to limit or restrict the City from issuing its own obligations, providing its own program or participating in any other program for the financing of public projects which the City 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 the Ordinance.

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 City agrees that the Finance Authority shall do all things necessary or convenient to the implementation of the Program to facilitate the purchase of the Bonds from the City pursuant to the terms of the Bond Purchase Agreement.

Section 7. Effective Date. This Intercept Agreement shall take effect on the Closing Date of the Bonds.

Section 8. Initial Intercept Date. As indicated on the Intercept Schedule, the first distribution of the Pledged Revenues that is subject to interception by the Distributing State Agency under the terms of this Intercept Agreement consist of Pledged Revenues due to the City distributed in _____.

Section 9. Final Intercept Date**.** Once the Bonds have been fully paid off and satisfied or earlier as otherwise determined by the Finance Authority, the Finance Authority shall provide written notice to the Distributing State Agency and the City to discontinue the interception of the City's Pledged Revenues.

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: _____
State Taxation and Revenue Department

Date: _____

EXHIBIT "A"

INTERCEPT SCHEDULE
CITY OF LAS CRUCES, NEW MEXICO\
PPRF-5235

Month	Pledged Revenues	Amount
Monthly, beginning ____ through _____	The distribution of all of the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Ordinance; and provided further that the amount of revenues pledged pursuant to the Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance.	$0.00**

** In the event the City fails to pay the Bond Payments, the Finance Authority shall prepare and deliver to the City and the State Taxation and Revenue Department a replacement of this Exhibit A. The replacement Exhibit A will be effective immediately upon delivery to the State Taxation and Revenue Department and the City consents in advance to the replacement Exhibit A. The State Taxation and Revenue Department shall thereafter distribute the Pledged Revenues as set forth in the replacement Exhibit A and the Pledged Revenues shall be applied to payment of the Bonds as provided in the Ordinance and this Intercept Agreement.

COUNCIL BILL NO. ~~——~~23-001

ORDINANCE NO. ~~——~~3007

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2022 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $5,000,000 FOR THE ACQUISITION OF FIRE ENGINES, AERIAL FIRE TRUCKS, AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.

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

The City Council is informed that:

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

WHEREAS, pursuant to Section 7-1-6.4 NMSA 1978, the City now receives monthly from the Revenue Division of the New Mexico Taxation and Revenue Department from the statewide gross receipts tax imposed on any person engaging in business in New Mexico, a distribution of the gross receipts tax which is to be in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of 1.225% divided by the tax rate imposed by Section 7-9-4 NMSA 1978, times the net receipts (i.e. the total gross

receipts tax less any refunds disbursed in that month) for the month attributable to the gross receipts tax from business locations within the City and other places designated in Section 7-1-6.4 NMSA 1978 (such distributions to the City as further defined herein the ("Pledged Revenues"); and

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

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

WHEREAS, except for the 2011A Bonds, the 2014 Bonds, the 2015 Bonds, the 2016 Subordinate Lien Bonds, 2017 Bonds, the 2017 NMFA Loan, the 2019 Subordinate Lien Bonds, the 2020 Refunding Bonds, the 2020A Bonds, and the 2020B Subordinate Lien Bonds, the Pledged State Shared Gross Receipts Tax Revenues are not pledged to the payment of any bonds or other obligations which are presently outstanding; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its residents that the Series 2022 Bonds be issued with a subordinate lien, but not an exclusive subordinate lien, on the Pledged State Shared Gross Receipts Tax Revenues subordinate to the lien thereon of outstanding Parity Bonds and on parity with the lien thereon of the outstanding Subordinate Obligations; and

WHEREAS, the proposed forms of this Bond Ordinance, the Bond Purchase Agreement and Intercept ~~Agreements~~Agreement have been on deposit with the City Clerk and presented to the City Council; and

WHEREAS, the City Council expects to sell the Series 2022 Bonds in a private placement to the New Mexico Finance Authority (the "Purchaser"), as determined pursuant to the Pricing Certificate supplementing this Bond Ordinance, and to delegate authority to the City Manager or City Financial Services Director to execute and deliver the Pricing Certificate to the Purchaser, as authorized by Section 6-14-10.2 NMSA 1978, provided that the final terms of the Bonds set forth in the Pricing Certificate be within the parameters set forth in this Ordinance; and

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

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

NOW, THEREFORE, be it ordained by the governing body of the City of Las Cruces:

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

"Act" means the general laws of the State, including Sections 3-31-1 to 3-31-12 NMSA 1978, as amended, the home rule powers of the City under the Charter and Article X, Section 6 of the Constitution of the State, and enactments of the City Council relating to the Pledged Revenues and the issuance of the Bonds, including this Bond Ordinance.

"Bond Insurance Policy" means the financial guaranty insurance policy, if any, issued by the Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.

"Bond Ordinance" means this City Ordinance No. ——3007 adopted on August 15, 2022, as supplemented by the Pricing Certificate.

"Bond Purchase Agreement" means the agreement between the City and the Purchaser providing for the sale of the Bonds by the City and the purchase of the Bonds by the Purchaser pursuant to the terms set forth therein and in the Pricing Certificate.

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

"Bonds" or "Series 2022 Bonds" or "2022 Bonds" means the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022 authorized by this Bond Ordinance, as supplemented by the Pricing Certificate.

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

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

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

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

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

"Continuing Disclosure Undertaking" means the continuing disclosure agreement with respect to the Bonds to be executed on the day of issuance and delivery of the Bonds to the Purchaser, if required by the Purchaser.

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

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

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

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

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

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

"Hold Harmless Distribution" means any distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the gross receipts tax revenues received pursuant to Section 7-1-6.4 NMSA 1978, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978.

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

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

"Intercept Agreement" means the Intercept Agreement, if any, dated the Closing Date between the City and the New Mexico Finance Authority providing for the direct payment, if required, by the New Mexico Department of Taxation and Revenue to the New Mexico Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest and any other amounts due on the Bonds, and any amendments or supplements to the Intercept ~~Agreements~~Agreement.

"Interest Payment Date" means each June 1 and December 1, commencing December 1, 2022 (or such other date specified in the Pricing Certificate).

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

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

"Notice of Sale" means, if the Bonds are sold in a competitive sale, the official notice of sale of the Bonds.

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

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

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

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

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

"Parity Bonds" or "Parity Obligations" means the 2011A Bonds, the 2014 Bonds, the 2015 Bonds, the 2017 Bonds, the 2017 NMFA Loan, the 2020 Refunding Bonds, the 2020A Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a first lien upon the Pledged Revenues.

"Parity Subordinate Obligations" means the 2016 Subordinate Bonds, the 2019 Subordinate Bonds, the 2020B Bonds, the Series 2022 Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a lien upon the Pledged Revenues subordinate and junior to the lien thereon of the Parity Bonds and on parity with the Parity Subordinate Obligations, as provided in Section 20 of this Bond Ordinance.

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

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

A. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and

TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

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

1. U.S. Export-Import Bank (Eximbank)

   Direct obligations or fully guaranteed certificates of beneficial ownership.

2. Farmers Home Administration (FmHA)

   Certificates of beneficial ownership

3. Federal Financing Bank

4. Federal Housing Administration Debentures (FHA)

5. General Services Administration

   Participation certificates

6. Government National Mortgage Association (GNMA or "Ginnie Mae")

   GNMA - guaranteed mortgage-backed bonds

   GNMA - guaranteed pass-through obligations

7. U.S. Maritime Administration

   Guaranteed Title XI financing

8. U.S. Department of Housing and Urban Development (HUD)

   Project Notes

   Local Authority Bonds

New Communities Debentures - U.S. government guaranteed debentures

U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

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

1. Federal Home Loan Bank System

   Senior debt obligations

2. Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mac”)

   Participation Certificates

   Senior debt obligations

3. Federal National Mortgage Association (FNMA or “Fannie Mae”)

   Mortgage-backed securities and senior debt obligations

4. Student Loan Marketing Association (SLMA or “Sallie Mae”)

   Senior debt obligations

5. Resolution Funding Corp. (REFCORP) obligations

6. Farm Credit System

   Consolidated system wide bonds and notes

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

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

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

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

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

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

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

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

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

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

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

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

2. The written repo contract must include the following:

   a. Securities which are acceptable for transfer are:

      (1) Direct U.S. governments, or

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

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

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

   d. Valuation of Collateral

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

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

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

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

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

"Pledged Revenue Fund" means the State Shared Gross Receipts Tax Revenue Fund, continued in Section 16 of this Bond Ordinance.

"Pledged State Shared Gross Receipts Tax Revenues" or "Pledged Revenues" means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for

which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to this Bond Ordinance; and provided further that the amount of revenues pledged pursuant to this Bond Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law, and includes the Hold Harmless Distribution to the extent the City receives any Hold Harmless Distribution; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Bond Ordinance (the term "Pledged State Shared Gross Receipts Tax Revenues" does not include any local option gross receipts tax income received by the City).

"Preliminary Official Statement" means the initial disclosure document relating to the issuance and sale of the Bonds, if any.

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

"Purchaser" means the New Mexico Finance Authority or such other purchaser as set forth in the Pricing Certificate.

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

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

"Reserve Fund Insurance Policy" means any insurance policy, surety bond or letter of credit deposited in or credited to the Reserve Fund, if any, as provided in the Pricing Certificate in lieu of or in partial substitution for cash or allowable investments on deposit in the Reserve Fund.

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

"State" means the State of New Mexico.

"2011A Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2011A" issued in the original aggregate principal amount of $9,640,000 and authorized by City Ordinance No. 2618 adopted by the City Council on June 8, 2011.

"2014 Bonds" means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2014 issued in an original aggregate principal

amount of $10,000,000 and authorized by City Ordinance No. 2718 adopted by the City Council on June 24, 2014.

"2015 Bonds" means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2015 issued in an original aggregate principal amount of $19,195,000 and authorized by City Ordinance No. 2739 adopted by the City Council on December 1, 2014 and Resolution No. 15-140 adopted by the City Council on February 3, 2015.

"2016 Subordinate Bonds" means the "City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2016" authorized in the original aggregate principal amount of $8,585,000 and authorized by City Ordinance No. 2774 adopted by the City Council on February 16, 2016 and Resolution No. 16-18 adopted by the City Council on March 9, 2016.

"2017 Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2017" issued in an original aggregate principal amount of $10,570,000 and authorized by City Ordinance No. 2808 adopted by the City Council on May 1, 2017 and Resolution No. 17-187 adopted by the City Council on May 10, 2017.

"2017 NMFA Loan" means the loan agreement between the City and the New Mexico Finance Authority executed on February 24, 2017 in the original aggregate principal amount of $3,203,527 and authorized by City Ordinance No. 2801 adopted by the City Council on January 17, 2017.

"2019 Subordinate Bonds" means the "City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2019

authorized in the original aggregate principal amount of $8,870,000 and authorized by City Council Ordinance No. 2894 adopted on August 5, 2019.

"2020 Refunding Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2020" authorized in the original aggregate principal amount of $15,435,000 and authorized by City Council Ordinance No. 2912 adopted on February 18, 2020.

"2020A Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020A" authorized in the original aggregate principal amount of $7,190,000 and authorized by City Council Ordinance No. 2925 adopted on May 18, 2020.

"2020B Bonds" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020B" authorized in the original aggregate principal amount of $6,750,000 and authorized by City Council Ordinance No. 2925 adopted on May 18, 2020.

"2022 Acquisition Fund" means the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, Improvement Project Acquisition Fund" established by Section 16 of the Bond Ordinance.

"2022 Debt Service Fund" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, Debt Service Fund" established in Section 16 of this Bond Ordinance.

"2022 Improvement Project" means (1) the acquisition of fire engines, aerial fire trucks, and fire equipment for the City Fire Department and (2) paying Expenses related to the issuance of the Series 2022 Bonds.

"2022 Minimum Reserve" means an amount equal to the least of (i) ten percent of the principal amount of the outstanding Series 2022 Bonds, (ii) the maximum annual debt service on the outstanding Series 2022 Bonds, or (iii) 125% of the average annual debt service on the outstanding Series 2022 Bonds. The Minimum Reserve shall be recalculated every year on or about June 1.

"2022 Reserve Fund" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, Reserve Fund" established by Section 16 of this Bond Ordinance.

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

Section 3. Authorization of the 2022 Improvement Project. The 2022 Improvement Project and the method of financing the 2022 Improvement Project are hereby authorized and ordered at a total cost estimated not to exceed the amount of the Bond proceeds allocated to the Project as set forth in the Pricing Certificate and any investment earnings thereon, excluding any such cost defrayed or to be defrayed by any source other than Bond proceeds.

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

A. The 2022 Improvement Project is needed to meet the needs of the City and its inhabitants.

B. Moneys available for the 2022 Improvement Project from all sources other than the issuance of Revenue Bonds are not sufficient to defray the cost of the 2022 Improvement Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment and redemption of the Bonds.

D. It is economically feasible to defray, in part, the cost of the 2022 Improvement Project by the issuance of the Bonds.

E. The issuance of the Bonds pursuant to the Act, to provide funds to finance the costs of the 2022 Improvement Project is necessary and in the interest of the public health, safety and welfare of the residents of the City.

F. The City is current in the accumulation of all amounts which are required to have been accumulated in the debt service funds and the reserve funds, if any, for the outstanding Parity Bonds and the Parity Subordinate Obligations.

Section 5. Bonds – Authorization, Parameters and Detail.

A. Authorization. This Bond Ordinance has been adopted by the affirmative vote of at least three-fourths of all of the members of the City Council. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the City, it is hereby declared necessary that the City, pursuant to the Act, issue one series of its negotiable, fully registered, revenue bonds to be designated the “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022” in an aggregate principal amount not to exceed $5,000,000, and the issuance, sale and delivery of the Bonds is hereby authorized.

B. Parameters Authorized; Details of Bonds. There is hereby authorized and created a series of bonds designated as the City of Las Cruces, New Mexico, Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022. The Series 2022 Bonds shall be issued subject to the following parameters:

(i) The Series 2022 Bonds shall be issued in an aggregate principal amount not to exceed $5,000,000 for the 2022 Improvement Project.

(ii) The net effective interest rate on the Series 2022 Bonds shall not exceed 12% per annum.

(iii) The final maturity of the Series 2022 Bonds shall not be later than June 1, 2034.

(iv) The Series 2022 Bonds shall be sold with a maximum underwriting or purchaser's discount not to exceed 1.00%.

(iv) The Series 2022 Bonds shall be payable solely from, and shall constitute a subordinate lien upon the Pledged Revenues, subordinate to the lien thereon of the Parity Obligations and on a parity with the outstanding Parity Subordinate Obligations.

(v) The Series 2022 Bonds shall be sold to the Purchaser pursuant to private placement with the Purchaser.

(vi) The maximum sale price of the Series 2022 Bonds shall be not more than $5,000,000, exclusive of premium payable in connection with the issuance of the Bonds.

(vii) The Series 2022 Bonds shall be in substantially the form set forth in this Ordinance.

C. The City Manager or City Financial Services Director, is hereby authorized pursuant to this Ordinance to approve the final terms of the Bonds as permitted by Section 6-14-10.2 NMSA 1978, and to execute and deliver the Pricing Certificate and the Bond Purchase Agreement. The forms of the Bond Purchase Agreement and Intercept Agreement submitted with the adoption of this Ordinance are hereby approved with such changes as are approved by the Delegate consistent with the parameters outlined in this Ordinance.

D. The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in such numbers and denominations as may be requested by the Purchaser, but exchangeable for other fully registered Bonds of any denominations which are multiples of $5,000. The Bonds shall be numbered separately and consecutively, shall be dated the date of their delivery to the Purchaser, shall mature on June 1 of each year and shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date, payable semi-annually on June 1 and December 1 in each year commencing on December 1, 2022 (or such other date as specified in the Pricing Certificate) until their respective maturities. The Bonds shall bear the rates of interest, maturities and provisions for redemption prior to maturity as shall be established in the Pricing Certificate.

Section 6. Redemption of Bonds.

A. Notice of Redemption. In the event that the Bonds are subject to redemption prior to maturity, as may be established in the Pricing Certificate, notice of redemption shall be given by the Registrar by sending a copy of such notice in the manner required by the Depository or by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of each Bond, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar on the fifth day prior to the mailing of notice on

the registration books kept by the Registrar. The City shall give notice of optional redemption of the Bonds to the Registrar at least forty-five (45) days prior to the redemption date (unless such deadline is waived by the Registrar). The Registrar's failure to give such notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. Notices of redemption shall specify the maturity dates and the number or numbers of the Bonds to be redeemed (if less than all are to be redeemed) and if less than the full amount of any Bond is to be redeemed, the amount of such Bond to be redeemed, the date fixed for redemption, and that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem all Bonds called for redemption shall on the redemption date be on deposit with the Paying Agent, the Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Bonds to be redeemed at the office of the Paying Agent, the Paying Agent will pay the Bond or Bonds so called for redemption with funds deposited with the Paying Agent by the City.

B. Conditional Redemption. If money or Defeasance Obligations (as defined in Section 31) sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to paragraph A of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in

the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in the manner deemed reasonable and fair by the City and the Registrar shall give notice, in the manner in which the original notice or optional redemption was given, that such money was not received and the information required by paragraph A of this Section. In that event, the Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been optionally redeemed.

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

Section 8. Execution and Authentication of Bonds.

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

execution of the Bonds and the signature certificate, each may adopt as and for his or her own facsimile signature, the facsimile signature of his or her predecessor in office if such facsimile signature appears upon any of the Bonds or certificates pertaining to the Bonds.

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

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

Section 10. Payment and Presentation of Bonds for Payment. Principal and interest on the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal shall be payable in immediately available funds at maturity or redemption thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent or at the designated office of any successor Paying Agent. Upon any partial prior redemption of any Bond, the registered owner, in its discretion, may request the Registrar to authenticate a new Bond or to make a notation on the Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case the Bond must be presented to the Paying Agent prior to payment. Interest on the Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon

by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the 15th day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or provided for shall cease to be payable to the owner thereof (or of one or more predecessor Bonds) as of the Record Date, but shall be payable to the owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to Bond owners not less than ten (10) days prior thereto. If any Bond presented for payment remains unpaid at maturity or redemption, it shall continue to bear interest at the rate or rates designated in, and applicable to, such Bond from time to time. If any Bond is not presented for payment at maturity or redemption when funds available therefor have been deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity or redemption.

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

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

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

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

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

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

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

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

H. Book Entry. The Bonds may be issued or registered, in whole or in part, in book-entry form from time to time with no physical distribution of bond certificates made to the public, with a Depository acting as securities depository for the Bonds. A single certificate for each maturity date of the Bonds issued in book-entry form will be delivered to the Depository and immobilized in its custody. The book-entry system will evidence ownership of the Bonds in authorized denominations, with transfer of ownership effected on the books of the Depository and its participants ("Participants"). As a condition to delivery of the Bonds in book-entry form, the Purchaser will, immediately after acceptance of delivery thereof, deposit, or cause to be deposited, the Bond certificates with the Depository, registered in the name of the Depository or its nominee. Principal, premium, if any, and interest will be paid to the Depository or its nominee

as the registered owner of the Bonds. The transfer of principal, premium, if any, and interest payments to Participants will be the responsibility of the Depository; the transfer of principal, premium, if any, and interest payments to the beneficial owners of the Bonds (the "Beneficial Owners") will be the responsibility of Participants and other nominees of Beneficial Owners maintaining a relationship with Participants (the "Indirect Participants"). The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Depository, Participants or Indirect Participants.

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

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

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

Bond Ordinance and by the Depository to its Participants or Indirect Participants and notices to the Beneficial Owners of the Bonds in the manner provided in an agreement or letter of the City to the Depository.

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

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

(Form of Bond)

UNITED STATES OF AMERICA

STATE OF NEW MEXICO COUNTY OF DOÑA ANA

CITY OF LAS CRUCES, NEW MEXICO

SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX

IMPROVEMENT REVENUE BONDS,

SERIES 2022

Bond No. _____ $_____

INTEREST RATE	MATURITY DATE	DATE OF BOND	CUSIP
% per annum	June 1, _____	_____ , 2022	_____

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____

The City of Las Cruces (the "City"), in the County of Doña Ana and State of New Mexico, a municipal corporation duly organized and existing under the Constitution and laws of the State of New Mexico, for value received, hereby promises to pay, solely from the special funds available for the purpose as hereinafter set forth, to the registered owner named above or registered assigns, on the Maturity Date specified above, upon presentation and surrender hereof at the principal office of the City Treasurer, Las Cruces, New Mexico, as paying agent, or any successor paying agent (the "Paying Agent"), the Principal Amount stated above, in lawful money of the Unites States of America, and to pay from such sources interest on the unpaid principal amount at the Interest Rate on December 1, 2022 and on June 1 and December 1 of each year (each an "Interest Payment Date") thereafter to its maturity, or until redeemed if called for redemption prior to maturity. This bond will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from its date. Interest on this bond is payable by check mailed to the registered owner hereof (or by such other arrangement as may

be mutually agreed to by the Paying Agent and the registered owner) as shown on the registration books for this issue maintained by the City Treasurer, Las Cruces, New Mexico, as registrar, or any successor registrar (the "Registrar") at the address appearing therein at the close of business on the fifteenth day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the owner hereof as of the Record Date but shall be payable to the owner hereof at the close of business on a special record date to be fixed by the Paying Agent for the payment of interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to owners of Bonds (defined below) as then shown on the Registrar's registration books not less than ten (10) days prior to the special record date. If, upon presentation at maturity or redemption, payment of this bond is not made as herein provided, interest hereon shall continue at the Interest Rate until the principal hereof is paid in full. The principal, premium, if any, and interest on this bond are payable in lawful money of the United States of America, without deduction for the services of the Paying Agent or the Registrar.

This bond is one of a duly authorized series of fully registered bonds of the City in the aggregate principal amount of $_____ issued in denominations of $5,000 or integral multiples thereof, designated as the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022 (the "Series 2022 Bonds") issued under and pursuant to City Ordinance No. ____, as supplemented by a Pricing Certificate dated _____ , 2022 (as supplemented, the "Bond Ordinance").

The Series 2022 Bonds maturing on and after June 1, ____, are subject to prior redemption at the City's option in one or more units of principal of $5,000 on and after June 1, ____ in whole or in part at any time, in such order of maturities as the City may determine (and by lot if less than all of the Series 2022 Bonds of such maturity is called, such selection by lot to

be made by the Registrar in such manner considered appropriate and fair), for the principal amount of each $5,000 unit of principal so redeemed plus accrued interest to the redemption date.

Redemption shall be made upon prior notice mailed to each registered owner of each Series 2022 Bond selected for redemption as shown on the registration books kept by the Registrar in the manner and upon the conditions provided in the Bond Ordinance.

Notice of redemption of this bond will be given by providing at least thirty (30) days prior written notice in the manner required by the depository for the Bonds or by first-class postage prepaid mail to the owner hereof at the address shown on the registration books as of the fifth day prior to the mailing of notice as provided in the Bond Ordinance. Notices of redemption will specify the number or numbers and maturity date of the Series 2022 Bonds to be redeemed (if less than all are to be redeemed), the date fixed for redemption, the amount of such Bond to be redeemed (if less than the full amount of any Bond is to be redeemed), and shall further state that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount thereof plus accrued interest to the redemption date and that from and after such date, the redemption amount having been deposited and notice having been given, interest will cease to accrue. Upon any partial prior redemption of this bond, the registered owner, in its discretion, may request the Registrar to authenticate a new bond or to make an appropriate notation on this bond indicating the date and amount of prepayment, except in the case of final maturity, in which case this bond must be presented to the Paying Agent prior to payment.

Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer or exchange of a Bond at the principal office of the Registrar, duly endorsed or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver, not more than three (3)

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

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

If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar will, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If such lost,

stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the City, and is payable and collectible solely out of the revenues derived from the revenues from the Pledged Revenues (as such term is defined in the Bond Ordinance) and the bondholders may not look to any other general or other municipal fund for the payment of the interest and principal of this bond. The lien of the Series 2022 Bonds on the Pledged Revenues is an irrevocable and subordinate lien, but not necessarily an exclusive subordinate lien, on the Pledged Revenues. Upon satisfaction of the conditions set forth in the Bond Ordinance, additional bonds may be issued and made payable from the Pledged Revenues having a lien thereon either on parity with or senior to the lien on the Pledged Revenues of the Series 2022 Bonds Amounts and securities held in the 2022 Debt Service Fund and 2022 Reserve Fund (if any), as such terms are defined in the Bond Ordinance, have been exclusively pledged for payment of the principal of, premium, if any, and interest on the 2022 Bonds.

The Series 2022 Bonds are issued to provide funds to defray in part the costs of (1) the acquisition of fire engines, aerial fire trucks, and fire equipment for the City Fire Department and (2) the payment of Expenses related to the issuance of the Series 2022 Bonds.

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

This Bond is subject to the condition, and every owner hereof by accepting the same agrees with the obligor and every subsequent owner hereof, that the principal of and interest on

this bond shall be paid, and this bond is transferable, free from and without regard to any equities, set-offs or crossclaims between the obligor and the original or any other owner hereof.

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

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

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

CITY OF LAS CRUCES, NEW MEXICO

By_____

Mayor

By_____

City Clerk

(SEAL)

(Form of Registrar's Certificate of Authentication)

Certificate of Authentication

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

Date of Authentication:

City Treasurer of the City of Las Cruces,

New Mexico, as Registrar

By_____

Authorized Officer

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

(Form of Assignment)

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

_____ _____

Social Security or Tax Identification No. of Assignee_____

Dated: _____

Signature Guarantee:

_____

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

(End of Form of Assignment)

(End of Form of Bond)

Section 14. Period of 2022 Improvement Project's Usefulness. It is hereby determined and recited that the period of usefulness of the 2022 Improvement Project financed with the proceeds of the Series 2022 Bonds will not expire prior to the final maturity date of the Series 2022 Bonds.

Section 15. Use of Bond Proceeds and Other Funds; Completion of 2022 Improvement Project. Except as herein otherwise specifically provided, the proceeds derived from the sale of the Bonds, shall be used and paid solely for the valid costs of the 2022 Improvement Project.

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

B. Acquisition Fund. Proceeds derived from the sale of the Series 2022 Bonds in an amount to be specified in the Pricing Certificate shall be deposited promptly upon the receipt thereof in the 2022 Acquisition Fund to be held by the trustee for the Purchaser. Until the completion of the 2022 Improvement Project, the money in the 2022 Acquisition Fund shall be used and paid out solely for the purpose of the 2022 Improvement Project in compliance with applicable law.

C. Reserve Fund. No deposit of proceeds of the Bonds, Pledged State Shared Gross Receipts Tax Revenues or other City moneys into the 2022 Reserve Fund shall be required on the date of issuance of the Bonds or at any time thereafter, except in the circumstances and on the conditions described in paragraph B of Section 17 of this Bond Ordinance.

D. 2022 Improvement Project Completion. As soon as practicable after completion of the 2022 Improvement Project, and in any event not more than 60 days after completion of the 2022 Improvement Project, any proceeds remaining unspent (other than any

amount retained by the City for any 2022 Improvement Project costs not then due and payable) shall be transferred and deposited in the 2022 Debt Service Fund and used by the City to pay principal and interest on the Series 2022 Bonds as same become due.

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

F. Bond Insurance Policy and/or Reserve Fund Insurance Policy. A Bond Insurance Policy and/or Reserve Fund Insurance Policy may be obtained in connection with the issuance of each of the Series 2022 Bonds, as may be provided in the Pricing Certificate. The covenants of the City and other provisions required by the issuer of the Bond Insurance Policy and/or Reserve Fund Insurance Policy or otherwise necessary or advisable in connection with the Bond Insurance Policy and/or Reserve Fund Insurance Policy shall be included in the Pricing Certificate.

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

A. 2022 Acquisition Fund. The "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, Improvement Project Acquisition Fund" to be maintained by the City or by the trustee for the Purchaser.

B. Pledged Revenue Fund. The "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Revenue Fund" (the "State Shared Gross Receipts Tax Revenue Fund") to be maintained by the City, into which the City shall deposit the Pledged State Shared Gross Receipts Tax Revenues.

C. 2022 Debt Service Fund. The "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, Debt Service Fund" (the "2022 Debt Service Fund") to be maintained by the City or by the trustee for the Purchaser.

D. 2022 Reserve Fund. The "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, Reserve Fund" (the "2022 Reserve Fund") to be maintained by the City or by the trustee for the Purchaser.

Section 17. Deposit of Pledged Revenues and Flow of Funds. So long as any of the outstanding obligations payable from the Pledged Revenues shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues.

A. Payment of Parity Obligations. As a first lien on amounts on deposit in the Pledged Revenue Fund, the City shall pay the of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Obligations payable from the Pledged Revenues as required by the ordinances authorizing the issuance of the Parity Obligations. If funds on deposit in the Pledged Revenue Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Obligations, then the available funds in the Pledged Revenue Fund will be used, first, on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Obligations, for the payment of principal of and interest on all series of outstanding Parity Obligations and, second, to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Obligations, for the required debt service reserve fund deposits for all series of outstanding Parity Obligations.

B. Payment of Parity Subordinate Obligations. Subsequent to the payments required by the outstanding Parity Obligations, any balance remaining in the Pledged Revenue Fund, after making the payments hereinabove provided, shall be used by the City for the payment of interest on and the principal of the Series 2022 Bonds and all other Outstanding Parity Subordinate Obligations or other obligations, if any, having a lien on any of the Pledged Revenues subordinate to the lien thereon of the Parity Obligations hereafter authorized, issued and payable from the Pledged Revenues, as the same become due. So long as any of the Series 2022 Bonds shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues on a parity with the payments required by the outstanding Parity Subordinate Obligations:

(i) 2022 Debt Service Fund Payments. The following amounts shall be withdrawn from the State Shared Gross Receipts Tax Revenue Fund (and on parity with other outstanding Parity Subordinate Obligations), and shall be concurrently credited to the 2022 Debt Service Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(aa) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2022 Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Series 2022 Bonds, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Series 2022 Bonds then outstanding.

(bb) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2022 Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the

next maturing installment of principal of the outstanding Series 2022 Bonds and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Series 2022 Bonds then outstanding.

(ii) Credit. In making the deposits required to be made into the 2022 Debt Service Fund, if there are any amounts then on deposit in the 2022 Debt Service Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph (aa) above shall be reduced by the amount available in such fund for such purpose.

(iii) Transfer of Money out of 2022 Debt Service Fund. Each payment of principal and interest becoming due on the Series 2022 Bonds shall be transferred from the 2022 Debt Service Fund to the Paying Agent on or before two Business Days prior to the due date of such payment.

(iv) 2022 Reserve Fund and Reserve Fund Insurance Policy. No deposit shall be required in the 2022 Reserve Fund upon the issuance of the 2022 Bonds or any time thereafter except in the event that the City's credit rating for its outstanding Parity State Shared Gross Receipts Tax Revenue Bonds is downgraded to a rating that is below the rating of A/A2 by any of the nationally recognized securities rating agencies identified in this Ordinance. If such downgrade below A/A2 occurs, the City shall promptly notify the Purchaser and shall follow the procedure outlined in either subsection (a) or subsection (b) of this paragraph.

(a) The City shall begin making substantially equal monthly deposits in the 2022 Reserve Fund from the first legally available Pledged State Shared Gross Receipts Tax Revenues so that after 24 months an amount equal to the 2022 Minimum Reserve will be held in the 2022 Reserve Fund.

(b) Alternatively, the City shall deposit in the 2022 Reserve Fund one or more Reserve Fund Insurance Policies approved by the Purchaser which are equal to the 2022 Minimum Reserve. The Reserve Fund Insurance Policies shall continue to be in force until the earlier of (a) the final maturity date of the Series 2022 Bonds (unless such date is extended by agreement of the provider of the policy or surety bond) or (b) the date on which there are sufficient funds on deposit in the Series 2022 Debt Service Fund to pay the principal of and interest due on the Series 2022 Bonds.

After funding the 2022 Reserve Fund in an amount equal to the 2022 Minimum Reserve, no additional payments need be made into the 2022 Reserve Fund so long as the moneys therein shall equal not less than the 2022 Minimum Reserve. The moneys (if any) in the 2022 Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in subparagraph B(v) of this Section 17, only to prevent deficiencies in the payment of the principal of and interest on the Series 2022 Bonds resulting from failure to deposit into the 2022 Debt Service Fund sufficient funds to pay the principal and interest as the same accrue.

(v) Defraying Delinquencies in the 2022 Debt Service Fund and 2022 Reserve Fund. If, on any Interest Payment Date, the amount on deposit in the 2022 Debt Service Fund is insufficient to pay principal of and interest on the 2022 Bonds then due, then an amount shall be paid into the 2022 Debt Service Fund on such date from the 2022 Reserve Fund (if moneys are then on deposit in the 2022 Reserve Fund) equal to the amount of the insufficiency. The money deposited in the 2022 Debt Service Fund from the 2022 Reserve Fund, if any, shall be replaced in the Reserve Fund in 24 substantially equal monthly deposits commencing on the first day of the first month immediately succeeding the draw on the 2022 Reserve Fund. Such accumulation shall be made from the Pledged Revenues second to the payments required by subparagraph I(i)(aa)(1) and (2) of this Section 17. If, in any month, the City shall, for any reason,

fail to pay into the 2022 Reserve Fund the full amount required, the difference between the amount paid and the amount so stipulated shall be paid therein from the first Pledged Revenues thereafter received and not required to be otherwise applied. The moneys in the 2022 Reserve Fund shall be used solely and only for the purpose of paying any deficiencies in the payment of the principal of and the interest on the 2022 Bonds; provided, however, that any moneys at any time in excess of the 2022 Minimum Reserve in the 2022 Reserve Fund may be withdrawn therefrom and applied to any other lawful purpose. Cash accumulated in the 2022 Reserve Fund shall not be invested in a manner which could cause the 2022 Bonds to become arbitrage bonds within the meaning of the Code. Any investments held in the 2022 Reserve Fund shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the 2022 Reserve Fund exceeds the 2022 Minimum Reserve, all amounts in excess of the 2022 Minimum Reserve shall be transferred to the 2022 Debt Service Fund and used to pay principal of and interest on the 2022 Bonds.

(vi) Payment of Parity Subordinate Obligations. Concurrently with and on the same priority as the payment of the Pledged Revenues required by subparagraphs B(i), (iv) and (v) of this Section, any amounts on deposit in the Pledged Revenue Fund shall be used by the City for the payment of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Subordinate Obligations payable from the Pledged Revenues, as the same become due. If funds on deposit in the Pledged Revenue Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to the 2022 Bonds and any other outstanding Parity Subordinate Obligations, then the available funds in the Pledged Revenue Fund will be used, first (after payment of the Parity Obligations), on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Subordinate Obligations, for the payment of principal of and interest on all series of outstanding Parity Subordinate Obligations and, second,

to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Subordinate Obligations, for the required debt service reserve fund deposits for all series of outstanding Parity Subordinate Obligations.

(vii) Termination Upon Deposits to Maturity. No payment shall be made into the 2022 Debt Service Fund or the 2022 Reserve Fund (if required to be funded) if the amounts in such funds total a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Series 2022 Bonds to their respective maturities or applicable redemption dates, in which case moneys in the 2022 Debt Service Fund and the 2022 Reserve Fund in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in the 2022 Debt Service Fund and the 2022 Reserve Fund may be used as provided below.

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

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

A. Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be invested by the City in Permitted Investments or deposited in one or more bank accounts in an Insured Bank or Banks. Each fund or account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose. Payments shall be made into the proper fund or account on the first day of the month except when the first day shall not be a Business Day, then payment shall be made on the next succeeding Business

Day. No later than two Business Days prior to each Interest Payment Date, moneys sufficient to pay interest and principal then due on the Bonds shall be transferred to the Paying Agent. Nothing in this Bond Ordinance shall prevent the City from establishing one or more bank accounts in an Insured Bank or Banks for all the funds required by this Bond Ordinance or shall prevent the combination of such funds and accounts with any other bank account or accounts or investments for other funds and accounts of the City.

B. Investment of Moneys. Moneys in the 2022 Reserve Fund shall be invested in accordance with paragraph C of this Section 18, and moneys in any other fund or account not immediately needed may be invested in any investment permitted by the laws of the State or by the Charter. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The City Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

C. Reserve Fund. Moneys, if any, in the 2022 Reserve Fund may be invested only in Permitted Investments with an average aggregate weighted term to maturity not greater than five years. The City shall annually on or about June 1 of each year, commencing on the first June 1 succeeding funding of the 2022 Reserve Fund, value the 2022 Reserve Fund on the basis of the current fair market value of deposits and investments credited to each of the 2022 Reserve Fund. If, upon any valuation, the value of the 2022 Reserve Fund exceeds the 2022 Minimum Reserve, the excess amount shall be withdrawn and deposited into the 2022 Debt Service Fund; if the value is less than the applicable requirement, the City shall replenish such amounts from

the first Pledged Revenues thereafter received not required to be otherwise applied or other monies legally available therefor.

At such time as the Series 2022 Bonds are paid in full or are deemed to be paid in full, the amount on deposit in the 2022 Reserve Fund may be used to pay the final installments of principal and interest on the Series 2022 Bonds and otherwise may be withdrawn and transferred to the City to be used for any lawful purpose, provided that, if such amounts are used for a purpose other than payment of the Series 2022 Bonds, there shall be delivered an opinion of nationally recognized bond counsel that the purpose for which such funds are to be used is a lawful purpose for which such proceeds may be used under the laws of the State of New Mexico and that such use shall not result in the inclusion of interest on any Series 2022 Bonds in gross income of the recipient thereof for federal income tax purposes.

If moneys have been withdrawn from the 2022 Reserve Fund and deposited into the 2022 Debt Service Fund to prevent a default on the Series 2022 Bonds, then the City will pay, from Pledged Revenues or other monies legally available therefor, the full amount so withdrawn or so much as shall be required to restore the 2022 Reserve Fund to the 2022 Minimum Reserve. Such repayment shall be made as required by Section 17 of this Bond Ordinance.

Section 19. Lien on Pledged Revenues. The Pledged Revenues and the amounts and securities on deposit in 2022 Debt Service Fund and the 2022 Reserve Fund, if any, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein for, the payment of the principal of, premium, if any, and interest on the Series 2022 Bonds, subject to the uses thereof permitted by, and the priorities set forth in, this Bond Ordinance. The Series 2022 Bonds constitute an irrevocable and subordinate lien, but not an exclusive subordinate lien on the Pledged Revenues, subordinate to the lien thereon of

the outstanding Parity Obligations and additional Parity Obligations, if any, hereafter authorized to be issued and payable from Pledged Revenues, and on parity with the lien thereon of the outstanding Parity Subordinate Obligations and additional Parity Subordinate Obligations, if any, hereafter authorized to be issued and payable from the Pledged Revenues.

Section 20. Additional Obligations Payable from Pledged Revenues.

A. Parity Obligations. This Bond Ordinance shall not prevent the issuance of additional Parity Bonds payable from and constituting a lien upon the Pledged Revenues on parity with the lien of the Parity Obligations in accordance with the ordinances authorizing the issuance of the outstanding Parity Obligations.

B. Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from Pledged Revenues pledged by this Bond Ordinance and having a lien on any of the Pledged Revenues subordinate to the lien of the Series 2022 Bonds.

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

Section 21. Additional Parity Subordinate Obligations Payable from Pledged Revenues.

A. Parity Subordinate Obligation Test. This Bond Ordinance shall not prevent the issuance of additional Parity Subordinate Obligations payable from and constituting a subordinate lien upon the Pledged Revenues on parity with the lien of the Series 2022 Bonds. Before any additional Parity Subordinate Obligations are actually issued, it must be determined that:

(1) The City is then current in the accumulation of all amounts which are then required to be on deposit in 2022 Debt Service Fund and 2022 Reserve Fund, in accordance with Section 17 of this Bond Ordinance; and

(2) The Pledged State Shared Gross Receipts Tax Revenues (not including any Hold Harmless Distribution) received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Subordinate Lien Bonds shall have been sufficient to pay an amount representing at least 150% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Parity Obligations, (2) outstanding Parity Subordinate Obligations, and (3) the Parity Subordinate Obligations proposed to be issued.

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

B. Certification or Opinion Regarding Pledged Revenues. A written certificate or opinion by an Independent Accountant or the City Treasurer or City Financial Services Director, that the Pledged Revenues (not including any Hold Harmless Distribution) are sufficient to pay the required amounts under the test in paragraph A of this Section, shall conclusively determine

the right of the City to issue additional Parity Subordinate Obligations. The Independent Accountant, City Treasurer or City Financial Services Director may utilize the results of any annual audit to the extent it covers the applicable period.

C. Super Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from Pledged Revenues pledged by this Bond Ordinance and having a lien on any of the Pledged Revenues subordinate to the lien of the Series 2022 Bonds.

Section 22. Refunding Bonds. The provisions of Section 20 and Section 21 of this Bond Ordinance are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time the City shall find it desirable to refund any outstanding Parity Obligations, or any part thereof, such obligations may be refunded, but only in accordance with the ordinances authorizing the issuance of such Parity Obligations.

B. Limitation Upon Issuance of Parity Subordinate Refunding Obligations. No refunding obligations shall be issued with a lien on the Pledged Revenues on parity with the lien of the Series 2022 Bonds, unless:

(1) The lien on the Pledged Revenues of the outstanding obligations so refunded is on parity with the lien on the Pledged Revenues of the Series 2022 Bonds; or

(2) The refunding obligations are issued in compliance Section 21 of this Bond Ordinance.

C. Refunding Part of an Issue. The refunding bonds or other refunding obligations issued shall enjoy complete equality of lien with the portion of any bonds or other

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

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

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

(3) The refunding bonds or other refunding obligations are issued in compliance with Section 20 (in the case of Parity Refunding Obligations) or Section 21 (in the case of Parity Subordinate Refunding Obligations) of this Bond Ordinance.

D. Limitation Upon Issuance of Any Refunding Obligations. Any refunding obligations payable from Pledged Revenues shall be issued with such details as the City Council may provide, subject to the inclusion of any such rights and privileges designated in paragraph B of this Section but without impairing any contractual obligation imposed by any proceedings authorizing any unrefunded portion of any issue or issues, including the Series 2022 Bonds.

Section 23. Equality of Parity Subordinate Obligations. The Parity Subordinate Obligations from time to time outstanding shall not be entitled to any priority one over the other in the application of the Pledged Revenues, regardless of the time or times of their issuance or the date incurred, it being the intention of the City Council that, except as set forth herein, there shall

be no priority among Parity Subordinate Obligations regardless of whether they are actually issued and delivered or incurred at different times.

Section 24. Protective Covenants. The City hereby covenants and agrees with each and every holder of the Bonds issued hereunder:

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

B. Payment of Bonds Herein Authorized. The City will promptly pay the principal of and the interest on every Series 2022 Bond at the place, on the date and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

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

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

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

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

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

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

I. Debt Service Fund and Reserve Fund. The 2022 Debt Service Fund and the 2022 Reserve Fund shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in this Bond Ordinance.

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

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

L. Tax Covenants. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Mayor, Mayor Pro Tem and other officers of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, other facts and circumstances relevant to the tax treatment of interest on the Bonds, and making related covenants.

The City covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments, yield reduction payments or payments of alternative amounts in lieu of rebate to the federal government, if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor, Mayor Pro Tem and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

In furtherance of the covenants set forth above, the City hereby establishes a fund separate from any other funds established and maintained hereunder designated as the Rebate Fund (the “Rebate Fund”). Money and investments in the Rebate Fund shall not be used

for the payment of the Bonds, and amounts credited to the Rebate Fund shall be free and clear under any pledge under this Bond Ordinance. Money in the Rebate Fund shall be invested in a manner provided in Section 18 for investment of money, and all amounts on deposit in the Rebate Fund shall be held by the City, or a designated trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The City shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The City shall remit all rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted to the City.

Section 25. Preliminary Official Statement and Continuing Disclosure Undertaking.

A. Preliminary Official Statement. If required by the Purchaser, the preparation of the Preliminary Official Statement is hereby requested and approved for use distribution and use in connection with the sale of the Bonds; provided, that the foregoing shall not be applicable in the event that the Bonds are purchased pursuant to a private placement for which the Preliminary Official Statement is not required.

B. Continuing Disclosure Undertaking. If required by the Purchaser, the officers of the City are authorized to sign such documents and to take such actions in the future with respect to the City's continuing disclosure obligations as are necessary or desirable to comply with the Continuing Disclosure Undertaking and the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended; provided, that the foregoing shall not be applicable in the event that the Bonds are purchased pursuant to a private placement for which the Continuing Disclosure Undertaking is

not required. Notwithstanding any other provisions of this Bond Ordinance, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an "event of default" under Section 26 hereof, and holders and beneficial owners of Bonds shall be entitled to exercise only such rights with respect thereto as are provided in the Continuing Disclosure Undertaking.

Section 27. Events of Default. Each of the following events is hereby declared an "event of default":

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

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

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

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

E. Bankruptcy. The City (i) files a petition or application seeking reorganization or arrangement of debt under Federal Bankruptcy law, or other debtor relief under

the laws of any jurisdiction, or (ii) is the subject of such petition or application which the City does not contest or is not dismissed or discharged within sixty (60) days.

Section 27. Remedies Upon Default. Upon the happening and continuance of any of the events of default as provided in Section 26 of this Bond Ordinance, then and in every case, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the City, the City Council and its agents, officers and employees, but only in their official capacities, to protect and enforce the rights of any holder of Bonds under this Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any Bondholder, or to require the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Bonds then outstanding. The failure of any Bondholder so to proceed shall not relieve the City or any of its officers, agents or employees of any responsibility for failure to perform, in their official capacities, any duty. Each right or privilege of such holder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

Section 28. Duties Upon Default. Upon the happening of any of the events of default provided in Section 26 of this Bond Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for

the payment of the Bonds and to insure the payment of the principal of and interest on the Bonds promptly as the same become due. All proceeds derived therefrom, so long as any of the Bonds, either as to principal or interest, are outstanding and unpaid, shall be applied as set forth in Section 17 of this Bond Ordinance. In the event the City fails or refuses to proceed as provided in this Section, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the owners of the Bonds as hereinabove provided.

Section 29. Bonds Not Presented When Due. If any Bonds shall not be duly presented for payment when due at maturity or on the redemption date thereof, and if moneys sufficient to pay such Bonds are on deposit with the Paying Agent for the benefit of the owners of such Bonds, all liability of the City to such owners for the payments of such Bonds shall be completely discharged, such Bonds shall not be deemed to be outstanding and it shall be the duty of the Paying Agent to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of the owners of such Bonds as may be provided in any agreement hereafter entered into between the Paying Agent and an officer of the City.

Section 30. Delegated Powers; Authority to Make Budget Adjustments. The officers of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Bond Ordinance, including, without limiting the generality of the foregoing, the publication of the title and general summary of the Bond Ordinance set out in Section 36 (with such changes, additions and deletions as they may determine), the printing of the Bonds, the preparation, printing, execution and distribution of the Preliminary Official Statement and final Official Statement, and the execution of the Continuing Disclosure Undertaking and of such documents or certificates as may be required by the Purchaser or bond counsel. The officers of the City are hereby authorized and directed to take all action necessary to make the budget adjustments needed to reflect the Bond proceeds.

Section 31. Amendment of Bond Ordinance. This Bond Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained herein. Prior to the date of the initial delivery of the Bonds to the Purchaser, the provisions of this Bond Ordinance may be amended with the written consent of the Purchaser, with respect to any changes which are not inconsistent with the substantive provisions of this Bond Ordinance. In addition, this Bond Ordinance may be amended without receipt by the City of any additional consideration, but with the written consent of the holders of seventy-five percent (75%) of the Bonds then outstanding (not including Bonds which may be held for the account of the City); but no ordinance adopted without the written consent of the holders of all outstanding Bonds shall have the effect of permitting:

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

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

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

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

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

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

Section 32. Defeasance. When all principal and interest in connection with the Bonds hereby authorized have been duly paid, the pledge and lien on the Pledged Revenues for the

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

Section 33. Bond Ordinance Irrepealable. After any of the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as herein provided, or there has been defeasance of the Bonds as herein provided.

Section 34. Severability Clause. If any Section, paragraph, clause or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 35. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 36. Effective Date. Upon due adoption of this Bond Ordinance, it shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the signatures of the Mayor or Mayor Pro Tem and City Clerk, and the title and general summary of the subject matter contained in this Bond Ordinance (set out in Section 37 below) shall be published in a newspaper which maintains an office and is of general circulation in the City and this Bond Ordinance shall be in full force and effect in accordance with law.

Section 37. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Bond Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Las Cruces, New Mexico

Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in an ordinance duly adopted and approved by the City Council of the City of Las Cruces, New Mexico, on August 15, 2022, relating to the authorization and issuance of the City's Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Las Cruces City Hall, 700 North Main Street Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2022 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $5,000,000 FOR THE ACQUISITION OF FIRE ENGINES, AERIAL FIRE TRUCKS, AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT; DELEGATING

AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.

TO THE PURCHASER.

A general summary of the Ordinance is:

The Ordinance authorizes the issuance and sale of the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022, in an aggregate principal amount not to exceed $5,000,000 for (1) the acquisition of fire engines, aerial fire trucks, and fire equipment for the City Fire Department and (2) paying Expenses related to the issuance of the Series 2022 Bonds; provides that the Bonds will be payable and collectible from the revenues derived from the 1.225% pledged state shared gross receipts tax distributed to the City; provides that the maturity dates, interest rates, redemption provisions and other details of each series of the Bonds will be as established in the Pricing Certificate, and delegate authority to the City Manager or Financial Services Director to execute and deliver the Pricing Certificate; provides a form of the Bonds; approves preparation, execution and delivery of certain documents relating to the Bonds; makes covenants for the benefit of owners of the Bonds; ratifies action previously taken in connection with the Bonds; and repeals all action in conflict with the Ordinance.

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

(End of Form of Summary for Publication)

DONE AND APPROVED this 15th day of August, 2022.

APPROVED:

_____
Ken Miyagishima, Mayor

ATTEST:

_____
Christine, Rivera City Clerk

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima:	_____
Councilor Gandara:	_____
Councilor Abeyta:	_____
Councilor Graham:	_____
Councilor Bencomo:	_____
Councilor Corran:	_____
Councilor Flores:	_____

APPROVED AS TO FORM

_____
Jennifer Vega, City Attorney

STATE OF NEW MEXICO)

COUNTY OF DOÑA ANA) ss.

CITY OF LAS CRUCES)

I, Christine Rivera, the duly acting and qualified City Clerk of the City of Las Cruces, New Mexico (the "Governmental Unit"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council (the "Governing Body"), constituting the governing body of the City had and taken at a duly called regular meeting held at the Municipal Offices, 700 North Main Street, Las Cruces, New Mexico, on August 15, 2022, at the hour of 1:00 p.m., insofar as the same relate to the issuance and delivery of the Bonds, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Such proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at such meeting, as therein shown.

3. Notice of such meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the City's open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of August, 2022.

CITY OF LAS CRUCES, NEW MEXICO

_____

Christine Rivera, City Clerk

Y:\dox\client\45380\0262\GENERAL\~~W4440398~~W4468397.DOCX

3008; Council Bill 23-002

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☒ 5 ☐ 6 ☐ N/A		
1st Reading:	August 1, 2022	**Adopted:**	August 15, 2022
Drafter:	John Castillo	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title: **AN ORDINANCE APPROVING A ZONE CHANGE FROM R-1A (SINGLE FAMILY MEDIUM DENSITY) TO R-2 (MULTI-DWELLING LOW DENSITY) FOR A PROPERTY ENCOMPASSING 2.68 + ACRES LOCATED AT 5600 MCGUFFEY STREET. SUBMITTED BY THE FORT CONSTRUCTION, REPRESENTATIVE.**

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

PURPOSE(S) OF ACTION:

Zone Change

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City Council is required to review and take final action on zone changes per Section 38-10 B. 2. b. and 38-13 A. of the 2001 Zoning Code, as amended. A zoning district is a specifically delineated area where land use regulations uniformly govern the use, placement, spacing, density, bulk, height, and size of buildings and/or land.

The applicant is requesting a zone change from R-1a (Single-Family Medium Density) to R-2 (Multi-Dwelling Low Density) on a vacant parcel of land located at 5600 McGuffey Street. The purpose for the proposed zone change is to allow for the development of multi-family residences (apartment complex) to increase the density and intensity of the use of the property and to provide a housing type generally identified as “Missing Middle Housing”.

The property is currently zoned R-1a (Single-Family Medium Density) which does not permit the aforementioned multi-dwelling unit residences. The proposed zone change request will allow for the development of multi-family dwelling units, promote investment within older areas of the city through redevelopment, and promote denser housing options for residents at all stages in life. The surrounding neighborhood has a mixture of residential zoning districts (Single-Family and Multi-Dwelling) in close proximity and Commercial/Industrial zoning districts to the south. Based on the existing neighborhood, the proposed zone change is compatible with the surrounding area and would be in harmony with Section 38-2 of the 2001 Zoning Code.

The proposed zone change is also consistent with many elements of Elevate Las Cruces Comprehensive Plan including the Future Development Map and several Goals, Policies, and Actions. The property is located within the Suburban Neighborhood Place Type which provides for low-to-moderate density residential land uses intermixed with areas of commercial development.

On April 26, 2022 the Planning and Zoning Commission (P&Z), per Section 38-10 B. 2. B of the 2001 Zoning Code, as amended, recommended approval of the proposed zone change by a vote of 6-0-0 (one Commissioner absent) based on the following finding, also reflected in Exhibit "B":

- The zone change request will allow for the development of vacant properties and foster a rational relationship between different land uses for the mutual benefit of all (2001 Zoning Code, Section 38-2).
- The expanded uses allowed by this zone change are consistent with existing uses in proximity to the property (2001 Zoning Code, Section 38-33).
- The proposed zone change request meets the intent of Elevate Las Cruces Comprehensive Plan.
- The zone change meets the intent and purpose outlined in Section 38-2 of the 2001 Zoning Code, as amended and fulfills the purpose of the Las Cruces Municipal Code Section 2-382.

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 - Site Plan
Exhibit B - Findings
Attachment A - 5600 McGuffey Zone change Staff Report
Attachment B - P&Z 04.26.22 Approved Minutes

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

P&Z

ANNUAL BUDGET APPROVAL:

☐ Yes
☐ No
☒ N/A

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

☐ Yes
☐ No
☒ N/A

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No
☐ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes", this will approve the Ordinance and affirm the P&Z recommendation for approval. The subject property located at 5600 McGuffey Street will be rezoned from R-1a (Single Family Medium Density) to R-2 (Multi-Dwelling Low Density).
2. Vote "No", this will deny the Ordinance and will reject the recommendation made by the P&Z. The current zoning designation of R-1a (Single Family Medium Density) will remain on the subject property. Denial of the zone change 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 the 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 3008; COUNCIL BILL 23-002

AN ORDINANCE APPROVING A ZONE CHANGE FROM R-1A (SINGLE FAMILY MEDIUM DENSITY) TO R-2 (MULTI-DWELLING LOW DENSITY) FOR A PROPERTY ENCOMPASSING 2.68 + ACRES LOCATED AT 5600 MCGUFFEY STREET. SUBMITTED BY THE FORT CONSTRUCTION, REPRESENTATIVE.

The City Council is informed that:

WHEREAS, The Fort Construction, representative, has submitted a request for a zone change from R-1a (Single-Family Medium Density) to R-2 (Multi-Dwelling Low Density) for 5600 McGuffey Street; and

WHEREAS, the proposed R-2 zoning designation will allow for the development of multi-family dwelling units, promote investment within older areas of the city through redevelopment and promote denser housing options for residents at all stages of in life; and

WHEREAS, the proposed site is in the Suburban Neighborhood Place Type as shown on the Future Development Map within Elevate Las Cruces Comprehensive Plan which supports low-to-moderate density residential land uses which include single-family and multi-family development; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on April 26, 2022, recommended that said zone change request be approved by a vote of 6-0-0 (one Commissioner absent).

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 here to and made part of this Ordinance, is hereby zoned R-2 (Multi-Dwelling Low Density)

(II)

THAT the zoning is based on the findings contained in Exhibit "B", attached hereto and made part of this Ordinance.

(III)

THAT the zoning of said property be shown accordingly on the City Zoning Atlas.

(IV)

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

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

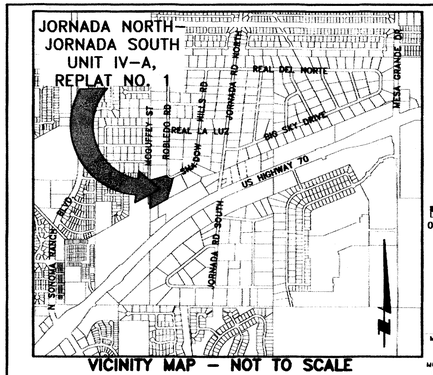
Seconded by:

AYES

NAYS

JORNADA NORTH–JORNADA SOUTH UNIT IV–A, REPLAT NO. 1

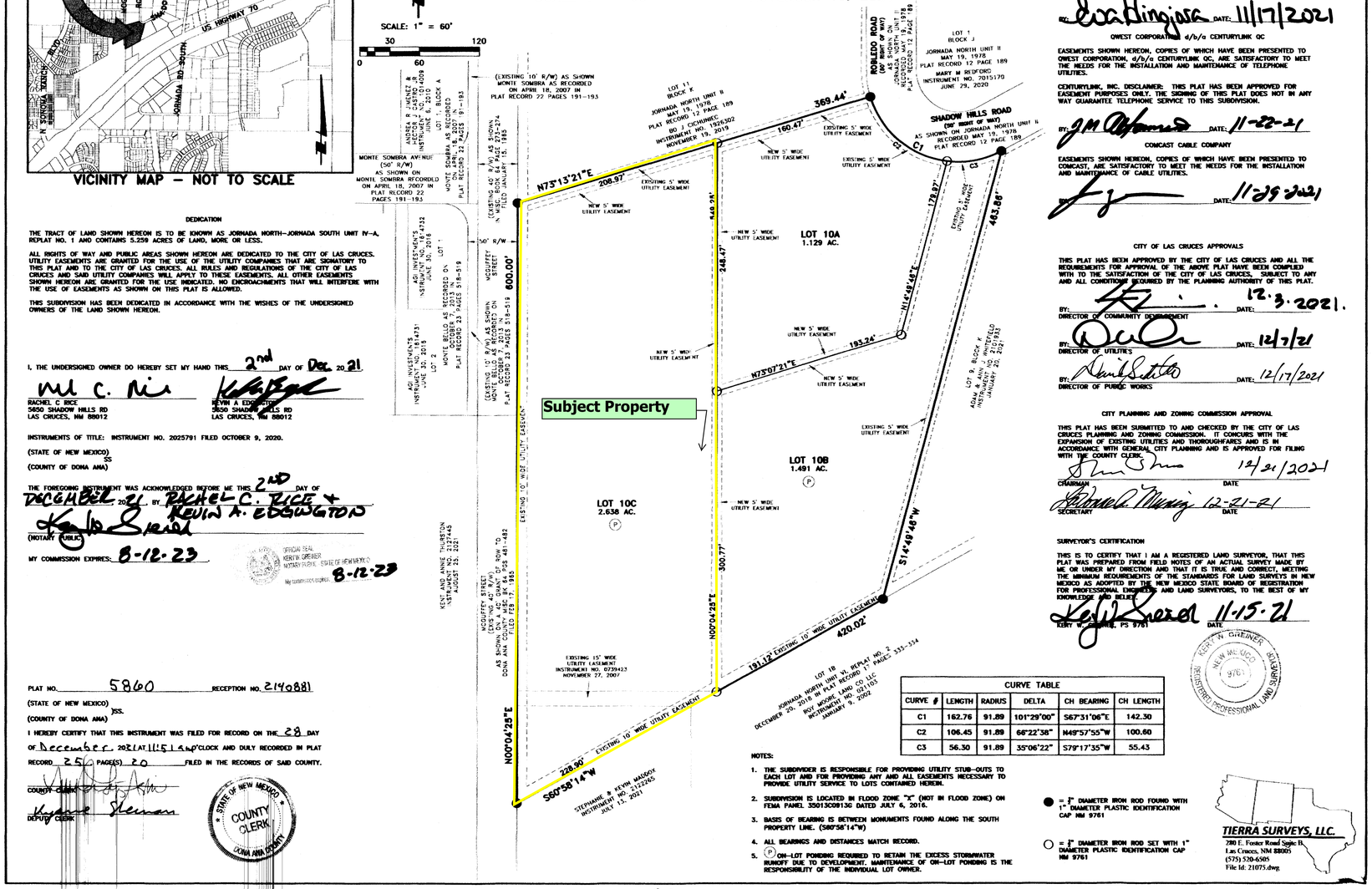
A 5.259 ACRE REPLAT OF LOT 10, BLOCK K,
JORNADA NORTH–JORNADA SOUTH UNIT IV–A
RECORDED DECEMBER 13, 1979 IN PLAT RECORD 13, PAGE 5
LOCATED IN SECTION 22, T.22S., R.2E., N.M.P.M. OF THE U.S.G.L.O. SURVEYS
CITY OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO
SCALE 1" = 60' NOVEMBER 15, 2021



VICINITY MAP – NOT TO SCALE

SCALE: 1" = 60'

0 30 60 120



DEDICATION

THE TRACT OF LAND SHOWN HEREON IS TO BE KNOWN AS JORNADA NORTH–JORNADA SOUTH UNIT IV–A, REPLAT NO. 1 AND CONTAINS 5.259 ACRES OF LAND, MORE OR LESS.

ALL RIGHTS OF WAY AND PUBLIC AREAS SHOWN HEREON ARE DEDICATED TO THE CITY OF LAS CRUCES. UTILITY EASEMENTS ARE GRANTED FOR THE USE OF THE UTILITY COMPANIES THAT ARE SIGNATORY TO THIS PLAT AND TO THE CITY OF LAS CRUCES. ALL RULES AND REGULATIONS OF THE CITY OF LAS CRUCES AND SAID UTILITY COMPANIES WILL APPLY TO THESE EASEMENTS. ALL OTHER EASEMENTS SHOWN HEREON ARE GRANTED FOR THE USE INDICATED. NO ENCROACHMENTS THAT WILL INTERFERE WITH THE USE OF EASEMENTS AS SHOWN ON THIS PLAT IS ALLOWED.

THIS SUBDIVISION HAS BEEN DEDICATED IN ACCORDANCE WITH THE WISHES OF THE UNDERSIGNED OWNERS OF THE LAND SHOWN HEREON.

I, THE UNDERSIGNED OWNER DO HEREBY SET MY HAND THIS 2nd DAY OF Dec. 2021

RACHEL C. RICE
5650 SHADOW HILLS RD
LAS CRUCES, NM 88012

KEVIN A EDDINGTON
5650 SHADOW HILLS RD
LAS CRUCES, NM 88012

INSTRUMENTS OF TITLE: INSTRUMENT NO. 2025791 FILED OCTOBER 9, 2020.

(STATE OF NEW MEXICO)
)SS
(COUNTY OF DONA ANA)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 2ND DAY OF DECEMBER 2021 BY RACHEL C. RICE & KEVIN A. EDDINGTON

(NOTARY PUBLIC)

MY COMMISSION EXPIRES: 8-12-23

OFFICIAL SEAL
KERRY GREINER
NOTARY PUBLIC, STATE OF NEW MEXICO
My Commission Expires: 8-12-23

PLAT NO. 5860 RECEPTION NO. 2140881

(STATE OF NEW MEXICO)
)SS.
(COUNTY OF DONA ANA)

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD ON THE 28 DAY OF December, 2021 AT 11:51 A.M. O'CLOCK AND DULY RECORDED IN PLAT RECORD 25 PAGE(S) 20 FILED IN THE RECORDS OF SAID COUNTY.

COUNTY CLERK

DEPUTY CLERK

STATE OF NEW MEXICO COUNTY CLERK DONA ANA COUNTY

UTILITY APPROVALS

THIS PLAT HAS BEEN APPROVED FOR EASEMENT PURPOSES ONLY. THE SIGNING OF THIS PLAT DOES NOT IN ANY WAY GUARANTEE UTILITY SERVICE BY THE UNDERSIGNED COMPANIES TO THE SUBDIVISION.

EL PASO ELECTRIC COMPANY

EASEMENTS SHOWN HEREON, COPIES OF WHICH HAVE BEEN PRESENTED TO THE EL PASO ELECTRIC COMPANY, ARE SATISFACTORY TO MEET THE NEEDS FOR THE INSTALLATION AND MAINTENANCE OF ELECTRICAL UTILITIES.

BY: Eva Hinojosa DATE: 11/17/2021

QWEST CORPORATION d/b/a CENTURYLINK QC

EASEMENTS SHOWN HEREON, COPIES OF WHICH HAVE BEEN PRESENTED TO QWEST CORPORATION, d/b/a CENTURYLINK QC, ARE SATISFACTORY TO MEET THE NEEDS FOR THE INSTALLATION AND MAINTENANCE OF TELEPHONE UTILITIES.

CENTURYLINK, INC. DISCLAIMER: THIS PLAT HAS BEEN APPROVED FOR EASEMENT PURPOSES ONLY. THE SIGNING OF THIS PLAT DOES NOT IN ANY WAY GUARANTEE TELEPHONE SERVICE TO THIS SUBDIVISION.

BY: JM Alfonso DATE: 11-22-21

COMCAST CABLE COMPANY

EASEMENTS SHOWN HEREON, COPIES OF WHICH HAVE BEEN PRESENTED TO COMCAST, ARE SATISFACTORY TO MEET THE NEEDS FOR THE INSTALLATION AND MAINTENANCE OF CABLE UTILITIES.

BY: DATE: 11-29-2021

CITY OF LAS CRUCES APPROVALS

THIS PLAT HAS BEEN APPROVED BY THE CITY OF LAS CRUCES AND ALL THE REQUIREMENTS FOR APPROVAL OF THE ABOVE PLAT HAVE BEEN COMPLIED WITH TO THE SATISFACTION OF THE CITY OF LAS CRUCES, SUBJECT TO ANY AND ALL CONDITIONS ACQUIRED BY THE PLANNING AUTHORITY OF THIS PLAT.

BY: DATE: 12.3.2021.
DIRECTOR OF COMMUNITY DEVELOPMENT

BY: DATE: 12/7/21
DIRECTOR OF UTILITIES

BY: DATE: 12/17/2021
DIRECTOR OF PUBLIC WORKS

CITY PLANNING AND ZONING COMMISSION APPROVAL

THIS PLAT HAS BEEN SUBMITTED TO AND CHECKED BY THE CITY OF LAS CRUCES PLANNING AND ZONING COMMISSION. IT CONCURS WITH THE EXPANSION OF EXISTING UTILITIES AND THOROUGHFARES AND IS IN ACCORDANCE WITH GENERAL CITY PLANNING AND IS APPROVED FOR FILING WITH THE COUNTY CLERK.

CHAIRMAN DATE 12/21/2021

SECRETARY DATE 12-21-21

SURVEYOR'S CERTIFICATION

THIS IS TO CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, THAT THIS PLAT WAS PREPARED FROM FIELD NOTES OF AN ACTUAL SURVEY MADE BY ME OR UNDER MY DIRECTION AND THAT IT IS TRUE AND CORRECT, MEETING THE MINIMUM REQUIREMENTS OF THE STANDARDS FOR LAND SURVEYS IN NEW MEXICO AS ADOPTED BY THE NEW MEXICO STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS, TO THE BEST OF MY KNOWLEDGE AND BELIEF.

KERRY N. GREINER, NM PS 9761 DATE 11-15-21

KERRY N GREINER NEW MEXICO 9761 REGISTERED PROFESSIONAL LAND SURVEYOR

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CH BEARING	CH LENGTH
C1	162.76	91.89	101°29'00"	S67°31'06"E	142.30
C2	106.45	91.89	66°22'38"	N49°57'55"W	100.60
C3	56.30	91.89	35°06'22"	S79°17'35"W	55.43

NOTES:

1. THE SUBDIVIDER IS RESPONSIBLE FOR PROVIDING UTILITY STUB–OUTS TO EACH LOT AND FOR PROVIDING ANY AND ALL EASEMENTS NECESSARY TO PROVIDE UTILITY SERVICE TO LOTS CONTAINED HEREIN.
2. SUBDIVISION IS LOCATED IN FLOOD ZONE "X" (NOT IN FLOOD ZONE) ON FEMA PANEL 35013C0913G DATED JULY 6, 2016.
3. BASIS OF BEARING IS BETWEEN MONUMENTS FOUND ALONG THE SOUTH PROPERTY LINE. (S60°58'14"W)
4. ALL BEARINGS AND DISTANCES MATCH RECORD.
5. (P) ON–LOT PONDING REQUIRED TO RETAIN THE EXCESS STORMWATER RUNOFF DUE TO DEVELOPMENT. MAINTENANCE OF ON–LOT PONDING IS THE RESPONSIBILITY OF THE INDIVIDUAL LOT OWNER.

● = ½" DIAMETER IRON ROD FOUND WITH 1" DIAMETER PLASTIC IDENTIFICATION CAP NM 9761

○ = ½" DIAMETER IRON ROD SET WITH 1" DIAMETER PLASTIC IDENTIFICATION CAP NM 9761

TIERRA SURVEYS, LLC.
780 E. Foster Road Suite B
Las Cruces, NM 88005
(575) 520-6505
File Id: 21075.dwg

Findings

- The zone change request will allow for the development of vacant properties and foster a rational relationship between different land uses for the mutual benefit of all (2001 Zoning Code, Section 38-2).
- The expanded uses allowed by this zone change are consistent with existing uses in proximity to the property (2001 Zoning Code, Section 38-33).
- The proposed zone change request meets the intent of Elevate Las Cruces Comprehensive Plan.
- Meets the intent and purpose outlined in Section 38-2 of the 2001 Zoning Code, as amended and fulfills the purpose of the Las Cruces Municipal Code Section 2-382.

Attachment A

City of Las Cruces
MOUNTAINS OF OPPORTUNITY

ZONING

Planning & Zoning Commission 04/26/2022

CASE 22ZO0500048: REZONING

STAFF CONTACT:	John Castillo, (575) 541-2288, jcastillo@las-cruces.org
OWNER:	Rachel C. Rice
REPRESENTATIVE:	The Fort Construction
DISTRICT:	District #5
SITE ADDRESS:	5600 McGuffey Street
EXISTING ZONING:	R-1a (Single Family Medium Density)
REQUEST:	Re-zone the property to R-2 (Multi-Dwelling Low Density)
RELATED APPLICATIONS:	Case 20CS0500095: A non-administrative replat of one lot to three lots.
STAFF RECOMMENDATION:	Approval

SUMMARY OF CASE 22ZO0500048:
A zone change request application from R-1a (Single Family Medium Density) to R-2 (Multi-Dwelling Low Density) on a property encompassing 2.68 ± acres and located at 5600 McGuffey Street. The purpose of the rezoning is to expand the density and intensity of the dwelling units allowed on the property.

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

- The zone change request will allow for the development of vacant properties and foster a rational relationship between different land uses for the mutual benefit of all (2001 Zoning Code, Section 38-2)
- The expanded uses allowed by this zone change are consistent with existing uses in proximity to the property (2001 Zoning Code, Section 38-33).
- The proposed zone change request meets the intent of Elevate Las Cruces Comprehensive Plan.
- Meets the intent and purpose outlined in Section 38-2 of the 2001 Zoning Code, as amended and fulfills the purpose of the Las Cruces

Municipal Code Section 2-382.

PROPOSAL AND LAND USE HISTORY

DETAILED DESCRIPTION:

The owner has proposed a zone change request from R-1a (Single Family Medium Density) to R-2 (Multi-Dwelling Low Density) for the expansion of the density and intensity of dwelling units on the property. The subject property located at 5600 McGuffey Street has a current zoning designation of R-1a which does not support the development of multi-family dwelling units. The property is currently a vacant lot. The applicant is interested in the development of multi-family residential development on the property

LAND USE HISTORY:

The subject property underwent a subdivision in 2021, which split the 5.62 ± acre property into three lots. The subject property is currently located at 5600 McGuffey Street and encompasses 2.68 ± acres and has direct access from the local roadway. The subject property was annexed into the City of Las Cruces in June of 1987 through the Jornada North-Jornada South subdivision annexation. It is also a part of the multiphase Jornada North-Jornada South Subdivision.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
Neighborhood Character and Compatibility	Yes
Elevate Las Cruces Comprehensive Plan	Yes
Thoroughfare Plans	Yes
Purpose and Intent of the Code: Section 38-2	Yes
Criteria for Decisions: Section 2-382	Yes

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:

The subject property has commercial and industrial zoning to the south, and multi-family and single-family residential zoning to the north, east and west. The request for the zone change to R-2 is keeping with the surrounding area. This request and proposed development will provide various types of housing to a diverse range of income and generational housing needs, addressing the "missing middle housing" that is addressed through goals, policies, and actions in Elevate las Cruces.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:

The property is located within an area designated as a The Suburban Neighborhood Place Type as shown on the Future Development Map in the Elevate Las Cruces Comprehensive Plan. The Suburban Neighborhood provide for low-to-moderate density residential land uses intermixed with areas of commercial development. As part of this office and retail uses are some of the predominant land uses found in the place type. The following goal(s),

policy(s), and action(s) 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-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.
      - Action CE-4.1.1: Promote a diversity of residential building types, lot sizes, density ranges, and architectural styles in new neighborhoods.
    - Policy CE-4.3 – Develop street networks that provide connectivity within and between residential areas and supporting center of activity.
      - Action CE-4.3.1: Establish minimum street connectivity requirements between neighborhoods to reduce traffic on thoroughfare.
- Community Prosperity:
  - Goal CP-7: Attainable Housing – Provide affordable, clean, and safe housing potions for all residents regardless of income.
    - Policy CP-7.2: Disperse Affordable housing units to promote the development of mixed-income neighborhoods.

The proposed zone change is supported by the Comprehensive Plan as outlined above. The proposed zone change aligns with the following Development Strategy: "Provide a diversity of residential building types, lot sizes, density ranges, and architectural styles".

COMPLIANCE WITH THOROUGHFARE PLANS:

The subject property is located north of Bataan Memorial West identified as a major arterial in Elevate Las Cruces Future Thoroughfare Plan and MPO Future Thoroughfare Map. The primary access is on McGuffey Street and is classified as a local roadway which the proposed zone change will be supported.

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.
L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
M. Foster a more rational relationship between different land uses for the mutual benefit of all.
N. Conserve the value of buildings and land.

Review by City of Las Cruces staff determined the proposed zone change would not adversely impact the surrounding area and any expansion in uses is in keeping with the surrounding area as per section 38-2 of the 2001 Zoning Code, as amended.

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 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 a positive recommendation to City Council regarding the zone change request. Staff also considered the Criteria for Decisions stated above during the internal review process and has deemed the zone change request appropriate for recommendation of approval.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:

The subject property currently encompasses 2.68 ± acres and is currently zoned R-1a. Under the current zoning designation, the subject is allowed to have a single-family dwelling in accordance with the 2001 Zoning Code, as amended. The applicant can subdivide the property into single-family residential lots consistent with the R-1a development standards.

SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:

The zone change request to R-2 would allow for the expansion of density and intensity of dwelling units (DU) on the property. The maximum density of dwelling units allowed for the R-2 zoning designation are fifteen (15) DU per acre. Therefore, the subject property can have a maximum of forty (40) dwelling units and will need to provide a minimum of 80 parking stalls. As the site is currently developed, it will meet all the applicable standards of the R-2 zoning district and meets the intent of Elevate Las Cruces Comprehensive Plan.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water, gas and sewer are currently serving the property and will not be negatively impacted by the zone change request. McGuffey Street provides adequate paved access, and the installation of sidewalks, and lighting adjacent to the subject property will be built at time of development.

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT:

Notification letters were mailed to property owners in compliance with City notification requirements. Staff has received a phone call in regard to the increase in traffic at the proposed site and access to the property from

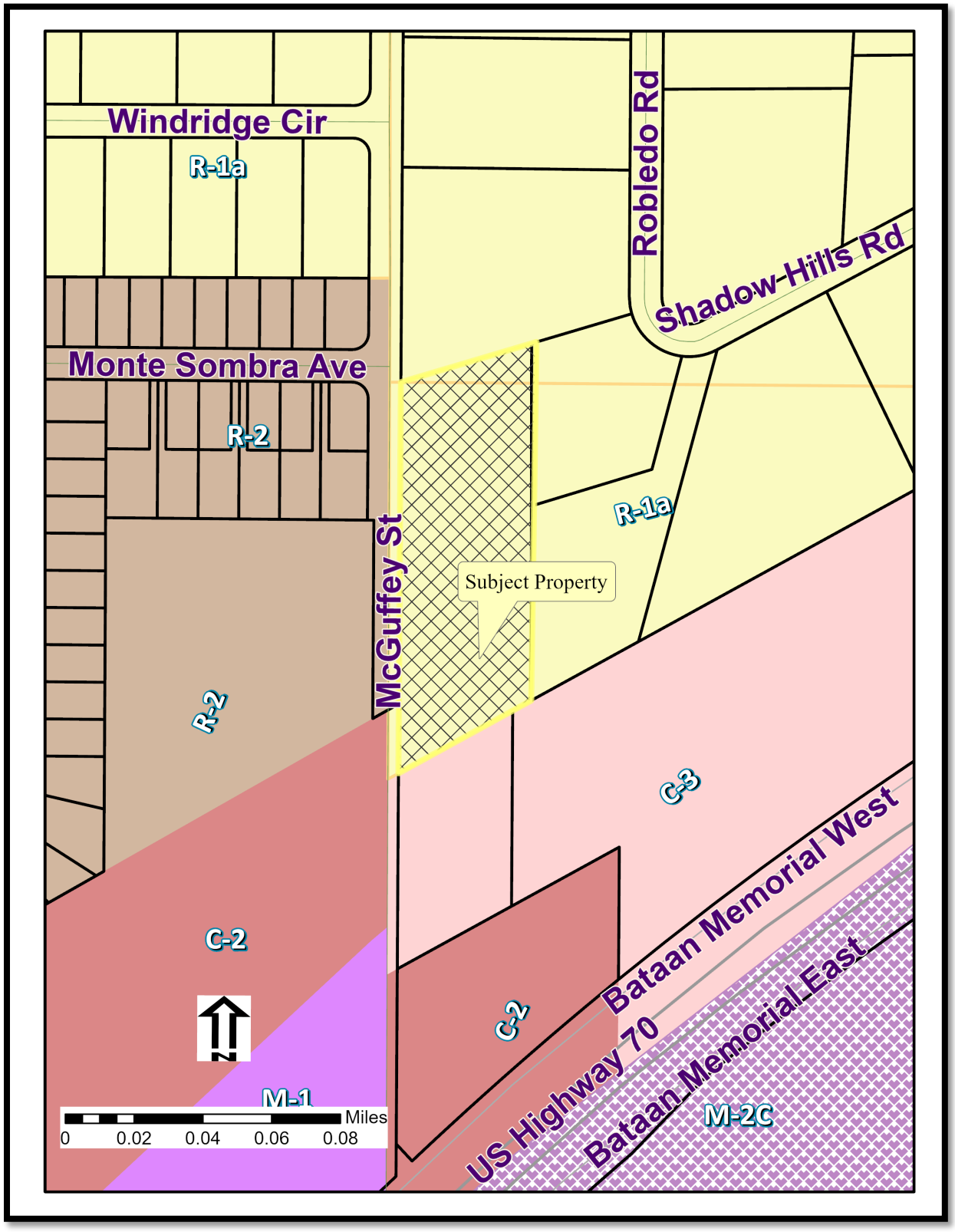
McGuffey.

STAFF COMMENTS:
No reviewing department had any negative comments nor have any reviewing staff objected to the proposed rezoning.

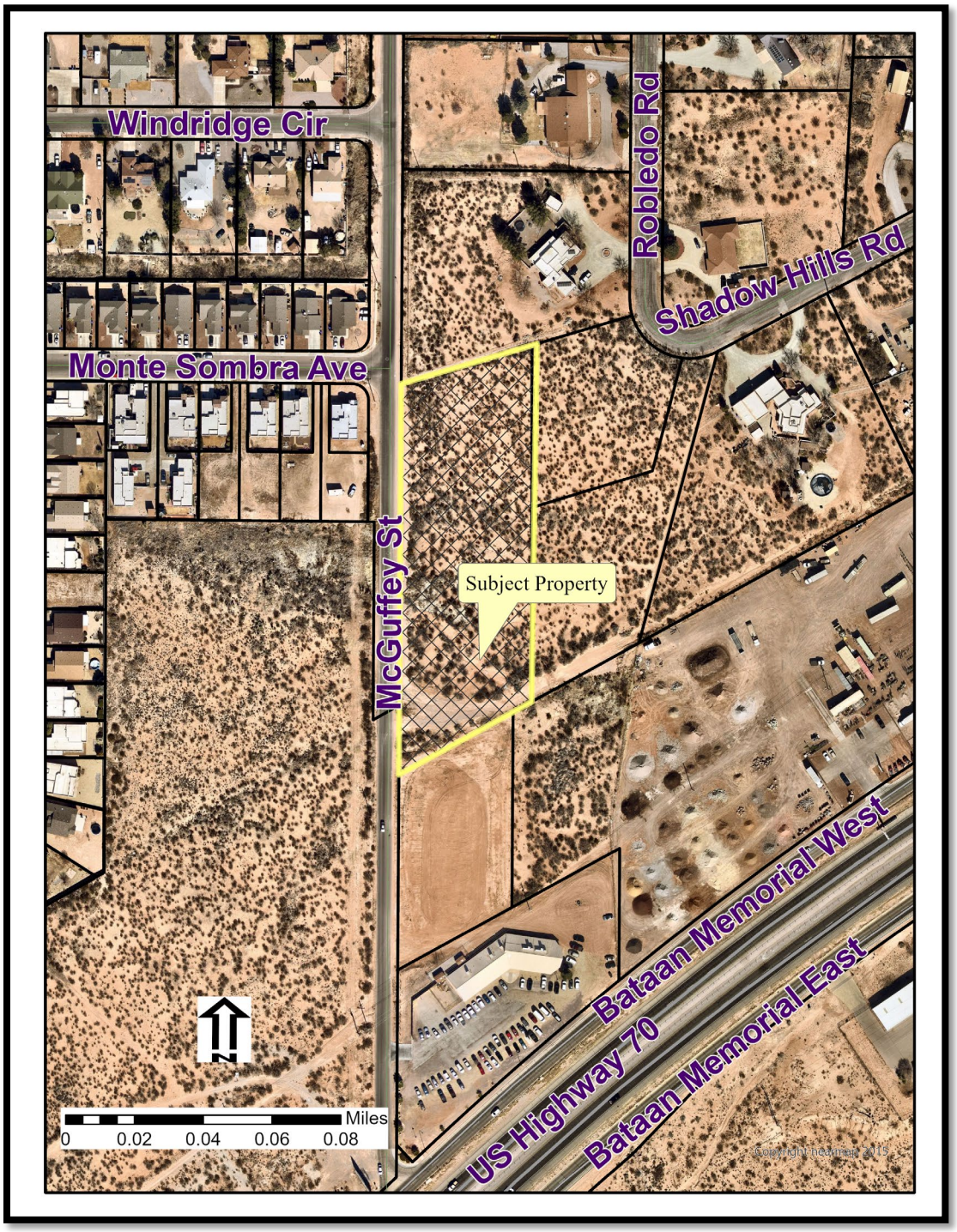
ATTACHMENTS:
1. Zoning Map
2. Aerial Map
3. Department Review Comments

ATTACHMENT 1

Zoning Map



ATTACHMENT 2
Aerial Map



ATTACHMENT 3
Department Review Comments

Department: Planning

Status: YES

Department: NMDOT

Status: YES

Department: Long Range Planning

Status: YES

Department: Traffic Engineering

Status: YES

Department: Engineering

Status: YES

Department: Utility Engineering

STATUS: YES

Department: Fire

Status: YES

Department: City MPO

Status: YES

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
APRIL 26, 2022 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Harvey Gordon, Chair
Luis Armando Guerrero, Vice-Chair
Scott Kaiser, Secretary
James Bennett, Member
Enrico Smith, Member
Vanessa Vega, Member

BOARD MEMBERS ABSENT:

STAFF PRESENT:

Larry Nichols, Director Community Development Department, CLC
David Weir, Deputy Director Community Planning
Katherine Harrison-Rogers, Senior Planner
Vincent Banegas, Interim Planner
John Castillo, CLC Planner
Roberto Cabrillo, CLC Deputy City Attorney
Adrian Guzman, CLC Communications
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Gordon: Good evening and welcome to the April 26, 2022 meeting of the Planning and Zoning Commission. I'd like to call this meeting to order

2. CONFLICT OF INTEREST

Gordon: Before we start, anybody on a Commission have any conflict of interest? If so. All right.

3. APPROVAL OF MINUTES - March 22, 2022

Gordon: I need a motion to approve the minutes.

Guerrero: I'll approve the minutes.

Smith: I'll second.

Gordon: Becky, please.

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Bam Board Member Vega.

Vega: I wasn't here. Abstain.

Baum: Thank you. Board Member Guerrero..

Guerrero: Yes.

Baum: Chair Gordon.

Gordon: Yes. All right. Before we get to public participation, I would like to reorder the agenda for this evening. Item 9.1, which is the progress report on the land development code. I'd like to move that to now before public participation. Can I get a motion on that please?

Bennett: I make a motion to move 9.1 to now.

Vega: I second

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Guerrero.

Guerrero: Yes.

Baum: Chair Gordon.

Gordon: Yes.

Baum: Thank you.

9. DISCUSSION

9.1 Progress Report on the Land Development Code Rewrite Known as Realize Las Cruces

Gordon: All right, Katherine.

H-Rogers: Good evening, members of the Commission. Let me go ahead and get this opened up for you. So this is a just an update to let everyone know where we are in terms of Realize Las Cruces, our code update. We've had several of these discussions before. Ultimately, this is a three phase project. We're now about midway point through the second phase, which is the actual drafting of the code sections. We do have our consultant here to go through some of the highlights of those. That is Karen Perez, who is from Freese and Nichols. We also have Erica Craycraft and hopefully Dawn Warrick, available via phone. They were unable to attend in person, but we do have Karen here. And so with that, I'll go ahead and turn it over to Karen and she can talk about the highlights about where we are and some of the points and exciting things that we're drafting in the code.

Gordon: All right. Good evening.

Perez: Good evening. Thank you all for moving this up on the agenda, you look like you have a full agenda. So I'm going to do the turbo version of this, leave your extra room for questions and we'll go from there. So Mr. Chairman, members of the Commission, I am Karen Perez. She introduced me. I work for Freese and Nichols. We've got my colleagues on the phone. This is the midpoint review, so we're about halfway through phase two. See if I can get this through. There's pictures of all of us just in case you're curious. And we'll keep on going.

So the agenda is just to go through the code update process overview, go through the design standards, draft highlights, that seems to be the most interesting part, talk about our next steps and go into discussion and questions and answers.

So if you all remember from the last, some of you are here I think for the last update, we had a major review of the zoning, zoning map, subdivisions, design standards, drainage and flood control, and signs. That's the focus of the effort. However, the outdoor lighting, historic preservation, cross connection control, and excavations and curb cuts are kind of the ancillary parts of those. So we also hit those in the update. The update process was phase one, which was the diagnostic evaluation. We go through the code. It's to understand the code itself. Here for the people who most frequently use the code, although we did open it up for public input, and we have that on our website as well. But just to make sure that we're addressing the things that either need to be improved or maintained. The phase ended with the development of the code diagnostic, which talks about the code updates. And we presented this, I think it was almost, well, nine months ago, so in August of last year, that code diagnostic. The sorry, I'm going to have to go back if I can remember how to do that.

Phase two, is where we are right now. Oh, sorry, I'm skipping around a lot, but I'm going to skip that whole section. In phase two, we're going through the actual draft sections of the report. So we're in the middle of that right now. What we do is we work with the staff on reviewing the individual parts of the code, we get their input, we put in all of those comments, then we're going to put it out for comments from everybody. So you've got a good clean copy to work with, you know that you have your staff and your City recommendations that are represented. So these, this is all developed on the Elevate Las Cruces that gave us our guidelines. And what we were putting into the code, we had over 200 recommendations in that code that relate to the code updates, so we're going back to the Elevate and looking at those recommendations and trying to get those implemented.

The code user interviews, and again we got a little confused with code users and stakeholders. The code users, we call them that because they're the people who use it all the time. They fill out the forms, they come in, they address all of you, they get their cases approved. And that involves utilities and home builders and engineers and architects and all of the people that are involved with development in the area. But we also reached out to other community groups, the people who were active on the Elevate Las Cruces, and got input, clarifications on some of the things in the Elevate that we had questions on for the implementation. We had open houses, unfortunately, online because it was on COVID. But we did get a lot of comments and those comments are still posted. And the realizelascruces.com is still up and available for comments on the website.

So going from there, code and map development is where we are in phase two. Phase three will be the refinement and the adoption that we're looking at March of next year to be done. So end of the summer for the beginning

of the draft comments in that comment phase, we'll implement those comments, address them, and then we'll adopt it in the spring. So we're well on our way. We all have to work with.

So today, we wanted to share the design standards, because that's what we're right in the middle of. So we have these sections lot design, as listed out right here. So I won't read through them. There's nine subsections that relate to the physical improvement of the land. So starting with roads and cross sections and right-of-ways, we updated the cross sections to implement the complete streets and Elevate and the Active Transportation Plan. So all of those have been put into a cross section. This is a sample of it, but you can see it's got the streets, the medians, some treescape, your multiuse paths, bike lanes. And whether or not we do the elevated sections of the sidewalk is going to depend on the application and places where we'll see that implemented. Campo here is probably a good example. But there'll be shared use and paths and bike lanes per the Active Transportation Plan and NACTO recommendations and that is primarily for new construction, or revisions to existing.

Roads and right-of-way. So one of the other things, a big section that we had a lot of comments on was on traffic impact analysis. So one of the things we wanted to do was go through and look at TIA triggers. When are you going to ask for a traffic impact analysis? What is the timeout, timing? What is the criteria? We're trying to make that very concrete. I think the impression of the feedback we got is it was somewhat subjective. We want to make sure that we are able to pinpoint some of those triggers and timing and it's not such a confusing thing or the perception's not there that it's in any way subjective. We've also updated the, or proposed to update the maximum block lengths for walkability. So blocks are shorter in the urban area, longer in the rural area. We've updated the clear sight triangle requirements. Thought we had a lot of comments yesterday from Council on clear sight triangles. If you have a question on it I'll answer that at the end. They don't dovetail with the AASHTO requirements, which is the standard, the national standard, so we're updating that and just making sure that it aligns with the national standards. They're not being really changed in any substantive way.

Subdivision access points and connectivity. Again, this goes back to Elevate. We added the requirement for the number of the access points for larger subdivisions beyond the minimum two access points, which are required under the fire code, and added a connectivity index requirement for new subdivisions to encourage that interconnectedness and walkability.

Drainage flood control and erosion. An also really popular topic. We're looking at, and this first one applies primarily to annexed areas, not in the City, there was never that impact on the downstream properties. It wasn't

the water on/water off that was part of the county development in some of the rural areas. So we're looking at some of the annexed areas, some of the areas where we have development that may impact that downstream. So we're tightening up those requirements.

Maintenance of private drainage systems. Setting up a system for that, making sure that they are inspected on a routine basis, that the City has a way to track it, call out Codes if there are issues, so we don't get those large ponding areas filling them with sediment trash. That the vegetation is maintained. That the structures are there, they're not clogged or collapsed.

Utilities and flood zones, my personal favorite, is putting sewer systems and arroyos, where you got the manholes popping up after a while. Those will be tightened up as well, that is a practice we should discourage.

And slope and pond vegetation. This aligns with the Elevate as well making sure that instead of using hardscape, that we're using vegetation and other methods to retain slopes and minimize erosion. So using those natural means. And of course, with desert appropriate landscaping that doesn't waste water.

Also looking at hillside development. There weren't a lot of standards in place, so we've implemented or proposed in draft some mechanisms or some requirements for hillside development that are specific for this area,

Encroachment on flood floodways. Making sure that the FEMA, the letter of map revision has been filed before any kind of proposed encroachment is reviewed. Proposed some buffers, these are related back to watershed size. And I know this will be a popular topic for discussion, there's a lot of varying opinions on whether or not the buffers, the building close to arroyo's is appropriate. And so there's a mechanism for proposing, the bigger the watershed, the bigger the area, the bigger the buffer, knowing that more water will be coming down and eroding it. Again, I know there'll be a lot of discussion on that where we're ready to talk about it and see if we can come up with a compromise to discourage people from building right up to the edge of the arroyos. So that will be in the final draft for comment.

The last part is dust control, both enforcement and planning. There are permits for this and contractors are pretty good. We were looking more on the Elevate side of what is a way to discourage one of stripping vegetation, because it keeps the dust down, so trying to develop in phases. And also trying to use alternative mechanisms. I said gorilla snot in public yesterday and I think I shocked some people, but it's a non-water based dust suppression that's a glycerin, natural substance but it keeps dust control down, and it minimizes the use of water for dust control, even non-potable

water. It's just not a great practice for this area. So there are some proposals there and we'll be looking forward to comments on that as well.

Parks and Trails. Looking at the parkland dedication for development with new lots or dwelling units, that system has been evaluated and we've got some new proposals for that dedication. Trail dedication for new development where proposed trails are shown on the Active Transportation Plan, and the criteria and the procedures for those dedications, credits, things that are associated with that practice.

Landscaping and screening. There are requirements for perimeter landscaping and interior parking islands for large parking lots right now. Half of the landscaping can be in front, some of it is on public right-of-way, which is not necessarily a common practice, so the new stay under proposes keeping that landscaping on the property itself, doing the whole perimeter and then getting those islands in to break up the parking spaces. And you'll see that in some of the new development here they've done that practice, and it actually is really attractive and does break up the big, I think they call it the sea of parking. Street trees would be required in the parkway or on the adjacent property if there is no parking, if there is no parkway associated with that.

So working on the street tree standards that's on collector and arterial streets, I want to make sure I get this right. And it supports the City's Cool Corridors Initiative. And before I forget something, I'll go back to the roads, we have not forgotten about the new street standard that just came into my head and left. That was just about the complete streets. Those are also to be integrated. And we are aware that that was recently passed and I forgot to say that. I said street and it came back.

Tree preservation. One of the examples that came up yesterday with Council is the Las Cruces Country Club property. So when we're talking about tree preservation, we're looking at areas like that where we're discouraging either require a replacement or a fee to remove the trees that are larger than two inches so if they're an established tree. The director can give an exception for a heavily treed lot, but we're trying to encourage a removal permit for large trees, so that we have a chance to save the trees on these properties. Also evaluating damage protections for existing trees, construction, lighting, cameras, those are some of those. The other thing that's in there is a fee in lieu that the City could use for planting trees elsewhere. So if you have to clear an area, then they would pay a fee and new trees would be established. So trying to keep that tree count balanced across the City.

Signs. Signs are always fun to talk about. There's a court case Reed versus Gilbert, there's some case law in 2015 that prohibits cities from regulating

signs based on their content. An example that was given was signs like real estate signs or on and off premise signs that aren't recommended to use that in Codes anymore, because you need to read the sign to see how to regulate them. So that's just not a really great way of doing sign control. Large billboards, billboards are hard to get rid of much as not everybody likes them. But they're going to need to meet a certain dimensional requirement. I think the maximum is the 50 to 200 square feet that is in there. Also expecting some very robust discussion on signage. We're also encouraging or recommending common signage plan for multitenant lots. A bunch of them you have the one main sign and it has all the businesses listing and some consistency across the property. It just looks nicer. And it minimizes the number of signs which are also a visual hazard if you're ducking around signs or trying to see around signs to get out on the street. So if those signs are there, the recommendation is that there's a 15% bonus in the maximum sign, because there's multiple signs within a sign, if that makes sense. So definitely coming up with some recommendations there.

So the code users and stakeholders. So right now we're primarily working with City staff, again to make sure that we aligned with all of the plans with the planning department, with the recommendations of the of the City Council, P&Z. Once that's complete the drafts will be shared on the website. And we're looking at August/September before those drafts will come up. They'll be cleaned up, we've got the recommendations, anything that doesn't, you know legal review and those other things. There's also a technical advisory group, a working committee, that the mayor has proposed, and I'll let staff give you details on that if anyone has questions. It's an additional group that will be doing review and it consists of a pretty wide variety of people, in addition to the stakeholder outreach we've already done. And then community wide input is going to be requested once there's a complete draft in the fall of 2022. There'll be lots of opportunities online, opportunities and meetings. And I don't think I breathed, and I probably whizzed through some important things, but I know you had a lot to do tonight. Is there any questions or clarifications or something that came up that you went?

Gordon: Thank you very much. Is there any members of the Commission have any questions, comments? Commissioner Kaiser.

Kaiser: Just a couple of comments. First, I appreciate the update. This was very informative, especially some of the examples of the work that you're doing. Going back to the road cross sections. I know there's been a lot of discussion around that and the complete streets and things like that. But are you looking at all at doing something similar for intersections?

Perez: I'm going to defer to my colleagues on that. I wasn't the road person. Dawn, Erica.

Craycraft: Yes. Good evening Commissioners. My name is Erica Craycraft with Freese and Nichols. And Commissioner could I ask you to clarify your question just a bit about the intersections?

Kaiser: Yes, certainly. So you're putting forward example of road cross sections that would be appropriate under the new code. So my question is, are you doing something similar for intersections? And I'll just be blunt because the intersections in the City are incredibly dangerous. And we've completely failed in that regard. I mean you just look at the new GO Bond trials, I mean none of the intersection crossings where the trail crossed a road were even addressed. And so I would like to see that aspect of the Complete Streets be implemented here.

Craycraft: Okay. Okay. Thank you for the clarification. Yes, we will be addressing that through a number of different sections. One would be the clear sight triangle that was mentioned in the presentation, just making sure that there's better visibility at intersections for better safety. Also, the traffic impact analysis section will be looking at turn lanes for example. And then also you mentioned the trail crossings. I don't think we have anything specific for that right now, but we can certainly be sure to take a look at that.

Kaiser: Thank you for that clarification. And I'll just make a recommendation that you look beyond just the site, the sightlines and traffic impact. If you look at NACTO, the urban street guidelines, I mean this is where the conflict happens most of the time is at intersections. And it's more than just cars being able to see other cars, it's pedestrian, cyclist safety, as well. So it's just something that I would hope you guys take into consideration when you're addressing the streets.

The other question that I have somewhat related. Is there going to be any unpacking of parking requirements as part of the development standards or design standards?

Craycraft: Yes, we'll be reviewing all of the parking requirements.

Kaiser: Okay. That's good to know. And I think my last comment/question for now is on the landscaping. You mentioned the idea of having street tree requirements for development. However, you said that that was going to be restricted to collector or arterial. I'm just wondering what the explanation is there for stopping it at those two classifications and not going all the way down to the local designation which is the vast majority of our road network?

Craycraft: Sure. The reason that we are looking primarily at collector and arterial roadways is because those are largely the commercial or the subdivision the exterior corridors, rather than a typical single-family lot. But if that's

something that you think would be more appropriate to also extend to the local street network, we can look at that as well.

Kaiser: I would strongly encourage it. I mean the urban heat island doesn't stop at the entrance to a subdivision. And you know if you have a subdivision of 600 homes, and we are not planting street trees, I mean it's great that you put a street tree on the collector and arterial road, but anywhere people live and go home at the end of the day and enjoy their neighborhood, I think this would be a tremendous benefit. So I would strongly encourage you to take a look at that. Thank you.

Perez: Thank you.

Gordon: Is there anyone else on the Commission?

Nichols: Mr. Chair. If I may.

Gordon: Okay.

Nichols: Larry Nicholas, Community Development Director for the record. Oftentimes people ask us why we've undertaken this updated review of the Zoning Code or the land use code. Two years ago, we took on a review of our comprehensive plan, which had not been reviewed for about eight or 10 years. The Zoning Code that we're speaking about tonight has not been updated in about 17 years. we all know that many things have changed in terms of planning and how our City is growing and the components we want to see in our streets, our landscape, our parking, and our zoning. So this is the endeavor, it's going to take about 18 to 20 months as was presented tonight. We're about halfway through that. But we wanted to present an update to the Commission and to the viewing audience of where we are at this point. Thank you.

Gordon: Thank you. My only comment is, I'm just very happy to hear that the Mayor has decided to form a committee to help and support the formation of these plans. I'm hoping that he's someone from the City Council will appoint someone from the Planning and Zoning Commission. We have not had the opportunity at this point to actually give our input. And I know from looking at the schedule we will not have that opportunity till sometime in the fall. And it would be nice if we could address some of the concerns that we have that we deal with every case, that we could forestall you know having to wait till then to give our suggestions and maybe have it put into this process. But I think you're on schedule and I'm glad to hear that. And I'm looking forward to having this revision done. It's been a long time, and I'm sure it'll be very helpful to the Commission and people who are planning to do things here in the City. And thank you.

Perez: Thank you very much, Mr. Chairman. And I'd just like to add, when we started out this process we interviewed groups of people, we did it two weeks I think straight of phone interviews and in person interviews as well as we were able at that time. At that point we did invite members of that current Planning and Zoning Commission, which I realize this is a group of people old, and we weren't able to unfortunately schedule it and get the input we wanted. So we'll be looking forward to having a similar process prior to the open public input with Planning and Zoning. Thank you.

Gordon: All right. Thank you. Is there anything else? Great. We appreciate your coming.

Perez: Thank you.

Gordon: All right. Thank you.

Perez: Thanks again for moving me up.

4. PUBLIC PARTICIPATION

Gordon: Okay, let's move on. Next item on the agenda is public participation. Is there anyone here needs to talk about anything that is not on the agenda. Will you please raise your hand? All right. Seeing none. Then we can move on.

5. POSTPONEMENTS - None

Gordon: There are no postponements.

6. CONSENT AGENDA

6.1 Red Hawk Central Final Site Plan: MOVED TO NEW BUSINESS.

Gordon: We move to the consent agenda. Is there anyone here who wishes to speak of an item to talk about on the consent? Please raise your hand. Seeing none. Anybody from the Commission?

Moore: I have one.

Gordon: I'm sorry, I didn't see you. Come forward, please.

Moore: All right I'd like to ...

Gordon: Excuse me. Would you please state your name for the record and let me swear you in?

Moore: All right. Kevin Moore.

Gordon: All right. 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?

Moore: Yes.

Gordon: Okay. Go ahead. Thank you.

Moore: I'd like to see the proposal for the Red Hawk Central presentation.

Gordon: Could you just let me interrupt? Could you please try to speak into the microphone?

Moore; I'm sorry. Now, can you hear me now? All right, I'd like to see the presentation on the Red Hawk Central Presentation.

Gordon: All right. We can do that. John, you're going to do that.

Castillo: Yes.

H-Rogers: Point of order Mr. Chair. We do need to vote to remove that from the consent agenda. It will then be placed as the first item on new business. And then you all can vote to approve the remainder of the consent agenda before that's heard.

Gordon: All right. Thank you for reminding me. All right then I do need a motion to move item 6.1 to new business.

Kaiser: Just one quick question. Do we have to pull and vote on each specific consent agenda item or can we pull multiple at the same time?

H-Rogers: You can pull multiple at the same time.

Kaiser: Thank you. So I would also like to pull item 6.2. I have a couple of questions for staff. I hope it will be relatively quick, but would like to pull that one as well.

Gordon: All right fine. Then I guess I will need two motions, one on 6.1 and one on 6.2. First on 6.1, to move it on to new business.

Kaiser: I'll make a motion to remove item 6.1 from the consent agenda.

Bennett: And I second the motion.

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Thank you. Board Member Vega.

Vega: Yes.

Baum: Board Member Guerrero.

Guerrero: Yes.

Baum: Chair Gordon.

Gordon: Yes.

Baum: Thank you.

6.2 421 Avenida De Mesilla Suite C Special Use Permit: MOVED TO NEW BUSINESS.

Gordon: All right, then I'll need a motion to move items 6.2 to new business.

Bennett: I'll motion to remove item 6.2 from the consent agenda.

Guerrero: I'll second.

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Breen Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Guerrero.

Guerrero: Yes.

Baum: Chair Gordon.

Gordon: Yes.

Baum: Thank you.

6.3 **1770 S Telshor Blvd Suite C Special Use Permit:** A SUP to allow a retail cannabis establishment within the required 300' buffer from a single-family zoning district. The 1.04-acre property is zoned C-3 (Commercial High Intensity) and allows a cannabis retail establishment. The business footprint is approximately 230 ± feet from an R-1a (Single-Family Medium Density) zone. Council District 3 (22ZO1000017)

Gordon: Is there anyone who has an interest in item 6.3, the Telstra Boulevard Suite, that wishes to have this pulled from the consent agenda? All right. Seeing none. We'll just deal with these two items then. All right, then I guess, John could you do a presentation on 6.1?

H-Rogers: Point of order. You do need to approve the remaining item on the consent agenda, and the two items that were pulled then now begin at new business and then there's old business prior to that.

Gordon: All right. Then I guess I need another motion to approve item 6.3.

Bennett: I make a motion to approve the consent agenda.

Guerrero: I'll second it.

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Guerrero.

Guerrero: Yes.

Baum: Chairman Gordon.

Gordon: Yes.

Baum: Thank you.

7. OLD BUSINESS

7.1 Camino Hills Subdivision Master Plan: A request for a master plan known as Camino Hills Subdivision. The proposed subdivision encompasses 10.954 +/- acres, is currently zoned R-1a (Single-Family Medium Density) and is located northeast of El Camino Real and west of Spitz St. The subdivision proposes 52 single-family residential lots and multiple tracts dedicated for drainage. The proposed subdivision with provide four internal roadways that will provide access to Spitz St. and Hanson Ave. Submitted by Steve Calderazzo, representative. Council District 1 (22CS0500012)

7.2 Camino Hills Subdivision Preliminary Plat: A request for a preliminary plat known as Camino Hills Subdivision. The proposed subdivision encompasses 10.954 +/- acres, is currently zoned R-1a (Single-Family Medium Density) and located northeast of El Camino Real and west of Spitz St. The subdivision proposed 52 single-family residential lots and multiple tracts dedicated for drainage. The proposed subdivision will provide four internal roadways that will provide access to Spitz St. and Hanson Ave. Submitted by Steve Calderazzo, representative. Council District 1 (21DS0500069)

Gordon: All right, then in that case we move to old business, which is item 7.1 and 7.2, the Camino Hills Subdivision Master Plan.

H-Rogers: Members of the Commission. Katherine Harrison-Rogers for the record. I do want to point out this was not listed on postponements. But we were unable to receive certain items that would have fulfilled conditions of approval for these two items as per the requirement of the Development Review Committee. As such, staff is requesting that these two particular

items be postponed to a date certain which does require a vote of this Commission. And that would be for the regular meeting in May.

Gordon: Do we know what the date of the next P&Z meeting is in May?

H-Rogers: That's correct. And I believe that that is the 28th if I'm correct. Let me check this calendar, the 24th, excuse me.

Gordon: 24th.

H-Rogers: Yes.

Gordon: Okay. All right. Then I do need a motion then to remove from old business item 7.1 and 7.2 to a date certain of May 14th, 2022 to be placed on the agenda.

Baum: May the 24th sir, not the 14, the 24th.

Gordon: Did I say the 24th? I stand corrected. The 24th.

Vega: I make a motion to move item 7.1 and 7.2 to the May 24 agenda.

Guerrero: I'll second it.

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Guerrero.

Guerrero: Yes.

Baum: Chair Gordon.

Gordon: Yes.

Baum: Thank you.

Gordon: I'll get a new pair of glasses.

8. NEW BUSINESS

6.1 Red Hawk Central Final Site Plan: A request for a Final Plan, known as Red Hawk Central, located within the Metro Verde South Planned Unit Development (PUD). The proposed subdivision encompasses 7.0 ± acres, is zoned PUD, and located east of Red Hawk Golf Road and north of Central Avenue. The Final Site Plan proposed 49 single-family residential lots and two lots for commercial development. The Final Site Plan shall follow all requirements of the Metro Verde South PUD Concept Plan. Council District 5 (22ZO3000019)

Gordon: All right then I guess we have to go back now to item 6.1 the Red Hawk Central Final Site Plan.

Castillo: Good evening Commission. My name is John Castillo. I'm a planner with the City of Las Cruces. Tonight I'll be presenting the Red Hawk Central Final Site Plan. Current conditions of the property, it's currently a vacant lot. It's approximately seven acres. It's currently zoned to U5a, which is a mixed use center. It's located on the northeast corner of Central Avenue and Red Hawk Road. And it's associated with the Metro Verde South PUD.

As you can see on the zoning map, this is the PUD zoning classification for it. Here's an aerial map showing the relation to it. So today, the developer is going to propose 49 single-family residential lots, two lots will be proposed for commercial. It's going to have connectivity through two interior roadways, one off of Red Hawk Golf Road and the other off of Central Avenue. In between that there is also an alleyway that will connect to Central and one of the interior roadways. It does meet all the requirements of the subdivision code, design standards, and the 2001 Zoning Code, as well as the PUD guidelines set forth in the Metro Verde South.

From these pictures, this is the U5a mixed use zoning. It does allow for various developments, such as commercial uses, as well as townhouses, apartment complexes. Here's kind of the lot layout of exactly what's going to be looking at. Central Road does have, is considered a 68 foot right-of-way. At this time, reviews were sent to all relevant agencies, discussions did place take place at the DRC on April 6, 2022. And it was given a recommendation of approval. Notices were sent out to the surrounding properties. We did have a phone call regarding discussions of what a PUD

was and kind of general zoning designations and what would be developed on the property.

Staff is recommending right now approval based on the following findings which Red Hawk Central Final Site Plan conforms to the Metro Verde South PUD concept plan. The proposed final site plan is all part of the development that balances benefits to the community with the developers interests and it has its recommended approval from the DRC on April 6th. Today's options are to vote "yes" to approve, to vote "no" to deny, vote "yes" with condition, or vote to table.

Gordon: All right. Thank you John. Is there anybody from the Commission who has any questions or comments? Does the, is the petitioner here, John?

Castillo: Yes. We do have Mr. Moscato who is the developer, who's representing.

Gordon: Does he have any comments or questions or statements? Evening John. Would you please state your name and let me swear you in please?

Moscato: John Moscato.

Gordon: 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?

Most Yes.

Gordon: Go ahead, John. Thank you.

Moscato: I don't have anything to add, but I'd be happy to answer any questions that the Commission has.

Gordon: I don't think there were any. In which case are you available if we have someone from the audience, I believe has some questions?

Moscato: Thank you.

Gordon: Okay, is that gentleman still here? You want to come back please? Okay, so we already swore you in. Just repeat your name for the record.

Moore: Kevin Moore.

Gordon: All right Mr. Moore. Go ahead. Thank you.

Moore: Yes, I'm interested on you know is that also going to, you talked about it's going to be multiple family units. So are we talking multiple stories? Whereabouts in the locations are those going to be and also where is the

traffic going to come from that's going to support that area? Is it going to come directly off of Red Hawk or is it going to be at this Central and at a new intersection there?

Gordon: John and John.

Castillo: So maybe Mr. Moscato might be able to clarify a little bit more. But as we can see from the provided plat, we will have access through Central Avenue down, right in here, as well as off of Red Hawk Road. The housing that's going to be along Central and within the interior roadway will have its primary access through the alleyway as frontages can occur off of Central Avenue.

Moore: So are they going to be, is there going to be single home built on Central right there where you see Central coming into Red Hawk? Is that going to be multifamily? Those look like bigger units that you have their.

Moscato: Good evening again. All the housing here will be single-family. So none of this is technically multifamily. Some of it's attached single-family, but it falls under the category of single-family. The access, as John Castillo just mentioned, would be from Red Hawk Golf Road or Sonoma Ranch Boulevard, which is connecting from Central Avenue. So multiple access points, single-family housing. It's a little more dense than has been developed in Metro Verde so far. This is an attempt to have more attainable housing, slightly smaller footprints, addressing the need which I think the Commission has heard in previous meetings, it's called the missing middle housing. So this is really our first attempt in Metro Verde with that type of housing.

Moore: What about the commercial lots there? Were they located on this map?

Moscato: The commercial lots are accessed from Red Hawk Golf Road.

Moore: Are they on, which end of that map are they on?

Moscato: The commercial lots are the two large lots on the left hand side.

Moore: So, down here on this end.

Moscato: Right along Red Hawk Golf Road.

Moore: Okay. All right. Thank you. No further questions.

Gordon: Okay. Thank you very much. Is there anyone else? All right, in that case, John. We need a motion and a second on this item.

Bennett: I make a motion to approve 6.1.

Vega: I second.

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: I'm going to need your reasoning behind that, please.

Kaiser: Yes, of course. Yes, based on staff's recommendation and consistency with the planning and development.

Baum: Thank you. Board Member Smith.

Smith: Yes, based on staff recommendation.

Baum: Board Member Bennett

Bennett: I vote to approve based on staff recommendation, this complies with the MPO Thoroughfare Plan and Elevate Las Cruces.

Baum: Board Member Vega.

Vega: I vote yes, based on staff recommendations and it meets Elevate Las Cruces.

Baum: Board Member Guerrero.

Guerrero: I vote yes based on staff recommendation and also Elevate Las Cruces plan.

Baum: Chair Gordon.

Gordon: I vote yes, based on staff recommendation and discussion and Elevate Las Cruces.

Baum: Thank you. I guess six nothing.

6.2 421 Avenida De Mesilla Suite C Special Use Permit: A SUP to allow a cannabis establishment within the required 300' buffer from a single-family zoning district. The 1.83-acre property is zoned C-3 (Commercial High Intensity) and allows a cannabis related cottage industry. The business footprint is approximately 108 ± feet to the closest R-1a (Single-Family Medium Density) zone. Council District 4 (22ZO1000016)

Gordon: All right. Then we can move to item 6.2.

H-Rogers: Good evening, Members of the Commission. Katherine Harrison-Rogers for the record. This particular item is a Special Use Permit for 421 Avenue de Mesilla, Suite C, in particular. There have been some questions about the differences between Special Use Permits and variances, and I would like to start with that.

Cannabis uses in the City have some recommendations surrounding them regarding certain buffering distances between daycares and schools, between single-family residential zones, and between each other. As part of that process staff looked at various methods by which to have some administrative relief from those requirements if it met certain standards, if applicants were interested in doing so. During that time when those codes were adopted the City Council elected to allow for a Special Use Permit process to deviate from the distancing between single-family zones and from other retailers.

A Special Use Permit process is, it's basically a use that could be allowed at a location by the zoning in so long as they're either no impacts or any impacts that may be created from said use are mitigated. Ultimately looking at compatibility in relation to other uses and that particular use.

Now variances, on the other hand are only allotted or allowed for the distancing between schools. And the reason behind that is, is because the City Council elected to be much more stringent in the regard between the distancing between schools, and cannabis related uses. Very similar to the way we treat alcohol at the state level. Now, variances have much stricter criteria. They have certain hardships that one must adhere to in order to prove to be allowed at that location. So they are slightly different.

Some of the reasons that we had two special use permits that were placed on the consent agenda, this being one of them, and I'm going to go into details about the case momentarily. And the reason they were placed on consent simply because they were not creating any additional impacts based on the use at those locations. They were allowed to have cannabis at those locations, they simply didn't meet that distancing rule. And the retail use as a category was not creating any additional impacts that were otherwise existed at those retail locations.

So that being said, I'm going to go ahead and talk about the details of this one in particular. This one at Avenida de Mesilla is a Special Use Permit. The current property is zoned C-3C. That C at the end of that, it's commercial high intensity conditional. And the condition that was placed upon the zoning when that was done several years ago, basically stated that if the property were to be redeveloped and were to trigger any of the

items that required that something come into compliance based on any nonconformities, that it would. That's a pretty typical standard. It's interesting that they added it is as a zoning condition, because it's actually a condition of any property that's nonconforming throughout the City. It's not a special or unique situation.

In terms of this particular property, it was constructed in the 1970s and so it's nonconforming in terms of the fact that there is one building that's split by a lot line. The front setbacks along Avenida de Mesilla don't quite conform to today's standards. And the landscaping isn't as robust as today's standards require. Based on the proposal for a retail establishment at this location, it's not triggering any of the requirements that would require it to go through any sort of any formal conversion or redevelopment to try to make those issues conforming. So that being said, this particular property is a little under two acres. Again developed as a small retail center. It has several suites and three buildings on the property. It is located a very, very active commercial corridor intersection, that is Avenida de Mesilla and South Valley Drive.

The surrounding neighborhood is a mixed use neighborhood. There's R-1a to the north and to the east. There's some R-3 which is multifamily. Office and some commercial uses. You can see by this map, the areas in question that would require this Special Use Permit, because it is within 300 feet, are these R-1a zones. And you can see the property is right here, as I'm circling it with my cursor. And then you can see the remainder of the area is multifamily, commercial, and office.

And what's being proposed again is a cannabis establishment, specifically a cottage industry. They're proposing to both grow, package, and sell cannabis at this location. To the north it's about 108 feet from the perimeter of the business footprint to that R-1a zone. which is actually at the center line of the roadway. And then to the east it's approximately 147 feet. Again the 300 foot deviation, or that deviation to the 300 feet rather, is what's triggering the need for a special use permit. All other buffer distances are met, and those other buffer distances again are between other cannabis retailers, and then school and daycare properties.

They are obligated to follow all of our regulations regarding cannabis and other business requirements. And all cannabis requirements of the state of New Mexico. It should be noted again that this is an established retail center. It was built in the 1970s. By staffs analysis there really is no change in impacts from a use perspective at this location. There will be no direct access to any of the single-family neighborhoods. And the proposed business and single-family uses are separated by a major commercial corridor to the north, and then by a wall, another commercial building, and some parking areas to the east, as well as some landscaping.

Here's a site plan. We are looking, this is actually pointing south. So this is Avenida de Mesilla right here. Here is the property in question. And this grayed out area is the suite in question. And you can see that to the left of the screen where my cursor is, there are some single-family homes here. And then of course across the street, there are some single-family homes, and as well some commercial.

This is just an interior of the layout of the building that particular suite. We did send notice to surrounding properties. We did receive one phone call basically expressing general displeasure or discomfort related to the effects of cannabis use for some people. And I'm not quite sure if they're here this evening or not, but did indicate that they may be.

Staff is recommending approval based on findings as were outlined in your staff report, and I've listed them here as well. And your options tonight are vote "yes" to approve, vote "no" to deny, vote "yes with conditions, or vote to table. And I would be happy to answer any questions. As I understand it the applicant is here as well and can answer questions of the Commission.

Gordon: All right. Thank you Katherine. Is there anyone for the Commission who has any questions or comments? Commissioner Kaiser.

Kaiser: Thank you. I just want to thank staff for providing that clarification tonight about the difference between the two consent agenda items related to cannabis, and the one that's upcoming further on in our agenda tonight. I think and I hope folks understand the difference there between why two are on the consent agenda versus the other one not being. I think for just good governance and transparency I think having that explanation on the record is beneficial. So, again I thank staff and I have no further questions.

Gordon: Okay, thank you. Does the applicant have any comments or does anyone else from the audience have any questions or comments? All right. If not then I will take a vote for the commission. I need a motion to approve item 6.2.

Kaiser: A motion to approve item 6.2.

Smith: I second.

Baum: Board Member Kaiser

Kaiser: Yes, based on staff's recommendation and consistency with Elevate Las Cruces.

Baum: Board Member Smith.

Smith: Yes, based on staff recommendation and site visit

Baum: Board Member Bennett.

Bennett: Yes, based on staff recommendation. This also complies with Elevate Las Cruces and the purpose intent of the code.

Baum: Board Member Vega.

Vega: Yes, based on staff recommendation and site visit as well.

Baum: Board Member Guerrero.

Guerrero: Yes, based on staff recommendation and complying with Elevate Las Cruces.

Baum: Chair Gordon.

Gordon: I vote yes based on as my sight visit, staff recommendations, and compliance with Elevate Las Cruces.

Baum: Thank you. Aix approval.

Gordon: Okay, thank you.

8.1 855 Pinon Avenue Infill Development Request: An infill development proposal (IDP) to allow one manufactured home on property zoned R-4 (Multi-dwelling High Density & Limited Retail) and associated development waivers. Waivers include density, lot width, and lot area. The IDP also seeks to maintain the R-4 development rights for future use. The property is ± 0.158 acres in size, and generally located on the northwest corner of Pinon Avenue and Santa Fe Street. Council District 1 (22ZO5000033)

Gordon: So now we can move on to new business which would be item 8.1. Mr. Banegas.

Banegas: Yes sir. Mr. Chairman. Vincent Banegas, Interim Planner for the record. I will be presenting three cases this evening. The first of which is a case involving 855 Pinon Street. It is an infill development process. Development that is seeking to place a single manufactured home on property that is currently predominantly vacant. There is an abandoned shed on the property and some chain link fencing, but otherwise vacant. It's certainly underutilized. And they're seeking to place that manufactured home on the property along with receiving some approvals for associated deviations to our Zoning Code.

The property is at the corner of Pinon Street. It's at the northwest corner of Pinon Street and North Santa Fe Street. As indicated it is predominantly vacant. The R-4 zone is our multi-dwelling high density and limited retail and office zoning district. It does come with both a minimum and a maximum density requirement for residential uses. In this case, perhaps the one that is targeted the most as it relates to the proposal is the minimum density and that is established at 10 dwelling units per acre.

The property is currently comprised of two lots, lots 1 and 2. It's part of block two, Cox's first subdivision 117. As indicated they are both making up the property in question and are underutilized properties. The property does fall within the infill development boundary and thus is a qualifying parcel. Combined acreage of both of those lots is 1.58 acres or 6,882 square feet. So the slide that is up right now is our zoning map for the area. It does show the prospective property in red, outlined in red here. Santa Fe Street is located here, Pinon Avenue here. You do have other roadways in the vicinity but primarily what you are seeing is a good amount of existing R-4 zoning in place covering obviously the subject parcel in question. Off to the east across Santa Fe Street you do have commercial zoning, in this case C-2, that's our medium intensity commercial district. Solano Drive is further east of that. On the west side you have R-2 zoning, which is our multi-dwelling, low density residential district. That certainly allows for apartments or duplexes, things of that nature, as well as single-family units as well.

The aerial map identifies the subject property once again outlined in red and you do see a rather robust mix of uses in the area, everything from duplexes, sometimes triplexes, single-family. Certainly immediately adjacent to the subject property you do have single-family uses again on that R-4 zoning that is in place. Across from the subject property on the east side, you have mini storage units, some of which, at least years ago, were utilized for some of the smaller offices and that kind of thing for not only storage materials but actual office uses. So you do have quite a variety of mixed use scenario going on in this vicinity. You also have some vacant parcels; they would certainly be eligible for the infill development process as well at some point in the future if the applicants came forward and requested a proposal.

So in regards to the specific request, the applicant in working with staff has requested that they be allowed to place as their new home a new manufactured home on the property. The requirements going back to that minimum density requirement, they would be required to place two in order to meet density requirements. That said they are off by less than half a dwelling unit in order to comply with that. So they are very close. It's one dwelling unit, but nonetheless they wish to place the single manufactured

home to serve as their home. They are also seeking some typical ancillary structures for the proposal. At some point in the future they're looking at a phased approach to the development here. Their main primary concern is the home, but a covered carport for instance, a new shed on the property. And maybe at some point in the future they would alter the existing fence that is there and maybe put a wall. Things of that nature are certainly under consideration by the applicant. In order to do so the deviations that are listed on the slide are required elements. These speak to the R-4 zoning. And for instance in that the property in question contains two lots, normally we seek the replanting of the two into a single lot, in that they're looking to place the structure promptly and get otherwise underutilized vacant parcel into active use, they're requesting that that be waived. And there's also a deviation to the minimum lot size requirement, right now in the R-4 zone the code requires 8.500 square foot minimum lot size, and they're shy of that by 1,618 square feet. And again, that's in consideration of both lots, one and two, and an adding up the acreage, respectively.

There's also a need for an 18 foot deviation to the minimum 70 foot lot width requirement in the code. And I spoke about the dwelling unit deviation, it'd be one dwelling unit deviation to the minimum two to meet that minimum density threshold. The applicant is also seeking to retain the R-4 development rights for the property. Their primary goal of course as indicated is residential. They want it for their house. But in speaking with staff, staff felt that to be consistent with the Elevate Las Cruces Comprehensive Plan and what it intends to do with the Urban Place type that this property is in, by retaining these rights at some point in the future should they opt to do so, they may consider improving the property beyond what they're going to do or what they're going to seek and maybe go into an office environment or a limited retail environment similar to what the R-4 standard would allow and certainly what the Urban Place type suggest we do.

They're also seeking to, in that it'd be residential at this point in time if approved, allow for curb cuts, the sizing of which thew driveway access parking area standards and surfacing, and any landscaping requirement to remain consistent with single-family dwelling provisions. Again, it would be single-family if approved. And henceforth they're looking to retain those requirements in accordance to a single-family use. The stipulation being that if the use changes in the future, again if they seek to intensify or densify the property then the prevailing standards would be in use at that time or be applied at that time I should say.

So this is a site plan of the property. It is showing the boundary of the property in question. This includes the two lots. They will be meeting the front yard setback of the R-4 zone at 20 feet, access will be along this area along Santa Fe Street. Their proposed carport would be in this general

vicinity and their shed here. The rear yard setback is not going to be a problem, side yard is not going to be a problem, nor will the secondary frontage be a problem. So again for the most part, very compliant site plan in terms of the R-4 standards that are in effect today.

In terms of analysis of this case, staff felt that the proposal was not out of character with the immediate surrounding area. Again, if you look at the R-4 zoning and some of the uses that are out there, it's very consistent with that. There were no health, safety, or welfare issues identified with the request. And there were some review comments but many of those spoke to comments that could be addressed at a building permit stage. And we saw no reason to prevent consideration of this IDP at this point in time.

In terms of public notice, notice was sent to the property owners in accordance with the Zoning Code. And staff has received three e-mails protesting the request. The concerns of these individuals cited the use of the manufactured home as one reason for the protest. Another was excessive number of deviations. And there was also mention of incompatible use in terms of the surrounding area. And just to address that, I'd like to speak to the manufactured home issue. I'd like the Commission to be advised that manufactured homes have the same rights and privileges that a site built home has. This is pursuant to state law. If it were mobile home, that'd be a different situation. But this is a manufactured home.

In terms of the excessive number of deviations, I'd like to point out that some of these deviations speak to the potential future use should the property be subject to again intensification or densification. And so those requests speak to that ability. Compatibility of the surrounding area, I think staff has indicated that there's quite a substantial amount of compatibility.

Staff recommendation is approval based on findings. The property is located in the IDO area and is an eligible IDP property. And so, this is an attempt to reactivate if you will a property that is substantially underutilized and make it an act of property in terms of tax rules, etc. And the IDP meets several of the purpose and the intent criteria of the Zoning Code, some of which speak to encouraging innovations and land development and redevelopment. This property did have a, I believe it was a manufactured home on it at some point in the past and had since been removed. But in allowing an IDP to go forward, again allows development or redevelopment in this case to take place. Development of underutilized property in an established area speaks for itself. Development to be sensitive to the character of existing neighborhoods. I think what they're trying to do here is make sure that the manufactured home use is indeed compatible with the surrounding property. And then there's the minimized neighborhood conflicts, and again speaks to itself there.

The property is also within the urban neighborhood place type characterized by medium to high density residential land uses and supporting neighborhood commercial development. The goals, there are several goals and policies and actions within Elevate Las Cruces that support the request and spoke to the consistency issue already. There's also the fulfillment of the City's infill policy plan, some of the criteria that's identified there, and the criteria for decisions in the Municipal Code 2-382. The property is adjacent to two dedicated improved rights-of-way, so use of the property would certainly take advantage of any utilities and infrastructure that currently exists.

The options this evening regarding this case is to vote "yes" and approve the case as presented, vote "no" and deny the case. If you deny the case, please be advised that new information or facts not identified during the presentation that would be necessary. And you could vote "yes with conditions, stipulating those conditions as part of your motion, or vote to table. And that concludes staff's presentation Mr. Chairman.

Gordon: Thank you Vince. So anyone from the Commission who has any questions? Commissioner Kaiser

Kaiser: Is one of the issues here related to the density that even with the replat, turning the two lots into one, that they wouldn't meet the design standards for that's, at a minimum second unit? Is that the case?

Banegas: Mr. Chairman, Commissioner Kaiser. That's correct. When staff reviewed this proposal it was considering both lots one and two as one lot anyway.

Kaiser: Okay. So, theoretically in the future if they were to try to redevelop this site they probably would have to go through the IDP process again. Is that true?

Banegas: Mr. Chairman, Commissioner Kaiser. That could very well be the case depending on what exactly they were proposing. Yes.

Kaiser: Okay. Thank you. And then finally the issue about retaining the rights to the R-4. I mean those wouldn't go away just by approving this IDP, right, I mean the underlying zoning would still be there, correct.

Banegas: Mr. Chairman, Commissioner Kaiser. That is correct. The R-4 zoning would still be in play. I think to avoid any future confusion on that issue staff felt it might be a good idea to incorporate that as part of the discussion.

Kaiser: Understood. Okay. Thank you. No further questions.

Gordon: Is there anyone else? I have one question. During your presentation you made some kind of comment about there might be a possibility in the future of some commercial use.

Banegas: Mr. Chairman. The R-4 zoning as its description implies allows some limited retail and office uses. And those are rather limited in the R-4. R-4 being the most, you know the highest if you will residential district in our code,

Gordon: That would mean in the future that they're not considering removing the manufactured home and replacing it with an office structure.

Banegas: Not at this time. Their primary focus is purely residential to create at home for the family.

Gordon: All right. Is there anyone from the public who wishes to speak?

Banegas: Mr. Chairman. If I may, real quick. The applicant is also in attendance tonight, Gilbert Olivas, and if you have any questions or like to hear from him, he's certainly willing to do so.

Gordon: All right. Well let's hear from him first. The applicant is here. Would you please state your name for the record and allow me to swear you in.

Olivas: Gilbert Olivas. And I swear,

Gordon: All right. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth I do under penalty of law?

Olivas: I do sir.

Gordon: All right. Go ahead sir. Thank you.

Olivas: Good evening members of Las Cruces Planning and the Chairman, and also to the members of the public in attendance. My name is Gilbert Olivas. And at this time my wife and I are requesting an infill development proposal. The purpose of this is simple. We wish to place a new single manufactured home on the subject property to be used as a residence. It will be ground set as VA requirements, so it's not going to be up above or anything. So it's going to be, look just like a home. It's got a pitched roof, shingles and the siding, everything complies with that, for that as a manufactured home. And once it's set, it's set there for life. It will be ground set and will meet all the easement requirements as explained and presented by the excellent professional staff. Thank you Mr. Banegas.

The IDP process can be, can aid us to developing our property. Eventually a fence, which we have a four foot chain link fence at the moment right now,

but we plan on putting up a different one some, you know better like maybe a rock wall or the wooden fence or something like that. But it will meet all the requirements as well.

It'll meet all the required setbacks and requirements to meet all building codes for the R-4 zoning district as well. The property has been in the family for over 65 years. It has three different mobile homes at the time, never had a built home. It has been empty for a few years and the yard maintained and clean. Always up to code as only had summer gardens and my trees that are growing around. We kept the utilities for such. We know most of the people that have lived in the neighborhood for many years. My wife was raised there and I was raised two blocks north of that place. At the corner of Spruce in Santa Fe. We both lived our lives there. I, except for serving proudly and honorably in the US Army from '72 to '75. And we saw it grow. It's always been our dream, as most Americans to own our own home, especially in our neighborhood where we grew up and we were raised. We want to go back to our roots as this is the only opportunity that we have, especially at this age. It'll brighten our neighborhood and improve the neighborhood community conditions and justify the infill development plan. It will be advantageous to the community as articulated to the City of Las Cruces comprehensive plan and any applicable regional or neighborhood plan. We really appreciate the assistance to making this thing possible. And if you have any questions, I will be glad to answer to you.

Gordon: All right. Thank you. Is there any questions? I do have one question. Is the picture that was presented to us, is the actual home that you're going to put there?

Olivas: Yes sir. But that one, it's exactly the same thing except it has a double pitch. Mine does, but the same. And it's going to be ground level just like that.

Gordon: That's very nice. All right then. Is there anyone from the public who wishes to speak on this? Please raise your ... yes ma'am.

Nichols: Three minutes.

Gordon: Yes, well, there's only one person. I will do that anyway. All right, before you speak, I'm going to only allow you three minutes. And so will you please state your name for the record and let me swear you in?

Saenz: Rita Saenz.

Gordon: All right. 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?

Saenz: Yes.

Gordon: Okay. Go ahead.

Saenz: First of all, I have a question. For manufactured homes, if they are set in, and I don't know the lingo, sorry ...

Gordon: Can you speak into the microphone so that she can record you?

Saenz: Yes. I'm sorry. So a manufactured homes, if it's set in a neighborhood where it's primarily built homes, I guess, will that devalue the, make the value of the homes less or not? Even though I under.

Banegas: Mr. Chairman. Just to clarify again, the manufactured homes pursuant to state law enjoy the same rights and privileges as any site built home. They're considered one in the same, they have HUD related design standards they must comply with. So in all intents and purposes they're considered the same.

Saenz: But do they devalue the home value?

Banegas: Mr. Chairman. That's subject to interpretation. Some folks may feel it might devalue property, others might feel it does not, it improves value. There's no set in stone method of comparing and contrasting homes in terms of single-family detached styles to determine value, devaluation or valuation.

Gordon: Is there anything else?

Saenz: Yes. So I'm here on behalf of my sister, Claudia Diaz has property there, my mother, Rita Diaz, has property. And myself, I have two properties around that neighborhood. And I believe you got any e-mail for me, and I'm here physically to represent as well. So another concern that we have is if that it goes through there's a big empty lot, property right across it, that won't set precedent to add more manufactured homes, which is like how you say, it is the right or whatever. But I know that from Spruce to the other side I've seen a manufactured homes, but not the side where we are set in our neighborhood. And we are you know against, if it's going to come to like if there's a precedent to add more mobile homes, as it is it's a neighborhood that struggles with the home value. I have an empty property myself; I know you guys are trying to fill empty lots. I have an empty lot across the, behind the street. And as for me I really am trying to, you know what my lot is someone to do like multiple dwellings. I'm trying to do homes, because I do try to see my neighborhood. We can encourage them to build their own homes or own homes. And we're against it. I don't know if that makes, I'm so sorry. I don't know. A little bit nervous. So we're here to be against it.

And I'm representing like I said, our, my sister, Claudia Diaz, my mother, Rita Diaz, and myself, who we all have properties there at that.

Gordon: All right. Thank you.

Saenz: Thank you.

Gordon: Is there anyone else? Yes, sir. Again I'd like to limit you to three minutes please. So would you please state your name for the record and let me swear you.

Flores: Zachary Flores.

Gordon: 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?

Flores: I do.

Gordon: All right. Please make sure you speak into the microphone.

Flores: Yes, sir.

Gordon: It could be raised a little bit I think. There you go.

Flores: You don't want me bunched up. I'm here speaking give or take professionally, impartially, on behalf of the lady that just left. I'm a realtor in town. I do sell, but I also have family home on the corner of Spruce and Virginia. So when you talk about devaluing the neighborhood or you know all that, as a realtor and as having appraisers it matters on what style the home is. Is it a single wide or is it a double wide? So being as it's a ... it's a double wide. Okay. So being as it's a double wide it allows some lenders, but not all lenders, right, s you're not going to find every single lender. So on resale of that property it's not going to provide the same value as when he installed it ground set. We're living in a crazy time on this housing market. And I'm, on behalf of the gentleman that's fighting for this, I feel for him because there's no answer to inexpensive housing right now. So we're seeing that shortage. And he's got land there, right.

But also there's real estate professionals like myself and a developer in this room right now or was, I'm not sure if he's still here. But there are people here that could push the agenda towards what Las Cruces in that area needs to be. So if you're looking at the Alameda Depot, right, and we're pushing east, right from the downtown Main Street and the development and the rehab and the updating of that area is going to be next, right the Mesquite Historical District.

So in speaking for the lady and myself and my family, I definitely will like to bring to your attention absolutely doublewides make it a lot more difficult to sell. It won't devalue the neighboring house. But now if you're, if it does set a precedence and you allow that big lot to have three, four. another one, in my perfect vision of Las Cruces born and bred you know we would see more sight built houses, especially in these historic depots where this gentleman grew up, right. My family grew up. My blood, we're all here. So I would not side with putting a double wide there. Unfortunately, there's not a good answer for our housing crisis. And that's all I have to say. So if you have any questions?

Gordon: All right. Thank you. Is there anyone else? All right, in that case, I guess, any comments or more questions from the Commission?

Smith: Yes, I have a comment. You know, and so Olivas, he did mention that he and his wife grew up in his neighborhood. And the land has been in their family for 65 years. And he also stated that this is going to be a home that he will remain in for the rest of his life. So as we look at this proposal you have to take into account that you know there is a home shortage and the cost of homes continue to you know skyrocket. And here is a couple who has had roots in the City for a very, very long time, for many decades, and they want to come home to establish a home. It is a home. It is a house, whether it's manufactured, doublewide, whether it's built out of adobe, that really doesn't matter in this situation. It is a home. And so I feel that when someone comes up from a real estate perspective, you're only thinking about money, you're not thinking about people. You're not thinking about homes. They don't think about families.

Gordon: Thank you. Anyone else? All right, in that case, I guess the Commission is ready for a vote. Vince.

Banegas: I apologize, Mr. Chairman. I just wanted to read a definition that I think may help in the discussion. Manufactured housing means a manufactured home or modular home that is a single-family dwelling with a heated area of at least 36 feet by 24 feet and at least 864 square feet and constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Standards Act of 1974. And the Housing and Urban Development Zone Code II or the Uniform Building Code, as amended. to the date of the units construction and installed consistent with the Manufactured Housing Act and with regulations made pursuant to that act. So these types of structures if you're talking about assessed value, they're considered real property, not personal property like a mobile home would be. Just to clarify.

Gordon: All right. Thank you. All right, then I guess we are ready for a vote. I need a motion to approve item 8.1.

Bennett: I make a motion to approve item 8.1.

Guerrero: I'll second it.

Baum: Board Member Kaiser.

Kaiser: Yes, based on staff recommendation. consistency with Elevate Las Cruces. and the IDP.

Baum: Board Member Smith.

Smith: I vote yes, based on staff recommendation and also compliance with the infill development plan.

Baum: Bennett.

Breen I vote yes, based on staff recommendation. This also meets the IDP requirements and Elevate Las Cruces

Baum: Board Member Vega.

Vega: I vote yes, based on the site visit and it means the IDP criteria.

Baum: Board Member Guerrero.

Guerrero: I vote yes, as well based on staff recommendation and need for infill in Las Cruces.

Baum: Chair Gordon.

Gordon: I vote yes, based on my site visit, staff recommendations, good use of the IDP. and Elevate Las Cruces.

Baum: Approval by six. Thank you.

8.2 **227 S. Main Street Variance Request:** A variance request of ± 300 feet to the minimum 300-foot buffer distance required between a cannabis facility and a qualifying school (property line). The subject property is zoned DDC-MS (Downtown Development Code – Main Street), ± 0.381 acres in size and is generally located at the northeast corner of S. Main Street and E. Bowman Avenue. Council District 1 (22VO0500011)

Gordon: All right, we can move on to item 8.2. Mr. Banegas, you're on stage again.

Banegas: Yes sir. Let me get to that if I could. Okay here we go.

Gordon: Excuse me, just for a second. John, could you come here for a minute, please? Go ahead, I'm sorry.

Banegas: Mr. Chairman, Members of the Commission. Once again, Vincent Banegas, Interim Planner for the record. Presenting tonight's case involving 227 South Main Street. It is a variance request involving cannabis related use or proposed use. The property is currently located at the corner of Bowman Avenue and South Main Street. Again 227 South Main Street. Currently the facility is operated as the Mesilla Valley Pharmacy. Based on the information presented, among other things, not only are they a pharmacy, but they also compound and retail CBD related product presently. They're looking to expand and incorporate cannabis related compounds etc. for the benefit of their customers.

The property is 0.381 acres in size and it is zoned in our Downtown Development Code as Main Street. The area in question was developed as part of the Las Cruces Original Townsite. The structure was originally built in 1977. And in this case it is located immediately adjacent to the New America School, in fact they share a wall between them. They may have two separate walls, but nonetheless they're attached.

So this is the zoning map showing the property in question. Dry throat, it's not COVID. The property is outlined in red. Again Bowman Avenue along the southern boundary here, South Main Street in the middle, Church Street is off to the east. And you have the Main Street District on either side of Main Street. Each of these properties that I'm pointing to are Main Street. Elsewhere, primarily in this area and along several of the other surrounding properties you have the Downtown Development Code. There's a Downtown designation, and then you have some civic uses that are also within the general vicinity to serve as public related uses, the plaza is an example, parking, public parking, etc.

An aerial map showing the area. The subject property again outlined in red. You have the building that is currently the Mesilla Valley Pharmacy here. It is along this edge of the building where the attachment takes place to the New America School located here. You have a variety of uses in the area, everything from service, restaurant, retail, you have office, you have everything, I should say you have a good mix of uses, that is certainly promoted as part of the Downtown effort to date.

The request as it was submitted is for a variance of 300 feet to the required 300 foot minimum buffer distance between a cannabis facility, and by that we're talking about the building footprint, and a qualifying school property line. Qualifying school just to be clear is everything pre K through 12. No

adult school, trade school, etc. are considered as part of that definition. And the school in question is the New America School as indicated.

The applicant is Pharmtrue Cannabis retail and manufacturing. And again they're looking to expand a little bit beyond the CBD aspect and incorporate cannabis or THC level product as part of their medications, and offering to their customer base. The company is obviously healthcare oriented. And as part of their package of information they submitted, there's three criteria Katherine touched on as part of her of her presentation regarding the cannabis case earlier. But there's three criteria that the Zoning Code stipulates. One is a physical hardship. And two is showing that there's some economic development justification to the request. And a third is to show economic hardship in complying with the requirements of the code. So this is one of the two items that they submitted to help justify the request. It is economic development driven, at least at this slide and talks to the issue of job creation. As part of the expansion they would need some additional employees and positions to facilitate that growth. There's also the issue of GRTs as retail sales expand as a result of the cannabis use in their medications, etc, they anticipate that retail sales will increase thus the GRT increase to the City.

Also, in terms of again the criteria for a decision, the applicant submitted some information about monetary hardships as it pertains to this particular request. There's the investment aspect that has already taken place with the property, getting it ready for not only what they have in place now, but for any potential increase in activity. They illustrate that some of the alternatives that would really affect them and you know put them in a bad position is the issue of leasing additional or another site to serve as their facility for this use as requested, is going to be costly. There's a possibility of purchasing commercial property for this proposed use. And there's the cost to develop the land for the building that would house their operation. So all that equates to a substantial monetary hardship which they illustrate through the slides.

The site plan that was submitted, again showing the property in its entirety, but the building footprint here, it is again along this wall that the connection to the New America School is at issue. Parking would take place along not only South Main Street but along Bowman Avenue. You could see some of the parking stalls identified as part of this graphic. Upper right you have the small but useful aerial showing again the connection point to the school.

A couple of more photos,. this is just more or less at the corner of Bowman and Main Street, again showing Mesilla Valley Pharmacy, the New America School. The one on the left is just a south facade of the subject business. And the one on the right is the east facade showing again connection to the school.

So public notice and input. Notice was sent to the surrounding properties in accordance with our Zoning Code rules and regulations. At first I must say that staff had not received a lot of input, but since Thursday last week, most of it come in this weekend and through today, there has been substantial interest in this case. Ten e-mails were submitted all protesting the request. And the concerns largely centered on the items, the bulleted items that are shown in the slide, and I'll just touch on a few. Again the distance issue was thought to be excessive based on current code. A large degree of concern with the impact to the student population of the school and to the children in the community. And they also felt the school felt that there could be some school operational concerns as well. But those were some of the consistent themes of the protest e-mails. Staff did receive a few additional calls, but some of them were just inquisitive type calls, and another was in opposition as well.

Recommendation, in reviewing this case, Mr. Chairman, Members of the Commission, this was a tough one. You had staff look at the issues that were brought forward in terms of this request. And we looked at both policy and ordinance, keeping in mind that policy was written a couple of years back, and the ordinance written certainly more recently than that. And we considered some of the discussion that took place regarding the buffer distances and certainly thought that there was an intent to protect schools and to protect the students that go to those schools. So staff has what we would call a soft denial on this, but it is a denial. And the findings for the denial are as follows. Obviously, the site is 3.81 acres in size. And currently, and this is important, currently operates as a pharmacy compounding retailing CBD product. And the reason why I bring that up, Mr. Chairman, Commissioners is because there's a known quantity of what the rules required for a business that was already in operation, looking to entertain cannabis as an expansion. So the other findings are, the use of cannabis requires a 300 foot buffer. That has to be met and since it cannot, the variance to the tune of 100% is being requested. And staff felt that this was just too excessive. If you recall, we had a case a couple of months back on the north side of this very same school where the applicants couldn't meet the 300 feet, but they can meet two-thirds of that. So there was a little allowance there to mitigate some of the impact, and that's kind of how we viewed that case. This one it's 100% and a little bit tougher to contend with.

Again, discussion in the drafting of the ordinance took place trying to determine best practices to limit exposure to school aged children. There's been no 100% buffer distance variance approved to date. And we did have the superintendent and the school oppose the request as they did in the other case, and again they were the ones that cited significant concerns to their student population and to operational issues.

I want to indicate that Elevate Las Cruces, our comprehensive plan, lends broad support to the request. It does so through economic development related policy and it does so through broad land use policy. But nowhere in the comp plan does it speak to specific issues related to cannabis locations and schools or anything along those, those lines. So even though there's broad support, staff feels that the recent ordinance overrides that broad support and was aimed at protecting a specific group, in this case schools and students.

If this is denied the action would not be contrary to Section 38-10 K, criteria for decisions. Again one of the first things that's listed there is demonstrating physical hardship, which staff did not find to be the case with this request. As per section 38-2 there's three provisions that further lend support to the denial decision. Staff didn't feel that the request fostered a rational relationship between different land uses for the mutual benefit of all. Again you have at least one property owner who's a significant player in this issue, very concerned with the request. And there's also the issue of sensitivity to the character of the existing neighborhood and trying to mitigate conflicts amongst neighbors.

So with this, you have options this evening Mr. Chair, Commissioners, vote "yes" and approve the case. Keep in mind that this is a little different, if you go that route you'll need to submit new findings of fact not identified during staff's presentation. You could certainly vote "no" and go with the staff recommendation of denial. You could vote "yes" with the conditions or vote to table. If you do have any conditions, please include them in your motion for approval. And that concludes staff's presentation. I know that we have the representative for Pharmtrue in attendance this evening, Mr. Chairman, so I'm sure he would like to speak to the issues at hand.

Gordon: All right. Thank you. Would the applicant like to speak first before I go to the Commission for questions? Would you please state your name for the record and let me swear you in please?

Buck: Daniel G. Buck.

Gordon: All right. 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?

Buck: I do.

Gordon: Thank you.

Buck: Thank you Chairman and Members of the Commission. To keep items moving efficiently and effectively we can reference certain documentation I

brought with me in regard to the docket in the case at hand. I will take a moment to distribute them and I will explain what the color coding at the header equates to.

Buck: While we continue to pass out the docket, I'm going to take a few seconds to describe my background as it pertains the State of New Mexico and cannabis. I'm currently the state appointed mediator for Chaparral's incorporation on behalf of State Representative Willie Madrid, as well as the case handler for items that arise with cannabis., and executive director of the Southwestern Cannabis Trade Association, which represents ancillary service providers as well as economic drivers of cannabis, and cannabis adjacent businesses.

This specific client before you tonight, Pharmtrue has invested a large sum of capital into the Downtown Main Street program, and has employed over 20 people since the dawn of this year in August of 2021. As we all know, at the beginning of 2020 Main Street saw a stall in its economic spur due to the COVID rise case and then the shutdown subsequently, and we're coming now out of the recession in 2022 in the first fiscal quarter. This client currently retails CBD adjacent products and compounds and they're looking to expand into THC related products in a two-step safety protocol program. One of the most comprehensive I've seen year to date come before my staff and my office. Upon check-in on the green header of your docket you will see that this business will have a check-in encounter for cannabis before they enter the retail district at the furthest end of the store. They will then have an additional check-in when you enter the retail area through a Dutch style split in half doors. There'll be a counter upon first check in for an ID retrieval, then a subsequent ID check of the purchaser of the cannabis adjacent product. With the cannabis adjacent product, you will not be allowed to leave the cannabis retailing zone inside the pharmacy without checking out in the designated retail area for cannabis or have purchased the goods from the retail frontage as well as your prescription that you may be retrieving simultaneously upon checkout.

I'm going to remove my tennis bracelet to enter this as Exhibit A. Imagine this in a yellow highlighted or blue highlighted color coded manner. I'm sure we've all been to nightclubs where there's underage individuals by state statute who can enter and they're usually governed by a wristband or an X on the hand. Cannabis retailers will be mandated to wear a wristband upon the two-step checking protocol. And upon leaving the cannabis retail zone to enter back into the normal commerce zone of the pharmacy itself.

If we do not work as a trade group and as a commission to pass the variance that's before you, we will have killed a subsequent business that is benefiting the Main Street area and employing people and supplying food for their families. This is an extremely safe business. And cannabis is

governed very harshly by the State of New Mexico. Upon discovery last Friday, the school has continued a dual relationship with this client which is actually illegal in a broad stroke of breach of moral conduct. Someone who receives a salary from DLCP has been continuously communicating with the client and failed to disclose her involvement with the school board. And at the same time has been giving verbal context that is relayed from this client back to the school board. Which is a prime example of what hurts e-commerce and economic incentive driven growth in Las Cruces, in Doña Ana County. We must work with our trade partners and our industries to ensure their future and collaborate with people who are investing on Main Street. And I would like to get for the record straight, New America School represents mostly an age, federally recognized 18 to 21 bracket. People who are on a secondary education track. They provide preschool related services for the attendees relative children. It is not a daycare, an underage federally recognized bracket that has being served continuously in the ed program. And I would like to see a continuation of economic spurt disperse in the downtown.

Gordon: Are you finished?

Buck: Yes.

Gordon: All right. Thank you. Is there anyone from the Commission who has any questions to the applicant?

Guerrero: I have a question.

Gordon: Commissioner Guerrero.

Guerrero: Yes, sorry. Can you clarify? So you were saying that, I'm just a little confused of like when you were talking about client and then talking about the person that has been working with New America School, is that like I guess a competitor to this company or what's the relationship there?

Buck: The relationship is she has paid a salary by DLCP as executive director, and then has failed to disclose her involvement with the school board. But the school board has harassed the client on more than one occasion. And this individual has also taken the relative economic information that the client has exchanged with DLCP back to the school board. Serving on multiple committees inside the City of Las Cruces and civic duties that I uphold morally, I have to disclose my involvement on other boards and I believe that other members should be upheld to that moral standard and should abstain from coming to hearings or having a voice in opposition due to duality.

Gordon: Is this is not a civil issue?

Buck: It is a civil issue. I mean it's not a civil issue. I'm sorry.

Gordon: Are you're saying it's a matter of conflict of interest?

Buck: Yes.

Gordon: Is there anyone else?

Smith: I just have a question. Is Pharmtrue in partnership with Mesilla Valley Pharmacy in this venture? Or are they two separate businesses that are in question? I mean I know that Mesilla Valley Pharmacy has already been established. And then now you're trying to have Pharmtrue be you know establish a cannabis business there. Are they both connected? Are they one in the same business?

Buck: Yes Commissioner. It's a board of founders. They're two separate LLCs. Pharmtrue has been in existence since the legalization of hemp in the State of New Mexico. And they are transitioning into a broader branch of their hemp related products, which would of course entail cannabis, which is a THC based product, governed by the same board of directors, governed by the same founders in partnership, just two LLCs coming together into one facility.

Smith: All right. Thank you.

Gordon: I have a question to Vince, please. Could you go back to the slide that shows the site plan please? That's it. Did I understand we're looking at this information that we received, is there also a possibility that they're thinking of building a separate building or just renovating the interior of the present building?

Banegas: Mr. Chairman, Members of the Commission. My understanding is that the interior of the building would be modified to accommodate the expansion.

Gordon: So all right, if they were to put up a building let's say far enough away from the school would they qualify under the 300 foot exemption? Business at the same property?

Banegas: Mr. Chairman. I think that would be tough. The property line you know even if they located at its furthest distance, I think they'd still be shy of the 300 foot requirement.

Gordon: Okay. I wasn't sure what you had said and it's hard to read sometimes these slides, really couldn't be a little bit bigger would have been nicer. All right, anyone else on the Commission? Commissioner Kaiser.

Kaiser: Thank you. First question probably, well for staff or the applicants representative, the Mesilla. Valley Pharmacy as it stands now fills prescription drugs, is that true?

Buck: Commissioner. That is correct. They currently retail pharmaceutical drugs. And three of the founders on the board, to elaborate, are board certified pharmacists.

Kaiser: Thank you. So they're, just establish for the record, there's already controlled substances, if you will, being distributed out of this pharmacy. So from my perspective this is certainly a challenging case for sure. I think you know the location, the context of being downtown, is certainly challenging. The fact that we just a couple of months ago approved a similar variance. Precedent can be a slippery slope. If one-third variance is good, where do we draw the line? So I think that's what makes this really challenging. To staff, I asked a question earlier about the 300 foot buffers applies to both New America and the other school facility near downtown. I'm hoping you have that map available. Thank you.

So this is the first time I've seen it. So I'm just sort of digesting here what's on the slide. But this is certainly informative, at least from my perspective. I think one of the concerns I had was how much of downtown would be ruled out of this potential opportunity based on this 300 foot buffer. It appears to me that the, it's I mean it's hard to tell without context here, but it seems to me that there's still a fair amount of downtown that would be available and remain outside of the buffer. Is that, am I reading that correctly?

Banegas: That's correct. Mr. Chairman, Commissioner Kaiser. Yes, the buffers, if I could just kind of orient folks, the New America School is located where my pointer is right now, Pharmtrue is looking to incorporate here in this building to the south. Healthnotics, the case that was previously dealt with a couple of months ago, here. And then there is a business, I believe it's Sugies, at least in our database, it was Diner LLC, here. So those are, and this one may be, the cannabis related centers if you will, or retail establishments. The items in blue are areas that are alcohol based. They have liquor license of some sort associated with them so we showed that. But this red or pink, orange, whichever color you want to call it, is showing the buffer distance 300 foot buffer, from the property line of Central Elementary out, and the property line from New America School out. And so all this shaded area would be within the 300 foot buffer distance. And you're going to have to consider a variance or an SUP depending on what we're dealing with, and then any area outside is free and clear, keeping in mind the other cannabis related businesses.

Kaiser: Yes, thank you. I think this is very helpful. I kind of wish we had had this a couple of months ago. And I think just broadly speaking from my perspective, I think there's a possibly a larger question here for the Commission about what should be downtown. I mean downtown by definition is the central business district. I mean you have a variety of uses, you have alcohol consumption, you have bars, you have pharmacies that are prescribing drugs under prescriptions, you know there's a lot of activity going on in it. I guess the question is, is if a school decides to locate downtown does that mean we push everybody else out? I don't know. I mean, that's just kind of where I'm coming from. I'm glad to see that this map that there's still plenty of opportunity it would appear. But you know we do have some facilities, there's at least one you know alcohol or liquor license located within 300 feet. So the question is when their license comes up for review or whatever are we going to have to exclude them? Are they going to have to relocate in downtown? You know I'm sympathetic to probably some of the folks in the room tonight that are going to speak out against this, but at the end of the day you know it's downtown. I mean this is where we want to attract businesses. You know certainly we have to weigh the pros and cons, but you know I think that's certainly something that we have to seriously consider that there's some additional context here. Certainly, you know providing or setting precedent you know only a couple of months ago I think, makes this a little bit more difficult for me, but that's just my perspective.

Gordon: I do have a question also, Vince. Maybe you could just answer this for me. There are certain criteria that will enable us to grant a variance other than to approve the fact that there is not a 300 foot barrier between the school and in the building, plus hardship economic, what else is in there besides that?

Banegas: It's physical hardship, justification, citing economic development as a benefit, and consideration of monetary hardship in trying to meet the development code as written.

Gordon: So then, what you said should we consider is this one out of three, two out of three, three out of three?

Banegas: Mr. Chairman. Correct. As it's presented here this evening, the denial looks at one of three. But I do cite the other two criteria as having merit. I mean the applicant has shown merit for those.

Gordon: And it is possible in consideration of the applicant of this proposal that we could consider the hardships outweigh the distance restriction. And so you're requesting that they want a variance request at 300 feet. Let me just look at this for a second. It doesn't say anything about the summary of the

request. They're just coming forward now just asking for the 300 feet and providing this other information as ancillary information.

Banegas: Mr. Chairman. The information that was provided citing some of the, they had submitted a PowerPoint that had several slides and the monetary hardship issue and the economic development benefit came up just after packets went out.

Gordon: So then we have something else to consider here.

Banegas: Correct.

Gordon: Okay. In that case is there any other questions from the Commission?

Vega: I have one question. I know this came up in March. What's the age range of the students at the New America School?

Banegas: Mr. Chairman, Commissioner Vega. That's a good question. We'll probably have to defer that question to either the superintendent of the school. If you recall on the other case there was quite a bit of confusion on that. But because it included some of the school aged children, the pre K through 12, we considered it a legitimate qualifying school.

Nichols: Mr. Chairman. If I may. Before we leave the discussion of the Commission. Larry Nichols for the Community Development for the record. We had a lot of discussion on staff on this. And as Mr. Banegas mentioned the recommendation from the staff was a denial. The primary factor in that had to do with distance. We spent a lot of time before the cannabis ordinance was adopted, we first started with a distancing of 1,000 feet because we felt the necessary separation from schools, not churches, but schools. Churches were not a part of the formula here. Then we had said well, it was decided that was too great a distance, and it was reduced to 600 feet. And then we had a lot of discussion and public input on that, and it was reduced to 300 feet. And that's what was approved by the ordinance. This proposal is zero feet. And so I think as Commissioner Kaiser mentioned, it's a slippery slope. Once you begin to approve variances, what is the line that the Commission wants to work with as it complies with the ordinance, in particular the distancing? We had discussion tonight about the variance was based on, we have operational procedures that would overcome that, that would be a safeguard to having the distance reduced to zero. The staff determined that the overriding factor here would be complying with the ordinance that was adopted at the 300 feet. Thank you Mr. Chairman.

Gordon: I understand what you're saying, however we do have the option to give them this variance. We're not restricted from going with your request of denial. If we decide that we want to approve this, that's still a requirement.

And school has its option. All right. If there were no other questions, I'd like to. we can go to the public.

Smith: Excuse me. I did have one comment to make.

Gordon: Sorry.

Smith: This has been as Commissioner Kaiser stated, a really challenging proposal that has come before us. And you know I have lived downtown for almost 24 years. And I remember a time when you know the downtown area was on life support. And you know there was you know a church there, still is, Calvary Chapel, and the New America School came in at some point over the last 15 years. And other than that there were various businesses down there, but it was pretty dead down there. And you know they had to you know the downtown revitalization committee that came into play. And I have seen downtown really grow. And as a resident downtown, I've been really you know happy to see that. You know looking at this the school buffer zone that they, the slide that they put up, I realized that when this school was established downtown, like I said earlier, there was basically nothing there from a business standpoint. And as we now know there you know there is bars, restaurants, cafes, you know it is a business district for the most part.

And the difficulty for me in this proposal is that on one hand I want to see businesses thrive downtown, I want to see new businesses come in. And as Commissioner Kaiser said, it is a slippery slope when you start to issue variances where they're completely deviating from the standard that's been in place. So I just, I'm saying this because you know as we make a vote on this, a decision on this, it's not going to be easy. I know particularly for myself you know being a resident of downtown. So you know it's, yes this is a challenging one for me. So I just wanted to state that, that whatever decision is made it's not going to be an easy one to make. Thank you.

Buck: I'd like to thank the Chairman and Commission for their time tonight. And just urge you to consider the economic benefactor, the colloquium laid before you, and the modus operandi of the current economic environment downtown, and overall in the municipality. Thank you.

Gordon: All right then with that we now can go to the public. Just everybody who would like to speak please raise your hand. One, two, three, four, five, six, seven, eight. All right, I count eight people. I will allow each one of you to speak for three minutes. So when you come forward, please state your name for the record and let me swear you in and we'll start on this side. The gentleman here in the first row. Please state your name.

Wisner: Jay Wisner.

Gordon: Make sure you talk into the microphone.

Wisner: Okay.

Gordon: It think it can be raised if you want. There you go.

Wisner: My name is Jay Wisner.

Gordon: Thank you. 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?

Wisner: Yes sir.

Gordon: Thank you. Go ahead.

Wisner: Yes. I would urge you to think of family, to think of education, to think of the families who have children in the school, and I do mean children. I've placed children in the school before. They do have children at that school. And I would ask you to think of the impact on their children. I have forwarded an article to each of you, I believe it's been distributed to each of you about the impact of cannabis ads and location and the influence on youth regarding marijuana use. I've forwarded a factsheet on cannabis from the DEA. And a study which talks about increased incidence of addiction for youth. And no they can't buy the cannabis there. If you were to pass it, that's true. But it's there right beside them. I want you to think each of you who have ever had children. Would you want your child in a school with a cannabis distribution point right next door with an adjoining wall to where your child receives education? Would you want that?

I would also ask you to think about your position as leaders in this community. The leaders in our community should be looking out for the most vulnerable in our community. And if children aren't the most vulnerable in and one of the poorest counties in our country, then I don't know who is. I'm asking you to think of these families. I'm asking you think that their impact. And I'm also, I would ask a question which I'm pretty sure I know the answer to, were the parents at this school, of the children at this school, notified? And if not, why not? I mean they certainly have a voice here I would think. They certainly have an interest if they have children in that school. I mean that would be my question, do they not have an interest? And that's what I would ask, you know the decision lies at your feet. And if approved we may very well have the dubious distinction of having the first City in our country with a THC distributor attached to a public school. Do you want that distinction? I would ask that. And I leave with that. I have some studies here if anybody's interested, they were e-mailed out to you. They're the same ones that were e-mailed out earlier.

Gordon: Okay. Thank you. Does anybody have any questions, comments? All right. Thank you sir.

Wisner: Thank you. Just one last statement. If it is approved, we will go on in the morning and challenge it. So I do appreciate your time. I do. Thank you.

Gordon: Anyone in the second row? The gentleman with the hat. I guess that's the third row. Will you please state your name?

Vieth: Mark Vieth.

Gordon: All right, I have to swear you in. 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?

Vieth: I do.

Gordon: All right sir. Go ahead.

Vieth: I'd like to thank Mr. Smith for pointing out earlier about the greed of business over the welfare of somebody's house or the welfare of children. Thank you for pointing that out. There is currently a business in this location. And when I drive by there I don't see that business having any hardship. So they're just adding to how much money they can make. Or maybe they might create a few more jobs. But the bottom line is, they will be making more money. Mr. Kaiser, to you I point out, yes, you're correct, they are already selling controlled substance there, federally approved controlled substance. Not something that Santa Fe approved. Are we, 300 feet should be non-negotiable. Non-negotiable. This is our children. Are we going to sell our children out just so that somebody can make a little bit more money? We had testimony that it started out at 1,000, that was too great, 600, down, down, down, 300. 300 should be non-negotiable. Thank you.

Gordon: All right. Thank you. And I move to the next row. I guess that was three, four, or five. Lady in the corner back there. Will you please state your name?

Valdez: My name is Marcy Valdez.

Gordon: All right. I have to swear you in please. 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?

Valdez: Yes I do.

Gordon: All right. Go ahead.

Valdez: My name is Marcy Valdez. And I would, I come in 100% support of Pharmtrue. Mesilla Valley Pharmacy. I met, sorry I'm a little nervous. I met these doctors several years back when my daughter became chronically ill. And I'm going to ask her to stand. And if you would please take a look at her. This is a walking miracle. Without the products that these pharmacists so graciously had a vision and a dream, several years ago, this, my daughter would not be here today. She lived in a dark room. She suffered chronic migraine. So if we want to talk about children, this is mine. And I thank the pharmacist for creating the product that they have today. And it's not about money. It's not about finances. I'm sure they are very well educated to do something else. It's not about that. It's about the community. It's about the welfare of our community. And we're talking about the feet and all that, but I'm talking about a life. There's a different aspect as well. There's life, and there's use of medical cannabis. There's a lot of information as well regarding the good use of it. We're not talking about recreational you know kind of stuff like that, we're talking about the medical use of cannabis.

Now my daughter has been using Pharmtrue products for the last three years. And like I said, she is a walking miracle. And her doctors can testify regarding that. It is in her medical file. No other pharmaceutical narcotic that is created synthetically anywhere on this earth worked for her. The only thing that ever worked for her was the CBD product that Pharmtrue provided and it is documented by her doctor. And I can provide that if anybody would like it. I don't have it today, but if you would like it I can provide it. And so I'm coming today to you, Chairman and Commissioners, to consider the fact that there is a community of disabled people that are thankful for these pharmacists for the business that they created. And if we're talking about a wall that separates the two, the school and the business, children cannot walk through a wall. And I'm sure if you look at their map of what they did, there are protocols provided for safety. Thank you.

Gordon: Before you leave, I have a question. I want to clarify what you just said. Did your daughter take CBD or THC?

Valdez: She took CBD but I am not opposed for her trying anything that they have, provided it that it would give my daughter a better quality of life.

Gordon: Well if CBD works and I know that you can buy CBD almost anywhere now, you don't even need to go into a pharmacy.

Valdez: That is correct.

Gordon: Go in any store, basically, all, everybody sells CBD.

Valdez: And that is correct. Although, in my daughter's case different CBDs did not work. The only one that worked was the product that they provided and the way they produced it, not really sure how that is, I'm not a scientist, I'm not a pharmacist. And I'm sure that they can provide that for you. All I know is that my daughter is now here. Where before, she was not.

Gordon: Okay. Thank you.

Valdez: Thank you. I appreciate your time. Thank you.

Gordon: The gentleman with the, raised his hand. Please state your name.

Martinez: Ramon Martinez.

Gordon: All right. 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?

Martinez: Yes.

Gordon: All right. Go ahead sir.

Martinez: I'm just here. I wasn't going to talk but my wife takes medical marijuana. It helps her. I've had two back surgeries. I've tried everything. My doctor tried the THC that really expensive and it just made me loony. So I can't take it. I'm not against the marijuana use but I am against people selling drugs next to a school and a church down the street. There are kids that shouldn't be on that stuff. It leads to other drugs, we know that. But the thing that we're fighting here is the fact that they're trying to sell marijuana next door and I think that's wrong. My wife is against it. We should have brought her and she would have explained to you, yes there is medical use for marijuana but not next to a kids school. Thank you.

Gordon: All right. Thank you. And going up any, all the way in the back. The lady in the blue.

Catanach: Dawn Catanach.

Gordon: Okay. I have to swear you in please. 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?

Catanach: Yes.

Gordon: All right. Go ahead. Thank you.

Catanach: My name again is Dawn Catanach. I am a teacher at New America School and have been a teacher there since 2012. Our students range in ages from 14 to 22. Pre- pandemic, we would take students up to any age if they had not yet gotten their high school diploma. Our target population is at risk students. They come to New America because for some reason or other, they did not or were unable to be successful in a regular high school. We have 12 teachers there. We work with them. We try to convince them of the importance of education, of the importance of getting their high school diploma. There we're pretty successful. Sometimes we have kids that drop out. We have kids that hit a stumbling block. One of our problems is drugs. Maybe they get taken away by the police, because of drugs, not necessarily taken away at our school. But drugs are a problem, because our oldest students can be up to 23 years old, maybe they can find a retailer who sells drugs and they can get the drugs from them. That is our big concern at our school. Thank you.

Gordon: Thank you. Anyone else on this side? Wait a minute. I'll come back to you.

Kimball: Susie Kimball. I'm the president of the governing council at New America School.

Gordon: Okay, let me swear you in then please. 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?

Kimball: Yes.

Gordon: All right. Go ahead.

Kimball: First, I want to clarify that Mr. Buck is wrong. The DLCP employee who sits on our board has not supplied us with any economic numbers.

Gordon: Excuse me, but just make sure you talk into the microphone so the recorder can get your information.

Kimball: The DLCP employee who sits on our school board has not provided us with any economic indicators, any numbers, any insight information from Pharmtrue or from Mesilla Valley pharmacy. That's an outright lie. And I just want you to know. When we have talked about Pharmtrue and the Mesilla. Valley Pharmacy, we talked in the very beginning of the year, they came and visited with us and talked to us about building their pharmacy and then said we're considering going into the further realm, what would you all think about that. And we told them, as a school we would be opposed. We didn't want that so close to our school. And they said, we understand, we will probably still pursue it. We said, we understand, we will probably still

oppose it. It's been cordial all along. There's been no conflict. We haven't been mean to them. Our staff, our students go into that pharmacy on a regular basis, half of us have gotten our vaccinations at that pharmacy. We enjoy that pharmacy. We appreciate that pharmacy. We just believe that the variance rule was put into place for safety. So for you all to just disregard it and say, that doesn't mean anything we'll go ahead and do with a zero variance, zero distance. That's wrong. And you're setting a precedent, you really are, and it is a slippery slope. Because the next time the next person comes and says we're only at 87 feet apart, they're going to say, you gave it to them and they were zero feet apart. And that's what you're starting. And that's what's not good.

We're not opposed to marijuana. We're not opposed to it being sold. We just don't want it sold at our back door. That's the problem we see. As Ms. Catanach said, many of our students are high risk, which means they have a history of not making good decisions. So if they see someone in the parking lot that's likely to help them get marijuana drugs, marijuana products, they're going to try it. It's going to increase security requirements at our school. It's going to encourage increased monitoring by our teachers. We already have to monitor our students. And if a student walks in and we know they have drugs on them, we call the police. We don't fiddle around. We call the police. We can't have that on our campus. So to be so close to us puts us in a bad way. And they knew when they came that we were going to protest it. And I just want you to know that we're still friendly with them. We still like that pharmacy. We still appreciate it. And we want them to stay in the area. And as you talked about Las Cruces being kind of rundown, when we built New America School, we bought the old Las Cruces furniture building that had been empty for 40 years. It had molds, it had dirt, it had crap. We built it and turned it into a beautiful building. So for you all not to respect us as an anchor on the downtown area, is really detrimental to what we do. We brightened up that end of the street. Other businesses came because of us. We weren't the only driver but we really were a driver. And that building was an eyesore. So I just want you to keep that in mind that we are an important part. And I think if you had children that went to that school, you wouldn't want pot being sold next door either.

Gordon: All right. Thank you. Before, ma'am, there's a gentleman.

Guerrero: Can I make a comment real quick? Super, super quick.

Gordon: All right.

Guerrero: Commissioner Gordon. Could I make a comment real quick? And I understand that you know there's a lot of emotions involved with this. But if we could please refer to this as cannabis or the appropriate term. Calling it

marijuana or marijuana pot is not helpful. So again it's not an attack on anybody that has spoken, I just want to make that clear.

Gordon: All right. Thank you. This gentleman here, and then we'll go back up to you right after that.

Fox: So I can leave, just with the baby.

Gordon: Excuse me sir, let her go, she has that little child.

Fox: Thank you so much. Thank you so much.

Gordon: Would you please state your name?

Fox: Sure, my name is Nicole Fox.

Gordon: All right. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under the penalty of law? And the same for that person?

Fox: I do. My name is Nicole Fox. I'm a technical writer in the cannabis industry. I do licensing, standard operating procedures, business plans, and general consultation. Ironically, some of the people who stood up and opposed before me are my former colleagues as I worked in the behavioral health field for 13 years at Families and Youth Incorporated. I also was the board president of Las Montañas Charter High School who serves a similar population as New America's.

I just want to make a few comments. I'll try to be as pointed as I can, it's a little distracting holding a baby having to comment. I want to say first of all that discussing the fact that cannabis could potentially be addicting for youth is practically a null point in this situation where opioids are also sold right next door to the school. And the opioid problem that we have here in Doña Ana County and basically nationwide is much more unsettling than any discussion we could have about the negative effects of cannabis.

Secondly, I understand the school's concern. However, if they have a student who is in possession of marijuana, and they are 21 or older the police cannot be called on them because it is now legal here in the state of New Mexico. Thirdly, in order to receive a state license to be a retail establishment for cannabis, businesses have to go through some pretty strict compliance, including security systems with cameras that are monitored by cell phone and on site and can be monitored at any time by the Cannabis Control Division and Regulation and Licensing Division. Many cannabis businesses choose to also have human security, in addition to the really intense security systems they're required to have.

The other point that I want to speak on is the economic development point and the establishment of potentially skilled jobs in the field of cannabis. When they're talking about mixing compounds and retailing cannabis, this is not a line of work that is fulfilled by someone without special credentials, not just a pharmacist, but also people who are preparing compounds or infusions or extractions of cannabis very likely hold some kind of degree like a chemical engineering degree. So the positions that they talk about that will be created are not minimum wage, retail positions, these are highly skilled positions that will contribute to the expansion of our economy. So those are just a few points I wanted to make. There's a lot of misinformation especially when we continue to reinforce the stigmatization of cannabis by calling it marijuana and/or comparing it to drugs. Thank you.

Gordon: All right. Thank you. Yes sir.

Thompson: That's a tough act to follow. May I borrow your beautiful baby. Be from a different perspective with the baby house.

Gordon: Please state your name

Thompson: Jerry Thompson.

Gordon: All right. 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?

Thompson: Yes sir.

Gordon: Go ahead.

Thompson: I come to you from a little bit different perspective than the other folks in here about cannabis. Are there any Vietnam veterans up on this? You're a Vietnam veteran? I won't put you on the spot, sir. But I'm sure you remember the Vietnam War, especially the combat troops, the infantry men and all the problems we had with drugs in Vietnam. We had soldiers committing ... yes sir. You were going to say some something?

Nichols: I remember very clearly sir.

Thompson: So we had fratricide going on, we have soldiers killing soldiers. We had some serious drug problems. I'm a former United States Army soldier. The United States Army went through some real growing pains after the Vietnam War. One of those growing pains was recognizing the dangers of drug abuse of these kinds of drugs, cannabis. Okay not medical marijuana, oops sorry, medical cannabis, the cannabis among the soldiers. As a commander in the United States Army, I chaptered out several soldiers for

drug related offenses. And I will tell you, when soldiers went to the field or went on combat operations or got deployed, they did not have it. It was not there. Alcohol wasn't there. General order number one was the rule. Those soldiers did fine. I was with specialist Granberry. I was a scout platoon leader. I had specialist Granberry, he became a hero. Came back to Garrison, came back to the States. One month later specialist Granberry was chaptered out of the army for drugs. I will tell you, it is a problem with drugs in the in the military. So I'm here talking about, you know we've had some people come up to talk about how great cannabis is. And I'm sure it's got some medical benefits. But I will tell you from firsthand experience, the United States Army is a much better fighting force now, because we got rid of the drug problem in the United States Army we had in Vietnam. Thank you for your service, sir. That's all I've got.

Gordon: All right. Thank you. Anyone else on this side? All right, then we'll go to the other side. Go towards the back. Lady right here. Yes. Will you please state your name?

Collins: Janet Collins.

Gordon: All right. Let me swear you in please. 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?

Collins: I do.

Gordon: Go ahead. Thank you.

Collins: Okay. Good evening, ladies and gentlemen. I have things written down because I forget. My name is Janet Collins. I am not a parent at New America School. But I am a concerned citizen. I've never seen anything like this come up where either a bar or this type of business would be butted up to a school. When I heard of this variance request, I started looking into the regulations set forth in the New Mexico Cannabis Control Division, and saw there were a few operational requirements for cannabis establishments. It said that New Mexico State laws set the 300 foot rule, Article 2C cannabis regulation states, a local jurisdiction may adopt a time, place, and manner rules that do not conflict with the Cannabis Regulation Act, or the D. Johnson Clean Indoor Act.

Although the minimum distance can't be set or forced more than the 300 feet, if you start cutting it down, at some point you're not going to be able to say no. You have to go back to the 300 feet. Like you said, it is a slippery slope. Once you start cutting it down, cutting it down, there's no turning back. These children are our future. So what we're looking at is a business worried about monetary problems to our future. You know, I don't point

fingers because I was there. You know I feel sorry for the lady back here whose daughter is having to be under all of that. I went through that. I just didn't do the cannabis. I found out aspartate it was causing me migrants. To this day I have migraines, regular headaches every day. Guess what? I've got sleep apnea. So now I'm having to use a mask every night and look like Darth Vader. But I'm waking up refreshed with energy. I don't want kids to go through everything I did. And it does lead to that. Even if they say it's not addicting what used to be a good for me one joint, it wasn't enough. The high wasn't there. Then it was more and more. If it's medical use you have the card, that's different. I'm not saying don't have these businesses. Don't have them up against a school. Don't knock down that 300 foot lock that's there, set there for the safety of children, daycares, even churches. Take all this into consideration, please. Thank you.

Gordon: All right. Thank you. Anyone else on this side? Yes, young lady.

Tamez: Salma Tamez.

Gordon: All right. 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?

Tamez: Yes.

Gordon: All right. Go ahead.

Tamez: So my name is Salma Tamez, and I have had the pleasure of working for Mesilla Valley Pharmacy and their owners for a little over half a year now. I can attest that what they're trying to do, they are not trying to go over any, break any laws or anything. I'm a little nervous so I'm sorry I'm looking at my phone. While there is concern from the parents here at the New American School, this concern wasn't raised for controlled substances, where we dispense opiates. And 92,000 people in 2020 died of opioid overdoses. This cannabis is another way for people to manage their pain and have a better quality of life. I've known of several people who have been able to get off of opioids that they weren't able to work, weren't able to do anything and medical cannabis saved their life. What better place, what better people to operate a dispensary than pharmacists. They go through four years of pharmacy school. They get educated on the pharmacodynamics and pharmacokinetics of medicine and how it interacts in your body. There is a stigma with cannabis. And people maybe aren't comfortable asking their doctor about the effects and their medications. Pharmacists like Joaquin and the other owners are there to be able to answer their questions, to be able to help their patients understand if the medications that they're currently taking are they going to be effective more with cannabis. This is a really safe option for people. No other dispensary in town can offer it. As well another concern as Commissioner Kaiser where

it is a slippery slope, but are we going to prevent other, if we don't do it someone else more than 300 feet could do it. Are they going to say no because there's still a school involved? The kids here can walk. They do have access to cars. They can drive. What's to stop them to driving to another dispensary and getting cannabis there. What is the difference? They're able, there is three bars in the vicinity or four, Rad Retrocade and Little Toad, there's alcohol there. There's a bunch a lot of things. We have the security measures here to prevent students accessing the cannabis. Thank you for your time

Gordon: All right. Is there anyone else? Yes ma'am.

Forbush: My name is Christina for Bush.

Gordon: All right. Let me swear you in. Do you swear or affirm that the testimony you're about to give it the truth and nothing but the truth under penalty of law?

Forbush: Yes.

Gordon: Thank you. Go ahead.

Forbush: So I've been sitting here listening to everybody and everybody has extremely valid points. However, what I would like to point out is it's all about the education of what we teach our children. I'm sorry, of what we need to teach our children and what a better place than at the school. Yes, they're high risk and it is, it could be potentially hazardous. However, it's all about educating and telling them, teaching them not to do this, not to do that, and this should be part of it I think. And that goes along the ways of most of this cannabis uses. The education is where we need to focus on and teaching our children and our communities what we need to do and what is correct. I think that needs to be a little bit more documented and I don't know, looked into. If we can have some sort of a community outreach, some sort of curriculum, addendum, something but we need to be able, education is where it starts. And I think that's where it needs to be. Thank you.

Gordon: All right. Thank you. Is there anyone else who cares to speak? Yes sir. All right. You've already spoken on behalf of the applicant, what is it that you'd like to add other than what you've already said?

Buck: I would like to invite a doctor down from the staff. But can I make a closing argument?

Gordon: All right, well let me just see if there's anyone else has something to say then they can raise your hand, we'll give them the same amount of time.

Buck: Okay.

Gordon: Yes sir.

Flores: Back again.

Gordon: All right.

Flores: With great intentions, I promise.

Gordon: Just for the record, please state your name.

Flores: Zachary Flores.

Gordon: All right. Since we've already sworn you in, I don't think it's necessary.

Flores: All right, cool. I just kind of wanted to start by saying that I grew up with Joaquin. He's the one of the owners of Pharmtrue and of Mesilla Valley Pharmacy. We grew up since sixth grade, middle school, together making all the same choices, hanging out, doing everything we could together, he went to school, he went to NMSU, he took advantage of the lottery scholarship, which we provide now to everybody, thank you for New Mexico, right. And he stayed. He stayed in New Mexico. He used his degree in New Mexico, not just New Mexico, he used his degree downtown. Right, this revitalization. So if you want to talk about kids you know with potentially troubled pasts, he didn't really get in trouble, you probably wouldn't be able to find something, mine, but not his. So someone like him, right. I'd like to point to his integrity. I know him personally very well, right. So as a person you probably won't find a better guy. And I've served as well. Thank you for your service. I've gone to Afghanistan twice. So I know how to judge the character of a person. And he has, from the moment we met and became our friendship, he was a very, very respectful, very high integrity type person, right. And then to come back to New Mexico and continue business, it is business, right. A school is business, right. So we're talking about this school as if it's not the full intention of this charter school is to get children or children, you keep using this word children, they're almost, they're adults, or adolescents. You know they're older than 14 years old. So we're getting these teenagers and pushing them into places that if you say, all of this cannabis user, everything that we're looking at right now is not good for this. It's in a new, we're in a new New Mexico. We're in a new US, right. So it's legalized. And that's not going anywhere.

And if you talk about a slippery slope well the variance as a real estate professional, I know that there is a variance, a variance means a variance right. You don't have to give it to everybody. But I implore you to give it to

these gentlemen. Why? Because they have those protocols in place to prevent anyone from taking advantage of it, right. What is to stop one of these kids from going to one of the vagrants that stay on the downtown strip. We talk about, it's in our house. We have a lot of you know ne'er do wells or whatever on this downtown strip. What's to stop those guys from getting it from somewhere else and giving it to these kids. There's nothing really stopping them, right. But these gentlemen have controls in place to prevent anything from their store, from them to a student at the school right. And so I'd like to close and say, these gentlemen are high integrity people. And I do implore you to look at their character in granting a variance, not to look at the struggles between marijuana or cannabis and students, right. Students being 14, 15, 16 year olds. We're looking at variance between this business and that 300 foot rule with all of these measures already put into place for their opiates, for Adderall, for Xanax it's already there. So I would implore you guys to grant the variance one time, because just as easily as they can move there's, New America, which if you look at that, New America covers quite a bit. And you can say, why don't they just move?

Nichols: Mr. Chairman. May I interrupt. Could you wrap up please, sir? We don't want to give you unfair advantage to the other speakers..

Flores: I understand. I, you know, there was a lot to be said about emotions. And I wanted to bring it back to the business aspect. This variance should be granted because these businessmen have it in place. They're not going to sell to minors. There's no way that these guys are going to sell to minors. So I just want you to know, high integrity individuals.

Gordon: Your request of having someone speak now, are they the applicant?

Buck: Yes, one of the business partners.

Gordon: All right. It is just one of them that wishes to speak.

Buck: Just one.

Gordon: How many are going to talk? Just the one?

Buck: Just him and I'd like to make a closing argument.

Nichols: Mr. Chairman. If I may. We have heard from a number of the audience and the public on this issue. We're, it's about a distancing variance. It's not really about business operations. It's not about other issues. And so if your comments are about the distance variation, then we'd be pleased to hear them, but otherwise, I think we've probably have had a fair of presentation for the other.

Howard: Trey Howard.

Gordon: All right then I'll allow you the same three minutes. Let me swear you in. Do you swear and affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Howard: Yes sir.

Gordon: Go ahead..

Howard: Ladies and gentlemen of the Council and the audience. We appreciate everyone in attendance, even those opposing said ruling. Now I will take this back to the 300 foot variance, as you said sir, but I will focus on the fact that it is a distance variance. And there's been a lot of talk this evening about a slippery slope. Okay, everyone loves that word. It's a slippery slope. And I understand the precarious predicament that you ladies and gentlemen are in here trying to make this call. But what you all need to realize is that we are not your run of the mill dispensary, fly by night, California and people that come in and throw up a dispensary because we're April 1st now. We are local doctors of pharmacy and drug use. We went to college here in New Mexico for nearly eight years studying drug safety and controlled substance use to try to better our state. This is not your typical variance in the sense that you know, sorry if I'm at a loss for words. We're not just anybody. We are drug professionals. We are doctors of pharmacy here to protect our community. We are the ones that take care of your parents, grandparents, children. We are not here to put anyone in danger or at risk. We are only here to provide a higher level of service for a new industry in our state. We do not intend to do anything but uplift the cannabis industry by applying the same standards of controlled substance use, monitoring, and reconciliation that we already do every day for hundreds of patients in our community, to cannabis. This is not a typical dispensary to walk in, grab your pot and get out. This is an opportunity for higher level health care. Sorry about that by the way. This is an opportunity for higher level health care, better monitoring of a brand new industry within our state, and the ability to allow trained drug professionals to take on something that is potentially one of the best things to happen for New Mexico in a long time. So I thank you guys so much for the opportunity to talk. I'm sorry that I got off a little bit from the 300 foot variance. I hope you can forgive me. And you ladies and gentlemen have a good evening.

Gordon: Thank you. With that I think I'd like to come back to the Commission. Anybody has any comments or questions or things they'd like to say at this point? Commissioner Vega.

Vega: Just a quick question. So I think it's for staff. Can the school be established within, so we've said how you can't establish an alcohol or THC dispensary

within 300 feet of a school. Could a school be established if they decided to push the variance?

Banegas: Mr. Chairman, Commissioner Vega. The ordinance is, and Katherine correct me if I'm wrong, but the ordinance is very clear in that it's a one way street. However, in the past I can tell you that we've applied it in two ways. It didn't deal with cannabis. And it didn't deal with a school. But nonetheless there were some restrictions back in the day that were typically applied one sided and we made sure that they were applied in both directions. So both uses met with the same criteria. And I would assume, even though it's written in single direction, we'd have to take into consideration the alternative.

Gordon: Commissioner Guerrero.

Guerrero: Yes, I just wanted to make a couple quick comments, I'll try to be quick because it's getting late. But you know I just want to just reinforce that this is a tough choice for us to make, because it's true, whatever we decide may set precedents for other businesses in the future. And I just you know I just want to thank everybody for being here, giving your comments. I love public participation. I wish there was this much public participation when the pharmacy first opened, selling opiates and prescribe medications there.

So as it's been pointed, there's also three bars just up the street, four bars around the corner from here, all to which students, because it's not kids in the school, students could have access to. I also just want to say real quick, you know we know that this industry is here. It's legal in New Mexico. It's not going anywhere. I mean this is an extremely professional crew. And you know just want to thank them as well for coming. But you know just want to remind you all that I actually really was moved by the lady that gave the comment about education, because it's true a lot of education when it comes to alcohol and cannabis or other drugs starts at home. Society can definitely pitch in, but it starts at home as well. So you know this is a good opportunity for parents to get more involved in the life of their children as well if they're so concerned. So you know just wanted to just share those comments.

Smith: I'll make one more quick comment. Forgive me for sneaking again. You know as I've sat here and listened to both sides of this proposal, I've also been sitting here looking at this PowerPoint that's been sitting here for you know for over 45 minutes. And as I stated earlier, I've been living downtown for you know almost 24 years. And I keep focusing on Central Elementary School. My daughter attended Central Elementary School. I walked her to Central Elementary School. And I think about downtown and the growth that has occurred. But we also have to remember that this is still part of a neighborhood, that there are homes and there are families there, there are

kids that will be walked to school. Because there was a point, though you've been here a long time, remember they were going to close Central Elementary School and the parents and families of that community fought to keep Central Elementary School open.

And so as I look at the New America School and the location of the Pharmtrue proposal, it comes back to how difficult this decision is going to be based on the fact that there is a buffer that is in place, it is part of the City code for the 300 feet. And looking at Central Elementary School, if we were to have a variance of zero beside the school, at what point where this no longer becomes a community of families along with businesses, it's just strictly becomes a downtown of businesses. I just think it's important that we keep that in perspective when we think about what's happening downtown, because there are families and people like me who still live downtown, it's part of our community. It's where we live. It's where we attend church. It's where we go to school, and where we shop. So I can say that it's a difficult decision that needs to be made. But also have to look at the fact that downtown is still about families too.

Gordon: All right. Commissioner Kaiser.

Kaiser: Just one question, point of clarification. So is this medicinal use only or is there a recreational component here? In other words, how would you get access to this as a customer? Do you have to have some sort of prescription?

Gordon: Can the applicant come answer that question I guess? I think apparently he's asking you whether or not you need a cannabis medicines certificate or card from the state.

Buck: With this particular business, no. With a proper ID of an age marker of over 21 by statute recognized by the State of New Mexico under cannabis and CCD, you will not be allowed to access cannabis without an earmark of 21 years or older or a medicinal card issued by a physician.

Kaiser: Okay, so you don't have to have a prescription from a doctor to buy,.

Buck: No. And that is the case for all retailers.

Kaiser: Thank you. Quick question for staff. Going back to just the pharmacy as it currently stands, is that an allowed use by right here? Are there any restrictions based on the fact that they are selling controlled substances, narcotics? I mean are there any regulations that would apply to them in this particular situation, without the cannabis component?

Banegas: Mr. Chairman, Commissioner Kaiser. Pharmacy is an allowed to use in this particular zoning district, even the component that they speak to as it relates to compounding CBD, that's an acceptable use.

Kaiser: And no setbacks are required from the school, assuming.

Banegas: That's correct. No criteria that would, similar to what we're hearing tonight anyway.

Kaiser: Thank you. I don't have any further questions other than this is hard.

Gordon: If there's no one else. All right, let me just advise everyone here, that before the commission votes if we vote to deny the applicant, then the applicant has the right to go before City Council and appeal our decision. So this is not the end of it as far as they're concerned. If we vote to approve, then the school or the general public or whoever wishes, can also go to City Council and appeal our decision. I would suggest that if whichever way this goes, whichever party wants to do what they're going to do is contact Community Development and get the proper protocol for doing this appeal if that is what you wish to do. So other than that, I think, are we ready for a vote? All right. Then I need a motion.

Guerrero: I'll make a motion. I'm not sure what we're, so I'm not sure what the motion is just for a vote to deny or what are we doing? Okay. Okay. Perfect. So I make the motion sorry, make the motion to approve the vote.

Kaiser: I will second.

Baum: Board Member Kaiser.

Kaiser: I vote no, based on staff's recommendation, and the fact that looking at this map presented tonight, I think there's plenty of opportunity within the downtown to establish such a business and come in fully compliant with the setback requirements.

Baum: Board Member Smith.

Smith: I vote no, based on staff recommendation, although there is flexibility built into this variance request for a buffer, I believe that a zero deviation actually just nearly abolishes you know the standard of a 300 foot buffer for the safety of you know just children, whether it's the New America School whether it's Central Elementary School.

Baum: Board Member Bennett.

Bennett: I vote no, based on staff recommendation. A 100% buffer variance is too excessive and sets a bad precedent.

Baum: Board Member Vega.

Vega: I also vote no, this is, it is challenging because you are a local business and you're awesome. But we, and I think there's still so much stigma tied to cannabis. But that being said, to share a wall with a school it's just too close we wouldn't even be having this discussion if it was an elementary school right, so that's my answer.

Baum: Board Member Guerrero.

Guerrero: That's a tough one. I will vote no, but I just want to say that you know we should be holding the same standard for other controlled substances as well not just cannabis. So moving forward, and I know that this is not you know legislation or anything, but I just., I really hope to see the public more engaged when it's other controlled substances not just cannabis.

Baum: Chair Gordon.

Gordon: If it wasn't for the 300 foot minimum requirement this would be a no brainer and the applicant wouldn't be here. But I am also in a position where I think I'm going to vote no, based on the discussion this evening and my vote is no.

Baum: Thank you. That's six for negative

Nichols: Mr. Chairman. If I may. I would like to suggest a recess for 10 minutes and reconvene at 9:10.

RECESS OF 10 MINUTES

8.3 801 E. Farney Lane Zone Change Request: A zone change request on a ± 4.35-acre parcel from R-3/C-3C (Multi-Dwelling Medium Density) / (Commercial Medium-Intensity) Conditional to R-3 (Multi Dwelling Medium Density). The zone change seeks to remove the commercial zoning from the property and remove all conditions established for both commercial and residential uses. The property is located on the northeast corner of El Paseo Road and E. Farney Lane. Council District 2 (22ZO0500014)

Gordon: Can we get everybody back in their seats please? Everyone is here. All right let's resume. It is now 9:10.

Banegas: Mr. Chairman, Members of the Commission. Vincent Banegas, Interim Planner presenting the third and final of my cases, involving 801 East

Farney Lane. It is a rezoning application that was submitted to staff. Current zoning of the property is R-3 and C-3C. And they're seeking to rezone it to straight R-3. The current conditions that are in play here with this application is the property is located at 801 East Farney lane. It is at the intersection basically of three roadways EL Paseo Road, Farney Lane on the south, EL Paseo Road is on the west, and West Park Drive is on the east. The property as presented in our assessor's records is plus or minus 4.35 acres. It is an underutilized parcel. There is a single-family home on the parcel. But because of its acreage and because of the use it is considered underutilized. And as indicated pursuant to the zoning it does have a pancake zone, what staff considers to be pancakes zoning of R-3/ C-3C.

The R-3 is our multi dwelling medium density residential district in our code and C-3 is our commercial high intensity. The C at the end of this grouping of zoning districts means conditional. Conditions as per ordinance 2767 stipulate that there's several conditions actually but stipulate that the residential units are to be capped at 60 for the property when development takes place. There's also restrictions on alcohol sales and hours of operation for commercial establishments that might locate on the property. And there's also a number of prohibited nonresidential uses that are again outlined in this ordinance 2767.

The property is within the Urban Neighborhood Place type pursuant to our comprehensive plan. And it's also subject to the EL Paseo Corridor Community Blueprint, which established some closer focus on attempting to develop properties along El Paseo. The applicant's request helps pave the way to facilitate the proposed development of the property. They're looking to create or develop a senior apartment complex. That issue is not part of this request, but I'm informing you of what they've come forward with. The R-3 zoning that they seek pursuant to this request, helps pave the way for that development. And I think in your packets I had stipulated that there's R-3 zoning allows for 15 dwelling units per acre. That is incorrect, it should be 20 dwelling units per acre. But again, there is a cap of that 60 that is still in play today. The R-3 zoning district allows a building height of 35 feet and the C-3 district allows 60 feet. And there's currently no cap that was established pursuant to that ordinance previously mentioned.

So here's the zoning of the property. The property is outlined or bordered in red here. You have West Park Drive along the east side, Farney Lane on the south, and El Paseo Road on the west side. You have a good percentage of acreage on the west side of El Paseo Road that's currently R-1a zoning. A lot of single-family dwelling development occurs in this location. You also have a PUD south of the property; it too is single-family in nature in large part. And the school is further northwest, Las Cruces High School I should say. You have immediately north of the subject property a

church and some additional Las Cruces High School facilities thereafter further north. The park sits, there is a park that sits right here along West Park Drive and Farney Lane. And further east of that is some commercial property that has various commercial type uses, both restaurant and retail etc.

This is the aerial of that property. Again the property outlined in red. Church is again directly north. But you can see the distribution of land uses taking place. What you don't see is further south of the subject property and where it's cut off on this aerial is you start getting into other zones, there's an O-2 zone which is our office zone, and you start getting to other development that is apartment complexes, things of that nature as you get closer to the university.

So the proposal that was brought before us again is to rezone the R-3/C-3C property to straight R-3. R-3 again, multi dwelling medium intensity. And the conditions that I previously stipulated would be removed. There would be no conditions unless your actions tonight recommended that conditions be placed, which would then go to City Council for consideration. But as it's presented this evening, they're looking to eliminate the conditions, which basically eliminates any of the commercial aspects associated with the property. This again facilitates the senior apartment complex that the developer is seeking to build on the property. And it was originally that aspect of the proposal was originally going to be brought simultaneously as infill development proposal. But because of some site design related issues, they're working with staff, we're still trying to resolve some of those issues, it was decided to bring forward the zoning aspect which would have to be dealt with anyway and move on from there.

The Elevate Las Cruces and El Paseo Corridor Community Blueprints, the provisions that are provided in there, the policies and goals and focus that both documents present, lend support for the R-3 zone change request. So associated with this proposal, it should be noted that the applicant was informed of a need to do some early notification pursuant to the Zoning Code. And they did take that initiative. They notified property owners and neighborhood associations within the area as outlined in the Zoning Code. And I believe it was in January that the meeting with the neighborhood took place. They informed the neighborhood and the associations of their intentions, both with the zoning and with the actual development. And from the information obtained from the applicant there was substantial neighborhood support for what they were seeking to do. One of the key things staff feels that came from that endeavor is the potential removal of the commercial zoning and the land uses that might eventually coincide with the commercial aspect of the zoning of the property. That was long held to be problematic with this site.

So again, this isn't part of tonight's package for consideration, but nonetheless this was the site plan that they had brought forward. Looking at the site plan they were proposing 74 apartment units in this building. It was a three storey building being proposed. And you had some duplex units, there are three duplex units here that made up the remaining six for a total of 80 units. You had some individual garages that could be leased by the residents eventually in the facility, and garages here and here, and also on the opposite side along West Park Drive here and here. Access that was discussed and vetted with staff not only Community Development staff, but Transportation staff was going to be located here to avoid any conflicts with the exit point or entrance point to that residential subdivision on the south.

What you see here in a dashed line was a proposed basically pedestrian access to the park facility. And so they tried to incorporate various elements of again our comprehensive plan and the EL Paseo Corridor Plan or Blueprint into their design. A couple of photos, again this is at the corner Forney Lane and El Paseo. This is that single-family home that currently sits on the property. It is being utilized, at least it's my understanding it's still utilized, but it will be demolished if approval goes forward in order to accommodate the intended development. This is a photo that's looking west at the more or less intersection of West Park Drive and Farney. And another one from a different angle looking Northwest, again viewing that home and some of the property to the right of it.

In terms of staff analysis, there were no health, safety, or welfare issues that were identified by staff. Staff felt that the proposed zoning or zone change I should say, provided the necessary compatibility with existing uses and of course the surrounding neighborhood. The property is within the Urban Place type as per our comprehensive plan and is subject to of course the EL Paseo Blueprint. The comp plan, as we know now, after many cases being vetted before you encourages mixed use. And in this case the Urban Place type encourages medium to high residential densities, attainable housing, and a variety of housing styles, while the blueprint encourages higher density along the corridor and attainable housing within the same development. All these factors that are summarized in terms of the comprehensive plan and the blueprint were elements that were introduced not only with the zoning but with the proposed development that had been presented to staff.

Public notice and input. The case was noticed as per code. Staff received a couple of e-mails. Those have been provided to you. One was in support of the proposal. And there was one that was proposing a condition and I think in looking at that e-mail they were proposing limiting the height to 25 feet. Please keep in mind that the R-3 zone both today and if this goes through would allow 35 feet, so somewhat of an element or issue to deal

with there. The early notification meeting I touched on already, that was 01/18/22. Again, some of the concerns at that meeting which were mitigated, talking about traffic impacts and how the offset and access would help alleviate some of those concerns. But it was also mentioned that there would be a good transition in terms of land use for this property and its intended development in terms of some of the more dense or more commercialized properties further north.

So staff's recommendation, we're recommending approval based on the findings. They are provided in your packet. Be advised that again the neighborhood showed substantial support at that neighborhood meeting. The zone change facilitates the applicant's proposal and is found to be compatible with the surrounding neighborhood. It is an infill parcel and subjected to infill criteria if they so deem it necessary. And so in this case by facilitating the zone change and ultimately any development proposal via the IDP process, we are changing virtually what consists of an inactive parcel to a very active parcel should this come to fruition. The compliance with the blueprint and our comprehensive plan has been illustrated. And so I just wanted to reiterate, there's consistency in that regard. And several of the goals obviously are in support of the request. It's also consistent with the purpose and intent of the Las Cruces Zoning Code, and criteria for decisions in the Municipal Code.

Your options this evening are to vote "yes" and approve the request that has been brought to you this evening, you can vote "no" and deny. Please be aware that new findings would be necessary. And you could vote "yes" with conditions, and vote to table. And Mr. Chairman, that concludes staff's presentation. I know the applicant's representative are in attendance and they would like to say a few words. And they'd be here to answer any questions you might have also.

Gordon: I have a question. Just something that was stated in the packet, your summary of recommendation, it says that the owner developer is proposing a senior apartment complex. Is this going to be an over 55 community?

Banegas: My understanding in reading the documentation provided, Mr. Chairman, Commissioners, is that it would be an age restricted development. So specifically targeting senior.

Gordon: Is there like an age minimum that you could go there, like 60,. 65?

Banegas: Applicant will respond to that.

Gordon: Okay. Is there any was anybody else have any questions to staff? All right. Yes.

Kaiser: I'll wait until the applicant.

Gordon: Okay, then we can hear from the applicant and he can answer my question.

Mantrac: Mr. Chairman. My name is Tom Mantrac.

Gordon: All right. 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?

Mantrac: I do.

Gordon: Go ahead. Thank you.

Mantrac: Thank you. I will be as brief as I can possibly be and try to stick with the zoning. But I think there's an important component that needs to be layered into that discussion. Basically, what we have is a 4.2/4.3 acre parcel that is split zoned. We could build a 60 unit family apartment complex that had four or five bedroom apartments, and about 10,000 square feet of retail type use on this site. That's the ordinance that was passed several years ago. What we're proposing to do, and let me introduce Ron Bohannan, with the Tierra West from Albuquerque as our engineer and land use consultants. So technical questions, he can answer. But what we're proposing to do is to give back if you will the more intense use, the 10,000 square feet of retail roughly and develop an 80 unit senior apartment complex which would fit within the R-3 densities, so there's no density variance that we're asking for.

Importantly, this apartment community will be age restricted, 62 and older, and will be income and rent restricted because some of the financing package will go through New Mexico Mortgage Finance Authority. As I said the ages 62 and older and based on the current income and rent numbers it will be renting to individuals and couples. Incomes will range from about $9,500 per year to about $40,000 per year. The one bedroom rents are and believe me when I say this $307 a month to about $800 a month. The two bedroom rents are about $370 a month to about $980. The land use restriction, just like when a subdivision comes in and you put CC and Rs on a subdivision. There will be recorded covenants against this property which say you must rent to your age group for a period of 40 years and you must rent to this income group for a period of 40 year. And that document is recorded ahead of our loan documents, so if we don't do it right, we're in trouble.

So it's very important as you're looking at the zoning request to, even though the intended use is not before you right now, that is the only use we will put the property to. And there will be restrictions in place between us, probably the City of Las Cruces because we have requested some money, and Natalie is here to maybe answer a question you have one. But there will be

recordable foreclosable documents between our company and New Mexico Mortgage Finance Authority that requires us to do exactly what I'm telling you tonight.

We have always done neighborhood outreach. When we started doing this a lot of years ago, 32 years ago, very few jurisdictions required preapplication neighborhood meetings. We have always done that. The meeting we had at Las Cruces High School was not very well attended because it was cold and windy and rainy that night. But we had a number of people who attended via Zoom, and very good questions were asked. We did a follow up letter summarizing the meeting. When the application was submitted the first part of February, we mailed the application with another summary to all of the neighbors. When the staff report came in, we mailed the staff report and another summary to all the neighbors. What I did in the letter that included the staff report, as I said, you know if you like what we're doing, would you please let the City know. And so I got two or three e-mail says, well we don't like what you're doing and we just want it to be vacant land forever. That's the way this business goes sometimes. We did have a follow up Zoom meeting last night with five neighbors Ron, I think five neighbors. A couple of them were the ones that said we don't like what you're doing. And they were okay by the end of the meeting. And you got to a positive note I think today from one of them. We also spent about an hour this afternoon with representatives of the church who had not been able to come to any of the previous meetings. It was very thoughtful, and you know we're going to be neighbors and you know tell us about your fence and you know we have a community garden, are you going to have a community garden. It was a very interactive and very positive. And the two gentlemen we met with cannot be here tonight. But they did authorize Ron and I to say that speaking on behalf of the church, they're very supportive of what we're doing. So the zoning change is necessary to construct 80 units of senior affordable housing in Las Cruces, which will be governed by New Mexico Mortgage Finance Authority. We will be income and age restricted for 40 to 44 years. I don't remember what the number, but a long time. Staff report was very well done. I'm happy to answer any questions.

Kaiser: So not so much a question but more of I think a comment at this point. First of all I think the proposal in front of us is great. I think it's highly needed, especially in the EL Paseo Corridor. I know that's been an area of focus for the City for quite some time. I'm wondering, Vincent, if you could go back to the proposed or the conceptual site plan. Yes, that's perfect. So I know it's conceptual in nature, however because it was in the packet and the presentation I feel like it's fair game for some critique here. I just want to kind of point out a couple of things, specifically from the EL Paseo Corridor Community Blueprint. There's a couple of goals and actions here that I think are relevant in this particular case. Goal number one talks about redeveloping the EL Paseo Corridor as a safer and more user friendly

corridor. Goal number four talks about improving the aesthetic appeal of the corridor and fostering a sense of place or community identity along the corridor. And number six, goal number six, says support active living and healthy community design through appropriate guidelines and regulations for the planning area. We can then get into the actions. There is one action that is designed EL Paseo Road as a complete street, and also one in here that talks about urban design architectural standards that improve the aesthetics and user appeal of the street.

So I say all that because what I'm seeing here, this is still more of the same car-centric design. I'll even go to page six of the EL Paseo Corridor and I will quote a short paragraph here that says, "the following is a composite of visuals, visualization sketches, and images that were part of the public visioning process picturing EL Paseo. The sketches were conceptualized and drawn by Las Cruces residents. The images are samples of the preferences shown by Las Cruces residents during the visual preference survey, and some sort of Photovoice exercise. The graphic of a complete street cross section and is an example of how the mixed use corridor may be configured." There's a series of images on this page. And none of them have parking lots that are visible from the street frontage. So I would just encourage staff and the applicant to seriously consider doing some rethinking about bringing the buildings closer to the El Paseo street frontage as well as the road to the south, forget the name of it off top my head, but essentially basically hiding all of that parking behind the building so that the frontage along EL Paseo is not just the surface parking lot. Other than that, I think it's a wonderful opportunity for the corridor and for the City.

Bohannan: Mr. Chair. Ron Bohannan.

Gordon: Okay, could you state your name, please?

Bohannan: Ron Bohannan.

Gordon: 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?

Bohannan: I do.

Gordon: Thank you. Go ahead.

Bohannan: Thank you. Thank you, Mr. Chair and thank you Commissioner Kaiser. So yes, we did look at that. And really ...

Nichols: Excuse me Mr. Bohannan, could you raise the microphone slightly so we can hear you more clearly?

Bohannan: Yes, sir.

Nichols: Thank you.

Bohannan: Thank you. So what we have done is we did look at your complete streets, and we have looked at that. And so what we have actually done is, we placed these here as well as a landscaped enhanced buffer in here with groves of trees at these locations, we brought these duplex units up to the street to energize that, and to create that walkable area through this area. So we have created that. And these areas actually blocks this area right through here from the street. So you see over this and you can see the building, so you actually have that visual that you're looking at. We do have some elevations and some cross sections that we could have brought with you. And we will be working with staff to meet those guidelines through that. We have looked at Elevate Las Cruces and so we do, do that.

We also are looking at you know the fire circulation, the drainage, the access, we vetted the access with transportation already. So we're quite a bit ways down here, we just didn't have enough time to really vet this to a point here. And so that's our next, with a successful zoning change as we move forward to City Council, we plan on being back with staff to vet all of those questions, to say how we can make everything. Yes. The other thing I'd like to point out is this is a completely gated community. So we want to prevent the students that are parking on with the drive next to the park from parking inside of this area as well as protection of the residents as well. So we've got a lot of thoughts in there. And we have been looking at the comp plans.

Kaiser: I appreciate that. And I'm encouraged by that. But I'll just say a garage and a wall and having to look over the parking lot, I mean even if you can't see the physical parking lot, you're still looking at a wall, you're looking at a garage fronting the street. I mean it's just, that's not consistent with the visioning of this urban corridor. I mean that's essentially what the community has asked for. And with all due respect, I mean even with what you just said right now, I mean that's just not, that's not going to cut it. I mean I think you can bring those buildings to the front edge, activate that space. The building itself you know you won't necessarily have your entrances to the buildings, so essentially you've got your wall, you've got a more active visually appealing corridor for pedestrians, cyclists, and the like. And you know the way that I see it this is still more of the same car-centric design. And I know we're not here to get into that detail, but I just want to encourage staff and you, the applicant, to push a little harder.

Bohannan: Okay. Mr. Chair, Commissioner. We've heard you loud and clear. Thank you. And we'll answer any other questions,

Gordon: Is there anyone else? Is there anyone from the audience who cares to speak? If not, then I'll enter a motion.

Bennett: I make a motion to approve 8.3.

Vega: I second.

Baum: Board Member Kaiser.

Kaiser: Yes, based on staff recommendation, consistency with Elevate Las Cruces, and the El Paseo Blueprint.

Baum: Board Member Smith.

Smith: Yes, based on staff recommendation, site visit, and also meets Elevate Las Cruces

Baum: Board Member Bennett.

Bennett: Yes, based on staff recommendation, complies with purpose and intent of the code, Elevate Las Cruces, and I just think this is a great project and I think it's a huge need for the community.

Baum: Board Member Vega.

Vega: Yes, based on site visit and it meets the EL Paseo Blueprint.

Baum: Board Member Guerrero.

Guerrero: Yes, again based on staff recommendations, and just you know the need for affordable housing. It's definitely there and this meets it.

Baum: Chair Gordon.

Gordon: I vote yes, based on my site visit, staff recommendation. I do think that this does provide nice affordable housing, which could be a wonderful project that does include concept of Elevate Las Cruces

Baum: Approval six. Thank you.

8.4 **5600 McGuffey Zone Change Request:** A zone change application to rezone from R-1a (Single-Family Medium Density) to R-2 (Multi-Family Medium Density), for the development of multi-family residential housing. The property encompasses 2.638 ± acres in size and located at 5600 McGuffey Street. Council District 5 (22ZO0500048)

Castillo: Good evening everyone.

Gordon: For the list item on the agenda.

Castillo: This is the last item on the agenda.

Gordon: Item 6.4 John, 8.4 I'm sorry.

Castillo: 8.4 So today I will be presenting a zone change request from an R-1a single-family medium density zoning district to R-2 which is multi dwelling medium density at a property located at 5600 McGuffey Street. The current conditions of the property is it is currently a vacant property that encompasses 2.6 acres, and it's located on the east side of McGuffey Street. It's currently zoned R-1a and the property encompasses various, it's surrounded by various zoning districts; to the north, west, and east which all deal with single-family housing or multifamily housing. Then to the south of it is commercial and industrial zoning areas.

A little bit of history on the property is it had been previously subdivided within the past year into three lots. As we can see from the zoning map here you do see the subject property which is highlighted by this yellow checkered item. That is the one that is in question to be requesting to be R-2. As you can see across on the opposite side there is R-2 right across from it. There's C-3, C-2 and single-family housing.

Here you can see an aerial image. The R-2 is predominantly single-family housing as it was built, but it does have the option for multifamily housing. So the proposal is to request a zone change from the R-1a to R-2 to expand on the density and intensity of the current zoning. So the analysis, the zone change request is consistent with existing zoning in proximity to the property. The property is located along of local roadway which is recommended for various residential land uses. Meets the intent and support of Elevate Las Cruces as its within its suburban neighborhood. Meets the purpose and Intent statements and P&Z decision criteria.

Reviews were sent to all relevant agencies; they all supported the zone change. Notice was sent out to surrounding properties. There was concern of traffic increases along McGuffey Street, either at the time of development and future developments across, on the west side of McGuffey as well. Staff provides a recommendation of approval of the proposed zone change is consistent with the developing and zoning in the area. The subject property is located on a local roadway, and it does meet the intent and purpose of Elevate Las Cruces. So your options today are to vote "yes" to approve, vote "no" to deny, vote to amend, or vote to table.

Gordon: Are there any questions by the Commission? Seeing none. Any comments from the audience? Seeing none.

Castillo: I believe there was a …

Gordon: I'm sorry.

Castillo: I believe there is one. Did you have a comment? Okay, I guess.

Gordon: No.

Castillo: No.

Gordon: All right, then I guess we're ready to vote. Can I have a motion please?

Guerrero: I'll make a motion to approve this vote.

Bennett: I'll second.

Baum: Board Member Kaiser.

Kaiser: Yes, based on staff's recommendation and consistency with Elevate Las Cruces.

Baum: Board Member Smith.

Smith: Yes, based on staff recommendation and it's consistent with the intended purpose of the zoning.

Baum: Board Member Bennett.

Bennett: Yes, based on staff recommendation, meets intent and purpose of Elevate Las Cruces

Baum: Board Member Vega.

Vega: Yes, based on staff recommendation.

Baum: Board Member Guerrero.

Guerrero: Yes, based on staff recommendation.

Baum: Chair Gordon.

Gordon: Based on my visit. staff recommendations, Elevate Las Cruces, I also vote yes.

Baum: Six approval six. Thank you.

9. DISCUSSION - MOVED TO BEFORE PUBLIC PARTICIPATION

10. COMMISSION COMMENTARY

Gordon: Is there any discussion or commentary by Commission this evening? Any comments? No.

11. STAFF ANNOUNCEMENTS

Gordon: How about staff?

Nichols: Mr. Chairman and Commission. No comments this evening from staff. We've had a very active meeting and appreciate the hard work and due diligence that we heard tonight. We will keep you informed as the Realize Las Cruces develops that you heard about earlier tonight. Thank you Mr. Chairman

12. ADJOURNMENT (9:45)

Gordon: All right then the time is 9:48. I'll entertain a motion to adjourn.

Guerrero: Seconding or are you making a motion? Did you make a motion?

Gordon: No I'm asking someone to make a motion.

Guerrero: Okay, I'll make a motion to adjourn.

Smith: I second the motion.

Gordon: All in favor.

MOTION PASSES UNANIMOUSLY.

Harvey Gordon

Chairperson

3009; Council Bill 23-003

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:	August 15, 2022	**Adopted:**	September 6, 2022
Drafter:	Elizabeth Teeters	**Department:**	Economic Development
Program:		**Line of Business:**	

Title: **AN ORDINANCE SUPPORTING INVESTMENT OF $235,000 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORDANCE WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, AUTHORIZING A PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND ELECTRONIC CAREGIVER, INC., AND ENTERING INTO AN AGREEMENT TO SERVE AS FISCAL AGENT FOR THE STATE OF NEW MEXICO'S PARTICIPATION NOT TO EXCEED $1,000,000 IN THE PROJECT.**

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

PURPOSE(S) OF ACTION:

To approve a Local Economic Development Act (LEDA) project for Electronic Caregiver, Inc., with allocations from the City of Las Cruces and State of New Mexico

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Electronic Caregiver, Inc. (ECG), is a privately held, digital health technology and services company headquartered in Las Cruces. Three major HCO partners have contracted with ECG recently to provide enrollment and health coaching services to 87,000 of their patients. To fulfill the initial contracts, ECG will be hiring clinical triage specialists, health coaches, care coordinators, project managers, and program managers. It is anticipated that the company will grow to a headcount in excess of 800 individuals by 2026.

The State of New Mexico (State) via that State's Local Economic Development Act (LEDA) Program is committing $1,000,000 in LEDA funding. The City of Las Cruces (City) has proposed providing LEDA funding of $235,000. This funding will be used for building and infrastructure costs, In exchange, the Company will employ 770 additional full-time persons by December 31, 2027, with a capital investment of approximately $17,592,000 by the same date.

If approved by this proposed Ordinance, the City will enter into a Project Participation Agreement (Exhibit A) with the Company, subject to the LEDA requirements and the adopted LEDA Plan by the City, for its investment in the project. Furthermore, The City will also enter into an Intergovernmental Agreement (Exhibit B) with the State to serve as the fiscal agent for the administration of up to $1,000,000 of LEDA contribution to the project.

A separate resolution will be brought to City Council for a budget adjustment for both City and State when the State funding is received.

SUPPORT INFORMATION:

Exhibit "A", Project Participation Agreement
Exhibit "B", Inter Governmental Agreement
Attachment "A", LEDA Application
Attachment "B", Executive Summary

PLAN(S):

City Council Strategic Plan, Department Strategic Business Plan, Elevate Las Cruces

ANNUAL BUDGET APPROVAL:

☐ Yes
☐ No
☒ N/A

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

☐ Yes
☐ No
☒ N/A

Does this action align with Elevate Las Cruces?

☐ Yes
☒ No
☐ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes", this will approve the Ordinance and authorize the City to provide local LEDA funding and to act as fiscal agent for State LEDA Project funds to Electronic Caregiver, Inc.
2. Vote "No", this will not approve the Ordinance and authorize the City to provide local LEDA funding and to act as fiscal agent for State LEDA Project funds to Electronic Caregiver, Inc.
3. Vote to "Amend", this could delay the Ordinance and would require City Council to provide direction to staff.
4. Vote to "Table", this would delay the Ordinance and require City Council to provide direction to staff.

ORDINANCE 3009; COUNCIL BILL 23-003

AN ORDINANCE SUPPORTING INVESTMENT OF $235,000 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORDANCE WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, AUTHORIZING A PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND ELECTRONIC CAREGIVER, INC., AND ENTERING INTO AN AGREEMENT TO SERVE AS FISCAL AGENT FOR THE STATE OF NEW MEXICO'S PARTICIPATION NOT TO EXCEED $1,000,000 IN THE PROJECT.

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) adopted an updated LEDA Plan in 2018 to encourage economic development; and

WHEREAS, Electronic Caregiver, Inc., (the "Company") has applied for LEDA assistance from the City and the State of New Mexico; and

WHEREAS, the State of New Mexico has committed up to $1,000,000 in LEDA funding and the City has proposed to provide LEDA funding of $235,000; and

WHEREAS, the State of New Mexico conducted an economic impact analysis establishing the benefit of this LEDA project to the community.

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

(I)

THAT the City hereby enters into a Project Participation Agreement, as shown in Exhibit "A" attached hereto and made part of this Ordinance, with Electronic Caregiver, Inc., subject to the requirements of LEDA and the adopted LEDA Plan of the City, for its $235,000 in investment in the project.

(II)

THAT the City hereby enters into an Intergovernmental Agreement with the State of New Mexico to serve as fiscal agent for the administration of up to $1,000,000 the State will invest in the project, as shown in Exhibit "B" attached hereto and made part of this Ordinance.

(III)

THAT the City Manager is hereby authorized to sign the Agreements as referenced in this Ordinance on the City's behalf.

(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

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement ("Agreement") is entered into on _____, 2022 by and between **CITY OF LAS CRUCES, NEW MEXICO** (the "City"), a political subdivision of the State of New Mexico (the "State"), and **ELECTRONIC CAREGIVER, INC. (ECG, INC.)** (the "Company").

Recitals.

A. Article 9, Section 14 of the New Mexico Constitution provides counties the ability to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources. Pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-17 NMSA 1978 (the "Act"), public support for economic development may be provided if the governmental entity has adopted by ordinance an economic development plan and has approved by a second ordinance an application for a project in keeping with such plan.

B. Pursuant to City of Las Cruces Ordinance No. 2873 (the "Las Cruces Local Economic Development Plan"), adopted on September 17, 2018, the City established the City of Las Cruces Economic Development Plan (the "Plan") as the City's economic development plan as required by Section 5-10-6, NMSA 1978.

C. As provided in the Las Cruces Local Economic Development Plan Ordinance, the City considered an application from the Company, which proposed that the City serve as local government conduit for an appropriation of up to $1,000,000 from the Legislature of the State of New Mexico (the "**State Contribution**") and also provide up to $235,000 from City funds (the "**City Contribution**") toward the Company's development of a manufacturing facility in the City of Las Cruces, New Mexico (the "Project"). The company will construct and occupy the facility and will employ a minimum of 770 additional full-time persons by December 31, 2026.

D. The City has adopted Ordinance No._____-2022 ("Project LEDA Ordinance") finding that the Company is a "qualifying entity" and the Project is an "economic development project" as those terms are defined by the Act, and approving this Agreement as meeting the requirements of the Act.

1. Goals and Objectives. The objective of this Agreement is to create and support an economic development project that fosters, promotes and enhances local economic development efforts. The goal is that the Project will provide jobs and career opportunities that will benefit the community and contribute to its long-term economic growth and sustainability.

2. Substantive Contribution from the Company.

a. **Facility.** The Company will increase and expand operations at their facility in Las Cruces, New Mexico (the "Facility").

b. **Investment.** The Company (or one of its subsidiaries, affiliates, investment partners or other related entities) will make capital investments in the Project and costs associated therewith (including, for the acquisition of land, building, equipment, tangible personal property and services associated with the acquisition, construction and equipping of the Project) in the amount of approximately $17,592,000 by December 31, 2026 (the "Project Contribution").

c. **Job Creation.** The Company will directly employ a target of 770 additional full-time employees at the facility by December 31, 2026 (the "Job Target"). "Job" means a permanent, full-time employment position (at least 32 hours per week) offering the employee the full range of benefits offered to other full-time employees of the Company. Full–time employees do not include agency, sub-contracted, temporary employees or independent contractors.

d. **Sustainability.** Although the Company intends to have a long-term presence in the City, for purpose of the contractual obligations of this Agreement, the Company covenants to continue to operate the Project until December 31, 2027.

3. The State Contribution

a. The City anticipates that the State Contribution will be delivered by the State to the City for disbursement to the Company upon enactment of the Project LEDA Ordinance, and execution of this document and the intergovernmental agreement between the State and the City, after which time the City will request transfer of the State Contribution. Upon receipt, the City will place the State Contribution into a separate account established in connection with the Project, as required by law. The City will disburse the State Contribution, if and when it is received, only in the manner described in this Agreement and the Intergovernmental Agreement executed between the City and the State. The City will disburse the State Contribution to the Company as reimbursement for LEDA Eligible Expenditures subject to the Company's satisfaction of the conditions set forth herein. Disbursements shall be paid on a reimbursement basis and the Company shall first incur the LEDA Eligible Expenditures and then submit requests for reimbursement to the City. For purposes of this Agreement, "**LEDA Eligible Expenditures**" shall mean: expenditures including, but not limited to, land, building and infrastructure, including permanently installed and situated physical assets whose cost is born entirely by ECG, Inc. and the design, labor and permitting required to put them in place. Examples include: foundation, drainage improvements, electrical wiring, architecture fees, insulation, landscaping and equipment rentals.

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b. The State's contribution is composed of a LEDA award of $1,000,000 for use by the Company for such purposes as set forth in NMSA 1978, § 5-10-3(E), the application of the Company and the agreements entered into between the parties. The Company shall also instruct the contracted construction companies to use the correct **New Mexico Taxation and Revenue Department Location Code of 07-105 for the City of Las Cruces**.

4. The City Contribution.

a. The City will account for receipts and disbursements of the State Contribution and will provide financial documentation to the State pertaining to the State Contribution. The City will contribute $235,000. The City will comply with the Local Economic Development Act ("LEDA") with respect to the acceptance and disbursement of the State and Local Contributions. As required by the LEDA Ordinance and the Act, City will deposit the State Contribution into a clearly identified separate account.

b. The State Contribution will be disbursed to the Company through the City for reimbursement of LEDA Eligible Expenditures.

5. Disbursement of City and State Contributions

a. State and City contributions shall be combined into a single account and disbursed through the City.

Conditions to Disbursement; Performance Milestones. The State Contribution will be disbursed in four (4) separate allotments. The City Contribution will be disbursed in three (3) separate allotments. Each disbursement will be conditioned on (i) the Company's having incurred LEDA Eligible Expenditures prior to the disbursement; (ii) where applicable, the Company meeting minimum employment targets and being in compliance with job reporting requirements; and (iii) the Company's satisfaction of the performance milestones set forth below (the "Disbursement Performance Milestones") for each allotment prior to the disbursement:

State of New Mexico LEDA Disbursement Schedule		
Tranche	*Amount of State Contribution Available for Disbursement/Tranche*	*Disbursement Performance Milestone*
1	$400,000	Certificate of Occupancy, incur LEDA eligible expenses, hire 200 new employees and maintain for 6 months, and current with all reporting
2	$300,000	Hire 300 additional new employees and maintain for 6 months, LEDA eligible expenses and current with all reporting
3	$300,000	Hire 200 additional new employees and maintain for 6 months, LEDA eligible expenses and current with all reporting

City of Las Cruces LEDA Disbursement Schedule		
Tranche	*Amount of State Contribution Available for Disbursement/Tranche*	*Disbursement Performance Milestone*
1	$117,500	Certificate of Occupancy, incur LEDA eligible expenses, and current with all reporting
2	$58,750	Hire 300 new employees and maintain for 6 months, LEDA eligible expenses and current with all reporting
3	$58,750	Hire 400 additional new employees and maintain for 6 months, LEDA eligible expenses and current with all reporting

6. **Disbursement Requests.** From time to time, after the Company has satisfied the conditions for disbursement set forth herein, the Company may submit to the City and the New Mexico Economic Development Department ("EDD") a written request for disbursement of the State Contribution (the "Disbursement Request"). All Disbursement Requests shall be accompanied by (i) documentation substantiating LEDA Eligible Expenses, and (ii) documentation of current employment level in New Mexico pursuant to Section 10c below. The Company will not submit a Disbursement Request for less than $50,000, but may, upon completion of all performance milestones, submit a Disbursement Request for up to the full amount of the State Contribution or City Contribution then available to the Company at any time. The City may, in good faith, object to or require additional information regarding a Disbursement Request to verify compliance with this Agreement.

7. **Review.** EDD will review the Disbursement Request to assure the charges submitted are LEDA Eligible Expenditures. The EDD's review and approval or objection shall not be unreasonably withheld and shall occur within 30 calendar days of receipt of the Disbursement Request. The City will disburse to the Company the full amount requested in the Disbursement Request no later than 30 calendar days after EDD's approval of the Disbursement Request.

8. **No Offset of City costs.** The City may not offset any internal costs or overhead charges for review or processing of the Disbursement Requests against the Disbursement Request or the State Contribution.

9. **Security.** As security for the faithful performance and payment of Company's obligations under this Agreement, prior to the Company's receipt of any part of the State Contribution or City Contribution, Company shall furnish the City with a Letter of Credit or some alternative form of security in a form mutually acceptable to the parties (the "Security"). The maximum obligation secured by the Security (the "Maximum Obligation") will be $1,235,000. The Company shall be permitted to obtain incremental increases in the Security in the amount of each Disbursement

Request and shall not be required to secure the Maximum Obligation before a disbursement will be made.

a. The City may draw on the Security in order to satisfy any unpaid Clawback Penalty which shall become due and payable, but only thirty (30) calendar days following written demand for payment to the Company. Such draw may be initiated without filing a proceeding in any court of competent jurisdiction.
b. Provided that the Company has not been required to pay any Clawback, the Security will terminate on January 31, 2028, unless earlier released in accordance with this Agreement.
c. If the State or the City reduce the amount of LEDA Funds and/or forgivable lien that are made available for the Project and/or if the Company does not draw the entire amount of the LEDA Funds and/or forgivable lien available, the Maximum Obligation will be reduced proportionately to reflect the amount of LEDA Funds and/or forgivable lien actually received by the Company.
d. A mortgage agreement/municipal lien document shall be recorded in Dona Ana County in the amount of the City Contribution. Partial lien releases shall be recorded upon performance of the set performance milestones.

10. Clawbacks. Notwithstanding any other provision of this Agreement, the Company shall be required to pay the Clawback Penalties set forth in this Section (together with forfeiture of the security instrument provided to secure the Company's Clawback obligations), if the Company does not satisfy the conditions set forth herein.

a. **Facility Closure Clawback.** If the Company ceases operations in the City on or before December 31, 2027 the Company will repay to the City all LEDA Funds that the Company actually received from the City as of that date (the "Facility Closure Clawback") and the City shall have the right to execute reimbursement from the Security, but only after thirty (30) calendar days following written demand for payment to the Company. For purposes of this Agreement, a failure to produce product for a period of 90 calendar days or more, after initial startup (initial startup will be considered the date of the first production run or within 180 days of receipt of certificate of occupancy, whichever comes first) or failure to occupy the Facility shall be considered a cessation of operations; provided however cessations for reasonable periods for the repair or replacement of facilities damaged or destroyed, cessations resulting from labor disputes, strikes, riots or acts of God, shortages of materials or supplies or for any other reason beyond the reasonable control of the Company, or under similar circumstances will not constitute a failure by the Company to comply with this Section 10a. If the Company ceases operations for any of the causes set forth in this Section 10a, the Company shall submit a plan for resolving such cessation of operations within 30 calendar days. In the event of a cessation of operations, the Company shall provide written notice thereof and a reason therefore to the City within 10 calendar days.

b. **Performance Clawback.** It is the Company's intent to create, hire and maintain

the number of jobs set forth in the table below under the column captioned "Cumulative Full Time Job Creation Target" on the Job Determination Dates set forth below. If the Company does not meet or exceed the job numbers set forth under the column captioned "Minimum Job Number" in the table below on each of the specified Job Determination Dates (and after expiration of the Cure Periods), then the Company shall be required to pay a Clawback Penalty (as defined below) to the City which will be applied in the percentage set forth in the table below:

Job Creation Commitment and Schedule

Year	*Cumulative Full Time Job Creation Target*	*Minimum Job Number*	*Job Determination Period*	*%-Clawback*	
1	70 + 50 = 120	115	Date of Ord	12/31/2022	100%
2	120 + 100 = 220	205	7/1/2023	12/31/2023	100%
3	220 + 175 = 395	362	7/1/2024	12/31/2024	75%
4	395 + 220 = 615	560	7/1/2025	12/31/2025	50%
5	615 + 225 = 840	763	7/1/2026	12/31/2026	25%
Total	770				
	Addt'l Notes: 70 is beginning job number for ECG for basis of LEDA award Minimum job number represents 90% of new job creation Clawbacks 100% for closure at any point during project duration. Clawback % is based on percentage of shortfall after cure period; all shortfalls are automatically granted a 6 month cure period				

Starting Headcount:	70	*As of*:	*12/31/2021*

For the purposes of this Section:

The "**Clawback Penalty**" is a penalty that the Company will be required to pay the City upon the Company's failure to meet the Minimum Job Target on the applicable Job Determination Date, if such Minimum Job Target is not otherwise reached by the Company during the Cure Period. The Clawback Penalty shall be equal to the product of the Percentage Hiring Shortfall (as defined herein), multiplied by the total State Contribution paid to the Company as of that time. For purposes of this subsection, the "**Percentage Hiring Shortfall**" shall be the quotient of (i) the Minimum Job Number for applicable Job Determination Date, minus the actual number of jobs the Company maintains at the Facility at that time, divided by (ii) the Minimum Job Number for applicable Job Determination Date. See Attachment 1 hereto for examples of Clawback Calculations

"**Cure Period**" is the period of 180 calendar days after each Job Determination Date during which the Company shall have the opportunity to cure any shortfall in meeting the Minimum Job Number. For the avoidance of doubt, if the Company meets the Minimum Job Number at any time during the Cure Period as validated by the job reporting requirements set forth herein, the Company shall have no obligation to pay a Clawback Penalty corresponding to the applicable Job Determination Date. If the Company fails to reach the Minimum Job Number during the Cure Period, the Company shall pay the City a Clawback Penalty determined in accordance with the table set forth above.

The parties hereto recognize certain economic factors generally described as "Business Climate Changes" are beyond the control of any of the parties and may affect the ability of the Company to strictly adhere to the job creation numbers and schedule set forth herein. "Business Climate Changes" means substantial changes, beyond the control of the Company within the industry in which the Company operates, that causes a significant decrease in the Company's ability to perform pursuant to the requirements of this agreement with the City. The Company may request specific modifications to the job creation schedule in writing within ten calendar days of learning of the existence of the "Business Climate Change." Such notification shall include the details of the business climate change, the effect thereon on the Company, and the modification of this agreement the Company requests. If the City and EDD agree that Business Climate Changes have affected the Company's ability to perform, the Performance Clawback may be modified.

c. **Job Reporting.** The Company shall submit quarterly employment reports documenting its quarterly filing of the Department of Workforce Solutions' (DWS) Employment and Wage Detail Reporting as submitted to DWS in the form and manner required by EDD and the City beginning with the October 31, 2022 and continuing every January 31, April 30, and July 31 thereafter until the completion of this agreement. The State will provide copies of all such reports to the City or the State may request a copy of the Company's quarterly employment reports at any time while this Agreement is in effect and the Company agrees to provide such documents. The Company acknowledges this quarterly reporting will be relied upon by the City and the State to ascertain if the Company is in compliance with the job creation provisions of this Agreement and all subsequent and ancillary agreements. The Company will receive no disbursements of State Contribution as stipulated in this Agreement without up-to-date quarterly job reporting as set forth herein.

d. If the Company has been required to pay the Facility Closure Clawback, the Company will not be required to pay any Performance Clawback that may come due after the date of such payment.

11. <u>Fees.</u> Each party shall bear its own costs and expenses in connection with the negotiation, execution and delivery of this Agreement or any amendment or

enforcement of this Agreement.

12. **Annual Performance Review.** To ensure the prudent use of the taxpayer's funds and as required by the LEDA statute and Ordinance, the Project will be subject to an annual performance review conducted by City or EDD staff beginning on June 30, 2023 and every year thereafter until this Agreement terminates. The review will evaluate whether the Project is meeting the requirements set forth in this Agreement and any subsequent agreements or amendments and shall be made available to the State. At this time, the Company may report any difficulties it has experienced under the terms of this Agreement or the LEDA program and may request any assistance it deems necessary. The City or State may request the Company provide data and information to assess the broader economic impact of the Project, but the Company shall not be required to divulge information or documents it considers confidential or proprietary.

    If the requirements are not being met, the City may terminate this assistance to the Project by passage of an ordinance which terminates this Agreement and specifies the disposition of all obligations of the Project. In addition, in accordance with LEDA, the City may enact an ordinance revoking the LEDA Ordinance and terminating any further payments for any or all Projects thereunder. In the event the City terminates the LEDA Ordinance or this Agreement while the Company is in compliance with the terms and requirements of this Agreement, the City will not have a right to clawback any of the payments already made to the Company.

13. **Records and Audits**. The Company will maintain records indicating dates, employment records, and all records related to this agreement. The CITY has the right to audit records before and after payment and contest any reimbursement or portion thereof. Payment under this Agreement does not foreclose the CITY's right to recover excessive or illegal payments.

14. **Termination**. This Agreement shall terminate at the close of business on January 31, 2028 or when otherwise terminated by ordinance.

15. **Request for early release of security.** If the Company achieves and then sustains the Minimum Job Number of 770 employees for six (6) consecutive months prior to December 31, 2027, the Company may request release of the Security and termination of the agreement. Said request shall be made to the City in writing and accompanied by documentation comprising its quarterly job reports demonstrating such employment. In no event shall the security be released until the Company has furnished contemporaneous job reporting documentation and completed the corresponding Annual Performance Review. A request for release of the Security may not be submitted prior to December 31, 2025. Upon receipt of such a request the New Mexico Economic Development Department will work with the Company to gather sufficient documentation of the economic activity directly created by the Company during the period of this agreement and complete an economic impact analysis report. If said report verifies that the State of New Mexico has received

direct tax revenues from the activity of the company said request shall be granted.

16. **Liability.** No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Nothing herein shall operate or be deemed to alter or expand any liabilities or obligations under the applicable provisions of the New Mexico Tort Claims Act (NMSA 1978 §§ 41-4-1, et seq.), or to waive any immunities, limitations or required procedures thereunder. Nothing in this Agreement constitutes a waiver of any party's right to seek judicial relief.

17. **Amendments.** This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto and EDD. Any amendments may be subject to the approval of the Governing Body of City of Las Cruces.

18. **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of New Mexico. The venue for any litigation shall be a competent court of jurisdiction located in New Mexico.

19. **Miscellaneous.** This Agreement binds and inures to the benefit of the City and the Company and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning party and the EDD; provided, however, that with notice to the City and the EDD, the Company may assign this Agreement to any affiliate or other member of the Company that agrees in writing to assume and perform all of the Company's obligations under this Agreement. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument.

19. **Notice.**

All notices or other written communications, including requests for disbursement, that are required or permitted to be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by a recognized overnight delivery service, by fax, by electronic mail, or by registered or certified mail, postage prepaid, to the parties at the addresses shown below. If notice is mailed, it will be deemed received on the earlier of actual receipt or on the third business day following the date of mailing. If a notice is hand-delivered or sent by overnight delivery service, it will be deemed received upon actual delivery. If any written notice is sent by facsimile or electronic mail, it will be deemed received upon printed or written confirmation of the transmission. A party may change its notice address by written notice to the other party to this Agreement.

The initial notice addresses for the parties are as follows:

If to the City:
City of Las Cruces
Attention: Economic Development
P O Box 20000
Las Cruces, New Mexico 88004

If to the Company:
Electronic Caregiver, Inc. (ECG, Inc.)
506 S. Main St., Ste 100
Las Cruces, NM 88001

Effective Date: _____

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Attachment:

1. Example of Clawback Calculations

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SIGNATURE PAGE TO PROJECT PARTICIPATION AGREEMENT

CITY OF LAS CRUCES, NEW MEXICO

By _____

Name Ifo Pili

Title City Manager

Electronic Caregiver, Inc. (ECG, Inc.)

By _____

Name: _____

Title: _____

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Attachment 1
Example of Clawback Calculations

Clawback Calculations

Clawback Formula = (Job Creation % Shortfall) * (Cumulative LEDA Dollars Distributed)

Job Creation % Shortfall = (1 - (actual jobs / cumulative hiring target))*100%

Example - 1 100%		End of year 1, inclusive of cure period
Actual Employees	(a)	41
Cumulative Hiring Target	(b)	42
Job Creation % Shortfall =	(c) = 1-(a/b)	2.38%
LEDA Dollars Distributed	(d)	$ 150,000.00
Clawback %	(e)	100%
Penalty	(f) = c*d*e	$ 3,571.43

Example - 2 100%		End of year 2, inclusive of cure period
Actual Employees	(a)	57
Cum Hiring Target	(b)	58
Job Creation % Shortfall =	(c) = 1-(a/b)	1.72%
LEDA Dollars Distributed	(d)	$ 200,000.00
Clawback %	(e)	100%
Penalty	(f) = c*d*e	$ 3,448.28

Example - 3 75%		End of year 3, inclusive of cure period
Actual Employees	(a)	57
Cum Hiring Target	(b)	58
Job Creation % Shortfall =	(c) = 1-(a/b)	1.72%
LEDA Dollars Distributed	(d)	$ 200,000.00
Clawback %	(e)	75%
Penalty	(f) = c*d*e	$ 2,586.21

INTERGOVERNMENTAL AGREEMENT BETWEEN THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AND THE CITY OF LAS CRUCES, NEW MEXICO

This Intergovernmental Agreement ("Agreement") is entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department ("EDD") and The City of Las Cruces (the "City"), a political subdivision of the State of New Mexico, and collectively referred to as "the Parties" with reference to the following facts.

RECITALS:

WHEREAS, the legislature of the State of New Mexico appropriated funds to the Economic Development Department for economic development projects statewide pursuant to the Local Economic Development Act (the "Appropriation"); and

WHEREAS, the purpose of the Local Economic Development Act, NMSA 1978 §5-10-1 through §5-10-14 (2020) ("LEDA"), is to provide "public support for economic development to foster, promote and enhance local economic development efforts"; and

WHEREAS, the City has adopted LEDA by Ordinance No. 2873, which established the City of Las Cruces Economic Development Plan that promotes economic development within the City; and

WHEREAS, Electronic Caregiver, Inc. (ECG, Inc.). (hereinafter "Qualifying Entity") has entered into a Local Economic Development Project Participation Agreement (hereinafter "PPA") with the City. A copy of the City's Ordinance and PPA are attached hereto and incorporated herein; and

WHEREAS, pursuant to the terms of that PPA, the Qualifying Entity will expand and increase the medical technology facility at 506 S. MAIN STREET, SUITE 100 in Las Cruces, New Mexico (the "Project") and will employ at least 770 full-time persons by December 31, 2027; and

WHEREAS, EDD and the City desire to enter into this Agreement as necessary to facilitate disbursement of funds for the Project.

NOW THEREFORE, the Parties do hereby agree to the following terms and conditions to accomplish the Project.

SECTION 1. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to define the responsibilities of the City and EDD for the oversight and administration of up to $1,000,000 of the Appropriation for the Project. It is the intent of the parties that the City will receive an amount up to one million dollars ($1,000,000) to implement the Project. The Parties agree that any and all State funds received will be accounted for by the City as the fiscal agent for EDD in accordance with the procedures the City will use to account for its own funds and property used to implement the project, or any properties acquired or developed by the City as a result of implementation of the Project will be used by the City for economic development purposes only.

SECTION 2. SCOPE OF WORK:

The City will act as fiscal agent for up to $1,000,000 of the Appropriations for the Project. Pursuant to Section 5-10-3(E) of LEDA, EDD will transfer up to $1,000,000 to the City for costs and expenses associated with the Project. In exchange for the contribution, the Qualifying Entity certifies it will employ at least 770 full-time employees at the facility by December 31, 2027.

All the terms, conditions, and requirements set forth under the PPA are incorporated into this Agreement. EDD and the City agree that failure of the Qualifying Entity to create the number of new full-time jobs described in the PPA or otherwise meet its obligations set forth under the PPA shall require the City to apply the applicable Clawback as provided for by the PPA. In the event that the Qualifying Entity does not remit to the City the monies owned as provided for by the PPA then such violation will require that the City foreclose on the security interest after any cure period granted to the Qualifying Entity. Any monies

recovered by the City as a result of payment made by the Qualifying Entity from the application of the applicable Clawbacks shall be returned to EDD within 30 calendar days. Any foreclosure of the security interest shall be returned to EDD. The Qualifying Entity will deliver to the City contemporaneously with the execution of the PPA a form of security acceptable to all parties, which will be incorporated into this Agreement (the “Security”).

SECTION 3. CITY RESPONSIBILITIES:

The City shall:

A. Pay the costs and expenses incurred for the Project from the Appropriation;

B. Provide to EDD supporting documentation in a format acceptable to EDD for activities associated with the Project. Any funds recaptured by the City as the result of enforcing the provisions of the PPA shall be returned to EDD;

C. The City shall notify EDD in writing of any failure to meet requirements (default) of the PPA by the Qualifying Entity within 15 business days of learning of the event of default;

D. Serve as Fiscal Agent for the funds transferred to it under this Agreement;

E. Distribute the funds transferred to the City by EDD to the Project; account for receipts and disbursements of said monies; and provide EDD with the required financial documentation pertaining to this disbursement;

F. Submit all required and reasonably requested documentation to EDD including the endorsed LEDA Ordinance approved by the City Council accepting the Project as qualifying entity for LEDA, with the accompanying endorsed Project Application and PPA entered into by the City and the Qualifying Entity, a fully executed copy of the Security, and copies of invoices and other documentation as required by EDD within the time required;

G. Not impose any obligations on EDD with respect to the administration of this Project, other than the transfer of funds as described herein; and

H. Initiate and prosecute litigation as necessary to enforce the terms of the PPA, at EDD's cost, if necessary.

SECTION 4. CITY CERTIFICATIONS:

As Fiscal Agent, the City hereby assures and certifies that:

A. It will comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and use of the Appropriation;

B. It has the legal authority to receive and expend the Appropriation;

C. It will enforce the provisions of Ordinance No. 2873 and the City's Economic Development Plan;

D. It has exercised due diligence in confirming that the Project is a viable economic development initiative with potential long term economic development benefits based on information provided by EDD;

E. It will provide to EDD upon request all documentation and references to expertise it has relied upon in approving this Project upon receipt thereof or reliance thereupon and also with copies of all reports and documentation City receives from the Qualifying Entity;

F. It has entered into a PPA with the Qualifying Entity and has obtained from the NM EDD all financial documentation necessary to protect the City's and State's investments in the Project;

G. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those within the Project description as defined herein;

H. It will notify EDD of any default on the part of the Qualifying Entity within 15 business days of learning of any default and shall provide the Qualifying Entity an opportunity to cure any default by in accordance with the PPA prior to termination thereof;

I. No member, officer or employee of the City or its designees or agents, no member of the governing body of the locality of which the Project is situated, and no other public official that exercises any functions or

responsibilities with respect to the Project during his/her tenure, or for one (1) year thereafter, shall have any interests, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The City shall incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification; and

J. It has complied with Article IX, Section 14, of the New Mexico Constitution known as the "anti-donation clause."

SECTION 5. EDD RESPONSIBILITIES:

EDD shall:

A. Transfer to the City for costs and expenses incurred for the Project an amount not to exceed one million dollars ($1,000,000). The funds shall be used only for the purpose stated in this Agreement;

B. Monitor job creation by the Qualifying Entity and report the number of jobs created to the City each quarter up to December 31, 2028.

C. At its discretion, review and audit the Project if it is deemed to be necessary or desirable; and

D. Reimburse the City for any costs associated with litigation to enforce the terms of the Security and the Clawback provisions.

SECTION 6. TERM OF AGREEMENT:

This Agreement shall become effective on the date it is fully executed and shall terminate on January 31, 2029 or when all of the obligations of the PPA have been fulfilled.

SECTION 7. LIABILITY:

No Party shall be responsible for liability incurred as a result of the other Party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the New Mexico Tort Claims Act. The City and EDD may agree to reimburse one another under these liability provisions, subject to sufficient

appropriation by the New Mexico Legislature or sufficient funds being available to the party, as determined by the Party responsible for payment.

SECTION 8. DISPOSITION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS

A. Property purchased under this Agreement for the Project shall remain with the purchasing party unless otherwise agreed upon.

B. The City shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the Project, the purposes for which such funds were used and such other records as EDD may require.

C. If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds are possessed by the City, the City shall return said funds to EDD for disposition in accordance with law.

SECTION 9. STRICT ACCOUNTABILITY:

The City shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EDD and the New Mexico State Auditor quarterly or upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.

SECTION 10. REPORTS:

The Qualifying Entity shall submit quarterly reports regarding employment to the EDD during the life of this Agreement and EDD shall share those reports and any other information obtained respecting job retention and creation attributable to the State appropriation with the City. The City shall coordinate with EDD to conduct an annual performance review of the Project.

SECTION 11. NOTICES; REPRESENTATIVES OF THE PARTIES:

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

To EDD:

Finance Development Team Leader
NM Economic Development Department
Joseph Montoya Building
1100 St. Francis Drive
PO Box 20003
Santa Fe, New Mexico 87504

To the CITY:

City Manager
The City of Las Cruces
700 S Main Street
P O Box 20000
Las Cruces, NM 88004

SECTION 12. AMENDMENTS:

This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto.

SECTION 13. GOVERNING LAW/VENUE:

This Agreement shall be governed by the laws of the State of New Mexico. The venue for any litigation shall be a competent court of jurisdiction located in New Mexico.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below,

THE CITY OF LAS CRUCES, NEW MEXICO

By: _____

Name: Ifo Pili

Title: City Manager

Date: _____

APPROVED AS TO FORM

By: _____

The City of Las Cruces Attorney

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

By: _____

Alicia J. Keyes
Cabinet Secretary

Date: _____

APPROVED AS TO FORM

By: _____

Jesika Ulibarri
General Counsel

FY22 LEDA Application

Applicant	Mark Francis
Applicant ID	APP-015764
Company Name	Electronic Caregiver, Inc
Email	mfrancis@ecg-hq.com
Status	Submitted
Application Amount	$0.00
Funded/Approved	☐
LEDA PPA Job Count Target	770

Contact Information

Question: Legal Company Name

Electronic Caregiver, Inc

Question: Trade Name (dba)

Electronic Caregiver, Inc

Question: Project Name

Question: Company Street Address

506 S. Main Street, Suite 1000

Question: Company City

Las Cruces

Question: Company State

NM

Question: Company Zip

88001

Question: Phone

575.649.4604

Question: Website

https://electroniccaregiver.com/

Question: Primary Contact Person First Name

Mark

Question: Primary Contact Person Last Name

Francis

Question: Federal Tax ID #

26-4367432

Question: NM State Tax and Revenue (CRS) #

03-263647-00

Question: City/County Business License Registration will be pursued

- [x] Yes
- [ ] No

Question: NAICS Code(s)

624230-8322

Question: DUNS # (preferred but not required)

078543531

Question: This Business is organized as a:

- [x] C-Corporation
- [ ] S-Corporation
- [ ] LLC
- [ ] Partnership
- [ ] Sole Proprietorship

☐ B-Corporation

Question: Incorporation Papers

Question: Resumes of all principals (owners, partners, directors or officers; required for businesses 1 year or younger)

No Attachments

Question: Company Contact for Project Administration (if different from above)

Electronic Caregiver, Inc

Question: Title

Chief Product Officer

Question: Telephone

575-993-4856

Question: Cell Phone

408-386-6077

Question: Email

mfrancis@ecg-hq.com

Project Information

Please include detailed information such as:

- Executive Summary; Business description and history
- Infrastructure Development/Needs
- Market analysis and strategy
- Summary of competition
- Tax Reporting Status
- Effect on Existing Industry and Commerce during and after Construction
- Land Acquisition

- Local Purchasing
- Water Conservation
- Relocation of Individuals or Businesses
- Construction Schedule
    - Target Close Date
    - General Contract Signed
    - Construction Start
    - Construction End
    - New Facility Operational Date
- Operations plan; Organizational chart
- Any document or record that the local governing body, in its sole discretion, deems necessary.

Question: Description of the Proposed Development, its product and its timeline.

Electronic Caregiver (ECG) is a privately held, digital health technology and services company headquartered in Las Cruces, NM. ECG's mission is to design and deliver innovative, impactful telehealth products and services that bridge the chasm between the doctor's office and patient's home to improve outcomes, expand access, and optimize resource allocation. The company's solutions are available through health care organizations (HCO), physician practices, care management firms, homecare agencies, and senior housing providers to deliver hospital-at-home, chronic care management, and remote patient monitoring programs.

Based upon the quality of services provided by ECG, recently 3 major HCO partners [with over 2 million Medicaid lives under management] have contracted with ECG to provide the enrollment and health coaching services to 87,000 of their patients. These initial contracts [value in excess of $19 million] are the basis of an expansion of staff and facilities to establish a Clinical Triage & Telehealth Services Center. Upon demonstrated success, ECG has an MOU to extend the services to the remainder of the patient population.

To fulfill the initial contracts, ECG will be hiring clinical triage specialists, health coaches, care coordinators, project managers, and a program manager. In addition, support staff across administration, accounting, IT, and finance will be expanded. NMEDD, City of Las Cruces, and MVEDA have awarded ECG $1.6 million in JTIP and Wage + funding to support the hiring, training and retention of 120 new employees. With increased demand for services, ECG will continue to expand by hiring additional clinical staff, graphic designers, software developers, engineering managers, cloud economics analysts, and other roles across the company. It is anticipated that the company will grow to a headcount in excess of 800 individuals by 2026. 90% of ECG headcount is locally based, thus we are creating new jobs to strengthen the Las Cruces, Dona Ana, and New Mexico economies.

This significant growth in business will require expanded staff and additional office space. After assessing options, ECG is seeking to acquire our existing leased space at 506 S Main Street in Las Cruces, NM. In this scenario, ECG would purchase the building, make significantly capital improvements, and build out the rest of the office space throughout the building. Doing so will

make the tallest building in the city a showcase for downtown economic strength, community empowerment, job creation, and technical innovation. The 770 new hires in the LEDA application would fill out the building, creating new jobs as well as new equipment, office build out, and building infrastructure improvements.

Question: Provide a detailed scope of work that is specific to the funding request/award and what the funds will be used for.

The requested LEDA funds would be used towards acquiring the building at 506 South Main Street in Las Cruces, NM. This is a 10 story building in which ECG currently fully occupies the 8, 9, and 10th floors and partially occupies space on the 1st and 7th floors. The other anchor tenant is the US General Services Administration (GSA) which occupies three floors in the building on a long-term lease agreement.

As part of this project, ECG will be hiring 770 new employees through end of 2026. These employees will populate all aspects of the company from engineering, design and production to clinical services, human resources, and finance. Immediately, ECG desires to place the Clinical Triage and Telehealth Services business unit in the building, occupying two full floors, initially, with expansion over time to additional floors. The expanding engineering and design team would occupy another 1-2 floors. Finance, billing, and administration would would require additional space. The marketing, video production, and human resources teams will also be expanded. Job growth is expected to scale as follows: 50 in year 1, 100 in year 2, 175 in year 3, 220 in year 4, and 225 in year 5. In total, 770 new jobs will be created.

LEDA funding would go towards the purchase of the building, required infrastructure (health/safety/code) improvements, tenant improvements, and workspace build-out to meet the business needs of ECG and the team. Year 1 capital investment (land, building, infrastructure, and improvements) is anticipated to be $10.6 million. Through years 2-5, ECG intents to invest an additional $7 million in the building, equipment, and capital improvements. As a 40 year old building, ECG will be planning for significant infrastructure improvements for major systems during the timeline of the LEDA award as well as improvements in the public entrance, elevators, and other public space. As the company hires 770 new staff, the retrofitting, build-out, and equipping numerous floors of the building to enable staff to effectively work will be another important use of funds.

Question: Business Plan (required for businesses 1 year or younger)

Not Answered

Question: Supporting Documentation

2021 Amended Articles (002).pdf (7/13/2022, 8:20 AM)
ECG Leadership Organization Chart final version.pdf (7/12/2022, 4:35 PM)

Financial Information

*Upload sources and uses chart; enter N/A and zero for questions that do not apply to your business

Question: Provide detailed assumptions for your project including three years of projected cash flow income statements. If the applicant has been in business less than one year, you may be requested to provide additional financial information after review.

ECG Three Statement 3 Year Financial Model.xlsx (7/8/2022, 5:11 PM) **CONFIDENTIAL**

Question: Provide financial statements (balance sheet, profit and loss and cash flow) or tax returns for the past three years. Also provide interim statements within 90 days of application date.

Income Statement ECG - Summary 2022 Q1.pdf (7/8/2022, 5:28 PM)
Balance Sheet ECG Q1 2022.pdf (7/8/2022, 5:28 PM)
Income Statement ECG - Summary 2021.pdf (7/8/2022, 5:11 PM)
Income Statement ECG - Summary 2020.pdf (7/8/2022, 5:10 PM)
Income Statement ECG - Summary 2019.pdf (7/8/2022, 5:10 PM) **CONFIDENTIAL**
Balance Sheet ECG 2021.pdf (7/8/2022, 5:10 PM)
Balance Sheet ECG 2020.pdf (7/8/2022, 5:10 PM)
Balance Sheet ECG 2019.pdf (7/8/2022, 5:09 PM)

Question: What is the collateral/security to be pledged to the funds awarded?

- ☐ Letter of Credit
- ☑ Surety Bond
- ☐ Mortgage Security
- ☐ Security Agreement/Escrow
- ☐ Security Agreement/Lien
- ☐ Security Interest/Lien

Question: What is the method of appraisal for stated security (if Security Mortgage or Lien were selected above)?

N/A

Question: What is the equity investment from the applicant?

$3,000,000.00

Question: External Equity Investment Sources

N/A

Question: External Equity Investment Amount

$0.00

Question: City/County Funding Source

City of Las Cruces LEDA

Question: City/ County Funding Amount

$235,000.00

Question: Bank Loan Source (financial institution names), type (commercial, USDA, SBA 504, etc.), and stage (applied or approved)

Pioneer Bank, Commercial loan to purchase the building. Approved!

Question: Bank Loans Amount Total

$7,480,000.00

Question: Other Loans Source

Edward S. Bredniak 2008 Grantor Retained Annuity Trust

Question: Other Loans Amount

$2,500,000.00

Question: Other Sources

Company generated revenues

Question: Other Sources Amount

$4,377,000.00

Question: Total Project Amount (Sum of above)

$17,592,000.00

Question: Supporting financial documentation

Company History and Background

Question: How long has the company been in operation, as of the date of application?

Electronic Caregiver Inc. has been in operation for 13 years. First year of operation was 2009.

Question: At the time of this application, how many full-time employees do you currently employ? Please provide the most recent Department of Workforce Solutions report below. If no employees, disregard report. Enter 0.

274.00

Question: List owners with more than 20% ownership stake in the company. Additionally, please list principal directors and/or officers.

There are no owners with more than 20%. Anthony Dohrmann CEO; Joseph Baffoe, President; Jorge Sanchez, CFO; David Keeley, Chief technology Officer; Mark Francis, Chief Product Officer; Albert Parra, Corporate Director of Human Resources

Question: Are owners and/or officers current with financial obligations/payments to the State of New Mexico or any other Federal or State entity? If no, please explain.

Yes

Question: Does the applicant have any loans or other financial obligations on which payments are not current? If yes, please explain.

No

Question: Please identify any financially affiliated/associated companies in which any of the applicant's owners have a 20% stake.

None

Community Aspects

Question: At the community level, what are the infrastructure needs not yet in place or in process that will affect this project's application?

As ECG is acquiring an existing building, the infrastructure needs are in place. No additional community infrastructure needs exist which would affect the project's application. As the company is acquiring an existing building, there will be capital improvement and build-out expenses that ECG will incur.

Question: What specific incentives are being REQUESTED from the COMMUNITY? Please explain where the applicant is in this process and provide an idea of a timeline for incentives' deployment.

ECG has pursued and will continue to pursue support from the state, city, and community to support the job creation and economic development efforts of the business expansion. The company has received two JTIP awards from the State of New Mexico EDD, WagePlus support from the City of Las Cruces, and funding through MVEDA. We expect to request additional JTIP and WagePlus support for future hiring, training, and retention. ECG is evaluating the opportunity to pursue an Industrial Revenue Bond (IRB) and is in active discussion with stakeholders on this incentive program.

Question: What specific incentives will be PROVIDED from the COMMUNITY?(e.g. parcel of land, building lease, waiver of fees, utility access/extension)?

Two JTIP awards obtained from NM EDD. One WagePlus award received from City of Las Cruces - a second is anticipated to support the recently awarded JTIP2. MVEDA and Community Foundation award received through El Paso Electric community investment. At this time, no additional building related incentives - beyond this LEDA application and a potential IRB -- are being pursued.

Job Creation / Performance

Please download the job creation worksheet to work up the required information for this section.

- Job Creation Worksheet

Question: Outline the number and types of jobs to be created.

770 total jobs will be created. These will be professional jobs across a variety of functional roles. Job roles will include registered nurses, CNAs, medical billers, financial analysts, human resource benefit analysts, recruiters, and trainers. In addition, the engineering and design teams will be expanded through the hiring of design engineers, quality assurance specialists, software developers, software testers, engineering managers, product owners, user experience designers, and user test researchers. The hiring plan is as follows: Year 1 (50), Year 2 (100), Year 3 (175), Year 4 (220), and Year 5 (225).

Question: Outline the proposed pay scale and payroll proposed by the entity.

The attached Job Creation Workshop provides a breakdown of the types of jobs and the pay scale per job. Hourly wage rate ranges from $16 - 78 depending upon role and experience. Entry level positions are on the low end of the range while experienced software managers and executive staff are on the high end of the range. Importantly, ECG has a culture of upskilling and creating career pathways for internal professional development and growth. We are excited to offer such opportunities through these new jobs.

To provide an estimated average annual wage rate/payroll per year - we have taken a weighted average of the jobs to be hired. This information was pulled from the Economic Impact Analysis (EIA) information form which was created. Average salary for the new jobs is $47,000 in year one. Conservatively, this average salary will grow to $53,934 in year five.

Question: Outline the benefits offered to the employees, including but not limited to health care and retirement.

ECG provides Medical, Dental, Vision and EAP services to all full-time employees. Basic Life and AD&D Insurance (Company Paid) Voluntary Life/AD&D (Employee Paid), Voluntary Disability Insurance, Voluntary Benefits Administered by AFLAC, Identity Theft Protection, and Met Law. Other benefits are paid time off for Birthday, Employment Anniversary, Paid Sick Time Off, Bereavement and holiday pay for New Years day, Good Friday, Memorial Day, Independence Day, Labor Day, the day before Thanksgiving, Thanksgiving Day and the Day after, Christmas Eve, Christmas Day and day after. Retirement 401K.

Question: Outline any efforts being made or proposed by the applicant to hire people within the local employment pool.

ECG's focus is to hiring from and development the local employment pool. ECG's jobs are 90%+ Las Cruces based as the company has a strong focus to grow, strengthen, and diversify the Las Cruces, Dona Ana, and New Mexico economy. The company works closely with Dona Ana Community College, New Mexico State University, and Burrell College of Osteopathic Medicine to employ and train clinical professionals. A large number of engineering, design, and business development staff are graduates of NMSU. Later in 2022 the company will launch a telehealth certificate credential available through the NMSU On Demand platform. ECG also works with Workforce Solutions and other local agencies to identify, hire, upskill, and retain local workers.

Question: Attach job creation worksheet

ECG.LEDAJobCreationWorksheet.pdf (7/7/2022, 3:51 AM)

Question: Starting Headcount (from worksheet above)

70.00

Question: Total new jobs to be created Year 1 (from worksheet above)

50.00

Question: Total new payroll Year 1 (from worksheet above)

$2,350,000.00

Question: Total number of new jobs to be created Year 2 (from worksheet above)

100.00

Question: Total new payroll Year 2 (from worksheet above)

$4,864,500.00

Question: Total number of new jobs to be created Year 3 (from worksheet above)

175.00

Question: Total new payroll Year 3 (from worksheet above)

$8,810,900.00

Economic Impact Analysis

NMEDD will perform an Economic Impact Analysis to address the impact to the local tax base, the school system, etc. using the Economic Impact Datasheet provided by the applicant.

Question: Outline any impacts to the environment, positively or negatively.

We are acquiring an existing structure, which will not require any external construction. We anticipate no changes in utility use or major traffic changes to the existing infrastructure and area. Purchasing, renovating, and investing in capital improvements in the tallest building in Las Cruces will have a positive economic impact. It will ensure that the downtown core remains vibrant and that older commercial building stock remains fully utilized. We will turn the most visually prominent building in the city into a showcase for innovation. The physical appearance and mechanical infrastructure of the building will be enhanced. By creating 700+ local jobs, we will be bringing professionals into the downtown area which will support local businesses, increase demand for restaurants, and support service providers. The jobs, wages, and taxes will have a strong economic impact on the region. These benefits have been elaborated upon in the full application.

Question: Status of permitting/regulatory matters needed for project.

None required (obtaining existing building for the project)

Attachments

Please download the authorization for examination and release of information template and the example employer quarterly wage and contribution report.

- Authorization for examination and release of information form
- Employer quarterly wage and contribution report example

If you are a new business, please apply for a NM Tax Identification Number here:

http://www.tax.newmexico.gov/Businesses/wage-witholding-tax.aspx

Please download the LEDA Application Affirmation Template here:

LEDA Application Affirmation Template

Click here to view a filled out sample.

Question: New Mexico Economic Development Department authorization for examination and release of information.

NM Economic Dev Dept Auth ROI Signed.pdf (7/8/2022, 4:58 PM)

Question: Latest New Mexico employer's quarterly wage and contribution report submitted to the Department of Workforce Solutions.

Q122 ES903A_upload.csv (7/8/2022, 5:35 PM)

Question: Affirmation and any other supporting documents

Q122 ES903A print out.pdf (7/15/2022, 3:34 PM)
LEDA Affirmation signed.pdf (7/8/2022, 4:49 PM)
LEDA App signed.pdf (5/11/2022, 12:02 PM)

NINTH AMENDED AND RESTATED ARTICLES OF INCORPORATION OF ELECTRONIC CAREGIVER, INC.

The undersigned, Electronic Caregiver, Inc., a Nevada corporation (the "Corporation"), for the purpose of amending and restating the Articles of Incorporation of the Corporation, in accordance with the provisions of Nevada Revised Statutes, Title 17, Chapter 78, Section 78.402 as from time to time amended (the "Nevada General Corporation Law"), does hereby make and execute these Ninth Amended and Restated Articles of Incorporation and does hereby certify that:

1. The name of the Corporation is Electronic Caregiver, Inc. Its original Articles of Incorporation as were filed with the Secretary of State of Nevada on February 20, 2009.

2. Upon a proposal recommended and adopted by the Board of Directors and submitted to the majority stockholders of the Corporation by the Corporation's directors pursuant to Section 78.315 of the Nevada General Corporation Law, resolutions setting forth the within Ninth Amended and Restated Articles of Incorporation of this Corporation were duly adopted by majority vote of the stockholders of the Corporation by written consent, in accordance with Section 78.320 of the Nevada General Corporation Law.

3. The Ninth Amended and Restated Articles of Incorporation of the Corporation submitted and recommended by the Corporation's directors and approved by the majority stockholders of the Corporation read as follows:

ARTICLE I
NAME

The name of the corporation is Electronic Caregiver, Inc. (hereinafter, the "Corporation").

ARTICLE II
REGISTERED OFFICE

The address of the Corporation's registered office in the State of Nevada is Corporation Service Company, 112 North Curry St., Carson City, NV, 89703, USA. The name of the registered agent at such address is United States Corporation Agents, Inc. The Corporation may, from time to time, in the manner provided by law, change the resident agent and the registered office within the State of Nevada. The Corporation may also maintain an office or offices for the conduct of its business, either within or without the State of Nevada.

ARTICLE III
PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Nevada General Corporation Law.

ARTICLE IV
EXISTENCE

The Corporation shall have perpetual existence.

ARTICLE V
CAPITAL STOCK

Section 5.01. Authorized Shares. (a) The total number of shares of all classes of stock that the Corporation shall have authority to issue is 150,000,000 shares consisting of:

(i) 90,000,000 shares of Common Stock, par value of $0.001 per share (the "Common Stock");

(ii) 10,000,000 shares of Nonvoting Common, par value of $0.001 per share (the "Nonvoting Common Stock"; and

(iii) 50,000,000 shares of Preferred Stock, par value of $0.001 per share (the "Preferred Stock").

(b) The rights, preferences, privileges and restrictions of the Preferred Stock shall be determined by the board of directors. Authority shall be vested in the board of directors to change the class, the number of each class of stock and the voting powers, designations, preferences, limitations, restrictions, and relative rights of each class of stock.

(c) The following classes of preferred stock are designated as follows:

Series A - 8,775,000 shares

Series B - 3,845,000 shares

Series C - 3,000,000 shares

Series D - 15,750,000 shares

Series E – 5,000,000 shares

(d) The preferences of the designated classes are set forth below:

SERIES A PREFERENCES

Section d.1.1 Unless the context otherwise requires all purposes of these Articles of Incorporation, the meanings herein specified.

Common Stock. The term "Common Stock" shall mean all shares now or hereafter authorized of any class of Common Stock of the Corporation and any other stock of the Corporation, howsoever designated, authorized after the Issue Date, which has the right (subject always to prior rights of any

class or series of Preferred Stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

Conversion Ratio. The term "Conversion Ratio" shall mean the ratio per share of Common Stock used to determine the number of shares of Common Stock deliverable upon conversion of a share of the Series A Preferred Stock, which ratio shall initially be one (1) share of Series A Preferred Stock to one (1) share of Common Stock.

Dividend Payment Date. The term "Dividend Payment Date" shall be December 31 of each year, the day upon which non-cumulative payments shall be payable, when and as declared by the Board of Directors. Each such dividend shall be paid to the holders of record of the Series A Preferred Stock as their names appear on the share register of the Corporation on the corresponding Record Date. As used above, the term "Record Date" means, with respect to the dividends payable on December 31 of each year, the preceding December 15, or such other record date designated by the Board of Directors of the Corporation with respect to the dividend payable on such respective Dividend Payment Date.

Dividend Period. The term "Dividend Period" shall have the meaning of the annual period between consecutive Dividend Payment Dates.

Issue Date. The term "Issue Date" shall mean the date that shares of Series A Preferred Stock are first issued by the Corporation.

Subordinate Stock. The term "Subordinate Stock" shall mean the Common Stock, Nonvoting Common Stock and any other class or series of stock of the Corporation issued after the Issue Date which have rights that are subordinate to the rights and preferences of the Series A Preferred Stock and any class or series of stock of the Corporation issued after the Issue Date not entitled to receive any assets upon the liquidation, dissolution or winding up of the affairs of the Corporation until the Series A Preferred Stock shall have received the entire amount to which such stock is entitled upon such liquidation, dissolution or winding up.

Net Distributable Profit. The term "Net Distributable Profit" shall mean, for the purposes of Section d.1.2.1 below, the difference between revenues and expenses realized by the Company according to Generally Accepted Accounting Principles that the Company, in its sole discretion, elects to distribute to interest holders. Expenses shall include any and all amounts that the Company determines, in its sole discretion, are necessary for the payment of or due provision for (a) the liabilities of the Company to all creditors, and/or (b) additional requirements for funds in connection with the Company's business.

Parity Stock. The term "Parity Stock" shall mean any other class or series of stock of the Corporation issued after the Issue Date entitled to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation on parity with the Preferred Stock.

Senior Stock. The term "Senior Stock" shall mean any class or series of stock of the Corporation issued ranking senior to the Series A Preferred Stock in respect of the right to receive dividends, and any class or series of stock of the Corporation issued ranking senior to the Series A Preferred Stock in respect of the right to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation.

Section d.1.2 - Series A Preferred Stock. The Corporation is hereby authorized to issue up to eight million, sevent-hundred seventy-five thousand, (8,775,000) shares of Preferred Stock, to be designated "Series A Convertible Preferred Stock" and in accordance with the following preferences:

Section d.1.2.1 - Revenue Distribution Provisions.

(a) The holders of the then outstanding shares of Series A Preferred Stock shall be entitled to a pro rata share of the net distributable profits based on all Common Stock, Nonvoting Common Stock and all Preferred Stock outstanding as a group. Distributions on the Series A Preferred Stock shall not be cumulative and no rights shall accrue to the holders of Series A Preferred Stock by reason of the fact that this Corporation may have failed to declare or pay distributions on the Series A Preferred Stock in any previous fiscal year of the Corporation, whether or not the earnings of this Corporation were sufficient to pay such distributions.

(b) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock assets shall be distributed as set forth hereby:

(i) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock senior to Series A Preferred Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Preferred Stock senior to Series A Preferred Stock ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Preferred Stock senior to Series A Preferred Stock shall be distributed among the holders of the Series A Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled.

(ii) In the event that full cash dividends are paid to Senior Stock, but not paid or made available to the holders of all outstanding shares of Series A Preferred Stock and of any Parity Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Series A Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Series A Preferred Stock shall cumulate as provided in Subsection d.1.2.1(c) below.

(c) If, on any Dividend Payment Date, the holders of the Series A Preferred Stock shall not have received the full dividends provided for in the other provisions of this Section d.1.2.1, then such dividends shall cumulate, whether or not earned or

declared, with additional dividends thereon for each succeeding full Dividend Period during which such dividends shall remain unpaid. Unpaid dividends for any period less than a full Dividend Period shall cumulate on a day-to-day basis and shall be computed on the basis of a three hundred sixty (360) day year.

(d) So long as any shares of Series A Preferred Stock shall be outstanding, the Corporation shall not declare or pay on any Subordinate Stock any dividend whatsoever, whether in cash, property or otherwise (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock or Nonvoting Common Stock with respect to Subordinate Stock other than Common Stock and Nonvoting Common, together with cash in lieu of fractional shares), nor shall the Corporation make any distribution on any Subordinate Stock, nor shall any Subordinate Stock be purchased or redeemed by the Corporation or any Subsidiary, nor shall any monies be paid or made available for a sinking fund for the purchase or redemption of any Subordinate Stock, unless all dividends to which the holders of Series A Preferred Stock shall have been entitled for all previous Dividend Periods shall have been paid or declared and a sum of money sufficient for the payment thereof set apart.

(e) Subject to Section (f) of this Section d.1.2.1, no distributions may be paid to holders of shares of Common Stock or Nonvoting Common unless the holders of shares of Series A Preferred Stock participate in such distributions together with holders of shares of Common Stock to the same extent as if their shares of Series A Preferred Stock were converted into shares of Common Stock (as provided in Section d.1.2.1 with respect to shares of Series A Preferred Stock, on the record date for determining the holders of Common Stock entitled to such distributions).

(f) For purposes of this Section d.1.2.1., unless the context otherwise requires, distribution shall mean the transfer of cash or property without consideration, payable other than in Common Stock, or the purchase or redemption of shares of this Corporation (other than repurchases of Common Stock or Nonvoting Common held by employees or consultants of this Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation. Each holder of shares of Series A Preferred Stock shall be deemed to have consented, for purposes of the Nevada Statutes, to distributions made by the Corporation in connection with the repurchase of shares of Common Stock or Nonvoting Common Stock issued to or held by employees or consultants upon termination of their employment or services pursuant to agreements providing for such repurchase.

Section d.1.2.2 - Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, the holders of shares of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of the Common Stock or Nonvoting Common Stock by reason of their ownership thereof, an amount per share as may be

fixed for such class (the "Preferential Amount") plus an amount equal to all accrued and unpaid distributions thereon. The Preferential Amount is one dollar ($1.00) for each share of Series A Preferred Stock.

(b) In the event the assets thus distributed among the holders of all the outstanding Series A Preferred Stock and Parity Preferred Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed as set forth hereby:

(i) If, upon the occurrence of such event, the assets thus distributed among the holders of the Senior Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Senior Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(ii) If, upon the occurrence of such event, the assets thus distributed are sufficient to permit payment to Senior Stock holders of the full Preferential Amount, but insufficient to permit the payment to the holders of the Series A Preferred Stock and Parity Preferred Stock of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock and Parity Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(c) If assets remain in this Corporation after the distributions provided for in Sections (a) and (b) of this Section d.1.2.2 have been fully made, the holders of Common Stock and Nonvoting Common Stock shall be entitled to receive, prior and in preference to any further distribution of any other of the surplus funds or assets of the Corporation to the holders of Series A Preferred Stock by reason of their ownership thereof, an amount equal to five cents ($0.05) per share (subject to adjustment for stock dividends, stock splits, stock combinations or the like). If upon the completion of the distribution required by Sections (a) and (b) of this Section d.1.2.2, the assets and funds available to be distributed among the holders of shares of Common Stock and Nonvoting Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid amounts, then the remaining assets and funds of this Corporation legally available for distribution shall be distributed ratably among the holders of the Common Stock and Nonvoting Common Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(d) If upon the completion of the distributions contemplated by Sections (a), (b) and (c) of this Section d.1.2.2, assets remain in the Corporation, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock and Nonvoting Common Stock shall participate on a pro rata basis in the distribution of all remaining assets of the Corporation legally available for distribution, with the outstanding shares of Series A Preferred Stock treated as though they have been

converted into the number of shares of Common Stock, if any, into which they are convertible as of the date of such distribution.

Section d.1.2.3 - Conversion. The holders of outstanding shares of Series A Preferred Stock shall have conversion rights as follows:

(a) Incidents Causing Conversion.

(i) Optional Conversion. There shall be no voluntary conversion rights.

(ii) Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into such number of fully paid and non-assessable shares of Common Stock as is determined pursuant to Section (d) of this Section 1.2.3 upon the closing of the issuance of shares following the effectiveness of a registration statement (other than a registration statement with respect to any securities offered pursuant to any employee purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive or similar plan of the Corporation) under the Securities Act of 1933, as amended.

(b) Cases Creating Automatic Conversion.

(i) A consolidation, reorganization or merger of this Corporation with or into any other corporation or corporations (1) in which the acquiring company is a public company or (2) in which the stockholders of this Corporation immediately after the transaction own less that fifty percent (50%) of the voting power of the surviving entity;

(ii) A sale, conveyance or other disposition of all or substantially all of this Corporation's property or business;

(iii) A transaction or class of related transactions in which control of this Corporation is transferred (consisting of transfer of at least fifty percent (50%) of the voting power of the Corporation to one (1) person or group of affiliated persons); or,

(iv) The Corporation files a registration statement to register its securities with the Federal Securities and Exchange Commission pursuant to the Securities Act of 1933.

(c) Mechanics of Automatic Conversion. In the event of an automatic conversion of all outstanding shares of Series A Preferred Stock pursuant to Section (a)(ii) of this Section d.1.2.3, the effective date of such conversion shall be the date of the occurrence of the event that triggered such automatic conversion. Notwithstanding the fact that such conversion shall be deemed to have taken place automatically, each holder of outstanding shares of Series A Preferred Stock so converted shall be obligated to surrender to the Corporation all certificates representing his or her shares of Series A Preferred Stock so converted, the satisfaction of which obligation shall be a condition to the Corporation's obligation to issue a certificate representing the shares of Common Stock he received upon such automatic conversion.

(d) Conversion Ratio. Each share of Series A Preferred Stock to be converted into shares of Common Stock shall be converted on the basis of a 1:1 ratio into the number of fully paid and non-assessable shares of Common Stock, with no fractional shares to be issuable upon conversion.

(e) Notices. In the event of any taking by this Corporation of a record of the holders of any class or class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Series A Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right. Any notice required by the provisions of this Section d.1.2.3 to be given to the holders of shares of Series A Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of this Corporation.

(f) Reservation of Common Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all the outstanding shares of the Series A Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

Section d.1.2.4 - Voting Rights. The holders of the issued and outstanding shares of Series A Preferred Stock shall have no voting rights.

Section d.1.2.5 - Covenants. In addition to any other rights provided by law, so long as any Series A Preferred Stock is outstanding, the Corporation, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of such outstanding shares of each series of Series A Preferred Stock, will not:

(a) Amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or By-Laws if such action would alter adversely or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any Series A Preferred Stock, or increase or decrease the number of shares of Series A Preferred Stock authorized hereby;

(b) Pay or declare any dividend on any Subordinate Stock (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock or Nonvoting Common Stock with

respect to Subordinate Stock other than Common Stock or Nonvoting Common Stock , together with cash in lieu of fractional shares and dividends not in excess of dividends paid to the Preferred Stock) while the Series A Preferred Stock remains outstanding, or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any Subordinate Stock, except from employees of the Corporation upon termination of employment or otherwise pursuant to the terms of stock purchase or option agreements providing for the repurchase of, or right of first refusal with respect to, such Subordinate Stock entered into with such employees; or

(c) Materially change the principal business of the Corporation.

Section d.1.2.6 - Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series A Preferred Stock shall not have any preferences or relative, participating, optional or other special rights, and in the Corporation's Certificate of Incorporation. The shares of Series A Preferred Stock shall have no preemptive or subscription rights.

Section d.1.2.7 - Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

Section d.1.2.8 - Severability of Provisions. If any right, preference or limitation of the Series A Preferred Stock set forth in this resolution (as such resolution may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this resolution (as so amended) which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

Section d.1.2.9 - Status of Reacquired Shares. Shares of Series A Preferred Stock which have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Nevada) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and may be redesignated and reissued.

Section d.1.2.10 - Adjustments for Stock Splits, Dividends and Combinations. The number of shares of Series A Preferred Stock and the Series A Preferred Stock Conversion Ratio set forth in Section d.1.2.3 (d), as adjusted, shall be appropriately adjusted for any share combination or share split of, or any dividend of Series A Preferred Stock with respect to, the Series A Preferred Stock after the effective date of the Corporation's adoption of this Designation of Rights and Preferences for the Series A Preferred Stock.

SERIES B PREFERENCES

Section d.2.1 - Definitions. Unless the context otherwise requires, the terms defined in this Section d.2.1 shall have, for all purposes of these Articles of Incorporation, the meanings herein specified.

Common Stock. The term "Common Stock" shall mean all shares now or hereafter authorized of any class of Common Stock of the Corporation and any other stock of the Corporation, howsoever designated, authorized after the Issue Date, which has the right (subject always to prior rights of any class or series of Preferred Stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

Conversion Ratio. The term "Conversion Ratio" shall mean the ratio per share of Common Stock used to determine the number of shares of Common Stock deliverable upon conversion of a share of the Series B Preferred Stock, which ratio shall initially be one (1) share of Series B Preferred Stock to one (1) share of Common Stock.

Dividend Payment Date. The term "Dividend Payment Date" shall be December 31 of each year, the day upon which non-cumulative payments shall be payable, when and as declared by the Board of Directors. Each such dividend shall be paid to the holders of record of the Series B Preferred Stock as their names appear on the share register of the Corporation on the corresponding Record Date. As used above, the term "Record Date" means, with respect to the dividends payable on December 31 of each year, the preceding December 15, or such other record date designated by the Board of Directors of the Corporation with respect to the dividend payable on such respective Dividend Payment Date.

Dividend Period. The term "Dividend Period" shall have the meaning of the annual period between consecutive Dividend Payment Dates.

Issue Date. The term "Issue Date" shall mean the date that shares of Preferred Stock are first issued by the Corporation.

Subordinate Stock. The term "Subordinate Stock" shall mean the Common Stock, Nonvoting Common Stock and any other class or series of stock of the Corporation issued after the Issue Date which have rights that are subordinate to the rights and preferences of the Series B Preferred Stock and any class or series of stock of the Corporation issued after the Issue Date not entitled to receive any assets upon the liquidation, dissolution or winding up of the affairs of the Corporation until the Series B Preferred Stock shall have received the entire amount to which such stock is entitled upon such liquidation, dissolution or winding up.

Net Distributable Profit. The term "Net Distributable Profit" shall mean, for the purposes of Section d.2.2.1 (c) below, the difference between revenues and expenses realized by the Company according to Generally Accepted Accounting Principles that the Company, in its sole discretion, elects to distribute to interest holders. Expenses shall include any and all amounts that the Company determines, in its sole discretion, are necessary for the payment of or due provision for (a) the liabilities of the Company to all creditors, and/or (b) additional requirements for funds in connection with the Company's business.

Parity Stock. The term "Parity Stock" shall mean any other class or series of stock of the Corporation issued after the Issue Date entitled to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation on a parity with the Series B Preferred Stock.

Senior Stock. The term "Senior Stock" shall mean any class or series of stock of the Corporation issued ranking senior to the Series B Preferred Stock in respect of the right to receive dividends, and any class or series of stock of the Corporation issued ranking senior to the Series B Preferred Stock in respect of the right to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation.

Section d.2.2 - Series B Preferred Stock. The Corporation is hereby authorized to issue three million, eight-hundred thousand (3,800,000) shares of Preferred Stock, to be designated "Series B Convertible Preferred Stock" and in accordance with the following preferences:

Section d.2.2.1 - Revenue Distribution Provisions.

(a) The holders of the then outstanding shares of Series B Preferred Stock shall be entitled to a pro rata share of the net distributable profits based on all Common Stock, Nonvoting Common Stock and all Preferred Stock outstanding as a group. Distributions on the Series B Preferred Stock shall not be cumulative and no rights shall accrue to the holders of Series B Preferred Stock by reason of the fact that this Corporation may have failed to declare or pay distributions on the Series B Preferred Stock in any previous fiscal year of the Corporation, whether or not the earnings of this Corporation were sufficient to pay such distributions.

(b) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock assets shall be distributed as set forth hereby:

(i) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock senior to Series B Preferred Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Preferred Stock senior to Series B Preferred Stock ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Preferred Stock senior to Series B Preferred Stock shall be distributed among the holders of the Series B Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled.

(ii) In the event that full cash dividends are paid to Senior Stock, but not paid or made available to the holders of all outstanding shares of Series B Preferred Stock and of any Parity Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be

distributed among the holders of the Series B Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Series B Preferred Stock shall cumulate as provided in Subsection d.2.2.1(c) below.

(c) If, on any Dividend Payment Date, the holders of the Series B Preferred Stock shall not have received the full dividends provided for in the other provisions of this Section d.2.2.1, then such dividends shall cumulate, whether or not earned or declared, with additional dividends thereon for each succeeding full Dividend Period during which such dividends shall remain unpaid. Unpaid dividends for any period less than a full Dividend Period shall cumulate on a day-to-day basis and shall be computed on the basis of a three hundred sixty (360) day year.

(d) So long as any shares of Series B Preferred Stock shall be outstanding, the Corporation shall not declare or pay on any Subordinate Stock any dividend whatsoever, whether in cash, property or otherwise (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock with respect to Subordinate Stock other than Common Stock, together with cash in lieu of fractional shares), nor shall the Corporation make any distribution on any Subordinate Stock, nor shall any Subordinate Stock be purchased or redeemed by the Corporation or any Subsidiary, nor shall any monies be paid or made available for a sinking fund for the purchase or redemption of any Subordinate Stock, unless all dividends to which the holders of Series B Preferred Stock shall have been entitled for all previous Dividend Periods shall have been paid or declared and a sum of money sufficient for the payment thereof set apart.

(e) Subject to Section (f) of this Section d.2.2.1, no distributions may be paid to holders of shares of Common Stock or Nonvoting Common Stock unless the holders of shares of Series B Preferred Stock participate in such distributions together with holders of shares of Common Stock to the same extent as if their shares of Series B Preferred Stock were converted into shares of Common Stock (as provided in Section d.2.2.1 with respect to shares of Series B Preferred Stock, on the record date for determining the holders of Common Stock entitled to such distributions).

(f) For purposes of this Section d.2.2.1, unless the context otherwise requires, distribution shall mean the transfer of cash or property without consideration, payable other than in Common Stock or Nonvoting Common Stock , or the purchase or redemption of shares of this Corporation (other than repurchases of Common Stock or Nonvoting Common Stock held by employees or consultants of this Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation. Each holder of shares of Series B Preferred Stock shall be deemed to have consented, for purposes of the Nevada Statutes, to distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by employees or consultants upon

termination of their employment or services pursuant to agreements providing for such repurchase.

Section d.2.2.2 - Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, the holders of shares of each class of Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of the Common Stock or Nonvoting Common Stock by reason of their ownership thereof, an amount per share as may be fixed for such class (the "Preferential Amount") plus an amount equal to all accrued and unpaid distributions thereon. The Preferential Amount is one dollar ($1.00) for each share of Series B Preferred Stock.

(b) In the event the assets thus distributed among the holders of all the outstanding Series B Preferred Stock and Parity Preferred Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed as set forth hereby:

(c) If, upon the occurrence of such event, the assets thus distributed among the holders of the Senior Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Senior Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(d) If, upon the occurrence of such event, the assets thus distributed are sufficient to permit payment to Senior Stock holders of the full Preferential Amount, but insufficient to permit the payment to the holders of the Series B Preferred Stock and Parity Preferred Stock of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Series B Preferred Stock and Parity Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(e) If assets remain in this Corporation after the distributions provided for in Sections (a) and (b) of this Section d.2.2.2 have been fully made, the holders of Common Stock and Nonvoting Common Stock shall be entitled to receive, prior and in preference to any further distribution of any other of the surplus funds or assets of the Corporation to the holders of Series B Preferred Stock by reason of their ownership thereof, an amount equal to five cents ($0.05) per share (subject to adjustment for stock dividends, stock splits, stock combinations or the like). If upon the completion of the distribution required by Sections (a) and (b) of this Section d.2.2.2, the assets and funds available to be distributed among the holders of shares of Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid amounts, then the remaining assets and funds of this Corporation legally available for distribution shall be distributed ratably among the holders of the

Common Stock and Nonvoting Common Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(f) If upon the completion of the distributions contemplated by Sections (a), (b) and (c) of this Section d.2.2.2, assets remain in the Corporation, the holders of shares of Series B Preferred Stock and the holders of shares of Common Stock and Nonvoting Common Stock shall participate on a pro rata basis in the distribution of all remaining assets of the Corporation legally available for distribution, with the outstanding shares of Series B Preferred Stock treated as though they have been converted into the number of shares of Common Stock, if any, into which they are convertible as of the date of such distribution.

Section d.2.2.3 - Conversion. The holders of outstanding shares of Series B Preferred Stock shall have conversion rights as follows:

(a) Incidents Causing Conversion.

(i) Optional Conversion. There shall be no voluntary conversion rights.

(ii) Automatic Conversion. Each share of Series B Preferred Stock shall automatically be converted into such number of fully paid and non-assessable shares of Common Stock as is determined pursuant to Section (d) of this Section d.2.2.3 upon the closing of the issuance of shares following the effectiveness of a registration statement (other than a registration statement with respect to any securities offered pursuant to any employee purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive or similar plan of the Corporation) under the Securities Act of 1933, as amended.

(b) Cases Creating Automatic Conversion.

(i) A consolidation, reorganization or merger of this Corporation with or into any other corporation or corporations (1) in which the acquiring company is a public company or (2) in which the stockholders of this Corporation immediately after the transaction own less that fifty percent (50%) of the voting power of the surviving entity;

(ii) A sale, conveyance or other disposition of all or substantially all of this Corporation's property or business;

(iii) A transaction or class of related transactions in which control of this Corporation is transferred (consisting of transfer of at least fifty percent (50%) of the voting power of the Corporation to one (1) person or group of affiliated persons); or,

(iv) The Corporation files a registration statement to register its securities with the Federal Securities and Exchange Commission pursuant to the Securities Act of 1933.

(c) Mechanics of Automatic Conversion. In the event of an automatic conversion of all outstanding shares of Series B Preferred Stock pursuant to Section (a)(ii) of

this Section d.2.2.3, the effective date of such conversion shall be the date of the occurrence of the event that triggered such automatic conversion. Notwithstanding the fact that such conversion shall be deemed to have taken place automatically, each holder of outstanding shares of Series B Preferred Stock so converted shall be obligated to surrender to the Corporation all certificates representing his or her shares of Series B Preferred Stock so converted, the satisfaction of which obligation shall be a condition to the Corporation's obligation to issue a certificate representing the shares of Common Stock he received upon such automatic conversion.

(d) Conversion Ratio. Each share of Series B Preferred Stock to be converted into shares of Common Stock shall be converted on the basis of a 1:1 ratio into the number of fully paid and non-assessable shares of Common Stock, with no fractional shares to be issuable upon conversion.

(e) Notices. In the event of any taking by this Corporation of a record of the holders of any class or class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Series B Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right. Any notice required by the provisions of this Section d.2.2.3 to be given to the holders of shares of Series B Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of this Corporation.

(f) Reservation of Common Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series B Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all the outstanding shares of the Series B Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

Section d.2.2.4 -Voting Rights. The holders of the issued and outstanding shares of Series B Preferred Stock shall have no voting rights.

Section d.2.2.5 - Covenants. In addition to any other rights provided by law, so long as any Series B Preferred Stock is outstanding, the Corporation, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of such outstanding shares of each series of Series B Preferred Stock, will not:

(a) Amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or By-Laws if such action would alter adversely or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any Series B Preferred Stock, or increase or decrease the number of shares of Series B Preferred Stock authorized hereby;

(b) Pay or declare any dividend on any Subordinate Stock (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock or Nonvoting Common Stock with respect to Subordinate Stock other than Common Stock or Nonvoting Common Stock, together with cash in lieu of fractional shares and dividends not in excess of dividends paid to the Preferred Stock) while the Series B Preferred Stock remains outstanding, or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any Subordinate Stock, except from employees of the Corporation upon termination of employment or otherwise pursuant to the terms of stock purchase or option agreements providing for the repurchase of, or right of first refusal with respect to, such Subordinate Stock entered into with such employees; or

(c) Materially change the principal business of the Corporation.

Section d.2.2.6 - Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series B Preferred Stock shall not have any preferences or relative, participating, optional or other special rights, and in the Corporation's Articles of Incorporation. The shares of Series B Preferred Stock shall have no preemptive or subscription rights.

Section d.2.2.7 - Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

Section d.2.2.8 - Severability of Provisions. If any right, preference or limitation of the Series B Preferred Stock set forth in this resolution (as such resolution may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this resolution (as so amended) which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

Section d.2.2.9 - Status of Reacquired Shares. Shares of Series B Preferred Stock which have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Nevada) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and may be re-designated and reissued.

Section d.2.2.10 - Adjustments for Stock Splits, Dividends and Combinations. The number of shares of Series B Preferred Stock and the Series B Preferred Stock Conversion Ratio set forth in Section d.2.2.5 (d), as adjusted, shall be appropriately adjusted for any share combination

or share split of, or any dividend of Series B Preferred Stock with respect to, the Series B Preferred Stock after the effective date of the Corporation's adoption of this Designation of Rights and Preferences for the Series B Preferred Stock.

Section d.2.2.11 - Common Stock Warrants. For every one (1) shares of Series B Preferred Stock purchased after the filing of these Restated Articles of Incorporation, the purchaser shall receive one (1) warrant to purchase one (1) share of the Corporation's Common Stock that is exercisable for a three (3) year period from the date of purchase. The exercise price shall be one dollar ($1.00.) if exercised within thirty six months (36 months) from the date of the investment until the expiration of the three year (3) period. However, if the Company successfully completes an Initial Public Offering ("IPO") of its securities all warrants must be exercised at the time of the IPO or all rights to warrants will be forfeited.

SERIES C PREFERENCES

Section d.3.1 - Definitions. Unless the context otherwise requires, the terms defined in this Section d.3.1 shall have, for all purposes of these Articles of Incorporation, the meanings herein specified.

Common Stock. The term "Common Stock" shall mean all shares now or hereafter authorized of any class of Common Stock of the Corporation and any other stock of the Corporation, howsoever designated, authorized after the Issue Date, which has the right (subject always to prior rights of any class or series of Preferred Stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

Conversion Ratio. The term "Conversion Ratio" shall mean the ratio per share of Common Stock used to determine the number of shares of Common Stock deliverable upon conversion of a share of the Series C Preferred Stock, which ratio shall initially be one (1) share of Series C Preferred Stock to one (1) share of Common Stock.

Dividend Payment Date. The term "Dividend Payment Date" shall be December 31 of each year, the day upon which non-cumulative payments shall be payable, when and as declared by the Board of Directors. Each such dividend shall be paid to the holders of record of the Series B Preferred Stock as their names appear on the share register of the Corporation on the corresponding Record Date. As used above, the term "Record Date" means, with respect to the dividends payable on December 31 of each year, the preceding December 15, or such other record date designated by the Board of Directors of the Corporation with respect to the dividend payable on such respective Dividend Payment Date.

Dividend Period. The term "Dividend Period" shall have the meaning of the annual period between consecutive Dividend Payment Dates.

Issue Date. The term "Issue Date" shall mean the date that shares of Preferred Stock are first issued by the Corporation.

Subordinate Stock. The term "Subordinate Stock" shall mean the Common Stock, Nonvoting Common Stock and any other class or series of stock of the Corporation issued after the Issue Date which have rights that are subordinate to the rights and preferences of the Series C Preferred Stock

and any class or series of stock of the Corporation issued after the Issue Date not entitled to receive any assets upon the liquidation, dissolution or winding up of the affairs of the Corporation until the Series C Preferred Stock shall have received the entire amount to which such stock is entitled upon such liquidation, dissolution or winding up.

Net Distributable Profit. The term "Net Distributable Profit" shall mean, for the purposes of Section d.3.2.1 below, the difference between revenues and expenses realized by the Company according to Generally Accepted Accounting Principles that the Company, in its sole discretion, elects to distribute to interest holders. Expenses shall include any and all amounts that the Company determines, in its sole discretion, are necessary for the payment of or due provision for (a) the liabilities of the Company to all creditors, and/or (b) additional requirements for funds in connection with the Company's business.

Parity Stock. The term "Parity Stock" shall mean any other class or series of stock of the Corporation issued after the Issue Date entitled to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation on a parity with the Series B Preferred Stock.

Senior Stock. The term "Senior Stock" shall mean any class or series of stock of the Corporation issued ranking senior to the Series C Preferred Stock in respect of the right to receive dividends, and any class or series of stock of the Corporation issued ranking senior to the Series C Preferred Stock in respect of the right to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation.

Section d.3.2 - Series C Preferred Stock. The Corporation is hereby authorized to issue three million (3,000,000) shares of Preferred Stock, to be designated "Series C Convertible Preferred Stock" and in accordance with the following preferences:

Section d.3.2.1 - Revenue Distribution Provisions

(a) The holders of the then outstanding shares of Series C Preferred Stock shall be entitled to a pro rata share of the net distributable profits based on all Common Stock, Nonvoting Common Stock and all Preferred Stock outstanding as a group. Distributions on the Series C Preferred Stock shall not be cumulative and no rights shall accrue to the holders of Series C Preferred Stock by reason of the fact that this Corporation may have failed to declare or pay distributions on the Series C Preferred Stock in any previous fiscal year of the Corporation, whether or not the earnings of this Corporation were sufficient to pay such distributions.

(b) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock assets shall be distributed as set forth hereby:

(i) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock senior to Series C Preferred Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Preferred Stock senior to Series C Preferred

Stock ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Preferred Stock senior to Series C Preferred Stock shall be distributed among the holders of the Series C Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled.

(ii) In the event that full cash dividends are paid to Senior Stock, but not paid or made available to the holders of all outstanding shares of Series C Preferred Stock and of any Parity Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Series C Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Series C Preferred Stock shall cumulate as provided in Subsection d.3.2.1 (c) below.

(c) If, on any Dividend Payment Date, the holders of the Series C Preferred Stock shall not have received the full dividends provided for in the other provisions of this Section d.3.2.1, then such dividends shall cumulate, whether or not earned or declared, with additional dividends thereon for each succeeding full Dividend Period during which such dividends shall remain unpaid. Unpaid dividends for any period less than a full Dividend Period shall cumulate on a day-to-day basis and shall be computed on the basis of a three hundred sixty (360) day year.

(d) So long as any shares of Series C Preferred Stock shall be outstanding, the Corporation shall not declare or pay on any Subordinate Stock any dividend whatsoever, whether in cash, property or otherwise (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock with respect to Subordinate Stock other than Common Stock, together with cash in lieu of fractional shares), nor shall the Corporation make any distribution on any Subordinate Stock, nor shall any Subordinate Stock be purchased or redeemed by the Corporation or any Subsidiary, nor shall any monies be paid or made available for a sinking fund for the purchase or redemption of any Subordinate Stock, unless all dividends to which the holders of Series C Preferred Stock shall have been entitled for all previous Dividend Periods shall have been paid or declared and a sum of money sufficient for the payment thereof set apart.

(e) Subject to Section (f) of this Section d.3.2.1, no distributions may be paid to holders of shares of Common Stock or Nonvoting Common Stock unless the holders of shares of Series C Preferred Stock participate in such distributions together with holders of shares of Common Stock and Nonvoting Common Stock to the same extent as if their shares of Series C Preferred Stock were converted into shares of Common Stock (as provided in Section d.3.2.2.3 with respect to shares of Series C Preferred Stock, on the record date for determining the holders of Common Stock and Nonvoting Common Stock entitled to such distributions).

(f) For purposes of this Section d.3.2.1, unless the context otherwise requires, distribution shall mean the transfer of cash or property without consideration, payable other than in Common Stock, Nonvoting Common Stock or the purchase or redemption of shares of this Corporation (other than repurchases of Common Stock or Nonvoting Common Stock held by employees or consultants of this Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation. Each holder of shares of Series C Preferred Stock shall be deemed to have consented, for purposes of the Nevada Statutes, to distributions made by the Corporation in connection with the repurchase of shares of Common Stock or Nonvoting Common Stock issued to or held by employees or consultants upon termination of their employment or services pursuant to agreements providing for such repurchase.

Section d.3.2.2 - Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, the holders of shares of each class of Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of the Common Stock and Nonvoting Common Stock by reason of their ownership thereof, an amount per share as may be fixed for such class (the "Preferential Amount") plus an amount equal to all accrued and unpaid distributions thereon. The Preferential Amount is one dollar ($1.00) for each share of Series C Preferred Stock.

(b) In the event the assets thus distributed among the holders of all the outstanding Series C Preferred Stock and Parity Preferred Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed as set forth hereby:

(c) If, upon the occurrence of such event, the assets thus distributed among the holders of the Senior Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Senior Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(d) If, upon the occurrence of such event, the assets thus distributed are sufficient to permit payment to Senior Stock holders of the full Preferential Amount, but insufficient to permit the payment to the holders of the Series C Preferred Stock and Parity Preferred Stock of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock and Parity Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(e) If assets remain in this Corporation after the distributions provided for in Sections (a) and (b) of this Section d.3.2.2 have been fully made, the holders of

Common Stock and Nonvoting Common Stock shall be entitled to receive, prior and in preference to any further distribution of any other of the surplus funds or assets of the Corporation to the holders of Series C Preferred Stock by reason of their ownership thereof, an amount equal to five cents ($0.05) per share (subject to adjustment for stock dividends, stock splits, stock combinations or the like). If upon the completion of the distribution required by Sections (a) and (b) of this Section d.3.2.2, the assets and funds available to be distributed among the holders of shares of Common Stock and Nonvoting Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid amounts, then the remaining assets and funds of this Corporation legally available for distribution shall be distributed ratably among the holders of the Common Stock and Nonvoting Common Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(f) If upon the completion of the distributions contemplated by Sections (a), (b) and (c) of this Section d.3.2.2, assets remain in the Corporation, the holders of shares of Series C Preferred Stock and the holders of shares of Common Stock and Nonvoting Common Stock shall participate on a pro rata basis in the distribution of all remaining assets of the Corporation legally available for distribution, with the outstanding shares of Series C Preferred Stock treated as though they have been converted into the number of shares of Common Stock, if any, into which they are convertible as of the date of such distribution.

Section d.3.2.3 - Conversion. The holders of outstanding shares of Series C Preferred Stock shall have conversion rights as follows:

(a) Incidents Causing Conversion.

(ii) Optional Conversion. There shall be no voluntary conversion rights.

(iii) Automatic Conversion. Each share of Series C Preferred Stock shall automatically be converted into such number of fully paid and non-assessable shares of Common Stock as is determined pursuant to Section (d) of this Section d.3.2.3 upon the closing of the issuance of shares following the effectiveness of a registration statement (other than a registration statement with respect to any securities offered pursuant to any employee purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive or similar plan of the Corporation) under the Securities Act of 1933, as amended.

(b) Cases Creating Automatic Conversion.

(ii) A consolidation, reorganization or merger of this Corporation with or into any other corporation or corporations (1) in which the acquiring company is a public company or (2) in which the stockholders of this Corporation immediately after the transaction own less that fifty percent (50%) of the voting power of the surviving entity;

(v) A sale, conveyance or other disposition of all or substantially all of this Corporation's property or business;

(vi) A transaction or class of related transactions in which control of this Corporation is transferred (consisting of transfer of at least fifty percent (50%) of the voting power of the Corporation to one (1) person or group of affiliated persons); or,

(vii) The Corporation files a registration statement to register its securities with the Federal Securities and Exchange Commission pursuant to the Securities Act of 1933.

(c) Mechanics of Automatic Conversion. In the event of an automatic conversion of all outstanding shares of Series C Preferred Stock pursuant to Section (a)(ii) of this Section d.3.2.3, the effective date of such conversion shall be the date of the occurrence of the event that triggered such automatic conversion. Notwithstanding the fact that such conversion shall be deemed to have taken place automatically, each holder of outstanding shares of Series C Preferred Stock so converted shall be obligated to surrender to the Corporation all certificates representing his or her shares of Series C Preferred Stock so converted, the satisfaction of which obligation shall be a condition to the Corporation's obligation to issue a certificate representing the shares of Common Stock he received upon such automatic conversion.

(d) Conversion Ratio. Each share of Series C Preferred Stock to be converted into shares of Common Stock shall be converted on the basis of a 1:1 ratio into the number of fully paid and non-assessable shares of Common Stock, with no fractional shares to be issuable upon conversion.

(e) Notices. In the event of any taking by this Corporation of a record of the holders of any class or class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Series C Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right. Any notice required by the provisions of this Section d.3.2.3. to be given to the holders of shares of Series C Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of this Corporation.

(f) Reservation of Common Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series C Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series C Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all the

outstanding shares of the Series C Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

Section d.3.2.4 - Voting Rights. The holders of the issued and outstanding shares of Series C Preferred Stock shall have no voting rights.

Section d.3.2.5 - Covenants. In addition to any other rights provided by law, so long as any Series C Preferred Stock is outstanding, the Corporation, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of such outstanding shares of each series of Series C Preferred Stock, will not:

(a) Amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or By-Laws if such action would alter adversely or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any Series C Preferred Stock, or increase or decrease the number of shares of Series C Preferred Stock authorized hereby;

(b) Pay or declare any dividend on any Subordinate Stock (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock or Nonvoting Common Stock with respect to Subordinate Stock other than Common Stock or Nonvoting Common Stock, together with cash in lieu of fractional shares and dividends not in excess of dividends paid to the Preferred Stock) while the Series C Preferred Stock remains outstanding, or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any Subordinate Stock, except from employees of the Corporation upon termination of employment or otherwise pursuant to the terms of stock purchase or option agreements providing for the repurchase of, or right of first refusal with respect to, such Subordinate Stock entered into with such employees; or

(c) Materially change the principal business of the Corporation.

Section d.3.2.6 - Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series C Preferred Stock shall not have any preferences or relative, participating, optional or other special rights, and in the Corporation's Certificate of Incorporation. The shares of Series C Preferred Stock shall have no preemptive or subscription rights.

Section d.3.2.7 - Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

Section d.3.2.8 -Severability of Provisions. If any right, preference or limitation of the Series C Preferred Stock set forth in this resolution (as such resolution may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this resolution (as so

amended) which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

Section d.3.2.9 - Status of Reacquired Shares. Shares of Series C Preferred Stock which have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Nevada) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and may be re-designated and reissued.

Section d.3.2.10 - Adjustments for Stock Splits, Dividends and Combinations. The number of shares of Series C Preferred Stock and the Series C Preferred Stock Conversion Ratio set forth in Section d.2.2.3 (d), as adjusted, shall be appropriately adjusted for any share combination or share split of, or any dividend of Series C Preferred Stock with respect to, the Series C Preferred Stock after the effective date of the Corporation's adoption of this Designation of Rights and Preferences for the Series C Preferred Stock.

Section d.3.2.11 - Common Stock Warrants. For every one (1) shares of Series C Preferred Stock purchased after the filing of these Restated Articles of Incorporation, the purchaser shall receive one (1) warrant to purchase one (1) share of the Corporation's Common Stock that is exercisable for a two (2) year period from the date of purchase. Up to 6 months (180 days) after the original date of the Series C Preferred investment, the Investor may exercise the right to purchase the warrants at $1.25 per share. If after 6 months and up to 12 months after the original Series C investment the Investor may purchase the warrants at an increased price of $1.50 per share. If after 12 months and up to 18 months after the original Series C Preferred investment, the Investor may purchase the warrants at $1.75 per share. If after 18 months and up to 24 months after the original Series C Preferred investment, the Investor may purchase the warrants at $2.00 per share. After 24 months any remaining warrants may be sold to Series C Private Placement Investors at the sole discretion of the Company. However, if the Company successfully completes an Initial Public Offering ("IPO") of its securities all warrants must be exercised at the time of the IPO or all rights to warrants will be forfeited.

SERIES D PREFERENCES

Section d.4.1 Definitions. Unless the context otherwise requires, the terms defined in this Section d.4.1 shall have, for all purposes of these Articles of Incorporation, the meanings herein specified.

Common Stock. The term "Common Stock" shall mean all shares now or hereafter authorized of any class of Common Stock of the Corporation and any other stock of the Corporation, howsoever designated, authorized after the Issue Date, which has the right (subject always to prior rights of any class or series of Preferred Stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

Conversion Ratio. The term "Conversion Ratio" shall mean the ratio per share of Common Stock used to determine the number of shares of Common Stock deliverable upon conversion of a share of the D Preferred Stock, which ratio shall initially be one (1) share of Series D Preferred Stock to one (1) share of Common Stock.

Dividend Payment Date. The term "Dividend Payment Date" shall be December 31 of each year, the day upon which non-cumulative payments shall be payable, when and as declared by the Board of Directors. Each such dividend shall be paid to the holders of record of the Series D Preferred Stock as their names appear on the share register of the Corporation on the corresponding Record Date. As used above, the term "Record Date" means, with respect to the dividends payable on December 31 of each year, the preceding December 15, or such other record date designated by the Board of Directors of the Corporation with respect to the dividend payable on such respective Dividend Payment Date.

Dividend Period. The term "Dividend Period" shall have the meaning of the annual period between consecutive Dividend Payment Dates.

Issue Date. The term "Issue Date" shall mean the date that shares of Preferred Stock are first issued by the Corporation.

Subordinate Stock. The term "Subordinate Stock" shall mean the Common Stock and any other class or series of stock of the Corporation issued after the Issue Date which have rights that are subordinate to the rights and preferences of the Series D Preferred Stock and any class or series of stock of the Corporation issued after the Issue Date not entitled to receive any assets upon the liquidation, dissolution or winding up of the affairs of the Corporation until the Series D Preferred Stock shall have received the entire amount to which such stock is entitled upon such liquidation, dissolution or winding up.

Net Distributable Profit. The term "Net Distributable Profit" shall mean, for the purposes of Section d.4.1.1 below, the difference between revenues and expenses realized by the Company according to Generally Accepted Accounting Principles that the Company, in its sole discretion, elects to distribute to interest holders. Expenses shall include any and all amounts that the Company determines, in its sole discretion, are necessary for the payment of or due provision for (a) the liabilities of the Company to all creditors, and/or (b) additional requirements for funds in connection with the Company's business.

Parity Stock. The term "Parity Stock" shall mean any other class or series of stock of the Corporation issued after the Issue Date entitled to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation on a parity with the Series D Preferred Stock.

Senior Stock. The term "Senior Stock" shall mean any class or series of stock of the Corporation issued ranking senior to the Series D Preferred Stock in respect of the right to receive dividends, and any class or series of stock of the Corporation issued ranking senior to the Series D Preferred Stock in respect of the right to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation.

Section d.4.2 Series D Preferred Stock. The Corporation is hereby authorized to issue fifteen million, seven hundred fifty thousand (15,750,000) shares of Preferred Stock, to be designated "Series Convertible Preferred Stock" and in accordance with the following preferences:

Section d.4.2.1 Revenue Distribution Provisions.

(a) The holders of the then outstanding shares of Series D Preferred Stock shall be entitled to a pro rata share of the net distributable profits based on all Common Stock, Nonvoting Common Stock and all Preferred Stock outstanding as a group. Distributions on the Series D Preferred Stock shall not be cumulative and no rights shall accrue to the holders of Series D Preferred Stock by reason of the fact that this Corporation may have failed to declare or pay distributions on the Series D Preferred Stock in any previous fiscal year of the Corporation, whether or not the earnings of this Corporation were sufficient to pay such distributions.

(b) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock assets shall be distributed as set forth hereby:

(i) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock senior to Series D Preferred Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Preferred Stock senior to Series D Preferred Stock ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Preferred Stock senior to Series D Preferred Stock shall be distributed among the holders of the Series D Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled.

(ii) In the event that full cash dividends are paid to Senior Stock, but not paid or made available to the holders of all outstanding shares of Series D Preferred Stock and of any Parity Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Series D Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Series D Preferred Stock shall cumulate as provided in Subsection d.4.2.1below.

(c) If, on any Dividend Payment Date, the holders of the Series D Preferred Stock shall not have received the full dividends provided for in the other provisions of this Section d.4.2.1, then such dividends shall cumulate, whether or not earned or declared, with additional dividends thereon for each succeeding full Dividend Period during which such dividends shall remain unpaid. Unpaid dividends for any period

less than a full Dividend Period shall cumulate on a day-to-day basis and shall be computed on the basis of a three hundred sixty (360) day year.

(d) So long as any shares of Series D Preferred Stock shall be outstanding, the Corporation shall not declare or pay on any Subordinate Stock any dividend whatsoever, whether in cash, property or otherwise (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock with respect to Subordinate Stock other than Common Stock, together with cash in lieu of fractional shares), nor shall the Corporation make any distribution on any Subordinate Stock, nor shall any Subordinate Stock be purchased or redeemed by the Corporation or any Subsidiary, nor shall any monies be paid or made available for a sinking fund for the purchase or redemption of any Subordinate Stock, unless all dividends to which the holders of Series D Preferred Stock shall have been entitled for all previous Dividend Periods shall have been paid or declared and a sum of money sufficient for the payment thereof set apart.

(e) Subject to Section (f) of this Section d.4.2.1, no distributions may be paid to holders of shares of Common Stock or Nonvoting Common Stock unless the holders of shares of Series D Preferred Stock participate in such distributions together with holders of shares of Common Stock Nonvoting Common Stock and to the same extent as if their shares of Series D Preferred Stock were converted into shares of Common Stock (as provided in Section d.4.2.3 with respect to shares of Series D Preferred Stock, on the record date for determining the holders of Common Stock entitled to such distributions).

(f) For purposes of this Section d.4.2.1, unless the context otherwise requires, distribution shall mean the transfer of cash or property without consideration, payable other than in Common Stock, Nonvoting Common Stock or the purchase or redemption of shares of this Corporation (other than repurchases of Common Stock held by employees or consultants of this Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation. Each holder of shares of Series D Preferred Stock shall be deemed to have consented, for purposes of the Nevada Statutes, to distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by employees or consultants upon termination of their employment or services pursuant to agreements providing for such repurchase.

Section d.4.2.2 Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, the holders of shares of each class of Series D Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of the Common Stock and Nonvoting Common Stock by reason of their ownership thereof, an amount per share as may be fixed for such class (the "Preferential Amount") plus an amount equal to

all accrued and unpaid distributions thereon. The Preferential Amount is one dollar ($1.00) for each share of Series D Preferred Stock.

(b) In the event the assets thus distributed among the holders of all the outstanding Series D Preferred Stock and Parity Preferred Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed as set forth hereby:

(c) If, upon the occurrence of such event, the assets thus distributed among the holders of the Senior Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Senior Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(d) If, upon the occurrence of such event, the assets thus distributed are sufficient to permit payment to Senior Stock holders of the full Preferential Amount, but insufficient to permit the payment to the holders of the Series D Preferred Stock and Parity Preferred Stock of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Series D Preferred Stock and Parity Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(e) If assets remain in this Corporation after the distributions provided for in Sections (a) and (b) of this Section d.4.2.2 have been fully made, the holders of Common Stock and Nonvoting Common Stock shall be entitled to receive, prior and in preference to any further distribution of any other of the surplus funds or assets of the Corporation to the holders of Series D referred Stock by reason of their ownership thereof, an amount equal to five cents ($0.05) per share (subject to adjustment for stock dividends, stock splits, stock combinations or the like). If upon the completion of the distribution required by Sections (a) and (b) of this Section d.4.2.2, the assets and funds available to be distributed among the holders of shares of Common Stock and Nonvoting Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid amounts, then the remaining assets and funds of this Corporation legally available for distribution shall be distributed ratably among the holders of the Common Stock and Nonvoting Common Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(f) If upon the completion of the distributions contemplated by Sections (a), (b) and (c) of this Section d.4.2.2, assets remain in the Corporation, the holders of shares of Series D Preferred Stock and the holders of shares of Common Stock and Nonvoting Common Stock shall participate on a pro rata basis in the distribution of all remaining assets of the Corporation legally available for distribution, with the outstanding shares of Series D Preferred Stock treated as though they have been converted into the number of shares of Common Stock, if any, into which they are convertible as of the date of such distribution.

Section d.4.2.3 Conversion. The holders of outstanding shares of Series D Preferred Stock shall have conversion rights as follows:

(a) Incidents Causing Conversion.

(i) Optional Conversion. There shall be no voluntary conversion rights.

(ii) Automatic Conversion. Each share of Series D Preferred Stock shall automatically be converted into such number of fully paid and non-assessable shares of Common Stock as is determined pursuant to Section (d) of this Section d.4.2.3 upon the closing of the issuance of shares following the effectiveness of a registration statement (other than a registration statement with respect to any securities offered pursuant to any employee purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive or similar plan of the Corporation) under the Securities Act of 1933, as amended.

(b) Cases Creating Automatic Conversion.

(i) A consolidation, reorganization or merger of this Corporation with or into any other corporation or corporations (1) in which the acquiring company is a public company or (2) in which the stockholders of this Corporation immediately after the transaction own less that fifty percent (50%) of the voting power of the surviving entity;

(ii) A sale, conveyance or other disposition of all or substantially all of this Corporation's property or business;

(iii) A transaction or class of related transactions in which control of this Corporation is transferred (consisting of transfer of at least fifty percent (50%) of the voting power of the Corporation to one (1) person or group of affiliated persons); or,

(iv) The Corporation files a registration statement to register its securities with the Federal Securities and Exchange Commission pursuant to the Securities Act of 1933.

(c) Mechanics of Automatic Conversion. In the event of an automatic conversion of all outstanding shares of Series D Preferred Stock pursuant to Section (a)(ii) of this Section d.4.3.3., the effective date of such conversion shall be the date of the occurrence of the event that triggered such automatic conversion. Notwithstanding the fact that such conversion shall be deemed to have taken place automatically, each holder of outstanding shares of Series D Preferred Stock so converted shall be obligated to surrender to the Corporation all certificates representing his or her shares of Series D Preferred Stock so converted, the satisfaction of which obligation shall be a condition to the Corporation's obligation to issue a certificate representing the shares of Common Stock he received upon such automatic conversion.

(d) Conversion Ratio. Each share of Series D Preferred Stock to be converted into shares of Common Stock shall be converted on the basis of a 1:1 ratio into the number of fully paid and non-assessable shares of Common Stock, with no fractional shares to be issuable upon conversion.

(e) Notices. In the event of any taking by this Corporation of a record of the holders of any class or class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Series D Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right. Any notice required by the provisions of this Section d.4.2.3. to be given to the holders of shares of Series D Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of this Corporation.

(f) Reservation of Common Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the D Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series D Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all the outstanding shares of the Series D Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

Section d.4.2.4 Voting Rights. The holders of the issued and outstanding shares of Series D Preferred Stock shall have no voting rights.

Section d.4.2.5 Covenants. In addition to any other rights provided by law, so long as any Series D Preferred Stock is outstanding, the Corporation, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of such outstanding shares of each series of Series D Preferred Stock, will not:

(a) Amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or By-Laws if such action would alter adversely or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any Series D Preferred Stock, or increase or decrease the number of shares of Series D Preferred Stock authorized hereby;

(b) Pay or declare any dividend on any Subordinate Stock (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock with respect to Subordinate Stock other

than Common Stock, together with cash in lieu of fractional shares and dividends not in excess of dividends paid to the Preferred Stock) while the Series D Preferred Stock remains outstanding, or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any Subordinate Stock, except from employees of the Corporation upon termination of employment or otherwise pursuant to the terms of stock purchase or option agreements providing for the repurchase of, or right of first refusal with respect to, such Subordinate Stock entered into with such employees; or

(c) Materially change the principal business of the Corporation.

Section d.4.2.7 Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series D Preferred Stock shall not have any preferences or relative, participating, optional or other special rights, other than those specifically set forth in these Articles (as such Articles may be amended from time to time) and in the Corporation's Articles of Incorporation. The shares of Series D Preferred Stock shall have no preemptive or subscription rights.

Section d.4.2.7 Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

Section d.4.2.8 Severability of Provisions. If any right, preference or limitation of the Series D Preferred Stock set forth in this resolution (as such resolution may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this resolution (as so amended) which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

Section d.4.2.9 Status of Reacquired Shares. Shares of Series D Preferred Stock which have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Nevada) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and may be re-designated and reissued.

Section d.4.2.10 Adjustments for Stock Splits, Dividends and Combinations. The number of shares of Series D Preferred Stock and the Series D Preferred Stock Conversion Ratio set forth in Section 4.2.3(d) of these , as adjusted, shall be appropriately adjusted for any share combination or share split of, or any dividend of Series D Preferred Stock with respect to, the Series D Preferred Stock after the effective date of the Corporation's adoption of this Designation of Rights and Preferences for the Series D Preferred Stock.

Section d.4.2.11 Common Stock Warrants. For every two (2) shares of Series D Preferred Stock purchased after the filing of these Restated Articles of Incorporation, the purchaser shall receive one (1) warrant to purchase one (1) share of the Corporation's Common Stock that is exercisable for a one (1) year period from the date of purchase. After 12 months any remaining warrants may be sold to Series D Private Placement Investors at the sole discretion of the Company. However, if the Company successfully completes an Initial Public Offering ("IPO") of

its securities all warrants must be exercised at the time of the IPO or all rights to warrants will be forfeited.

SERIES E PREFERENCES

Section d.5.1 Definitions. Unless the context otherwise requires, the terms defined in this Section d.5.1 shall have, for all purposes of these Articles of Incorporation, the meanings herein specified.

Common Stock. The term "Common Stock" shall mean all shares now or hereafter authorized of any class of Common Stock of the Corporation and any other stock of the Corporation, howsoever designated, authorized after the Issue Date, which has the right (subject always to prior rights of any class or series of Preferred Stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

Conversion Ratio. The term "Conversion Ratio" shall mean the ratio per share of Common Stock used to determine the number of shares of Common Stock deliverable upon conversion of a share of the Series E Preferred Stock, which ratio shall initially be one (1) share of Series E Preferred Stock to one (1) share of Common Stock.

Dividend Payment Date. The term "Dividend Payment Date" shall be December 31 of each year, the day upon which non-cumulative payments shall be payable, when and as declared by the Board of Directors. Each such dividend shall be paid to the holders of record of the Series E Preferred Stock as their names appear on the share register of the Corporation on the corresponding Record Date. As used above, the term "Record Date" means, with respect to the dividends payable on December 31 of each year, the preceding December 15, or such other record date designated by the Board of Directors of the Corporation with respect to the dividend payable on such respective Dividend Payment Date.

Dividend Period. The term "Dividend Period" shall have the meaning of the annual period between consecutive Dividend Payment Dates.

Issue Date. The term "Issue Date" shall mean the date that shares of Preferred Stock are first issued by the Corporation.

Subordinate Stock. The term "Subordinate Stock" shall mean the Common Stock and any other class or series of stock of the Corporation issued after the Issue Date which have rights that are subordinate to the rights and preferences of the Series E Preferred Stock and any class or series of stock of the Corporation issued after the Issue Date not entitled to receive any assets upon the liquidation, dissolution or winding up of the affairs of the Corporation until the Series E Preferred Stock shall have received the entire amount to which such stock is entitled upon such liquidation, dissolution or winding up.

Net Distributable Profit. The term "Net Distributable Profit" shall mean, for the purposes of Section d.5.1.1 below, the difference between revenues and expenses realized by the Company according to Generally Accepted Accounting Principles that the Company, in its sole discretion, elects to distribute to interest holders. Expenses shall include any and all amounts that the Company determines, in its sole discretion, are necessary for the payment of or due provision for (a) the

liabilities of the Company to all creditors, and/or (b) additional requirements for funds in connection with the Company's business.

Parity Stock. The term "Parity Stock" shall mean any other class or series of stock of the Corporation issued after the Issue Date entitled to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation on a parity with the Series E Preferred Stock.

Senior Stock. The term "Senior Stock" shall mean any class or series of stock of the Corporation issued ranking senior to the Series E Preferred Stock in respect of the right to receive dividends, and any class or series of stock of the Corporation issued ranking senior to the Series E Preferred Stock in respect of the right to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation.

Section d.5.2 Series E Preferred Stock. The Corporation is hereby authorized to issue five million, (5,000,000) shares of Preferred Stock, to be designated "Series E Convertible Preferred Stock" and in accordance with the following preferences:

Section d.4.3.1 Revenue Distribution Provisions.

(g) The holders of the then outstanding shares of Series E Preferred Stock shall be entitled to a pro rata share of the net distributable profits based on all Common Stock, Nonvoting Common Stock and all Preferred Stock outstanding as a group. Distributions on the Series E Preferred Stock shall not be cumulative and no rights shall accrue to the holders of Series E Preferred Stock by reason of the fact that this Corporation may have failed to declare or pay distributions on the Series E Preferred Stock in any previous fiscal year of the Corporation, whether or not the earnings of this Corporation were sufficient to pay such distributions.

(h) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock assets shall be distributed as set forth hereby:

(iii) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock senior to Series E Preferred Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Preferred Stock senior to Series E Preferred Stock ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Preferred Stock senior to Series E Preferred Stock shall be distributed among the holders of the Series E Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled.

(iv) In the event that full cash dividends are paid to Senior Stock, but not paid or made available to the holders of all outstanding shares of Series E Preferred Stock and of any Parity Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then

entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Series E Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Series E Preferred Stock shall cumulate as provided in Subsection d.4.3.1below.

(i) If, on any Dividend Payment Date, the holders of the Series E Preferred Stock shall not have received the full dividends provided for in the other provisions of this Section d.4.3.1, then such dividends shall cumulate, whether or not earned or declared, with additional dividends thereon for each succeeding full Dividend Period during which such dividends shall remain unpaid. Unpaid dividends for any period less than a full Dividend Period shall cumulate on a day-to-day basis and shall be computed on the basis of a three hundred sixty (360) day year.

(j) So long as any shares of Series E Preferred Stock shall be outstanding, the Corporation shall not declare or pay on any Subordinate Stock any dividend whatsoever, whether in cash, property or otherwise (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock with respect to Subordinate Stock other than Common Stock, together with cash in lieu of fractional shares), nor shall the Corporation make any distribution on any Subordinate Stock, nor shall any Subordinate Stock be purchased or redeemed by the Corporation or any Subsidiary, nor shall any monies be paid or made available for a sinking fund for the purchase or redemption of any Subordinate Stock, unless all dividends to which the holders of Series E Preferred Stock shall have been entitled for all previous Dividend Periods shall have been paid or declared and a sum of money sufficient for the payment thereof set apart.

(k) Subject to Section (f) of this Section d.4.3.1, no distributions may be paid to holders of shares of Common Stock or Nonvoting Common Stock unless the holders of shares of Series E Preferred Stock participate in such distributions together with holders of shares of Common Stock Nonvoting Common Stock and to the same extent as if their shares of Series E Preferred Stock were converted into shares of Common Stock (as provided in Section d.4.3.3 with respect to shares of Series E Preferred Stock, on the record date for determining the holders of Common Stock entitled to such distributions).

(l) For purposes of this Section d.4.3.1, unless the context otherwise requires, distribution shall mean the transfer of cash or property without consideration, payable other than in Common Stock, Nonvoting Common Stock or the purchase or redemption of shares of this Corporation (other than repurchases of Common Stock held by employees or consultants of this Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation. Each holder of shares of Series E Preferred Stock shall be deemed to have consented, for purposes of the Nevada Statutes, to distributions made by the Corporation in connection with the repurchase of shares of Common Stock

issued to or held by employees or consultants upon termination of their employment or services pursuant to agreements providing for such repurchase.

Section d.4.3.2 Liquidation Preference.

(g) In the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, the holders of shares of each class of Series E Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of the Common Stock and Nonvoting Common Stock by reason of their ownership thereof, an amount per share as may be fixed for such class (the "Preferential Amount") plus an amount equal to all accrued and unpaid distributions thereon. The Preferential Amount is one dollar ($1.00) for each share of Series E Preferred Stock.

(h) In the event the assets thus distributed among the holders of all the outstanding Series E Preferred Stock and Parity Preferred Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed as set forth hereby:

(i) If, upon the occurrence of such event, the assets thus distributed among the holders of the Senior Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Senior Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(j) If, upon the occurrence of such event, the assets thus distributed are sufficient to permit payment to Senior Stock holders of the full Preferential Amount, but insufficient to permit the payment to the holders of the Series E Preferred Stock and Parity Preferred Stock of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Series E Preferred Stock and Parity Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(k) If assets remain in this Corporation after the distributions provided for in Sections (a) and (b) of this Section d.4.3.2 have been fully made, the holders of Common Stock and Nonvoting Common Stock shall be entitled to receive, prior and in preference to any further distribution of any other of the surplus funds or assets of the Corporation to the holders of Series E referred Stock by reason of their ownership thereof, an amount equal to five cents ($0.05) per share (subject to adjustment for stock dividends, stock splits, stock combinations or the like). If upon the completion of the distribution required by Sections (a) and (b) of this Section d.4.3.2, the assets and funds available to be distributed among the holders of shares of Common Stock and Nonvoting Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid amounts, then the remaining assets and funds of this Corporation legally available for distribution shall be distributed ratably among the

holders of the Common Stock and Nonvoting Common Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(l) If upon the completion of the distributions contemplated by Sections (a), (b) and (c) of this Section d.4.3.2, assets remain in the Corporation, the holders of shares of Series E Preferred Stock and the holders of shares of Common Stock and Nonvoting Common Stock shall participate on a pro rata basis in the distribution of all remaining assets of the Corporation legally available for distribution, with the outstanding shares of Series E Preferred Stock treated as though they have been converted into the number of shares of Common Stock, if any, into which they are convertible as of the date of such distribution.

Section d.4.2.3 Conversion. The holders of outstanding shares of Series E Preferred Stock shall have conversion rights as follows:

(c) Incidents Causing Conversion.

(iii) Optional Conversion. There shall be no voluntary conversion rights.

(iv) Automatic Conversion. Each share of Series E Preferred Stock shall automatically be converted into such number of fully paid and non-assessable shares of Common Stock as is determined pursuant to Section (d) of this Section d.4.3.3 upon the closing of the issuance of shares following the effectiveness of a registration statement (other than a registration statement with respect to any securities offered pursuant to any employee purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive or similar plan of the Corporation) under the Securities Act of 1933, as amended.

(d) Cases Creating Automatic Conversion.

(v) A consolidation, reorganization or merger of this Corporation with or into any other corporation or corporations (1) in which the acquiring company is a public company or (2) in which the stockholders of this Corporation immediately after the transaction own less that fifty percent (50%) of the voting power of the surviving entity;

(vi) A sale, conveyance or other disposition of all or substantially all of this Corporation's property or business;

(vii) A transaction or class of related transactions in which control of this Corporation is transferred (consisting of transfer of at least fifty percent (50%) of the voting power of the Corporation to one (1) person or group of affiliated persons); or,

(viii) The Corporation files a registration statement to register its securities with the Federal Securities and Exchange Commission pursuant to the Securities Act of 1933.

(c) Mechanics of Automatic Conversion. In the event of an automatic conversion of all outstanding shares of Series E Preferred Stock pursuant to Section (a)(ii) of this Section d.4.3.3., the effective date of such conversion shall be the date of the occurrence of the event that triggered such automatic conversion. Notwithstanding the fact that such conversion shall be deemed to have taken place automatically, each holder of outstanding shares of Series E Preferred Stock so converted shall be obligated to surrender to the Corporation all certificates representing his or her shares of Series E Preferred Stock so converted, the satisfaction of which obligation shall be a condition to the Corporation's obligation to issue a certificate representing the shares of Common Stock he received upon such automatic conversion.

(g) Conversion Ratio. Each share of Series E Preferred Stock to be converted into shares of Common Stock shall be converted on the basis of a 1:1 ratio into the number of fully paid and non-assessable shares of Common Stock, with no fractional shares to be issuable upon conversion.

(h) Notices. In the event of any taking by this Corporation of a record of the holders of any class or class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Series E Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right. Any notice required by the provisions of this Section d.4.3.3. to be given to the holders of shares of Series E Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of this Corporation.

(i) Reservation of Common Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the E Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series E Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all the outstanding shares of the Series E Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

Section d.4.2.4 Voting Rights. The holders of the issued and outstanding shares of Series E Preferred Stock shall have no voting rights.

Section d.4.2.5 Covenants. In addition to any other rights provided by law, so long as any Series E Preferred Stock is outstanding, the Corporation, without first obtaining the affirmative vote

or written consent of the holders of not less than a majority of such outstanding shares of each series of Series E Preferred Stock, will not:

(d) Amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or By-Laws if such action would alter adversely or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any Series E Preferred Stock, or increase or decrease the number of shares of Series E Preferred Stock authorized hereby;

(e) Pay or declare any dividend on any Subordinate Stock (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock with respect to Subordinate Stock other than Common Stock, together with cash in lieu of fractional shares and dividends not in excess of dividends paid to the Preferred Stock) while the Series E Preferred Stock remains outstanding, or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any Subordinate Stock, except from employees of the Corporation upon termination of employment or otherwise pursuant to the terms of stock purchase or option agreements providing for the repurchase of, or right of first refusal with respect to, such Subordinate Stock entered into with such employees; or

(f) Materially change the principal business of the Corporation.

Section d.4.3.7 Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series E Preferred Stock shall not have any preferences or relative, participating, optional or other special rights, other than those specifically set forth in these Restated Articles (as such Restated Articles may be amended from time to time) and in the Corporation's Articles of Incorporation. The shares of Series E Preferred Stock shall have no preemptive or subscription rights.

Section d.4.3.7 Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

Section d.4.3.8 Severability of Provisions. If any right, preference or limitation of the Series E Preferred Stock set forth in this resolution (as such resolution may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this resolution (as so amended) which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

Section d.4.3.9 Status of Reacquired Shares. Shares of Series E Preferred Stock which have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Nevada) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and may be re-designated and reissued.

Section d.4.3.10 Adjustments for Stock Splits, Dividends and Combinations. The number of shares of Series E Preferred Stock and the Series E Preferred Stock Conversion Ratio set forth in Section 4.3.3(g) of these Restated Articles, as adjusted, shall be appropriately adjusted for any share combination or share split of, or any dividend of Series E Preferred Stock with respect to, the Series E Preferred Stock after the effective date of the Corporation's adoption of this Designation of Rights and Preferences for the Series E Preferred Stock.

Section d.4.3.11 Common Stock Warrants. For every one Unit of Series E Preferred Stock ($150,000) purchased after the filing of these Restated Articles of Incorporation, the purchaser shall receive a warrant to purchase up to 25,000 shares of voting Common Stock at $2.50 per share that is exercisable for a one (1) year period from the date of purchase. After 12 months any remaining warrants may be sold to Series E Private Placement Investors at the sole discretion of the Company. However, if the Company successfully completes an Initial Public Offering ("IPO") of its securities all warrants must be exercised at the time of the IPO or all rights to warrants will be forfeited.

ARTICLE VI
INDEMNIFICATION

Section 6.01. Limitation on Personal Liability. (a) To the fullest extent permitted by the laws of the State of Nevada, as the same exist or may hereinafter be amended, no director or officer of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer involving any act or omission of any such director or officer; provided, however, that nothing contained herein shall eliminate or limit the liability of a director or officer of the Corporation to the extent provided by applicable laws (i) for acts or omissions which involve intentional misconduct, fraud or knowing violation of law or (ii) for authorizing the payment of dividends in violation of Section 78.300 of the Nevada General Corporation Law. The limitation of liability provided herein shall continue after a director or officer has ceased to occupy such position as to acts or omissions occurring during such director's or officer's term or terms of office. No repeal, amendment or modification of this Article VI, whether direct or indirect, shall eliminate or reduce its effect with respect to any act or omission of a director or officer of the Corporation occurring prior to such repeal, amendment or modification.

(b) Except as may otherwise be specifically provided in these Articles of Incorporation, no provision of these Articles of Incorporation is intended by the Corporation to be construed as limiting, prohibiting, denying or abrogating any of the general or specific powers or rights conferred under the Nevada General Corporation Law upon the Corporation, upon its stockholders, bondholders and security holders, and upon its directors, officers and other corporate personnel, including, in particular, the power of the Corporation to furnish indemnification to directors and officers in the capacities defined and prescribed by the Nevada General Corporation Law and the defined and prescribed rights of said persons to indemnification as the same are conferred under the Nevada General Corporation Law. The Corporation shall, to the fullest extent permitted by the laws of the State of Nevada, including, but not limited to Section 78.751 and Section 78.7502 of the Nevada General Corporation Law, as the same may be amended and

supplemented, indemnify, defend and hold harmless any and all directors and officers of the Corporation and may, in the discretion of the board of directors, indemnify any and all other persons whom it shall have power to indemnify under said Sections or otherwise under Nevada law, from and against any and all of the expenses, claims, damages or liabilities or other matters referred to or covered by said Sections. The indemnification provisions contained in the Nevada General Corporation Law shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, resolution of stockholders or disinterested directors, or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent, both as to action in his official capacity and as to action in another capacity while holding such office, and shall inure to the benefit of the heirs, executors and administrators of such person.

ARTICLE VII
BYLAWS

In furtherance and not in limitation of the powers conferred by law, the Board is expressly authorized and empowered to adopt, amend and repeal the Bylaws of the Corporation at any regular or special meeting of the Board or by written consent, subject to the power of the stockholders of the Corporation to adopt, amend or repeal any Bylaws.

ARTICLE VIII
CERTAIN NEVADA LAW PROVISIONS

Section 8.01. Business Combination Provisions. The Corporation hereby expressly elects not to be governed by Section 411 to Section 444 of the Nevada General Corporation Law (NRS 78.411 to 78.444), inclusive, or any successor provisions thereto.

Section 8.02. Control Share Provisions. The provisions of Section 378 to 3793 of the Nevada General Corporation Law (NRS 78.378 to 78.3793), or any successor provisions thereto, shall not apply to the Corporation or to any acquisition of a controlling interest by any current or future holder of Common Stock, Nonvoting Common Stock or Preferred Stock of the Corporation.

ARTICLE IX
AMENDMENTS

The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, this Ninth Amended and Restated Articles of Incorporation is hereby executed on behalf of the corporation by the undersigned officer this 24th day of February 2021.

Electronic Caregiver, Inc.

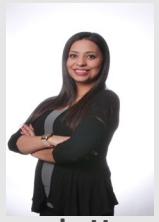
By: _____

Anthony Dohrmann, CEO

ECG Leadership Team 2022



Jen Ross
Director of Care Partner Operations



Amanda Herrera
Executive Administrative Assistant



Jan Hart
Digital Marketing Director



Randall Frye
Controller



Albert Parra
Chief Human Resources Officer



Tim Washburn
Chief Clinical Officer



Tony Dohrmann
Chief Executive Officer



Joe Baffoe
President



Dave Keeley
Chief Technology Officer



Carol Noel
Vice President



Abel Salcido
Deputy Chief Technology Officer



Stephanie Guadian
Public Relations Director



Alan Legarreta
Graphic Design Director



Jorge Sanchez
Chief Financial Officer



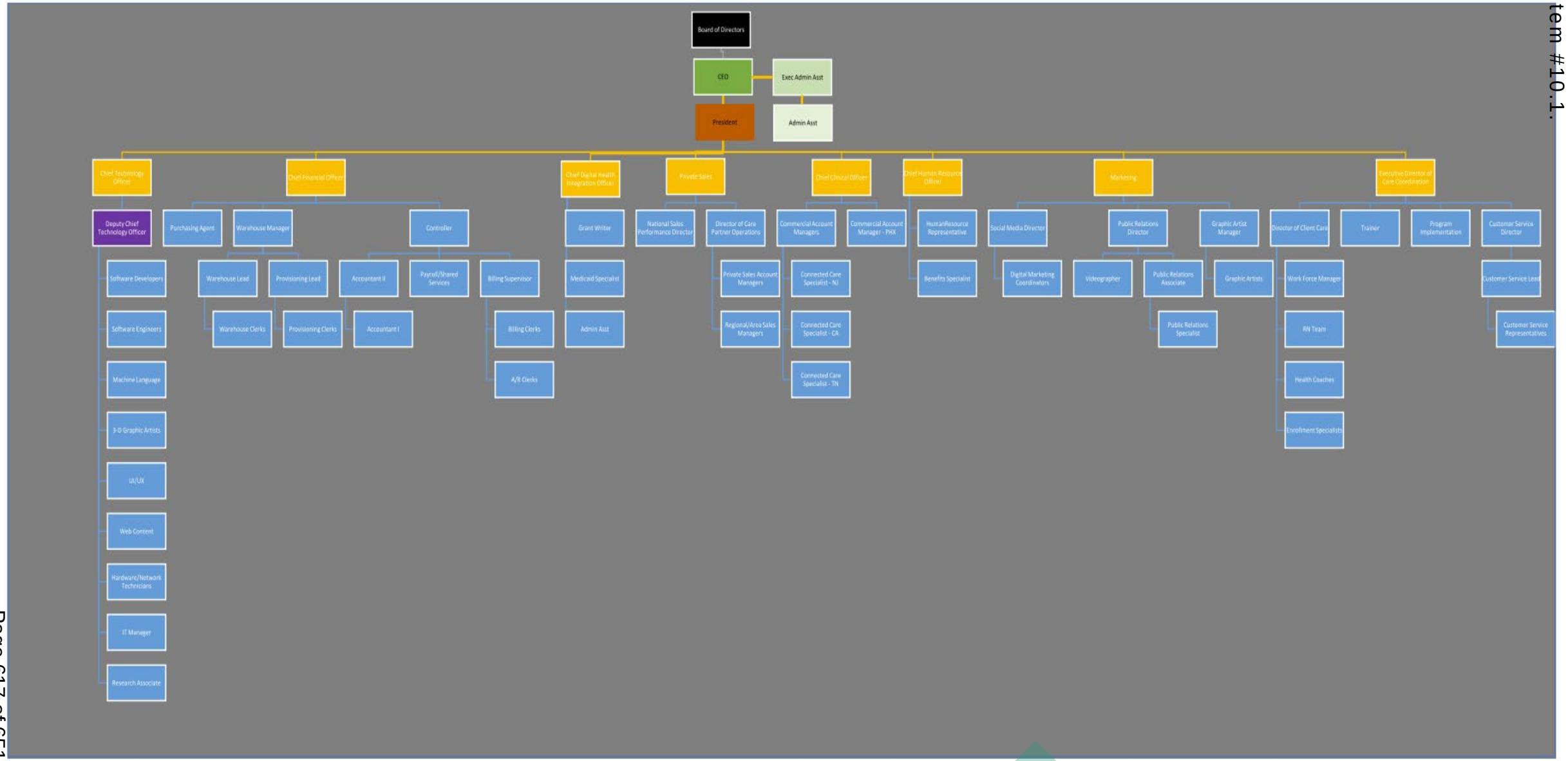
Mark Francis
Chief Digital Health Integration Officer



John Munoz
Executive Director of Care Coordination

Mark Sullivan
Clinical Coordinator

electronic caregiver



ECG LEDA Job Creation Worksheet

2022 Application

ECG's LEDA award will facilitate ECG's purchase, capital improvement, build-out and renovation of the Las Cruces Tower building. This acquisition and development project will enable ECG to remain in downtown Las Cruces and grow the business within the existing physical infrastructure – keeping jobs locally and supporting the economic diversification of Las Cruces' downtown core.

Plans are to hire 770 individuals through end of 2026. An overview of hiring plans and timing are noted in the worksheet below. Please note that nearly all jobs will be filled locally. If we do recruit from outside the area, we will be looking to have the new staff work out of Las Cruces. In the table below, we indicate which jobs are anticipated to be filled locally (L), filled by transfer from other facilities (T), or recruit from outside the COMMUNITY (R). BTW – to help recruit and retain local talent, we are developing a telehealth certificate program with NMSU to be offered through the NMSU On Demand program. We are also in discussions with BCOM of more collaboration through the residency and physician training programs. We eagerly welcome other opportunities to strengthen the local employment base through partnership with other community organizations.

Number of new full-time (FT) employees to be hired each year

Year	Number of new FT employees	Source: local (L), transfer (T), recruit (R)
1	50	90%+ local (L)
2	100	90%+ local (L)
3	175	90%+ local (L)
4	220	90%+ local (L)
5	225	90%+ local (L)
	770	90%+ local (L) ECG's intent is to build jobs in New Mexico, mostly Las Cruces and Dona Ana County; individuals transferred (T) or recruited (R) will be encouraged to relocate to the state/region.

To build the business, job retention through robust training programs, upskilling the workforce, and career pathways are key elements of the company's plans. ECG plans to continue to work closely with both NMEDD and the City of Las Cruces via the JTIP and WagePlus programs. These programs provide a foundation for well developed job classifications, training plans, tracking, and auditing. We have seen that such a structure leads to high retention and high employee satisfaction.

While the exact hiring cadence for the new jobs will vary based upon demands of the business, an overview of the hiring plans and types of jobs, wages, etc. can be found in the table below.

Job Title	Estimated Pay Scale (hourly)	Number of Jobs Created		
		Year 1	Year 2	Year 3
Clinical Triage Specialist	$16 – 26	30	26	25
Health Coach	$20 – 28	20	40	35
Care Coordinator (RN)	$28 – 44		5	10
Project Manager	$28 – 42		5	5
Program Director	$34 – 64		3	5
IT Support Specialist	$17 – 32		3	10
Financial Analyst/Controller/Biller	$16 – 38		4	10
SW Developer	$28 – 78		4	20
QA/Testing Engineer	$28 – 64		2	10
Operations/Distribution/Shipping Specialist	$16 – 28		4	20
Commercial Account Managers	$16 - 32		4	10
EMTs	$24 - 46			15
		50	100	175

The above table is for reference purposed only; actual hiring plan TBD.

The below table provides an estimated average salary for the combined new employees. This data is summarized from the EIA Data Collection Form which ECG has submitted. FYI: Benefit rate for all employers is 35%.

Year	Average Salary
1	$ 47,000
2	$ 48,645
3	$ 50,348
4	$ 52,110
5	$ 53,934

Total new payroll annually

Year	Number of new hires	Average Salary	Annual New Payroll
1	50	$ 47,000	$ 2,350,000
2	100	$ 48,645	$ 4,864,500
3	175	$ 50,348	$ 8,810,900
4	220	$ 52,110	$ 11,464,200
5	225	$ 53,934	$12,135,150

Thank you!

*NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AUTHORIZATION FOR EXAMINATION AND RELEASE OF INFORMATION

Electronic Caregiver, Inc. hereby grants permission to the New Mexico Economic Development Department to conduct a review, full disclosure, and release of any and all information authorized pursuant to federal and state law. The purpose for obtaining and examining the information is to construct a record of the company's personal and professional history, including credit history, to ensure it meet the requirements that the New Mexico Economic Development Department has established for potential recipients of State funds. The company understands an investigation will be conducted by the New Mexico Economic Development Department, the New Mexico Department of Public Safety, or their contractors, and the results of the investigation will only be supplied to the New Mexico Economic Development Department.

Electronic Caregiver, Inc. hereby grants the New Mexico Economic Development Department permission to obtain any information in its background pertaining to any credit (to include obtaining a copy of a commercial credit report), education, bankruptcy, investigation, arrest and/or conviction of it or its principals in any criminal or civil matter. The company also authorizes an employee of the New Mexico Economic Development Department, as its authorized representative, to obtain from the New Mexico Taxation and Revenue Department and/or the Department of Workforce Solutions any tax information that is in any way related to a company Electronic Caregiver Inc. owns or has invested in. Electronic Caregiver, Inc. hereby directs you to release such information upon the request of this bearer. Electronic Caregiver, Inc. hereby releases you as a custodian of such records for any criminal justice, law enforcement or court agency, including its officers and employees, or related personnel, both individually and collectively, from any and all liability for damages of whatever kind, that may at any time result to the New Mexico Economic Development Department or the State of New Mexico because of compliance with this authorization and request to release information; or any attempt to comply with it.

1. The information reviewed, disclosed, and/or released may be used by the New Mexico Economic Development Department for any lawful purpose and/or to determine the company's suitability to receive funds from the State of New Mexico.

2. Electric Caregiver, Inc. hereby releases the providers and users of the information collected pursuant to this authorization from any liability under state or federal privacy laws and further release the New Mexico Economic Development Department, its contractors, agents, and/or employees from any liability which may be incurred as a result of the collection and use of information.

3. Electronic Caregiver, Inc., understands that it may revoke this authorization in writing at any time.

FULL NAME: Anthony Dohrmann

SIGNATURE: _____

TITLE: CEO

COMPANY: Electronic Caregiver, Inc.

The above named certifies that they are authorized to commit to this release on behalf of the company identified.

Please provide below information if company is a sole proprietorship:

SSN: _____

DOB: _____

DATE: 07/08/2022

**** This Document is only valid if notarized***

Scribed and sworn to me on this 8TH day of 2022, of Dona Ana County, New Mexico

Signed Amanda R Herrera

My Commission expires: 10/08/2023

Notary Public

OFFICIAL SEAL
Amanda Renee Herrera
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 10/8/2023

Print Close

Attachment "A"

Thursday, July 14, 2022

Employer Account Number: 10002398 **Employer Name: SameDay Security, Inc.** **Claims Response Method: Email**
DBA Name: **TPA: 500000657**

Employment and Wage Detail Submission History Search

From: (mm/dd/yyyy)
(mm/dd/yyyy)
To: (mm/dd/yyyy)
(mm/dd/yyyy)
Confirmation#:
Submission Type: All
Quarter: January, February, March (Q1)
Year: 2022

Search Results

Submission Date	Year	Qtr	Filing	Method	Confirmation Number	SSNs	Total UI Gross Wages	NM Withholding	WC Fees	Month 1	Month 2	Month 3	Status	Record Errors	Submitter
5/9/2022	2022	1	Original	File Upload		0	$0.00	$0.00	$0.00				Rejected	errors	jsanchez84
5/9/2022	2022	1	Original	File Upload	10002398_ 050922180209	261	$2,093,296.49	$118,475.98	$1,122.30	161	175	225	Processed		jsanchez84

Michelle Lujan Grisham • Governor
Alicia J. Keyes • Cabinet Secretary

Exhibit C – LEDA Application

Affirmation of officer of Company

Declaration of Electronic Caregiver, Inc. **Officer**

I, Anthony Dohrmann, declare as follows:

I am CEO/Owner for Electronic Caregiver, Inc. and I have been employed in this capacity since_____. Except where otherwise noted, I have personal knowledge of the facts set forth in this declaration.

Date: 5/11/2021

I declare under penalty of perjury that the foregoing is true and correct.

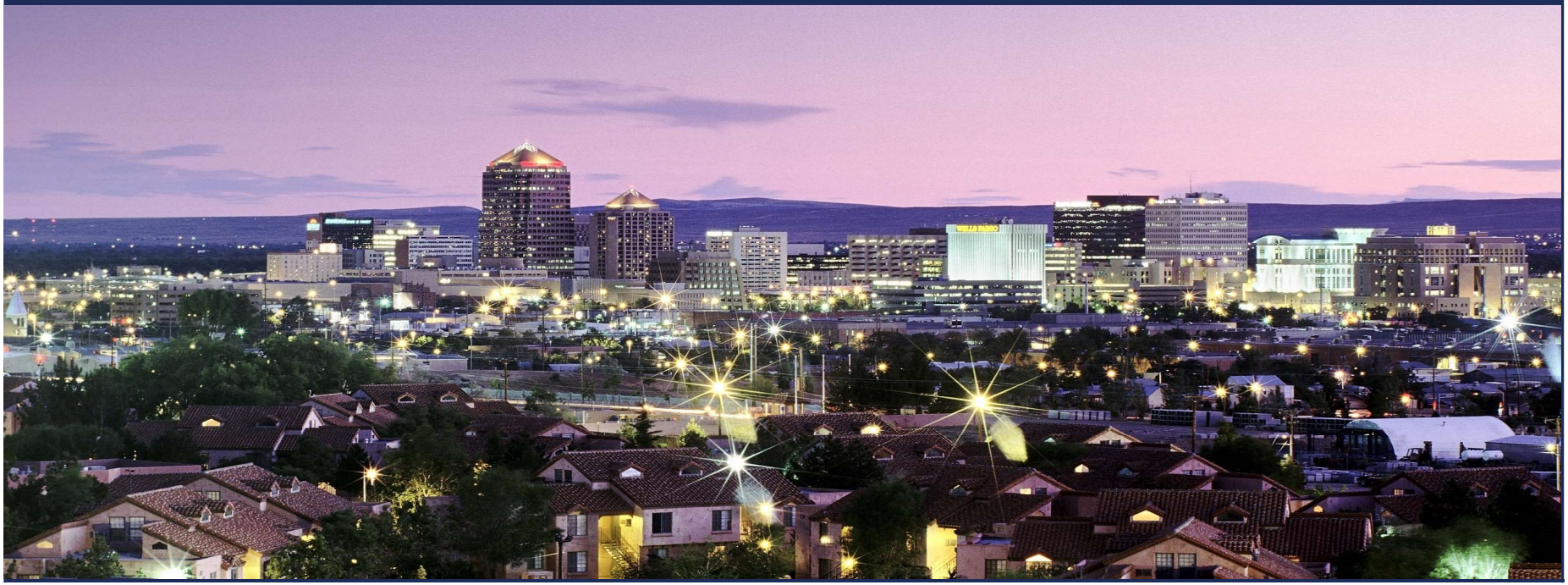
Name
Job Title
Name of Company

EDD Economic Development Department

4/21/2022

FISCAL IMPACT ANALYSIS AND ECONOMIC IMPACT OF THE EXPANSION OF ECG

Prepared by:
New Mexico Economic Development Department
Joseph Montoya Building
1100 S. St. Francis Drive
Santa Fe, New Mexico 87505





Purpose and Limitations:

This report and analysis, provided by the New Mexico Economic Development Department, relies on prospective estimates of business activity. These estimates, which are provided by the company, may not be realized due to unforeseen events that are outside the control of the company and unknown to the New Mexico Economic Development Department.

The New Mexico Economic Development Department made reasonable efforts to ensure that the estimates provided by the company, are realistic estimates of future activity.

The model was created by the New Mexico Economic Development Economists and used assumptions to generate the final report. The report and analysis provided by the New Mexico Economic Development Department is not a guarantee that any of the estimates or results contained in this report will actually be achieved.

Introduction:

This report and analysis presents the results of an economic impact analysis performed using a model developed by the New Mexico Economic Development Department. The report estimates the impact that a potential project may have on the state and local economies and estimates the costs and benefits for the state and local economies over a 10-year period. The report and analysis uses RIMS II Multipliers produced by the U.S. Bureau of Economic Analysis (BEA).

Most projects produce a growth in population and/or a growth in the workforce in a City, County and the State of New Mexico. All growth comes at a cost, the additional economic activity and population growth stimulated by the project will generate additional costs in terms of providing basic infrastructure (roads and utilities) and public services (including public safety and schools). For example, if the applicant hires employees from outside the State, County and City, those workers who end up relocating their residence to within one or all of those areas, the population for which the government must provide services also increases. The costs associated with the expansion are broken down into two categories: 1) New residents to the State, County and City. 2) New Mexican residents hired to work for the company. The analysis assumes that all workers will live in the area of the expansion.

Description of the Company:

Electronic Caregiver is a privately held, 11-year-old digital health technology and services company headquartered in Las Cruces, NM. ECG's mission is to design and deliver innovative, impactful telehealth products and services that bridge the chasm between the doctor's office and patient's home to improve outcomes, expand access, and optimize resource allocation. The company's solutions are available through health care organizations, physician practices, care management firms, homecare agencies, and senior housing providers to deliver hospital-at-home, chronic care management, and remote patient monitoring programs.

ECG has been growing revenue and patient subscribers over the past three years. In the wake of COVID, demand for ECG's telehealth products increased significantly as providers needed to adopt technology and solutions which empowered care-at-a-distance with their patients and the federal government expanded reimbursement coverage for telehealth. In the aftermath, the company signed contracts with 20 health care organizations (HCO) and has been approved to provide services under Medicaid in 8 states. Today, 85% of ECG's business is from reimbursement while 15% is from private pay customers (senior housing providers, home care agencies, direct consumer purchase). The revenue growth is based upon accelerating adoption amongst customers, diversified product offerings, and service expansion into clinical triage and health coaching. The clinical triage and health coaching services are the basis of the LEDA application.

Description of the Project:

Historically, ECG provided equipment used to communicate with a patient in her home as well as to capture vital sign measurements such as blood pressure, blood glucose, weight, and heart rate. This data was collected in the context of a care plan and sent to health providers to manage patients outside of the clinic. The identification of the eligible patient, enrollment of the patient into services, and health coaching or care coordination was conducted by the providers or a 3rd party. Based upon the quality of services provided by ECG, recently 3 major HCO partners [with over 2 million Medicaid lives under management] have contracted with ECG to provide the enrollment and health coaching services to 87,000 of their patients. These initial contracts [value in excess of $19 million] are the basis of an expansion of staff and facilities to establish a Clinical Triage & Telehealth Services Center. Upon demonstrated success, ECG has an MOU to extend the services to the remainder of the patient population.

To fulfill the initial contracts, ECG will be hiring clinical triage specialists, health coaches, care coordinators, project managers, and a program manager. In addition, support staff across admin, accounting, IT, and finance will be expanded. NMEDD, City of Las Cruces, and MVEDA have awarded ECG $1.6 million in JTIP and Wage + funding to support the hiring, training and retention of 120 new employees.

In addition, to support the new hires and new business line, ECG is seeking to acquire and build-out a facility. The company has been approached by parties in New Mexico and Texas to locate the new business in various locations and facilities. After assessing various scenarios, the preferred option is to acquire the building where the company is currently located in downtown Las Cruces. Doing so would result in the least business disruption while also fulfilling the vision of company executives to build jobs and expand the business to contribute to economic expansion within the Dona Ana County region.


Total Impacts

Fiscal Impact of Existing and Expanded Operations Over the Next Ten Years

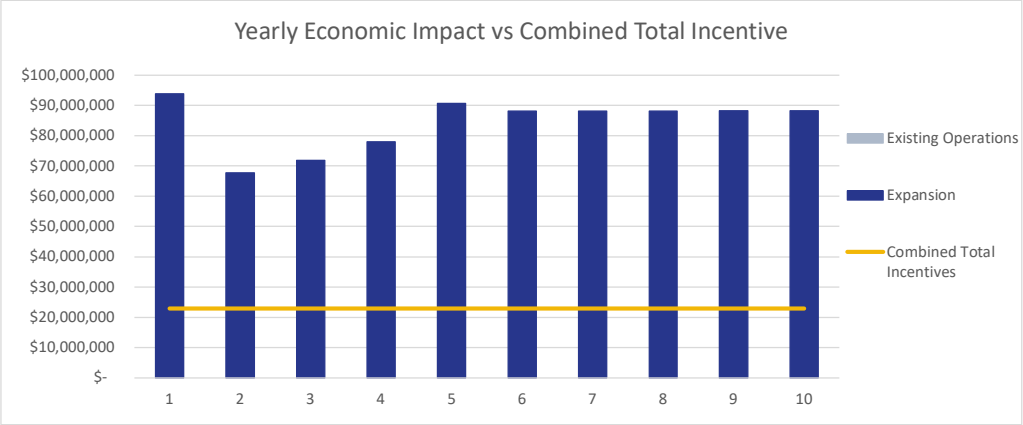
	Cumulative Net Benefits			
	Existing Operations	Expansion	Existing & Expanded Operations	Present Value of Net Benefits*
State of New Mexico	$ -	$ 37,464,904	$ 37,464,904	$ 29,742,776
County	$ -	$ 5,172,119	$ 5,172,119	$ 4,061,135
City	$ -	$ 6,984,706	$ 6,984,706	$ 5,637,407
School District	$ -	$ 100,210	$ 100,210	$ 80,605
Special Taxing District	$ -	$ 20,100	$ 20,100	$ 16,168
Total	**$ -**	**$ 49,742,041**	**$ 49,742,041**	**$ 39,538,090**

* The Present Value of Net Benefits expresses the future stream of net benefits received over several years as a single value in today's dollars. Today's dollar and a dollar to be received at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. This analysis uses a discount rate of 5% to make the dollars comparable.

** In the cumulative net benefits of the existing and expanded operations for the State of New Mexico, corporate income tax has been removed from the existing operations total to avoid double counting.

Total Economic Impact

	Total
Estimated Economic Impact Over 10 Years:	$ 842,973,661
Combined Total Incentive Over 10 Years:	$ 22,923,761
Economic Impact Rate of Return:	3,577%

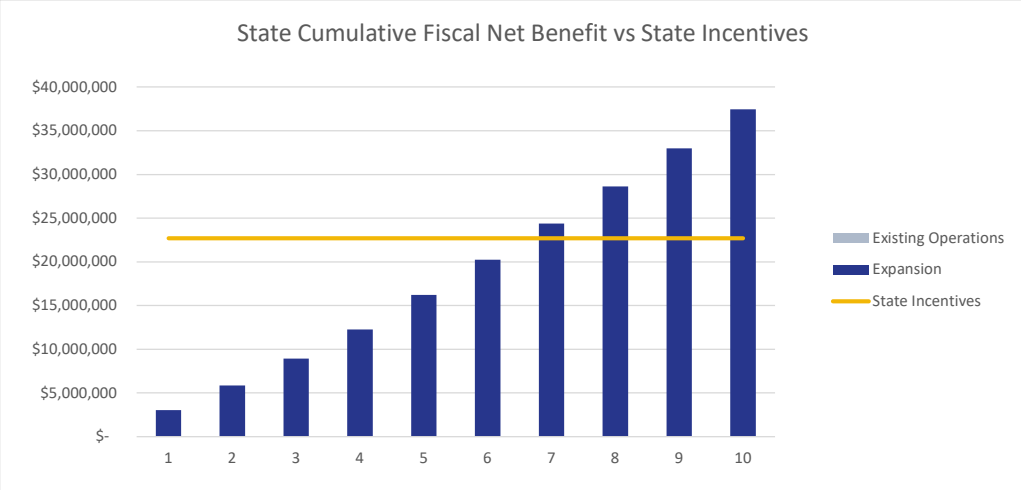


Workers and New Residents over 10 years

	Direct	Indirect and Induced
Number of Jobs Created:	770	715
Estimated Number of Construction Workers:	66	
Estimated Number of New Residents to the State:	116	
Estimated Number of New Residents to the County:	116	
Estimated Number of New Residents to the City:	116	

State Impacts





Incentives

Total State Incentive:	$	22,688,761
State Incentive Per Job:	$	29,466

Combined Payback and Return

State Payback Period Combined:	6.59	Years
State Rate of Return Combined:	31%	

Expansion Only Payback and Return

State Payback Period Expansion:	6.59	Years
State Rate of Return Expansion:	31%	

State Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

State Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 3,164,619	$ 132,067	$ 3,032,553	$ 3,032,553
2	$ 2,975,457	$ 135,038	$ 2,840,418	$ 5,872,971
3	$ 3,201,303	$ 138,077	$ 3,063,226	$ 8,936,197
4	$ 3,489,424	$ 141,184	$ 3,348,240	$ 12,284,437
5	$ 4,081,456	$ 144,360	$ 3,937,096	$ 16,221,533
6	$ 4,181,002	$ 147,608	$ 4,033,394	$ 20,254,926
7	$ 4,288,278	$ 150,929	$ 4,137,348	$ 24,392,275
8	$ 4,399,250	$ 154,325	$ 4,244,924	$ 28,637,199
9	$ 4,514,047	$ 157,798	$ 4,356,250	$ 32,993,449
10	$ 4,632,804	$ 161,348	$ 4,471,456	$ 37,464,904

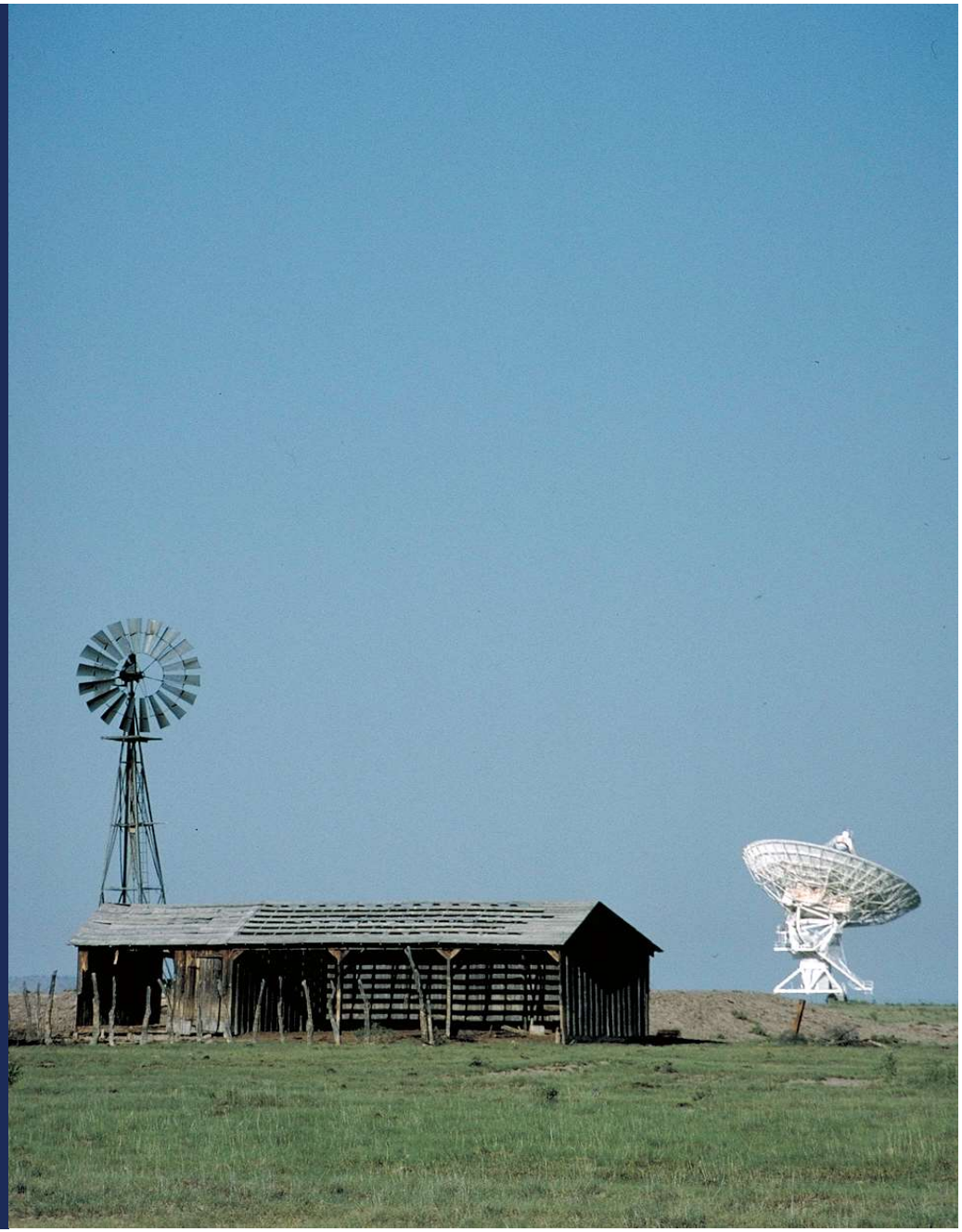
State Combined Net Benefits

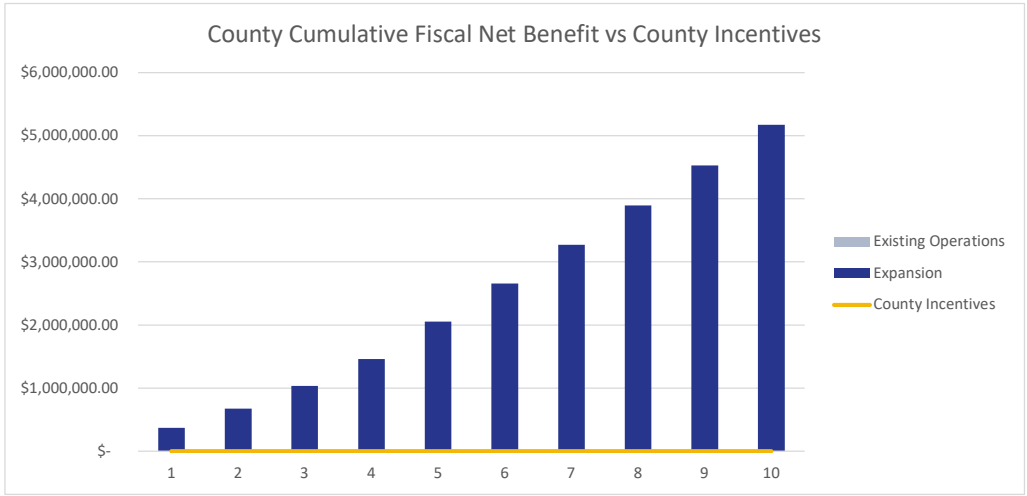
Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 3,164,619	$ 132,067	$ 3,032,553	$ 3,032,553
2	$ 2,975,457	$ 135,038	$ 2,840,418	$ 5,872,971
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7	$ 4,288,278	$ 150,929	$ 4,137,348	$ 24,392,275
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9	$ 4,514,047	$ 157,798	$ 4,356,250	$ 32,993,449
10	$ 4,632,804	$ 161,348	$ 4,471,456	$ 37,464,904

State Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue			
	Gross Receipt Taxes	$	16,184,973
	Personal Income Taxes	$	20,457,483
	Corporate Income Taxes	$	-
	Misc. Taxes and Revenue	$	2,285,183
	Subtotal of Benefits	**$**	**38,927,640**
Costs			
	Costs	$	1,462,735
	Subtotal of Costs	**$**	**1,462,735**
Net Benefits			
	Net Benefits	**$**	**37,464,904**
	Present Value	**$**	**29,742,776**

County Impacts





Incentives

Total County Incentive:	$	-
County Incentive Per Job:	$	-

Combined Payback and Return

County Payback Period Combined:	-	Years
County Rate of Return Combined:	N/A	

Expansion Only Payback and Return

County Payback Period Expansion:	-	Years
County Rate of Return Expansion:	N/A	

County Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

County Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 383,682	$ 15,219	$ 368,463	$ 368,463
2	$ 323,320	$ 15,562	$ 307,758	$ 676,221
3	$ 374,317	$ 15,912	$ 358,406	$ 1,034,627
4	$ 444,680	$ 16,270	$ 428,410	$ 1,463,037
5	$ 611,552	$ 16,636	$ 594,916	$ 2,057,953
6	$ 620,115	$ 17,010	$ 603,105	$ 2,661,059
7	$ 630,020	$ 17,393	$ 612,627	$ 3,273,686
8	$ 640,269	$ 17,784	$ 622,485	$ 3,896,171
9	$ 650,875	$ 18,184	$ 632,691	$ 4,528,862
10	$ 661,851	$ 18,593	$ 643,258	$ 5,172,119

County Combined Net Benefits

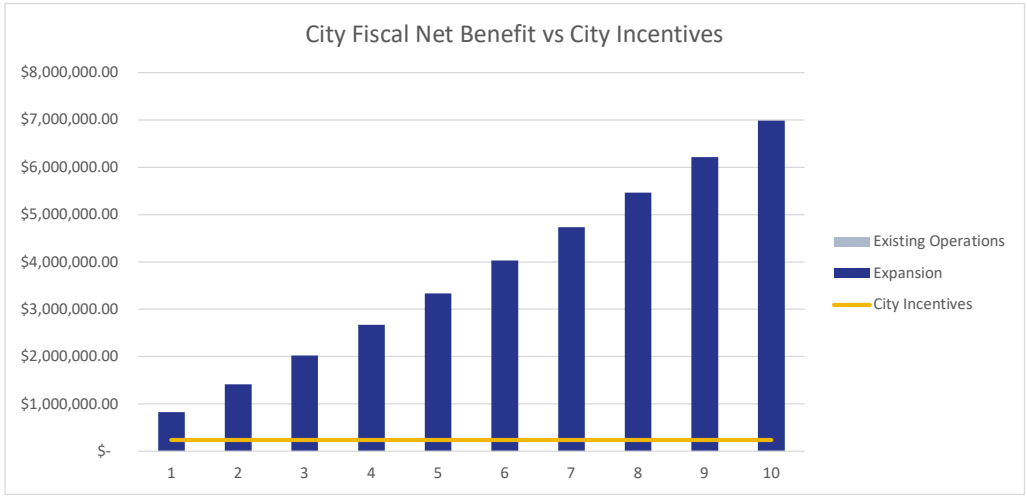
Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 383,682	$ 15,219	$ 368,463	$ 368,463
2	$ 323,320	$ 15,562	$ 307,758	$ 676,221
3	$ 374,317	$ 15,912	$ 358,406	$ 1,034,627
4	$ 444,680	$ 16,270	$ 428,410	$ 1,463,037
5	$ 611,552	$ 16,636	$ 594,916	$ 2,057,953
6	$ 620,115	$ 17,010	$ 603,105	$ 2,661,059
7	$ 630,020	$ 17,393	$ 612,627	$ 3,273,686
8	$ 640,269	$ 17,784	$ 622,485	$ 3,896,171
9	$ 650,875	$ 18,184	$ 632,691	$ 4,528,862
10	$ 661,851	$ 18,593	$ 643,258	$ 5,172,119

County Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue			
	Gross Receipt Taxes	$	5,187,491
	Misc. Taxes and Revenue	$	59,278
	Property Taxes	$	93,913
	Subtotal of Benefits	**$**	**5,340,682**
Costs			
	Costs	$	168,562
	Subtotal of Costs	**$**	**168,562**
Net Benefits			
	Net Benefits	**$**	**5,172,119**
	Present Value	**$**	**4,061,135**

City Impacts





Incentives

Total City Incentive:	$	235,000
City Incentive Per Job:	$	305

Combined Payback and Return

City Payback Period Combined:	0.28	Years
City Rate of Return Combined:	2299%	

Expansion Only Payback and Return

City Payback Period Expansion:	0.28	Years
City Rate of Return Expansion:	2299%	

City Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

City Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 961,617	$ 136,746	$ 824,870	$ 824,870
2	$ 727,836	$ 139,777	$ 588,059	$ 1,412,929
3	$ 756,164	$ 142,873	$ 613,291	$ 2,026,220
4	$ 787,577	$ 146,029	$ 641,548	$ 2,667,768
5	$ 820,530	$ 149,244	$ 671,286	$ 3,339,054
6	$ 840,289	$ 152,517	$ 687,772	$ 4,026,826
7	$ 863,453	$ 155,846	$ 707,607	$ 4,734,433
8	$ 887,499	$ 159,231	$ 728,268	$ 5,462,701
9	$ 912,458	$ 162,667	$ 749,792	$ 6,212,493
10	$ 938,364	$ 166,151	$ 772,213	$ 6,984,706

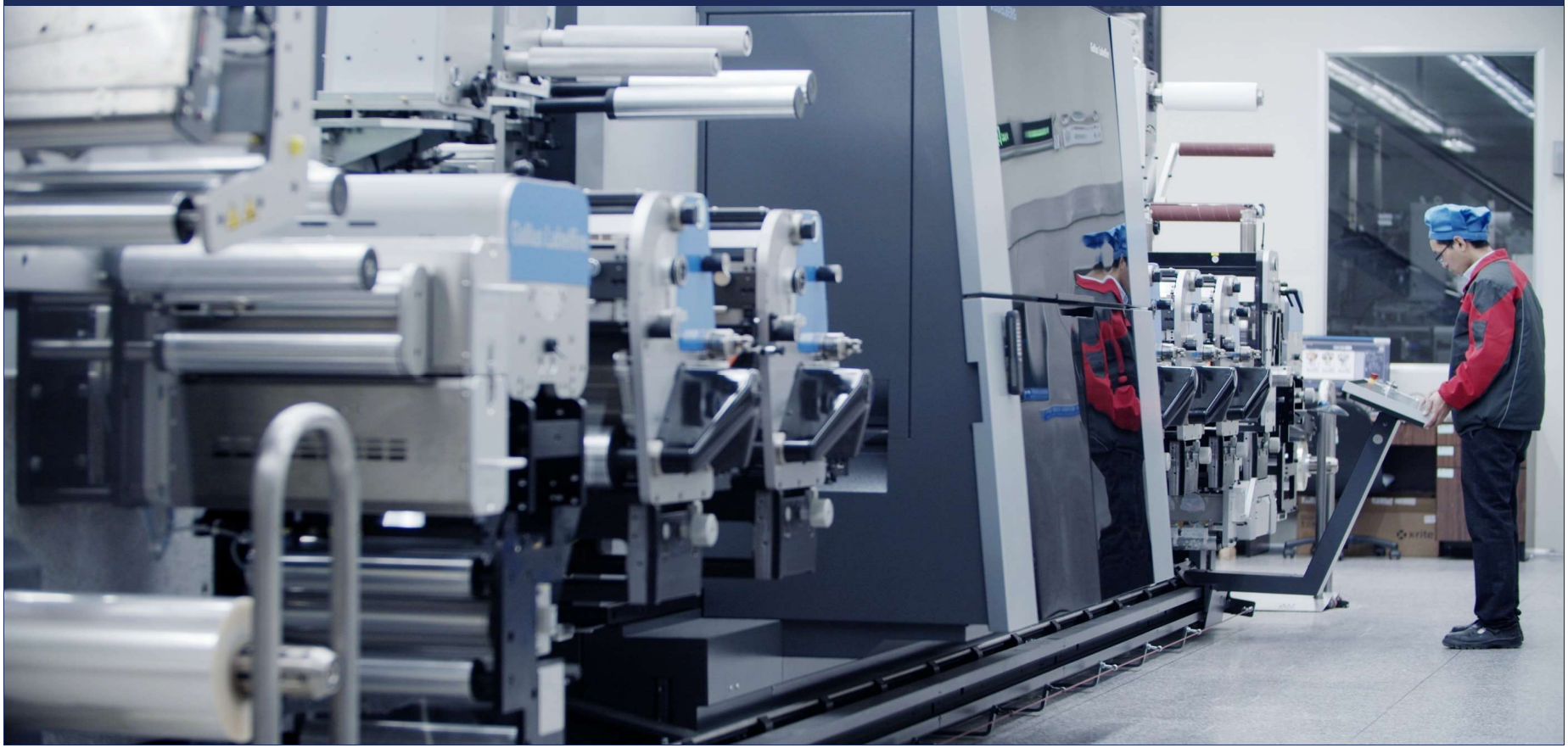
City Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 961,617	$ 136,746	$ 824,870	$ 824,870
2	$ 727,836	$ 139,777	$ 588,059	$ 1,412,929
3	$ 756,164	$ 142,873	$ 613,291	$ 2,026,220
4	$ 787,577	$ 146,029	$ 641,548	$ 2,667,768
5	$ 820,530	$ 149,244	$ 671,286	$ 3,339,054
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7	$ 863,453	$ 155,846	$ 707,607	$ 4,734,433
8	$ 887,499	$ 159,231	$ 728,268	$ 5,462,701
9	$ 912,458	$ 162,667	$ 749,792	$ 6,212,493
10	$ 938,364	$ 166,151	$ 772,213	$ 6,984,706

City Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue			
	Gross Receipt Taxes	$	7,566,260
	Misc. Taxes and Revenue	$	453,499
	Property Taxes	$	476,028
	Subtotal of Benefits	**$**	**8,495,787**
Costs			
	Costs	$	1,511,080
	Subtotal of Costs	**$**	**1,511,080**
Net Benefits			
	Net Benefits	**$**	**6,984,706**
	Present Value	**$**	**5,637,407**

Special Taxing District and Public Schools



Special Taxing District

Special Taxing District Net Benefits of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

Special District Net Benefits of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 1,836	$ -	$ 1,836	$ 1,836
2	$ 1,872	$ -	$ 1,872	$ 3,708
3	$ 1,910	$ -	$ 1,910	$ 5,618
4	$ 1,948	$ -	$ 1,948	$ 7,566
5	$ 1,987	$ -	$ 1,987	$ 9,553
6	$ 2,027	$ -	$ 2,027	$ 11,580
7	$ 2,067	$ -	$ 2,067	$ 13,647
8	$ 2,109	$ -	$ 2,109	$ 15,756
9	$ 2,151	$ -	$ 2,151	$ 17,907
10	$ 2,194	$ -	$ 2,194	$ 20,100

Special District Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 1,836	$ -	$ 1,836	$ 1,836
2	$ 1,872	$ -	$ 1,872	$ 3,708
3	$ 1,910	$ -	$ 1,910	$ 5,618
4	$ 1,948	$ -	$ 1,948	$ 7,566
5	$ 1,987	$ -	$ 1,987	$ 9,553
6	$ 2,027	$ -	$ 2,027	$ 11,580
7	$ 2,067	$ -	$ 2,067	$ 13,647
8	$ 2,109	$ -	$ 2,109	$ 15,756
9	$ 2,151	$ -	$ 2,151	$ 17,907
10	$ 2,194	$ -	$ 2,194	$ 20,100

Public Schools

Public Schools Net Benefits of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

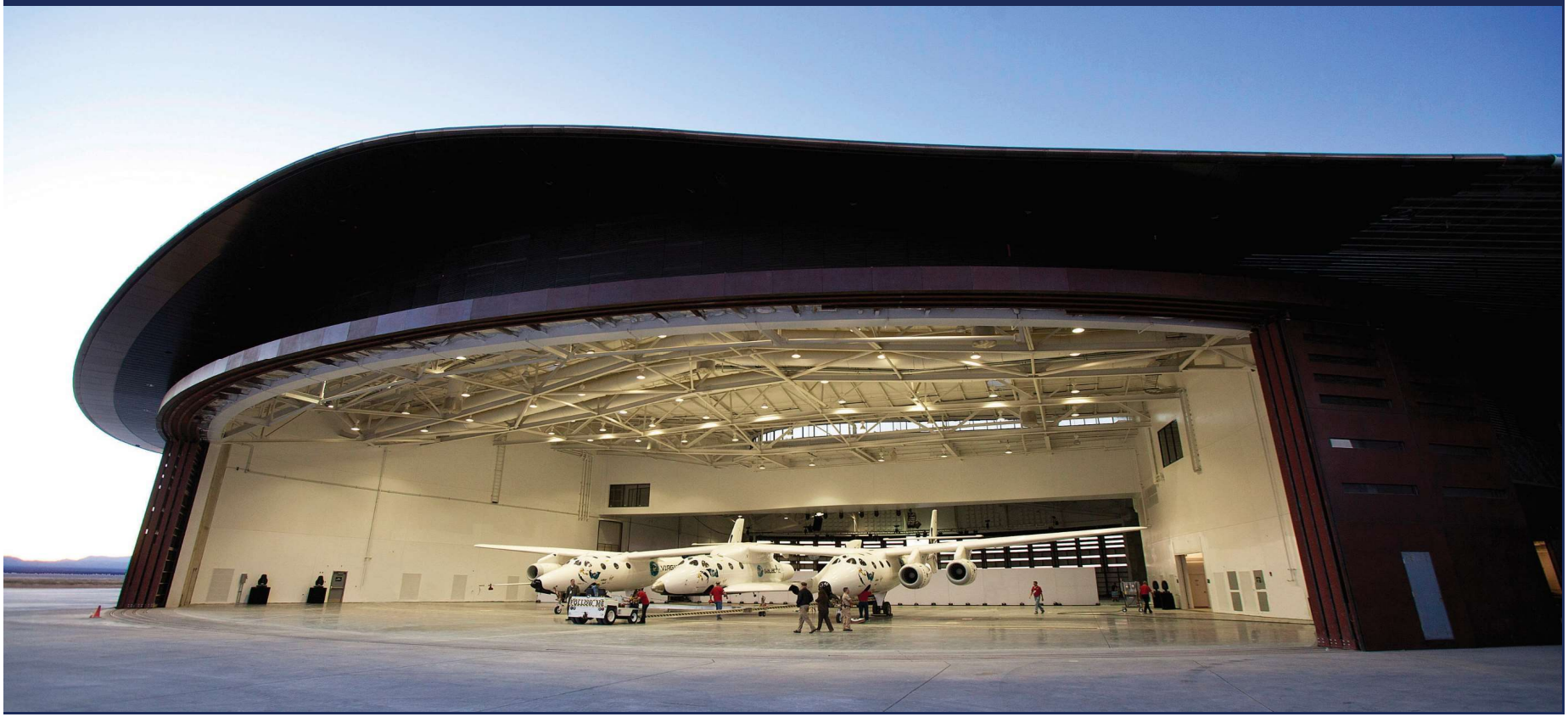
Public Schools Net Benefits of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 9,152	$ -	$ 9,152	$ 9,152
2	$ 9,335	$ -	$ 9,335	$ 18,487
3	$ 9,522	$ -	$ 9,522	$ 28,008
4	$ 9,712	$ -	$ 9,712	$ 37,720
5	$ 9,906	$ -	$ 9,906	$ 47,626
6	$ 10,104	$ -	$ 10,104	$ 57,731
7	$ 10,306	$ -	$ 10,306	$ 68,037
8	$ 10,513	$ -	$ 10,513	$ 78,550
9	$ 10,723	$ -	$ 10,723	$ 89,273
10	$ 10,937	$ -	$ 10,937	$ 100,210

Public Schools Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 9,152	$ -	$ 9,152	$ 9,152
2	$ 9,335	$ -	$ 9,335	$ 18,487
3	$ 9,522	$ -	$ 9,522	$ 28,008
4	$ 9,712	$ -	$ 9,712	$ 37,720
5	$ 9,906	$ -	$ 9,906	$ 47,626
6	$ 10,104	$ -	$ 10,104	$ 57,731
7	$ 10,306	$ -	$ 10,306	$ 68,037
8	$ 10,513	$ -	$ 10,513	$ 78,550
9	$ 10,723	$ -	$ 10,723	$ 89,273
10	$ 10,937	$ -	$ 10,937	$ 100,210

Property Tax Exemptions and Industrial Revenue Bonds



Property Tax Exemptions and Industrial Revenue Bonds

The City and/or the County is considering abating taxes on the Project's property. Below is a table that identifies the types of property that are under consideration for property tax abatement:

Land:	Yes
Building and Property Improvements:	Yes
Furniture, Fixtures and Equipment:	Yes

Property Tax Percentage Exemptions On Land and Building

County	City	Schools	Special Taxing District
75%	75%	75%	75%

Property Tax Percentage Exemptions On Furniture, Fixtures and Equipment

	County	City	Schools	Special Taxing District
	75%	75%	75%	75%
Value of Exemption Through 10 Years:	**$ 571,421**	**$ 436,564**	**$ 47,901**	**$ 9,470**
*Value of Payment in Lieu of Taxes Through 10 Years:	**$ -**	**$ 387,374**	**$ -**	**$ -**

*The model assumes that the payment in lieu of taxes will be administered to the either the county or city, and the local government will disperse the amounts to the appropriate districts.

Percentage of Gross Receipt Taxes Foregone on Newly Purchased Furniture, Fixtures and Equipment Over 10 Years

Year	State	County	City
1	100%	100%	100%
2	100%	100%	100%
3	100%	100%	100%
4	100%	100%	100%
5	100%	100%	100%
6	100%	100%	100%
7	100%	100%	100%
8	100%	100%	100%
9	100%	100%	100%
10	100%	100%	100%
Value of Exemption Through 10 Years:	**$ 78,507**	**$ 25,163**	**$ 63,661**

3010;COUNCIL BILL 23-004

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:	August 15, 2022	**Adopted:**	September 6, 2022
Drafter:	Sergio Ruiz	**Department:**	City Manager's Office
Program:	Council and Community Support	**Line of Business:**	Council and Community Support

Title: **AN ORDINANCE TO REPEAL AND REPLACE NOISE ORDINANCE OF THE LAS CRUCES MUNICIPAL CODE 1998, AS AMENDED, CHAPTER 19, ARTICLE III, DIVISION 2, SECTIONS 19-121 THROUGH 19-136.**

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

PURPOSE(S) OF ACTION:

To repeal and replace Chapter 19 of the municipal code.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

To make changes to the existing noise ordinance by adding noise measurement guidelines lacking within the existing noise ordinance, therefore, proposing the following changes.

No noise shall be measured at a distance of at least twenty-five feet (25) feet from a noise source located within the public right-of-way, and if the noise source is located on private property other than the public right-of-way, the noise shall be measured at the property line of the noise source and sound level measurements shall be made with a sound level meter reader and enforced by the Las Cruces Police Department.

A noise measured or registered in the manner provided in Sec. 19-122(1) in excess of the dB(A) established as the baseline noise level for the time period and zoning districts listed in this section is hereby declared to be a noise disturbance and is unlawful and 67 dB(A) is designated for a residential zone, 72 dB(A) is designated for a commercial zone (Special use permits issued for special events), 67 dB(A) is designated for park zones, and 72 dB(A) is designated for an industrial zone. Decibel levels are established by Federal Highway Administration guidelines.

No person shall start, drive, turn or stop any motor vehicle, or accelerate the vehicle engine while the vehicle is stationary, in a manner which causes any loud and unnecessary noise in or from the engine, exhaust system or braking system, or from the contact of the tires with the roadway and such regulations shall include maximum permissible noise limits measured in decibels with any motor vehicle's noise level limit shall be at 80 dB(A), motorcycles at 90 dB(A), motor vehicles that exceed 8,000 pounds or more at 85 dB(A), and UTV/ATV/Off-Road Vehicles at 96 dB(A).

The Federal Aviation Administration has guidelines that address noise at airports. Any aircraft engine operating within an aircraft during a landing, takeoff, or while moving upon the ground surface of an airport shall be exempt from noise level regulations.

The City may grant a temporary permit that allows non-compliance with the limitations prescribed in this article for the purpose of amplified sound activities of short duration. The issuance of such permits will be only for a time period between 7:00 a.m. and 12:00 midnight and shall not exceed three consecutive days.

A violation of any of the provisions of this division shall be a petty misdemeanor. When an offender commits a violation of this division, the offender shall be sentenced to a fine of not less than $100.00 nor more than $500.00. In addition, the offender may be sentenced to up to 90 days in jail. The minimum fine of $100.00 may not be suspended, deferred, or taken under advisement. The court may, at its discretion, suspend the remainder of the fine as well as any jail time, and any commercial noise violation to exceed a third offense will be reviewed by the city administration with the possibility of the commercial license being revoked.

SUPPORT INFORMATION:

Exhibit A_Noise Ordinance Finalized Draft

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

ANNUAL BUDGET APPROVAL:

☐ Yes
☐ No
☒ N/A

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

☐ Yes
☐ No
☒ N/A

Does this action align with Elevate Las Cruces?

☐ Yes
☐ No
☒ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance to repeal and replace the Las Cruces Municipal Code 1998, as amended, Chapter 19, Article III, Division 2, Sections 19-121 through 19-136.
2. Vote "No"; this will not approve the Ordinance to repeal and replace the Las Cruces Municipal Code 1998, as amended, Chapter 19, Article III, Division 2, Sections 19-121 through 19-136.
3. Vote to "Amend"; this allows the City Council to modify the Ordinance as deemed appropriate.
4. Vote to "Table"; this allows the council to table/postpone the Ordinance and direct staff accordingly.

ORDINANCE 3010;COUNCIL BILL 23-004

AN ORDINANCE TO REPEAL AND REPLACE NOISE ORDINANCE OF THE LAS CRUCES MUNICIPAL CODE 1998, AS AMENDED, CHAPTER 19, ARTICLE III, DIVISION 2, SECTIONS 19-121 THROUGH 19-136.

The City Council is informed that:

WHEREAS, no noise shall be measured at a distance of at least twenty-five feet (25) feet from a noise source located within the public right-of-way, and if the noise source is located on private property other than the public right-of-way, the noise shall be measured at the property line of the noise source; and

WHEREAS, sound level measurements shall be made with a sound level meter reader and enforced by the Las Cruces Police Department; and

WHEREAS, a noise measured or registered in the manner provided in Sec. 19-122(1) in excess of the dB(A) established as the baseline noise level for the time period and zoning districts listed in this section is hereby declared to be a noise disturbance and is unlawful; and

WHEREAS, 67 dB(A) is designated for a residential zone, 72 dB(A) is designated for a commercial zone (Special use permits issued for special events), 67 dB(A) is designated for a park zone' and 72 dB(A) is designated for an industrial zone; and

WHEREAS, decibel levels are established by Federal Highway Administration guidelines; and

WHEREAS, no person shall start, drive, turn or stop any motor vehicle, or accelerate the vehicle engine while the vehicle is stationary, in a manner which causes any loud and unnecessary noise in or from the engine, exhaust system or the braking system, or from the contact of the tires with the roadway; and

WHEREAS, such regulations shall include maximum permissible noise limits measured in decibels with any motor vehicle's noise level limit shall be at 80 dB(A), motorcycles at 90 dB(A), motor vehicles that exceed 8,000 pounds or more at 85 dB(A), and UTV/ATV/Off-Road Vehicles at 96 dB(A); and

WHEREAS, the Federal Aviation Administration has guidelines that address noise at airports. Any aircraft engine operating within an aircraft during a landing, takeoff or while moving upon the ground surface of an airport shall be exempt from noise level regulations; and

WHEREAS, the City may grant a temporary permit which allows noncompliance with the limitations prescribed in this article for the purpose of amplified sound activities of short duration. The issuance of such permits will be only for a time period between 7:00 a.m. and 12:00 midnight and shall not exceed three consecutive days; and

WHEREAS, a violation of any of the provisions of this division shall be a petty misdemeanor. When an offender commits a violation of this division, the offender shall be sentenced to a fine of not less than $100.00 nor more than $500.00. In addition, the offender may be sentenced up to 90 days in jail. The minimum fine of $100.00 may not be suspended, deferred, or taken under advisement. The court may, in its discretion, suspend the remainder of the fine as well as any jail time; and

WHEREAS, any commercial noise violation to exceed a third offense will reviewed by city administration with the possibility of the commercial license being revoked.

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

(I)

THAT the Las Cruces Municipal Code 1978, as amended, Chapter 19, Noise Ordinance is hereby repealed and replaced as shown in "Exhibit A" and attached hereto.

(II)

THAT the 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

DIVISION 2. – NOISE

Sec. 19-121. – Definitions.

A-weighted sound pressure level means the sound pressure level as measured on an approved sound-level meter using the A-weighting network. The unit of measurement is dB(A). Sounds measured with the "A" weighting network approximate the response of human hearing when measuring sounds of low to moderate intensity.

Baseline noise level means the actual ambient noise level measured during specific periods on various days of the week. The CLC Noise Study established baseline noise levels for land types during traffic peaks (AM/PM), mid-day, or night-time hours, with some measurements taken on weekends and/or weekdays.

Decibel (dB) means a logarithmic and dimensionless unit of measure often used in describing the amplitude of sound.

Equivalent sound level (leq.) means a level of steady sound which in a stated time period and stated location, has the same A-weighted sound energy as the time varying sound. Leq. shall be calculated using approved Federal Highway Administration noise projection models.

Noise means any sound which is unwanted, or which causes or tends to cause an adverse psychological or physiological effect on human beings.

Property line means the official boundary of a parcel, lot, or tract of land as designated by either a metes and bounds description or subdivision plat filed in the records and maps of the county clerk.

Public right-of-way means any land area deeded, reserved, or otherwise acquired by the city, the county, or the state for public use, e.g., roads, streets.

Residential, commercial, industrial, means terms that shall be used as used in Chapter 38 of the LCMC (aka Zoning Code), and when used to describe a receptor or source premises, the terms refer to the particular zoning classification of the receptor or source premises and not the actual use of such premises.

Sound level meter means an instrument, including microphone, amplifier, output meter and visual display and frequency weighting networks, that is sensitive to pressure fluctuations. The instrument reads sound pressure level when properly calibrated and is a Type II or better, as specified in American National Standards Institute publication, Specifications for Sound Level Meters, ANSI S1.4-1971.

Sec. 19-122. – Classification and measurement of noise.

For the purposes of classifying any noise disturbance and determining whether it is in a violation of this section, the following test measurements and requirements shall be applied:

1. No noise shall be measured at a distance of at least twenty-five feet (25) feet from a noise source located within the public right-of-way, and if the noise

source is located on private property other than the public right-of-way, the noise shall be measured at the property line of the noise source.

2. Sound level measurements shall be made with a sound level meter reader and enforced by the Las Cruces Police Department.

Sec. 19-123. – Prohibited.

Except as otherwise provided in this section, no person shall make or continue, cause to be made or continued, or allow to be made or continued, any sound that persistently or continuously results in an exceedance of the baseline noise level standards provided in Sec. 19-124, using an approved sound-level meter measuring decibels on the A-weight scale.

Sec. 19-124. – Baseline noise level standards.

A noise measured or registered in the manner provided in Sec. 19-122(1) in excess of the dB(A) established as the baseline noise level for the time period and zoning districts listed in this section is hereby declared to be a noise disturbance and is unlawful.

DECIBELS	ZONE
67 dB(A)	Residential
72 dB(A)	Commercial (Special use permits issued for special events)
67 dB(A)	Parks
72 dB(A)	Industrial

* Decibel levels established by Federal Highway Administration guidelines.

Motor-Driven Vehicle Noise Limits

No person shall start, drive, turn or stop any motor vehicle, or accelerate the vehicle engine while the vehicle is stationary, in a manner which causes any loud and unnecessary noise in or from the engine, exhaust system or the braking system, or from the contact of the tires with the roadway.

Such regulations shall include maximum permissible noise limits measured in decibels:

TYPE OF VEHICLE	NOISE LIMIT (IN dB(A)
Any motor vehicle	80
Motorcycles	90
Motor Vehicles that exceed 8,000 pounds or more	85
UTV/ATV/Off-Road Vehicles	96

Sec. 19-125. – Exemptions.

The following uses and activities shall be exempt from noise level regulations:

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1. Noise of safety signals, warning devices and emergency pressure relief valves;
2. Noise resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency;
3. Noise resulting from emergency work;
4. Noise resulting from lawful fireworks and noisemakers used for celebration of an official holiday, as stated in Chapter 11, Article III, of the Las Cruces Municipal Code;
5. Sounds and vibrations generated by any train traveling into or through Las Cruces; and
6. Noise resulting from activities of temporary duration permitted by law for which a license or permit has been approved by the City in accordance with Se. 19-126 of this code.
7. The Federal Aviation Administration has guidelines that address noise at airports. Any aircraft engine operating within an aircraft during a landing, takeoff or while moving upon the ground surface of an airport shall be exempt.

Sec. 19-126. – Temporary permits.

1. The City may grant a temporary permit which allows noncompliance with the limitations prescribed in this article for the purpose of amplified sound activities of short duration. The issuance of such permits will be only for a time period between 7:00 a.m. and 12:00 midnight and shall not exceed three consecutive days.
2. Permits shall be granted upon application, provided an initial investigation assures that the permit will not result in a condition unreasonably injurious to the comfort, repose, health, peace, and safety of others.
3. The following factors shall be considered, in the initial investigation, in order to determine whether granting the permit will result in a condition unreasonably injurious to the comfort, repose, health, peace or safety of others.
    a. Distance of proposed activities from a residential zone.
    b. Number of amplification devices to be used in the proposed activities.
    c. Anticipated direction of amplification devices.
    d. Anticipated length of proposed activities.
    e. Whether the activity will be held within or without a structure.
    f. Approval or disapproval of adjacent property owners.
    g. Any other factors reasonably related to the comfort, repose, health, peace, or safety of others.

1. Upon a determination that the granting of a permit will not result in a condition unreasonably injurious to the comfort, repose, health, peace or safety of others, the permit shall be issued specifying place, duration, and any restrictions appropriate to the proposed site of the activities.
2. Issued permits will be surrendered to any city police or codes enforcement officer upon request when it is determined that the restriction of the permit specifying duration has been violated.

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3. Reapplication for a permit may be denied upon evidence of a complaint(s) by a resident(s) in the locality of the permitted activity or if an applicant has in the past been required to surrender a permit as described in subsection (5) above.
4. Any person aggrieved by the disposition of an application for a temporary permit may appeal to the city manager such disposition by filing a written petition with the City Manager or designee within 30 days of the disposition. The decision by the City Manager shall be final.

Sec. 19-127. – Penalties

1. A violation of any of the provisions of this division shall be a petty misdemeanor. When an offender commits a violation of this division, the offender shall be sentenced to a fine of not less than $100.00 nor more than $500.00. In addition, the offender may be sentenced up to 90 days in jail. The minimum fine of $100.00 may not be suspended, deferred, or taken under advisement. The court may, in its discretion, suspend the remainder of the fine as well as any jail time.
2. Where the complaint alleges a violation of this division, any pleas of guilty or nolo contendere thereafter entered in satisfaction of the charges shall include at least a plea of guilty or nolo contendere to a violation of this division or no other disposition by please of guilty or nolo contendere to any other charge shall be authorized.
3. Any commercial noise violation to exceed a third offense will reviewed by city administration with the possibility of the commercial license being revoked.

Sec. 19-128. – Violations; additional remedies; injunctions.
As an additional remedy (to the penalty set forth in section 19-127), the violation of any provision of this division may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

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