

# City of Las Cruces<sup>2009</sup>

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 13 Ordinance/Resolution # 11-009 Council District:     

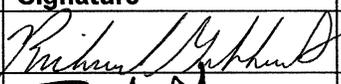
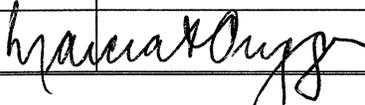
For Meeting of July 6, 2010  
(Adoption Date)

**TITLE:**

**RESOLUTION AUTHORIZING THE REORGANIZATION OF RIO GRANDE NATURAL GAS ASSOCIATION AS SET FORTH HEREIN.**

**PURPOSE(S) OF ACTION:**

To request authorization to proceed with the reorganization of Rio Grande Natural Gas Association as set forth in the resolution.

<b>Name of Drafter:</b> Marcia B. Driggers		<b>Department:</b> Legal		<b>Phone:</b> 541-2128	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Originating Department	Legal	541-2128	Budget		541-2107
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:** Rio Grande Natural Gas Association ("Association") is a non-profit natural gas association established in 1969 pursuant to state statutes by the Village of Hatch ("Village") and the City of Las Cruces ("City") (collectively the "Owners"). In 2005, the Owners and the Association approved resolutions stating that the Owners owned the Association assets jointly and in equal shares.

The Owners appointed a task force in June 2008 to develop and recommend alternatives for the future operation and management of the Association. The task force analyzed several alternatives and presented them to the Owners. The preliminary recommendation selected by the Owners (1) would transfer about 93 commercial customers and about 6,000 residential customers from the Association to the City, (2) would obligate the City to pay \$1.2 million to pay off the Association's outstanding bonds, and (3) would give the City 10% ownership in the reorganized Association.

After the preliminary recommendation was further examined, City staff concluded that it would be preferable for the City to relinquish a 10% ownership interest in the reorganized Association in exchange for not having to pay \$1.2 million for the bonds. In the revised recommendation set forth in this Resolution, the Village would own 100% of the

(Continue on additional sheets as required)

reorganized Association and would have full control of the new Association Board. If the reorganized Association is thereafter sold, the Village would be solely entitled to the sales proceeds.

Under both the preliminary and revised recommendations for reorganizing the Association, the primary goal of staff has been to transfer Association customers within the City limits to the City, and to insure that the City would be the natural gas provider within the newly annexed East Mesa and West Mesa areas and within most of the extraterritorial five mile zone around the existing City limits. The proposed Resolution implements that goal.

The original Articles of Incorporation (also referred to as the Certificate of Association) established the Association in 1969 and provided for a service area. The Owners by adopting comparable resolutions will provide for a revised service area for the reorganized Association as set forth in Exhibits "A-1" and "A-2" to this Resolution. The existing Association Board of Directors consisting of three (3) City appointees and three (3) Village appointees will amend the 1969 Articles of Incorporation to provide for the revised service area. The City's proposed geographic service area would generally include all areas within the existing City limits (except for a limited area along Carver Road), New Mexico State University, the Aldershot facility off of South Main Street, and most of the ETZ. The reorganized Association's proposed geographic service area would generally include the north and south valley, the Town of Mesilla, the Picacho Hills area, and areas outside of the City's service area. The respective service areas are shown in detail on Resolution Exhibits "A-1" and "A-2".

If the Council approves this Resolution and if the Village Trustees approve a resolution fully compatible with this Resolution, the City and the reorganized Association will need to (1) draft a long term natural gas transportation agreement which will be approved by the Utilities Board on behalf of the City; (2) develop a final implementation plan for the reorganization including technical provisions for the transfer of customers; and (3) implement the plan. The City as fiscal agent will assist the Association in retiring the outstanding revenue bond at the Association's sole expense, which needs to be accomplished before existing Association customers can be transferred to the City.

City staff has worked diligently and cooperatively with representatives on behalf of the Village to draft this Resolution. Staff expects the Village to adopt a fully compatible resolution if the Council approves this Resolution.

The City Council conducted a work session on Monday, June 14, on the proposed reorganization which was attended by representatives of the Village and of the Association. The information submitted to the Council for the work session included a draft copy of the proposed Resolution. Council directed staff to bring the Resolution forward for consideration. There have been minor changes made to the Resolution since that date. Therefore, the Resolution is attached as support information in both final form and in legislative format showing the changes since June 14, 2010.

(Continue on additional sheets as required)

A cost associated with the reorganization is the cost of converting approximately 6,000 Rio Grande customers to the City's computer system.

**SUPPORT INFORMATION:**

<b>Fund Name / Account Number</b>	<b>Amount of Expenditure</b>	<b>Budget Amount</b>
5100-51518010-722190	\$25,000	\$350,000

1. Resolution in final form with Exhibits "A-1" and "A-2" attached;
2. Resolution in legislative format without the exhibits attached.

**OPTIONS / ALTERNATIVES:**

1. **Approve** the Resolution as drafted;
2. **Amend** the Resolution which amendments would have to be approved by the Village;
3. **Not approve** the Resolution and provide direction to staff whether to renegotiate specific provisions of the proposed reorganization.

**RESOLUTION NO. 11-009****RESOLUTION AUTHORIZING THE REORGANIZATION OF RIO GRANDE NATURAL GAS ASSOCIATION AS SET FORTH HEREIN.**

The City Council of the City of Las Cruces is informed that:

**WHEREAS**, Rio Grande Natural Gas Association ("Association") was formed as a non-profit corporation and inter-community natural gas association in 1969 pursuant to NMSA 1953, Sections 14-27-1 through 14-27-18, which sections were re-codified as NMSA 1978, Sections 3-28-1 through 3-28-22, with the Village of Hatch ("Village") and the City of Las Cruces ("City") (collectively the "Owners") as the original members and owners; and

**WHEREAS**, Village Resolution No. 645 and City Resolution No. 05-243A provided in part that the assets of the Association in their entirety are jointly and in equal shares owned by the City and the Village. City Resolution No. 05-243A further provided that the City would commit to entering into good faith discussions with the Village to resolve several critical issues, including amending or changing the corporate organization of the Association, redefining membership of the Association's Board of Directors, establishing definitive fiscal agency authorization, and establishing a definitive mechanism for the sale of Association customers and related tangible and intangible assets to the City through payment or other consideration to the Association; and

**WHEREAS**, the Association's Board of Directors thereafter approved an amendment in Resolution RG-05-09, which amendment provided that, upon

dissolution, all assets of the Association shall be owned in severalty by the City and the Village as tenants in common with each Owner owning 50% therein; and

**WHEREAS**, the Owners appointed a Task Force in June 2008 to develop and recommend alternatives for the future operation and management of the Association. The Task Force reviewed and analyzed several alternatives which were presented to the Owners. The alternative selected by the Owners in September 2009 would reorganize the Association by transferring all of the Association customers within the City limits and some of the Association customers within parts of the Extraterritorial Zone ("ETZ") to the City, and by amending the Association's certificate of association (also referred to as the Association's articles of incorporation) and bylaws to reflect the proposed change in ownership interest and in the composition of the Board of Directors as provided below; and

**WHEREAS**, the Owners recognize that in order to reorganize the Association the Association's bonded debt needs to be paid; and

**WHEREAS**, the Association retained the services of Sunrise Engineering, Inc. to perform a viability study for the reorganized Association under the task force's recommended reorganization plan selected by the Owners; and

**WHEREAS**, the Owners contemplate that the City and the Village would remain the sole members of the reorganized Association, and that the Village would own 100% of the reorganized Association; and

**WHEREAS**, the City asserts and the Village shall confirm the City's assertion by adopting a comparable resolution that the Association owns and will retain ownership of the Rio Grande Tap and the Associated Pipeline, commonly referred to as the Rio Grande High Pressure Main Line, and the El Paso Natural Gas Company firm transportation contract No. 9823; and that the City owns and will retain ownership of the following major infrastructures which are used in part by the City to deliver natural gas to the Association and to monitor and control such deliveries: high pressure transmission lines commonly referred to as the Tillman Line and the Afton Line, regulator stations commonly referred to as the West Mesa Regulator Station, the Martinez Regulator Station, and the Sonoma Metering Station, and the SCADA System; and

**WHEREAS**, with the adoption of this Resolution, the reorganization of the Association shall be approved by the City and, upon completion of the reorganization as provided for in this Resolution, the City will no longer have any economic ownership in the Association, and will have received its full asset distribution as contemplated by this Resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES THAT:**

**(I)  
REORGANIZATION**

A. As a result of the reorganization as set forth herein, the Village shall remain a member of the Association and shall have 100% ownership interest in the

reorganized Association, and the City shall remain a member of the Association to meet the statutory requirements of NMSA 1978, Section 3-28-1 (1993) and shall have no ownership interest in the reorganized Association. Effective with the adoption of fully compatible resolutions by the Owners approving the reorganization of the Association, the City's appointees to the Association's existing Board of Directors shall vote in favor of amending the Association's Articles of Incorporation in compliance with NMSA 1978, Section 3-28-6 (1990), by separate Board Resolution, to perfect the changes contemplated herein. The amended Articles of Incorporation shall provide that the Village shall be solely entitled to appoint all members of the new Board of Directors for the reorganized Association; and shall set forth the new service area for the reorganized Association identical with the service areas set forth in Exhibits "A-1" and "A-2" attached hereto and as otherwise provided in this Resolution.

B. The Village shall then appoint all members of the new Board of Directors for the reorganized Association in accordance with the amended Articles of Incorporation. The new Board shall be solely entitled to amend the existing bylaws in compliance with NMSA 1978, Section 3-28-8 (1965) as it deems necessary.

C. Effective with the appointment of the new Board, the new Board shall have the sole power to act on behalf of the Association, including proceeding with any future dissolution of the Association, with no further involvement by the City.

D. The City shall continue to operate the reorganized Association in accordance with the Cooperative Services Agreement dated June 21, 1971 currently in

effect as between the Association and the City by using the existing cost allocation system, which is based on the City's actual costs, for a period not to exceed one year from the date of this Resolution. The City's Utilities Department administrative charges for gas administration and for the gas analyst salary expenditures paid in monthly installments by the Association will be reduced by 50%. The City's annual MIS fee of \$90,321 paid in monthly installments by the Association will be reduced by 50%. The City's annual administrative charge for finance functions of \$82,433 paid in monthly installments by the Association will be reduced by 50%. In addition, no capital improvements shall be made by the City without the prior approval of the new Board.

(E) The City shall honor the Main Line Reimbursement Agreements between the Association and developers of the following subdivisions which are located within the City service area: High Desert Phase II, Las Lomitas, Rincon Mesa Phase I, Desert Song Estates Phase I, and Desert Wind Estates; for new customer connections made after August 1, 2010 to the gas main extensions referenced in the individual reimbursement agreements until the agreements expire. The reorganized Association shall be solely responsible for reimbursing developers pursuant to the reimbursement agreements for new customer connections within the above referenced subdivisions made on or before August 1, 2010, and for paying all of the Association's other financial obligations, including the Main Line Reimbursement Agreements with developers of subdivisions located outside of the City service area.

**(II)**  
**BOND PAYMENT**

A. Payment of the Association's outstanding revenue bond shall be made as follows: Utilizing cash reserves and other cash accounts held by the Association, the bond will be paid in full by the reorganized Association after July 1, 2010 without cash contribution by the City. The new Board shall direct bond counsel, in coordination with City staff as fiscal agent, to prepare the appropriate documentation.

B. After payment of the bond and transfer of the customer deposits as provided below, any cash assets whether positive or negative remaining on the books of the Association shall belong solely to the Association.

**(III)**  
**SERVICE AREAS**

In order to avoid future service area disputes between the reorganized Association and the City, and to implement the intent of the Task Force's recommendation to transfer certain Association customers to the City, the following service areas are established as between the City and the reorganized Association:

A. City Service Area. The City shall be exclusively entitled to serve areas shown on Exhibits "A-1" and "A-2" attached and incorporated herein as well as the Aldershot of New Mexico, Inc. ("Aldershot") site. The City's service area as shown on the exhibits generally includes the existing City limits; New Mexico State University; those portions of the ETZ west and south of the City's western municipal boundaries; and those portions of the ETZ east of I-25. However, the City's service area shown on the Exhibits shall control over the general description set forth above. Further, if there

is any inconsistency between the map identified as Exhibit "A-1" and the geographic description identified as Exhibit "A-2", Exhibit "A-2" shall control.

B. Reorganized Association Service Area. The reorganized Association shall be exclusively entitled to serve all of the area outside of the City service area as shown on the exhibits.

C. Aldershot. The Aldershot site is located off of south Main Street at 3905 Meadowlark Lane, is a current City gas customer, and shall remain a City gas customer even though the site is located within the reorganized Association service area as shown on the exhibits.

D. Future Annexations by the Town of Mesilla. The Town of Mesilla as its boundaries exist as of the date of this Resolution will be within the service area of the reorganized Association. If the Town of Mesilla annexes lands within the City's service area as shown on Exhibits "A-1" and "A-2" and the City is not providing natural gas service within any part of the annexed lands, then the reorganized Association may serve the newly annexed area. If the Town of Mesilla annexes lands within the City's service area as shown on Exhibits "A-1" and "A-2" and the City is providing natural gas service within any part of the annexed lands, then the reorganized Association shall compensate the City for the loss of the individual gas customers within the annexed area as negotiated between the parties and may then serve the newly annexed area.

E. Customer Accounts. The City and the reorganized Association shall coordinate (1) the exchange of customer account information based on the

establishment of the respective service areas set forth herein, which information shall include related accounts receivable; and (2) the transfer of cash associated with customer deposits, including any accrued interest, for Association customers being transferred to the City and for City customers within the Rios Encantados subdivision and along Carver Road being transferred to the reorganized Association. Accounts receivable shall be equitably allocated between the City and the reorganized Association as agreed to between City staff and the reorganized Association.

**(IV)**  
**INFRASTRUCTURE AND RIGHT OF WAY**

A. Infrastructure Within City Service Area. Any distribution infrastructure and gas meters owned by the Association within the City service area shown on the exhibits and associated with the Association customers being transferred to the City shall be transferred to the City.

B. Infrastructure Within the Reorganized Association's Service Area. Any distribution infrastructure and gas meters owned by the City within the reorganized Association's service area shown on Exhibits "A-1" and "A-2" and associated with the City customers within the Rios Encantados subdivision and along Carver Road being transferred to the reorganized Association, shall be transferred to the reorganized Association.

C. Easements and Rights of Way. Easements and rights of way authorizations associated with the distribution infrastructure to be transferred between the City and the reorganized Association shall be assigned as appropriate.

D. Martinez Regulator Station. The Martinez Regulator Station located on City property along west Picacho Avenue is fully owned by the City. However, the City will provide the reorganized Association with scheduled access and emergency access to the Martinez Regulator Station to monitor and regulate the pressures of gas delivered to the reorganized Association's system. If sufficient City owned property exists, the City will grant an easement at no cost to the reorganized Association for a new regulator station within the Martinez Regulation Station site.

E. Future Taps. The City will grant the reorganized Association additional taps at locations that do not adversely affect the existing City gas system, as determined by Las Cruces Utility Engineering. The taps and all associated costs will be at the sole expense of the reorganized Association. The costs will include but are not necessarily limited to meters, valves, actuators, power, flow computers, communication equipment, secure enclosure/building, labor, land or right of way cost, and overhead.

(V)  
CONTRACTS

A. Existing Natural Gas Sale Contract. The existing Natural Gas Sale Contract between the City and the Association dated June 1, 2006 shall remain in full force and effect until June 30, 2011.

B. Replacement Transportation Contract. The Las Cruces Utilities Board on behalf of the City and the reorganized Association shall negotiate a long-term natural gas transportation contract on or before June 30, 2011. The replacement transportation contract will be for a term of 30 years, will contain an arbitration clause in accordance

with the New Mexico Uniform Arbitration Act, will provide capacity for the reorganized Association of 15,000 Dth per day on City transmission lines as designated by the City, and will provide for a two-part transportation rate with a reservation charge of \$0.80 per Dth for the 15,000 Dth per day reservation capacity and a usage charge of \$0.02 per Dth for volumes transported by the City for the reorganized Association.

**(VI)**  
**MISCELLANEOUS PROVISIONS**

A. The provisions of this Resolution are binding on the successors or assigns of the reorganized Association.

B. This Resolution is of no effect if the Village does not approve a resolution fully compatible with this Resolution before August 1, 2010, and if the Association's Articles of Incorporation are not amended as set forth in Paragraph I(A) above before September 1, 2010.

C. City staff is authorized to do all deeds necessary to accomplish the intent of this Resolution including the City Attorney's office notifying the City Clerk and the Village in writing that the requirements set forth in Paragraph VI(B) have been completed to the satisfaction of City staff.

**DONE AND APPROVED** on this 6th day of July, 2010.

APPROVED:

\_\_\_\_\_  
Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
City Clerk

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

VOTE:

Mayor Miyagishima: \_\_\_\_\_

Councillor Silva: \_\_\_\_\_

Councillor Connor: \_\_\_\_\_

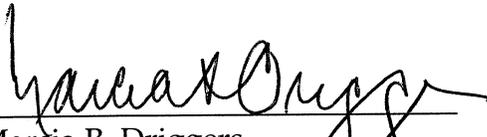
Councillor Pedroza: \_\_\_\_\_

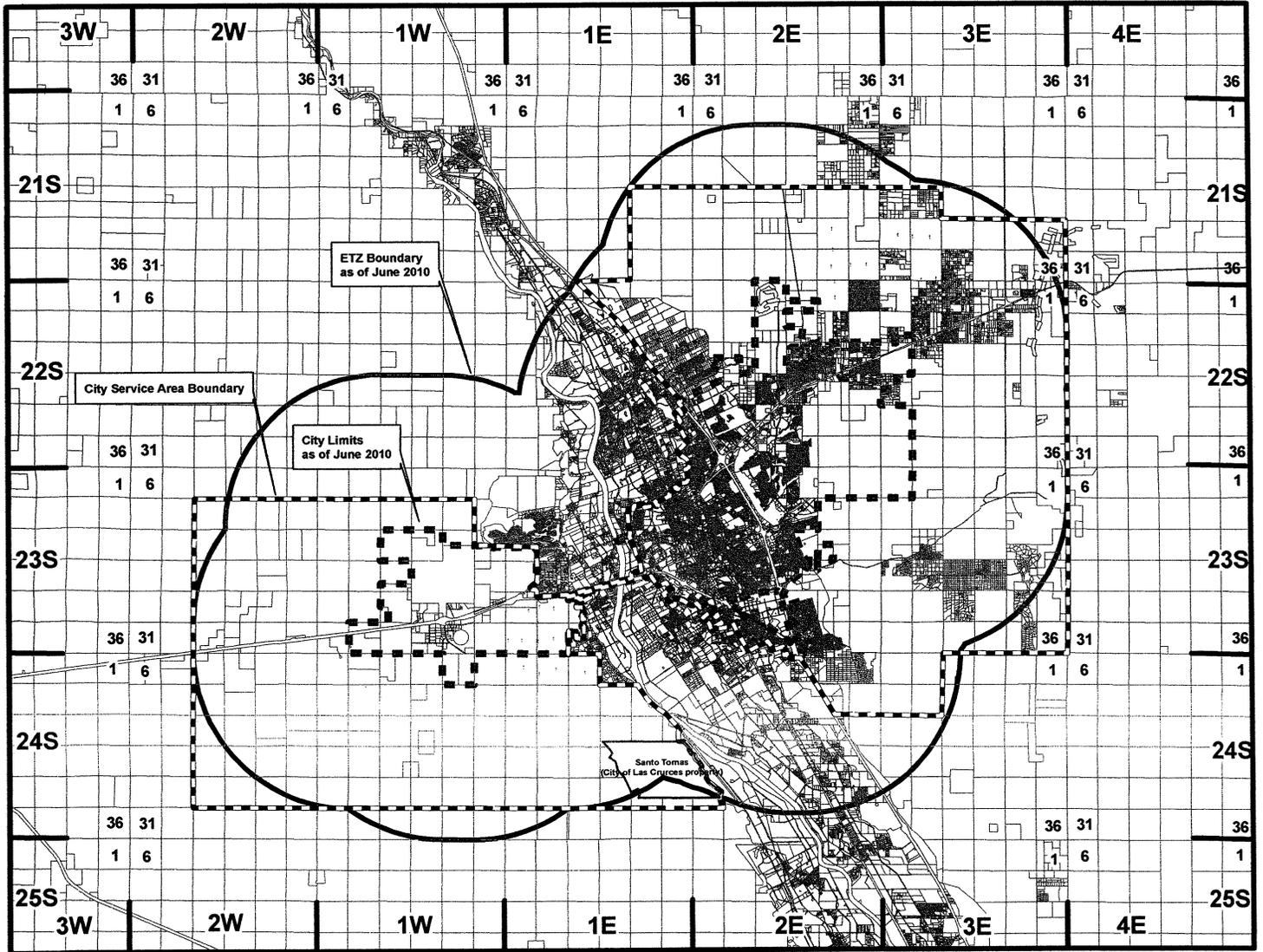
Councillor Small: \_\_\_\_\_

Councillor Sorg: \_\_\_\_\_

Councillor Thomas: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Marcia B. Driggers  
Senior Assistant City Attorney



**EXHIBIT A-1**

**Description of the City of Las Cruces Natural Gas Service Area  
June, 2010**

A boundary line of service situate in Dona Ana County, New Mexico, and being more particularly described as follows to wit:

Beginning at the northeast section corner of Township 21South Section 25 Range 3East;

Thence in a southerly direction for a distance of 73,920 feet, more or less, to the southeast section corner of Township 23South Section 36 Range 3East;

Thence in a westerly direction for a distance of 21,120 feet, more or less, to the northeast section corner of Township 24South Section 5 Range 3East;

Thence in a southerly direction for a distance of 10,560 feet, more or less, to the southeast section corner of Township 24South Section 8 Range 3East;

Thence in a westerly direction for a distance of 18,140 feet, more or less, crossing a tract owned by Salopek Foundation and further identified under parcel ID 03-22384 to the eastern right-of-way line of Interstate 10;

Thence along the eastern right-of-way line of Intersection 10 due northwest to the intersection of eastern right-of-way line of Interstate 10 and the City Limits which lies on the south side of Las Piedras Road;

Thence along the City Limits, crossing Interstate 10, in a westerly direction to the intersection of the City Limits and the southwest property corner of a parcel of land owned by the City of Las Cruces and further identified under Parcel ID 02-21847;

Thence leaving the southwest property corner of Parcel ID 02-21847 in a southwesterly direction along the south side of the Elephant Butte Irrigation District (EBID) outfall channel, that is immediately south of Astor Drive, to the intersection of the western right-of-way line of New Mexico State Road 478, also known as South Main Street and the eastern right-of-way line of Burlington North Santa Fe Railway;

Thence along the western right-of-way line of New Mexico State Road 478 in a northwesterly direction, to the intersection of the western right-of-way line of New Mexico 478 and the north right-of-way line of the EBID Park Drain;

Thence along the Park Drain in a westerly direction to the intersection of the Park Drain and the City Limits at the southwest corner of Mesilla Park Elementary School;

Thence along the City Limits to the intersection of the City Limits and the northern right-of-way line of Union Avenue;

Thence along the City Limits on Union Avenue, in a northeasterly direction to the intersection of Union Avenue and the eastern right-of-way line of the EBID Laguna Lateral;

**Description of the City of Las Cruces Natural Gas Service Area  
June, 2010**

Thence along the Laguna Lateral in a northwesterly direction to the intersection of Laguna Lateral and the City Limits at the southwest corner of the Mesilla Heritage Phase II subdivision and further identified under parcel ID 02-25947;

Thence along the City Limits in a northwesterly direction to the intersection of the City Limits and the eastern right-of-way line of the EBID Mesilla Drain;

Thence leaving the City Limits crossing the EBID Mesilla Drain and the EBID Mesilla Lateral to the eastern right-of-way line of New Mexico State Road 292;

Thence along the eastern right-of-way line of New Mexico State Road 292 in a northwesterly direction to the intersection of New Mexico State Road 292 and the southeast corner of Interstate 10;

Thence crossing New Mexico State Road 292 to the intersection of the New Mexico State Road 292, the southwest corner of Interstate 10, and the City Limits;

Thence along the City Limits, crossing the Rio Grande, to the intersection of the City Limits and the southeast section corner of Township 23South Section 32 Range 1East;

Thence leaving the City Limits in an easterly direction for a distance of 5,280 feet, more or less, to the northeast section corner of Township 24South Section 4 Range 1East;

Thence leaving the northeast section corner of Township 24South Section 4 Range 1East in a southerly direction for a distance of 5,280 feet, more or less, to the northwest section corner of Township 24South Section 10 Range 1East;

Thence leaving the northwest section corner of Township 24South Section 10 Range 1East in an easterly direction for a distance of 6,190 feet, more or less, to the intersection of north section line of Township 24South Section 11 Range 1East and the western boundary line of the Rio Grande;

Thence along the western boundary line of the Rio Grande in southeasterly direction to the intersection of western boundary line of Rio Grande and the west right-of-way line of the EBID Westside Canal;

Thence along west right-of-way line of the Westside Canal in a southeasterly direction to the intersection of the Westside Canal and the northeast property corner of a parcel of land owned by the Stahmann Family 2001 Et. Al. and further identified under Parcel ID 02-24153;

Thence leaving the northeast property corner of Parcel ID 02-24153 in a southeasterly direction along the west property line of Parcel ID 02-24153 to the intersection of the west property line of Parcel ID 02-24153 and the northeast property corner of a parcel of land owned by the Stahmann Family 2001 Et. Al. and further identified under Parcel ID 02-24152;

**Description of the City of Las Cruces Natural Gas Service Area  
June, 2010**

Thence leaving the northeast property corner of Parcel ID 02-24152 in a westerly direction to the northwest property corner of Parcel ID 02-24152;

Thence leaving the northwest property corner of Parcel ID 02-24152 in a southerly direction to the intersection of the west property line of Parcel ID 02-24152 and the north property line of a parcel of land owned by the City of Las Cruces and further identified under Parcel ID 03-23437;

Thence along the north property line of Parcel ID 03-23437 in an easterly direction to the northeast property corner of Parcel ID 03-23437;

Thence leaving the northeast property corner of Parcel ID 03-23437 along the eastern property of Parcel ID 03-23437 to the southeast property corner of Parcel ID 03-23437;

Thence leaving the southeast property corner of Parcel ID 03-23437 in a southerly and westerly direction along the eastern section line of Township 24South Section 30 Range 2East to the northeast section corner of Township 24South Section 31 Range 2East;

Thence leaving the section corner of Township 24South Section 31 Range 2East in a westerly direction for a distance of 89,760 feet, more or less, to the southwest section corner of Township 24South Section 28 Range 2West;

Thence in a northerly direction for a distance of 52,800 feet, more or less, to the northwest section corner of Township 23South Section 9 Range 2West;

Thence in an easterly direction for a distance of 47,520 feet, more or less, to the northeast section corner of Township 23South Section 11 Range 1West;

Thence in a southerly direction to the intersection of the east section line of Township 23South Section 14 Range 1West and the City Limits;

Thence along the City Limits, crossing the Rio Grande, to the intersection of the City Limits and the east right-of-way line of the EBID Mesilla Lateral;

Thence leaving the City Limits along the east right-of-way line of the Mesilla Lateral to the intersection of the Mesilla Lateral and the City Limits;

Thence along the City Limits in a northeasterly direction to the intersection of the City Limits and the eastern right-of-way line of Interstate 25;

Thence leaving the City Limits along the eastern right-of-way line of Interstate 25 in a northwesterly direction to the intersection of the eastern right-of-way line of Interstate 25 and the north section line of Township 22South Section 4 Range 1East;

Thence in an easterly direction to the southwest section corner of Township 21South Section 35 Range 1East;

**Description of the City of Las Cruces Natural Gas Service Area  
June, 2010**

Thence in a northerly direction for a distance of 15,840 feet, more or less, to the northwest section corner of Township 21South Section 23 Range 1East;

Thence in an easterly direction for a distance of 52,800 feet, more or less, to the northeast section corner of Township 21South Section 20 Range 3East;

Thence in a southerly direction for a distance of 5,280 feet, more or less, to the northwest section corner of Township 21South Section 28 Range 3East;

Thence in an easterly direction for a distance 21,120 feet, more or less, to the northeast section corner of Township 21South Section 25 Range 3East to the place and point of beginning.

NOTE: All City Limits and properties referenced in this Description are current as of June, 2010.

**RESOLUTION NO. 11-\_\_\_\_\_****RESOLUTION AUTHORIZING THE REORGANIZATION OF RIO GRANDE NATURAL GAS ASSOCIATION AS SET FORTH HEREIN.**

The City Council of the City of Las Cruces is informed that:

**WHEREAS**, Rio Grande Natural Gas Association (“Association”) was formed as a non-profit corporation and inter-community natural gas association in 1969 pursuant to NMSA 1953, Sections 14-27-1 through 14-27-18, which sections were re-codified as NMSA 1978, Sections 3-28-1 through 3-28-22, with the Village of Hatch (“Village”) and the City of Las Cruces (“City”) (collectively the “Owners”) as the original members and owners; and

**WHEREAS**, Village Resolution No. 645 and City Resolution No. 05-243A provided in part that the assets of the Association in their entirety are jointly and in equal shares owned by the City and the Village. City Resolution No. 05-243A further provided that the City would commit to entering into good faith discussions with the Village to resolve several critical issues, including amending or changing the corporate organization of the Association, redefining membership of the Association’s Board of Directors, establishing definitive fiscal agency authorization, and establishing a definitive mechanism for the sale of Association customers and related tangible and intangible assets to the City through payment or other consideration to the Association; and

**WHEREAS**, the Association’s Board of Directors thereafter approved an amendment in Resolution RG-05-09, which amendment provided that, upon

dissolution, all assets of the Association shall be owned in severalty by the City and the Village as tenants in common with each Owner owning 50% therein; and

**WHEREAS**, the Owners appointed a Task Force in June 2008 to develop and recommend alternatives for the future operation and management of the Association. The Task Force reviewed and analyzed several alternatives which were presented to the Owners. The alternative selected by the Owners in September 2009 would reorganize the Association by transferring all of the Association customers within the City limits and some of the Association customers within parts of the Extraterritorial Zone ("ETZ") to the City, and by amending the Association's certificate of association (also referred to as the Association's articles of incorporation) and bylaws to reflect the proposed change in ownership interest and in the composition of the Board of Directors as provided below; and

**WHEREAS**, the Owners recognize that in order to reorganize the Association the Association's bonded debt needs to be paid; and

**WHEREAS**, the Association retained the services of Sunrise Engineering, Inc. to perform a viability study for the reorganized Association under the task force's recommended reorganization plan selected by the Owners; and

**WHEREAS**, the Owners contemplate that the City and the Village would remain the sole members of the reorganized Association, and that the Village would own 100% of the reorganized Association; and

**WHEREAS**, the City asserts and the Village shall confirm the City's assertion by adopting a comparable resolution that the Association owns and will retain ownership

of the Rio Grande Tap and the Associated Pipeline, commonly referred to as the Rio Grande High Pressure Main Line, and the El Paso Natural Gas Company firm transportation contract No. 9823; and that the City owns and will retain ownership of the following major infrastructures which are used in part by the City to deliver natural gas to the Association and to monitor and control such deliveries: high pressure transmission lines commonly referred to as the Tillman Line and the Afton Line, regulator stations commonly referred to as the West Mesa Regulator Station, the Martinez Regulator Station, and the Sonoma Metering Station, and the SCADA System; and

**WHEREAS**, with the adoption of this Resolution, the reorganization of the Association shall be approved by the City and, upon completion of the reorganization as provided for in this Resolution, the City will no longer have any economic ownership in the Association, and will have received its full asset distribution as contemplated by this Resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES THAT:**

**(I)**  
**REORGANIZATION**

A. As a result of the reorganization as set forth herein, the Village shall remain a member of the Association and shall have 100% ownership interest in the reorganized Association, and the City shall remain a member of the Association to meet the statutory requirements of NMSA 1978, Section 3-28-1 (1993) and shall have no

ownership interest in the reorganized Association. Effective with the adoption of fully compatible resolutions by the Owners approving the reorganization of the Association, the City's appointees to the Association's existing Board of Directors shall vote in favor of amending the Association's Articles of Incorporation in compliance with NMSA 1978, Section 3-28-6 (1990), by separate Board Resolution, to perfect the changes contemplated herein. The amended Articles of Incorporation shall provide that the Village shall be solely entitled to appoint all members of the new Board of Directors for the reorganized Association; and shall set forth the new service area for the reorganized Association identical with the service areas set forth in Exhibits "A-1" and "A-2" attached hereto and as otherwise provided in this Resolution.

B. The Village shall then appoint all members of the new Board of Directors for the reorganized Association in accordance with the amended Articles of Incorporation. The new Board shall be solely entitled to amend the existing bylaws in compliance with NMSA 1978, Section 3-28-8 (1965) as it deems necessary.

C. Effective with the appointment of the new Board, the new Board shall have the sole power to act on behalf of the Association, including proceeding with any future dissolution of the Association, with no further involvement by the City.

D. The City shall continue to operate the reorganized Association in accordance with the Cooperative Services Agreement dated June 21, 1971 currently in effect as between the Association and the City by using the existing cost allocation system, which is based on the City's actual costs, for a period not to exceed one year from the date of this Resolution. The City's Utilities Department administrative charges

for gas administration and for the gas analyst salary expenditures paid in monthly installments by the Association will be reduced by 50%. The City's annual MIS fee of \$90,321 paid in monthly installments by the Association will be reduced by 50%. The City's annual administrative charge for finance functions of \$82,433 paid in monthly installments by the Association will be reduced by 50%. In addition, no capital improvements shall be made by the City without the prior approval of the new Board.

(E) The City shall honor the Main Line Reimbursement Agreements between the Association and developers of the following subdivisions which are located within the City service area: High Desert Phase II, Las Lomitas, Rincon Mesa Phase I, Desert Song Estates Phase I, and Desert Wind Estates; for new customer connections made after August 1, 2010 to the gas main extensions referenced in the individual reimbursement agreements until the agreements expire. The reorganized Association shall be solely responsible for reimbursing developers pursuant to the reimbursement agreements for new customer connections within the above referenced subdivisions made on or before August 1, 2010, and for paying all of the Association's other financial obligations, including the Main Line Reimbursement Agreements with developers of subdivisions located outside of the City service area.

**(II)**  
**BOND PAYMENT**

A. Payment of the Association's outstanding revenue bond shall be made as follows: Utilizing cash reserves and other cash accounts held by the Association, the bond will be paid in full by the reorganized Association after July 1, 2010 without cash

contribution by the City. The new Board shall direct bond counsel, in coordination with City staff as fiscal agent, to prepare the appropriate documentation.

B. After payment of the bond and transfer of the customer deposits as provided below, any cash assets whether positive or negative remaining on the books of the Association shall belong solely to the Association.

### (III) SERVICE AREAS

In order to avoid future service area disputes between the reorganized Association and the City, and to implement the intent of the Task Force's recommendation to transfer certain Association customers to the City, the following service areas are established as between the City and the reorganized Association:

A. City Service Area. The City shall be exclusively entitled to serve areas shown on Exhibits "A-1" and "A-2" attached and incorporated herein as well as the Aldershot of New Mexico, Inc. ("Aldershot") site. The City's service area as shown on the exhibits generally includes the existing City limits; New Mexico State University; those portions of the ETZ west and south of the City's western municipal boundaries; and those portions of the ETZ east of I-25. However, the City's service area shown on the Exhibits shall control over the general description set forth above. Further, if there is any inconsistency between the map identified as Exhibit "A-1" and the geographic description identified as Exhibit "A-2", Exhibit "A-2" shall control.

B. Reorganized Association Service Area. The reorganized Association shall be exclusively entitled to serve all of the area outside of the City service area as shown on the exhibits.

C. Aldershot. The Aldershot site is located off of south Main Street at 3905 Meadowlark Lane, is a current City gas customer, and shall remain a City gas customer even though the site is located within the reorganized Association service area as shown on the exhibits.

D. Future Annexations by the Town of Mesilla. The Town of Mesilla as its boundaries exist as of the date of this Resolution will be within the service area of the reorganized Association. If the Town of Mesilla annexes lands within the City's service area as shown on Exhibits "A-1" and "A-2" and the City is not providing natural gas service within any part of the annexed lands, then the reorganized Association may serve the newly annexed area. If the Town of Mesilla annexes lands within the City's service area as shown on Exhibits "A-1" and "A-2" and the City is providing natural gas service within any part of the annexed lands, then the reorganized Association shall compensate the City for the loss of the individual gas customers within the annexed area as negotiated between the parties and may then serve the newly annexed area.

E. Customer Accounts. The City and the reorganized Association shall coordinate (1) the exchange of customer account information based on the establishment of the respective service areas set forth herein, which information shall include related accounts receivable; and (2) the transfer of cash associated with customer deposits, including any accrued interest, for Association customers being

transferred to the City and for City customers within the Rios Encantados subdivision and along Carver Road being transferred to the reorganized Association. Accounts receivable shall be equitably allocated between the City and the reorganized Association as agreed to between City staff and the reorganized Association.

**(IV)**  
**INFRASTRUCTURE AND RIGHT OF WAY**

A. Infrastructure Within City Service Area. Any distribution infrastructure and gas meters owned by the Association within the City service area shown on the exhibits and associated with the Association customers being transferred to the City shall be transferred to the City.

B. Infrastructure Within the Reorganized Association's Service Area. Any distribution infrastructure and gas meters owned by the City within the reorganized Association's service area shown on Exhibits "A-1" and "A-2" and associated with the City customers within the Rios Encantados subdivision and along Carver Road being transferred to the reorganized Association, shall be transferred to the reorganized Association.

C. Easements and Rights of Way. Easements and rights of way authorizations associated with the distribution infrastructure to be transferred between the City and the reorganized Association shall be assigned as appropriate.

D. Martinez Regulator Station. The Martinez Regulator Station located on City property along west Picacho Avenue is fully owned by the City. However, the City will provide the reorganized Association with scheduled access and emergency

access to the Martinez Regulator Station to monitor and regulate the pressures of gas delivered to the reorganized Association's system. If sufficient City owned property exists, the City will grant an easement at no cost to the reorganized Association for a new regulator station within the Martinez Regulation Station site.

E. Future Taps. The City will grant the reorganized Association additional taps at locations that do not adversely affect the existing City gas system, as determined by Las Cruces Utility Engineering. The taps and all associated costs will be at the sole expense of the reorganized Association. The costs will include but are not necessarily limited to meters, valves, actuators, power, flow computers, communication equipment, secure enclosure/building, labor, land or right of way cost, and overhead.

(V)  
CONTRACTS

A. Existing Natural Gas Sale Contract. The existing Natural Gas Sale Contract between the City and the Association dated June 1, 2006 shall remain in full force and effect until June 30, 2011.

B. Replacement Transportation Contract. The Las Cruces Utilities Board on behalf of the City and the reorganized Association shall negotiate a long-term natural gas transportation contract on or before June 30, 2011. The replacement transportation contract will be for a term of 30 years, will contain an arbitration clause in accordance with the New Mexico Uniform Arbitration Act, will provide capacity for the reorganized Association of 15,000 Dth per day on City transmission lines as designated by the City, and will provide for a two-part transportation rate with a reservation

charge of \$0.80 per Dth for the 15,000 Dth per day reservation capacity and a usage charge of \$0.02 per Dth for volumes transported by the City for the reorganized Association.

**(VI)**  
**MISCELLANEOUS PROVISIONS**

A. The provisions of this Resolution are binding on the successors or assigns of the reorganized Association.

B. This Resolution is of no effect if the Village does not approve a resolution fully compatible with this Resolution before August 1\_\_\_\_\_, 2010, and if the Association’s Articles of Incorporation are not amended as set forth in Paragraph I(A) above before September 1\_\_\_\_\_, 2010.

C. City staff is authorized to do all deeds necessary to accomplish the intent of this Resolution including the City Attorney’s office notifying the City Clerk and the Village in writing that the requirements set forth in Paragraph VI(B) have been completed to the satisfaction of City staff.

**DONE AND APPROVED** on this 6th\_\_\_\_\_ day of July, 2010.

APPROVED:

\_\_\_\_\_  
Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
City Clerk

VOTE:

Mayor Miyagishima: \_\_\_\_\_

Councillor Silva: \_\_\_\_\_

Councillor Connor: \_\_\_\_\_

Councillor Pedroza: \_\_\_\_\_

Councillor Small: \_\_\_\_\_

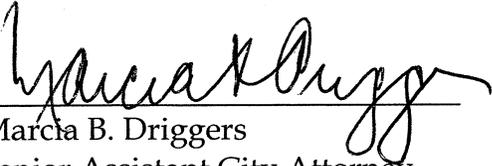
Councillor Sorg: \_\_\_\_\_

Councillor Thomas: \_\_\_\_\_

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED AS TO FORM:



\_\_\_\_\_  
Marcia B. Driggers  
Senior Assistant City Attorney