City of Las Cruces®
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 26 Ordinance/Resolution# 2665

For Meeting of September 4, 2012 (Ordinance First Reading Date)

For Meeting of September 17, 2012 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: AN ORDINANCE AUTHORIZING A REAL ESTATE PURCHASE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND UNION AVENUE LLC, FOR THE SALE OF 2.08 ACRES OF MUNICIPALLY OWNED LAND AT 101 E. UNION AVENUE FOR THE PURCHASE PRICE OF EIGHT HUNDRED FIFTY THOUSAND DOLLARS ($850,000.00), IN ACCORDANCE WITH PROVISIONS OF LCMC 1997, SECTION 2-1312.

PURPOSE(S) OF ACTION:

Sale of City property.

COUNCIL DISTRICT: 2		
Drafter/Staff Contact: Michael Q. Hernandez	**Department/Section:** Public Works/Real Estate Services	**Phone:** 528-3124
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In 1994, the City through the United States Marshal's office acquired approximately 2.08 acres of land from the Las Cruces Police Department. The City-owned property is located at 101 E. Union Avenue and is currently zoned C-3. For several years, the building was used as a teen and recreation center, as well as a training facility for City staff. It is currently vacant.

In 2000, the City executed a long-term lease agreement for the placement of a cell tower with Voice Stream PCS II Corporation. The corporation has since transitioned to T-Mobile. The lease with T-Mobile will also be included in the sale and will be transferred to Union Avenue, LLC.

City staff has secured the building and has been maintaining the site to prevent accumulation of excessive weeds or debris. The site was marketed for sale with information distributed through the local commercial real estate community. The City has negotiated a Real Estate Purchase Agreement signed by the City Manager, which requires City Council approval.

The property was appraised by two local appraisers in May 2012. One appraiser concluded a value of Nine Hundred and Five Thousand Dollars ($905,000.00), while the other appraiser valued the property at Nine Hundred Thousand Dollars ($900,000.00) as shown on Attachment "A". The proposed sale price is Eight Hundred and Fifty Thousand Dollars ($850,000.00).

A memo providing further information regarding this sale amount is attached. The Municipal Code allows the City to sell land at below appraised value and doing so does not set a precedent that would interfere with the sale price for any other City-owned land. The average value of the property according to the appraisal is Nine Hundred and Two Thousand, Five Hundred Dollars ($902,500.00).

No City infrastructure improvements are required as part of this sale. The City would be responsible for paying a six percent (6%) real estate commission as part of this land sale agreement, as authorized by Resolution 02-125. Steinborn TCN represents the buyer and will be responsible for coordinating the sale process. The 6% commission payment will be funded from the proceeds of the land sale. Closing costs will be the full responsibility of the purchaser. The purchase price amount of Eight Hundred and Fifty Thousand Dollars ($850,000.00) minus the 6% real estate commission of Fifty-One Thousand Dollars ($51,000.00) results in a final amount of Seven Hundred and Ninety-Nine Thousand Dollars ($799,000.00) to be deposited into the General Fund account number 1000-590020.

The Ordinance has been prepared in accordance with LCMC 1997, Section 2-1312. The closing date for the sale will not occur until forty-five (45) days after the adoption of the Ordinance and would occur no later than ninety (90) days after adoption between November 1, 2012 and December 16, 2012. This Ordinance has been published prior to its adoption and will be published at least once after its adoption.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A", Real Estate Purchase Agreement.
3. Attachment "A", Property Appraisals.
4. Attachment "B", Memo detailing negotiated purchase price.
5. Attachment "C", Vicinity Map.

SOURCE OF FUNDING:

Is this action already budgeted?			
N/A	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☒	Funds will be deposited into this fund: General Fund 1000-590020 in the amount of $799,000.00 for FY12/13.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

Sale proceeds are being deposited into the General Fund number 1000-590020 for use as administration deems appropriate.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance and allow the sale of property to Union Avenue, LLC, and/or assigns in the amount of $850,000.00.
2. Vote "No"; this will reject the Ordinance. The City would continue to market the property for sale.
3. Vote to "Amend"; this could modify the Ordinance based on direction provided by the City Council.
4. Vote to "Table"; this could allow the Council to postpone the Ordinance and provide direction to staff accordingly.

REFERENCE INFORMATION:

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

1. N/A

COUNCIL BILL NO. 13-010
ORDINANCE NO. 2665

AN ORDINANCE AUTHORIZING A REAL ESTATE PURCHASE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND UNION AVENUE LLC, FOR THE SALE OF 2.08 ACRES OF MUNICIPALLY OWNED LAND AT 101 E. UNION AVENUE FOR THE PURCHASE PRICE OF EIGHT HUNDRED AND FIFTY THOUSAND DOLLARS ($850,000.00), IN ACCORDANCE WITH PROVISIONS OF LCMC 1997, SECTION 2-1312.

The City Council is informed that:

WHEREAS, in 1994, the City acquired approximately 2.08 acres of land from the Las Cruces Police Department. The City-owned property is located at 101 E. Union Avenue and is currently zoned C-3. For several years, the building has been used as a teen and recreation center as well as a training facility for City staff. The facility is currently vacant; and

WHEREAS, in 2000, the City also executed a long-term lease agreement for the placement of a cell tower with Voice Stream PCS II Corporation. They have since transitioned to T-Mobile. The lease with T-Mobile will also be included in the sale and will be transferred to Union Avenue, LLC; and

WHEREAS, City staff has secured the building and has been maintaining the site to prevent accumulation of excessive weeds or debris. The site was marketed for sale with information distributed through the local commercial real estate community. On July 19, 2012, a purchase offer was received from Kary Bulsterbaum who is representing Union Avenue, LLC; and

WHEREAS, appraisals were ordered when the offer was received. The property was appraised by two local appraisers in May 2012. One appraiser concluded a value of Nine Hundred and Five Thousand Dollars ($905,000.00), while the other appraiser

valued the property at Nine Hundred Thousand Dollars ($900,000.00); and

WHEREAS, no City infrastructure improvements are required as a part of this sale. The City would be responsible for paying a six percent (6%) real estate commission as a part of this land sale agreement, as authorized by Resolution 02-125. Steinborn TCN represents the buyer and will be responsible for coordinating the sale process. The 6% commission payment will be funded from the proceeds of the land sale; and

WHEREAS, City staff recommends the property be sold to Union Avenue, LLC, for the purchase amount of Eight Hundred and Fifty Thousand Dollars ($850,000.00) minus the 6% commission of Fifty-One Thousand Dollars ($51,000.00) resulting in a final amount of Seven Hundred and Ninety-Nine Thousand Dollars ($799,000.00) to be deposited in the General Fund.

NOW, THEREFORE, be it ordained by the governing body of the City of Las Cruces:

(I)

THAT the Real Estate Purchase Agreement between the City of Las Cruces and Union Avenue, LLC, attached hereto as Exhibit "A", is hereby approved.

(II)

THAT the Mayor of the City of Las Cruces is hereby authorized to execute the Real Estate Purchase Agreement on behalf of the City.

(III)

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

DONE AND APPROVED this _____ day of _____, 2012.

APPROVED:

_____
Mayor

ATTEST:

_____

City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Smith: ____
Councillor Pedroza: ____
Councillor Small: ____
Councillor Sorg: ____
Councillor Thomas: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

Exhibit "A"

REAL ESTATE PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT is entered into on this 14th day of August, 2012, between **UNION AVENUE LLC**, a limited liability company, whose address is 420 S Kenazo El Paso Tx 79928 ("Union Avenue") and the City of Las Cruces, a New Mexico municipal corporation ("City").

RECITALS

1. The City is the owner of the real property and improvements thereon as more particularly described in Exhibit "A," attached hereto and incorporated herein (the "Property").

2. The City is also lessor of a portion of the Property that is occupied by Cellular Tower leases ("Leases").

3. The City desires to sell the Property and assign the Leases to Union Avenue.

4. Union Avenue desires to purchase the Property for cash or certified funds and have the City assign the Leases to Union Avenue.

NOW THEREFORE, for valuable consideration, the City and Union Avenue agree as follows:

TERMS AND CONDITIONS

1) **Purchase Price.**

The purchase price for the Property shall be Eight Hundred Fifty Thousand Dollars ($850,000) cash or certified funds, payable as follows:

A. $10,000 as an earnest money deposit which Union Avenue shall deposit with Southwest Abstract and Title Company upon signing this Agreement by the parties; and

B. $840,000 in cash or certified funds at closing.

2) **Closing Date.**

Closing for the sale of the Property shall occur on a mutually agreeable date at least forty-five (45) days after the adoption of the ordinance authorizing the purchase by the City Council (unless a referendum election is held pursuant to NMSA 1978, Section 3-54-1, as amended) and not more than ninety (90) days following the date of the ordinance.

3) **Review of Title and Patent Reservations.**

A. As soon as reasonably possible following the execution of this Agreement, the City shall furnish Union Avenue a commitment of owner's policy of title insurance ("Commitment") for the Property together with full copies of all exceptions set forth therein, including but not limited to covenants, conditions, restrictions, reservations, easements, rights of way, assessments, liens and other matters of record. Union Avenue shall have fifteen (15) days from receipt of the Commitment and copies of said exceptions within which to notify the City of Union Avenue's disapproval of valid title discrepancies shown in the Report.

B. The City shall have until the date for closing to eliminate any valid exception(s) or reservations, except patent reservation(s) from the policy of title insurance to be issued in favor of Union Avenue, and if not eliminated, then the earnest money deposit shall be refunded, unless Union Avenue then elects to waive prior disapproval. Failure of Union Avenue to disapprove any exception(s) within the aforementioned time limit shall be deemed an approval of such exception(s). The policy of title insurance shall be a standard coverage policy in the amount of the total purchase price and shall be paid for by Union Avenue.

C. In the event this contingency or any other contingency to this Agreement has not been eliminated or satisfied within the time limits and pursuant to the provisions herein, and unless Union Avenue elects to waive the specific contingency by written notice to the City, this Agreement shall be deemed null and void, the earnest money deposit shall be returned to the Union Avenue, and neither party shall have any rights or liabilities under this Agreement.

D. At closing the City shall execute and deliver a Warranty Deed conveying the Property to Union Avenue, in fee simple, subject to all patent reservations and to all other existing liens, encumbrances and other exceptions of record except those exceptions and reservations which are eliminated by the City pursuant to this Agreement. The City shall assign the Leases to Union Avenue. The rent for the Leases to date of closing belongs to the City. Thereafter, Union Avenue is entitled to the rent. Union Avenue and the City shall notify the lessees in writing of the assignments.

4) **Costs, Fees, and Alternative Dispute Resolution.**

A. All closing costs shall be paid by Union Avenue to include, but not limited to, surveying fees, the Commitment of Title Insurance, Title Policy Premium, Phase I environment assessment. The City shall pay six percent (6%) of the sales price as a real estate commission and applicable gross receipts tax to Steinborn/TCN Commercial Broker. If there are additional closing costs, they will be divided equally between the City and Union Avenue.

B. Prior to the institution of any litigation, however, the parties have the contractual duty to in good faith attempt to resolve any controversy hereunder at the least

possible expense using alternative dispute resolution. Should alternative dispute resolution fail and litigation be brought, if either party is found by a court to have breached this Agreement, the other party may recover its costs, including reasonable attorney fees.

5) **Compliance with Statutes.**

The City has complied with the requirements of the Las Cruces Municipal Code and has the authority to sell the Property.

6) **Governing Laws.**

This Agreement shall be subject to the laws of the State of New Mexico.

7) **Default and Remedy.**

A. If City cannot perform this Agreement solely as a result of the passage of a negative recall referendum on the real estate sale pursuant to NMSA 1978, Section 3-54-1, as amended, this Agreement is terminated and all monies paid by Union Avenue shall be refunded to Union Avenue promptly.

B. Default by Union Avenue. If Union Avenue defaults in the performance of this Agreement by failure to complete the purchase, the City may keep the earnest money or seek other remedies as allowed for by law at the City's discretion.

8) **Risk of Loss.**

All risk of loss or damage to the Property will pass from the City to Union Avenue at closing. In the event that material loss or damage, or material adverse change occurs prior to closing. Union Avenue may, without liability, refuse to accept the conveyance of title. Possession of the Property will be released to Union Avenue at closing.

9) **Counterparts.**

This Agreement may be executed in one or more identical counterparts, and all counterparts so executed shall constitute one agreement which shall be binding on the parties.

10) **Successors and Assigns.**

This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. Neither party may assign this Agreement or duties hereunder without the express written consent of the other party.

11) **Termination.**

This Agreement shall be terminated on the closing date for sale of Property, unless either party terminates the Agreement prior to that date per the provisions of this Agreement.

12) **Notice.**

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by certified mail, postage prepaid, to the City of Las Cruces, Attn: City Attorney, P.O. Box 20000, Las Cruces, NM 88004; and to Union Avenue LLC, Attn: Timothy J. Wilson, 420 S Kenazo El Paso TX, 79928, _____ _____, or to such address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

13) **Conditions Precedent.**

A. Both the City and Union Avenue have no obligation hereunder until this Agreement is approved by the City Council at a properly noticed public hearing. Should Union Avenue decide to terminate this Agreement prior to a vote by City Council on this Agreement, after giving written notice to terminate to the City Attorney, then the earnest money will be returned to Union Avenue less $2,500 for the right to terminate the Agreement.

B. If the City Council approved this Agreement and its approval is rescinded by referendum as set forth in NMSA 1978, Section 3-54-1, as amended, this Agreement is terminated.

14) **Miscellaneous.**

A. Inspection of the Property. After signing this agreement, Union Avenue or the designated agents of Union Avenue, may inspect the Property and conduct tests deemed necessary by Union Avenue at Union Avenue's expense; however, any damage to the Property will be repaired at Union Avenue's expense promptly if this Agreement is terminated.

B. Union Avenue will be responsible for any additions, personal projects, and taxes on the Property from date of closing and thereafter. The City will be responsible for any of said taxes prior to the closing date.

CITY OF LAS CRUCES

Robert L. Garza, P.E., City Manager

PURCHASER

Timothy J. Wilson
on behalf of Union Avenue LLC

Approved as to Form:

City Attorney

APPRAISAL OF
101 UNION AVENUE
LAS CRUCES, NEW MEXICO

MAY 2, 2012

FOR
CITY OF LAS CRUCES
MR. BILL HAMM
LAND MANAGER
PO BOX 20000
LAS CRUCES, NM 88004

BY
HARRY L. HANSEN, MAI, SRA
HANSEN REAL ESTATE APPRAISALS, INC.
545 S. MELENDRES, SUITE D
LAS CRUCES, NM 88005

SUMMARY APPRAISAL REPORT

SUBJECT: 101 Union Avenue, Las Cruces, NM.

PURPOSE OF THE APPRAISAL:

The purpose of this appraisal is to estimate the market value, as defined, of the subject property, as of the effective date of the appraisal. The real estate interest being appraised is that of ownership in fee simple. The property is appraised as if free and clear, and as if without liens and encumbrances.

INTENDED USE OF REPORT:

This appraisal is intended to assist the client in asset management.

CLIENT AND INTENDED USERS: City of Las Cruces.

EFFECTIVE DATE OF VALUE: May 2, 2012.

DATE OF REPORT: May 2, 2012.

MARKET VALUE ESTIMATE: **$900,000.00**
Tower Lease: 10 years: **$124,419.00**
20 years: **$180,505.00**

RECENT OWNERSHIP HISTORY:

To my knowledge the subject property is not currently under any agreement of sale or option and has not been sold within the past three years. There is a lease remaining for a tower site.

REASONABLE EXPOSURE TIME: One to two years.

Harry L. Hansen Digitally signed by Harry L. Hansen DN: cn=Harry L. Hansen, o=Hansen Real Estate Appraisals, Inc., ou, email=hope1@zianet.com, c=US Date: 2012.05.21 10:44:31 -06'00'

HARRY L. HANSEN, MAI, SRA
NM Certification #44-G

SUMMARY
APPRAISAL REPORT

CLUB FUSION
101 UNION AVENUE
LAS CRUCES, NEW MEXICO 88005

PREPARED FOR:
MR. BILL R. HAMM
LAND MANAGER
CITY OF LAS CRUCES
PO BOX 20000
LAS CRUCES, NEW MEXICO 88004

PREPARED BY:
W. SCOTT ESCHENBRENNER, MAI
MESILLA VALLEY APPRAISAL SERVICES

DATE OF VALUE:
MAY 2, 2012

DATE OF REPORT:
MAY 7, 2012

MESILLA VALLEY APPRAISAL SERVICES
FILE NO. 7602

MESILLA VALLEY APPRAISAL SERVICES

REAL ESTATE APPRAISALS & COUNSELING

W. SCOTT ESCHENBRENNER, MAI
State Certified - New Mexico
General Certificate #1180

545 SOUTH MELENDRES, SUITE D
LAS CRUCES, NEW MEXICO 88005
(575) / 523-2812
FAX (575) / 526-1872

May 7, 2012

Mr. Bill R. Hamm
City of Las Cruces
PO Box 20000
Las Cruces, NM 88004

Reference: MVAS File No. 7602
Club Fusion
101 Union Avenue
Las Cruces, New Mexico 88005

Dear Mr. Hamm:

In accordance with your request, Mesilla Valley Appraisal Services, in coordination with the City of Las Cruces, has prepared an appraisal of the market value of the fee simple estate in the above-referenced real property. The intended use of the appraisal is for counseling purposes. The intended user of the appraisal is City of Las Cruces. The effective date of appraisal is May 2, 2012 with the estimate of market value reflecting market conditions as of that date.

Mesilla Valley Appraisal Services analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation and the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. In addition, this report conforms to the requirements of the Financial Institution Reform, Recovery and Enforcement Act (FIRREA). The value estimate is based in large part upon the descriptions, data, and analyses on file in my office, as well as the General Assumptions, General Limiting Conditions, and Special Assumptions and Limiting Conditions as found in the Addendum of this report.

Based on research and analysis contained in this report, it is concluded that the market value of the fee simple interest in the subject property, as of May 2, 2012, is:

SEVEN HUNDRED TWENTY-FIVE THOUSAND DOLLARS
$725,000

I have also been asked to determine the leased fee estate of the land that is leased to T-Mobile and Verizon Wireless at the rear of the property. I have concluded that the market value of the leased fee interest of the cell tower site, as of May 2, 2012, is:

ONE HUNDRED EIGHTY THOUSAND DOLLARS
$180,000

Respectfully submitted,

Scott Eschenbrenner

Digitally signed by Scott Eschenbrenner
DN: cn=Scott Eschenbrenner, o=Mesilla Valley Appraisal Services, ou, email=brenner@zianet.com, c=US
Date: 2012.05.21 11:00:03 -06'00'

W. Scott Eschenbrenner, MAI
Certified General Real Estate Appraiser
State of New Mexico No. 1180G

City of Las Cruces®

PEOPLE HELPING PEOPLE

TO: **Robert L. Garza, P.E. City Manager**

FROM: **Michael Q. Hernandez, Real Estate Services Specialist Senior**

DATE: **8/15/2012** **FILE; 12-383**

SUBJECT: **Negotiated sale price for the property located at 101 E. Union Avenue known as Club Fusion Teen Center.**

City staff evaluated the property and determined that there is no City use for which the facility is suitable and so the property was made available for sale. The property was appraised by two local appraisers in May 2012. One of the appraisers concluded a value of $900,000.00, while the other appraiser valued the property at $905,000.00. The appraisals were distributed indicating the value through the local commercial real estate community.

On July 19, 2012, a purchase offer was received from Kary Bulsterbaum who is representing Union Avenue, LLC, with Steinborn TCN in the amount of $850,000.00.

The building is 20 to 25 years old and does not appear to have been well maintained. The roof covering is in need of replacement as evidenced by missing shingles and water leak damage.

There is a value to selling this property now at $850,000.00 rather than holding on to it in hopes of getting a higher price soon.

There are expenses associated with the City holding on to the vacant building, the site is near a residential area and requires frequent monitoring and clean up to keep it from becoming a nuisance. A private purchase of the site would bring the property onto the tax rolls and allow the purchaser to locate there to invest in the property, create employment and generate additional tax revenue.

Section 2-1314 of the Las Cruces Municipal Code requires that when real property is sold for a value less than the lowest appraised value, a detailed written explanation of the difference be made available to the public. This memo serves as that public explanation.

cc Bill Hamm, Land Management Administrator
Loretta Reyes, PE, Public Works Director
Brian Denmark, Assistant City Manager COO

PUBLISHING INFO FOR CITY CLERKS OFFICE
FIRST READ September 4
ADOPTION September 17

Terms of Sale:
Proposed sale is for $850,000.00 payable in cash or equivalent at closing.

Appraised Value:
The property was appraised by two local appraisers in May 2012. One appraiser concluded a value of Nine Hundred and Five Thousand Dollars ($905,000.00), while the other appraiser valued the property at Nine Hundred Thousand Dollars ($900,000.00). The proposed sale price is Eight Hundred and Fifty Thousand Dollars ($850,000.00).

Schedule of Payments:
$10,000.00 earnest money deposit has been received. $840,000.00 will be paid at closing.

Amount of Purchase price:
Proposed sale is for $850,000.00.

Purchaser of Property:
Union Avenue, LLC, whose address is 420 S. Kenazo, El Paso, TX 79928

Purpose of Sale:
The City has received a fair market offer. Due the building being vacant the City objective is to remove a liability and budget draining asset from its inventory. Selling the parcel to a private entity would eliminate those costs to the City.

Attachment "C"

Vicinity Map