

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 11 Ordinance/Resolution# 13-085

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of December 17, 2012
(Adoption Date)

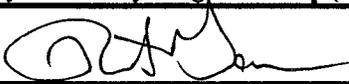
Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING AN AGREEMENT AUTHORIZING THE VILLA DEL SOL MOBILE HOME PARK TO CONNECT TO THE CITY WASTEWATER SYSTEM.

PURPOSE(S) OF ACTION:

To approve a request to connect to the City's wastewater system.

COUNCIL DISTRICT: N/A		
<u>Drafter/Staff Contact:</u> Marcia B. Driggers	<u>Department/Section:</u> City Attorney/Legal	<u>Phone:</u> (575) 541-2128
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Utilities Department staff received a request from Brett Smith of Smithco Properties, LLC ("Property Owner), a managing member of the Villa Del Sol Mobile Home Park ("Park"), for authorization to connect the Park to the City's wastewater utility system. The Park is located at 5800 Stern Drive which is south of the City limits. The Park is currently utilizing an onsite wastewater treatment system and land application for wastewater disposal. The Park has been notified by the New Mexico Environment Department ("NMED") that its groundwater discharge permit is not in compliance with NMED groundwater discharge standards and has been given options to either upgrade the existing onsite treatment system or discharge wastewater to a municipal system. Due to this, the Property Owner is requesting authorization to connect to the City's wastewater utility system.

The nearest Las Cruces Utilities ("LCU") wastewater infrastructure that could serve the Park is located at the Dove Crossing Subdivision. Utilities staff has reviewed the request and determined that there is adequate capacity in the City's system to accommodate the request and recommend approval for this request.

The Property Owner would be required to pay the full amount of the City's wastewater development impact fees prior to connection. The Property Owner will also be subject to the City's out of City limits surcharge and applicable connection charges, fees and rates for wastewater service. The Property Owner would be required to meet LCU Design Standards for

(Continue on additional sheets as required)

the design and construction of the wastewater system that will be dedicated to the LCU for ownership and maintenance.

The Utilities Board in Board Resolution No. 12-13-016 recommended that the City Council approve the Property Owner's request to connect the Park to the City's wastewater system. The Utilities Board reviewed a draft agreement which has been finalized, signed by the Property Owner and attached as Exhibit "A" to the Council resolution.

The Utilities Board, however, does not have authority to approve utility service outside of the City limits, but can recommend such approval. The City Council on behalf of the City of Las Cruces is the final authority for approval or disapproval of requests from owners of properties located outside of the City limits to connect to the City's water and/or wastewater systems.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", An Agreement Authorizing the Villa Del Sol Mobile Home Park to Connect to the City Wastewater System.
3. Attachment "A", Map of area.
4. Attachment "B", Utilities Board Resolution No. 12-13-016.

SOURCE OF FUNDING:

N/A	Is this action already budgeted?	
	Yes	<input type="checkbox"/> See fund summary below
	No	<input type="checkbox"/> If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/> Expense reallocated from:
		<input type="checkbox"/> Proposed funding is from a new revenue source (i.e. grant; see details below)
	<input type="checkbox"/> Proposed funding is from fund balance in the _____ Fund.	
Does this action create any revenue?	Yes	<input checked="" type="checkbox"/> Funds will be deposited:* (<i>See Budget Narrative</i>)
	No	<input type="checkbox"/> There is no new revenue generated by this action.

BUDGET NARRATIVE

*Wastewater development impact fee payment will be deposited into this fund: 5401-54540020-541431 in an amount to be determined for FY13.

*Monthly wastewater payments will be deposited into this fund: 5400-54540010-541421 in an amount to be determined for FY13.

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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 Agreement Authorizing the Villa Del Sol Mobile Home Park to Connect to the City Wastewater System.
2. Vote "No"; this will not approve the Agreement Authorizing the Villa Del Sol Mobile Home Park to Connect to the City Wastewater System.
3. Vote to "Amend"; this would allow Council to propose modifications to the Agreement as it deems appropriate, which modifications would have to be approved by the Property Owner.
4. Vote to "Table"; this would allow Council to postpone consideration of the resolution to approve the Agreement and direct 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.

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 13-085

A RESOLUTION APPROVING AN AGREEMENT AUTHORIZING THE VILLA DEL SOL MOBILE HOME PARK TO CONNECT TO THE CITY WASTEWATER SYSTEM.

The City Council is informed that:

WHEREAS, Brett Smith, a managing member of Smithco Properties, LLC (“Property Owner”), has requested authorization to connect the Villa Del Sol Mobile Home Park (“Park”), located at 5800 Stern Drive to the City’s wastewater utility system; and

WHEREAS, Utilities Department staff has determined that there is adequate capacity in the City’s wastewater utility system for the proposed connection; and

WHEREAS, the Las Cruces Utilities Board of Commissioners in Board Resolution No. 12-13-016 recommended that the City Council approve the Property Owner’s request to connect the Park to the City’s wastewater system; and

WHEREAS, the proposed wastewater utility connection will be subject to the City’s surcharge for out of City limits utility rates; and

WHEREAS, the Property Owner will be required to pay the full amount of the City’s wastewater development impact fees; and

WHEREAS, Utilities Department staff is recommending approval to the City Council of the request from the Villa Del Sol Mobile Home Park to connect to the City’s wastewater utility system.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the Agreement Authorizing the Villa Del Sol Mobile Home Park to Connect to the City's Wastewater System, as shown in Exhibit "A" attached hereto and made a part of this resolution is hereby approved.

(II)

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

DONE AND APPROVED this _____ day of _____, 2012.

APPROVED:

ATTEST:

Mayor

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:



Senior Assistant City Attorney

**AGREEMENT AUTHORIZING THE VILLA DEL SOL MOBILE HOME PARK
TO CONNECT TO THE CITY WASTEWATER SYSTEM**

THIS Agreement is entered into on this _____ day of November, 2012 between the City of Las Cruces ("City"), a New Mexico municipal corporation, and Smithco Properties, LLC, ("Property Owner"), a New Mexico limited liability company and owner of the Villa Del Sol Mobile Home Park ("Park").

Background

1. The Property Owner has requested authorization from the City Council to connect the Park, located at 5800 Stern Drive, to the City's wastewater system.
2. The Park currently has 180 mobile home spaces and is planning to build an additional 120 new spaces in the near future.
3. The Park is utilizing an onsite wastewater treatment system with land application for wastewater disposal and is not in compliance with New Mexico Environment Department ("NMED") Groundwater Discharge Standards.
4. The Park has been provided options by NMED to either upgrade the onsite treatment system or discharge wastewater to a municipal system.
5. The City's Utilities Board has recommended approval of the Park connecting to the City's wastewater system.

Conditions

1. The City will allow the Park at the Property Owner's sole expense to connect to the City's existing wastewater system in the Dove Crossing Subdivision.
2. The infrastructure for the Park wastewater project ("Project") will be designed by a professional engineer licensed in the state of New Mexico on behalf of the Property Owner

based on a design recommended and approved by the City's Utilities Department staff. Design criteria include but are not limited to the following:

- A. The City Utilities Department prefers a gravity conveyance system from the Park to the City's wastewater system in the Dove Crossing Subdivision. The design of a gravity conveyance system will meet the requirements in the Las Cruces Utilities Design Standards. The Property Owner will be responsible for obtaining all easements and permits prior to discharging to the City system.
 - B. If a lift station and force main are used to convey wastewater from the Park, the Property Owner shall dedicate the lift station and force main to the City, and the design of the lift station and force main will need to be reviewed and approved by the City Utilities staff and meet all applicable Las Cruces Utilities Design Standards. The Property Owner will be responsible for obtaining all easements and permits prior to dedication and discharging to the City system.
3. The Park is currently using a private well for domestic water supply to the mobile homes. For wastewater billing purposes, an equivalent residential monthly wastewater charge will be applied to the existing numbers of mobile homes if the gravity conveyance system is used. For a lift station and force main conveyance option, a magnet wastewater flow meter will be used and the monthly charge will be based on the reading of the flow meter. The Property Owner will be responsible for the payment of the monthly wastewater charge.
 4. With the number of existing mobile home spaces, the applicable City wastewater utility rate will be the large commercial rate. The rate may be adjusted periodically hereafter by the Utilities Board. There is also an out of City limits wastewater surcharge previously approved by the City Council which would apply to the Park.

5. The Park receives water service from its own private well. Based on the existing 180 mobile home spaces, an equivalent of a 3-inch water meter is needed to serve a Park of this size. Therefore, the full amount of the City's applicable wastewater development impact fee of \$16,334.00, which is based on water meter size, is due prior to connection to the City's wastewater system.

6. The Property Owner will be responsible for paying any additional wastewater development impact fees if expansions to the current Park facility occur in the future. Any future wastewater development impact fee assessment for the expansions will be based on the wastewater development impact fee effective at that time.

7. The Park will pay all of the normal connection and service line charges assessed by the City for comparable properties within the City limits in effect at the time of connection to the City's wastewater utility system.

8. The Property Owner is responsible for complying with all applicable City wastewater ordinances and resolutions such as the "Liquid Waste Disposal Ordinance," "Interceptor and Grease Trap Ordinance" and H₂S odor limits.

9. The Property Owner shall be solely liable for and shall indemnify and hold the City, its employees, officers, and agents harmless from any claim for damages resulting from personal injury, wrongful death or property damage caused by the negligent acts or omissions of the Property Owner, its employees or agents in any way related to its design, construction, operation and maintenance of the Project. The City may require that the Property Owner execute a separate and more detailed indemnification agreement including but not limited to requiring proof of liability insurance.

10. The City claims sole ownership of any return flow credits associated with the Park's wastewater handled and treated by the City pursuant to this Agreement.

11. As a condition for accepting wastewater outside of the City limits and in accordance with Chapter 28, as amended, of the 1997 Las Cruces Municipal Code, the City shall be authorized:

A. To disconnect or refuse to connect wastewater utility service to the Park for any of the following reasons:

- (1) Failure to meet applicable provisions of City or County wastewater ordinances;
- (2) Violations of the regulations pertaining to municipal wastewater utility service;
- (3) Nonpayment of any City utility bill;
- (4) Willful or negligent waste of wastewater due to improper or imperfect pipes, fixtures, appliances, or otherwise on the Park's side of the connection to the City's wastewater system;
- (5) Tampering with any meter, seal or other equipment controlling or regulating City wastewater utility service;
- (6) Theft or diversion and/ or use of wastewater utility service without payment.

B. To file a utility lien on the Park for nonpayment.

C. To pursue any other collection remedies in accordance with applicable law.

12. No third party will connect to the Park portion of the Project without City Council approval.

13. The Agreement may be assigned by the Park only with the written consent of the City Manager, which consent will not be unreasonably withheld by the City.

14. This Agreement includes all of the understanding between the parties concerning the wastewater extension project. No prior understandings, whether verbal or otherwise, of the parties or their agents will be enforceable unless included in this Agreement.

15. This Agreement will not be altered or amended except by instrument in writing executed by the Parties or their successors or assigns.

16. This Agreement must be approved by City Council resolution before it is binding upon the City.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

CITY OF LAS CRUCES

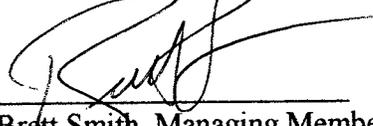
By: _____
Robert Garza
City Manager

PREPARED AND APPROVED BY:

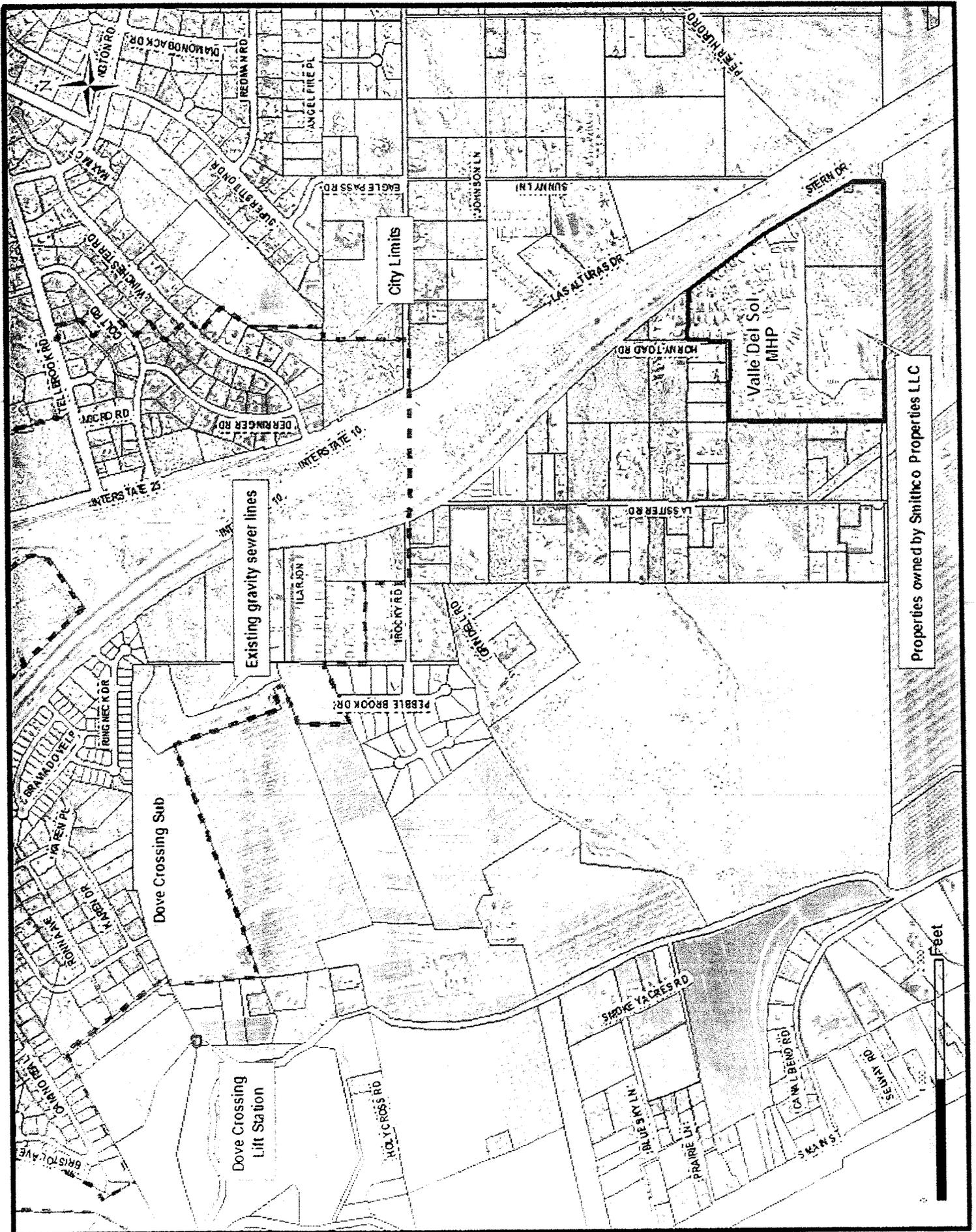


Marcia B. Driggers
Utilities Attorney

SMITHCO PROPERTIES, LLC

By: 

Brett Smith, Managing Member



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LAS CRUCES UTILITIES BOARD RESOLUTION NO. 12-13-016**A RESOLUTION RECOMMENDING APPROVAL TO THE CITY COUNCIL OF THE REQUEST FROM THE VILLA DEL SOL MOBILE HOME PARK TO CONNECT TO THE CITY'S WASTEWATER UTILITY SYSTEM.**

The Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces, is informed that:

WHEREAS, Brett Smith, a managing member of Smithco Properties, LLC ("Property Owner"), requested authorization to connect the Villa Del Sol Mobile Home Park ("Park"), located at 5800 Stern Drive to the City's wastewater utility system; and

WHEREAS, Utilities Department staff has determined that there is adequate capacity in the City's wastewater utility system for the proposed connection; and

WHEREAS, a preliminary draft agreement is attached as Exhibit "A" and made part of this Resolution; and

WHEREAS, the Utilities Director and the Utilities Attorney will work with the Property Owner to finalize the draft agreement to ensure that the City's requirements are met; and

WHEREAS, the proposed wastewater utility connection will be subject to the City's surcharge for out of City limits utility rates; and

WHEREAS, the Property Owner will be required to pay the full amount of the City's wastewater development impact fees; and

WHEREAS, in accordance with its By-Laws, the Las Cruces Utilities Board of Commissioners is authorized to develop long range and strategic policy recommendations concerning the extension of the City utility services outside of the City limits; and

WHEREAS, Utilities Department staff is recommending approval to the City Council of the request from the Villa Del Sol Mobile Home Park to connect to the City's wastewater utility system.

NOW, THEREFORE, be it resolved by the Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces:

(I)

THAT, the Utilities Board of Commissioners recommends approval to City Council of the request from the Villa Del Sol Mobile Home Park to connect to the City's wastewater utility system.

(II)

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

DONE AND APPROVED this 8th day of November, 2012.

By William M. Little
Board Chair

ATTEST:

[Signature]
Secretary

Moved by Sorg

Seconded by Pedroza

VOTE:

- Chair Little: Aye
- Vice-Chair Hanson: Aye
- Commissioner Cadena: Aye
- Commissioner Ericson: Absent
- Commissioner Pedroza: Aye
- Commissioner Sorg: Aye
- VACANT

APPROVED AS TO FORM:

[Signature]
Utilities Attorney