

# City of Las Cruces®

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 8

Ordinance/Resolution# 13-132

For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)

For Meeting of April 1, 2013  
(Adoption Date)

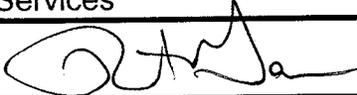
Please check box that applies to this item:

QUASI JUDICIAL     LEGISLATIVE     ADMINISTRATIVE

**TITLE:** A RESOLUTION ADOPTING A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NON-PROFIT CORPORATION KNOWN AS FARMERS & CRAFTS MARKET OF LAS CRUCES, INC. FOR THE GOVERNANCE AND OPERATION OF THE LAS CRUCES FARMERS AND CRAFTS MARKET.

**PURPOSE(S) OF ACTION:**

Approve Memorandum of Agreement.

<b>COUNCIL DISTRICT:</b> N/A		
<b><u>Drafter/Staff Contact:</u></b> Andy Hume	<b><u>Department/Section:</u></b> Community Development / Planning & Neighborhood Services	<b><u>Phone:</u></b> 528-3048
<b><u>City Manager Signature:</u></b>		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

The Las Cruces Farmers and Crafts Market has been in operation for over 40 years. Over the past several years the market has been under the governance of the City. Oversight of the market has typically resided with the Community Development Department.

Last year, a series of discussions, called Great Conversations, were held to explore the opportunities available for a non-profit group to take over governance and operations. The group that was organized from these discussions is called the Farmers & Crafts Market of Las Cruces, Inc. (the "Corporation").

The attached Memorandum of Agreement (MOA) outlines the governance responsibilities of both the City and the Corporation should both parties adopt the MOA for management and oversight of the market. The City will retain ownership, maintenance, and operation of Main Street. The Corporation will conduct all market management activities including maintaining appropriate operating documents, billing and receipting, and vendor conflict resolution. The City and the Corporation will cooperate on seeking alternate funding sources to improve Main St. and the market; maintain communication regarding planning issues; and continue to coordinate market and downtown issues with all appropriate stakeholders.

During the past six months, the Corporation has made significant strides to solidify its status in order to prepare for entering into this MOA. The corporation has applied for and received non-profit status. The governing board of the Corporation has adopted organization bylaws. The corporation is now drafting a set of policies and procedures that will be the basis for vendor practices at the market.

Once the MOA is adopted by both parties, a lease agreement for the Corporation to use Main Street will be drafted. The lease agreement will contain details about operational responsibilities for both parties. The lease will be submitted to City Council at a future date for adoption.

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit "A", Memorandum of Agreement between the City of Las Cruces and the non-profit corporation known as Farmers & Crafts Market of Las Cruces, Inc.

**SOURCE OF FUNDING:**

Is this action already budgeted?  N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	Budget Adjustment Attached	<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?  N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

N/A
-----

**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 action will approve the Resolution adopting the Memorandum of Agreement between the City of Las Cruces and the non-profit corporation known as Farmers & Crafts Market of Las Cruces, Inc.
2. Vote "No"; this action will deny the Resolution adopting the Memorandum of Agreement between the City of Las Cruces and the non-profit corporation known as Farmers & Crafts Market of Las Cruces, Inc. The City of Las Cruces will retain governance of the Farmers and Crafts Market.
3. Vote to "Amend"; this action could modify the Resolution and approve the modified Resolution. The Resolution may be modified to "Accept" the recommendations.
4. Vote to "Table"; this action could prevent staff from implementing the Memorandum of Agreement.

**REFERENCE INFORMATION:**

1. N/A

RESOLUTION NO. 13-132

**A RESOLUTION ADOPTING A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NON-PROFIT CORPORATION KNOWN AS FARMERS & CRAFTS MARKET OF LAS CRUCES, INC. FOR THE GOVERNANCE AND OPERATION OF THE LAS CRUCES FARMERS AND CRAFTS MARKET.**

The City Council is informed that:

**WHEREAS**, the Las Cruces Farmers and Crafts Market has been in existence for over 40 years; and

**WHEREAS**, over the past few years the Las Cruces Farmers and Crafts Market has been named the number one market in New Mexico and even the United States; and

**WHEREAS**, the Las Cruces City Council desires to enter into an agreement for the non-profit corporation known as Farmers & Crafts Market of Las Cruces, Inc. to govern and operate the Las Cruces Farmers and Crafts Market; and

**WHEREAS**, the City of Las Cruces has the authority to enact a Memorandum of Agreement with various agencies as it sees fit.

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

(I)

**THAT** the Memorandum of Agreement between the City of Las Cruces and the non-profit corporation known as Farmers & Crafts Market of Las Cruces, Inc. for the governance and operation of the Las Cruces Farmers and Crafts Market, as shown in Exhibit "A," attached hereto and made part of this Resolution, is hereby approved.

(II)

**THAT** the City Manager is authorized to execute the Memorandum of 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 \_\_\_\_\_, 2013.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

(SEAL)

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

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

VOTE:

Mayor Miyagishima: \_\_\_\_\_  
Councillor Silva: \_\_\_\_\_  
Councillor Smith: \_\_\_\_\_  
Councillor Pedroza: \_\_\_\_\_  
Councillor Small: \_\_\_\_\_  
Councillor Sorg: \_\_\_\_\_  
Councillor Thomas: \_\_\_\_\_

**MEMORANDUM OF AGREEMENT BETWEEN THE FARMERS & CRAFTS MARKET OF LAS CRUCES, INC. AND THE CITY OF LAS CRUCES FOR THE GOVERNANCE AND OPERATION OF THE FARMERS AND CRAFTS MARKET.**

This Memorandum of Agreement ("MOA") is made and entered into by and between the Farmers & Crafts Market of Las Cruces, Inc. (the "Corporation"), and the City of Las Cruces (the "City").

WHEREAS, the Corporation is a non-profit New Mexico corporation; and

WHEREAS, the City is a New Mexico municipal corporation; and

WHEREAS, the City has been operating a farmers and crafts market ("Market") in Downtown Las Cruces area since 1999 and now desires to transfer the governance and operation of the Market to the Corporation as set forth in this MOA.

NOW, THEREFORE, in consideration of the agreements contained herein, the parties agree as follows:

1. Recitals: The above recitals are hereby incorporated into this MOA.
2. Purpose of MOA: The purpose of this MOA is to allow the Corporation to operate the Farmers and Crafts Market, hereinafter the Market, on Main Street in Downtown Las Cruces.
3. Effective Date: This MOA provides for two periods. The "First Period," as designated herein, becomes effective upon signature by all parties and terminates at midnight on June 30, 2013 and is meant to be a transition period. The "Second Period," as designated herein, becomes effective at 12:01 am on July 1, 2013, and shall remain in effect until terminated in writing by either party pursuant to the provisions of the MOA.
4. Responsibilities During Each Period
  - A. Responsibilities During First Period:
    - 1) Responsibilities of the City:
      - a. Continue Market governance and operations as provided in LCMC Sections 10-1 through 10-43 and in the Market rules and regulations referenced in LCMC Section 10-34(c)
      - b. Orchestrate the expansion of the Market to the Main Street southern blocks.
      - c. Facilitate smooth transition of the Market operations from the City to the Corporation.

- d. Reconcile and transfer current Market and vendor data and materials to the Corporation Secretary and/or Treasurer.
- e. Submit FY 2013 Fourth Quarter Market fee billing to Market vendors.
- f. Transfer FY 2013 Fourth Quarter Market fee receipting to the Corporation Treasurer. The Corporation will retain all funds received from the FY 2013 Fourth Quarter.
- g. Execute a lease permitting Market operations by the Corporation on Main Street according to the Main Street/Downtown Policies, as amended.

2) Responsibilities of the Corporation:

- a. Adopt and implement necessary governance and operational documents. These include, but are not limited to: Bylaws, Vendor Policies and Procedures, and various standard operating procedures as needed.
- b. Coordinate Market expansion to the Main Street southern blocks with necessary parties.
- c. Participate in the transition of Market governance and operations from the City to Corporation. This includes taking timely and appropriate Board actions as needed.
- d. Adopt and implement processes to recruit and retain people for the Market and Block Coordinator positions.
- e. Upon transfer from the City, conduct FY 2013 Fourth Quarter Market fee receipting. The Corporation will retain all funds received from the FY 2013 Fourth Quarter.

B. Responsibilities During the Second Period:

1) Responsibilities of the City:

- a. Allow the Corporation autonomy to conduct Market governance and operations. This includes, but may not be limited to, deferring all Market and vendor-related inquiries, fees, and decisions to the Corporation. Decisions include, but may not be limited to, complaints, vendor participation and code of conduct, and discipline issues outlined in the Bylaws, Vendor Policies and Procedures, or other standard operating procedures adopted by the Corporation. There shall be no appeals of Corporation decisions to the City.

- b. Update and maintain all applicable City, State, and national codes and standard operating procedures such as the Main Street/Downtown Policies, as amended.
- c. The area used for the Market shall be defined by the City in cooperation with the Corporation and the Downtown business and property owners. This shall include the number and placement of the spaces within the Market.
- d. Main Street Downtown and the Market shall be considered during all future transportation planning and implementation efforts.
- e. Invite the Corporation to provide a representative to serve on committees and groups participating in projects or other items that directly impact Main Street Downtown.
- f. Provide accommodations for large Corporation meetings such as general vendor meetings.
- g. Coordinate with the Corporation and all Downtown business and property owners, groups, committees, and associations regarding Downtown policy or ordinance amendments.
- h. Repeal Las Cruces Municipal Code Sections 10-1 through 10-43 and 16-170.6 to the extent that they conflict with this MOA and with the lease to be entered into between the parties.

2) Responsibilities of the Corporation:

- a. Govern and operate the Market. This includes, but may not be limited to, establishing and assessing fees, maintaining accurate accounting, addressing all Market and vendor-related inquiries, fees, and decisions. Decisions include, but may not be limited to, complaints, vendor participation and code of conduct, and discipline issues outlined in the Bylaws, Vendor Policies and Procedures, or other standard operating procedures adopted by the Corporation.
- b. Maintain and implement governance and operational documents. These include, but are not limited to: Bylaws, Vendor Policies and Procedures, and various standard operating procedures as needed.
- c. Comply with all applicable City, State, and national codes and standard operating procedures such as the Main Street/Downtown Policies, as amended.

- d. Provide a semi-annual "State of the Market" report and/or presentation to City Council on or about the first regularly scheduled Council meetings in June and December.
- e. Provide proof of payment of taxes to the Downtown Tax Increment Development District (TIDD) or City (should the TIDD no longer exist) as reported in the aggregate by transaction or trade type (i.e. North American Industrial Classification System, NAICS) without revealing any confidential vendor information.
- f. Establish and maintain procedures to promote the Market outside of Doña Ana County and expand awareness of Downtown businesses and City-sponsored events.
- g. Establish and maintain procedures to provide clear, accurate, and timely communication with the City, Downtown business and property owners, Downtown groups, committees, and associations, and Market vendors.
- h. Designate a Corporation representative to serve on committees and groups participating in projects or other items that directly impact Main Street Downtown. This representative will continue to work with the City and all other Downtown groups, committees, and associations.
- i. Assign the permanent and temporary spaces within the Market subject to the lease.
- j. All existing permanent or temporary vendors as of July 1, 2013 shall be allowed to continue to participate/vend at the Market until such time as they voluntarily cease their participation or are terminated for cause in accordance with the policies and procedures adopted by the Corporation. Any new vendors authorized to participate/vend at the Market beginning on July 1, 2013 will abide by the most current policies and procedures adopted by the Corporation.

3) Responsibilities of Both Parties:

- a. Seek legislative funding to advance Downtown-related activities including, but not limited to, the Market and implementation of revitalization plans.
- b. Apply for grants. Application process may include, but not be limited to, co-authoring appropriate documents with the City acting as the fiscal agent if necessary; and supporting the long-term sustainability goals of the Market.

5. Equal Opportunity Compliance: The Corporation agrees to abide by all State and Federal laws, rules, and regulations pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, the Corporation agrees to assure that no

person in the United States shall on the grounds of race, color, national origin, sex, sexual preference, age, or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this MOA. If the Corporation is found to be out of compliance with these requirements during the life of this MOA, the Corporation agrees to take appropriate steps to correct these deficiencies.

6. Third Party Beneficiary Clause: This MOA is not intended to create in the public, or any member thereof, a third party beneficiary claim or to authorize anyone not a party to the MOA to maintain a suit for wrongful death, bodily and/or personal injury to person, damage to property, and/or any other claim(s) whatsoever pursuant to its provisions.
7. New Mexico Tort Claims Act: By entering into this MOA, each party agrees that it shall be responsible for liability arising from personal injury or damage to property occasioned by its own agents or employees in the performance of this MOA, subject in all cases to the immunities and limitation of the New Mexico Tort Claims Act (NMSA 1978, Section 41-4-1, et seq.) and any amendments thereto.
8. Insurance: The Corporation shall at all times during the term of this MOA have and keep in force liability, property, casualty and workers' compensation insurance in amounts not less than those as set forth in the New Mexico Tort Claims Act. The Corporation agrees to assume all risk in the performance of its services hereunder and in its operations and/or activities in connection herewith. The City shall be named as an additional insured.
9. Dispute Resolution: Before any party to this MOA may bring suit in any court concerning any issues relating to this MOA, such party must first seek in good faith to resolve the issue through means such as negotiation or mediation. The City, at its discretion, may establish a dispute resolution process that includes, but is not limited to, the City, the Corporation and Downtown businesses and property owners.
10. Authorization of Expenditures: The City and the Corporation are not committed to expenditure of any funds until such time as they are budgeted, obligated, encumbered and approved for expenditure. The City's decisions as to whether its funds are sufficient for fulfillment of the MOA shall be final.
11. Employment Status: This MOA in no way alters the employment status of the Corporation employees or the City employees who shall remain under the supervision of their respective entities.
12. Amendment: This MOA shall not be altered, modified or amended except by an instrument in writing and executed by the parties hereto.
13. Termination of MOA: Either party may terminate this MOA without cause upon sixty (60) days written notice by certified letter to the following addresses:

President  
Farmers & Crafts Market of Las Cruces, Inc.  
WAITING ON PO BOX  
Las Cruces, New Mexico 88005

City Manager  
City of Las Cruces  
PO Box 20000  
Las Cruces, New Mexico 88004

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement effective as of the \_\_\_\_ day of April, 2013.

City of Las Cruces

By: \_\_\_\_\_  
Robert Garza, City Manager

Date: \_\_\_\_\_

Approved as to Form

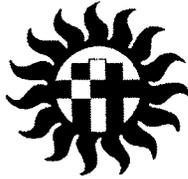
By: \_\_\_\_\_  
Harry Connelly, City Attorney

Date: \_\_\_\_\_

Farmers & Crafts Market of Las Cruces, Inc.

By: \_\_\_\_\_  
Don Kelly, President

Date: \_\_\_\_\_



# City of Las Cruces<sup>®</sup>

PEOPLE HELPING PEOPLE

## COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)

For Meeting of April 1, 2013  
(Adoption Date)

TITLE:

A RESOLUTION ADOPTING A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NON-PROFIT CORPORATION KNOWN AS FARMERS & CRAFTS MARKET OF LAS CRUCES, INC. FOR THE GOVERNANCE AND OPERATION OF THE LAS CRUCES FARMERS AND CRAFTS MARKET.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes  No

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	<i>[Signature]</i>	528-3048	3/19/13
Department Director	<i>[Signature]</i>	528-3067	3-19-13
Other			
Assistant City Manager /CAO Management & Budget Manager	<i>[Signature]</i>	2078 2107	3/19/13 3/19/13
Assistant City Manager/COO	<i>[Signature]</i>	7221	3/20/13
City Attorney	<i>[Signature]</i>	2128	3/20/13
City Clerk	<i>[Signature]</i>	8215	3/20/13