



City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 17

Ordinance/Resolution# 15-169

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of March 16, 2015
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL

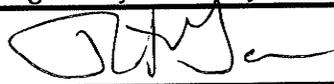
LEGISLATIVE

ADMINISTRATIVE

TITLE: A RESOLUTION TO AMEND THE TERMS AND CONDITIONS OF THE NEW MEXICO STATE UNIVERSITY AND CITY OF LAS CRUCES GROUND LEASE CONCERNING THE CONVENTION CENTER AND ADJOINING PROPERTY.

PURPOSE(S) OF ACTION:

To amend a lease.

COUNCIL DISTRICT: N/A		
<u>Drafter/Staff Contact:</u> Monica Campbell	<u>Department/Section:</u> Legal/City Attorney	<u>Phone:</u> 541-2128
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On March 12, 2007, the Las Cruces City Council approved a Ground Lease Agreement ("Agreement") between the Board of Regents of New Mexico State University ("NMSU") and the City of Las Cruces ("the City") to lease approximately 8.8370 acres of property owned by NMSU to the City.

Pursuant to Section 16 of the Agreement, the City has notified NMSU of its desire to exercise its option to lease additional land. NMSU and the City note that it is in their best interests that the City be provided the option to lease additional land not previously identified in the Agreement, and the parties have agreed to a Third Amendment to the Agreement.

NMSU and the City negotiated an amended rent structure which includes payment in lieu of rent in which the City agrees to make beneficial use of water from NMSU during 2015. In addition, the Agreement will provide a remedy for the current Claim of Municipal Utility Lien filed by the City against improvements owned by Aldershot of New Mexico Inc. on land owned by NMSU.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Third Amendment to Agreement.

(Continue on additional sheets as required)

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

The amendment provides that the current rent arrangement will remain the same until January 2018.

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 Third Amendment to the Agreement.
2. Vote "No"; this will not approve the Third Amendment to the Agreement and the current agreement will remain.
3. Vote to "Amend"; this could allow the City Council to add to or remove portions of the Third Amendment to the Agreement.
4. Vote to "Table"; this could allow the City Council to table or postpone consideration of the resolution and to 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.

1. Resolution No. 07-203.

(Continue on additional sheets as required)

RESOLUTION NO. 15-169**A RESOLUTION TO AMEND THE TERMS AND CONDITIONS OF THE NEW MEXICO STATE UNIVERSITY AND CITY OF LAS CRUCES GROUND LEASE CONCERNING THE CONVENTION CENTER AND ADJOINING PROPERTY.**

The City Council is informed that:

WHEREAS, a Ground Lease Agreement ("Agreement") between the Board of Regents of New Mexico State University ("NMSU") and the City of Las Cruces ("the City") dated March 12, 2007 leased approximately 8.8370 acres of property owned by NMSU to the City of Las Cruces; and

WHEREAS, the Agreement was amended on February 9, 2008 and October 10, 2011; and

WHEREAS, pursuant to Section 16, Option to Lease Additional Land, of the Agreement, the City has notified NMSU of its desire to exercise its option to lease additional land; and

WHEREAS, NMSU and the City note that it is in their best interests that the City be provided the option to lease additional land not previously identified in the Agreement, and, therefore, the parties have agreed to a Third Amendment to the Agreement; and

WHEREAS, NMSU and the City negotiated an amended rent structure which includes payment in lieu of rent in which the City agrees to make beneficial use of water from NMSU during 2015; and

WHEREAS, the Agreement will provide a remedy for the current Claim of Municipal Utility Lien filed by the City against improvements owned by Aldershot of New Mexico Inc. on land owned by NMSU.

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

(I)

THAT the Third Amendment to the Ground Lease Agreement between the City of Las Cruces and the Board of Regents of New Mexico State University, as shown on Exhibit "A" attached hereto, 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 on this _____ day of _____, 20__.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Levatino: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to be 'W. B. J.', written over a horizontal line.

City Attorney

THIRD AMENDMENT TO GROUND LEASE AGREEMENT

This Third Amendment to Ground Lease Agreement ("Agreement") is made and entered into this _____ day of _____ 2015 by and between the City of Las Cruces, a municipal corporation of the State of New Mexico ("the City") and the Board of Regents of New Mexico State University ("NMSU").

RECITALS

A. The City and NMSU are parties to that certain Agreement dated March 12, 2007, as amended on February 19, 2008 and October 10, 2011, with respect to the lease of approximately 8.8370 acres, situate in Dona Ana County, New Mexico, and located on that certain property commonly known as the New Mexico State University, Las Cruces Campus.

B. Pursuant to Section 16. OPTION TO LEASE ADDITIONAL LAND of the 2007 Agreement, the City has notified NMSU of its desire to use the additional land. NMSU has reviewed the City's needs for additional land and has determined that a portion of the additional land consisting of approximately 2.7 acres satisfies the needs of the City and that the City has notified NMSU of their desire to exercise their option to lease only the additional 2.7 acres of land.

C. NMSU and the City have agreed that it is in their best interests to provide the City the option to lease additional land not previously identified in the Agreement.

D. NMSU and the City also agree to the beneficial use of a maximum of 6,000 acre feet of water from NMSU to the City during 2015.

E. The City and NMSU also desire to utilize this instrument as a means to remedy a current Claim of Municipal Utility Lien filed by the City against improvements owned by Aldershot of New Mexico Inc. which existed on lands leased from NMSU.

F. The City and NMSU desire to amend the Agreement as hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, the following agreements and undertakings of the parties, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby amend the Agreement and agree as follows:

1. Section 1 of the original Agreement is hereby deleted and in its place is substituted the following:

Section 1. GRANT OF LEASE. NMSU upon the terms and conditions hereinafter set forth does hereby lease unto the City certain real property consisting of an 8.8370 acre tract of land more particularly described in Exhibit "A" attached hereto including a plat thereof, and Tract C shown on Exhibit "B" hereto. Said

property is situate in Dona Ana County, New Mexico and located on that certain property referred to as New Mexico State University, Las Cruces Campus (hereinafter referred to as "Land"). A survey of Tract C shown on Exhibit "B" will be prepared and will be added to Exhibit "B" upon preparation.

2. Section 3. RENT is deleted and in its place is substituted the following:

Section 3. RENT. Upon execution of this Agreement, the annual rent for the 8.8370 acre tract and Tract C will be payable in the amount of \$3,500.00 through December 31, 2017. Commencing on January 1, 2018 and each year thereafter, the City covenants with NMSU that it will pay to NMSU without demand and without reduction whatsoever at such place as NMSU shall designate in writing an annual rental payment of \$41,623.71 per year. Annual rent shall be adjusted on the fifth (5th) anniversary after January 1, 2018 based on an increase or decrease in the cumulative average Annual US Consumer Price Index or successor report issued by the Federal Government over the preceding five (5) calendar years of reporting.

In lieu of the payment of rent over \$3,500.00 per year, the City agrees to take and place to a beneficial use up to 6,000 acre feet of water from NMSU during the calendar year 2015, in accordance with existing agreements in place. The amount of rent owed shall decrease proportionately to the amount of water put to beneficial use for all acre feet in excess of 3,000 acre feet during 2015 as set forth in Exhibit "C" attached to this Third Amendment. For example, should the City put to beneficial use and place in service 4,000 acre feet of water, the annual rent owed by the City to NMSU would be permanently decreased by \$12,707.90 and thus the rent owed would be \$25,416.31. Should the City put 6,000 acre feet of water to beneficial use during 2015, the annual rent owed by the City to NMSU would be permanently decreased by \$38,123.71 and thus the rent owed would be \$3,500.00 per year plus any increase or decrease in the cumulative average Annual US Consumer Price Index or successor report issued by the Federal Government over the preceding five (5) calendar years of reporting, for the remainder of the lease.

3. Section 16. OPTION TO LEASE ADDITIONAL LAND is hereby deleted and in its place is substituted the following:

Section 16. OPTION TO LEASE ADDITIONAL LAND. NMSU hereby grants to the City an option to lease parcels "A" and "B" shown on Exhibit "B" attached hereto upon the expiration or termination of the lease with the United States Department of Agriculture ("USDA") which lease is currently on parcels "A" and "B" shown on Exhibit "B" attached to this Third Amendment. Upon expiration of said lease or termination of the lease between the USDA and NMSU, NMSU shall notify the City that the parcels are available and the City shall have sixty (60) days from the date of notification to exercise its option to lease. In the event the option to lease is exercised, the parties shall prepare an amendment to the Ground Lease adding the two parcels and increasing the then current annual rental payment provided for above by the percentage increase in square footage of the

amended Ground Lease by the addition of parcels "A" and "B" shown on Exhibit "B" attached hereto. The City releases any option to purchase any land within the area shown on parcel "B" in the original Exhibit "A" to the original Ground Lease. That option to purchase is superseded by this new option to purchase and the leasing of Tract C in Exhibit B. In connection with the lease of Tract C described in Exhibit "B" attached hereto, the City agrees to allow NMSU access to Tract C for continuation of current agricultural activities until such time as the City occupies Tract C to begin construction activities. If the City gives such notice and if there is a current existing crop planted on Tract C by NMSU or its agents, said crop shall be allowed to be harvested but in no event shall possession of Tract C be provided to the City by NMSU later than December 31 of the year of which notice was given.

4. There shall be added to Section 13. ANNEXATION OF LAND the following provision:

NMSU shall submit an application for the annexation of the four parcels labeled "A", "B", "C" and "D" as shown on Exhibit "B" attached hereto upon request to do so by the City. The City shall be responsible for all costs related to such annexation of parcels labeled "A", "B", "C" and "D" as shown on Exhibit "B" attached hereto.

5. There is added the following additional paragraph to the original Ground Lease, Section 56.

5b. RELEASE OF MUNICIPAL UTILITY LIEN. The City and the University agree that this Agreement completely satisfies any claim the City has pursuant to the following described municipal utility lien:

First Amended Claim of Municipal Utility Lien filed in the office of the County Clerk of Dona Ana County, April 4, 2014, as Instrument No. 1406806 in the amount of \$120,884.50 plus interest at 12% per annum.

The above utility lien shall be released by the City within thirty (30) days of the execution of this amendment at the office of the County Clerk of Dona Ana County, New Mexico. In return for the release of this utility lien, NMSU agrees to credit the City with rent in the amount of \$120,884.50 for the remaining years of this Agreement.

6. Miscellaneous.

(a) In the event of any inconsistency among the terms and provisions of this Third Amendment to Ground Lease and those of the original Ground Lease, the terms and provisions of this Agreement shall control.

(b) Except as expressly amended hereby the original Ground Lease remains in full force and effect between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment to Ground Lease Agreement by proper persons thereunto duly authorized to do so as of the day and year first above written.

CITY OF LAS CRUCES

By: _____
Robert L. Garza, P.E., City Manager

Date: _____

Approved as to form:

City Attorney

BOARD OF REGENTS OF NEW MEXICO STATE UNIVERSITY

By: _____
Mike Cheney, Chair, Board of Regents
of New Mexico State University

Date: _____

STATE OF NEW MEXICO)
 : ss.
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me on this _____ day of _____, 2015, by Robert L. Garza, P.E., City Manager for the City of Las Cruces, New Mexico, a municipal corporation, on behalf of said municipality.

Notary Public

My commission expires:

EXHIBIT 8

University Avenue

Parcel A
Approximately 8.3 acres

Area B
Approximately 6.3 Acres

Area B
Approximately 1.5 Acres

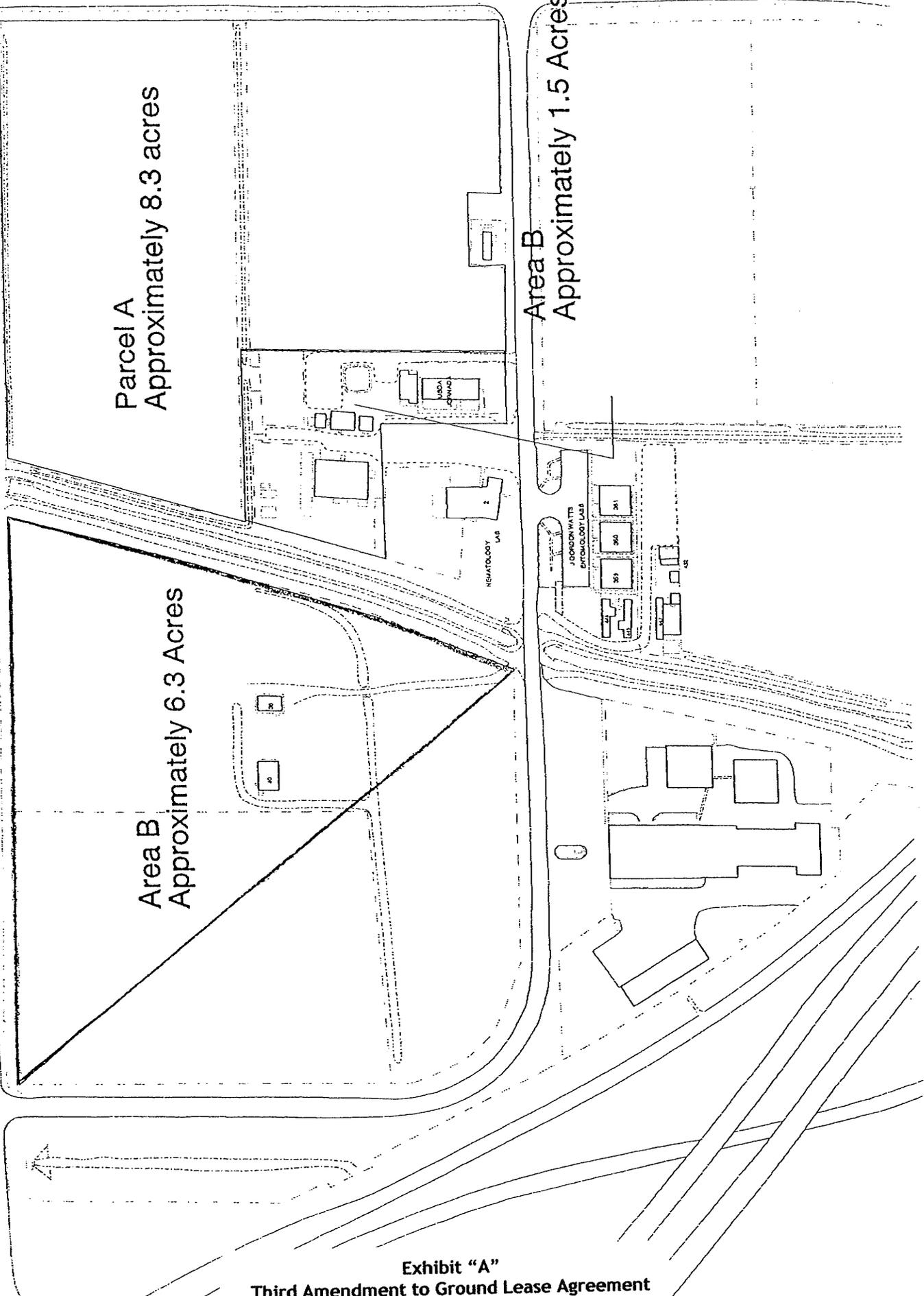


Exhibit "A"
Third Amendment to Ground Lease Agreement

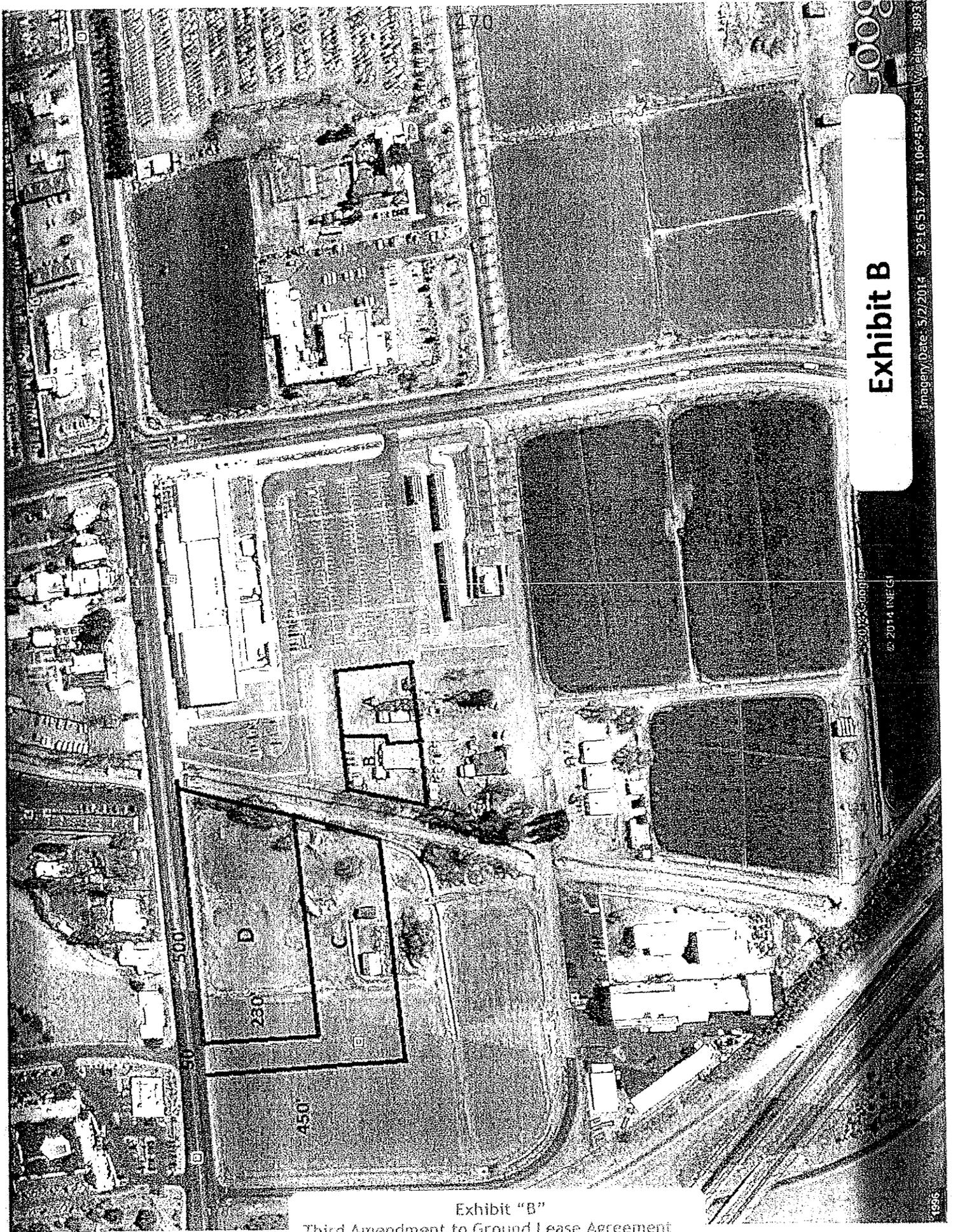


Exhibit B

Exhibit "B"
Third Amendment to Ground Lease Agreement

Google
Imagery Date: 5/2/2014 32°16'51.37" N 106°45'44.88" W Elev: 3893

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Volume Acre Feet	Rent Reduction	Comment
2,500	\$ -	Original Agreement
3,000	\$ -	Amended Agreement
3,500	\$ 6,353.95	
4,000	\$ 12,707.90	
4,500	\$ 19,061.86	
5,000	\$ 25,415.81	
5,500	\$ 31,769.76	
6,000	\$ 38,123.71	

Increment	\$ 6,353.95 per 500 acre-feet
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