



City of Las Cruces®

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Council Action and Executive Summary

Item # 2Ordinance/Resolution# 16-141For Meeting of _____
(Ordinance First Reading Date)For Meeting of January 19, 2016
(Adoption Date)

Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING A UTILITY INFRASTRUCTURE IMPROVEMENT FUNDING AGREEMENT BETWEEN MESA DEVELOPMENT CENTER, INC. AND THE CITY OF LAS CRUCES FOR MODIFICATIONS TO THE WATER SYSTEM IN STEWARDS DRIVE BETWEEN SIERRA VISTA AVENUE AND PETTES BOULEVARD AND PETTES BOULEVARD FROM STEWARDS DRIVE TO MESA DRIVE. THE RESOLUTION AUTHORIZES THE CITY MANAGER TO SIGN THE AGREEMENT ON THE CITY'S BEHALF AND TO APPROVE AN ADJUSTMENT TO THE FY 2016 BUDGET.

PURPOSE(S) OF ACTION:

Approve utility infrastructure agreement.

COUNCIL DISTRICT: 5		
<u>Drafter/Staff Contact:</u> Raymond Burchfield	<u>Department/Section:</u> Community Development / Neighborhood Services	<u>Phone:</u> 528-3094
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The purpose of this Resolution is to approve a Utility Infrastructure Improvement Funding Agreement (Agreement) between Mesa Development Center, Inc. (MDC) and the City of Las Cruces (City) for modifications to the water system in the area of Stewards Drive and Pettes Boulevard. City Council approval is required in order to enter into such agreements with outside organizations. In addition, Council is being asked to approve a budget adjustment. Funding for the Pettes and Stewards project was allocated through Resolution 15-216 as part of the 2015 Action Plan. The budget adjustment reflects the approved funding amount being assigned to the correct account for this project.

The City is designated as a Community Development Block Grant (CDBG) entitlement community by the U.S. Department of Housing and Urban Development (HUD). HUD requires the City to develop an annual Action Plan to allocate CDBG funds each program year. The City's Action Plan for program year 2015 (FY2016) allocates \$300,000 for the reconstruction of Stewards Drive

between Sierra Vista Avenue and Pettes Boulevard, and Pettes Boulevard between Stewards Drive and Mesa Drive ("project area"). The CDBG funds will be partnered with roadway and flood control funds to complete the project. Infrastructure improvements will include complete reconstruction of the roadway, curb and gutter, sidewalks, and upgrades to the existing utility systems (water, gas, wastewater, and storm sewer).

All of the utilities in the project area are owned by the City, except for the water distribution system owned by Mesa Development Center, Inc. City staff proposed that the CDBG funds be used as gap funding to address concerns about the condition and depth of MDC's water distribution lines.

In order to facilitate waterline upgrades within the project area, the City's Legal Department drafted an Agreement that outlines the terms and conditions of the improvements. In the Agreement, MDC agrees that should they sell their system to either the City or another party, the value of City improvements shall:

- 1) not be included in the purchase price should the City buy their system for this portion along the project area; or
- 2) be reimbursed back to the City from the sale's proceeds should they sell to an outside party.

This project is an eligible use of CDBG funds and complies with HUD's mission of improving the lives of low-income residents by ensuring their continued access to a reliable and safe water system. No direct payments will be made to MDC. All City funds will be used to pay an outside contractor that is selected through the City's procurement process. Further, the use of CDBG funds for this purpose does not violate any prohibitions under the anti-donation clause of the New Mexico Constitution.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Utility Infrastructure Improvement Funding Agreement between the Mesa Development Center, Inc. and the City of Las Cruces for the Pettes and Stewards project area.
3. Exhibit "B", Budget adjustment.
4. Attachment "A", Vicinity map.

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" 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 checked="" type="checkbox"/>	Proposed funding is from fund balance in the <u>2000</u> Fund.
Does this action create any revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$_____ for FY__.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

Funding for the Pettes and Stewards project was allocated through Resolution 15-216 as part of the 2015 Action Plan. The budget adjustment reflects the approved funding amount being assigned to the correct account for this project.

FUND EXPENDITURE SUMMARY

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
CDBG	20184370-854121-70M35	\$126,359.99	\$126,359.99	\$0	N/A
CDBG	20184420-854121-70M35	\$173,640.01	*\$173,640.01	\$0	N/A

*Pending approved budget adjustment

OPTIONS / ALTERNATIVES:

- Vote "Yes"; this will approve the Utility Infrastructure Improvement Funding Agreement between Mesa Development Center, Inc. and the City. This will authorize the City Manager to sign the Agreement and adjust the FY 2016 budget.
- Vote "No"; this will not approve the Utility Improvement Funding Agreement between Mesa Development Center, Inc. and the City. This would delay the project and may result in a loss of funding.
- Vote to "Amend" and vote "Yes"; this may allow City Council to modify the Resolution by adding conditions as they deem appropriate. Direction would need to be provided by City

Council on any proposed amendments. This would delay the project and may result in a loss of funding.

4. Vote to "Table"; City Council may table/postpone the Resolution and direct staff accordingly. This would delay the project and may result in a loss of funding.

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. 15-216

RESOLUTION NO. 16-141

A RESOLUTION APPROVING A UTILITY INFRASTRUCTURE IMPROVEMENT FUNDING AGREEMENT BETWEEN MESA DEVELOPMENT CENTER, INC. AND THE CITY OF LAS CRUCES FOR MODIFICATIONS TO THE WATER SYSTEM IN STEWARDS DRIVE BETWEEN SIERRA VISTA AVENUE AND PETTES BOULEVARD AND PETTES BOULEVARD FROM STEWARDS DRIVE TO MESA DRIVE. THE RESOLUTION AUTHORIZES THE CITY MANAGER TO SIGN THE AGREEMENT ON THE CITY'S BEHALF AND TO APPROVE AN ADJUSTMENT TO THE FY 2016 BUDGET.

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) is a designated Community Development Block Grant (CDBG) Program entitlement community by the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, the City has worked to improve the utilities, streets, and sidewalks along various roads in the City's East Mesa since the area's annexation in 1986; and

WHEREAS, the City's Program Year 2015 Action Plan, Resolution 15-216, approved the use of \$300,000 in CDBG funding for infrastructure improvements to project area including Stewards Drive and Pettes Boulevard; and

WHEREAS, Mesa Development Center, Inc. (MDC) owns a private water utility company that serves the residents along the identified portion of Stewards Drive and Pettes Boulevard; and

WHEREAS, a Utility Improvement Funding Agreement (Agreement) is necessary to outline the terms of the improvements to MDC's water system along Stewards Drive and Pettes Boulevard in order to complete the construction project and provide quality water service; and

WHEREAS, the Agreement outlines the long-term conditions and potential future acquisition of MDC's water system by either the City or another party; and

WHEREAS, the State of New Mexico Constitution's Article IX, Section 14

(otherwise known as the anti-donation clause) is not applicable to this Agreement; and

WHEREAS, City staff has developed the necessary construction documents, secured the proper approvals, and is prepared to open the bidding process for this project and now requires the execution of the Agreement in order to move forward with this project.

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

(I)

THAT the Utility Infrastructure Improvement Funding Agreement between the Mesa Development Center, Inc. and the City of Las Cruces for modifications to the water system in Stewards Drive and Pettes Boulevard, as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby approved.

(II)

THAT the City Manager is hereby authorized to sign the Utility Infrastructure Improvement Funding Agreement on the City's behalf.

(III)

THAT the FY 2016 adopted budget is hereby adjusted as reflected in Exhibit "B", attached hereto and made a part of this Resolution.

(IV)

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

DONE AND APPROVED this _____ day of _____ 20__.

APPROVED:

Mayor

ATTEST:

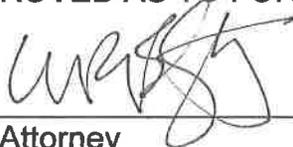
City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

VOTE:

Mayor Miyagishima:	_____
Councillor Gandara:	_____
Councillor Smith:	_____
Councillor Pedroza:	_____
Councillor Eakman:	_____
Councillor Sorg:	_____
Councillor Levatino:	_____

**UTILITY INFRASTRUCTURE IMPROVEMENT FUNDING AGREEMENT
BETWEEN MESA DEVELOPMENT CENTER, INC. AND THE CITY OF LAS
CRUCES FOR MODIFICATIONS TO THE WATER SYSTEM IN STEWARDS
DRIVE BETWEEN SIERRA VISTA AVENUE AND PETTES BOULEVARD AND
PETTES BOULEVARD BETWEEN STEWARDS DRIVE AND MESA DRIVE.**

This Agreement is entered into on this _____ day of _____, 2016, by and between the **CITY OF LAS CRUCES**, a New Mexico municipal corporation ("**City**"), and **MESA DEVELOPMENT CENTER, INC.** ("**Owner**") as follows:

WHEREAS, the Owner owns a private water system serving portions of the East Mesa with infrastructure within Stewards Drive between Sierra Vista Avenue and Pettes Boulevard and Pettes Boulevard between Stewards Drive and Mesa Drive; and

WHEREAS, the City is undertaking the reconstruction and paving of Pettes Boulevard and Stewards Drive as part of a Community Development Block Grant Program and general street improvement program; and

WHEREAS, the Owner's existing water distribution system within that portion of Pettes Boulevard and Stewards Drive may be adversely impacted as the result of the proposed City roadway improvements; and

WHEREAS, there is no need for the Owner to pay for the relocation of its infrastructure within that portion of Stewards Drive and Pettes Boulevard in accordance with the City's 1988 franchise with the Owner because the City is in the process of purchasing the Owner's water utility assets in accordance with an Agreement for Purchase and Sale between the parties approved in City Council Resolution No. 15-017 and in further accordance with the approval from the New Mexico Public Regulation Commission as set forth in an Order Adopting Recommended Decision dated October 28, 2015 in Case No. 15-00047-UT. Therefore, the City is willing to pay for the improvements to that portion of the Owner's water system within those streets subject to the conditions set forth hereafter; and

WHEREAS, further, the City is not prohibited by the anti-donation provisions contained in Article IX, Section 14 of the New Mexico State Constitution from paying for such improvements because the improvements will be paid from Community Development Block Grant Program (CDBG) funding, and said funding conditions allow for such improvements so long as the private beneficiary does not financially benefit directly there- from; and

WHEREAS, the City desires to relocate and replace that portion of the Owner's water system within Stewards Drive and Pettes Boulevard to minimize the potential for damaging that portion of the Owner's water system or the City's new street at a later date as a result of a water system failure; and

WHEREAS, this Agreement recognizes the future acquisition of the Owner's water utility assets by the City, and is not to be used as a precedent for future City street projects within the service area of other City water franchisees.

NOW, THEREFORE, in consideration of the mutual obligations and promises contained herein, the City and the Owner agree as follows:

1. City shall design and build Stewards Drive between Sierra Vista Avenue and Pettes Boulevard and Pettes Boulevard between Stewards Drive and Mesa Drive, including the necessary design and construction of the roadway as well as the Owner's water system within that portion of the roadway. The water system shall consist of 8" PVC C-900 main, 3/4" poly services, 6" gate valves, ductile iron fittings, relocation and reconnection of existing meters into existing meter boxes, necessary wet connections, and other miscellaneous items to make that portion of the Owner's system and services complete.
2. City will complete all construction improvements, subject to this Agreement, within one (1) year from the date of this Agreement.
3. City will ensure that all affected customers are notified of the schedule for the proposed outages and that all such outages are kept to a minimum.
4. Owner hereby grants the City permission to modify its water system without exception within the boundaries of the Pettes Boulevard and Stewards Drive Construction Project to include the installation of water mains, valves, services and relocation and reconnection of existing services.
5. Owner shall not be paid for the cost of the water system improvements in Pettes Boulevard and Stewards Drive paid for by the City if the City or a third party ever purchases or otherwise acquires the affected water system. If the water system in Pettes Boulevard and Stewards Drive is sold to a third party, the City's Community Development Block Grant and other funding sources shall be fully compensated for all costs associated with the installation of the new water system improvements in Pettes Boulevard and Stewards Drive. The cost of such improvements will

be determined from the Contract Bid Amount in the Pettes Boulevard and Stewards Drive Construction Project No. 15-16-107.

- 6. Nothing herein commits the City to undertaking any specified modifications, improvements, or changes to the existing water system to improve the existing water pressure or volume of water to existing water customers. Furthermore, the City will not be responsible for water quality for water delivered through the new system from Owner's infrastructure.
- 7. This Agreement contains the entire agreement between the parties with respect to the Pettes Boulevard and Stewards Drive Construction Project.
- 8. Changes to this Agreement are not binding unless made in writing and signed by both parties.
- 9. This Agreement is binding upon and inures to the benefit of the successors and/or assigns of the parties.
- 10. In any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion. If either party defaults, the defaulting party shall be responsible for the non-defaulting party's reasonable attorney's fees and court costs.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of the date and year first above written.

CITY OF LAS CRUCES

MESA DEVELOPMENT CENTER, INC.

By: _____
City Manager

By: _____

Printed Name: _____

Title: _____

APPROVED AS TO FORM:

City Attorney

CITY OF LAS CRUCES

Fund Summary

EXHIBIT "B"

Fund: 2000
DFA: 218

Fund Name: HUD COMMUNITY DEVELOPMENT
DFA Name: Intergovernmental Grants

	2015-16 Budget			%
	Adopted	Adjustment	Amended	Inc. / Dec.
<i>Beginning Balance</i>	\$ 97,813	0	97,813	0.00%
Resources				
Revenue	\$ 2,795,034	0	2,795,034	0.00%
Proceeds	0	0	0	0.00%
Transfers In	0	0	0	0.00%
Total Resources	\$ 2,795,034	0	2,795,034	0.00%
Expenditures				
Salaries & Benefits	\$ 0	0	0	0.00%
Operating Costs	10,000	0	10,000	0.00%
Capital Outlay	0	0	0	0.00%
Debt Service	0	0	0	0.00%
Grant / Projects	2,211,410	173,640	2,385,050	7.85%
Transfers Out	0	0	0	0.00%
Total Expenditures	\$ 2,221,410	173,640	2,395,050	7.82%
<i>Ending Balance</i>	\$ 671,437	(173,640)	497,797	-25.86%





City of Las Cruces[®]

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2

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of January 19, 2016
(Adoption Date)

TITLE: A RESOLUTION APPROVING A UTILITY INFRASTRUCTURE IMPROVEMENT FUNDING AGREEMENT BETWEEN MESA DEVELOPMENT CENTER, INC. AND THE CITY OF LAS CRUCES FOR MODIFICATIONS TO THE WATER SYSTEM IN STEWARDS DRIVE BETWEEN SIERRA VISTA AVENUE AND PETTES BOULEVARD AND PETTES BOULEVARD FROM STEWARDS DRIVE TO MESA DRIVE. THE RESOLUTION AUTHORIZES THE CITY MANAGER TO SIGN THE AGREEMENT ON THE CITY'S BEHALF AND TO APPROVE AN ADJUSTMENT TO THE FY 2016 BUDGET.

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

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	<i>[Signature]</i>	528-3094	12-21-15
Department Director	<i>[Signature]</i>	528-3067	12-21-15
Other			
Assistant City Manager /CAO	<i>[Signature]</i>	541-2018	12/21/15
Management & Budget Manager	<i>[Signature]</i>	541-2106	12-21-15
Assistant City Manager/COO	<i>[Signature]</i>		12-28-15
City Attorney	<i>[Signature]</i>	KXT 2128	5 JAN 2016
City Clerk - Interim	<i>[Signature]</i>	X2115	1/7/16