



# City of Las Cruces<sup>®</sup>

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 3 Ordinance/Resolution# 16-164

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

For Meeting of March 7, 2016  
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL     LEGISLATIVE     ADMINISTRATIVE

**TITLE:** A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE AMADOR HOTEL FOUNDATION, INC. AND THE CITY OF LAS CRUCES FOR THE RESTORATION OF THE AMADOR HOTEL.

**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 City of Las Cruces (City) acquired the Amador Hotel in 2007. Since June 2007, the Amador Hotel Foundation (Foundation) has had an agreement with the City to support renovation efforts and reuse of the Hotel. The Foundation uses the Hotel as a venue to continue fundraising efforts aimed at the preservation and reuse of the building.

The Foundation has solicited funds through private, foundation, New Mexico state legislative appropriations and federal grants to renovate the historic building in accordance with the adaptive reuse study completed by Kells and Craig Architects. This study was accepted by City Council December 7, 2009. All of these efforts are in harmony with the City's ongoing Downtown revitalization efforts.

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit "A", Memorandum of Agreement Between the Amador Hotel Foundation, Inc. and the City of Las Cruces for the Restoration of the Amador Hotel.

**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
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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 action will approve the Memorandum of Agreement.
2. Vote "No"; this action will not approve the Memorandum of Agreement. The Amador Hotel Foundation will no longer be able to assist with restoring the Hotel.
3. Vote to "Amend"; this action could modify the Resolution and may delay further restoration.
4. Vote to "Table"; this action will delay supporting the Resolution and may delay further restoration.

**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



# City of Las Cruces<sup>®</sup>

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## COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

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

For Meeting of March 7, 2016  
(Adoption Date)

TITLE: **A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE AMADOR HOTEL FOUNDATION, INC. AND THE CITY OF LAS CRUCES FOR THE RESTORATION OF THE AMADOR HOTEL.**

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

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Community Development Staff Contact		528-3048	2/8/16
Department Director		528-3067	2-8-16
Other			
Assistant City Manager /CAO Management & Budget Manager		541-2401	2-8-2016
Assistant City Manager/COO	Daniel Oviedo		2/10/16
City Attorney		EXT 2128	11 FEB 2016
City Clerk		X2115	2-25-16

RESOLUTION NO. 16-164

**A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE AMADOR HOTEL FOUNDATION, INC. AND THE CITY OF LAS CRUCES FOR THE RESTORATION OF THE AMADOR HOTEL.**

The City Council is informed that:

**WHEREAS**, the City acquired the Amador Hotel in 2007; and

**WHEREAS**, the Amador Hotel Foundation has maintained an agreement with the City to support renovation efforts and reuse the Hotel since June 2007; and

**WHEREAS**, the Amador Hotel Foundation is interested in utilizing the Hotel as a venue to continue fundraising efforts aimed at the preservation and reuse of the building through private, foundation, New Mexico state legislative appropriations and federal grants to renovate the historic building into a community event center as part of the City's ongoing revitalization efforts for the Downtown area.

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

**(I)**

**THAT** the Memorandum of Understanding, as shown in Exhibit "A," attached hereto and made part of this Resolution, and 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 \_\_\_\_\_ 20\_\_.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

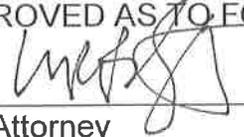
\_\_\_\_\_  
City Clerk

(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: \_\_\_\_\_

**MEMORANDUM OF AGREEMENT  
BETWEEN THE AMADOR HOTEL FOUNDATION, INC.  
AND THE CITY OF LAS CRUCES  
FOR THE RESTORATION OF THE AMADOR HOTEL.**

**THIS MEMORANDUM OF AGREEMENT** ("MOA"), is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2016, between the City of Las Cruces ("City"), a New Mexico municipal corporation, and the Amador Hotel Foundation, Inc. ("Foundation") a New Mexico non-profit corporation.

**RECITALS**

1. The Amador Hotel (the "Hotel"), located at 180 W. Amador Blvd. (the "Property"), is a historic two-story adobe building listed on the New Mexico Register of Cultural Properties; and is described on Exhibit A attached hereto and is owned by the City; and
2. The Foundation is interested in utilizing the Property as a venue to continue fundraising efforts aimed at the preservation and reuse of the building through private, foundation, New Mexico state legislative appropriations, and federal grants to renovate the historic building as part of the City's ongoing revitalization efforts for the Downtown area; and
3. The City supports the Foundation's preservation and restoration efforts of the Hotel as part of the Downtown revitalization process.

**NOW, THEREFORE**, the parties agree as follows:

**Article 1. Property Use**

The City hereby grants to the Foundation permission to use the Property, with all improvements located thereon, including but not limited to the main hall, and all rooms on the first floor for the purposes set forth herein; subject to the right of the City to use such Property as provided below.

**Article 2. Term, Extended Terms and Possession**

1. The term of this Memorandum shall be five (5) years commencing on January 1, 2016.
2. The Foundation must notify the City in writing no later than ninety (90) days prior to the termination of the then current term of its desire to extend this MOA. If the Foundation does not notify the City within said time period, the City may terminate the MOA at the end of the current

Term. The right to extend the term shall be solely at the discretion of the City after the City has evaluated the Foundation's performance during the then current term, which evaluation shall be conducted as set forth in Article 3.

**Article 3. Evaluation to Extend a Term**

1. The City shall evaluate the performance of the Foundation in providing opportunities for community events, fund-raising, and meeting opportunities to the public as referenced in Article 4 as a precondition to granting the Foundation an Extended Term at the expiration of the prior term.

2. The Foundation shall provide, at least on an annual basis, a synopsis of the previous year's programs, activities, and events at the Property to the City's Liaison, or his/her designee, to review and present to the City Manager and/or City Council with a recommendation for an Extended Term of this MOA. The City's Liaison is responsible for proper notification of appropriate Departments within the City for all MOA functions.

3. To enable the City to evaluate the Foundation's performance in providing services to the public, the Foundation shall do the following:

a. Keep detailed records of the title, date, location, number of participants or attendees, and a summary description including an estimated value of each program conducted or sponsored by the Foundation at the Hotel, including an accounting of all associated income. The estimated value of each program will be calculated by consideration of, but not be limited to, the following:

1. income which would normally have been earned through rentals and staffing when use of the building is provided free to the City (of Las Cruces) or community organizations;
2. the actual expense incurred, including salaries and benefits, for any programs presented by the Foundation at little or no cost to the community; and
3. the actual expense incurred, including salaries and benefits, to manage the Property which will be provided to the City Liaison upon request and/or as outlined below.

- b. Provide the detailed records as part of the annual synopsis to the City on an annual basis within three (3) months of the end of the Foundation's fiscal year (June 30).
- c. If the City disagrees with the value of the various services the Foundation has provided the community, either by itself or in partnership with other entities, as presented by the Foundation in its annual synopsis to the City, the City may engage a consultant, at the City's expense, to provide such a valuation or to assist the City in arriving at a valuation method. The City's valuation methodology shall be conclusive.
- d. Should the recommendation of the City's Liaison be to not extend this Memorandum, the Foundation shall have the right to appeal such a recommendation first to the City Manager and then to the City Council.

#### Article 4. Use Fees

1. The Foundation shall be allowed use of the Property, free of charge, for the purpose of fundraising events for the preservation and reuse of the Property. A single event shall consist of a consecutive twenty-four (24) hour period of time. The Foundation will provide all setup, after event cleanup and custodial services for the event. The Foundation will provide the Downtown Coordinator with at least fourteen (14) days advance written notice (e-mail is acceptable) of all scheduled events. The Coordinator will notify the appropriate City departments of needed work. The Facilities Director will determine the ability to provide the work requested. The City will pay the cost of utilities to the Property.
2. Use of the Property by a third party will be allowed at the facility use rate as defined by Council Resolution.
3. The City reserves the right to inspect the Property within forty-eight hours of the conclusion of an event for the purpose of assessing post event Property conditions.
4. In the event of the discovery of unacceptable Property conditions resulting from use by the Foundation, its guests, event participants, and/or volunteers during the scheduled event, the City shall notify the Foundation event coordinator or its designee within forty-eight (48) hours of the completed inspection. The Foundation retains the right of remediation to be executed within five (5) calendar days.

5. Should remediation fail to be executed or to restore the Property to a pre-event condition within ten (10) calendar days, the City may charge the Foundation the City's direct labor charges for applicable clean up, custodial work and maintenance.

#### **Article 5. Permitted Uses**

1. The Foundation shall use the Property for the purpose of providing event and meeting services to the community which may include but is not limited to, arts programs and events, educational programs and events, and community-related non-arts programs and events.

2. The Foundation will not use, occupy, or knowingly permit or allow the use or occupancy of the Property for any purpose which is directly or indirectly forbidden by law or regulation, or which may be dangerous to life, limb or property; or permit the maintenance of any public or private nuisance; or do or permit any act or thing which may unreasonably disturb the quiet enjoyment of adjacent properties giving due consideration to the purposes for which the Property is used that being a community events center.

3. The Foundation shall have the right to allow third parties to use the Property for events, meetings, etc.- three (3) or fewer days in duration provided that any such use does not interfere with the use of the Property by the City as described in this MOA and that any such use does not extend beyond the term of this MOA.

4. Any use for a longer period of time must be individually negotiated with the City and the appropriate proofs of insurance and share of utilities will be required of the third party. Use by a third party shall be with the written agreement of the Community/Cultural Services Department of the City.

#### **Article 6. Use of the Hotel by the City**

The City retains the right to use the Property for the purpose of public meetings and presentations or any other public purpose on behalf of the City. The City shall provide a forty-eight (48) hour advance written (e-mail is acceptable) notice to the Foundation of its intent to use the Hotel. Such usage shall not conflict with previously scheduled events at the Hotel. Upon receipt of the notice to use the Hotel, the Foundation shall inform the City staff of any potential scheduling conflicts and coordinate alternate dates for the City to use the Hotel. City staff shall be solely

responsible for advertising City functions; for coordinating use of the Hotel with the Foundation's staff in advance of any such use by the City; and for cleaning after any City functions.

**Article 7. Maintenance and Repairs.**

1. The Foundation shall be responsible for furnishings, equipment and other personal and business property in the Hotel that are owned by the Foundation.
2. The Foundation shall not knowingly permit or allow any damage to be committed on any portion of the Property.
3. The Foundation shall be responsible for any expenses required to repair or replace any damage or injury done to the Hotel, or any part thereof, caused by the Foundation, its agents, employees, licensees, or visitors. However, if the Foundation fails to make such repairs or replacements promptly, the City may, at its option, make such repairs or replacements and the Foundation shall pay the cost thereof to the City on demand.
4. The Foundation and the City shall coordinate maintenance and repair scheduling through the City Liaison who will coordinate with appropriate City department. The City shall have the right to enter the Property to make emergency repairs as necessary.
5. The City, its employees and agents shall have the right to enter all parts of the Property, to inspect, clean, make repairs, conduct safety inspections which are reasonably required, or to provide any service which it is obligated to furnish. Notwithstanding the above, the City shall have the right to enter the Property without notice in the event of an accident or urgent situation, such as a fire, medical or police emergency being declared on the Property.
6. All furnishing, equipment and other personal or business property installed by the Foundation in the Property shall be deemed to be personal property and shall remain the property of the Foundation, except as otherwise provided herein. The Foundation shall have the right at any time during the Term hereof when not in default and when not otherwise prohibited to remove any or all of its property, subject to the Foundation's obligation to repair all damage, if any, resulting from such removal. All personal property of the Foundation shall be removed by it from the Hotel on termination or revocation of this MOA.
7. The City shall be responsible for routine maintenance and repair of the building fabric including, but not limited to, security alarms and re-keying the facility. Any work affecting the

structure of the building, especially any work outlined in the Kells & Craig Master Plan, will be conducted under the supervision of the City Community/Cultural Services Department. Any items not directly related to building operations are the full financial responsibility of the Foundation and are subject to the approval of the Community/Cultural Services Department. The City has the option to defer any maintenance for which funding is not available without penalty. The Foundation will request routine items via the City Liaison who will enter work orders with the appropriate City staff.

#### **Article 8. General Provisions**

1. All City design standards for construction are applicable to the Property for any construction and development activities which may occur in the future. The Foundation must meet minimum City standards for any infrastructure construction, including water, wastewater, gas, streets, drainage, signs, and landscaping, that it does to the Property.
2. The City shall give the Foundation adequate notice of any construction or development activities in the Downtown which may affect the normal usage of the Property. The City shall make accommodations when such disruptions occur for the Foundation to continue its previously scheduled activities, programs or services.
3. The Foundation shall pay when due all valid taxes, special assessments, business license fees, and permit fees of whatever nature applicable to its use of the Property and shall take out and keep current any required City business registrations, and further shall not permit any of said taxes or fees for which it is responsible to knowingly become delinquent. The Foundation shall furnish to the City, upon request, satisfactory evidence showing prompt payment by the Foundation of all of the Foundation's required taxes and fees.
4. As a non-profit corporation, the Foundation has the right to request facility capital funds from sources other than the City. The Foundation shall inform the City in writing prior to submitting said request. The City may request a consultation with the Foundation prior to submitting said request.

#### **Article 9. Insurance**

1. The Foundation shall maintain General Commercial Liability Insurance coverage at all times, as follows:

General Commercial Liability Insurance in the amount of One Million Dollars (\$1,000,000) with the City named as an additional insured and shall furnish the City with a copy of said policy and endorsement each year.

2. The City shall maintain Commercial Property Insurance on the building in an amount determined by a replacement cost estimate and shall maintain Commercial Property Insurance on the building contents owned by the City in an amount determined by a replacement cost estimate based on a current list of fixtures and personal property. The City is not responsible for any property owned by the Foundation.

3. The Foundation and the City shall review insurance coverage limits at periodic intervals during the term, with the parties making the necessary adjustments in the coverage limits to comply with the City's insurance requirements in effect at that time.

4. If the Property is partially or totally destroyed or damaged by fire or other casualty, then the City and the Foundation shall work jointly in a cooperative manner to repair and restore the Property as soon as it is reasonably practical, to substantially the same condition in which the Property was prior to such damage, with the proceeds from property insurance. The City and the Foundation shall negotiate at such time as to each parties' pro rata share of financial responsibility to fund the repair and reconstruction. However, in the event the Property is completely destroyed or so badly damaged that repairs cannot commence within thirty (30) days and be completed within three (3) months thereafter, then this MOA shall be terminable as of the date of the occurrence of the damage or destruction by the Foundation serving written notice upon the City. Such notice shall be provided to the City within 30 days after such a determination. In such event, the Foundation and the City shall jointly determine if the Hotel should be rebuilt or if the proceeds from the Property insurance settlement should be used to reconstruct a facility at another location.

5. If the Hotel is damaged by fire or other casualty resulting from the willful act or negligence of the Foundation, its agents, employees, licensees, or invitees, the City shall require such damage be repaired by and at the expense of the Foundation.

6. The Property is a wholly owned City property. Should the City determine that any or all of the Property is to be used exclusively by the City for a public purpose outside the scope of this Memorandum and the Council approved Master Plan, the MOA will terminate effective with the proper notifications as outlined in Article 12. This includes the conveyance of (this) [the] Property by the City to any other entity, public or private.

**Article 10. Construction and Ownership of Permanent Improvements**

1. During any Term of this Memorandum, title to all permanent improvements existing or constructed upon the Property shall be vested in the City. The Foundation shall not construct any improvements which represent an increase in the square footage of the Hotel on the Property without the express written consent of the City, which consent shall not be unreasonably withheld.
2. All temporary buildings and other temporary improvements owned by the Foundation on the Property shall meet City codes.
3. The Foundation shall not make any structural change or addition or modification without the City's prior written consent (which shall not be unreasonably withheld), and without first furnishing the City with at least thirty (30) days advance written notice outlining in detail the proposed changes or alterations, including a set of plans and specifications. All such actions will be routed through the City Liaison for review and approval by the appropriate City departments.
4. The Foundation shall be permitted to renovate, improve and expand the Hotel on the Property, based on needs as determined by the adopted Kells & Craig master plan option approved by City Council, according to applicable City regulations at its sole expense with the City's consent as set forth above. The Foundation and the City shall work cooperatively in all building expansion and construction projects. The City shall be the fiscal agent in such instances where New Mexico state legislative appropriations have been made for such projects or as agreed upon by the parties.

**Article 11. Non-Transferable**

This MOA is not transferable or assignable by the Foundation under any condition. The Foundation has no authority to attempt to encumber the Property during any Term of this Memorandum.

**Article 12. Default and Revocation**

1. The violation by the Foundation of any condition under this MOA shall be considered a default and may cause this MOA to be terminated following at least six (6) months advance written notice of such default from the City to the Foundation; provided however, said termination shall not be made if, within said period, the Foundation cures or remedies said default or otherwise complies with any demand contained within such written notice.

2. If the Foundation continues in default, the City may at its option immediately or any time thereafter without further notice or demand, terminate this MOA and enter upon and take back the Property.

3. Further, the City may revoke this MOA without cause on six (6) months advance written notice to the Foundation.

### **Article 13. Relinquishment**

At any time after forty-five (45) days prior written notice to the City, provided that all the terms of this MOA have been met and the Foundation is not in default under this MOA, the Foundation may terminate this Memorandum and relinquish the Property to the City, whereupon the Foundation shall be relieved of any further liabilities and/or obligations under this MOA Article 7 shall apply with respect to ownership and removal of personal property by the Foundation upon such termination.

### **Article 14. Compliance with Laws and Non-Discrimination**

1. The Foundation shall at its own expense fully comply with all applicable laws and regulations which have been or may be enacted in all matters affecting the Property and the Foundation's operations thereon. Further, the Foundation shall not unlawfully discriminate on the basis of race, color, religion, sex, national origin, disability, sexual orientation, or age while providing services or programs pursuant to this Memorandum:

- a. As set forth by 2006 IFC, Chapter 9, 903.2.1.2 Group A-2, maximum occupancy load for any event serving food and/or drink in the Hotel is set at 100.
- b. As set forth in NMSA 1978, § 60-6A-12 and 60-7A-22, and City Municipal Code 1997, § 5-31 through 5-38, the Foundation shall fully comply with the sale, use and distribution of alcohol on the Property.

### **Article 15. Indemnification**

1. The Foundation shall save and hold harmless, indemnify and defend the City, its elected officials, employees and agents, in their official and individual capacities, of and from any claims arising out of or alleged to arise out of or connected with the acts or omissions of the Foundation, its officers, directors, employees or agents under this MOA.

2. Each party shall be solely responsible for fiscal or other sanctions, penalties, or fines occasioned as a result of its own violation or alleged violation of requirements applicable to performance of this Memorandum. Each party shall be liable for its acts or failure to act in accordance with this MOA, subject to the immunities and limitations of the New Mexico Tort Claims Act.

#### **Article 16. Scope of Memorandum**

The parties believe that this MOA is compatible with the Agreement previously entered into between the parties in June 2007 and as amended in 2010, see Resolution 11-067. However, if there are inconsistencies between the documents, this MOA shall control.

#### **Article 17. Amendment**

This MOA shall not be altered, changed or amended except by instrument in writing executed by the City and the Foundation.

#### **Article 18. Waiver**

No waiver by either of the parties hereto of any breach or default by the other of any of the conditions of this MOU shall be held to be a waiver of any subsequent breach. No waiver shall be valid or binding unless the same is in writing and signed by the City and the Foundation.

#### **Article 19. Applicable Law**

This MOU shall be governed by the laws of the State of New Mexico. If any clause or provision of this Memorandum is found to be illegal, invalid or unenforceable under present or future laws effective during any Term hereof, the remainder of this MOA shall not be affected thereby.

#### **Article 20. Notices**

Whenever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered when deposited in the United States mail, postage prepaid, return receipt requested, addressed to the parties at their respective addresses set forth below. Notice shall be deemed to be received on the fifth day following mailing.

City Manager  
City of Las Cruces  
PO Box 20000  
Las Cruces, NM 88004  
(Copy to City Attorney)

President  
Amador Hotel Foundation, Inc.  
PO Box 1268  
Las Cruces, NM 88004 (mail address)  
(Copy to Operations Manager)

IN WITNESS WHEREOF, City and the Foundation have executed this Memorandum in duplicate on the date first written above.

CITY OF LAS CRUCES

Amador Hotel Foundation, Inc.

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

By: \_\_\_\_\_  
Heather Pollard, President

APPROVED AS TO FORM:

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