



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 23Ordinance/Resolution# 16-194For Meeting of _____
(Ordinance First Reading Date)For Meeting of April 4, 2016
(Adoption Date)

Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION AUTHORIZING THE CONDEMNATION BY MUTUAL AGREEMENT OF TWO WELL SITES AND ADJACENT RIGHT OF WAY OWNED BY MESA DEVELOPMENT CENTER, INC. TO ENABLE THE PARTIES TO COMPLY WITH THE AGREEMENT FOR PURCHASE AND SALE OF WATER UTILITY ASSETS AND TO FACILITATE THE ACQUISITION.

PURPOSE(S) OF ACTION:

To authorize condemnation.

COUNCIL DISTRICT: 3		
<u>Drafter/Staff Contact:</u> Monica Campbell	<u>Department/Section:</u> Legal	<u>Phone:</u> 541-2128
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City Council approved the Agreement for Purchase and Sale of Water Utility Assets of the Mesa Development Center Water Company ("Mesa") in Resolution 15-017, which Agreement provided in part that Mesa would deed its physical plant including three well sites to the City. Mesa, through its attorney and surveyor, has been working diligently with City staff to overcome obstacles that impede or prevent it from deeding two of the three well sites, namely Well Site No. 2 and Well Site No. 3, and dedicating adjacent right of way to the City, and the City is unable to acquire Mesa until such sites and adjacent right of way can be deeded and dedicated to the City.

As to Well Site No. 2 and adjacent right of way, generally shown on Exhibit "A", Mesa is unable to comply with the subdivision requirements due to its inability to secure the cooperation of the adjacent property owner to the north.

As to Well Site No. 3 and adjacent right of way, generally shown on Exhibit "B", Mesa can comply with the subdivision requirements but would have to seek approval of the Planning and Zoning Commission and the City Council for waiver of roadway requirements.

(Continue on additional sheets as required)

City staff, with the support of Mesa, has suggested that a condemnation action may be the only way to clear the obstacles that impede or prevent Mesa from deeding those well sites and dedicating adjacent right of way to the City. Section 1.03(c) of the City Charter authorizes the City to exercise its power of eminent domain to condemn private property for a public purpose only when the City Council determines by resolution that such condemnation will serve the public interest. Therefore, through this proposed Resolution, the City Council would determine that the condemnation of the two well sites and adjacent right of way is in the public interest to enable the City to acquire ownership of the well sites and adjacent right of way.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", general location of Well Site No. 2 and adjacent right of way to be condemned.
3. Exhibit "B", general location of Well Site No. 3 and adjacent right of way to be condemned.

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:
	<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? 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 authorize the condemnation of two well sites and adjacent right of way owned by Mesa Development Center, Inc.
2. Vote "No"; this action will not authorize the condemnation and will prevent the parties from complying with the Agreement to Purchase and Sale of Water Utility Assets of Mesa.
3. Vote to "Amend"; this action would allow the City Council to modify provisions of the Resolution.
4. Vote to "Table"; this action would allow the City Council to table or postpone authorizing the condemnation.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

Resolution No. 15-017.

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City of Las Cruces[®]

PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of April 4, 2016
(Adoption Date)

TITLE:

A RESOLUTION AUTHORIZING THE CONDEMNATION BY MUTUAL AGREEMENT OF TWO WELL SITES AND ADJACENT RIGHT OF WAY OWNED BY MESA DEVELOPMENT CENTER, INC. TO ENABLE THE PARTIES TO COMPLY WITH THE AGREEMENT FOR PURCHASE AND SALE OF WATER UTILITY ASSETS AND TO FACILITATE THE ACQUISITION.

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

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	<i>Monica Campbell</i>	541-2128	3/4/2016
Department Director	<i>WRB</i>	541-2128	3/4/2016
Other			
Assistant City Manager /CAO Management & Budget Manager	<i>David Walker</i>	541-2100 541-2107	24/2016 <i>27</i>
Assistant City Manager/COO	<i>De De</i>	541-2271	3/4/16
City Attorney	<i>WRB</i>	541-2128	3/4/2016
City Clerk	<i>Jana Davis</i>	541-2115	3/29/16

RESOLUTION NO. 16-194

A RESOLUTION AUTHORIZING THE CONDEMNATION BY MUTUAL AGREEMENT OF TWO WELL SITES AND ADJACENT RIGHT OF WAY OWNED BY MESA DEVELOPMENT CENTER, INC. TO ENABLE THE PARTIES TO COMPLY WITH THE AGREEMENT FOR PURCHASE AND SALE OF WATER UTILITY ASSETS AND TO FACILITATE THE ACQUISITION.

The City Council is informed that:

WHEREAS, the City Council approved the Agreement for Purchase and Sale of Water Utility Assets of the Mesa Development Center Water Company ("Mesa") in Resolution 15-017, which Agreement provided in part that Mesa would deed its physical plant including three well sites to the City; and

WHEREAS, Mesa, through its attorney and surveyor, has been working diligently with City staff to overcome obstacles that impede or prevent it from deeding two of the three well sites, namely Well Site No. 2 and Well Site No. 3, and dedicating adjacent right of way to the City, and the City is unable to acquire Mesa until such sites and adjacent right of way can be deeded and dedicated to the City; and

WHEREAS, City staff, with the support of Mesa, has suggested that a condemnation action may be the only way to clear the obstacles that impede or prevent Mesa from deeding those well sites and dedicating adjacent right of way to the City; and

WHEREAS, Section 1.03(c) of the City Charter authorizes the City to exercise its power of eminent domain to condemn private property for a public purpose only when the City Council determines by resolution that such condemnation will serve the public interest and, by this Resolution, if approved, therefore, the City Council would determine that the condemnation of the two well sites and adjacent right of way is in the public interest to enable the City to acquire ownership of the well sites and adjacent right of way.

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

(I)

THAT the City Council determines that the condemnation for a public purpose of two well sites, namely, Well Site No. 2 and Well Site No. 3, and adjacent right of way owned by Mesa Development Center, Inc., as shown on Exhibits "A" and "B" attached hereto and made part of this Resolution, will serve the public interest and so authorizes the condemnation.

(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:

ATTEST:

Mayor

City Clerk

(SEAL)

VOTE:

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

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

[Handwritten Signature]
Sr. Asst. City Attorney

General Location of Well Site No. 2 and Adjacent Right of Way

MESA DEVELOPMENT ESTATES

D E D I C A T I O N
THIS TRACT OF LAND IS TO BE KNOWN AS

ALL OTHER RECORDS ARE QUINCE FOR THE USE OF THE COUNTY COMMISSIONERS AND THE CITY OF LAS CRUCES. ALL RECORDS ARE TO BE KEPT IN THE OFFICE OF THE COUNTY COMMISSIONERS AND THE CITY OF LAS CRUCES. ALL RECORDS ARE TO BE KEPT IN THE OFFICE OF THE COUNTY COMMISSIONERS AND THE CITY OF LAS CRUCES. ALL RECORDS ARE TO BE KEPT IN THE OFFICE OF THE COUNTY COMMISSIONERS AND THE CITY OF LAS CRUCES.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20th day of January, 2016.

DESA DEVELOPMENT
3501 AVENUE
LAS CRUCES, NM 88003

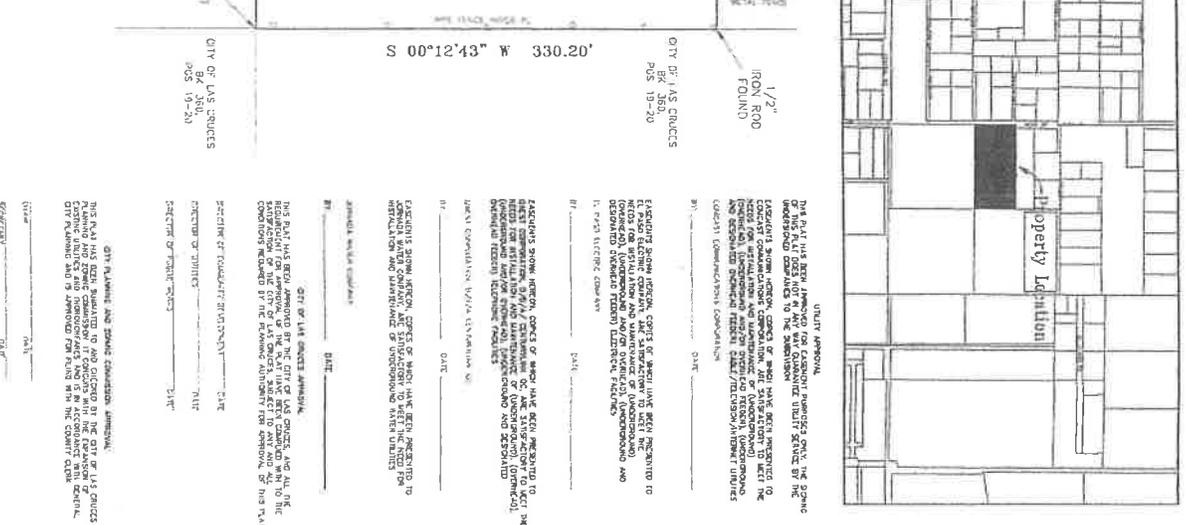
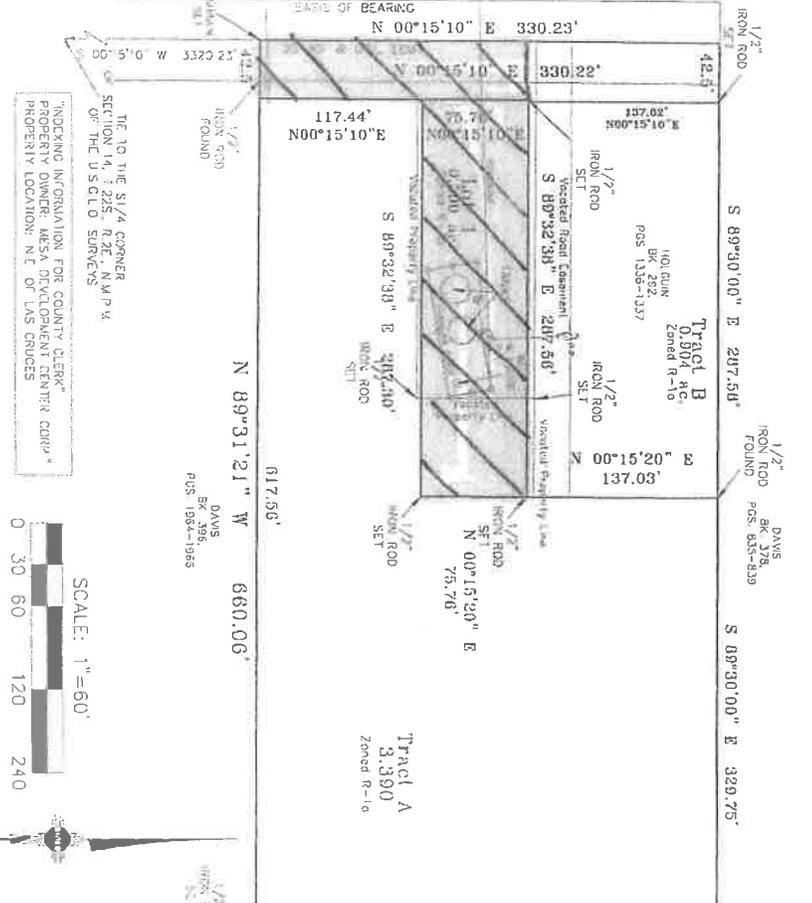
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STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF DOÑA ANA COUNTY, NEW MEXICO, ON THIS 20th DAY OF JANUARY, 2016.

NOTES
1. IF ANY RECORD SET WITH A PLATING OR SURVEYING CHAS. 18076
2. IF ANY RECORD SET WITH A PLATING OR SURVEYING CHAS. 18076
3. EXCESS SURVEY TO BE RETURNED TO THE SURVEYOR WHO MADE THE SURVEY
4. EXCESS SURVEY TO BE RETURNED TO THE SURVEYOR WHO MADE THE SURVEY
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6. EXCESS SURVEY TO BE RETURNED TO THE SURVEYOR WHO MADE THE SURVEY
7. UNLESS NOTED OTHERWISE, ALL DISTANCES ARE RECORD AND FIELD MEASUREMENTS
8. UNLESS NOTED OTHERWISE, ALL DISTANCES ARE RECORD AND FIELD MEASUREMENTS
9. UNLESS NOTED OTHERWISE, ALL DISTANCES ARE RECORD AND FIELD MEASUREMENTS
10. UNLESS NOTED OTHERWISE, ALL DISTANCES ARE RECORD AND FIELD MEASUREMENTS
11. UNLESS NOTED OTHERWISE, ALL DISTANCES ARE RECORD AND FIELD MEASUREMENTS
12. UNLESS NOTED OTHERWISE, ALL DISTANCES ARE RECORD AND FIELD MEASUREMENTS



UTILITY APPROVAL
PROPERTY LOCATION
SCALE: 1" = 60'
NORTH ARROW

