



# City of Las Cruces®

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 10Ordinance/Resolution# 16-246For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)For Meeting of June 20, 2016  
(Adoption Date)

Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

**TITLE:** A RESOLUTION DECLARING THE INTENT OF THE CITY OF LAS CRUCES, NEW MEXICO TO ISSUE A TAX-EXEMPT INDUSTRIAL REVENUE BOND ENTITLED CITY OF LAS CRUCES, NEW MEXICO TAX-EXEMPT INDUSTRIAL REVENUE BONDS (F&A DAIRY PRODUCTS, INC. PLANT EQUIPMENT UPGRADE PROJECT), SERIES 2016, IN AN AGGREGATE PRINCIPAL AMOUNT OF UP TO \$5,000,000 IN CONNECTION WITH THE ENGINEERING, DESIGN AND INSTALLATION OF MANUFACTURING AND PROCESSING EQUIPMENT FOR A DAIRY PROCESSING PLANT LOCATED IN THE CITY OF LAS CRUCES (THE "PROJECT"), FOR THE PURPOSE OF INDUCING F&A DAIRY OR ITS SUCCESSORS OR ASSIGNS, TO ACQUIRE AND INSTALL THE PROJECT AND TO PAY THE COST OF THE PROJECT FROM PROCEEDS OF THE BONDS; AND CONCERNING RELATED MATTERS.

### PURPOSE(S) OF ACTION:

F&A Dairy's request that the City Consider issuing industrial revenue bonds.

<b>COUNCIL DISTRICT: 4</b>		
<b>Drafter/Staff Contact:</b> Mayra De La Canal	<b>Department/Section:</b> Administration /Economic Development Office	<b>Phone:</b> 541-2286
<b>City Manager Signature:</b>		

### BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Industrial revenue bonds are the pre-eminent economic development tool for large projects in New Mexico. F&A Dairy Products, Inc (F&A Dairy) is requesting the City of Las Cruces (City) to serve as issuer of industrial revenue bonds in order to finance on a tax-exempt basis various manufacturing related equipment, engineering, installation and related bond financing costs of issuance for their Las Cruces facility.

In an industrial revenue bond transaction, the real and/or personal property comprising the industrial revenue bonds "project" is deeded from the benefiting company, F&A Dairy to the

(Continue on additional sheets as required)

industrial revenue bonds issuer, the City. The City then simultaneously leases the project back to the company for the term of the bonds, with the company being obligated to purchase the project at the bond maturity date.

The City Charter authorizes City Council to borrow money by ordinance. The City is authorized to issue industrial revenue bonds per Article 3, Section 32 et al. of NMSA 1978. Industrial revenue bonds are authorized by a bond ordinance which may be adopted only after published notice and a public hearing.

If the company desires to begin substantial planning or development of the project prior to scheduled adoption of the ordinance, the company may request the issuer to adopt an "inducement resolution" early on in the process.

The City has issued industrial revenue bonds for F&A Dairy on three other occasions to promote economic development at West Mesa Industrial Park. The purpose of the current bond request is to acquire and modify equipment that will consist of a whey pasteurizer system which is required by the United States Department of Agriculture. The modification is due to regulatory procedures that need to be followed to qualify it as safe and sanitary.

With the system upgrades and modifications, F&A Dairy will maintain required health and safety measures by remaining in compliance with the new United States Department of Agriculture mandate processing procedures, create process efficiencies by providing a safe, reliable, and consistent consumer product, avoid reduction of workforce and adversely affect existing positions by retaining current workforce levels, with plans for future, local new job creation. In addition, the project will preserve the health, safety and welfare of the residents of the City by providing the resources to meet new United States Department of Agriculture mandated procedures to qualify the internal water system as safe and sanitary and avoid cross connections with public drinking water systems. By maintaining the viability of F&A Dairy, the project will promote the use of local agricultural products and natural resources within the region.

If F&A Dairy is not able to finance these modifications, compliance with new United States Department of Agriculture mandate procedures will not be attainable, cross connections with public drinking water systems will not be avoided, water extracted from dairy products will not be re-used in different ways, and the company will not be able to find an alternative solution to deal with the excess salt brine. The major consequence of not taking action will result in inadequate production and eventually inevitable cease of the Las Cruces facility operations.

#### **SUPPORT INFORMATION:**

1. Resolution.

**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
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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 will approve the resolution declaring the intent of the City to issue tax-exempt industrial revenue bonds.
2. Vote "No"; this will not approve the resolution, thus not declaring the intent of the City to issue tax-exempt industrial revenue bonds.
3. Vote to "Amend"; this could delay the declaration of the intent of the City to issue tax-exempt industrial revenue bonds.
4. Vote to "Table"; this could delay the declaration of the intent of the City to issue tax-exempt industrial revenue bonds with potential adverse effect to F&A Dairy development and growth.

**REFERENCE INFORMATION:**

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

N/A



# 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 June 20, 2016  
(Adoption Date)

**TITLE:** A RESOLUTION DECLARING THE INTENT OF THE CITY OF LAS CRUCES, NEW MEXICO TO ISSUE A TAX-EXEMPT INDUSTRIAL REVENUE BOND ENTITLED CITY OF LAS CRUCES, NEW MEXICO TAX-EXEMPT INDUSTRIAL REVENUE BONDS (F&A DAIRY PRODUCTS, INC. PLANT EQUIPMENT UPGRADE PROJECT), SERIES 2016, IN AN AGGREGATE PRINCIPAL AMOUNT OF UP TO \$5,000,000 IN CONNECTION WITH THE ENGINEERING, DESIGN AND INSTALLATION OF MANUFACTURING AND PROCESSING EQUIPMENT FOR A DAIRY PROCESSING PLANT LOCATED IN THE CITY OF LAS CRUCES (THE "PROJECT"), FOR THE PURPOSE OF INDUCING F&A DAIRY OR ITS SUCCESSORS OR ASSIGNS, TO ACQUIRE AND INSTALL THE PROJECT AND TO PAY THE COST OF THE PROJECT FROM PROCEEDS OF THE BONDS; AND CONCERNING RELATED MATTERS.

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

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact		541-2286	6/15/16
Department Director			
Other			
Assistant City Manager /CAO Management & Budget Manager		541-2078 541-2106	6/15/2016 4/15/16
Assistant City Manager/COO		541-2271	6/15/16
City Attorney		EXT 2128	15 JUNE 2016
City Clerk		X2115	6-15-16

CITY OF LAS CRUCES  
RESOLUTION NO. 16-246

**A RESOLUTION DECLARING THE INTENT OF THE CITY OF LAS CRUCES, NEW MEXICO TO ISSUE A TAX-EXEMPT INDUSTRIAL REVENUE BOND ENTITLED CITY OF LAS CRUCES, NEW MEXICO TAX-EXEMPT INDUSTRIAL REVENUE BONDS (F&A DAIRY PRODUCTS, INC. PLANT EQUIPMENT UPGRADE PROJECT), SERIES 2016, IN AN AGGREGATE PRINCIPAL AMOUNT OF UP TO \$5,000,000 IN CONNECTION WITH THE ENGINEERING, DESIGN AND INSTALLATION OF MANUFACTURING AND PROCESSING EQUIPMENT FOR A DAIRY PROCESSING PLANT LOCATED IN THE CITY OF LAS CRUCES (THE "PROJECT"), FOR THE PURPOSE OF INDUCING F&A DAIRY OR ITS SUCCESSORS OR ASSIGNS, TO ACQUIRE AND INSTALL THE PROJECT AND TO PAY THE COSTS OF THE PROJECT FROM PROCEEDS OF THE BONDS; AND CONCERNING RELATED MATTERS.**

WHEREAS, the New Mexico "Municipal Industrial Revenue Bond Act" (the "Act"), being NMSA 1978, Sections 3-32-1 through 3-32-16, as amended, authorizes the City of Las Cruces, New Mexico (the "City") to issue industrial revenue bonds and to acquire projects as defined in the Act; and

WHEREAS, the City desires to promote industry and develop trade or other economic activity to secure and maintain a balanced and stable economy in the City and to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, Section 3-32-B(1) of the Act defines "project" to include, among other things, land and buildings or other improvements thereon and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by an industry for the manufacturing, processing or assembling of agricultural or manufactured products; and

WHEREAS, F&A Dairy Products, Inc., a Wisconsin corporation (together with its successors and assigns, including, but not limited to, subsidiaries or affiliates of F&A Dairy Products, Inc., the "Company") has made a proposal to the City (the "Proposal") whereby the City will acquire components of manufacturing and processing equipment to be installed in the Company's existing facilities located within the boundaries of the City for use by the Company in processing and selling dairy products and in storing and disposing of by-products (the "Project"); and

WHEREAS, the Project will consist of engineering, designing, acquisition and installation of a whey pasteurizer system required by the United States Department of Agriculture to heat-treat whey product, modifications to internal COW (Condensate of Whey) water system, a packaging line automation system and a large evaporative drying pond, which will enable the Company to reuse or dispose of water extracted from dairy products; and

WHEREAS, the Project is an authorized project as defined under the Act; and

WHEREAS, the issuance of its tax-exempt industrial revenue bond or bonds (the "Bonds") by the City to finance all or a part of the Project, will constitute one of the inducements whereby the Company will determine to acquire the Project in the City; and

WHEREAS, the City Council of the City constitutes the governing body of the City within the meaning of the Act; and

WHEREAS, the Project has been considered by the City Council which has determined that the Proposal and Project will promote the local health, general welfare, safety, convenience and prosperity of the inhabitants of the City, and the City Council desires to indicate its intent to proceed with the issuance of the Bonds for the financing of the Project; and

WHEREAS, in order to issue the Bonds on a tax-exempt basis, the City will apply to the State Board of Finance for an allocation of private activity bond volume cap; and

WHEREAS, concurrently with the issuance of the Bonds, the Company will enter into a lease or other financing agreement with the City providing for the payment of lease rentals or other payments on the Project sufficient to pay the debt service on the Bonds, subject to the prior adoption by the City Council of an ordinance approving such agreement and other related documents and authorizing issuance of the Bonds (the "Bond Ordinance"); and

WHEREAS, the City and the Company understand that the adoption of this Resolution shall not obligate the City Council to adopt the Bond Ordinance, to issue the Bonds or obligate the Company to proceed with the Project, except pursuant to the terms of the Bond Ordinance and related bond documents in forms satisfactory to the City as presented by the Company prior to the issuance of the Bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAS CRUCES, NEW MEXICO:

Section 1. All actions (not inconsistent with the provisions hereof) heretofore taken by the City Council and the officers and employees of the City related to the Proposal, the acquisition of the Project, and the sale and issuance of the Bonds, are hereby ratified, approved and confirmed.

Section 2. The City Council has been informed by the Company that:

A. The Project will be located in the Company's facilities located at 355 S Crawford Blvd, Las Cruces, New Mexico 88006, and will consist of the engineering, design, acquisition and installation equipment generally described in Exhibit A hereto.

B. The maximum aggregate face amount of the Bonds to be issued with respect to the Project is \$5,000,000.

C. The initial developer of the Project is the Company.

D. The initial operator of the Project will be the Company.

Section 3. In order to promote the local health and general welfare, safety, convenience and prosperity of the inhabitants of the City, it is the Board's intent to take all necessary and advisable steps to effect the issuance of the Bonds in an aggregate principal amount up to \$5,000,000 in order to defray part or all of the costs of the Project. The Bonds are to be entitled substantially as follows "City of Las Cruces, New Mexico Tax-Exempt Industrial Revenue Bonds (F&A Dairy Products, Inc. Plant Equipment Upgrade Project), Series 2016" provided that in the Bond Ordinance the City Council may designate a

different Bond title, including but not limited to the Series designation. It is the intention of the City Council that the Bonds will be issued with a term of not exceeding seven (7) years but the City Council may increase or decrease such term in the Bond Ordinance to be adopted. This expression of intent of the City Council is conditioned upon the issuance of the Bonds on or before five years from the date of the adoption of this Resolution.

Section 4. The Bonds for the acquisition and installation of the Project shall be payable from the revenues derived from the lease between the Company and the City for the equipment to be acquired with the proceeds of the Bonds (the "Project Property") or other moneys payable by the Company, with respect thereto, and shall not constitute a debt or indebtedness of the City within the meaning of any provision or limitation of the Constitution or statutes of the State of New Mexico. The lease shall include provisions for an annual in-lieu tax payment to be made by the Company on behalf of the taxing jurisdictions in which the Project is located (collectively, the "Taxing Jurisdictions"), in an amount to be negotiated by the City Manager, and the Taxing Jurisdictions in which the Project is located, and approved by the City Council in connection with the issuance of the Bonds. In addition, if the Bonds are issued, the Company shall indemnify and hold harmless the City, the City Council and their respective officers, employees, designated representatives and agents (collectively, the "Indemnified Persons") from and against any liability to the Company, or to any third parties that may be asserted against the City with respect to the City's ownership of the Project Property. Nothing contained in this Resolution or in any other instrument shall be considered as obligating the City to any pecuniary liability or a charge upon the general credit of the City or against its taxing power, it being understood that no costs are to be borne by the City and that all costs incurred by the City in connection with the Bonds are to be promptly reimbursed by the Company. The City's adoption of this Resolution shall not be deemed a conclusion or expression of approval by the City or any Indemnified Person of the Company or the Project.

Section 5. The Company, as agent for the City and consistent with Taxation and Revenue Department Regulation 3.2.212.22 NMAC (the "Regulation"), will acquire the Project. The Company will to the extent required by law and consistent with New Mexico law and as agent for the City, apply to the Taxation and Revenue Department for Type 9 Nontaxable Transaction Certificates ("Certificates"). If, and to the extent required to allow for a deduction from New Mexico gross receipts tax, the Company will deliver a Certificate to each person selling tangible personal property to the Company for the Project as applicable under the New Mexico Gross Receipts and Compensating Tax Act and the Regulation. For this purpose, by adoption of this Resolution, the County authorizes the Company to act as agent for the County with respect to the acquisition of the Project. The Company shall not use the Certificates other than for the purchase of capital equipment and other tangible personal property for the Project, nor shall the Company use such Certificates after the completion of the Project. Prior to the use of such Certificates by the Company as agent for the City, the City Manager and the Company will agree to certain procedures regarding the use of the Certificates and protection of the City from any unfunded tax liability. This Resolution is intended to be an "inducement resolution" as that term is used in, and for the purposes of, the Regulation.

Section 6. The City Manager and City Attorney are hereby authorized and directed to take such steps as are necessary to apply to the State Board of Finance for an allocation of private activity bond volume cap in order that the Bonds be issued on a tax-exempt basis.

Section 7. For purposes of 26 CFR 1.150-2 the City Council hereby declares its official intent to authorize the reimbursement of expenditures made in connection with the Project prior to the date of issuance of the Bonds in an amount not to exceed \$5,000,000, which is the maximum principal amount of the Bonds requested by the Company in the Proposal. This declaration of reimbursement intent is contingent upon the adoption of the Bond Ordinance and issuance of the Bonds, and shall not be construed as obligating the City Council to adopt the Bond Ordinance or the City to issue the Bonds.

Section 8. The City Council and other appropriate City officials and employees are hereby authorized and empowered to take such steps and to do such things as may be necessary to achieve the purposes of this Resolution; provided, however, the issuance of the Bonds and the execution and delivery of any documents to which the City is a party in connection therewith shall be subject to the approval and authorization by the City Council pursuant to the Bond Ordinance, to be adopted following public notice of the Board's intent to adopt such Bond Ordinance at least fourteen (14) days prior to the consideration of the Bond Ordinance by the Board at a public meeting, such public notice to specify the time, date and place of the Board's meeting. Such notice may be in substantially the form set forth in Exhibit B attached hereto, to be published one time in the *Las Cruces Sun-News*, a newspaper that maintains an office in the City of Las Cruces and is of general circulation in the City, at least two weeks before the meeting of the City Council at which the Bond Ordinance is to be adopted. This authorization is in compliance with Section 3-17-3 NMSA, 1978. In particular, no provision of this Resolution shall in any way obligate the City or any other person to issue the Bonds, any other bonds or in any way finance the Project; and the City retains full and complete discretion with respect thereto.

Section 9. This Resolution shall not give rise to a pecuniary liability of the City and shall not give rise to a charge against its general credit or taxing powers.

Section 10. The City Manager is hereby authorized and directed to give notice of the City's intent to consider the Bond Ordinance for adoption, which notice shall be provided to the Dona Ana County Assessor and Dona Ana County Commission, so that comments can be transmitted by such entities to the County, such notice to be provided by certified mail, return receipt requested, at least 30 calendar days prior to the meeting at which final action is to be taken on the Bond Ordinance, as provided in Section 3-32-6.1 (A) NMSA 1978.

Section 11. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 12. All orders and resolutions, or parts thereof, in conflict with this Resolution are hereby repealed; this repealer shall not be construed to revive any order, resolution or part thereof, heretofore repealed.

Section 13. The adoption of this Resolution shall not require any further action by the City regarding the issuance of the Bonds or the terms and conditions of their issuance.

DONE AND APPROVED this 20<sup>th</sup> day of June 2016.

APPROVED:

\_\_\_\_\_  
Ken Miyagishima, Mayor

ATTEST:

\_\_\_\_\_  
Linda Lewis, City Clerk

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

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

VOTE:

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

APPROVED AS TO FORM:

  
 \_\_\_\_\_  
 William R. Babington, Jr., City Attorney

EXHIBIT A

PROJECT DESCRIPTION

Equipment consisting of a whey pasteurizer system to heat-treat the whey product; modifications to internal COW (Condensate of Whey) water system; packaging line automation system; installation of a large evaporative drying pond.

EXHIBIT B

FORM OF NOTICE OF INTENT TO ADOPT  
INDUSTRIAL REVENUE BOND ORDINANCE FOR PUBLICATION  
CITY OF LAS CRUCES, NEW MEXICO  
NOTICE OF INTENT TO ADOPT INDUSTRIAL REVENUE BOND ORDINANCE

Notice is hereby given of the title and general subject matter contained in an ordinance which the City Council of the City of Las Cruces, New Mexico will consider for adoption at a regular meeting on \_\_\_\_\_, 2016 at the hour of \_\_\_\_\_ a.m./p.m. at the Las Cruces City Hall, 700 North Main Street, Las Cruces, New Mexico relating to the authorization, issuance and sale by the City of Las Cruces, New Mexico of its industrial revenue bonds.

The title of the proposed Ordinance is:

AUTHORIZING THE ISSUANCE AND SALE OF INDUSTRIAL REVENUE BONDS ENTITLED CITY OF LAS CRUCES, NEW MEXICO TAX-EXEMPT INDUSTRIAL REVENUE BONDS (F&A DAIRY PRODUCTS EQUIPMENT UPGRADE PROJECT), SERIES 2016, IN AN AGGREGATE PRINCIPAL AMOUNT OF UP TO \$5,000,000 IN CONNECTION WITH THE ENGINEERING, DESIGN, ACQUISITION AND INSTALLATION OF DAIRY PROCESSING EQUIPMENT IN TO BE LOCATED IN THE CITY OF LAS CRUCES; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE, A BOND PURCHASE AGREEMENT, THE BOND AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

A general summary of the Ordinance (the "Ordinance") is contained in its title.

A copy of the Ordinance in draft form is on file in the office of the City Clerk, 700 North Main Street, Las Cruces, New Mexico, and will be available for inspection during normal business hours. All members of the public are invited to attend the hearing, and will be provided opportunity to ask questions about, and to express their opinions concerning, the proposed Ordinance.

This notice is given pursuant to NMSA 1978, Section 3-17-3.

Dated: \_\_\_\_\_, 2016.

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