City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item #_15_ Ordinance/Resolution# 2788

For Meeting of August 1, 2016 (Ordinance First Reading Date)

For Meeting of August 15, 2016 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: **AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE 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 $5,000,000; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.**

PURPOSE(S) OF ACTION:

Issue industrial revenue bond debt.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Karin Byrum	**Department/Section:** Finance/Treasury	**Phone:** 541-2084
City Manager Signature:	Daniel Ortega	

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Section 3-32-1 to 3-32-16 NMSA 1978, as amended, authorizes City Council to issue industrial revenue bonds and use the proceeds of such bonds for the purpose of promoting industry and trade by giving tax exemptions to the subject project. In an industrial revenue bonds transaction, the project property is deeded from the benefiting company to the City of Las Cruces (City). At the same time, the project property is leased back to the benefiting company for the term of the bonds with the company obligated to purchase the property for a nominal sum at the bond maturity date. Since the project property is owned by the City during the bond term, the company essentially acquires the tax status of the City with respect to the project party. The benefiting company makes all of the debt service payments and the City is not legally liable for any of the bond payments.

F&A Dairy Products, Inc. has presented to City Council a proposal for using City industrial revenue bonds to finance the costs of acquiring upgraded plant equipment located in the city limits. The City Council adopted Resolution No. 16-246 on June 20, 2016 declaring the City Council's intent to take all necessary steps to effect the issuance of the bonds and the City has

(Continue on additional sheets as required)

taken all the necessary steps including providing giving public notice and getting approval from the New Mexico Department of Finance for an allocation of the state's volume cap.

SUPPORT INFORMATION:

1. Ordinance.

SOURCE OF FUNDING:

Is this action already budgeted?			
N/A	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
N/A	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $_____ for FY__.
	No	☐	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 will approve the Ordinance authorizing the issuance of $5,000,000 tax-exempt industrial revenue bonds for the F&A Dairy Products, Inc. plant equipment upgrade project.
2. Vote "No"; this will not approve the Ordinance, thus not authorizing the issuance of $5,000,000 tax-exempt industrial revenue bonds for the F&A Dairy Products, Inc. plant equipment upgrade project.
3. Vote to "Amend"; this could delay the issuance of the bonds.

(Continue on additional sheets as required)

4. Vote to "Table"; this could delay the issuance of the bonds with a potential adverse effect on the F&A Dairy Products, Inc. plant equipment upgrade project.

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. 16-246.

(Continue on additional sheets as required)

City of Las Cruces®
PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of August 1, 2016 (Ordinance First Reading Date)

For Meeting of August 15, 2016 (Adoption Date)

TITLE: AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE 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 $5,000,000; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

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

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	Karin Byrum	541-2084	7/22/16
Department Director	[illegible]	541-2042	7/22/16
Other			
Assistant City Manager /CAO Management & Budget Manager	[illegible]	541-2078 541-2071	7-25-2016 7-25-2016
Assistant City Manager/COO	[illegible]	541-2271	7-26-16
ACTING City Attorney	[illegible]	541-2128	7-27-16
City Clerk	[illegible]	X2115	7-27-16

Rev. 8/2011

Council Bill No. 17-002
ORDINANCE NO. 2788

AUTHORIZING THE ISSUANCE AND SALE OF THE 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 $5,000,000; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, the City of Las Cruces (the "City," or the "Issuer"), located in Doña Ana County (the "County") in the State of New Mexico (the "State"), is a legally and regularly created, established, organized and existing municipal corporation with Home Rule Powers; and

WHEREAS, pursuant to Sections 3-32-1 to 3-32-16 NMSA 1978, as amended (the "Act"), the City Council (the "Council") of the City is authorized to issue industrial revenue bonds to acquire an industrial revenue bond project to be located within the City, and to use the proceeds of such bonds for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in the State and promoting a sound and proper balance in the State between agriculture, commerce and industry; 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") is authorized to do business in the State; and

WHEREAS, the Company has presented to the Council a proposal (the "Proposal"), pursuant to which the City will issue its "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 (the "Bonds") for the purpose of financing the costs of acquiring upgraded plant processing equipment (the "Equipment") for installation at and improvement of its processing plant located within the boundaries of the City (the "Processing Plant" and, together with the Equipment, the "Project Property"), to be used by the Company (the "Project") pursuant to the terms of an Amended and Restated Lease Agreement by and between the Company and the City (the "Lease Agreement"), which Project Property is to be used on the Project Site (as defined in the Lease Agreement in the City; and

WHEREAS, the Council has adopted its Resolution No. 16-246 declaring, among other matters, the Council's intent to take all necessary and advisable steps to effect the issuance of the Bonds; and

WHEREAS, following at least 14 days' notice describing the Project and the proposed Bonds which was published in the *Las Cruces Sun*-News, a newspaper of general circulation

within the City, the City held a public approval hearing as required by Section 147(f) of the Internal Revenue Code, as amended (the "Code"); and

WHEREAS, the Company has agreed to enter into the Lease Agreement with the City, pursuant to which the Company shall lease the Project Property from the City, which Lease Agreement shall amend and restate the prior lease agreement between the City and the Company entered into in connection with industrial revenue bonds previously issued by the City to finance the Processing Plant; and

WHEREAS, the Company has requested that the City issue the Bonds to provide funds to be used to finance the Project; and

WHEREAS, pursuant to the provisions of the Lease Agreement, the Company shall make payments to the [Purchaser] [Trustee] (defined below) sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds and to pay all other obligations incurred pursuant to the provisions of the [Amended and Restated Indenture of Trust (the "Indenture")] [First Supplemental Indenture of Trust (together with the Indenture of Trust dated as of December 1, 2008 by and between the City of and Wells Fargo Bank, National Association as Trustee, the "Indenture"], the Lease Agreement and this Ordinance; and

WHEREAS, the proceeds of the Bonds shall be applied to pay the costs of the Project and to pay costs of issuance thereof; and

WHEREAS, the City is authorized to enter into the Bond Documents (defined below) and other related documents and to issue the Bonds pursuant to the Act, the laws of the State and this Ordinance; and

WHEREAS, after having considered the provisions of the Proposal, the Council has concluded that the economic and other benefit to the City will be substantial and that it is desirable and necessary at this time to authorize the issuance of the Bonds and that the issuance of the Bonds by the City shall constitute a valid public purpose under the Act; and

WHEREAS, the Bonds shall be issued in a maximum principal amount of $5,000,000, and shall be numbered and registered, and shall contain such other features, as provided in the Indenture, and shall be issued, sold and delivered by the City pursuant to the Act; and

WHEREAS, Wells Fargo Bank, National Association (the "Purchaser"), is expected to offer to purchase the Bonds at a private sale pursuant to a Continuing Covenant Agreement to be entered into among the City, the Company and the Purchaser (the "Continuing Covenant Agreement"); and

WHEREAS, there has been published in the *Las Cruces Sun-News*, a newspaper published in and of general circulation in the City, public notice of the Council's intention to adopt this Ordinance, which notice includes certain information concerning the Project, the maximum amount of the Bonds to be issued to finance the acquisition of the Project and further detail concerning the Bonds and the Project, which notice was published at least 14 days prior to final action upon this Ordinance; and

WHEREAS, the City has given notice to the Dona Ana County Board of Commissioners and Assessor of the intent of the Council to consider this Ordinance authorizing the issuance of the Bonds at least thirty (30) days prior to the meeting at which this Ordinance is considered for adoption by the Council; and

WHEREAS, the hearing relating to this Ordinance was conducted at the Council meeting held on August 15, 2016, at which all interested individuals were given a reasonable opportunity to express their views, both oral and in writing on the proposed Bonds and the Project, and the Council hereby determines that the Issuer shall proceed with the Project, the issuance of the Bonds and the adoption of this Ordinance; and

WHEREAS, the proposed forms of the following documents (the "Bond Documents") have been filed with the City Clerk before this meeting: (1) the [Amended and Restated] [First Supplemental] Indenture of Trust, (2) the Lease Agreement, and (3) the Continuing Covenant Agreement.

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

SECTION 1. RATIFICATION. All actions not inconsistent with the provisions of this Ordinance previously taken by the Council and the officials of the City directed toward the sale and issuance of the Bonds and the acquisition and lease of the Project Property, including, without limitation, the publication of notice as set forth above, and the submittal to the State Board of Finance of an application for an allocation private activity volume cap for the purpose of qualifying the Bonds as "qualified small issue bonds" under Section 144(a) of the Internal Revenue Code of 1986, as amended, and Treasury Regulations promulgated thereunder (collectively, the "Code") are approved and ratified.

SECTION 2. THE PROJECT. The City shall acquire by purchase, bill of sale, lease, sublease, transfer agreement or deed to the City and other instruments, as appropriate, the Project Property from the Company and lease, sell and transfer the Project Property to the Company for use in connection with the Company's acquisition of upgraded plant processing equipment in accordance with the Bond Documents. The Project Property will be located at all times within the City.

SECTION 3. APPROVAL OF PROJECT. The Project, described in the Proposal, is hereby approved.

SECTION 4. FINDINGS. The Council finds that:

(A) The maximum aggregate face amount of the obligation to be issued with respect to the Project is $5,000,000.

(B) The developer and operator of the Project shall be the Company.

(D) The location of the Project is in the City of Las Cruces, New Mexico.

SECTION 5. AUTHORIZATION AND APPROVAL OF FINANCING. To finance the cost of the acquisition of the Project the City hereby authorizes the issuance and sale of a single industrial revenue bond to be designated "City of Las Cruces, New Mexico Tax-Exempt Industrial Revenue Bonds (F&A Dairy Products, Inc. Plant Equipment Upgrade Project), Series 2016" in the maximum principal amount of $5,000,000. The City shall finance the acquisition and construction of the Project as described in the Lease Agreement and the Indenture.

SECTION 6. FORM AND TERM OF BONDS. The Bonds shall be issued in registered form without coupons, and shall be dated and sold subject to the terms and conditions of the Indenture and the Continuing Covenant Agreement. The Bonds shall mature on [September 1, 2023] (the "Maturity Date") and, to the extent not previously paid, the entire principal amount of the Bonds shall be payable in one payment on the Maturity Date. The Bonds shall bear interest at the rate of ____% per annum on the principal amount advanced thereunder, commencing on the date of delivery of the Bonds, as further provided in the Indenture. Interest on principal amounts outstanding under the Bonds shall be payable on each [[July]] 1 while the Bonds are outstanding, to and including the Maturity Date; provided, however, that interest may be permitted to accrue with the consent of the Purchaser and, in any event all unpaid interest shall be due and payable on the Maturity Date. The Bonds shall be in substantially the form provided in the Indenture, shall be dated as of the initial date of delivery thereof to the Purchaser, and shall be subject to such other terms and conditions, including but not limited to redemption provisions, as are provided in the Indenture; provided that the final payment of principal plus accrued interest on the Bonds shall be due no later than the Maturity Date. Interest on the Bonds shall be calculated on the basis of a 360 day year of twelve 30 day months. The sale of the Bonds on the terms set forth in the Continuing Covenant Agreement is hereby approved.

SECTION 7. FINDINGS REGARDING PAYMENT OF INTEREST AND PRINCIPAL AND OTHER MATTERS. The Council makes the following determinations and findings in accordance with the Act:

(A) The maximum amounts necessary in each year to pay the installments of principal and interest on the Bonds, assuming issuance of the Bonds as of the date of execution and delivery of the Lease Agreement and Indenture in the aggregate principal amount of $5,000,000 and assuming the interest rate specified in Section 6 hereof shall be no more than the following:

Annual Calendar Period to and Including	Maximum Principal Payments Required in Such Period	Maximum Interest for Such Period*	Total Debt Service Requirement*
2016	$ -		$ -
2017	-		-
2018	-		-
2019	1,250,000		
2020	1,250,000		
2021	1,250,000		
2022	1,250,000		

*[add assumption re:
Floating Index Rate]

(B) The terms under which the Project Property is leased provide that the Company shall maintain the Project Property and carry all proper insurance with respect to the Project Property.

(C) The principal and all interest due in connection with the Bonds may be prepaid at any time, without penalty, in accordance with the terms of the Bond Documents.

(D) The lease rentals payable under the Lease Agreement shall be at least sufficient to pay the amounts set forth in paragraph (A) of this Section 7 (or such lesser amounts as the actual debt service on the Bonds requires), and to render the financing of the acquisition of the Project Property entirely self-liquidating.

(E) The funds and any accounts which are part of the funds established in the Indenture and maintained in trust with, and disbursements made from the funds and such accounts by, the Trustee shall be made as set forth in the Indenture. The Trustee may establish such other funds and accounts as are necessary to administer the trust created by the Indenture. All of the proceeds from the sale of the Bonds will be allocated, deposited and credited as set forth in the Indenture. All other money received by the Trustee shall be deposited in and withdrawn from the funds and such accounts as provided in the Indenture.

(F) It is not deemed advisable to establish any reserve fund for use in connection with the retirement of the Bonds or the maintenance of the Project Property.

SECTION 8. APPROVAL OF DOCUMENTS; APPOINTMENT OF TRUSTEE; AUTHORIZATION OF OFFICERS. The Council approves the forms, terms and provisions of the Bond Documents and the City shall enter into such Bond Documents substantially in the form of such Bond Documents presented at the meeting at which this Ordinance was adopted, with only such changes as are not inconsistent with this Ordinance or such other changes as may be approved by the Mayor or the Mayor Pro Tem and bond counsel. All such changes, insertions, deletions and modifications shall be deemed to have been approved by the City upon execution and delivery of the Bond Documents, such an execution and delivery to be conclusive evidence of such approval. Wells Fargo Bank, National Association is hereby appointed Trustee as further provided in the Indenture. The Council authorizes the Mayor or the City Manager and the City Clerk each to execute and deliver such Bond Documents, including the Bonds at the rate of interest set forth herein, to effectuate the sale of the Bonds to the Purchaser and the appointment of the Trustee under the Indenture.

SECTION 9. GENERAL AUTHORIZATION. The Council hereby authorizes, empowers and directs each of the officers (including the Council officers) and employees of the City, and its counsel, to carry out or cause to be carried out, and to perform, such obligations of the City and such other actions as they, in consultation with advisors to the City in connection with the issuance, sale and delivery by the City of the Bonds, shall consider necessary or advisable in connection with the Ordinance, including but not limited to the Bond Documents or

other documents deemed necessary, in the issuance, sale and delivery of the Bonds, including without limitation, arrangements with financial printers and credit agencies, if applicable.

SECTION 10. APPROVAL OF INDEMNIFICATION. The Council specifically approves the provisions of the Lease Agreement relating to indemnification which provide that the Company will indemnify the City in accordance with the terms of Section 5.7 of the Lease Agreement, which indemnification may be subject to the provisions of Section 56-7-1 and 56-7-2, New Mexico Statutes Annotated, 1978 Compilation, as described in Section 5.7.G of the Lease Agreement.

SECTION 11. ACTIONS TO BE TAKEN. The officers of the City shall take such action as is necessary by the Indenture to effectuate its provisions and shall take such action as is necessary in conformity with the Act to finance the construction and acquisition of the Project Property and for carrying out other transactions as contemplated by this Ordinance and the Bond Documents including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bonds.

SECTION 12. LIMITED OBLIGATIONS. The Bonds shall be special limited obligations of the City, payable solely as defined in the Indenture and shall never constitute a debt or indebtedness of the City, the County, the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes and shall not constitute or give rise to any pecuniary liability of the City or charge against its general credit or taxing power. Nothing contained in this Ordinance nor in the Bond Documents or any other instrument shall be construed as obligating the City (except with respect to the Project and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the City or against its taxing power, nor shall the breach of any agreement contained in this Ordinance, the Bond Documents, the Bonds or any other instrument be construed as obligating the City (except with respect to the Project and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the City or against its taxing power, the City having no power to pay out of its general funds, or otherwise contribute any part of the costs of constructing or equipping the Project, nor power to operate the Project as a business or in any manner except as lessor of the Project.

SECTION 13. PAYMENTS IN LIEU OF TAXES

(A) Subject to subsection B of this Section, the Company shall be responsible to pay general (ad valorem) taxes imposed on the Project Property under the laws of the State as calculated pursuant to the applicable New Mexico Statutes, including, without limitation, Sections 7-36-27, NMSA 1978.

(B) The Lease Agreement shall include substantially the following provisions, together with such additional details as the Mayor and City Manager may determine are necessary or convenient to carry out those provisions.

(1) The Issuer and the Company acknowledge that during the Term, the Project Property will be exempt from property taxation pursuant to Article VIII, Section 3 of the State constitution and Section 7-36-3, NMSA 1978. Notwithstanding the foregoing, the Company will pay payments in-lieu of ad valorem property tax (the "AV PILOT") as provided in subsection (2) of this Section and payments in-lieu of gross receipts or compensating tax as provided in subsection (3) of this Section.

(2) The Company shall pay to the Issuer, on each date the Company would have been required to pay ad valorem property taxes if the Project Property were owned entirely by the Company and the Bonds had not been issued by the Issuer, an amount equal to [[TO BE PROVIDED]]

SECTION 14. STATE TAX MATTERS. The City shall acquire in its name the Project Property, including capital equipment and other tangible personal property used in the Project, and for such acquisitions the City will, consistent with New Mexico state law, assist the Company in obtaining the necessary nontaxable transaction certificates for delivery to vendors as may be applicable under the New Mexico Gross Receipts and Compensating Tax Act.

SECTION 15. ELECTION UNDER INTERNAL REVENUE CODE SECTION 144(a). The City hereby elects, under Section 144(a)(4)(A) of the Code, that the $10,000,000 limitation shall apply to the Bonds.

SECTION 16. BOND ORDINANCE IRREPEALABLE. After the Bonds are issued, this Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall have been duly paid, cancelled and discharged in accordance with the Indenture. Amendments to this Ordinance shall not require the consent of the owners of the Bonds if a supplement to the Indenture which contains the same or similar changes or additional terms would not require the consent of the owners of the Bonds. Amendments to this Ordinance shall require the consent of a majority in aggregate principal amount of the owners of the Bonds then outstanding if a supplement to the Indenture which contains the same or similar changes or additional terms would require such consent of the owners of the Bonds. No amendment shall be made to this Ordinance without the consent of all the owners of the Bonds if a supplement to the Indenture which contains the same changes or additional terms would require the consent of all such owners. Notice of a proposed amendment requiring the consent of the owners of the Bonds shall be given in the same manner as notice of a proposed supplement to the Indenture which requires the consent of the owners of the Bonds. The City may, at any time prior to the issuance of the Bonds, amend or supplement any of the terms of this Ordinance by an ordinance or a resolution duly adopted by the Council.

SECTION 17. SEVERABILITY. If any section, paragraph, clause or provision of this Ordinance 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 Ordinance.

SECTION 18. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Ordinance are repealed to the extent only of such inconsistency.

This repealer shall not be construed as reviving any by law, order, resolution or ordinance or part thereof.

SECTION 19. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. By reason of the fact that it is necessary for the City and the Company to proceed as soon as possible to take all actions necessary to the consummation of the purpose of this Ordinance, this Ordinance, immediately upon its final passage and approval, shall be recorded in the ordinance book of the City, kept for that purpose, and shall be there authenticated by the signature of the Mayor as the presiding officer of the Council, and by the signature of the City Clerk or any Deputy City Clerk, and shall be published by title and general summary once in a newspaper which maintains an office in, and is of general circulation in, the City, and shall be in full force and effect thirty days following recordation by the City Clerk in the ordinance book of the City. The title and a general summary of this subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

CITY OF LAS CRUCES, NEW MEXICO
Notice of Adoption of Ordinance

Notice is hereby given that on August 15, 2016 the City Council of the City of Las Cruces, New Mexico adopted an Ordinance No. _____ (the "Ordinance") relating to the authorization and issuance of the City's Tax-Exempt Industrial Revenue Bonds (F&A Dairy Products, Inc. Plant Equipment Upgrade Project), Series 2016 (the "Bonds"). Complete copies of the Ordinance are available for public inspection during normal and regular business hours of the City Clerk at 700 North Main Street, Las Cruces, New Mexico. The title of Ordinance No. _____ is as follows:

> AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO TAX-EXEMPT INDUSTRIAL REVENUE BONDS (F&A DAIRY PRODUCTS, INC. PLANT EQUIPMENT UPGRADE PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT OF $5,000,000; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

Preambles of the Ordinance: state that (1) the proposal presented by F&A Dairy Products, Inc. pursuant to which the City will issue its Tax-Exempt Industrial Revenue Bonds in an aggregate principal amount of up to $5,000,000 (for the purpose of financing the costs of acquiring upgraded plant processing equipment for installation at and improvement of its processing plant located within the boundaries of the City; (2) the City held a public approval hearing following notice which described the Project and the proposed Bonds, as required under Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"); (3) the Company has agreed to enter into the Lease Agreement with the City, pursuant to which the Company shall lease the Project Property from the City; (4) the Lease Agreement and payments due thereunder will be pledged pursuant to the Indenture of Trust and will be sufficient to pay debt service on the Bonds; (5) the proceeds of the Bonds shall be applied to pay the costs of the Project and to

pay costs of issuance thereof (6) the City is authorized to enter into the Bond Documents; (7) the Council has concluded that the economic and other benefit to the City will be substantial and that the issuance of the Bonds by the City shall constitute a valid public purpose under the Act; (8) public notice of the Council's intention to adopt the Ordinance, including certain information concerning the Project, the maximum amount of the Bonds to be issued to finance the acquisition of the Project was published at least 14 days prior to final action upon the Ordinance; (9) notice was provided to the Dona Ana County Board of Commissioners and Assessor at least thirty (30) days prior to the meeting at which the Ordinance is considered for adoption by the Council; and (10) the hearing relating to the Ordinance was conducted at the Council meeting held on August 15, 2016, at which all interested individuals were given a reasonable opportunity to express their views.

Sections 1 through 3: Ratify prior actions of the City taken toward authorization of the Bonds and the Project, including the submittal of an application for an allocation private activity volume cap for the purpose of qualifying the Bonds as "qualified small issue bonds" under Section 144(a) of the Internal Revenue Code; provide that the City shall acquire by the Project Property from the Company and lease the Project Property to the Company; and approve the Project itself.

Sections 4 through 6: Make certain findings concerning maximum principal amount of the Bonds, the developer and location of the Project; authorize the issuance of the Bonds; and provide that form and terms of the bonds shall be as established in an indenture of trust and Continuing Covenant Agreement.

Sections 7 through 10: Specify the anticipated maximum amounts necessary each year to pay principal and interest; approve the forms of certain bond documents; appoint a trustee to receive funds for the payment of debt service on the Bonds; authorize officers of the City to take actions necessary to issue and deliver the Bonds: and approve provisions for indemnification of the City by the Company.

Sections 11 through 13: Authorize officers of the City to take action necessary to finance the acquisition of the Project; provide that the Bonds shall be special, limited obligations of the City payable solely as provided in the Indenture, and shall never be construed as obligating the city with respect to its general credit or taxing power; and provide for payments to the City in lieu of property taxes which would otherwise be due on the Project Property.

Sections 14 through 19: Provide that the City shall acquire the Project Property in its name; that the City has elected that the Bonds will be issued pursuant to the $10,000,000 limitation under Section 144(a) of the Code; that the Ordinance shall be irrepealable after the Bonds are issued; that any invalid provision of the Ordinance shall be severable from the remaining valid provisions; that all prior actions which are inconsistent with the Ordinance are repealed to the extent of such inconsistency; for recording of the Ordinance and for publication of a notice of adoption of the Ordinance.

This notice constitutes compliance with the Public Securities Limitation of Action Act, Sections 6-14-4 to 6-14-7 NMSA 1978.

WITNESS my hand and the seal of the City of Las Cruces, New Mexico, this 15th day of August, 2016.

(SEAL)

_____
City Clerk

(End of Form of Summary for Publication)

PASSED, ADOPTED, SIGNED AND APPROVED THIS 15TH DAY OF AUGUST, 2016.

CITY OF LAS CRUCES, NEW MEXICO

_____
Ken Miyagishima, Mayor

_____
Greg Smith, Mayor Pro Tem

_____
Kasandra Gandara, Councillor

_____
Olga Pedroza, Councillor

_____
Jack Eakman, Councillor

_____
Gill Sorg, Councillor

_____
Ceil Levatino, Councillor

(SEAL)

ATTEST:

_____
Linda Lewis, City Clerk

Approved as to Form and Legal Sufficiency:

_____
William R. Babington, Jr., City Attorney