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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

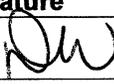
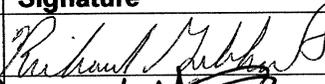
Council Action and Executive Summary

Item # 4 Ordinance/Resolution# 10-112 Council District: 1

For Meeting of October 19, 2009
 (Adoption Date)

TITLE: A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND RUSS AND MERCY SMITH FOR THE EXCLUSIVE USE OF 800 SQUARE FEET OF THE CITY PARKING AREA LOCATED AT THE NORTHWEST CORNER OF WATER STREET AND GRIGGS AVENUE IN DOWNTOWN LAS CRUCES.

PURPOSE(S) OF ACTION: Lease downtown land for business use.

Name of Drafter: Christine Logan		Department: Community Development		Phone: 541-2286	
Department	Signature	Phone	Department	Signature	Phone
Community Development		528-3067	Budget		541-2281
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

As part of the Las Cruces Urban Renewal Project, properties in the downtown mall were reconfigured and several public parking areas were created. A 45,250 square foot parking lot was established along Water Street south of the El Paso Electric offices. This parking lot has been recently repaved. There are 121 parking spacing in the lot. The parking lot is used for drop off and pick up of Central School students and for customers accessing the El Paso Electric site and surrounding businesses.

The Smiths have been operating their Happy Dog food cart in this parking area for several months. As long a mobile food vendor does not disconnect any part of the vehicle, does not place any items on the parking lot, and parks within a designated parking space, the Municipal Code allows for them to operate from public parking areas. The Smiths have requested to lease space in the parking lot from the City of Las Cruces so that they can layout a small seating area when they are present and so that they can establish themselves in the same spot everyday. The City has entered into similar leases for use of parking areas in the past. Jesse's KCBQ operates under such a lease at the southeast corner of Main Street Downtown. Café Paris was operating from the same parking area the Smiths have requested but has discontinued business. Desert Dog used to lease City land but now operates from a designated parking space. The attached lease agreement is based on those other leases.

The lease allows the Smiths exclusive use of four parking spaces. The Smiths must keep the property clean, abide by all zoning regulations and other city codes, and must restore the property to its current condition when the lease expires or is terminated. The Smiths would indemnify the City against any liability that may occur as a result of the business being on the property.

Appraisals of city parking lots in the downtown area have estimated the value to be \$4 to \$5 per square foot. The lease rate of \$50 per month equates to an annual lease at 15% of the purchase price. Lease income would be deposited into the downtown fund established for land revenue earmarked for downtown improvements (fund 2715).

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
NA	N/A	N/A

1. Resolution
2. Lease Agreement as Exhibit "A"
3. Request for lease
4. Vicinity map

OPTIONS / ALTERNATIVES:

1. Vote YES on the Resolution and approve the lease of 800 square feet in the City parking lot to Russ and Mercy Smith.
2. Vote NO on the Resolution to reject the lease. The Smiths may continue to operate in the parking lot but would not have exclusive use of any space.
3. Modify the terms of the agreement and then adopt the proposal.
4. Table the proposal and/or instruct staff to seek alternative direction.

RESOLUTION NO. 10-112

A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND RUSS AND MERCY SMITH FOR THE EXCLUSIVE USE OF 800 SQUARE FEET OF THE CITY PARKING AREA LOCATED AT THE NORTHWEST CORNER OF WATER STREET AND GRIGGS AVENUE IN DOWNTOWN LAS CRUCES.

The City Council of the City of Las Cruces is informed that:

WHEREAS, the City of Las Cruces is the owner of the parking lot located at the northwest corner of Water Street and Griggs Avenue in downtown Las Cruces, and

WHEREAS, Russ and Mercy Smith, owners of "Wood Works Cart", desires to utilize a portion of the parking lot to locate a mobile food vending business, and

WHEREAS, based on review by City staff, there is no conflict with this proposed use of the property, and

WHEREAS, the Smiths will pay the City \$600 per year for the use of the property.

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

(I)

THAT the Lease Agreement between the City of Las Cruces and Russ and Mercy Smith, to provide for lease of a portion of municipal parking lot, attached as Exhibit "A", is hereby approved.

(II)

THAT the Mayor is authorized to execute the Agreement on behalf of the City.

(III)

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

DONE AND APPROVED this _____ day of _____, 2009.

(SEAL)

APPROVED:

Mayor Ken Miyagishima

ATTEST:

City Clerk

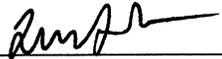
VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Archuleta: _____
Councillor Small: _____
Councillor Jones: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

EXHIBIT "A"
LEASE AGREEMENT

This Lease Agreement is entered into on this _____ day of October, 2009 between the City of Las Cruces, New Mexico, hereinafter referred to as "City" and Russ and Mercy Smith, doing business as Wood Works Cart, hereinafter referred to as "Smith".

WHEREAS, the City of Las Cruces is the owner of the parking area located at the northwest corner of Water Street and Griggs Avenue in downtown Las Cruces; and

WHEREAS, Russ and Mercy Smith as the owners of Wood Works Cart have approached the City of Las Cruces with a request to use this property to operate their mobile food vending business.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereby agree as follows:

1. The City shall allow Smith the exclusive use of a forty foot by twenty foot portion of the City parking area located at the northwest corner of Water Street and Griggs Avenue in downtown Las Cruces ("Property") between 5 am and 9 pm from November 1, 2009 to October 31, 2011.
2. Smith shall make application and obtain any permits and/or licenses required for use of the Property, to abide by any zoning conditions that may be applicable, and to maintain adequate business insurance during the term of this Agreement.
3. Smith shall make payment in the amount of \$50 per month for the term of the Agreement. Payment shall be delivered to the City of Las Cruces on or before the fifth day of each month. Payment for the initial month of the lease shall be due upon execution of this Agreement.

The use of the Property is subject to the following conditions:

1. Property shall be maintained by Smith in a satisfactory and workmanlike manner in accordance with all City codes, regulations and ordinances.
2. Smith may paint the lease area so as to mark it but may not make any permanent changes to the Property and shall not leave any items on the Property when his business is not present on the site.
3. The City reserves the right to relocate Smith to another location in the parking lot. The City may sell, lease, or use other parcels in the parking lot.

Indemnification

Smith hereby indemnifies and holds the City harmless against all losses that the City may incur or become liable for in whole or in part from the use of or presence on the Property, except for such loss proximately caused by the negligence of City employees or agents.

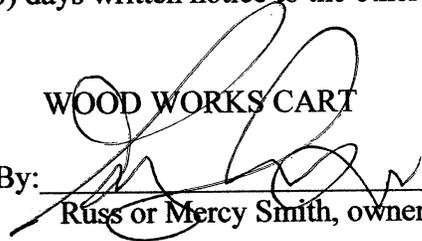
Termination

Either party may terminate this lease on thirty (30) days written notice to the other party.

CITY OF LAS CRUCES, NEW MEXICO

WOOD WORKS CART

By: _____
Ken Miyagishima, Mayor

By:  _____
Russ or Mercy Smith, owners

STATE OF NEW MEXICO)
)
COUNTY OF DOÑA ANA)

The foregoing instrument was acknowledged before me on this _____ day of _____, 2009 by Ken Miyagishima, Mayor of the City of Las Cruces, a New Mexico municipal corporation.

Notary Public
My commission expires: _____

STATE OF NEW MEXICO)
)
COUNTY OF DOÑA ANA)

The foregoing instrument was acknowledged before me on this 16th day of Sept, 2009 by Russel Smith, owner of Wood Works Cart.



Notary Public
My commission expires: 10/16/2012

APPROVED AS TO FORM:

City Attorney



1875 N. Alameda Blvd.
Las Cruces, NM 88005
575-640-8283
russhbs@yahoo.com

Christine Logan
Economic Development
City of Las Cruces

Dear Christine;

I have enjoyed the privilege of vending Hot Dogs & Burgers at the city lot located just south of El Paso Electric on S. Water St. Downtown.

I want to continue serving at this location because it has genuinely partnered well with the community of offices and businesses in the area. Knowing that current and future development in the area are going to add more parking pressure, I am looking for a way to solidify my position there and would like to ask for a lease agreement with the city.

I would offer up the idea of leasing a location in the lot. I would paint it according to your requirements so lines and colors would imply to others that this spot is not for casual parking. Doing this would give another revenue line to the city. It would allow me to better create a business moment in the downtown corridor and it would add yet another dimension of business growth in the area. A lease rate of \$50.00/month could be written and paid up front. I can provide copies of my business permit and current insurance which names The City of Las Cruces as additionally insured.

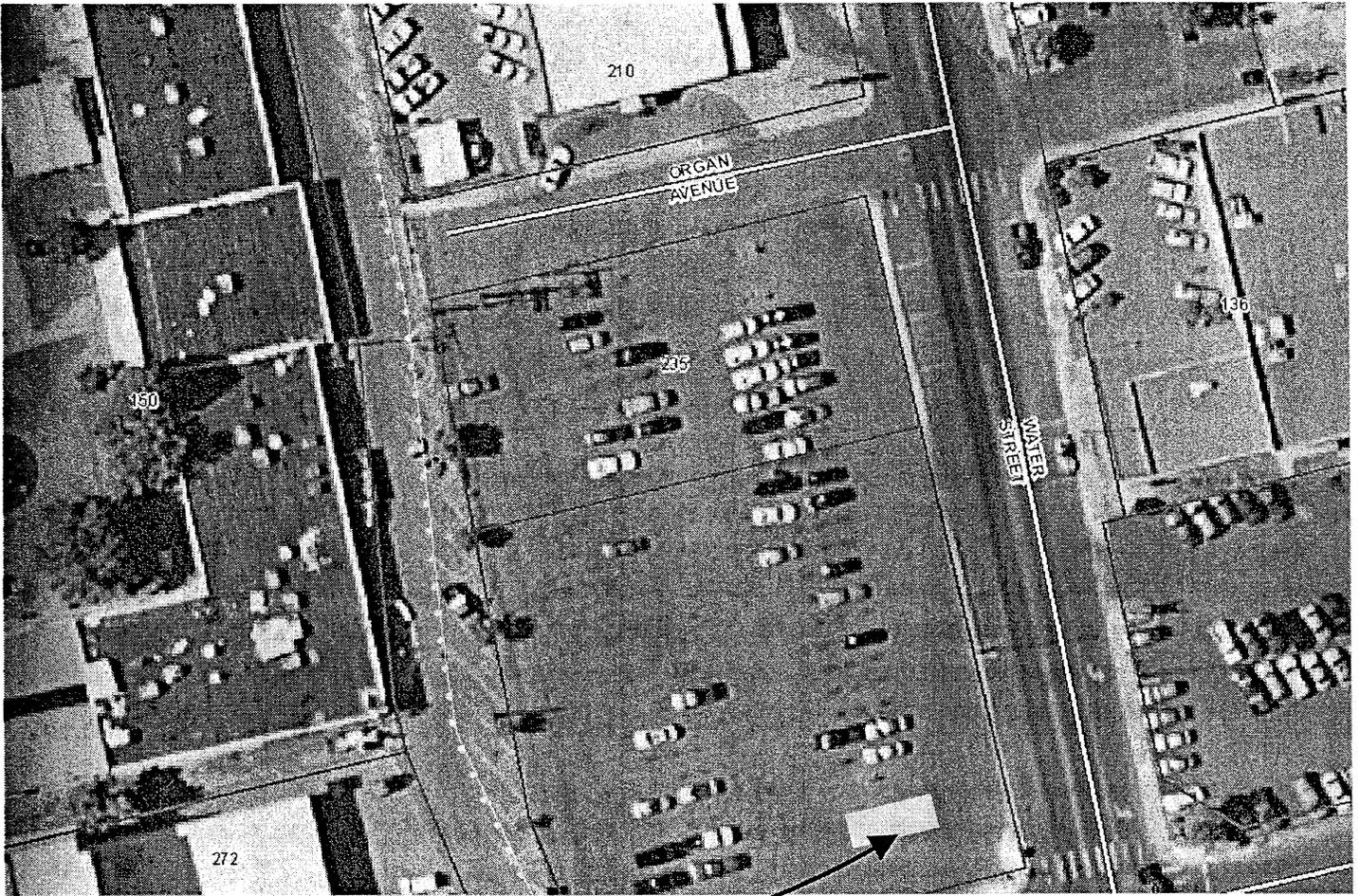
Let me know what is needed next for more discussion. I welcome the chance to have this plan going forward to a point of agreement perhaps starting September or there a bouts. Recognize that no city services would be required.

Sincerely

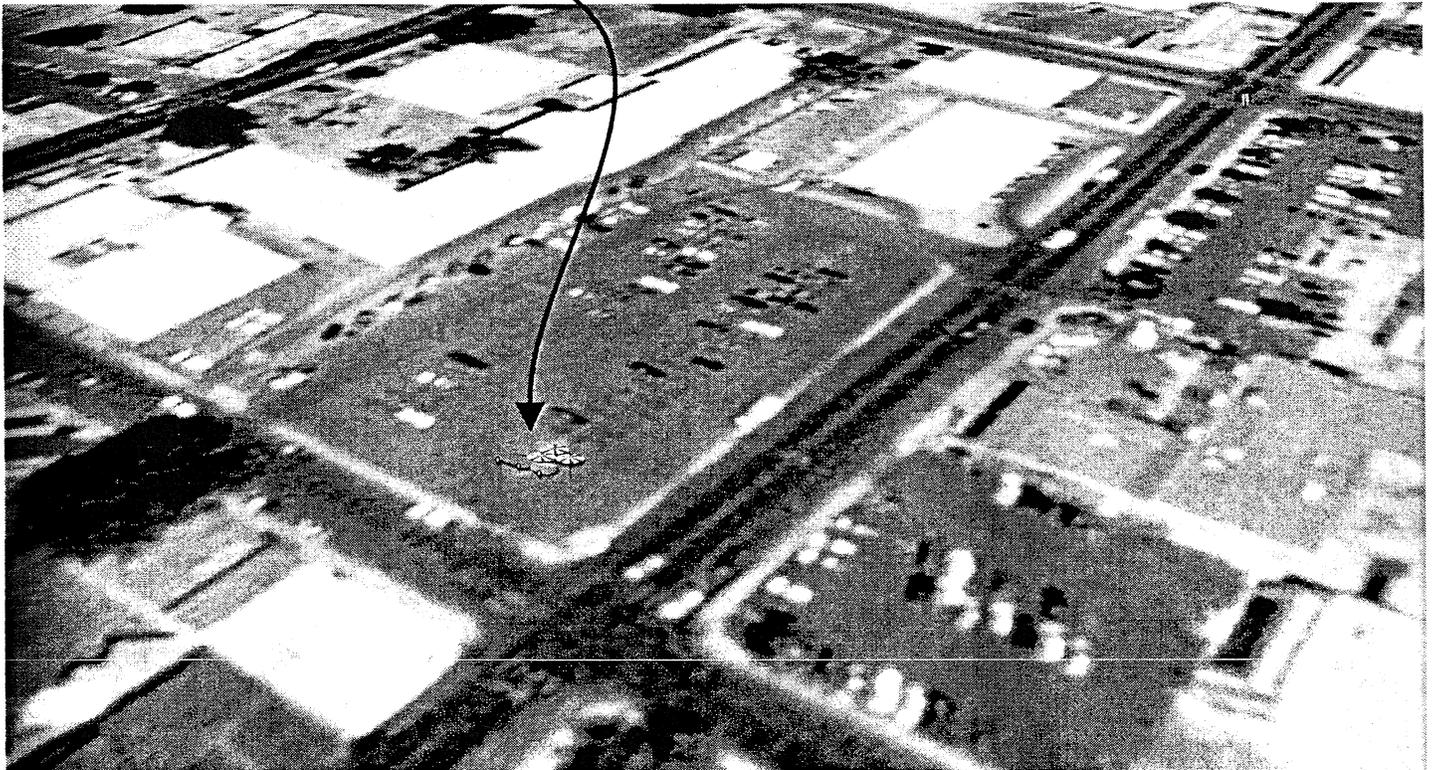
Russ Smith

Russ Smith
Happy Dog

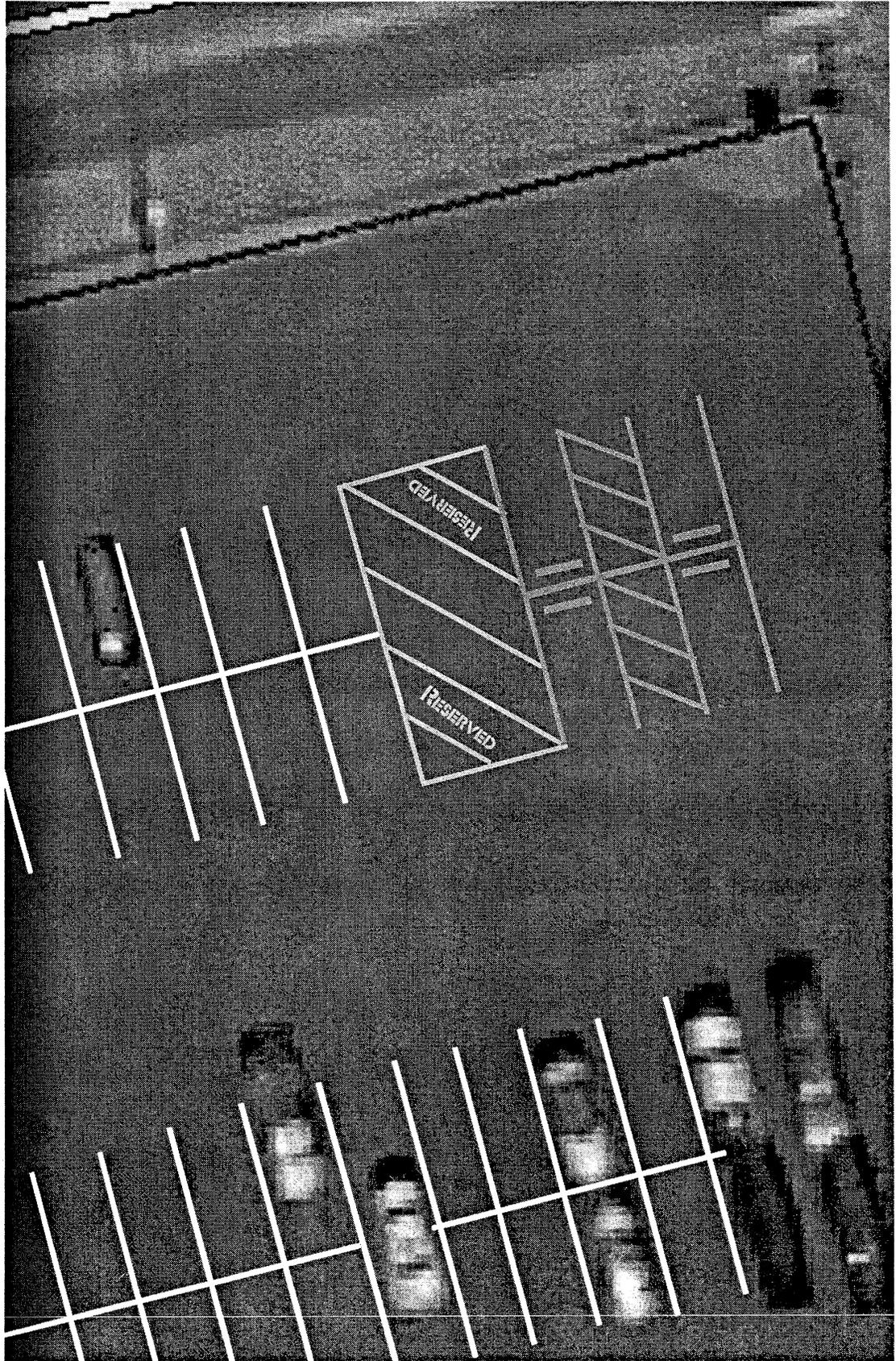




Location for lease



This is a proposed display of the location. The color and type of striping are to be ratified by your office or codes so that you are comfortable they comply. The best utility for me is to have this spot for visibility and access. The orange area constitutes the area of 4 parking spots allowing me a small area for casual canopy seating area. Recognize that the blue striped parking spots are already blue designated handicapped slots. They are rarely used.



Vicinity Map

Water Street

Griggs Avenue

Proposed
lease
location

