



City of Las Cruces
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 8 Ordinance/Resolution# 17-101

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of November 21, 2016
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION AUTHORIZING THE PURCHASE OF LAS CRUCES TAX INCREMENT DEVELOPMENT DISTRICT SPONGE BONDS UP TO \$3,000,000.00 AND APPROVING THE MAYOR'S SIGNATURE ON THE CORRESPONDING PURCHASE AGREEMENT.

PURPOSE(S) OF ACTION:

Authorize bond purchase.

COUNCIL DISTRICT: N/A		
<u>Drafter/Staff Contact:</u> Karin Byrum	<u>Department/Section:</u> Finance / Treasury	<u>Phone:</u> 541-2084
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Tax Increment Development District (TIDD) was created in 2008. The purpose of the TIDD is to generate revenues within a specific area and to use those revenues only within that area for public improvements. The current resolutions adopted by the State Board of Finance and the New Mexico State Legislature list ten street improvement projects within the TIDD area that are eligible for funding with the State (restricted) portion of the TIDD funding. The two specific projects that are being targeted are the two-way conversion of Church Street and Water Street.

The TIDD statute authorizes the State (restricted) portion of tax increment revenue only to be used to pay debt service on TIDD bonds issued to fund eligible public infrastructure costs, rather than for direct reimbursement of such costs. Additionally, the time allotted by the State Legislature to use the restricted revenues expires on December 31, 2018.

In order to comply with the State statute and continue expending funds in a timely manner, the following process will be conducted with the Series 2016 bonds as was done with the Series 2015 TIDD bonds and as illustrated below:

- Closing Date:
 - TIDD issues a 1-day bond with par amount of \$2,550,000.00, at 1% per annum

(Continue on additional sheets as required)

(interest will be taxable to manage transaction costs).

- Bond purchaser (City) purchases the bond per the attached purchase agreement and tenders \$2,550,000.00 principal amount to the TIDD to reimburse it for eligible infrastructure costs.
- Repayment Date:
 - TIDD uses accumulated gross receipts tax increment revenues to pay the City, as bond purchaser, \$2,550,000.00 plus one day of interest (\$70.00).

The result of this transaction is the TIDD has \$2,550,000.00 available for eligible infrastructure costs and the City is repaid \$2,550,070.00 in debt service on the bond.

The bond purchase agreement states the legal terms of the Series 2016 TIDD bond sale and related purchase by the City.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", City of Las Cruces TIDD Taxable Short-Term Tax Increment Revenue Bond Series 2016 Bond Purchase Agreement.

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 will authorize the purchase of Series 2016 TIDD bonds and approve the Mayor's signature on the bond purchase agreement between the City and the TIDD.
2. Vote "No"; this will not authorize the purchase of the Series 2016 TIDD bonds nor approve the Mayor's signature on the bond purchase agreement between the City and the TIDD. This will delay the sale of the TIDD bonds and the funding for the construction of the proposed street improvements.
3. Vote to "Amend"; this could allow the City Council to modify the Resolution by adding conditions as determined appropriate.
4. Vote to "Table"; this could delay the sale of the Series 2016 TIDD bonds and prevent funds from the TIDD being used to construct the proposed street improvements.

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[®]

PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of November 21, 2016
 (Adoption Date)

TITLE:

A RESOLUTION AUTHORIZING THE PURCHASE OF LAS CRUCES TAX INCREMENT DEVELOPMENT DISTRICT SPONGE BONDS UP TO \$3,000,000.00 AND APPROVING THE MAYOR'S SIGNATURE ON THE CORRESPONDING PURCHASE AGREEMENT.

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

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	<i>Karin Byrum</i>	541-2084	10/26/16
Department Director	<i>Victoria Fiedler</i>	541-2080	10/27/16
Other			
Assistant City Manager /CAO Management & Budget Manager	<i>Andrews Mabella</i>	541-2042 541-2085	10/28/16 10/28/16
Assistant City Manager/COO	<i>Daniel Acila</i>		11/2/16
City Attorney	<i>W. J. ...</i>	EXT 2129	3 NOV 2016
City Clerk	<i>[Signature]</i>	X2115	11-10-16

RESOLUTION NO. 17-101**A RESOLUTION AUTHORIZING THE PURCHASE OF LAS CRUCES TAX INCREMENT DEVELOPMENT DISTRICT SPONGE BONDS UP TO \$3,000,000.00 AND APPROVING THE MAYOR'S SIGNATURE ON THE CORRESPONDING PURCHASE AGREEMENT.**

The City Council is informed that:

WHEREAS, pursuant to Resolution No. 08-102 and Resolution No. 08-143 (together, the "Formation Resolution"), the City of Las Cruces (the "City") pursuant to the Tax Increment for Development Act, Sections 5-15-1 through 5-15-28 NMSA 1978 (the "Act"), approved a tax increment development plan (the "TIDD Plan") and the formation of a Tax Increment Development District as described in the TIDD Plan (the "District"), to be governed by a board (the "Governing Body") consisting of members of the City Council as permitted by Section 5-15-10(B) NMSA 1978 and a nonvoting member of the Doña Ana Board of County Commissioners; and

WHEREAS, the District is a political subdivision of the State of New Mexico (the "State"), separate and apart from the City, the County of Doña Ana (the "County") and the State; and

WHEREAS, pursuant to 2010 Laws of New Mexico, Chapter 9, Section 1, and following presentation by the New Mexico Finance Authority ("NMFA") of the proposed issuance of bonds secured by state gross receipts tax increment generated within the District as provided in Section 5-15-21(A) and (B) NMSA 1978, the Legislature of the State authorized the issuance of bonds for the Project in an amount not to exceed \$8,000,000 in net proceeds, secured by tax increments authorized pursuant to the Act, including 75% of the State gross receipts tax increment revenue generated within the District, as approved by the State Board of Finance by resolution dated December 22, 2008 (together, the "State Appropriation"); and

WHEREAS, the TIDD Plan initially provided for the design and construction of Public Infrastructure Improvements, including the following street improvement projects and estimated costs: Main Street from Griggs to Lohman, including the Roundabout at Bowman Avenue, at a cost of \$1,500,000; Main Street from Las Cruces Avenue to Picacho, including the Roundabout at Lucero, at a cost of approximately \$2,300,000; Water Street (converting from 1-way to 2-way traffic flow), at a cost of \$1,500,000; Church Street (converting from 1-way to 2-way traffic flow), at a cost of \$1,600,000; Las Cruces Avenue between Church and Alameda, at a cost of \$1,300,000; Griggs Avenue between Church and Alameda, at a cost of \$1,300,000; Organ Avenue between Campo and Main, at a cost of \$350,000; Court Avenue between Church and Water, at a cost of \$400,000; Hadley Avenue between Church and Water, at a cost of \$250,000; and May Avenue between Church and Water, at a cost of \$300,000 (collectively, the "Street Projects"); and

WHEREAS, the Street Projects are eligible for financing as public infrastructure improvements from proceeds of tax increment revenue bonds under the Act, the Formation Resolution and the TIDD Plan, as amended; and

WHEREAS, the City has previously been reimbursed from proceeds of the District's \$4,800,000 Taxable Short-Term Tax Increment Development District Revenue Bond, Series 2015 (the "Series 2015 Bond"), which Series 2015 Bond was issued pursuant to a Master Indenture of Trust dated as of December 1, 2014 by and between the District and BOKF, NA dba Bank of Albuquerque, as Trustee (the "Master Indenture") as supplemented and amended by a Series 1 Indenture of Trust by and between the District and the Trustee; and

WHEREAS, the District intends to issue its City of Las Cruces Tax Increment

Development District Taxable Short-Term Tax Increment Revenue Bond, Series 2016 (the "2016 Bond") in the principal amount of \$2,550,000; and

WHEREAS, in connection with this Resolution, a form of bond purchase agreement (the "Bond Purchase Agreement") proposed to be entered into by and between the Governing Body and the City has been presented to the Governing Body, pursuant to which the District will sell and the City (as purchaser, the "Purchaser") will purchase the 2016 Bond; and

WHEREAS, it is in the best interest of the City to buy the 2016 Bond from the District at a negotiated sale on the terms set forth herein.

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

(I)

THAT the City is authorized to purchase the 2016 Bond with a maximum principal amount of up to \$3,000,000.00.

(II)

THAT the Mayor is hereby authorized to execute and deliver the agreement for the City's purchase of the 2016 Bond.

(III)

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

DONE AND APPROVED this _____ day of _____, 20__.

APPROVED:

Mayor

ATTEST:

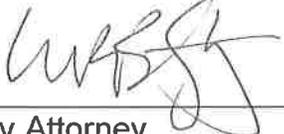
City Clerk

(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: _____

\$2,550,000
CITY OF LAS CRUCES TAX INCREMENT DEVELOPMENT DISTRICT
TAXABLE SHORT-TERM TAX INCREMENT REVENUE BOND
SERIES 2016

BOND PURCHASE AGREEMENT

December ___, 2016

Chairperson, Board of Directors
City of Las Cruces Tax Increment Development District
Las Cruces, New Mexico

The City of Las Cruces, New Mexico (the "Purchaser") enters into this Bond Purchase Agreement (the "Agreement") with the City of Las Cruces Tax Increment Development District (the "District") to purchase the City of Las Cruces Tax Increment Development District Taxable Short-Term Tax Increment Revenue Bond, Series 2016 in the principal amount of \$2,550,000 (the "Bond"). The Bond is issued pursuant to Sections 5-15-1 *et seq.* NMSA 1978, and Resolution 17-___ of the Board authorizing the issuance sale and delivery of the Bond (the "Bond Resolution"). Capitalized terms in this Agreement have the same definitions as set forth in the Bond Resolution unless the context clearly requires otherwise.

1. Purchase, Sale and Delivery of the Bond.

A. On the basis of the representations, warranties and agreements contained in this Agreement, the Bond Resolution and the Bond, and subject to the terms and conditions set forth herein and therein, the District agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the District the Bond at a purchase price equal to 100% of the principal amount thereof. The Bond shall be in the principal amount of \$2,550,000, shall bear interest at the rate of 1% per annum, calculated on the basis of a 365-day year, and shall mature in not less than one day, and not more than 30 days after the date of delivery of the Bond to the Purchaser.

B. The date of delivery of and payment for the Bond is referred to in subparagraph C below in this Agreement as the "Closing Date." The Bond shall be delivered to the Purchaser in typewritten form on the Closing Date upon receipt of the purchase price for the Bond by the District (which may be credited to the District's project construction fund), and a copy of the Bond shall be available for examination by the Purchaser prior to the Closing Date.

C. The parties hereto understand and agree that the Closing Date will occur on or about December 21, 2016 or another mutually agreeable date.

2. Financing Requirements. On or prior to the Closing Date, the Purchaser shall have received duly executed copies of the Bond Resolution and this Agreement. The

Bond shall be a special obligation of the District and be payable solely from gross receipts tax increment revenue as provided in the Bond Resolution.

3. Representations and Warranties of the District.

A. District duly organized and validly existing. The District was duly formed and validly exists under the Tax Increment for Development Act, Sections 5-15-1 through 5-15-28 NMSA 1978, Resolution No. 08-102 and Resolution No. 08-243 (together, the "Formation Resolution") of the City of Las Cruces (collectively, the "Act"). The District is authorized to enter into this Agreement and to take the actions contemplated hereby and in the Bond Resolution.

B. The District is authorized to issue the Bond for the purpose of providing funds pay costs of public infrastructure within or otherwise benefitting the real property within the District, and to provide costs of issuance of the Bond (the "Project"). The District has the power to enter into the transactions contemplated by, and to carry out its obligations under the Act, the Bond Resolution and this Agreement. The Chairman of the Board has duly executed the Bond Resolution, which is valid and enforceable against the District, which authorize the execution and delivery of this Agreement and the execution, issuance, sale and delivery of the Bond.

C. The Bond Resolution and this Agreement constitute legal, valid and binding agreements of the District, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights. The Bond, when issued, delivered and paid for, in accordance with the Bond Resolution and this Agreement, will constitute a legal, valid and binding obligation of the District entitled to the benefits of the Bond Resolution and this Agreement, and will be enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights.

D. The proceeds of the Bond will be used by the District only for the Street Projects described in the Bond Resolution. The distribution and use of proceeds of the Bond will be in compliance with the provisions of the Bond Resolution.

E. There is no litigation or proceeding pending or, to the knowledge of the undersigned official of the District, after due inquiry, threatened, in any way affecting the existence of the District, or seeking to restrain or to enjoin the issuance, sale or delivery of the Bond, or in any way contesting or affecting the validity or enforceability of the Bond, the Bond Resolution or this Agreement, or contesting the powers of the District or its authority with respect to the Bond, the Bond Resolution or this Agreement.

F. The issuance, sale and delivery of the Bond, the execution and delivery of this Agreement and compliance with the obligations on the part of the District contained in this Agreement and in the Bond do not conflict with or constitute a breach or default under any administrative regulation, judgment, decree, loan agreement, indenture, note, bond, resolution, agreement or other instrument to which the District is a party or to which the District, or any of its properties or other assets, is otherwise subject.

G. Statements contained in any certificate of the District provided to the Purchaser pursuant to this Agreement or in connection with the delivery of the Bond and delivered to the Purchaser shall be deemed representations and warranties by the District to the Purchaser.

4. Conditions of Closing. The District's obligation to sell and the Purchaser's obligations under this Agreement to purchase and pay for the Bond shall be subject to the following conditions:

A. The District shall have performed its obligations and agreements to be performed under this Agreement at or before the Closing Date, and the representations and warranties of the District contained in this Agreement shall be accurate as of the date of this Agreement and as of the Closing Date.

B. The Bond Resolution, this Agreement and the Bond shall have been duly authorized and executed by the District and the Purchaser and shall be in full force and effect.

C. On the Closing Date, the Purchaser shall receive:

(1) An opinion approving the legality and enforceability of the Bond from Modrall, Sperling, Roehl, Harris & Sisk, P.A. ("Bond Counsel") delivered to the Purchaser.

(2) A certificate, dated the Closing Date, of an authorized officer of the District to the effect that each of the representations and warranties of the District set forth in this Agreement is true, accurate and complete as of the Closing Date.

(3) Such additional certificates, opinions or other documents as Bond Counsel may reasonably require to evidence the satisfaction, as of the Closing Date, of the conditions then to be satisfied in connection with the transactions contemplated by the Bond Resolution and this Agreement.

D. All matters relating to this Agreement, the Bond, the sale of the Bond to the Purchaser, the Bond Resolution and the consummation of the transactions contemplated by this Agreement and the Bond Resolution shall be mutually satisfactory to and approved by the District and Purchaser.

E. No order, decree or injunction of any court of competent jurisdiction, nor any order, ruling, regulation or administrative proceeding by any governmental body or board, shall have been issued or commenced with the purpose or effect of prohibiting the issuance or sale of the Bond.

If the District is unable to satisfy the conditions to the obligations of the Purchaser contained in this Agreement, or if the obligations of the Purchaser are terminated for any reason permitted by this Agreement, this Agreement may be terminated and neither the Purchaser nor the District shall have any further obligations under this Agreement. Payment by the Purchaser to the District of the purchase price of the Bond shall be conclusive evidence that all of the conditions set forth in this section have been satisfied or waived by the Purchaser.

5. Representations and Warranties of the Purchaser.

A. The Purchaser represents and warrants that it is authorized to purchase the Bond.

B. In connection with the purchase of the Bond, the Purchaser acknowledges that no offering document or prospectus has been prepared with respect to the sale of the Bond to the Purchaser, and that the Purchaser is buying the Bond in a private placement by the District to the Purchaser. The Purchaser has reviewed such information as it deems relevant in making its decision to purchase the Bond.

C. The Purchaser acknowledges that the Bond will not be listed on any securities exchanges and that no trading market now exists in the Bond, and none may exist in the future.

D. The Purchaser is purchasing the Bond for its own account (and not on behalf of another) and will not resell the Bond.

E. The sale of the Bond is not subject to the requirements of Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. Part 240, § 240.15c2-12) and the District will not deliver a continuing disclosure undertaking in connection with the Bond.

6. The Purchaser's Right to Cancel. The Purchaser shall have the right in its sole discretion to cancel its obligations under this Agreement to purchase the Bond by notifying the District in writing of its election to do so between the date hereof and the Closing Date, if any of the following events occur prior to the Closing:

A. Legislation shall be enacted, or actively considered for enactment by the Congress, with an effective date on or prior to the date of Closing, or a decision by a court of the United States of America shall be rendered, or a ruling or regulation by the SEC or other governmental agency having jurisdiction over the subject matter shall be made, the effect of which is that (i) the Bond is not exempt from the registration,

qualification or other requirements of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and then in effect, or (ii) the Resolution is not exempt from the registration, qualification or other requirements of the Trust Indenture Act of 1939, as amended and then in effect;

B. A stop order, ruling or regulation by the SEC shall be issued or made, the effect of which is that the sale of the Bond, as contemplated herein, is in violation of any provision of the Securities Act of 1933, as amended and as then in effect, the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect;

C. There shall exist any fact or there shall occur any event which, in the sole judgment of the Purchaser, either (i) makes untrue or incorrect in any material respect any statement or information provided by the District to the Purchaser in connection with the sale of the Bond by the District to the Purchaser or (ii) is not reflected in statements or information provided by the District to the Purchaser in connection with the sale of the Bond by the District to the Purchaser but should be reflected therein in order to make the statements and information contained therein not misleading in any material respect;

D. There shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Purchaser, impractical or inadvisable to proceed with the purchase of the Bond;

E. Trading in the District's outstanding securities shall have been suspended by the SEC or trading in securities generally on the New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on such Exchange;

F. A banking moratorium shall have been declared either by Federal, New York or State authorities; or

G. Any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance, sale or delivery of the Bond or in any way contesting or affecting any authority for or the validity of the Bond, this Agreement, the Bond Resolution, the existence or powers of the District, or any of the transactions described herein.

7. Representations and Agreements to Survive Delivery. All representations, warranties and agreements of the District and the Purchaser shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the District or the Purchaser, and shall survive the delivery of the Bond to the Purchaser.

8. Payment of Expenses. The District shall pay the expenses incurred by it, Bond Counsel and its financial advisor relating to the preparation, issuance, delivery and sale of the Bond.

9. Parties in Interest. This Agreement is solely for the benefit of the Purchaser and the District and their respective successors and no other person, partnership, association or corporation shall acquire or have any right under or by virtue of this Agreement. This Agreement may not be assigned by the District or the Purchaser.

10. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of New Mexico.

11. Limitation of Liability. Notwithstanding anything in this Agreement to the contrary, no officer or employee of the District or the Purchaser shall have any personal liability as a result of any failure by the District or the Purchaser to perform its obligations hereunder.

12. Counterparts. This Agreement may be executed in one or more counterparts.

Please sign and return a duplicate original of this Agreement to the Purchaser. Upon your signing and delivering this Agreement, it will constitute a binding agreement.

CITY OF LAS CRUCES, NEW MEXICO

By: _____
Victoria Fredrick,
City Finance Director

Accepted and confirmed
as of December __, 2016:

BOARD OF DIRECTORS OF THE
CITY OF LAS CRUCES TAX INCREMENT
DEVELOPMENT DISTRICT

By: _____
Ken Miyagishima, Chairperson