EC-26-119

CITY OF ALBUQUERQUE

Albuquerque, New Mexico
Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM April 27, 2026

TO: Klarissa J. Peña, President, City Council

FROM: Timothy M. Keller, Mayor

SUBJECT: Approval of the Exchange Agreement for property located at 2117 Osuna Rd NE for the property located at 6600 Zuni Rd SE.

The Department of Municipal Development is requesting approval for an exchange agreement where the non- essential City-owned property located at 2117 Osuna Rd NE ("Osuna Property") will be utilized as partial consideration in exchange for 6600 Zuni Rd SE ("Zuni Property"), a property also known as the Ballut Abyad Shrine property.

The Osuna Property, consisting of approximately a 1.25-acre or 54,450-square-foot parcel, and a site built 11,501 square foot mixed office-warehouse building was declared non-essential through EC-24-67. The Osuna Property is no longer needed and can be used as part of the exchange. The City intends to acquire the Zuni Property, consisting of a 3.719-acre or 162,000-square-foot parcel, and, a site built 29,850 square foot lodge facility with a chapel, banquet/dining rooms, offices, meeting rooms, and storage areas, based on its location, size, and potential to be utilized for long-term housing and activities beneficial to the community.

As part of the Exchange Agreement appraisals were obtained for both properties, with the Osuna Property being valued, by Brian Jackson, of Valbridge Property Advisors, on December 1, 2025, at $1,150,000.00 and the Zuni Property being valued, by Brian Jackson of Valbridge Property Advisors, on February 18, 2026, for $3,110,000.00. A final purchase price of $1,100,000.00 for the Osuna Property, and $3,100,000.00 for the Zuni property has been negotiated. The State of New Mexico and the City have executed an Intergovernmental Agreement to fund the remaining balance of $2,000,000.00, subject to Council appropriation through separate resolution.

The exchange agreement is subject to review and adoption by the Shriners, as well as the City's due diligence.

Pursuant to Ordinance §5-2-1, City Council approval is requested to finalize the Exchange Agreement and to proceed with the closing.

TITLE/SUBJECT OF LEGISLATION: Approval of the Exchange Agreement for property located at 2117 Osuna Rd NE for the property located at 6600 Zuni Rd SE.

Approved:

Samantha Sengel, EdD Date
Chief Administrative Officer

Approved as to Legal Form:

Lauren Keefe Date
City Attorney

Recommended:

Jennifer Turner, Director Date
Municipal Development

Gilbert Ramirez, Director Date
Department of Health, Housing and Homelessness

Anna Sanchez, Director Date
Department of Senior Affairs

Cover Analysis

1. What is it?

Approval of the Exchange Agreement for property located at 2117 Osuna Rd NE and 6600 Zuni Rd SE.

2. What will this piece of legislation do?

Authorize the exchange of property not essential for municipal purposes for a property that will provide long-term housing for at risk populations and activities beneficial to the community.

3. Why is this project needed?

The property located at 2117 Osuna Rd NE has been declared not essential for municipal purposes pursuant to Ordinance §5-2-2 so that it may be sold or exchanged. City Council must also approve the acquisition of the property located at 6600 Zuni Rd SE through an exchange agreement pursuant to Ordinance §5-2-1.

4. How much will it cost and what is the funding source?

The exchange of the property located at 2117 Osuna NE for the property located at 6600 Zuni Rd SE, will leave a remaining balance of $2,000,000.00. The Funding will come from an Intergovernmental Agreement.

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

There is no revenue from this project at this time.

6. What will happen if the project is not approved?

The City will retain ownership, liability, expense, and maintenance of 2117 Osuna Rd NE, and will be delayed in providing housing support for at risk populations. The City will not exchange 2117 Osuna Rd NE for 6600 Zuni Rd SE.

7. Is this service already provided by another entity?

Yes.

FISCAL IMPACT ANALYSIS

TITLE: Exchange Agreement: 2117 Osuna & 6600 Zuni Avenue SE R: O:

FUND: 305

DEPT: DMD

[x] No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.

[ ] (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	Fiscal Years 2025	2026	2027	Total
Base Salary/Wages				-
Fringe Benefits at				-
Subtotal Personnel	-	-	-	-
Operating Expenses		-		-
Property		-	-	-
Indirect Costs	-	-	-	-
Total Expenses	$ -	$ -	$ -	$ -
[ ] Estimated revenues not affected				
[x] Estimated revenue impact				
Revenue from program		2,000,000		0
Amount of Grant		-	-	
City Cash Match				
City Inkind Match		1,100,000		
City IDOH	-	-	-	-
Total Revenue	$ -	$ 3,100,000	$ -	$ -

These estimates do not include any adjustment for inflation.

* Range if not easily quantifiable.

Number of Positions created

COMMENTS: Processing an exchange of two properties. The property located at 6600 Zuni Avenue SE is appraised at $1.1 million and the 2117 Osuna property is appraised at $3.1 million. The $2 million difference between appraisal values will be paid to the City of Albuquerque via an IGA between the Department of Workforce Solutions and the CABQ upon a fully executed purchase agreement for the site. This is a Capital Grant, there is no impact on the General Fund

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

PREPARED BY: APPROVED:

Christina Reyna — 4-27-26

FISCAL ANALYST DIRECTOR (date)

REVIEWED BY:

4/27/26 — 4/27/26 — Christine Boyle 4/27/26

EXECUTIVE BUDGET ANALYST BUDGET OFFICER (date) CITY ECONOMIST

REAL ESTATE EXCHANGE AGREEMENT

This Real Estate Exchange Agreement ("Agreement") is made by and between The City of Albuquerque, a New Mexico municipal corporation (the "City"), and Ballut Abyad Shrine Temple ("Shriners"), collectively known as the "Parties".

ARTICLE I
RECITALS

WHEREAS, Shriners is the owner of that certain real property with a street address of 6600 Zuni Rd SE, Albuquerque, New Mexico 87108-3020, and more specifically described and shown on **Exhibit A**, attached hereto and made a part of this Agreement (the "Ballut Abyad Shrine Property"), consisting of a 3.719-acre or 162,000-square-foot parcel, and, a site built 29,850 square foot lodge facility with a chapel, banquet/dining rooms, offices, meeting rooms, and storage areas; and

WHEREAS, the City is the owner of that certain real property with a street address of 2117 Osuna Rd NE, Albuquerque New Mexico 87113, and more specifically described and shown on **Exhibit B**, attached hereto and made a part of this Agreement (the "Osuna Property") consisting of approximately a 1.25-acre or 54,450-square-foot parcel, and a site built 11,501 square foot mixed office-warehouse building; and

WHEREAS, City seeks to acquire the Ballut Abyad Shrine Property for long-term housing and activities beneficial to the community; and

WHEREAS, Shriners desire to convey the Ballut Abyad Shrine Property to the City, in exchange for the Osuna Property and the City desires to convey the Osuna Property to Shriners in exchange for the Ballut Abyad Shrine Property; and

WHEREAS, Shriners desire to continue to occupy the Ballut Abyad Shrine Property for a period not to extend beyond December 31, 2026;

NOW, THEREFORE, for mutual consideration, and on the terms set forth herein, the City and Shriners agree as follows:

ARTICLE II
AGREEMENT TO EXCHANGE

Shriners hereby agrees to exchange and convey to the City the Ballut Abyad Shrine Property and the City hereby agrees to exchange and convey to Shriners the Osuna Property, plus

the Cash Consideration (hereinafter defined), for the consideration and subject to the terms, conditions and provisions herein contained.

The Ballut Abyad Shrine Property has a value of THREE MILLION ONE HUNDRED THOUSAND AND 00/100 DOLLARS **($3,100,000.00)** (the "Ballut Abyad Shrine Property Value"). The Osuna Property has a value of ONE MILLION ONE HUNDRED THOUSAND AND 00/100 DOLLARS **($1,100,000.00)** (the "Osuna Property Value"). The total acquisition amount of the Ballut Abyad Shrine Property exceeds the value of the Osuna Property by TWO MILLION and 00/100 DOLLARS **($2,000,000.00)** (the "Cash Consideration").

ARTICLE III
POST-CLOSING OCCUPANCY

Shriners shall occupy the Ballut Abyad Shrine Property, without cessation, until December 31, 2026 (the "Occupancy Term") as follows:

(a) Occupancy Fee and Term. Shriners agrees to a per square foot occupancy fee of six dollars **($6.00)**, for a term ending December 31, 2026 in a lump sum payment upon Closing of EIGHTY-NINE THOUSAND FIVE HUNDRED FIFTY AND 00/100 DOLLARS **($89,550.00).**

(b) Maintenance. Shriners will continue to maintain the property, building, and any and all encumbrances and improvements; as well as utility, insurance, and any and all occupant related expenses throughout Occupancy Term, with all maintenance responsibilities and related expenses transferring to City only upon the expiration of the Occupancy Term.

(c) Access by City. Shriners will grant access by City, without restriction, to the North parking lot area and dirt lot area, specifically described and shown on **Exhibit C**, attached hereto and made a part of this Agreement ("Unrestricted Access Area – North Portion of Ballut Abyad Shrine Property") as well as reasonable access to the building and Southern portion of property, with twenty four (24) hour notice by City, not to interfere with previously scheduled activities and events of Shriners.

(d) Insurance. During the Occupancy Term, Shriners shall obtain and maintain liability insurance in an amount of not less than $2,000,000.00 combined single limit for accidents or occurrences which cause bodily injury, death or property damage to any member of the public caused by or related to Shriners use of the Ballut Abyad Shrine Property. The insurance policy shall provide coverage per occurrence. The insurance policy shall name City as additional insured. Any cancellation provision must provide that if the policy is canceled prior to the expiration date of the Occupancy Term, materially changed, or not renewed, the issuing company will mail thirty (30) days written notice to City. A certificate of insurance in compliance with the above must be furnished to City prior to the

Occupancy Term. City reserves the right in the event of a failure to provide evidence of insurance to cancel this Agreement immediately.

(e) Indemnification. Unless caused by the negligence or willful misconduct of City, Shriners shall defend, save, hold harmless and indemnify City from any and all claims for the loss, damage or injury to any person or property resulting from Shriners' acts or omissions on the Ballut Abyad Shrine Property.

ARTICLE IV
SURVEY/PHASE I ENVIRONMENTAL REPORT AND TITLE BINDER AND ENVIRONMENTAL AND DUE DILIGENCE INSPECTIONS

1. Definitions. As used in this Agreement, the following terms shall have the following definitions:

A. "Environmental Condition" means any condition regarding the presence of Hazardous Materials (defined below) located on, in, under or originating from the Property or located within the improvements thereon with respect to air, soil, surface water, or groundwater, which require response under any Environmental Requirements (defined below) in effect at the time of their application.

B. "Environmental Requirements" means all applicable federal, state and local governmental agency environmental statutes, ordinances, rules, notices, regulations, standards, permits, orders and/or any other governmental action relating in any way (i) to indoor or outdoor air quality, surface or groundwater quality, consumption, diversion rights, use or quantity, or soil quality or contamination; or (ii) the generation, containment, release, emission, storage, disposal, treatment, or handling of Hazardous Materials; or (iii) the construction, operation, maintenance, repair, or closing of aboveground or underground storage tanks or impoundments containing Hazardous Materials.

C. "Hazardous Materials" means substances defined as such pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601 et seq. or the regulations promulgated by pursuant to CERCLA; or as hazardous waste, as that term is defined under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. ch. 82 § 6901 et seq. and the regulations promulgated pursuant to RCRA; polychlorinated biphenyls (PCBs); petroleum hydrocarbons; and substances so defined pursuant to requirements prevailing and applicable on the Effective Date as so established by the State of New Mexico.

D. "Other Materials" means any materials or substances which do not come within the definition of Hazardous Materials, including, but not limited to, asbestos-containing material (ACM), radon or other radioactive substances, lead-based paint, nonhazardous wastes, or any toxic or polluting substances not otherwise included in the definition of Hazardous Materials.

E. "Documents" means all documents, photographs, maps, data, notes, reports, chromatograms, in digital form, print, videotape, or other media used to transmit information regarding the environmental condition of any aspect of the Property, including, but not limited to the Phase I Report, the Phase II Report, if any, and the Cleanup Plan, if any. Documents shall also include any and all documents which may impact the City's use of the Property for its intended purpose, including, without limitation, lease agreements and documented easements or rights-of-way not already recorded against the Property.

2. City Inspections.

A. The City shall have the right, at its own expense unless otherwise negotiated, to conduct any and all investigations it desires to examine all characteristics of the Property reflecting the readiness of the Property for use by the City for the City's intended purpose ("Due Diligence") including, but not limited to, the examination of any Documents related to the Property, any improvements located thereon, building and building system condition assessments and the evaluation of the Environmental Condition of the Property for the presence of any Hazardous Materials or Other Materials located on, in, under or originating from the Property. The City will coordinate with the Seller so as to ensure that existing occupants and tenants (if any) of the improvements on the Property are not disturbed and shall restore the Property to as near its original condition as possible at the completion of the investigations conducted during the Due Diligence. This covenant will survive the termination of this Agreement.

B. The City may, at its sole expense, at any point in time following the Agreement in Principle Date, order the Phase I inspection report by a consultant approved by City. The period of time in which the City, together with its authorized agents, representatives, consultants, and engineers shall be permitted to conduct Due Diligence (the "Due Diligence Period") shall begin on the Effective Date and shall expire sixty (60) days thereafter.

C. The Due Diligence Period shall be used by the City for the purpose of conducting any inspection, investigation or examination of the Environmental Condition and overall condition of the Property as the City shall deem necessary or desirable, for identifying for completion all final punch list items, items related to code enforcement requirements, and all remaining items relative to the Property's readiness for use by the City for the City's intended purpose. The Seller shall provide the City with a reasonable opportunity to conduct its environmental investigations and other inspections during the Due Diligence Period. The City shall schedule and coordinate all inspections of the Property or other access thereto with the Seller and shall give the Seller at least two (2) business days' prior notice thereof. The Seller shall be entitled to have a representative present at all times during each such inspection or other access. The City agrees to pay to the Seller promptly upon demand the cost of repairing and restoring any damage or disturbance which the City or its representatives or agents shall cause to the Property. This covenant will survive the termination of this Agreement.

D. The Seller shall, at its own expense and from a consultant selected by Seller, provide the City with reports evaluating the condition of the Property related to lead-based paint, asbestos, radon and mold. Depending on the conclusions of such evaluations, the City and Seller

may agree on a plan for the remediation and cleanup (the "Cleanup Plan") from a consultant selected by the Seller and approved by the City, which shall be at the sole expense of the Seller. Any remediation recommended in the Cleanup Plan must be completed prior to Closing at the sole expense of the Seller. If the Parties cannot agree on a Cleanup Plan, this Agreement will terminate, in which event the Title Company will return to the City the Deposit, and the Seller and the City will have no further rights, obligations, or liabilities to one another under this Agreement except to the extent the Parties have agreed that such rights, obligations, or liabilities should survive termination.

3. Termination. If the City or its hired consultant identifies Hazardous Materials or Other Materials on, in, under or originating from the Property which cannot be cleaned up or remediated as required by applicable Environmental Requirements utilizing technological methods currently available or which in the sole and absolute judgment of the City will prevent the City from using the Property, or if the City identifies other issues in the course of Due Diligence that substantially impair the City's ability to use the Property for its intended purpose or cause the City substantial burden to remedy, the City may, at its sole discretion, propose additional or revised terms of this Agreement to the Seller for consideration or immediately terminate this Agreement by written notification. If the Parties are unable to come to agreement on such additional or revised terms offered by the City within thirty (30) days, the City may at its sole discretion choose to immediately terminate the Agreement by written notification. Upon termination, the City and the Seller shall have no further right or obligations as between the City and the Seller under this Agreement, except rights or obligations that expressly survive such termination.

Concurrent with the Due Diligence Period, the City will review all materials and observations related to inspections, site visits, bids, and estimates relevant to current or future necessary repair, renovation, replacement, maintenance, and upkeep of the Property, and upon its review may at its sole discretion terminate this Agreement by written notification for any reason. Upon termination, the City and the Seller shall have no further right or obligations as between the City and the Seller under this Agreement, except rights or obligations that expressly survive such termination.

4. Notice of Violation. If the Seller has received or receives written notice of a violation of any Environmental Requirement or other with respect to the Property prior to the date of the Closing, the Seller shall deliver a copy of such written notice to the City.

5. Each Party shall have prepared at its election for the property being acquired, and at its cost a Survey and a Phase I of the property being acquired by said Party. If acquired by Party, the respective Party may request all associated Survey and Phase I reports related to the property they are to receive upon Closing, no more than five (5) days after request. The Party disposing of property shall at their sole expense, within ten (10) days of the date of this Agreement, procure and provide to the acquiring Party, Title Binders issued by the Escrow Agent together with legible and true copies of all instruments referred to therein. The Surveys (to the extent such are in the applicable Party's possession and control), Phase I Reports (to the extent such are in the applicable

Party's possession and control), Title Binders and exception documents are referred to herein as the "Documents".

ARTICLE V
OBJECTIONS TO DOCUMENTS

1. **Objections**. The acquiring Parties shall have fifteen (15) days after the receipt of the Documents to review the Documents.

2. **Correction of Disapproved Items.** If the acquiring Parties disapprove any item set forth in the Documents, they shall so notify the disposing Parties and the Escrow Agent in writing within fifteen (15) days after the Effective Date (the "**Objection Notice**"). If an acquiring Party determines that such matter or matters contained within Objection Notice are reasonably capable of being cured or corrected to its satisfaction, it may request in its disapproval that such item be corrected or cured. In such case, the disposing Party shall, within ten (10) days of acquiring Party's Objection Notice, notify acquiring Party and the Escrow Agent in writing as to the steps, if any, that shall be taken to correct or cure any such item and the time within which such steps shall be taken (the "**Response**"). If not satisfied with the Response, the acquiring Party may give written notice to the disposing Party and the Escrow Agent within ten (10) days of receipt of the Response rescinding this Agreement (the "**Rescission Notice**"), in which case this Agreement shall terminate. If any Rescission Notice is not given within such time, this Agreement shall continue in full force and effect. If, however, Response gives notice that it proposes to correct or cure any disapproved item or items and such disapproved item or items have not been corrected or cured within the time set forth therein, the acquiring Party may, at any time, give Rescission Notice to the disposing Party whereupon this Agreement will terminate. If either acquiring Party delivers a Rescission Notice, then all transactions contemplated pursuant to this Agreement shall terminate.

3. **No Correction.** If an acquiring Party disapproves any items set forth in the Documents and the acquiring Party determines that such items are not reasonably capable of being cured or corrected to its satisfaction, sets forth such determination in the Objection Notice and gives Rescission Notice, then this Agreement shall terminate immediately upon the giving of such notice to the disposing Party and the Escrow Agent, and the parties shall have no further obligations under this Agreement, except for those which arise prior to the termination date, or which survive the expiration or termination of this Agreement. For the avoidance of doubt, in the event that the transaction contemplated by this Agreement terminates, then neither party shall have any right, duty, or obligation, one to the other, to convey or acquire either property.

ARTICLE VI
PARTIES' REPRESENTATIONS, WARRANTIES AND OBLIGATIONS PRIOR TO CLOSING

1. Parties Representations and Warranties. For the purpose of inducing the acquiring Party to enter into this Agreement and to consummate the transactions contemplated hereby pursuant to the terms and conditions hereof, disposing Parties represent and warrant to acquiring Parties, as of the Effective Date with respect to the property which they are conveying and, except as otherwise set forth herein, as of the Closing Date, as follows:

(a) Legal Right. On the Closing Date, Parties shall have full legal right and authority to convey their property to the acquiring Parties.

(b) Condemnation/Legal Action. To the best of Parties' knowledge, there is no (i) condemnation or similar proceeding or (ii) legal action of any kind or character whatsoever, affecting their property pending, threatened or contemplated by any Governmental Authority which will in any manner affect the rights of Parties upon or after the consummation of the transaction contemplated hereunder.

(c) Taxes and Assessments. All taxes and other assessments on their property are paid (or will be paid or otherwise prorated at the Closing) through the most recent real estate tax year.

(d) Violation of Law. Parties have received no notice from any Governmental Authority that its operation of their property, or any part thereof, is in violation of any applicable Governmental Requirements, and, to the best of Parties' knowledge, the execution and delivery of this Agreement, the consummation of the transaction contemplated hereunder, will not conflict with any applicable federal, state or local law, ordinance, regulation, statute, rule or restriction, or any judgment, order or decree of any court having jurisdiction over Parties or their property.

(e) Environmental Representations and Warranties. Parties represent and warrant that to the best of their knowledge and belief, no portion of their property is being used or has ever been used for the generation, treatment, storage, disposal, manufacture, refining, handling, production, transportation, transfer or processing of any hazardous substance, solid waste, oil, petroleum product, or other substance, except in full compliance with all applicable Environmental Laws, Rules and Regulations. Parties represent and warrant that to the best of their knowledge, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. '9501 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801et seq.; the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.; and those substances defined as hazardous waste or as hazardous substances under the laws of New Mexico or in regulations adopted in publications promulgated pursuant to the laws provides no basis for any remedial or response action in any way related to their property as of the date of this Agreement. Parties further represent and warrant that to the best of their knowledge, it has not caused or permitted, nor does it have any knowledge of the release of, or a substantial threat of a release of, any hazardous substance, pollutant, or other contaminant on their property, or from on onto their property to or from any other property.

2. Survival. The representations and warranties set forth in this Article shall be continuing and shall be true and correct on and as of the Closing Date with the same force and effect as if made at that time, and all of such representations and warranties shall survive the Closing for a period of one (1) year.

ARTICLE VII
INSPECTION OF PROPERTIES/LAND USE ENTITLEMENTS

During the pendency of this Agreement, Parties and or Parties' representatives, at reasonable times, and after reasonable notice, shall have full access and right to inspect the property they are acquiring and conduct soil tests, environmental evaluations and such other tests and examinations as acquiring Parties deem necessary. The acquiring Party agrees to pay for all damages to the disposing Party and third parties from personal injury or property damage that occurs in the property caused by the intentional misuse or neglect, by the acquiring Party, its employees, agents and invitees. The City's liability under this paragraph shall in all cases be subject to, and shall not exceed the statutory limits provided in NMSA (1978) Section 41-4-1 et. seq., as it may apply to the City at the time of any occurrence or claim. The acquiring Party will restore the property it is acquiring to the condition in which it was found prior to any tests being undertaken and will not allow any liens to attach in connection with its inspection of the property they are acquiring. In the event that this Agreement does not close for any reason, then acquiring Party agrees to deliver to the disposing Party copies of all reports and information obtained by the acquiring Party regarding the property they are acquiring.

ARTICLE VIII
THE CLOSING

1. Closing. Provided that all of the terms and conditions of this Agreement shall have been fulfilled prior to or on the Closing Date (as hereinafter defined), the closing of title to the Properties pursuant to the terms and conditions of this Agreement (the "**Closing**") shall take place at Stewart Title of Albuquerque, 7801 Academy Rd NE, Bldg 1, Ste 101, Albuquerque, New Mexico 87109, on or before June 29, 2026, following the satisfaction of the Closing Conditions (as hereinafter defined), or at such other place, time and date as Parties may agree (said date is herein referred to as the "**Closing Date**").

2. Closing Conditions. The Closing of this exchange is conditioned upon the following conditions (the "Closing Conditions"):

(a) The City Council approving this Agreement pursuant to Section 5-2-1(F), City of Albuquerque Code of Ordinances.

(b) The City Council and State of New Mexico, if applicable, appropriating the funding for the exchange.

3. <u>Obligations at Closing</u>. At Closing, Parties shall deliver all of the following:

(a) The City shall deliver to Shriners the Cash Consideration and a good and sufficient Quitclaim Deed (the "**City Deed**") conveying to Shriners marketable title to the Osuna Property, free and clear of all liens, encumbrances, conditions, easements, restrictions and rights of third parties, except for the Permitted Exceptions.

(b) Shriners shall deliver to the City a good and sufficient Special Warranty Deed (the "**Shriners Deed**") conveying to the City marketable title to the Ballut Abyad Shrine Property, free and clear of all liens, encumbrances, conditions, easements, restrictions and rights of third parties except the Permitted Exceptions.

(c) Title Policies for the Parties' respective disposed of properties in the desired amount, issued by the Title Company, insuring marketable title in fee simple with exceptions only for the Permitted Exceptions.

(d) Such other assignments and documents as may be required pursuant to the provisions hereof or mutually agreed by the Parties is to be reasonably necessary to fully consummate the transaction contemplated hereby.

4. <u>Closing Costs</u>. Costs of closing the transaction contemplated hereby shall be allocated between Parties as follows:

(a) Each Party shall pay:

(i) the premium for standard coverage Title Policy for the Property it is conveying;

(ii) its share of prorated ad valorem taxes;

(iii) one-half of any escrow fees or similar charges of the Escrow Agent;

(iv) the costs of obtaining any other items required to be delivered to acquiring Party at the Closing; and

(v) the cost of recording any mortgages, deeds of trust, financing statements or release of any security instruments in its favor or any title curative or similar documents.

(b) If Shriners elects to obtain the Survey and Phase I for the Osuna Property, Shriners shall pay its cost to obtain Survey and a Phase I of the Osuna Property.

(c) If the City elects to require the Survey and Phase I for the Ballut Abyad Shrine Property, the City shall pay its cost to obtain Survey and a Phase I of the Ballut Abyad Shrine Property.

(d) All other expenses incurred by Parties with respect to the Closing, including, but not limited to, attorneys' fees, shall be borne and paid exclusively by the party incurring the same, without reimbursement, except to the extent otherwise specifically provided herein.

5. Prorations and Adjustments. The following adjustments and prorations between Parties shall be made at the Closing, as of the Closing Date.

(a) Ad valorem and similar taxes (excluding assessments) for the then-current tax year relating to the property shall be prorated as of the Closing Date. If the Closing occurs before the tax rate is fixed for the then-current tax year, the apportionment of taxes shall be made on the basis of the tax rate for the preceding tax year applied to the latest assessed valuation of the property, and when the tax rate is fixed for the tax year in which the Closing occurs, Parties hereby agree to adjust the proration of taxes and, if necessary, to refund or pay such sums to the other party as shall be necessary to affect such adjustment;

(b) All unpaid assessments, if any, existing as of the Closing Date, whether due and payable before or after the Closing Date, shall be paid by the disposing Party in cash at the Closing to the Escrow Agent for transmittal to the assessing entity;

ARTICLE IV
DEFAULT

1. Parties' Default and Remedies. If either party is obligated to complete this exchange in accordance with the terms and conditions of this Agreement and fails to do so within the time provided herein, that party shall be deemed to be in default hereunder, and the other party shall be entitled to terminate this Agreement. If for any reason this transaction is not fully consummated on or before the Closing Date, the City's funding will expire, and this agreement will terminate.

ARTICLE X
REAL ESTATE COMMISSION; INDEMNIFICATION

1. Commission. The parties represent that they have not dealt with any brokers in this transaction.

2. Indemnity. The City warrants and represents to Shriners that City has not consulted or negotiated with any broker or finder with regard to the Properties or this Agreement and City has made no agreement to pay any commissions to a broker with respect to this Agreement. Shriners shall indemnify and hold the City harmless from and against any and all claims for brokerage commissions made by any party claiming through Shriners. The indemnities contained in this Article shall survive the Closing.

ARTICLE XI
GENERAL

1. Additional Acts. In addition to the acts and deeds recited herein and contemplated hereunder to be performed, executed and/or delivered by Parties, Parties hereby agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered at the Closing or thereafter, any and all such further acts, deeds and assurances as Parties, as the case may be, may reasonably require to evidence and vest in the acquiring Party's the ownership of and title to the Property they are acquiring and consummate the transactions contemplated hereunder.

2. Applicable Law, Venue, Waiver of Jury Trial. This Agreement shall be governed by and construed under and in accordance with the laws of the State of New Mexico. The parties agree that venue for any suit, action, or proceeding arising out of this Agreement shall be in Bernalillo County, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of said court. In any litigation between City and Shriners, the matter shall be decided by a judge sitting without a jury, and accordingly each party hereby waives its right to a jury trial. The parties further acknowledge that they have fully and fairly bargained for the terms of this Section 12.02. The provisions of this Section 12.02 shall survive the expiration or earlier termination of this Agreement and will survive the Closing and shall not be merged into the execution and delivery of the deeds or any other document executed and delivered subsequently to the execution and delivery of this Agreement.

3. Assignment. Either party shall have the right to assign its right, title and interest under the terms of this Agreement and the assignment shall be effective upon the non-assigning party's receipt of the assigning party's written notice of said assignment.

4. Attorneys' Fees. In the event that either party shall employ an attorney or attorneys to enforce any of the provisions hereof or to protect its interests in any manner arising under this Agreement, or to recover damages for the breach of this Agreement, each party shall be responsible

for its own respective attorneys' fees (including the reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses, expert witness fees, and service of process fees.

5. Authority. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such person, and that all formal requirements necessary or required by any state and/or federal law in order for the disposing Party to enter into this Agreement have been complied with fully.

6. Entire Agreement; Modifications. This Agreement embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought and then only to the extent set forth in such instrument.

7. Headings. The headings contained in this Agreement are for reference and convenience purposes only and shall not in any way affect the meaning or interpretation hereof.

8. Interpretation. Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and the neuter and vice versa. The terms "include", "includes", "including" and similar terms shall be construed to mean "without limitation". All references to Sections, subsections, Exhibits and Articles shall be deemed references to Sections, subsections and Articles of this Agreement and to Exhibits which are attached hereto and made a part hereof for all purposes.

9. Multiple Counterparts. This Agreement may be executed in a number of identical counterparts. If so executed, each such counterpart is to be deemed an original for all purposes, and all such counterparts shall collectively constitute one agreement, but in the making proof of this Agreement it shall not be necessary to produce or account for more than one such counterpart.

10. Notice. Any notice, demand, approval or disapproval, consent or submission for approval or consent permitted or required hereunder (hereinafter, collectively, any "**Notice**") shall be in writing, and any such Notice shall be sent to the Parties by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To City: City of Albuquerque
Attn: Chief Administrative Officer
P.O. Box 1293
Albuquerque, New México 87103

With a copy to: City of Albuquerque
Attn: Real Property Division Manager
P.O. Box 1293
Albuquerque, New México 87103
Tel.: 505-924-3490

To Shriners: Ballut Abyad Shrine Temple
6600 Zuni Rd SE,
Albuquerque, New Mexico 87108-3020
Attn: Potentate Dennis Kirkpatrick
Email: office@nmshriners.com;
bkballoon@gmail.com;
potentate@nmshriners.com

or the same may be delivered by messenger at the same address or, if the same is a post office box, the last known address of the addressee. In the event such Notice is given or delivered by messenger delivery, the date of actual delivery shall fix the time thereof. In the event Notice is given or delivered by registered or certified mail, such Notice shall be deemed given or delivered five (5) business days after the date on which the sealed envelope containing the Notice is deposited in the United States mail, properly addressed and with proper postage prepaid.

11. Parties Bound. The terms and provisions of this Agreement shall inure to, extend to and be for the benefit of the heirs, successors, assigns, and legal representatives of the respective parties hereto though the foregoing shall not of itself be construed as authorizing any assignment hereof.

12. Right to Possession. At the Closing and as a condition thereto, Shriners shall have the full and unrestricted right to possession of the Osuna Property, and City shall full and unrestricted right to possession of the Unrestricted Access Area – North Portion of Ballut Abyad Shrine Property, and partial access to the remainder of the property as outlined herein, until December 31, 2026, at which time City will have and full and unrestricted right to possession of the Shriner Property in its entirety, subject to the Permitted Encumbrances and applicable laws and regulations of Governmental Authorities having jurisdiction over the Property, and Parties shall execute such instruments and take such action as may be appropriate or required to assure to the acquiring Party's uninterrupted full possession of the same.

13. Severability. In the event any covenant, condition or provision herein is held to be void, voidable, invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable, or, if it cannot be so amended, without material altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this

Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either Shriners or City in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

14. Survival of Warranties. The warranties, representations, covenants and other terms and provisions hereof shall survive the Closing, shall not be merged into the execution and delivery of the deeds or any other document executed and delivered subsequently to the execution and delivery of this Agreement and shall remain in full force and effect thereafter.

15. Time of the Essence. Time is of the essence in this Agreement.

16. Representation. Each party hereto acknowledges that it has been represented, or has had ample opportunity to obtain representation of counsel, with respect to this Agreement. Accordingly, each party hereto represents to the other that it has read and understood the terms of this Agreement, and the consequences of executing this Agreement, and that except as expressly set forth herein, no representations have been made by either party to include the other party to execute this Agreement.

17. Force Majeure. In the event Parties are delayed, hindered or prevented from performing any act or thing required hereunder by reason of strikes, lockouts, labor troubles, casualties, failure or lack of utilities, governmental laws or regulations, riots, insurrection, war, acts of God, or other causes beyond the reasonable control of the parties, neither party shall be liable for the delay, and the period of the performance by either party shall be extended for a period equivalent to the period of such delay.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE SIGNED THIS AGREEMENT AS OF THE DATE indicated by each signature, and the Agreement is effective only upon the signature of the City's Chief Administrative Officer or their authorized designee.

[SIGNATURE PAGES IMMEDIATELY FOLLOWING]

CITY OF ALBUQUERQUE,
A New Mexico Municipal Corporation

Approved by the City Council
Date and EC #

Date:_____
EC#_____

By:_____
Samantha Sengel, EdD
Chief Administrative Officer

Date of Approval

_____

RECOMMENDED:

By:_____
Jennifer Turner, Director
Municipal Development

Date of Recommendation:

_____

By:_____
Gilbert Ramirez, Director
Health, Housing and Homelessness

Date of Recommendation:

_____

By:_____
Anna Sanchez, Director
Senior Affairs

Date of Recommendation:

_____

BALLUT ABYAD SHRINE TEMPLE

By:_____ Date: _____
Printed Name: Dennis Kirkpatrick
Title: Potentate

EXHIBIT "A"
Ballut Abyad Shrine Property

Block numbered Four (4) of the MESA PARK ADDITION

6600 Zuni Rd SE, Albuquerque, New Mexico 87108-3020, in Bernalillo County

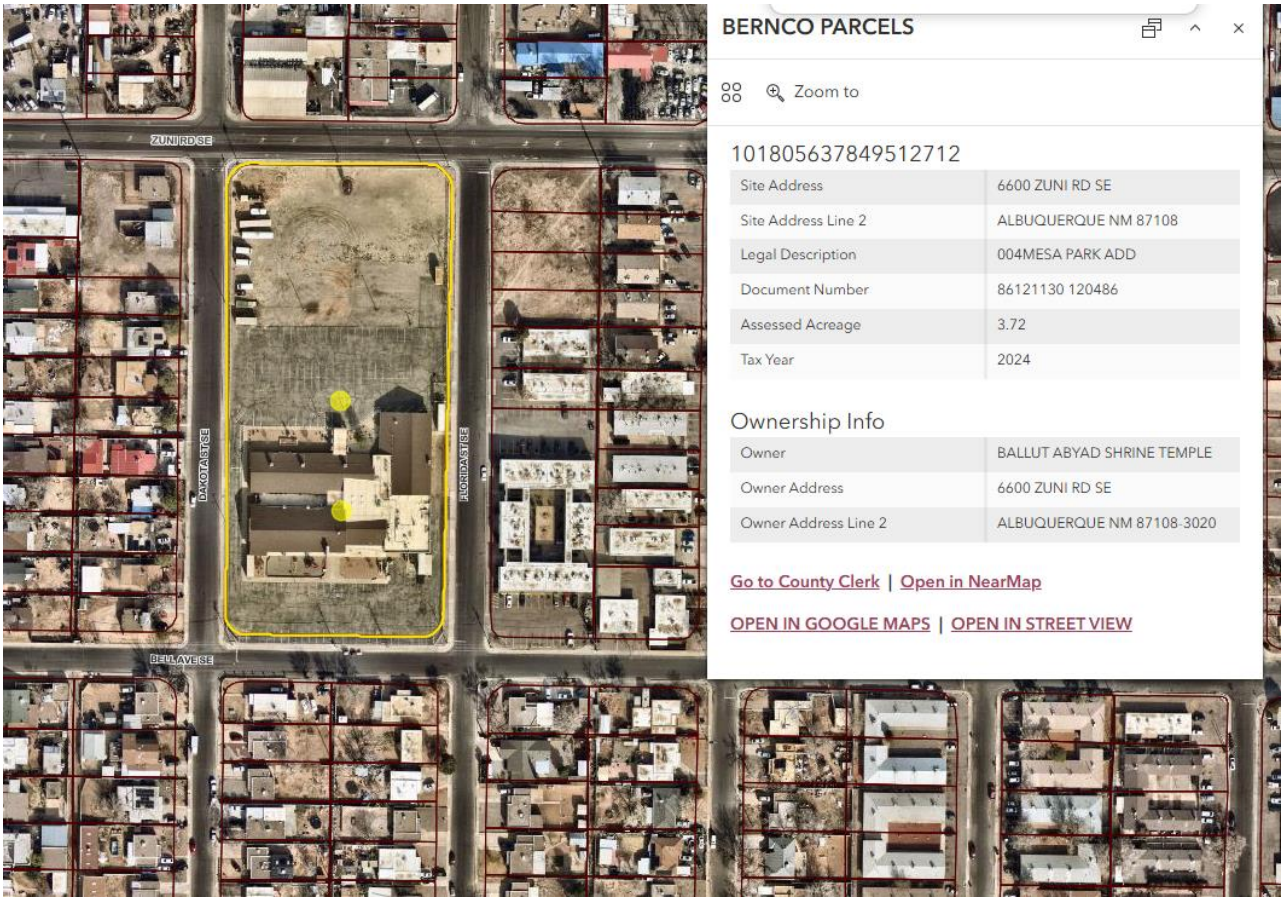

EXHIBIT "B"
Osuna Property

Lot 5A, Plat of Sego-Cox Subdivision, Lots 5A & 6A

2117 Osuna Rd NE, Albuquerque New Mexico 87113, in Bernalillo County

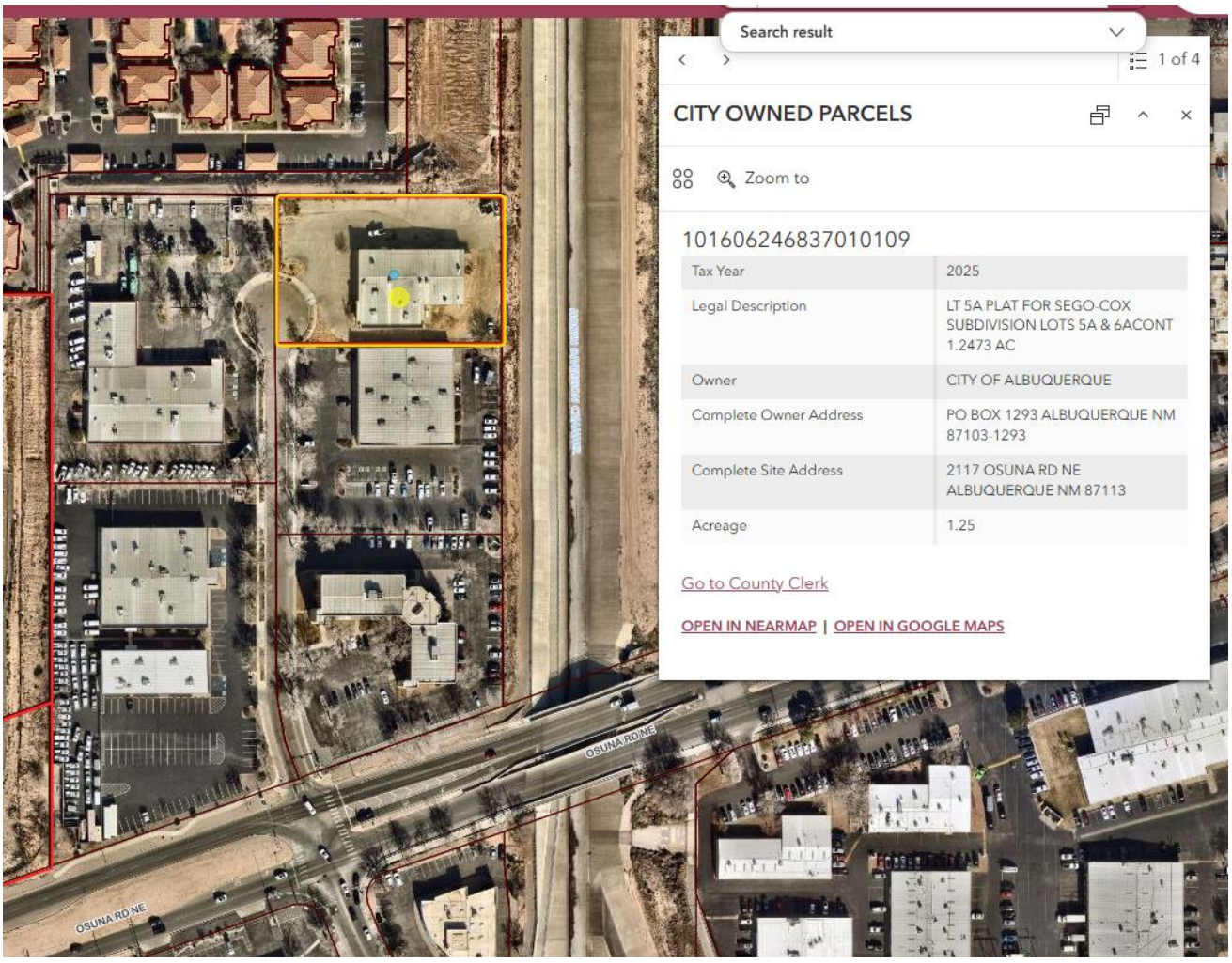

EXHIBIT "C"
Unrestricted Access Area – North Portion of Ballut Abyad Shrine Property

Area highlighted in yellow.