



AGENDA

City Council Regular Meeting
Janell Whitlock Municipal Complex
114 S. Halagueno Street
Carlsbad, New Mexico
September 8, 2026 at 6:00 PM

Invocation – Pledge of Allegiance

1. City Employee Recognition - Ashley Medina, ARC Driver
2. City of Carlsbad Project Update - Greene Street/Canal Street Storm Drain Project
3. Consider Approval of Resolution 2026-53, a Resolution making certain budgetary adjustments to the 2026-27 Fiscal Year Budget
4. Routine and Regular Business

All matters under this heading are considered routine by the City Council and will be acted upon in one motion. There will be no separate vote of these items. If a separate vote is desired on a particular item, upon request, that item may be removed from the Routine and Regular Business and be considered separately.

- A. Minutes of the City Council Meeting held on August 25, 2026
- B. City Personnel Report
- C. Agreements and Contracts
 - 1) Consider Approval of the Memorandum of Agreement between the City of Carlsbad and the New Mexico Department of Transportation for the FY 27 Carlsbad Municipal Transit Funding Agreement
 - 2) Consider Approval of First Renewal and Amendment to Agreement between the City of Carlsbad and Carlsbad MainStreet for Promotion and Operation of the Cavern Theatre
- D. Monthly Reports
 - 1) Utilities Department - July 2026
5. Consider Approval to accept a Grant Agreement from the New Mexico Department of Transportation Aviation Division for the Cavern City Air Terminal Runway 3-21, Mill, Overlay, and Lighting Reconstruction Project

6. Consider Approval of Resolution 2026-54, a Resolution authorizing Project SAP 26-K2425-GF for the East Greene Street Area Waterline Improvement Project, and the assignment of authorized Officers and Agents
7. Consider Approval of Resolution 2026-55, a Resolution authorizing Project SAP 26-K2426-GF for the West Shaw Street Lift Station, and the assignment of authorized Officers and Agents
8. Consider Approval of Resolution 2026-56, a Resolution vacating approximately 2,214 square feet (0.051) acres of platted alley right-of-way, and authorizing the execution and completion of a land swap between the City of Carlsbad and Viper Bit Services, LLC a New Mexico Limited Liability Company
9. Public Comments and Announcements. All Comments must be respectful and courteous (Three-minute time limit per person)
10. Council Committee Reports
11. Consider Approval to convene into closed session pursuant to N.M.S.A. 1978 Section 10-15-2(H)(7), discussion of Threatened or Pending Litigation
12. Consider Approval to reconvene into open session
13. Consider Approval of statement regarding closed session. Pursuant to the requirements of the Open Meetings Act. The closed session was held to discuss matters pursuant to N.M.S.A. 1978 Section 10-15-1(H)(7), discussion of Threatened or Pending Litigation. This was the only matter discussed during the closed session

FOR INFORMATION ONLY

Agendas and City Council minutes are available on the City website: cityofcarlsbadnm.com and may be viewed in the Office of the City Clerk during regular business hours.

CARLSBAD CITY COUNCIL MEETING SCHEDULE

- Regular Meeting - September 22, 2026
- Regular Meeting - October 13, 2026

If you require a hearing interpreter, language interpreters or auxiliary aids in order to attend and participate in the above meeting, please contact the City Manager's office at (575) 887-1191 at least 48 hours prior to the scheduled meeting time



CITY OF CARLSBAD, NEW MEXICO

CERTIFICATE OF RECOGNITION

This certificate is awarded to

ASHLEY MEDINA

In recognition of outstanding service and dedication to the City of Carlsbad and our community.

On July 16, Ashley Medina went above and beyond the scope of her duties while on her route by assisting an injured member of the public. She immediately provided assistance, helped care for the individual, and worked with a nearby resident to contact first responders. Her professionalism, compassion, and willingness to act without hesitation exemplify the highest standards of service to our community.

Ivan M. Abell
Director of Utilities

Richard D. Lopez
Mayor

CITY OF CARLSBAD PROJECT UPDATES

RESOLUTION NO. 2026-53

**A RESOLUTION MAKING CERTAIN BUDGETARY
ADJUSTMENTS TO THE 2026-27 FISCAL YEAR BUDGET**

WHEREAS, it is necessary to amend the 2026-27 fiscal year budget to adjust revenues, transfers and expenditures as reflected on the attached pages, and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD that the 2026-27 fiscal year budget be amended as attached.

INTRODUCED, PASSED, ADOPTED AND APPROVED this 8th day of September 2026.

Mayor

ATTEST:

City Clerk

Description		Revenues & Transfers		Costs		Approvals		
		Increase (Decrease) to Fund		Labor, Operating, Capital Increase (Decrease) to Fund		Dates		
Fund / Department	Item	Amount	R or T	Amount	L, O, C	Budget Com	Council	DFA
August								
General Fund - Airport	Add an Airport assistant manager position.			(122,170.39)	L	8/28/2026		
Capital Projects Fund	Grant from NMDFA for the renovations to the Carlsbad Animal Shelter.	203,500.00	R	(203,500.00)	C	8/28/2026		
Capital Projects Fund	Replace door at the Cascades Recreation & Wellness Center.			(300,000.00)	C	8/28/2026		
Capital Projects Fund	2026 GRO legislative appropriation for programmatic and operational costs to provide emergency response and station security at the Fire department.	200,000.00	R	(200,000.00)	L	8/28/2026		
Capital Projects Fund	New Mexico capital outlay emergency grant to be used to purchase an outdoor freezer and cooler for the Cascades Recreation & Wellness Center.	44,142.11	R	(44,142.11)	C	8/28/2026		
Lodgers' Tax Promotional Fund	Fishing derby advertising.			(10,000.00)	O	8/28/2026		
Lodgers' Tax Promotional Fund	Carlsbad Gem & Mineral show advertising.			(20,000.00)	O	8/28/2026		
Lodgers' Tax Promotional Fund	4th Annual Pickleball on the Pecos Tournament adverstising.			(5,100.00)	O	8/28/2026		
Lodgers' Tax Promotional Fund	Carlsbad Gus Macker advertising			(20,000.00)	O	8/28/2026		
Lodgers' Tax Promotional Fund	Cavern Theatre advertising			(24,000.00)	O	8/28/2026		
EMS Fund	Additional funds received for the annual EMS fund Act.	47,000.00	R	(47,000.00)	O	8/28/2026		
EMS Fund	EMS Special Project grant funds that will be used to purchase a Stryker LifePak 35 with accessories.	71,915.00	R	(71,915.00)	C	8/28/2026		
Fire Protection Fund	Annual grant came in higher than expected.	65,449.00	R			8/28/2026		

Description			Revenues & Transfers		Costs	
Fund / Department	Increase/Decrease	Item	Increase (Decrease)		Personnel, Operating, Capital Increase (Decrease)	
			Amount	R or T	Amount	L, O, C
August						
General Fund - Mayor & Council	Increase Operating	Transfer operating funds from the Executive department to the Mayor and Council department.			50,000.00	O
General Fund - Executive	Decrease Operating				(50,000.00)	O
General Fund - Cemetery	Increase Capital	Transfer funds from the Smith Park Basketball Court project to the Cemetery Front Gates project.			4,000.00	C
General Fund - Parks	Decrease Capital				(4,000.00)	C
General Fund - Fire	Increase Capital	Transfer operating funds to capital to replace 2 firetruck motors.			150,000.00	C
General Fund - Fire	Decrease Operating				(150,000.00)	O
General Fund - Streets	Increase Capital	Transfer funds from the Asphalt burner project and Smith Basketball court project to the School Flashing Lights project.			15,475.07	C
General Fund - Streets	Decrease Capital				(15,475.07)	C
General Fund - Judicial	Increase Capital	Transfer operating funds to the Tyler Justice Suite project to cover implementation and licensing fees.			50,000.00	C
General Fund - Judicial	Decrease Operating				(50,000.00)	O
Sports Complex Fund	Increase Capital	Transfer funds from the RV Parking project to the Sports Complex Road to cover shortfall.			30,000.00	C
Sports Complex Fund	Decrease Capital				(30,000.00)	C
Sports Complex Fund	Increase Capital	Transfer unused funds from the RV Parking project to the Soccer Field and Basketball Center Design projects.			150,000.00	C
Sports Complex Fund	Decrease Capital				(150,000.00)	C
Capital Projects Fund	Increase Capital	Transfer funds from the Friendship Park docks project to the Infill house project.			20,000.00	C
Capital Projects Fund	Decrease Capital				(20,000.00)	C

**LINKED MINUTES OF A REGULAR MEETING OF THE CITY COUNCIL OF THE
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE JANELL WHITLOCK
MUNICIPAL COMPLEX BUILDING ON AUGUST 25, 2026, AT 6:00 P.M.**

Present:	Richard D. Lopez	Mayor
	Lisa A. Anaya Flores	Councilor
	Edward T. Rodriguez	Councilor
	Karla Niemeier	Councilor
	Anthony Foreman	Councilor
	Mark C. Walterscheid	Councilor
	Jeff Forrest	Councilor
	Jason O. Chavez	Councilor
	Mary Garwood	Councilor
Absent:		
Also Present:	Wendy Austin	City Manager
	K.C. Cass	Chief of Operations
	Barbara Hodgson	City Attorney
	Nadine Mireles	City Clerk
	Stephan Brown	Compliance Clerk
	Dina Navarrette	Community Services Director
	Angie Barrios-Testa	Director of Grant Programs
	Mike Abell	Director of Utilities
	Patrick Cass	Director of Public Works
	Melissa Salcido	Finance Director
	Tony Souza	Fire Chief
	Kyla Gonzales	HR Director
	Wayne Hatfield	IT Director
	Stormy Valenzuela	IT Technician
	Jeff Patterson	Planning Director
	Jessie Rodriguez	Police Chief
	Patrick Brownfield	Police Officer
	Sarah Jones	Library Manager
	Dale Balzano	Citizen
	Jimmy Westfall	Citizen
	Clayton Bradley	Bradley Law Office
	Denise Madrid-Boyea	ELEA
	Chris Johnson	Citizen

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

0:00:00 **Call Meeting to Order**

0:01:56 **Invocation – Pledge of Allegiance**

Mayor Lopez stated item 1 would be removed from the agenda and all other agenda items will retain their original number.

0:02:40 **1. CITY EMPLOYEE RECOGNITION - ASHLEY MEDINA, ARC DRIVER**

0:02:41 **2. CITY OF CARLSBAD FINANCIALS - JULY 2026**

Ms. Salcido reviewed the revenues and expenditures as of July 2026, the first accounting period for Fiscal Year 2027.

0:04:08 **3. ROUTINE AND REGULAR BUSINESS**

A. Minutes of the City Council Meeting held on August 11, 2026

B. City Personnel Report

C. Purchasing

1) Consider Approval for Invitation to Solicit Bids for One (1) 2026 Polaris Ranger Crew UTV for the Carlsbad Fire Department

D. Agreements and Contracts

1) Consider Approval of Agreement between the City of Carlsbad and the Department of Cultural Affairs, New Mexico State Library Division for the 2024 General Obligation (GO) Bond Grant Agreement

2) Consider Approval of Agreement between the City of Carlsbad and the State of New Mexico Aging and Long-Term Services Department for a New Mexico Capital Outlay Emergency Grant Agreement for Kitchen Equipment at the Cascades Recreation and Wellness Center

E. Monthly Reports

1) Building Department – July 2026

2) Community Development Department – July 2026

3) Planning & Regulation Department and Condemnation Report - July 2026

4) Public Works Department – July 2026

F. Board Appointments

1) Parks and Recreation and Tree Advisory Board Appoint: Lisbeth Quinn Kimbell - 4 Year Term

G. Set the Date: October 27, 2026

1) Ordinance rezoning part of "PUD" Planned Unit Development District to "R-R" Rural Residential District for approximately 2.79 acres, located at 401 Rio Hondo Avenue

2) Ordinance rezoning part of "R-1" Residential 1 District to "C-2" Commercial 2 District for approximately 2.01 acres, located at 102 East Hamilton Street

0:04:23 **Mayor Lopez asked Sarah Jones to discuss item D-1, Consider Approval of Agreement between the City of Carlsbad and the Department of Cultural Affairs, New Mexico State Library Division for the 2024 General Obligation (GO) Bond Grant Agreement**

Ms. Jones stated this is a grant request under the 2024 General Obligation (GO) Bond Grant Agreement. She said a maximum of \$118,898.65 is available for qualifying purchases from July 1, 2026, through April 1, 2029. She stated the funds will be used for online resources, furniture, and delivery of services.

0:05:19 **Mayor Lopez asked Angie Barrios-Testa to discuss item D-2, Consider Approval of Agreement between the City of Carlsbad and the State of New Mexico Aging and Long-Term Services Department for a New Mexico Capital Outlay Emergency Grant Agreement for Kitchen Equipment at the Cascades Recreation and Wellness Center**

Mrs. Barrios-Testa stated this request is for a grant agreement with the New Mexico Aging and Long-Term Services Department for Emergency Senior Funding. She said the funding is available to address urgent needs arising at qualifying senior centers. She stated the temporary relocation of the Alejandro Ruiz Senior Center (ARSC) to the Cascades Recreation and Wellness Center (CRWC) identified a need for additional equipment to support the Senior Meals Program. She said the requested emergency funding will be used to purchase a permanent outdoor walk-in freezer and cooler at CRWC, to provide adequate food storage capacity and safe and efficient service.

0:06:49 **MOTION**

The motion was made by Councilor Forrest and seconded by Councilor Garwood to approve Routine and Regular Business

0:06:53 **VOTE**

The vote was as follows: Yes - Walterscheid, Anaya-Flores, Chavez, Garwood, Foreman, Rodriguez, Forrest, Niemeier; No - None; Absent - None; the motion carried.

0:07:16 **4. CONSIDER APPROVAL OF REQUEST FROM TRINITY HOTEL & SUITES FOR A RESTAURANT "A" (BEER AND WINE) LICENSE WITH ON-PREMISE CONSUMPTION**

Mr. Patterson stated this request is for a liquor license located at 201 S. Canal St.

Councilor Forrest asked if this request is to renew their liquor license since the Trinity Hotel already has one. **Councilor Walterscheid** asked if everyone that has a liquor license will have to do the same. **Mr. Patterson** stated only when changes to the license occur including name changes.

0:09:55 **A. Public Hearing**

Councilor Rodriguez asked Dale Balzano why this request was being made if the liquor license is staying the same. **Mr. Balzano** stated this request is due to a name change on the license.

0:11:33 **B. Consider Approval of Liquor License**

0:11:37 **MOTION**

The motion was made by Councilor Niemeier and seconded by Councilor Anaya-Flores to approve a request from Trinity Hotel & Suites for a Restaurant "A" (Beer and Wine) License with on-premise consumption

0:11:47 **VOTE**

The vote was as follows: Yes - Walterscheid, Anaya-Flores, Chavez, Garwood, Foreman, Rodriguez, Forrest, Niemeier; No - None; Absent - None; the motion carried.

0:11:59 **5. CONSIDER APPROVAL OF REQUEST BY CAVERN CITY EVENTS, LLC, TO HOST A RENAISSANCE FESTIVAL ON CITY PROPERTY AND SERVE ALCOHOL (BEER, WINE & MEAD) ON CITY PROPERTY**

Mr. Patterson stated this is a request to hold a Renaissance Festival on Friday, September 25, and Saturday, September 26, 2026, at the Carlsbad Beach Park. He said the event will take place from 4:00 P.M. to 8:00 P.M. on Friday, September 25, and from 10:00 A.M. to 8:00 P.M. on Saturday, September 26. He stated event setup will begin on Thursday, September 24, and event teardown will be completed on Sunday, September 27. He said the event will include food trucks, vendors, a variety of entertainment, an Armored Combat Professional Knight's Tournament, and eight alcohol vendors. **Mr. Patterson** stated the event will be a paid-ticket entry event, and the entire event area will be fenced off. He said within the fenced-off area, open alcohol carry will be permitted throughout the event area. He stated the event will have one entrance for attendees, and security will be provided. He said all attendees 21 years of age or older may obtain a bracelet, which will be required to purchase alcohol. **Mr. Patterson** stated all designated drivers entering the event will receive a separate bracelet for identification. He said staff recommends approval.

Councilor Walterscheid asked if there have been any problems in the past with attendees under the influence of alcohol. **Mr. Patterson** stated to his knowledge there has not been.

Councilor Garwood stated Carlsbad Mainstreet is in full support of this event and this event has been certified by the New Mexico True making it the first New Mexico True certified event in Carlsbad this year.

Councilor Walterscheid asked Chief Rodriguez if there have been any issues resulting from the Renaissance Festival. **Chief Rodriguez** said no.

0:17:56

MOTION

The motion was made by Councilor Niemeier and seconded by Councilor Garwood to approve a request by Cavern City Events, LLC, to host a Renaissance Festival on City property and serve alcohol (beer, wine & mead) on City property

0:18:03

VOTE

The vote was as follows: Yes - Walterscheid, Anaya-Flores, Chavez, Garwood, Foreman, Rodriguez, Forrest, Niemeier; No - None; Absent - None; the motion carried.

0:18:19

6. CONSIDER APPROVAL OF REQUEST FOR A TEMPORARY USE BUSINESS LICENSE FROM UNIVERSAL FIGHT PROMOTIONS FOR A MIXED MARTIAL ARTS EVENT AT THE CARLSBAD BEACH PARK

Mr. Patterson stated this request is for a special event business license for a mixed martial arts event on City property. He said the event is scheduled for September 4 and 5, 2026, at the Carlsbad Beach Park Bandshell. He stated the applicant is currently working with HUB International to obtain a warranty bond for the event. He said approval of the business license application would not include approval for alcohol service or a beer garden on City property. **Mr. Patterson** stated approval of the license would be based on the following conditions: a warranty bond must be provided prior to the event; the applicant shall ensure the Beach Park is left in a litter-free condition; and approval of the business license application does not include approval for alcohol service or a beer garden on City property.

Councilor Forrest asked if security will be required. **Mr. Patterson** said yes.

Councilor Garwood asked what a warranty bond is. **Mr. Patterson** explained it is used as a level of protection for the city in case any accidents or injuries occur.

Jimmy Westfall stated this event is not a mixed martial arts event, but rather a martial arts exhibition. He said several different martial artists will participate and provide demonstrations. He stated there will also be a wrestling tournament and a grappling tournament in the evening. He said they were asked if a beer garden could be included at the event, and the beer garden would be located separately from most of the activities. **Mr. Westfall** stated a liquor license application has not been submitted. He said, as far as the beer garden is concerned, the event will proceed with or without it.

0:26:28

MOTION

The motion was made by Councilor Rodriguez and seconded by Councilor Anaya-Flores to approve a request for a Temporary Use Business License from Universal Fight Promotions for a mixed martial arts event at the Carlsbad Beach Park without the sale of alcohol

0:26:43

VOTE

The vote was as follows: Yes - Walterscheid, Anaya-Flores, Chavez, Garwood, Foreman, Rodriguez, Forrest, Niemeier; No - None; Absent - None; the motion carried.

0:27:10

7. CONSIDER APPROVAL OF A PERMIT APPLICATION FROM SELECT WATER SOLUTIONS TO CONSTRUCT AND OPERATE A PRODUCED WATER PIPELINE WITHIN CITY LIMITS

Mr. Patterson stated on February 24, 2026, the City Council voted to approve a permit application from Select Water Solutions to construct and operate a 20-inch produced water pipeline. He said Select Water Solutions has submitted a second application to construct and operate another pipeline. He stated the alignment and pipeline specifications are the same as those in the first application. He said the pipeline will be 20 inches in diameter and constructed of High-Density Polyethylene material. **Mr. Patterson** stated the pipeline will be approximately 15.2 miles in length, with less than three-quarters of a mile constructed within City limits. He said approximately 3.5 miles will run within the Significant Impact Zone of the City's Wellhead Protection Area. He said the pipeline will be buried at a minimum depth of 36 inches and will operate at a pressure not exceeding 200 pounds per square inch. He stated after review by Mr. Clayton Bradley of the Bradley Law Office, Mr. Bradley recommends approval of the permit application with certain express conditions. He stated the conditions include filing and City receipt of approved Eddy County bore permits for Hidalgo Road and Rubble Lane; verification of contractors' business registrations with the City prior to mobilization; the applicant maintaining contact with the City's appointed inspector throughout construction; and submission of as-built GPS coordinates upon completion of the installation.

Councilor Rodriguez asked if there is a trespass fee being assessed for the 3/4 mile being constructed within the city. **Mr. Patterson** said no. He said it is within city limits but not on city owned property.

0:31:17

MOTION

The motion was made by Councilor Niemeier and seconded by Councilor Foreman to approve a permit application from Select Water Solutions to construct and operate produced water pipeline within City Limits

0:31:28

VOTE

The vote was as follows: Yes - Walterscheid, Anaya-Flores, Chavez, Garwood, Foreman, Rodriguez, Forrest, Niemeier; No - None; Absent - None; the motion carried.

0:31:49

8. CONSIDER APPROVAL OF A PERMIT APPLICATION FROM NGL WATER SOLUTIONS PERMIAN, LLC TO CONSTRUCT AND OPERATE A PRODUCED WATER PIPELINE WITHIN CITY LIMITS AND ACROSS CITY OWNED PROPERTY

Mr. Patterson stated this permit application is to construct and operate a produced water pipeline within City limits. He said the total length of the pipeline will be approximately 3.18 miles, with 0.43 miles crossing through the Significant Impact Zone of the Wellhead Protection Area and 0.65 miles located within the County. He stated 2.53 miles will be located inside City limits, with certain portions of the pipeline constructed on City-owned property. He said NGL Water Solutions Permian, LLC, is seeking an easement from the City to construct approximately 5,998.75 linear feet, or 363.56 rods, of pipeline along the north/northeast edges of the airport property. **Mr. Patterson** stated they are also requesting an easement from the City to construct a section of the pipeline measuring approximately 903.11 linear feet, or 54.73 rods, across City-owned property located on the west side of National Parks Highway, just northeast of the airport entrance. He said the easements will be 15 feet wide, with an additional 20 feet of temporary workspace during construction. He stated the total length of the easements will be 6,901.86 feet, covering a total area of 2.38 acres. He said NGL Water Solutions Permian, LLC, has agreed to pay the City \$2,000 per rod for the easements, resulting in a total payment of \$836,580.00 to the City. **Mr. Patterson** stated the proposed pipeline will be 18 inches in diameter, with a pressure rating of 250 pounds per square inch. He said after review by Clayton Bradley of the Clayton Bradley Law Firm, Mr. Bradley recommends approval of the permit application with conditions. He stated the conditions require final approval by the "Notification Form for Municipal and Double Eagle Water Systems Pipeline Crossing" and the City of Carlsbad Water Department; the applicant maintaining contact with the City's appointed inspector throughout construction and installation; and submission of as-built GPS coordinates upon completion of the installation.

0:35:41

MOTION

The motion was made by Councilor Niemeier and seconded by Councilor Foreman to approve a permit application from NGL Water Solutions Permian, LLC to construct and operate a produced water pipeline within City limits and across City owned property

0:35:53

VOTE

The vote was as follows: Yes - Walterscheid, Anaya-Flores, Chavez, Foreman, Rodriguez, Forrest, Niemeier; No - Garwood; Absent - None; the motion carried.

0:36:14

9. CONSIDER APPROVAL OF RESOLUTION 2026-50, A RESOLUTION AUTHORIZING AND APPROVING THE SUBMISSION OF COMPLETED APPLICATIONS FOR FINANCIAL ASSISTANCE TO THE NEW MEXICO FINANCE AUTHORITY - NEW MEXICO WATER TRUST BOARD FOR THE FISCAL YEAR 2027 DESIGN CYCLE

Mr. Abell stated approval of this Resolution will authorize staff to submit completed applications to the New Mexico Finance Authority (NMFA) for grants under the Water Project Act. He said there are nine projects staff would like to apply for. He stated NMFA has allowed the City to apply for design-only grants, which are fully funded and will not require a City match.

Mrs. Austin stated there are two phases this first round is for projects that need design and engineering and in January the shovel ready projects are due.

Councilor Walterscheid asked how many wells in the Tatum Wellfield are operational. **Mr. Abell** stated three wells are drilled for production two wells drilled for monitoring, and currently those wells are not connected to the double eagle or city water system.

0:40:27 **MOTION**

The motion was made by Councilor Niemeier and seconded by Councilor Garwood to approve Resolution 2026-50, a Resolution authorizing and approving the submission of completed applications for Financial Assistance to the New Mexico Finance Authority - New Mexico Water Trust Board for the Fiscal Year 2027 Design Cycle

0:40:36 **VOTE**

The vote was as follows: Yes - Walterscheid, Anaya-Flores, Chavez, Garwood, Foreman, Rodriguez, Forrest, Niemeier; No - None; Absent - None; the motion carried.

0:40:50 **10. CONSIDER APPROVAL OF RESOLUTION 2026-51, A RESOLUTION APPROVING THE EDDY-LEA ENERGY ALLIANCE'S PROPOSED EASEMENT RIGHT-OF-WAY AGREEMENT WITH DOUBLE E PIPELINE, SUBJECT TO REQUIRED STATE APPROVALS**

Ms. Hodgson stated this Resolution concerns a proposed pipeline easement across the Eddy-Lea Energy Alliance (ELEA) property. She said Double E Pipeline has requested an easement to place pipelines across the ELEA property. She stated the ELEA Board has already approved the proposed easement through a Resolution.

Councilor Chavez asked if the easement would affect any future projects. **Denise Madrid-Boyea** with ELEA stated the pipeline will be located along the very edge of the property and will not affect future development. **Councilor Chavez** asked if the pipelines will be high-pressure or low-pressure lines. **Ms. Madrid-Boyea** stated the pipeline pressure will comply with applicable federal pipeline regulations.

0:46:27 **MOTION**

The motion was made by Councilor Forrest and seconded by Councilor Niemeier to approve Resolution 2026-51, a Resolution approving the Eddy-Lea Energy Alliance's Proposed Easement Right-of-Way Agreement with Double E Pipeline, Subject to Required State Approvals

0:46:40 **VOTE**

The vote was as follows: Yes - Walterscheid, Anaya-Flores, Chavez, Garwood, Foreman, Rodriguez, Forrest, Niemeier; No - None; Absent - None; the motion carried.

0:46:56 **11. CONSIDER APPROVAL OF RESOLUTION 2026-52, A RESOLUTION REQUIRING THE REMOVAL OF THE RUINS, RUBBISH, WRECKAGE, DEBRIS, AND/OR WEEDS AT 408 W SHAW STREET OWNER: NANCY L GALLOWAY**

Ms. Hodgson stated the subject property at 408 W. Shaw Street is located in a residential neighborhood. She stated the property was inspected by Code Enforcement, the Building Inspector, and the Fire Marshal at various times in 2026. She said a final notice was mailed to the owner's address on February 23, 2026, and no one contacted the Code Enforcement Office. **Ms. Hodgson** stated another inspection was conducted on June 16, 2026, and revealed the code violations had not been corrected. She said the Fire Marshal conducted an inspection on May 11, 2026, and determined the property presents an extreme fire hazard. She stated a certified letter was sent to the owner on July 24, 2026, notifying the owner of the opportunity to address the City Council regarding the property.

0:50:45 **Mayor Lopez asked if anyone in the audience would like to address the Council. No one appeared.**

0:50:54 **MOTION**

The motion was made by Councilor Rodriguez and seconded by Councilor Chavez to approve Resolution 2026-52, a Resolution requiring the removal of the ruins, rubbish, wreckage, debris, and/or weeds at 408 W Shaw Street Owner: Nancy L Galloway

0:51:06 **VOTE**

The vote was as follows: Yes - Walterscheid, Anaya-Flores, Chavez, Garwood, Foreman, Rodriguez, Forrest, Niemeier; No - None; Absent - None; the motion carried.

0:51:21 **12. PUBLIC COMMENTS AND ANNOUNCEMENTS. ALL COMMENTS MUST BE RESPECTFUL AND COURTEOUS (THREE-MINUTE TIME LIMIT PER PERSON)**

Chris Johnson asked Pat Cass to read his statement since he is disabled. **Mr. Cass** read the concerns for the City of Carlsbad including or regarding flock cameras and taxes. He said he would like rumbles sticks or balls placed in or around the curb located at 3006 Standpipe Road.

Mr. Johnson addressed the City Council directly. He stated there have been many different accidents located on Standpipe that have damaged his personal property.

0:54:25 **13. COUNCIL COMMITTEE REPORTS**

None at this time.

0:54:32 **14. CONSIDER APPROVAL TO CONVENE INTO CLOSED SESSION PURSUANT TO N.M.S.A. 1978 SECTION 10-15-2(H)(7), DISCUSSION OF THREATENED OR PENDING LITIGATION**

0:54:41

MOTION

The motion was made by Councilor Chavez and seconded by Councilor Anaya-Flores to approve and convene into closed session pursuant to N.M.S.A. 1978 Section 10-15-2(H)(7), discussion of Threatened or Pending Litigation

0:54:52

VOTE

The vote was as follows: Yes - Walterscheid, Anaya-Flores, Chavez, Garwood, Foreman, Rodriguez, Forrest, Niemeier; No - None; Absent - None; the motion carried.

0:55:11

15. CONSIDER APPROVAL TO RECONVENE INTO OPEN SESSION

0:55:12

MOTION

The motion was made by Councilor Foreman and seconded by Councilor Chavez to approve and reconvene into open session

0:55:13

VOTE

The vote was as follows: Yes - Walterscheid, Anaya-Flores, Chavez, Garwood, Foreman, Rodriguez, Forrest, Niemeier; No - None; Absent - None; the motion carried.

0:55:15

16. CONSIDER APPROVAL OF STATEMENT REGARDING CLOSED SESSION. PURSUANT TO THE REQUIREMENTS OF THE OPEN MEETINGS ACT. THE CLOSED SESSION WAS HELD TO DISCUSS MATTERS PURSUANT TO N.M.S.A. 1978 SECTION 10-15-1(H)(7), DISCUSSION OF THREATENED OR PENDING LITIGATION. THIS WAS THE ONLY MATTER DISCUSSED DURING THE CLOSED SESSION

Mayor Lopez stated pursuant to the requirements of the Open Meetings Act. The closed session was held to discuss matters pursuant to N.M.S.A. 1978 Section 10-15-1(H)(7), discussion of Threatened or Pending Litigation. This was the only matter discussed during the closed session.

0:55:36

MOTION

The motion was made by Councilor Niemeier and seconded by Councilor Foreman to approve the statement regarding closed session. Pursuant to the requirements of the Open Meetings Act. The closed session was held to discuss matters pursuant to N.M.S.A. 1978 Section 10-15-1(H)(7), discussion of Threatened or Pending Litigation. This was the only matter discussed during the closed session

0:55:46

VOTE

The vote was as follows: Yes - Walterscheid, Anaya-Flores, Chavez, Garwood, Foreman, Rodriguez, Forrest, Niemeier; No - None; Absent - None; the motion carried.

0:56:06

Adjourned

With no further business to discuss, the Mayor declared the meeting adjourned at 8:01 PM.

Richard D. Lopez, Mayor

ATTEST:

Nadine Mireles, City Clerk

DRAFT

CITY OF CARLSBAD
PERSONNEL REPORT

September 8, 2026

APPOINTMENTS:

<u>NAME</u>	<u>DATE</u>	<u>DEPARTMENT</u>	<u>CLASSIFICATION</u>
Pablo R. Florez	09/09/26	Fire	Garage Student Assistant
Armando D. Ruiz	09/09/26	Solid Waste	Container Maintenance Assistant
Luc Salcido	09/09/26	Pro Shop	Golf Course Marshal

TERMINATIONS:

<u>NAME</u>	<u>DATE</u>	<u>DEPARTMENT</u>	<u>CLASSIFICATION</u>	<u>REASON</u>
Juan Coello	08/28/26	Police	Corporal	Resigned
Jesse Fuentes	08/11/26	Sports Complex	Seasonal Laborer	Resigned
Edythe Harrell	08/24/26	Planning	Code Enforcement Officer	Retirement
Garrett Hendren	08/28/26	Police	Corporal	Resigned
Christopher Rusk	08/20/26	Fire	Lieutenant/EMT-P	Retired

INTERNAL TRANSFERS AND PROMOTIONS:

<u>NAME</u>	<u>DATE</u>	<u>DEPARTMENT</u>	<u>CLASSIFICATION</u>
Zaqary Duran	08/31/26	Garage	Lubrication
Zeferino Gallegos	08/18/26	Fire	Firefighter/EMT-I
Cassandra Ramos	08/31/26	City Clerk	IPRA Specialist

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Richard D. Lopez, Mayor

Wendy D. Austin, City Manager

TO: The Honorable Mayor Richard D. Lopez & Members of the City Council

FROM: Tony Souza, Fire Chief 

SUBJECT: Recommendation for Employment

DATE: August 27, 2026

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Pablo Florez Classification/Position: BPA Student/ PFA

Department: Fire

☐ Regular	☐ Full-time	☒ Hourly \$ <u>13.48</u> per hour
☐ Seasonal	☒ Part-time	☐ Salary \$ _____ per annum
☒ Temporary	☐ On call	

Education Level:

☐ High School Diploma	☐ GED or equivalent
☐ Associates Degree _____	
☐ Bachelors Degree _____	
☐ Masters Degree _____	
☒ Other <u>Attending Early College High School & South East New Mexico College</u>	

Employment:

Present or last Employer: _____

City and State: _____

From _____ to _____ Classification: _____

Duties: _____

Related Experience: Has worked with heavy machinery. Works quickly and efficiently under high pressure.

Comments: I believe that Mr. Florez will be a valuable asset to the Fire Department.

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Richard D. Lopez, Mayor

Wendy D. Austin, City Manager

TO: The Honorable Mayor Richard D. Lopez & Members of the City Council

FROM: Ivan M. Abell, Director of Utilities



Official Seal of the City of Carlsbad, California
I, the undersigned, being the Director of Utilities, do hereby certify that the above is a true and correct copy of the original as the same appears in the files of the City of Carlsbad.

SUBJECT: Recommendation for Employment

DATE: August 19, 2026

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Armando D. Ruiz Classification/Position: Container Maintenance Assistant

Department: Solid Waste

☒ Regular	☒ Full-time	☒ Hourly \$ <u>26.74</u> per hour
☐ Seasonal	☐ Part-time	☐ Salary \$ _____ per annum
☐ Temporary	☐ On call	

Education Level:

☒ High School Diploma	☐ GED or equivalent
☐ Associates Degree	_____
☐ Bachelors Degree	_____
☐ Masters Degree	_____
☐ Other	_____

Employment:

Present or last Employer: Texas Petroleum Group, LLC

City and State: Houston, Texas

From 09/17/2014 to Current Classification: Fuel Tech

Duties: Perform routine inspections, troubleshooting, maintenance, and repairs on commercial fueling and petroleum storage equipment while ensuring compliance with safety and environmental protocols.

Related Experience: _____

Comments: Mr. Ruiz also has a Class A Heavy Equipment Operator qualification.

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Richard D. Lopez, Mayor

Wendy D. Austin, City Manager

TO: The Honorable Mayor Richard D. Lopez & Members of the City Council

FROM: Dina Navarrete, Director of Community Development

SUBJECT: Recommendation for Employment

DATE: 08/25/2026

[Handwritten Signature]
8/25/26

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Luc Salcido Classification/Position: Golf Course Marshal

Department: Golf Pro Shop

☒ Regular	☐ Full-time	☒ Hourly \$ <u>20.93</u> per hour
☐ Seasonal	☒ Part-time	☐ Salary \$ _____ per annum
☐ Temporary	☐ On call	

Education Level:

☒ High School Diploma	☐ GED or equivalent
☐ Associates Degree _____	
☐ Bachelors Degree _____	
☐ Masters Degree _____	
☐ Other _____	

Employment:

Present or last Employer: Army National Guard
City and State: Apple Valley, CA
From 08/12/2021 to Present Classification: 11B Infantryman
Duties: part time frontline ground soldier, maintain mission and soldier redness, security/escorting for personnel when needed.

Related Experience: Luc has a vast background in the army and national guard where he has had to remain calm and collected in times of high stress and tension

Comments: Based on Luc's background, we think that he will be a great fit for the Marshal position for the golf course



**CITY OF CARLSBAD
AGENDA BRIEFING
MEMORANDUM**

Council Meeting Date: September 8, 2026

DEPARTMENT: Transit	BY: Caleb Bellah	DATE: 08/31/2026																									
SUBJECT: Consider Approval of the Memorandum of Agreement between the City of Carlsbad and the New Mexico Department of Transportation for the FY 27 Carlsbad Municipal Transit Funding Agreement																											
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) Attached is the Memorandum of Agreement (MOA) between the New Mexico Department of Transportation (NMDOT) and the City of Carlsbad (City) for FY 2027 49 U.S.C. Section 5311 and/or Section 5339(b) Programs. The proposed MOA establishes a formal framework for coordination and defines the financial responsibilities between NMDOT and the City. The U.S.C. Section 5311 and/or Section 5339(b) Programs serve as the primary funding sources for the City’s transit system, which provides public transportation for the citizens of Carlsbad. This funding solicitation operates on an annual federal funding cycle. As part of this process, the City Council approved the application, Lobbying Certification, and Letter of Resolution associated with this funding request on October 14, 2025, through Resolution No. 2025-52. The MOA stipulates a combined disbursement of \$1,972,457.10 for eligible administrative, operating, and capital expenditures. A breakdown of the funding by expenditure category, including the applicable federal and local match percentages, is provided below.																											
<table><tr><th>City of Carlsbad</th><th>Total</th><th>Federal</th><th>Local</th></tr><tr><td>Administration (80/20) Section 5311</td><td>\$300,808.00</td><td>\$240,646.40</td><td>\$60,161.60</td></tr><tr><td>Operating (50/50) Section 5311</td><td>\$1,234,985.30</td><td>\$617,492.65</td><td>\$617,492.65</td></tr><tr><td>Capital to Sub-recipient (80/20) Section 5339</td><td>\$334,536.80</td><td>\$267,629.44</td><td>\$66,907.36</td></tr><tr><td>Capital to Sub-recipient (80/20) Section 5339</td><td>\$102,127.00</td><td>\$81,701.60</td><td>\$20,425.40</td></tr><tr><td>Total Administration, Operating and Capital</td><td>\$1,972,457.10</td><td>\$1,207,470.09</td><td>\$764,987.01</td></tr></table>				City of Carlsbad	Total	Federal	Local	Administration (80/20) Section 5311	\$300,808.00	\$240,646.40	\$60,161.60	Operating (50/50) Section 5311	\$1,234,985.30	\$617,492.65	\$617,492.65	Capital to Sub-recipient (80/20) Section 5339	\$334,536.80	\$267,629.44	\$66,907.36	Capital to Sub-recipient (80/20) Section 5339	\$102,127.00	\$81,701.60	\$20,425.40	Total Administration, Operating and Capital	\$1,972,457.10	\$1,207,470.09	\$764,987.01
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Total Administration, Operating and Capital	\$1,972,457.10	\$1,207,470.09	\$764,987.01																								
DEPARTMENT RECOMMENDATION: If it is the pleasure of the City Council, staff recommends approval of the FY 2027 Memorandum of Agreement between the New Mexico Department of Transportation and the City of Carlsbad for the administration and funding of the Carlsbad Municipal Transit System under 49 U.S.C. Sections 5311 and/or 5339(b).																											
BOARD/COMMISSION/COMMITTEE ACTION:																											

-	
Reviewed by:	
City Manager: Wendy D Austin	Date: September 3, 2026

Attachments:

1. FY_27_MOA_-_Carlsbad,_City_of_Rev_26Aug26

FISCAL YEAR 2027 (FY 27)

MEMORANDUM OF AGREEMENT

BETWEEN

THE NEW MEXICO DEPARTMENT OF TRANSPORTATION

AND

CITY OF CARLSBAD

This Agreement is between the **STATE OF NEW MEXICO**, acting through its **DEPARTMENT OF TRANSPORTATION**, Transit and Rail Division (Department), and the **CITY OF CARLSBAD** (Subrecipient). This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

Whereas, 49 U.S.C. Section 5305(e) provides federal assistance for public transportation statewide planning that can be used to provide technical assistance to subrecipients for planning purposes by way of a formula grant program administered by the State;

Whereas, 49 U.S.C. Section 5307 provides federal assistance for public transportation in small urbanized areas by way of a formula grant program which may be administered by the State;

Whereas, 49 U.S.C. Section 5310 provides federal assistance for public transportation to meet the special needs of seniors and individuals with disabilities by way of a formula grant program administered by the State;

Whereas, 49 U.S.C. Section 5311 provides federal assistance for public transportation in rural areas by way of a formula grant program administered by the State;

Whereas, 49 U.S.C. Section 5339 provides federal assistance for buses and bus-related equipment and facilities by way of a formula and discretionary grant program administered by the State;

Whereas, the State of New Mexico participates in the 49 U.S.C. Section 5305(e), 49 U.S.C. Section 5307, 49 U.S.C. Section 5310, 49 U.S.C. Section 5311, and U.S.C. Section 5339 programs, collectively referred to herein as the Program;

Whereas, the Governor of the State of New Mexico designated the Department to administer the Program funds; and

Whereas, the Subrecipient applied for financial assistance for public transportation services, which was approved by the Department and the Federal Transit Administration (FTA).

Now, therefore, pursuant to Section 67-3-69 NMSA 1978, the parties agree as follows:

1. Scope of Program.

- A. **Operations Profile.** The Subrecipient shall provide transportation services to the public within its service area as specified in the Operations Profile submitted with the Application, which is incorporated by reference and is on file with the Department and the Subrecipient.
- B. **Use of Program Vehicles, Equipment, and Facilities.** The Subrecipient agrees that any Program equipment purchased under this Agreement shall be used to provide public transportation service within the area described in the Operations Profile. If the equipment is not used in this manner or withdrawn from service,

the Subrecipient shall notify the Department in accordance with *Section 18. Use of Program Vehicles, Equipment, Facilities, and Real Property*.

- C. **Use of Program Funds.** The services described in the Operations Profile shall remain intact throughout the term of this Agreement. If the services change, the Subrecipient shall submit a revised Operations Profile. The Subrecipient shall notify the Department if there shall be an elimination or a reduction of services greater than twenty percent (20%).
- D. **Fare Schedule.** The fare schedule shall be approved by the Subrecipient's governing body. The Subrecipient shall notify the Department of any changes to the fare schedule.
- E. **Advertising and Public Information (Section 5311 and Public Section 5310).** The Subrecipient shall implement an advertising and information program. Acceptable methods include but are not limited to websites, social media, apps, trip planners, brochures, fliers and handbills, signs and posters, radio announcements, press releases and articles in local and organization newspapers, bulletins, and newsletters. Subrecipients operating fixed and deviated routes shall maintain and update as needed General Transit Feed Specification (GTFS) data. In addition, the name of the service together with the words "Public Transportation" shall be prominently displayed on all vehicle(s) and be readable at a distance of no less than thirty (30) feet. Painted or affixed signing with a decal is acceptable. Magnetic signs are not acceptable. The name shall indicate that the service is a transportation system open to the public. The Subrecipient shall have a telephone number established and operative during hours of transportation services so that the public can access information. All methods of advertising and the signs on the vehicles shall include the telephone number.
- F. **Personnel.** The Subrecipient shall maintain and update organizational contacts in BlackCat Transit Data Management System (BlackCat), including, but not limited to:
- transit manager
 - primary and secondary contact
 - signing official
 - transit asset management accountable executive
 - fleet and facility maintenance/asset manager(s)
 - drug and alcohol program manager/designated employee representative
 - safety officer
 - training supervisor
 - financial officer
 - procurement officer
 - grant manager

2. Cost of Program.

The Department shall provide partial funding to the Subrecipient to cover expenses of the Program as described in the approved Operations Profile in an amount described below:

Subaward FY 27

City of Carlsbad	Total	Federal	Local
Administration (80/20) Section 5311	\$ 300,808.00	\$ 240,646.40	\$ 60,161.60
Operating (50/50) Section 5311	\$ 1,234,985.30	\$ 617,492.65	\$ 617,492.65
Capital to Sub-recipient (80/20) Section 5339	\$ 334,536.80	\$ 267,629.44	\$ 66,907.36
Capital to Sub-recipient (80/20) Section 5339	\$ 102,127.00	\$ 81,701.60	\$ 20,425.40
Total Administration, Operating and Capital	\$ 1,972,457.10	\$ 1,207,470.09	\$ 764,987.01

Vehicle acquisition funds that are not obligated by contract by September 30, 2027, may revert to the Department.

Planning funds that are not obligated by contract by September 30, 2027, may revert to the Department.

Capital equipment acquisition funds that are not obligated by contract by September 30, 2028, may revert to the Department.

Capital rehab/renovation and construction project funds that are not obligated by contract by September 30, 2029, may revert to the Department.

The Department's share of Program expenses shall be obtained from the federal government. State funds shall not be earmarked or disbursed to fund the Program. The Department shall not be responsible for any other costs incurred by the Subrecipient. The Subrecipient shall take all actions necessary to fund its share of the Program.

3. Method of Payment.

The Department shall reimburse the Subrecipient for the Department's share of Program administration, operating assistance, and capital upon receipt of invoices with sufficient supporting documentation as determined and approved by the Department indicating that expenses have been paid and/or money is owed.

- A. **Monthly Administration and/or Operating Invoice.** Subrecipients shall submit a monthly invoice/report using BlackCat to include financial expenditures and service data. This monthly invoice shall be submitted to the Department by the 25th of the following month. The invoice shall include the supporting documentation as requested by NMDOT.
- B. **Final Administration and/or Operating Invoice.** Subrecipients shall submit a final invoice to the Department for Administration and Operating expenses and a financial statement showing the total expenses within 45 days of the end of the period of performance.
- C. **Vehicle and Equipment Invoice.** Subrecipients that receive capital assistance for vehicle and equipment purchases are expected to submit payment to the vendor within 30 days of vehicle and equipment acceptance. Subrecipients shall submit a reimbursement request for a vehicle and equipment purchase within 45 days of paying the vendor.
- D. **Construction, Technology, and Planning Project Invoice.** Subrecipient shall submit reimbursement requests for progress payments. Final reimbursement requests shall be submitted within 90 days of completion of the project.

All reimbursement requests shall be submitted to the Department utilizing BlackCat. All expenses shall be actual and listed on the invoice as charged. Rounding up or down, other than the total, is not permitted. Only those expenses or percentage thereof, properly documented and deemed eligible, shall be reimbursed. The Department may withhold payment of invoices that are incorrect and/or incomplete.

4. Eligible Costs.

- A. Eligible Costs are those costs attributable to and allowed under the Program and the provisions of 2 CFR Parts 200 and 1201, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.
- B. Costs incurred by the Subrecipient prior to the effective date of this Agreement or after termination are not eligible for reimbursement.
- C. Match shall be provided from eligible matching sources.

5. State General Appropriation Funds Not Obligated.

Nothing in this Agreement shall be construed as obligating State general appropriation funds for payment of any debt or liability arising under this Agreement. The parties expressly acknowledge that all payments made under this Agreement are from federal funds appropriated for these purposes.

6. Term.

Upon the signature of all parties, this Agreement becomes effective with a starting date of October 1, 2026.

Costs incurred under this agreement for Administration and Operating expenses from October 1, 2026, to September 30, 2027, are eligible for reimbursement.

Vehicle acquisition funds that are obligated by contract by September 30, 2027, are eligible for reimbursement.

Capital equipment acquisition funds obligated by contract by September 30, 2028, are eligible for reimbursement.

Capital rehab/renovation and construction project funds obligated by contract by September 30, 2029, are eligible for reimbursement.

Planning funds for contracted planning studies obligated by contract by September 30, 2027, are eligible for reimbursement.

7. Termination for Cause.

The Department has the option to terminate this Agreement if the Subrecipient fails to comply with any provision. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the Subrecipients breaches on which the termination is based.

The Department may provide the Subrecipient with a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Subrecipient has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Subrecipient has not begun and proceeded in good faith to correct the breach, the Department may declare the Subrecipient in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law. Upon termination of this Agreement, the Subrecipient shall return the Program equipment as specified in *Section 18. Use of Program Vehicles, Equipment, Facilities, and Real Property*.

8. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Congress of the United States. If sufficient appropriations and authorizations are not made, this Agreement shall terminate upon written notice from the Department to the Subrecipient. The Department's decision as to whether sufficient appropriations are available shall be accepted by the Subrecipient and shall be final.

9. Termination Management, Allowable Costs.

In the event of termination, neither party may nullify obligations already incurred for performance or failure to perform. The Subrecipient shall be paid for all the allowable costs incurred prior to the date of termination, subject to audit verification by the Department or its duly authorized representative. The Subrecipient shall not be paid for any costs incurred that are inconsistent with, or contrary to, the terms and conditions of this Agreement.

10. Breach and Dispute Resolution.

Disputes which cannot be resolved informally by the parties shall be decided in writing by a representative of the Department's Transit and Rail Division. The Subrecipient has ten (10) days from receipt of the decision to file a

written appeal with the Transit and Rail Division. Upon appeal, the Subrecipient shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Transit and Rail Division on appeal shall be binding.

11. Financial Management.

The Subrecipient shall account for program funds in accordance with 2 CFR parts 200 and 1201, the United States Department of Transportation (U.S. DOT), the FTA, and applicable New Mexico State Law, and the standards set forth in: Award Management Requirements, FTA Circular 5010.1, as amended.

12. Procurement Requirements.

The Subrecipient shall purchase Program equipment pursuant to procedures established by 2 CFR parts 200 and 1201, the FTA, applicable New Mexico State Law, and the standards set forth in: Third Party Contracting Guidance, FTA Circular 4220.1, as amended; and the Americans with Disabilities Act of 1990, Pub. L. No. 101-336.

The Subrecipient agrees to comply with 49 U.S.C. Section 5323(j) as amended by the Infrastructure Investment in Jobs Act (IIJA).

For non-construction procurements in excess of \$15,000 and all construction procurements, the Subrecipient shall seek approval from the Department at the pre-solicitation and pre-award stages.

13. Rolling Stock.

In acquiring rolling stock, the Subrecipient agrees that the parties are bound by the following provisions:

- A. **Method of Acquisition.** In compliance with 49 U.S.C. Section 5325(f), the Subrecipient agrees that any third party contract award it makes for rolling stock shall be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.
- B. **Multiyear Options.** In accordance with 49 U.S.C. Section 5325(e)(1), the Subrecipient procuring rolling stock financed with Federal assistance under 49 U.S.C. Chapter 53 may not enter into a multiyear contract with options exceeding five (5) years after the date of the original contract to purchase additional rolling stock and replacement parts.
- C. **Buy America.** The Subrecipient agrees to comply with the requirements of 49 U.S.C. Section 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any amendments to those regulations that may be promulgated.
- D. **Pre-Award and Post-Delivery Audits.** The Subrecipient agrees to comply with the requirements of 49 U.S.C. Section 5323(m) and FTA regulations, "Pre Award and Post Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663, and any amendments to those regulations that may be promulgated.
- E. **Bus Testing.** The Subrecipient agrees to comply with the requirements of 49 U.S.C. Section 5318(e) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

14. Insurance.

The Subrecipient shall maintain liability, comprehensive, collision, and uninsured motorist insurance adequate to protect vehicles, and satisfactory to the Department. The Department shall be named as an additional insured and a loss payee on Subrecipient's policy for each vehicle on which the Department has a lien.

The Subrecipient shall maintain insurance or adequate reserves to cover losses to buildings, facilities, contents, and equipment, and losses due to liability. The Subrecipient shall have flood insurance for FTA-funded facilities located in a flood hazard area.

A certificate of insurance shall be provided to the Department and it shall state that coverage provided under the policy is primary over any other valid insurance. The Subrecipient shall provide the Department with documentation of subsequent renewals and shall keep a copy of the insurance policy, which shall be accessible to the Department.

15. Coordinated Public Transit-Human Services Transportation Plan.

The Subrecipient shall participate in the development of the regional Coordinated Public Transit-Human Services Transportation Plan. Participation includes, but is not limited to, attending plan development meetings and providing requested information.

16. New Mexico Tort Claims Act.

As between the Department and the Subrecipient, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, *et seq.*, NMSA 1978. This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by the common law of the New Mexico Tort Claims Act.

17. Transit Asset Management (TAM).

A Subrecipient that receives Section 5311 funds or is a public Section 5310 provider shall develop or be part of a group TAM plan ([49 U.S.C. 625](#)). The Subrecipient may participate in the group TAM Plan sponsored by the Department. All group TAM plan participants shall assign an Accountable Executive that has responsibility for carrying out TAM practices and controlling or directing human and capital resources needed to support the group TAM plan in accordance with 49 U.S.C. 5326. The Subrecipient shall maintain supporting records or documents pertaining to performance targets, investment strategies, and the annual condition assessment report to aid in the planning process and sign a TAM Plan Approval Statement.

18. Use of Program Vehicles, Equipment, Facilities, and Real Property.

- A. The Program vehicles, equipment, facilities, and real property shall be used to provide public transportation service within the described service area and in the manner described in *Section 1. Scope of Program*.
- B. Failure to use Program vehicles, equipment, facilities, and real property as described in *Section 1. Scope of Program* shall be considered a material breach of agreement.
- C. The Subrecipient shall maintain current written fleet, equipment, and facility maintenance plans that include procedures for preventive and corrective maintenance, warranty tracking and claims recovery, and recall notification and follow-up. The plans will provide for maintenance of accessibility features as required by [49 CFR 37.163](#).
- D. The Subrecipient shall follow the vehicle manufacturer's minimum standards and recommended preventive maintenance schedules. The Subrecipient shall maintain vehicles, equipment, and facilities in a clean, safe, and mechanically sound condition. The Department or its authorized representative has the right to conduct periodic inspections during normal business hours for the purpose of confirming property maintenance pursuant to this clause.
- E. The Subrecipient shall notify the Department immediately via email of Program vehicle, equipment or facility accidents, thefts, or vandalism. All supporting documentation relating to the incident, including police reports, damage assessments, and insurance claims shall be reported and uploaded in BlackCat to the

corresponding inventory record. Failure to notify the Department shall be considered a material breach of agreement.

- F. Program vehicles, equipment, or facilities damaged in an accident, by vandalism, or weather are to be repaired or replaced depending on the physical and monetary extent of the damage and according to its scheduled final disposition.
- G. Subrecipients shall report inventories within the BlackCat system as well as updates to the inventories quarterly or as they occur. Reporting requirements apply to equipment valued at \$50,000 or greater for participants in the Department's group TAM plan.
- H. Section 5311 and general public Section 5310 Subrecipients shall report passenger/public injuries that occur on or off buses, at bus stops, and on transit property via email to the Department by the next business day of the occurrence. Closed-door Section 5310 Subrecipients shall report passenger/public injuries that occur on or off FTA-funded buses via email to the Department by the next business day of the occurrence.
- I. The Subrecipient shall maintain records that document preventive and corrective maintenance. Records shall be retained for at least three (3) years after vehicle disposition.

19. Program Vehicle Requirements.

- A. A Program Vehicle Inventory shall be completed for each vehicle used in the program and entered into BlackCat within thirty (30) days of delivery. Vehicle Inventory shall be updated within BlackCat quarterly and as significant changes to the vehicle/vehicle inventory occur. Significant changes shall include recalls, accidents, thefts, or vandalism. Updates shall include vehicle status, mileage, and current condition and rating.
- B. Major corrective maintenance, warranty tracking and claims recovery, and recall notifications shall be reported in BlackCat as they are received and updated as repairs are completed.
- C. Each vehicle shall be equipped with a fire extinguisher, first aid kit (including a blood borne pathogens/biohazard kit), fluorescent triangles and/or safety flares, reflective vests for drivers, flashlights, and web cutters/seat belt cutters, while the vehicle is in operation.
- D. The Department may require that Program vehicles purchased under FTA programs on which liens are held be returned to the Department. Such Program equipment shall be returned in good working condition within a reasonable timeline as stipulated and agreed to by the Department. If the Subrecipient fails to return the vehicle, the Department, as the recorded lien holder, shall have the right to immediately repossess the vehicle(s) by whatever means available to it under New Mexico law.
- E. Upon termination of the Agreement under *Section 7. Termination for Cause*, the Subrecipient shall not be eligible for reimbursement of any costs associated with the vehicle(s) purchase or be entitled to damages arising from Program operations, except that the Subrecipient shall be reimbursed for its pro-rata share of the Program equipment's depreciated value as determined by the straight-line depreciation method.
- F. If the Subrecipient wants to remove any Program vehicles from service or dispose of such equipment either as a result of planned withdrawal, casualty loss, or transfer, the Subrecipient shall submit a completed disposition or transfer request in BlackCat including all relevant and required supporting documentation. The Subrecipient should refer to the Vehicle Disposition Procedures in the Global Resources section of BlackCat.

20. Program Equipment Maintenance Requirements.

- A. Major corrective maintenance, warranty tracking and claims recovery, and recall notifications shall be reported in BlackCat as they are received and updated as repairs are completed for equipment with an acquisition value of \$50,000 or more.
- B. If the Subrecipient wants to remove any Program equipment from service or dispose of such equipment either as a result of planned withdrawal, casualty loss, or transfer, the Subrecipient shall submit a completed disposition or transfer request in BlackCat including all relevant and required supporting documentation. The Subrecipient should refer to the Vehicle and Equipment Disposition Procedures in the Global Resources section of BlackCat.

21. Program Facility Requirements.

- A. FTA requires written approval of incidental use of FTA-funded real property, including facilities. The Subrecipient shall work through the Department to obtain FTA approval for incidental use.
- B. FTA maintains an interest in real property, including facilities, until disposition. In accordance with FTA requirements, the Subrecipient shall work through the Department to obtain prior FTA approval for change in use, change in title, or disposition.

22. Charter Bus Requirements.

Pursuant to 49 U.S.C. Section 5323(d) and 49 C.F.R. Part 604, recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. Part 604.9. Any charter service provided under one of the exceptions shall be "incidental." For example, it shall not interfere with or detract from the provision of mass transportation.

23. School Bus Requirements.

Pursuant to 49 U.S.C. Section 5323(f) and 49 C.F.R. Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

24. Certificate of Title for Vehicles.

Any title to capital equipment the Subrecipient purchases shall reflect in a lien in favor of the Department. The liens shall remain in effect according to the following schedule:

Category	Approx. GVW (Pounds)	Minimum Life (either years or miles)	
		Years	Miles
Heavy-Duty Large Bus	33,000 to 40,000	15	625,000
Medium-Duty and Purpose-Built Bus	16,000 to 26,000	10	285,000
Light-Duty Mid-Sized Bus	10,000 to 16,000	8	240,000

Category	Approx. GVW (Pounds)	Minimum Life (either years or miles)	
		Years	Miles
Light-Duty Small Bus, Cutaway, and Modified Van	6,000 to 14,000	7	175,000

The Subrecipient shall pay all costs associated with obtaining, securing, and maintaining titles and liens including the payment of all applicable taxes and fees.

25. Duration of Lien.

The Subrecipient shall not pledge or collateralize any vehicles purchased under this Agreement without written authorization from the Department. This restriction is in effect from the date a title certificate is issued to when the Department releases the lien pursuant to *Section 24. Certificate of Title for Vehicles*. For specifics on disposition of vehicles after title lien is released, the Subrecipient should refer to the Vehicle Disposition Procedures in the Global Resources section of BlackCat.

26. Reporting Requirements.

- A. **Semi-annual Disadvantaged Business Enterprise (DBE) Reporting.** Section 5311 and general public Section 5310 Subrecipients shall submit in BlackCat semi-annual DBE reports due May 15 (for the period October 1 to March 31) and due November 15 (for the period April 1 to September 30).
- B. **Quarterly Section 5310 Ridership Report.** Section 5310 Subrecipients shall report Section 5310 ridership statistics quarterly within BlackCat system. Quarterly Ridership Reports are due thirty (30) days after each quarter ends. Reports are due January 31, April 30, July 31, and October 31.
- C. **Quarterly Drug and Alcohol Testing Report.** Section 5311 Subrecipients shall submit a quarterly Testing Report in BlackCat for each quarter of the calendar year. Subrecipients shall also conduct one (1) breath alcohol test observation and two (2) urine collection observations during the calendar year. Completed checklists shall be submitted with the corresponding quarterly testing report during the quarter in which the test(s) were observed. Reports are due January 31, April 30, July 31, and October 31 respectively. Reports are due January 31, April 30, July 31, and October 31.
- D. **Quarterly Charter Report.** Subrecipients shall report charter service in quarters in which the service is provided. Reports are due January 31, April 30, July 31, and October 31.
- E. **Annual Drug and Alcohol Management Information System (MIS) Data Report.** Section 5311 Subrecipients shall submit drug and alcohol testing data for the previous calendar year using the Management Information System (MIS) Data Collection Form to the entity designated by the Department before March 1 of each year.
- F. **Annual National Transit Database (NTD) Rural Report.** Section 5311 Subrecipients shall submit an annual NTD report, as required by 49 U.S.C. Section 5335, due December 15. More information on NTD Reporting can be found in the Global Resources Section of BlackCat.

The Department may withhold payment of monthly invoices if reports are not submitted timely, are incorrect and/or incomplete.

27. Department Compliance Reviews.

- A. **Drug and Alcohol Compliance Review/Report.** Section 5311 Subrecipients shall participate in Drug and Alcohol Compliance Reviews by the Department. Once a final report has been issued, the Subrecipient shall begin to implement corrective actions, providing supportive documentation for all deficiencies and responding to all recommendations cited in the final report.
- B. **Technical Assistance and Compliance Review/Report.** Section 5310 and Section 5311/5339 Subrecipients shall participate in Technical Assistance and Compliance Reviews by the Department. Once a final report has been issued, the Subrecipient shall begin to implement corrective actions, providing supportive documentation for all deficiencies and responding to all recommendations cited in the final report.

28. Access to FTA Reviews and Plans.

The Department shares oversight responsibility with FTA for Subrecipients that are also direct recipients of FTA funds. A Subrecipient that is also a direct recipient of FTA funds shall allow the Department to participate in FTA oversight reviews, including the Triennial Review, and provide copies of Title VI plans for review and comment. Subrecipient shall allow the Department to attend site visits and provide the Department draft and final reports and corrective actions. If requested, the Department shall provide technical assistance in preparing required submittals and responding to deficiencies.

29. Retention of Records.

The Subrecipient shall maintain all books, documents, papers, accounting records, reports and other evidence pertaining to the underlying agreement, and any amendments thereto until three (3) years after the Subrecipient has submitted its last or final expenditure report, and other pending matters are closed.

30. Access to Records.

The Subrecipient shall grant authorized representatives of the Department, the State, and the federal government access to books, documents, papers, reports, and records of the Subrecipient or its contractors or subcontractors, which are directly pertinent to this Agreement, for the purpose of making audits, examination excerpts, and transcriptions. The Subrecipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Subrecipient shall reimburse the Department for any expenditure for which it receives payment or reimbursement, as applicable, which is disallowed by an audit exception by the Department, the State or federal government.

31. Audit.

The Subrecipient shall ensure that a single audit of the Program based on the Subrecipient's fiscal year shall be conducted pursuant to 2 CFR Parts 200 and 1201. All governmental agencies shall have their financial affairs thoroughly examined and audited each year pursuant to Section 12-6-3(A) NMSA 1978 by the Office of the State Auditor or, pursuant to New Mexico administrative code 2.2.2.8(D), an independent auditor approved by the Office of the State Auditor. The list of approved auditors can be found [here](#). All nonprofits whose total annual expenses exceed \$750,000 shall ensure an independent audit is conducted in accordance with generally accepted governmental auditing standards pursuant to Section 6-5A-1 NMSA 1978.

32. Audit Exceptions.

If federal or State audit exceptions are made, the Subrecipient shall reimburse all costs incurred by the State and the Department associated with defending against the exceptions, which includes but is not limited to costs of performing a new audit or a follow-up audit, court costs, attorneys' fees, travel costs, penalty assessments.

Immediately upon notification from the Department, the Subrecipient shall reimburse the amount of the audit exception and any other related costs directly to the Department. In the notification, the Department may inform

the Subrecipient of the Department's election to withhold an amount equal to the payment owed under this Section from any future distribution owed to Subrecipient under this Agreement.

33. Third Party Beneficiaries.

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

34. Contracting and Assignment.

The Subrecipient shall not contract or permit to have subcontracted any portion of this Agreement without prior written approval of the Department. No such contracting or subcontracting shall relieve the Subrecipient from its obligations and liabilities under this Agreement, nor shall any contracting or subcontracting obligate payment from the Department.

Except to a successor in kind, the Subrecipient shall not assign or transfer any interest in this Agreement or assign any claim for money due or to become due under this Agreement without the prior written approval of the Department.

Should contract(s), subcontract(s) or an assignment be authorized by the Department, the contractor(s), subcontractor(s) and assignor(s) shall be subject to all provisions of this Agreement. It shall be the Subrecipient's responsibility to duly inform the contractor(s), subcontractor(s) and assignor(s) by means of a contract or other legally binding document stipulating responsibility to this Agreement.

35. Training.

The Subrecipient shall ensure that all staff described in the Operations Profile are trained in accordance with the Department's Training Standard Operating Procedures. The Subrecipient should refer to the Training Procedures in the Global Resources section of BlackCat. Should the Subrecipient fail to satisfy the terms and conditions as outlined, the Subrecipient may be found to be in breach of agreement.

36. No Federal Government Obligation to Third Parties.

- A. The Department and Subrecipient acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the federal government, the federal government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Department, Subrecipient, or any other party (whether or not a party to the Agreement or any contract or subcontract) pertaining to any matter resulting from the Agreement.
- B. The Subrecipient agrees to include the above clause in each contract or subcontract financed in whole or in part with federal assistance provided by FTA. It further agrees that the clause shall not be modified, except to identify the contractor or subcontractor who shall be subject to its provisions.

37. Drug and Alcohol Testing (Section 5311).

- A. The Subrecipient shall implement a drug and alcohol testing program that complies with 49 C.F.R. parts 40 and 655 for its Section 5311 and 5310 programs.
- B. The Subrecipient shall produce documentation necessary to establish its compliance, permit authorized representatives of the U.S. DOT or the Department to inspect the facilities and records associated with the drug and alcohol testing program, and review the testing process.

- C. The Subrecipient shall submit for review and approval a copy of its Policy Statement developed to implement its drug and alcohol testing program.
- D. The Subrecipient shall participate in the Department's consortium.
- E. The Subrecipient shall participate in Department-provided training opportunities.
- F. The Subrecipient shall sign up for Office of Drug and Alcohol Policy and Compliance (ODAPC) electronic updates at [Get ODAPC Updates by Email | US Department of Transportation](#).

38. Labor Warranty (Section 5311).

The Subrecipient agrees to comply with the terms and conditions of the Special 49 U.S.C. Section 5333(b) Labor Protection Warranty. The Subrecipient shall assume all legal and financial responsibility related to compliance with the terms and conditions of the Warranty.

39. Civil Rights Laws and Regulations Compliance.

The Subrecipient shall comply with all federal, State, and local laws and ordinances applicable to the work called for under this Agreement.

- A. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, disability, or other protected class. The Subrecipient shall comply with applicable Federal implementing regulations and such other requirements FTA may issue. The Nondiscrimination Assurance is attached as **Assurance 3**.
- B. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Agreement:
 - 1. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Subrecipient agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Part 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Subrecipient agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including gender identity and sexual orientation). Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the awarded contractor shall comply with any implementing requirements FTA may issue.
 - 2. **Age.** In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 623 and Federal transit law at 49 U.S.C. Section 5332, the Subrecipient agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Subrecipient shall comply with any implementation requirements FTA may issue.

3. **Disabilities.** In accordance with Section 102 of the Americans with Disabilities Act, 42 U.S.C. Section 12112, the Subrecipient agrees that it shall comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the awarded contractor shall comply with any implementing requirements FTA may issue.
- C. The Subrecipient shall include the requirements listed in 39.A and 39.B in each contract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- D. The Subrecipient shall ensure the requirements listed in 39.A and 39.B are included in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

40. DBE Policy.

- A. This Agreement is subject to the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Department's proposed overall goal for FTA participation for the 2027 fiscal year is 8.13%, through race-neutral means.
- B. The Subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements 49 CFR part 26. The Subrecipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Department's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Subrecipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- C. Each contract the Subrecipient signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
 1. Withholding monthly progress payments;
 2. Assessing sanctions;
 3. Liquidated damages; and/or
 4. Disqualifying the contractor from future bidding as non-responsible.
- D. The Subrecipient must include a contract provisions that requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of each payment the Subrecipient makes to the prime contractor.
- E. The Subrecipient shall promptly notify the Department whenever a DBE contractor is terminated or fails to complete its work and shall make good-faith efforts to engage another DBE contractor to perform at least the same amount of work. The Subrecipient may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Department.

The Subrecipient shall meet applicable DBE requirements when FTA funds are used in whole or in part to finance procurements of and contracts for applicable products and services. The Subrecipient with contracting

opportunities shall sign and submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients*, which is attached as **Certification 1**.

41. ADA Access.

The Subrecipient shall comply with 49 U.S.C. Section 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for seniors and individuals with disabilities. The Subrecipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973; with 29 U.S.C. Section 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA); 42 U.S.C. Sections 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, 42 U.S.C. Sections 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities.

42. Program Fraud and False or Fraudulent Statements or Related Acts.

- A. The Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. Sections 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this program. The Subrecipient certifies or affirms the truthfulness and accuracy of any statement it makes pertaining to the resultant Agreement or the FTA assisted program for which this work is being performed. The Subrecipient further acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Subrecipient to the extent the federal government deems appropriate.
- B. The Subrecipient also acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification to the federal government under a contract connected with a program that is financed in whole or in part with federal assistance originally awarded by FTA, the federal government reserves the right to impose the penalties of 18 U.S.C. Section 1001 on the Subrecipient to the extent the federal government deems appropriate.
- C. The Subrecipient certifies to abide by these clauses and include the clauses in each subcontract financed in whole or in part with FTA funds. The Subrecipient further agrees that these clauses shall not be modified, except to identify the contractor or subcontractor subject to its provisions.
- D. All claims for compensation reimbursement and payment of any amounts due pursuant to this Agreement are governed by the Fraud Against Taxpayers Act, NMSA 1978, Sections 44-9-1 through 44-9-14.

43. Lobbying.

A subrecipient receiving \$100,000 or more of FTA funds in cash or property shall file the Lobbying Certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying" with the application. The Subrecipient shall certify that it has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. Section 1352. If lobbying services for transit purposes are procured with non-Federal funds, the Subrecipient shall submit to the Department OMB Standard Form LLL, Disclosure of Lobbying Activities. The Subrecipient shall submit an initial disclosure form and an updated disclosure form for each calendar quarter in which any event occurs that requires disclosure or that materially affects the accuracy of the information contained in any previously filed disclosure form.

Before awarding a third-party contract exceeding \$100,000, the Subrecipient shall obtain a signed Lobbying Certification from the contractor. Each tier below the contractor awarded a subcontract exceeding \$100,000 shall also provide a Lobbying Certification. Contractors and subcontractors that procure lobbying services for transit

purposes procured with non-Federal funds must file disclosure forms. Such disclosures are forwarded from tier to tier up to the Subrecipient.

44. Officials Not to Benefit.

Neither any member of the New Mexico Legislature nor any member of or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom. The provisions of this clause shall be extended to all public employees, officers, or tribal council members.

45. Clean Water and Air Requirements.

- A. The Subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, 33U.S.C. Sections 1251 *et seq.*, and the Clean Air Act, 42 U.S.C. Sections 7401 *et seq.* The Subrecipient agrees to report each violation to the Department and understands and agrees that the Department shall, in turn, report each violation as required to assure notification to FTA and the appropriate United States Environmental Protection Agency Regional Office.
- B. The Subrecipient agrees to include these requirements in each contract or subcontract exceeding \$150,000.00 and financed in whole or in part with federal assistance provided by the FTA.

46. Energy Conservation

The Subrecipient agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 *et seq.*

47. Debarment and Suspension.

Executive Order No. 12549, "Debarment and Suspension of Participants in Federal Programs," February 18, 1986, 31 U.S.C. Section 6101 note, as amended by Executive Order No. 12689, "Debarment and Suspension," August 16, 1989 31 U.S.C. Section 6101 note, as implemented by 2 C.F.R. Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200 prohibits FTA subrecipients from contracting for goods and services from organizations that have been suspended or debarred from receiving federally-assisted contracts. Subrecipients shall include the certification and instruction language contained at 2 C.F.R. Part 1200 in all Invitations for Bids and Requests for Proposals (for inclusion by contractors and subcontractors in their bids or proposals) for all contracts expected to equal or exceed \$25,000.00, regardless of the type of contract to be awarded.

The Subrecipient is required to verify that none of the Subrecipient's principals or affiliates are excluded or disqualified as defined, as defined by 2 C.F.R. Part 1200. By signing and submitting this Agreement, the Subrecipient certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder/Subrecipient or proposer/Subrecipient knowingly rendered an erroneous certification, in addition to remedies available to the Department, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder/Subrecipient or proposer/Subrecipient agrees to comply with the requirements of 2 C.F.R. Part 1200 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder/Subrecipient or proposer/Subrecipient further agrees to include a provision requiring such compliance in its lower tier covered transactions.

48. Notification Related to Fraud, Waste, Abuse, or Other Legal Matters

If a current or prospective legal matter that may affect the Federal Government emerges, the Subrecipient shall promptly notify the Department so that it can notify the Federal Government. The Subrecipient shall include a

similar notification requirement in its third-party agreements and shall require each third-party participant to include an equivalent provision in its subagreements exceeding \$25,000 at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.230 and 1200.230. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

49. Seat Belt Use

The Subrecipient agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by (1) adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and (2) including a “Seat Belt Use” provision in each third party agreement related to the Award.

50. Safe Operation of Motor Vehicles

The Subrecipient agrees to comply with: (1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); (2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and (3) the following U.S. DOT Special Provision pertaining to Distracted Driving:

(i) Safety. The Subrecipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Subrecipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award;

(ii) Size. The Subrecipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and

(iii) Extension of Provision. The Subrecipient agrees to encourage its contractors to comply with this Special Provision and include this Special Provision in each third-party contract at each tier supported with federal assistance.

51. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

[Public Law 115-232](#), section 889, prohibits entering into a contract (or extending or renewing a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

52. Federal Tax Liability and Recent Felony Convictions.

The Subrecipient hereby certifies that it does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

53. Trafficking in Persons.

The Subrecipient agrees that it and its employees that participate in this contract, may not engage in severe forms of trafficking in persons during the period of time that this agreement is in effect, procure a commercial sex act during the period of time that this agreement is in effect, or use forced labor in the performance of any activities covered by this agreement.

54. System for Award Management (SAM) Requirements.

Prior to payment of invoices and receipt of vehicles and equipment, the Subrecipient shall register and maintain current registration with [SAM.gov](https://sam.gov). Registration requires having a Unique Entity Identifier. The Department shall not provide vehicles, or make payments, until the Subrecipient demonstrates that it is registered with SAM.gov.

55. Severability.

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

56. Scope of Agreement.

This Agreement incorporates and supersedes all of the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreements or understandings of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

57. Applicable Law and Venue; Federal Changes.

The Subrecipient shall comply with all federal, State, and local laws, ordinances, rules, warranties, assurances, and regulations applicable to the performance of this Agreement. This includes all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the current year's Master Agreement between the Department and the FTA. The Subrecipient shall make as part of this Agreement between the Department and the Subrecipient the assurances and warranties which were signed as part of the grant award. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

58. Incorporation of FTA Terms.

Provisions of this Agreement include, in part, certain Standard Terms and Conditions required by the U.S. DOT. All contractual provisions required by the U.S. DOT, as set forth in FTA circulars 5010.1, as amended, 4220.1, as amended, 9040.1 (Section 5311/5339), as amended, and 9070.1 (Section 5310), as amended are incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Subrecipient shall not perform any act, fail to perform any act, or refuse to comply with any Department request, which would cause the

Department to be in violation of FTA terms and conditions, as referenced in the current FTA Master Agreement, which shall prevail and be the instrument governing the receipt of Federal assistance from the FTA. The Master Agreement can be viewed on the [FTA website](#).

59. Amendment.

The terms of this Agreement may be altered, modified or amended by an instrument in writing executed by the parties. Specifically excluded from this requirement are revisions to transportation services and fare schedules identified in the Operations Profile. *Section 1. Scope of Program, Paragraphs C and D*, details how such changes are to be approved and documented.

The remainder of this page is intentionally left blank.

In witness whereof, each party is signing this Agreement on the date stated below that party’s signature. This Agreement becomes effective on the date the last party signed the Agreement.

New Mexico Department of Transportation

City of Carlsbad

NMDOT Cabinet Secretary or Designate

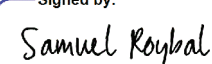
Signature

Name/Title of Signing Official (please print)

Date

Date

Approved as to Form and Legal Sufficiency by the Department’s Office of General Counsel.

Signed by:

57B9FC4FE09B464...

NMDOT Office of General Counsel

08/28/26

Date

ATTACHMENT A

§200.331 Requirements for pass-through entities.

All pass-through entities must:

Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward.

ATTACHMENT A - 1
SUBAWARD INFORMATION AS REQUIRED BY 2 CFR 200.332 REQUIREMENTS FOR PASS-THROUGH ENTITIES

(1) Federal Award Identification	
(i) Subrecipient name (which must match the name associated with its unique entity identifier)	Carlsbad, City of
(ii) Vendor's unique entity identifier (UEI)	LKCDUTRJHFY6
(iii) Federal Award Identification Number (FAIN)	TBD
(iv) Federal Award Date	3/15/2025
(v) Subaward Period of Performance Start and End Date	10/1/2026 through 9/30/2027
(vi) Subaward Budget Period Start and End Date	10/1/2026 through 9/30/2027
(vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient	Administrative \$240,646.40 Operating \$617,492.65
(viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation	Administrative \$240,646.40 Operating \$617,492.65
(ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity	Administrative \$240,646.40 Operating \$617,492.65
(x) Federal award project description, as required by the Federal Funding Accountability and Transparency Act (FFATA)	FY25 5311 Rural Transit Appropriation for FY27 Program Funding Award
(xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity	Federal Transit Administration, New Mexico Department of Transportation David Harris - 505 -699-4350, DavidC.Harris@dot.nm.gov, P.O. Box 1149 Santa Fe, NM 87501-1149
(xii) Assistance Listings title and number; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listing Number number at time of disbursement	20.509
(xiii) Identification of whether the award is R&D	No R&D
(xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect costs	N/A
(2) All requirements imposed by the pass-through including requirements imposed by Federal statutes, regulations and the terms and conditions of the Federal award	See MOA
(3) Any additional requirements that the pass-through entity imposes on the subrecipient for the pass-through entity to meet its responsibilities under the Federal award. This includes information and certifications (see §200.415 Required certifications) required for submitting financial and performance reports that the pass-through entity must provide to the Federal agency	See MOA
(4) Indirect cost rate	N/A
(5) A requirement that the subrecipient permit the pass-through entity and auditors to access the subrecipient's records and financial statements for the pass-through entity to fulfill its monitoring requirements	See MOA Section 29. Access to FTA Reviews and Plans and Section 30. Access to Records
(6) Appropriate terms and conditions concerning closeout of the subaward	See MOA Section 3. Method of Payment

ATTACHMENT A - 2
SUBAWARD INFORMATION AS REQUIRED BY 2 CFR 200.332 REQUIREMENTS FOR PASS-THROUGH ENTITIES

(1) Federal Award Identification	
(i) Subrecipient name (which must match the name associated with its unique entity identifier)	Carlsbad, City of
(ii) Vendor's unique entity identifier (UEI)	LKCDUTRJHFY6
(iii) Federal Award Identification Number (FAIN)	TBD
(iv) Federal Award Date	3/9/2024
(v) Subaward Period of Performance Start and End Date	10/1/2026 through 9/30/2029
(vi) Subaward Budget Period Start and End Date	10/1/2026 through 9/30/2029
(vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient	Capital \$349,331.04
(viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation	Capital \$349,331.04
(ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity	Capital \$349,331.04
(x) Federal award project description, as required by the Federal Funding Accountability and Transparency Act (FFATA)	FY24 5339(a) Buses and Bus Facilities Formula Appropriation for FY27 Program Funding Award
(xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity	Federal Transit Administration, New Mexico Department of Transportation David Harris - 505 -699-4350, DavidC.Harris@dot.nm.gov, P.O. Box 1149 Santa Fe, NM 87501-1149
(xii) Assistance Listings title and number; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listing Number number at time of disbursement	20.526
(xiii) Identification of whether the award is R&D	No R&D
(xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect costs	N/A
(2) All requirements imposed by the pass-through including requirements imposed by Federal statutes, regulations and the terms and conditions of the Federal award	See MOA
(3) Any additional requirements that the pass-through entity imposes on the subrecipient for the pass-through entity to meet its responsibilities under the Federal award. This includes information and certifications (see §200.415 Required certifications) required for submitting financial and performance reports that the pass-through entity must provide to the Federal agency	See MOA
(4) Indirect cost rate	N/A
(5) A requirement that the subrecipient permit the pass-through entity and auditors to access the subrecipient's records and financial statements for the pass-through entity to fulfill its monitoring requirements	See MOA Section 29. Access to FTA Reviews and Plans and Section 30. Access to Records
(6) Appropriate terms and conditions concerning closeout of the subaward	See MOA Section 3. Method of Payment

NEW MEXICO DEPARTMENT OF TRANSPORTATION TRANSIT AND RAIL DIVISION

NONDISCRIMINATION ASSURANCE AGREEMENT FOR FEDERAL TRANSIT ADMINISTRATION SUBRECIPIENTS

INTRODUCTION AND INSTRUCTIONS:

Please read the entire Agreement before completing, and do not change or add to the wording of the Agreement. The Agreement is incorporated into and becomes a material part of your contract with NMDOT, and Subrecipients are responsible for complying with the requirements contained therein.

On behalf of this Agreement, the **CITY OF CARLSBAD**; hereinafter referred to as “**Subrecipient**” assures that:

1. Subrecipient will comply with the following laws, regulations, and requirements so that no person in the United States will be denied the benefits of, or otherwise be subjected to discrimination in, any U.S. DOT or FTA assisted program or activity (particularly in the level and quality of transportation services and transportation-related benefits) based on race, color, national origin, religion, sex, disability, or age including:
 - a. Federal transit laws, specifically 49 U.S.C. § 5332 (prohibiting discrimination based on race, color, religion, national origin, sex (including gender identity), disability, age, employment, or business opportunity),
 - b. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d,
 - c. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (prohibiting discrimination based on race, color, religion, sex, (including gender identity and sexual orientation) or national origin,
 - d. Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs,
 - e. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., f. U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 25,
 - g. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, et seq.,
 - h. The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.,
 - i. U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR part 21,
 - j. U.S. DOT regulations, specifically 49 CFR parts 27, 37, 38, and 39, and
 - k. Any other applicable federal statutes that may be signed into law, federal regulations that may be issued, or federal requirements that may be imposed.
2. Subrecipient will comply with federal guidance implementing federal nondiscrimination laws, regulations, or requirements, except as FTA determines otherwise in writing.
3. As required by 49 CFR § 21.7:

NONDISCRIMINATION ASSURANCE 3

- a. Subrecipient will comply with 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR part 21 in the manner that:
- (1) Subrecipient implements its Award,
 - (2) Subrecipient undertakes property acquisitions, and
 - (3) Subrecipient operates all parts of its facilities, as well as its facilities operated in connection with its Award.
- b. This assurance applies to its Award and to all parts of its facilities, as well as its facilities used to implement its Award.
- c. Subrecipient will promptly take the necessary actions to carry out this assurance, including the following:
- (1) Notifying the public that discrimination complaints about transportation-related services or benefits may be filed with U.S. DOT or FTA Headquarters Office of Civil Rights, and
 - (2) Submitting information about its compliance with these provisions to U.S. DOT or FTA upon their request.
- d. If Subrecipient transfers U.S. DOT or FTA assisted real property, structures, or improvements to another party, any deeds and instruments recording that transfer will contain a covenant running with the land assuring nondiscrimination:
- (1) While the property is used for the purpose that the federal assistance is extended, or
 - (2) While the property is used for another purpose involving the provision of similar services or benefits.
- e. The United States has a right to seek judicial enforcement of any matter arising under:
- (1) Title VI of the Civil Rights Act, 42 U.S.C. § 2000d,
 - (2) U.S. DOT regulations, 49 CFR part 21, or
 - (3) This assurance.
- f. Subrecipient will make any changes in its Title VI implementing procedures, as U.S. DOT or FTA may request, to comply with:
- (1) Title VI of the Civil Rights Act, 42 U.S.C. § 2000d,
 - (2) U.S. DOT regulations, 49 CFR part 21, and
 - (3) Federal transit law, 49 U.S.C. § 5332.
- g. Subrecipient will comply with applicable federal guidance issued to implement federal nondiscrimination requirements, except as FTA determines otherwise in writing.
- h. Subrecipient will extend the requirements of 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR part 21 to each Third Party Participant, including any:
- (1) Subrecipient,
 - (2) Transferee,
 - (3) Third Party Contractor or Subcontractor at any tier,
 - (4) Successor in Interest,
 - (5) Lessee, or
 - (6) Other Participant in its Award, except FTA and the Applicant (and later, the Recipient).
- i. Subrecipient will include adequate provisions to extend the requirements of 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR part 21 to each third party agreement, including each:
- (1) Subagreement at any tier,
 - (2) Property transfer agreement,
 - (3) Third party contract or subcontract at any tier,
 - (4) Lease, or

NONDISCRIMINATION ASSURANCE 3

- (5) Participation agreement.
- j. The assurances you have made on your behalf remain in effect as long as FTA determines appropriate, including, for example, as long as:
 - (1) Federal assistance is provided for its Award,
 - (2) Subrecipient property acquired or improved with federal assistance is used for a purpose for which the federal assistance is extended, or for a purpose involving similar services or benefits,
 - (3) Subrecipient retains ownership or possession of its property acquired or improved with federal assistance provided for its Award,
 - (4) Subrecipient transfers property acquired or improved with federal assistance, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits, or
 - (5) FTA may otherwise determine in writing.
4. As required by U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR part 27, specifically 49 CFR § 27.9, and consistent with 49 U.S.C. § 5332, you assure that:
 - a. Subrecipient will comply with the following prohibitions against discrimination based on disability listed below in subsection 4.b of this Category 01.D Assurance, of which compliance is a condition of approval or extension of any FTA assistance awarded to:
 - (1) Construct any facility,
 - (2) Obtain any rolling stock or other equipment,
 - (3) Undertake studies,
 - (4) Conduct research, or
 - (5) Participate in any benefit or obtain any benefit from any FTA administered program.
 - b. In any program or activity receiving or benefiting from federal assistance that U.S. DOT administers, no qualified individual with a disability will, because of his or her disability be:
 - (1) Excluded from participation,
 - (2) Denied benefits, or
 - (3) Otherwise subjected to discrimination.

AFFIRMATION OF APPLICANT

Name of Applicant: _____

Printed Name of Authorized Representative: _____

Relationship of Authorized Representative: _____

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature: _____ Date: _____

Printed Name of Signing Official: _____

DISADVANTAGE BUSINESS ENTERPRISE CERTIFICATION 1

**NEW MEXICO DEPARTMENT OF TRANSPORTATION
TRANSIT AND RAIL DIVISION**

**DISADVANTAGED BUSINESS ENTERPRISE
RACE-NEUTRAL IMPLEMENTATION AGREEMENT
FOR
FEDERAL TRANSIT ADMINISTRATION SUBRECIPIENTS**

INTRODUCTION AND INSTRUCTIONS:

The New Mexico Department of Transportation (NMDOT) Transit and Rail Division, through the NMDOT Office of Equal Opportunity Programs (OEOP), must ensure that Subrecipient of Federal Transit Administration (FTA) funds meet applicable DBE requirements when funds are used in whole or in part to finance procurement and contracts of products and service(s). To that end, Subrecipient with contracting opportunities must submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients* (Agreement).

Please read the entire Agreement before completing, and do not change or add to the wording of the Agreement. The Agreement is incorporated into and becomes a material part of your contract with NMDOT, and Subrecipients are responsible for complying with the requirements contained therein.

DISADVANTAGE BUSINESS ENTERPRISE CERTIFICATION 1

DISADVANTAGED BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENTATION AGREEMENT for CITY OF CARLSBAD; hereinafter referred to as “Subrecipient.”**I. Definition of Terms**

The terms used in this agreement have the meanings defined in 49 CFR Part 26.5.

II. OBJECTIVE/POLICY STATEMENT (§26.1, 26.23)

The Subrecipient intends to receive federal financial assistance from the U.S. Department of Transportation (USDOT) through the New Mexico Department of Transportation (NMDOT), and as a condition of receiving this assistance, the Subrecipient will sign the New Mexico Department of Transportation’s Disadvantaged Business Enterprise Race Neutral Implementation Agreement (hereinafter referred to as Agreement).

The Subrecipient must implement a policy to ensure that DBEs, as defined in 49 CFR Part 26 (also referred to as the DBE Program), have an equal opportunity to receive and participate in DOT-assisted contracts. It is also their policy:

To ensure nondiscrimination in the award and administration of DOT-assisted procurement and contracts of products and services contracts.

To create a level playing field on which DBEs can compete fairly for DOT-assisted procurement and contracts of products and services contracts.

To ensure that their annual overall DBE participation percentage is narrowly tailored, in accordance with applicable law.

To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.

To help remove barriers to the participation of DBEs in DOT-assisted procurement and contracts of products and services contracts.

To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

III. Nondiscrimination (§26.7)

Subrecipient will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. Subrecipient will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

IV. Race-Neutral Means of Meeting the Annual DBE Goal (§26.51)

Subrecipient will assist NMDOT to achieve its Overall Statewide DBE Goal by race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

Race-neutral means include, but are not limited to, the following:

DISADVANTAGE BUSINESS ENTERPRISE CERTIFICATION 1

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has been historically low;
8. Ensuring distribution of the New Mexico DBE directory, through print and electronic means, to the widest feasible universe of potential contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Subrecipient will encourage utilization of DBE contractors whenever possible on its USDOT-assisted contracts. New Mexico Certified DBE firms and the fields of work in which they participate are listed in the electronic web-based DBE Directory located at <https://nmdot.dbesystem.com>

V. Quotas (§26.43)

Subrecipient will not use quotas or set asides in any way in the administration of the DBE Program.

VI. DBE Liaison Officer (§26.25)

DISADVANTAGE BUSINESS ENTERPRISE CERTIFICATION 1

Subrecipient must designate a DBE Liaison Officer (DBELO). DBELO is responsible for implementing the DBE Program as it pertains to the Subrecipient and ensures that the Subrecipient is fully and properly advised concerning DBE Program matters.

VII. Federal Financial Assistance Agreement Assurance (§26.13)

The Subrecipient will sign the following assurance, applicable to and to be included in all USDOT-assisted procurements and contracts for products and services:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

VIII. Required Contract Clauses (§§26.13, 26.29)

Subrecipient assures that the following clauses will be included in each USDOT-assisted prime contract:

A. Contract Assurance

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted procurement and contracts of products and services contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate.

B. Prompt Payment

Prompt Progress Payment to Subcontractors

A prime contractor or subcontractor shall pay to any subcontractor not later than 10 days of receipt of each progress payment. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with NMDOT's prior written approval. Any violation of this Section shall subject the violating contractor or subcontractor to penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Prompt Payment of Retainage

DISADVANTAGE BUSINESS ENTERPRISE CERTIFICATION 1

Subrecipient shall include either (1), (2), or (3) of the following provisions in their USDOT-assisted contracts to ensure prompt and full payment of retainage (withheld funds) to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

2. No retainage will be held by the agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies provided by law. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

IX. Bidders List (§26.11)

The Subrecipient will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its USDOT-assisted procurement and contracts for products and services. The bidders list will include the name, address and telephone number of each quoting firm and whether the quoter is a New Mexico certified DBE. Subrecipient will include language in its procurement documents that require each bidding Contractor, at the time that bids are submitted, to list the quotes received for the project as detailed above.

X. Reporting

Subrecipient will report bidders list and related DBE information to the NMDOT Transit and Rail Division or the NMDOT Office of Equal Opportunity Programs upon request.

DISADVANTAGE BUSINESS ENTERPRISE CERTIFICATION 1

Subrecipient will complete and submit annually to the NMDOT Office of Equal Opportunity Programs the NMDOT Annual Profile Registration Form. This Form will be mailed to Subrecipient.

Subrecipient will compile and provide other information related to its procurements and the DBE Program as deemed necessary by the NMDOT Transit and Rail Division or the NMDOT Office of Equal Opportunity Programs.

XI. Incorporation of Agreement

This Agreement is incorporated into Subrecipient’s financial assistance agreement with NMDOT by reference and made a part of that agreement.

Date:
Signature of Subrecipient Official:
Printed Name of Subrecipient Official:
Title of Subrecipient Official:



**CITY OF CARLSBAD
AGENDA BRIEFING
MEMORANDUM**

Council Meeting Date: September 8, 2026

DEPARTMENT: Community Development	BY: Dina Navarrette	DATE: 09/01/2026
SUBJECT: Consider Approval of First Renewal and Amendment to Agreement between the City of Carlsbad and Carlsbad MainStreet for Promotion and Operation of the Cavern Theatre		
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) The City wishes to renew its agreement with Carlsbad MainStreet to promote and operate the Cavern Theatre. The original agreement expired on February 28th, 2026, but MainStreet continued to manage, operate, and promote the Cavern Theatre with the knowledge and consent of the City and the parties acknowledge and agree that the terms and conditions of the Original Agreement governed their respective rights and obligations during the period from March 1, 2026, through the Effective Date of this Agreement. The agreement will expire on March 1st, 2027; upon the expiration of the term it may be renewed for no more than two (2) additional one (1) year terms upon the agreement of both parties. The compensation will be renegotiated between the parties for any subsequent years. MainStreet will provide the City with full Operation, Management, and Promotional Services for various performances, from plays and musicals to concerts and community events. MainStreet shall collect and remit to the City the Event Fee of \$2.00 event fee to the City for each ticket sold for a Live Event conducted at the CT The City will make Compensation of Two Hundred Thousand Dollars (\$200,000.00), in 12 monthly payments of \$16,666.67 for operations. The City will provide and pay the costs of professional services to monitor, inspect, maintain, and repair all electronic, sound, lighting, and visual or other specialized equipment. Future contract terms could include profit sharing and will be negotiated within ninety (90) days before the expiration of the initial terms.		
DEPARTMENT RECOMMENDATION: If it is the pleasure of the City Council, staff recommends the agreement be approved		
BOARD/COMMISSION/COMMITTEE ACTION: -		
Reviewed by:		
City Manager: Wendy D Austin		Date: September 3, 2026

Attachments:

1. 26-27 Master - Cavern Theatre Insurance (1)
2. CMS Cavern Theatre First Renewal



CARLMAI-01

HHAYES

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/18/2026

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER WAFD Insurance Group, Inc. Montgomery Insurance Agency PO Box 1568 Carlsbad, NM 88220	CONTACT NAME:		
	PHONE (A/C, No, Ext): (575) 725-2110	FAX (A/C, No): (575) 725-2107	
	E-MAIL ADDRESS: hhayes@maincnm.com		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : USLI (United States Liability Insurance Co)		25895
INSURED Carlsbad Main Street 102 S. Canyon St Carlsbad, NM 88220	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		
	INSURER F :		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE		ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	\$ 1,000,000
		CLAIMS-MADE ☒ OCCUR	X		NPP1646817	6/2/2025	6/2/2026	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
								MED EXP (Any one person)	\$ 5,000
								PERSONAL & ADV INJURY	\$ 1,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$ 2,000,000
		☒ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	\$ Included
		OTHER:						ABUSE AND MOLES	\$ 300,000
		AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$
		ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐						BODILY INJURY (Per person)	\$
		HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY ☐						BODILY INJURY (Per accident)	\$
								PROPERTY DAMAGE (Per accident)	\$
									\$
		UMBRELLA LIAB ☐ OCCUR ☐						EACH OCCURRENCE	\$
		EXCESS LIAB ☐ CLAIMS-MADE ☐						AGGREGATE	\$
		DED ☐ RETENTION \$							\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE ☐ OTH-ER ☐	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y / N		N / A				E.L. EACH ACCIDENT	\$
		If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$
								E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

City of Carlsbad 101 N. Halagueno St. Carlsbad, NM 88220	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Haley Hayes</i>

**FIRST RENEWAL AND AMENDMENT TO
AGREEMENT BETWEEN THE CITY OF CARLSBAD AND
CARLSBAD MAINSTREET FOR
PROMOTION AND OPERATION OF
THE CAVERN THEATRE**

THIS FIRST RENEWAL AND AMENDMENT TO AGREEMENT BETWEEN THE CITY OF CARLSBAD AND CARLSBAD CMS FOR PROMOTION AND OPERATION OF THE CAVERN THEATRE (this "Agreement") is entered into at Carlsbad, New Mexico, this 25th day of August, 2026 ("Effective Date"), by and between the CITY OF CARLSBAD, New Mexico, a municipal corporation (the "City") and the CARLSBAD MAINSTREET PROJECT, INC., a New Mexico non-profit corporation ("CMS").

WHEREAS, the City of Carlsbad (the "City") owns the **Cavern Theatre** ("CT"), which is a contributing historic resource within the Downtown Historic District listed on the New Mexico State Register of Cultural Properties; and

WHEREAS, the City has preserved and restored the CT to ensure its continued use as a historic community venue for motion picture exhibitions, live performances, concerts, educational programs, and other cultural, community, and civic events for the benefit of residents and visitors, and to make the CT available for public use and rental in accordance with the City's policies and this Agreement; and

WHEREAS, on March 1, 2025, the City and Carlsbad MainStreet Project, Inc. ("CMS") entered into that certain **Agreement Between the City of Carlsbad and Carlsbad MainStreet Project, Inc. for Promotion and Operation of the Cavern Theatre** (the "Original Agreement"); and

WHEREAS, Section 6 of the Original Agreement provides that, upon the mutual agreement of the parties, the Original Agreement may be renewed for up to three (3) additional one-year terms; and

WHEREAS, although the parties did not execute a written renewal of the Original Agreement prior to its expiration on February 28, 2026, CMS has continued to manage, operate, and promote the Cavern Theatre with the knowledge and consent of the City; and

WHEREAS, the parties acknowledge and agree that the terms and conditions of the Original Agreement governed their respective rights and obligations during the period from March 1, 2026, through the Effective Date of this Agreement; and

WHEREAS, the parties now desire to exercise the first renewal authorized by Section 6 of the Original Agreement and to amend certain provisions of the Original Agreement as set forth herein; and

WHEREAS, the City finds that continuing its partnership with CMS for the management, operation, and promotion of the Cavern Theatre serves a valid public purpose and is in the best interests of the City and the citizens of Carlsbad.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.**

- A. **"Commercial Feature Film"** means a feature-length motion picture produced for commercial theatrical distribution and exhibited as part of the CT's regular motion picture programming.
- B. **"CT" or "the CT"** shall mean the property commonly known as the CAVERN THEATRE, 210 N. Canyon St., Carlsbad, New Mexico, and more particularly described on the attached Exhibit "A". Said parcel or real estate and all fixtures, appliances, improvements, buildings, and appurtenances thereto are referred to as the "CT".
- C. **"Live Event"** shall mean a concert, theatrical production, comedy show, lecture, speaker presentation, live performance, exhibition, banquet, meeting, conference, or other event conducted at the CT for which admission is obtained by the purchase of a ticket. Notwithstanding the foregoing, the term does not include the exhibition of commercial feature films; provided, however, that the City may designate, upon written notice to CMS, a commercial feature film exhibition as a Live Event if the exhibition is conducted as part of a special event, festival, fundraiser, premiere, or other comparable event.
- D. **"Operation and Management Services"** shall include, but not be limited to:
 - i. In coordination with the City Manager and the City Council, developing, promulgating, and publishing rules, regulations, standardized agreements, and fee schedules for the use of the CT;
 - ii. Coordinating, facilitating, and scheduling the use of the CT. The CT shall be available for public use on a first-come, first-served basis, subject to the City's rules, regulations, standardized agreements, fee schedules, and applicable policies. CMS may host or sponsor events at the CT subject to the same rules, regulations, standards, and conditions applicable to other users of the CT; provided, however, that CMS shall not be required to pay a facility rental fee or security deposit.
 - iii. Complying with all applicable local, state, and federal laws, ordinances, codes, rules, regulations, and City policies, and obtaining and maintaining any and all permits, licenses, or certifications, or other authorizations or charges that may be necessary to carry out the operations contemplated by this Agreement, including, but not limited to all laws, codes, rules, and regulations regarding copyright and performance licenses, permissions, and

fees. CMS shall require all its agents, employees, officers, representatives, assigns, customers, patrons, or invitees, and all others who use or occupy the CT to comply with all applicable local, state, and federal laws, ordinances, codes, rules, regulations, and policies.

- iv. Keeping CT in a safe, sanitary, and sightly condition in accordance with all applicable laws, ordinances, codes, rules, regulations, and policies. CMS shall provide all janitorial services and all other services necessary to maintain the CT in a clean and orderly fashion, free of litter, trash, and debris. The City shall properly dispose of all litter, trash, and debris. CMS's duties shall include, without limitation, those duties shown to be performed by CMS in Exhibit "B".
- v. Performing such other oversight and management services as may be necessary to ensure the full utilization of the CT for programming, events, and facility use in accordance with this Agreement and the City's policies;
- vi. Attending meetings as may be requested from time to time with the City Manager, City staff, committees, and/or the governing body of the City;
- vii. Preparing and submitting monthly and quarterly reports in the format as agreed to by the parties and shall include, at a minimum, the information listed on Exhibit "C".
 - a) **Monthly Operations and Management Report.** CMS shall provide its completed Monthly Operations and Management report to the Director of Community Services no later than 4:00 p.m. on the third Tuesday of the month following the month for which the report is made.
 - b) **Monthly Event Fee Report.** CMS shall provide its completed Monthly Event Fees report to the Director of Community Services no later than 4:00 p.m. on the third Tuesday of the month following the end of the applicable calendar quarter.
- viii. Reporting within two (2) business days to the City in writing any damage, loss, vandalism, or destruction to the CT, and the City will respond back within two (2) business days; and
- ix. Performing such additional duties as may from time to time be mutually agreed to by the parties.

E. **"Promotional Services"** shall mean advertising, publicizing and promoting the CT, its facilities, and its events and related attractions and events within the Carlsbad area to develop and maintain the full utilization of the CT. This shall

include, but not be limited to the use of social media, the creation, development, and maintenance of a website advertising, publicizing, and promoting the CT, providing and maintaining an online ticket sales platform for events at CT, and such other promotional and marketing activities as are reasonably necessary to maximize public awareness and attendance.

2. **AS-IS Condition of the CT.** Prior to the commencement of this Agreement, CMS acknowledges that it has occupied, operated, examined, and inspected the CT, including its buildings, improvements, fixtures, City-owned equipment, and appurtenances, and is familiar with their existing condition and state of repair. Except for the obligations expressly assumed by the City under this Agreement, CMS accepts the CT in its existing **AS-IS, WHERE-IS CONDITION**, with all faults, without any representation or warranty by the City, express or implied, concerning the condition of the CT or its fitness or suitability for any particular use or purpose. Nothing in this Section relieves either party of any maintenance, repair, replacement, or other obligation expressly assigned to that party under this Agreement.
3. **CMS Provided Services.** Using sound business practices and in accordance with industry standards, CMS shall provide the City with full Operation and Management Services and full Promotional Services. CMS shall use commercially reasonable best efforts to maximize revenues from the use of the CT, including, but not limited to, marketing, sales, event production and promotion. Without limiting the foregoing, CMS shall also be responsible for the following:
 - A. **Equipment and Operating Supplies.** CMS shall furnish all operating supplies, office supplies, expendable materials, equipment, furnishings, and tools necessary to perform its obligations under this Agreement. CMS shall be solely responsible for the operation, maintenance, repair, and replacement of its own equipment, tools, furnishings, supplies, and other personal property furnished by CMS.
 - B. **Personnel.** CMS shall provide all personnel necessary to perform its obligations under this Agreement. CMS shall be solely responsible for the selection, supervision, scheduling, compensation, training, and performance of such personnel, who shall at all times remain employees or contractors of CMS and shall not be deemed employees of the City for any purpose.
 - C. **Protection of the CT.** CMS shall exercise reasonable care to protect the CT and all City-owned furnishings, fixtures, equipment, and improvements from damage, misuse, or waste during the performance of its obligations under this Agreement. CMS shall promptly notify the City of any condition requiring maintenance or repair or of any damage to the CT or City-owned property. Except as expressly authorized in writing by the City pursuant to this Agreement, CMS shall not perform or permit any maintenance, repair, alteration, improvement, construction, demolition, or other work affecting the CT.

D. **Security Cameras.**

- i. **Installation and Operation.** CMS shall be responsible for purchasing, installing, operating, maintaining, repairing, and replacing, as necessary, a security camera system for the CT. The security camera system shall provide video coverage of such public areas as may be reasonably approved by the City and shall be operated in compliance with applicable federal and state law.
- ii. **City Access.** CMS shall provide the Carlsbad Police Department and other authorized City personnel with read-only access to live and recorded video from the security camera system for law enforcement, public safety, emergency response, security, risk management, investigative purposes, and other lawful governmental purposes.
- iii. **Preservation of Recordings.** CMS shall preserve recordings relating to any incident, investigation, claim, or legal proceeding upon request of the City or the Carlsbad Police Department until authorized by the City to delete or destroy such recordings.
- iv. **Maintenance.** CMS shall promptly notify the City of any material malfunction or outage affecting the security camera system and shall diligently pursue repairs to restore the system to normal operation.
- v. **Ownership.** During the Term of this Agreement, the security camera system and all related equipment shall remain the property of CMS. Upon the expiration or earlier termination of this Agreement, ownership of the installed security camera system and all related equipment shall automatically transfer to the City without additional consideration.

E. **Intellectual Property Rights and Performance Licenses.** CMS shall ensure that all licenses, permits, permissions, consents, agreements, and other rights necessary for the lawful presentation, exhibition, performance, reproduction, or other use of copyrighted, trademarked, or otherwise protected works in connection with the operation of the CT and events conducted pursuant to this Agreement are obtained and maintained. Such rights include, without limitation:

- i. Motion picture exhibition licenses;
- ii. Public performance licenses for musical works;
- iii. Dramatic performance rights;
- iv. Copyright licenses and permissions;
- v. Artist, performer, promoter, producer, presenter, and similar agreements; and

- vi. Any other licenses, permissions, agreements, or intellectual property rights required by applicable law.

CMS shall obtain such rights when it is responsible for producing, presenting, promoting, or managing an event. For events conducted by sponsors, renters, licensees, exhibitors, performers, concessionaires, or other third parties, CMS shall require such parties to obtain and maintain all licenses, permits, permissions, agreements, and other rights required for their respective activities unless CMS has expressly agreed in writing to obtain them on the third party's behalf.

4. **City Provided Services.**

- A. **Utilities.** The City shall be responsible for water, sewer, garbage, electrical, and natural gas and internet utility service for the CT. The City shall also be responsible for the operation, maintenance, repair, and replacement of the HVAC system. CMS may operate the HVAC system only in accordance with procedures established by the City and shall promptly notify the City of any malfunction or condition requiring service.
- B. **Maintenance Services.** The City shall provide such services as shown to be performed by the City in Exhibit "B" attached hereto.
- C. **Equipment and Furnishings.** The City shall make available for CMS's use furniture, furnishings, equipment, and other personal property necessary for the operation of the CT. Exhibit "D" identifies certain equipment and furnishings available for CMS's use under this Agreement but is not intended to be an exhaustive inventory of all City-owned property located at the CT.
- D. **Capital Outlay.** The City may, in its sole discretion, pursue various funding sources to include, but not be limited to, legislative appropriations, and state and federal grants in order to provide for capital improvements to the CT as determined by the governing body of the City. In the event the City obtains such funds, it shall coordinate the priority and scheduling of any such improvements with CMS. This clause shall in no way commit the City to seek any specific funding or make improvements to the CT.
- E. **Professional Equipment Services.** The City shall provide and pay the costs of professional inspection, maintenance, repair, programming, calibration, and other specialized technical services required for the electronic, sound, lighting, visual or other specialized equipment and other specialized theater equipment owned by the City.
- F. **Lighting Equipment.** The City shall provide and replace, at its sole cost and expense, all specialized architectural and theatrical lighting equipment, to include all lamps, bulbs, tubes, LED modules, and other lighting components reasonably

necessary to maintain the normal operation of such systems.

5. **Miscellaneous Provisions.**

- A. **City use of CT.** Notwithstanding any provision to the contrary, the City shall have the right to use all or portions of the CT, and the right to schedule events it sponsors provided that such use does not interfere with previously scheduled events or uses. The City shall have immediate use of the CT, regardless of previously scheduled events or uses, when, in the City's sole opinion, there is an emergency or a public health or safety matter. All uses of the CT by the City or at the City's direction shall be free of charge. The City shall reimburse CMS for the reasonable, documented costs of expendable supplies and extraordinary operating expenses directly incurred as a result of such emergency use.
- B. **Initial Fee Structure.** Until such time as the City Council adopts the rules, regulations, standardized agreements, deposits, and fee schedules contemplated by Section 1.D.i of this Agreement, CMS may establish and implement interim rules, standardized agreements, deposits, and fee schedules for the operation of the CT, subject to review by the City Manager. Upon adoption by the City Council, the City-approved rules, agreements, deposits, and fee schedules shall govern.
- C. **Waiver of Fees.** All events or uses of CT, excepting those uses included in Subparagraph 5.A., above, shall be subject to the payment of all the then current deposits, fees, commissions, and charges.
- D. **Alcohol Service.**
 - i. **License Required.** CMS shall not sell, serve, dispense, or permit the consumption of alcoholic beverages on the Premises unless it has obtained and maintains a valid Special Independent Theater Dispensing License issued pursuant to NMSA 1978, § 60-6A-35.1, as amended from time to time (the "License"), together with any other licenses, permits, or approvals required by applicable law.
 - ii. **Compliance with Law.** CMS may serve alcoholic beverages only to the extent authorized by the License and applicable law. CMS shall, at its sole cost and expense, comply with the Liquor Control Act, all applicable rules and regulations of the New Mexico Regulation and Licensing Department, Alcoholic Beverage Control Division, and all applicable federal, state, and local laws, ordinances, regulations, orders, and permit conditions, including all conditions imposed by the License, each as amended from time to time.

- iii. **Server Requirements.** CMS shall ensure that all persons serving or dispensing alcoholic beverages hold all server permits, certifications, and training required by applicable law and shall be responsible for ensuring that alcoholic beverages are served in a lawful and responsible manner.
- iv. **Governing Body Approval.** The parties acknowledge that issuance of the License is contingent upon approval by the City Council acting as the governing body of the local option district, as required by § 60-6A-35.1, as amended from time to time. Nothing in this Agreement shall be construed as obligating the City Council to approve, renew, or otherwise support CMS's application for the License. Any action by the City Council regarding such approval shall be taken in accordance with applicable law and in the exercise of its legislative discretion.
- v. **City Authority.** The City, as owner of the Premises, may prohibit, suspend, or impose reasonable conditions upon the service of alcoholic beverages at any event upon a determination by the Mayor or City Manager that such action is reasonably necessary to: (a) protect the public health, safety, or welfare; (b) protect City property; (c) address inadequate security or crowd control; (d) respond to prior violations of this Agreement or applicable law; (e) otherwise ensure the safe and orderly operation of the Premises; or (f) to comply with applicable law or governmental order. The exercise of this authority shall not require prior approval of the City Council.
- vi. **Notice of Alcohol Service.** CMS shall provide the City with written notice not less than ten (10) business days before any event at which alcoholic beverages will be served. Upon request, CMS shall provide information regarding the event(s), anticipated attendance, hours of alcohol service, security plan, and any other information reasonably requested by the City. CMS shall promptly notify the City of any material changes to the information provided.
- vii. **Security.** Whenever alcoholic beverages are served, CMS shall provide, at its sole cost and expense, a minimum of one (1) security officer for every one hundred (100) anticipated attendees, or fraction thereof, unless the Mayor or City Manager approves a different staffing level. Based upon the nature of the event, anticipated attendance, prior event history, the presence of alcohol, or other public safety considerations, the Mayor or City Manager may require additional security personnel as a condition of permitting alcohol service.
- viii. **Costs and Liability.** CMS shall be solely responsible for all costs associated with obtaining and maintaining the License, providing required security, and complying with this Section. Except for any governing body approval required by applicable law as a condition to issuance of the

License, nothing in this Agreement shall be construed as requiring the City to obtain, maintain, sponsor, support, or assist CMS in obtaining or renewing the License or any other authorization for the service of alcoholic beverages.

- ix. **Notice of Enforcement Action.** CMS shall notify the City in writing within two (2) business days after receiving notice of any complaint, citation, warning, investigation, suspension, revocation proceeding, or other enforcement action relating to the License or the service of alcoholic beverages at the CT. CMS shall provide copies of all material correspondence received from or submitted to the Alcoholic Beverage Control Division relating to such matter.
- x. **Default.** A material violation of this Section or the suspension, revocation, expiration, failure to maintain the License or repeated violations of applicable liquor laws shall constitute a default under this Agreement, subject to the applicable notice and cure provisions.

6. **Term.**

- A. **Renewal Term.** The parties hereby mutually exercise the first renewal authorized by Section 6 of the Original Agreement. The renewal term shall commence on March 1, 2026, and shall expire on February 28, 2027, unless sooner terminated in accordance with this Agreement.
- B. **Future Renewals.** Upon expiration of the renewal term, this Agreement may be renewed for up to three (3) additional one-year terms upon the mutual written agreement of the parties.
- C. **Notice of Intent to Renew.** Not later than ninety (90) days before the expiration of the then-current term, CMS shall provide written notice to the City of its desire to negotiate a renewal of this Agreement. Failure to provide such notice shall not preclude the parties from mutually agreeing in writing to renew this Agreement.
- D. **Annual Appropriation.** Notwithstanding any provision of this Agreement to the contrary, the City's obligations under this Agreement are subject to the annual appropriation of sufficient funds by the Governing Body of the City. If sufficient funds are not appropriated for the City's performance under this Agreement, the City may terminate this Agreement without penalty upon written notice to CMS. The City's termination shall be effective upon the date specified in the written notice.

7. **Termination.** Either party may terminate this Agreement without cause by providing the other party with written notice of its intention to terminate this Agreement at least ninety (90) days prior to the termination date. The notice shall specify the effective date of termination. Unless otherwise agreed in writing by the parties, CMS shall continue to

perform its obligations under this Agreement through the effective date of termination, and the City shall continue to perform its obligations and make payments required under this Agreement through the effective date of termination.

8. **Compensation, Fees, and Revenues.** Compensation paid pursuant to this Agreement shall be used exclusively to support CMS's management, operation, and promotion of the CT, including, without limitation, personnel costs, programming expenses, movie licensing subscriptions, movie rights, performer and artist contracts, marketing, administrative expenses, educational programming, concession operations, and other expenses reasonably related to the performance of this Agreement.
- A. **Annual Compensation.** In consideration for the services rendered by CMS under this Agreement, the City shall pay CMS annual compensation in the amount of **Two Hundred Thousand Dollars (\$200,000.00)** for the renewal term. The annual compensation shall be paid in twelve (12) equal monthly installments of **Sixteen Thousand Six Hundred and Sixty-Six Dollars and Sixty-Six Cents (\$16,666.66)**, payable in accordance with the City's normal payment procedures. Prior to receiving any payment under this Agreement, CMS shall submit a current IRS Form W-9 to the City's Finance Department.
- B. **Compensation for Future Renewal Terms.** If this Agreement is renewed for any additional renewal term, the compensation payable by the City shall be subject to mutual negotiation and written agreement of the parties and shall remain subject to annual appropriation by the City Council.
- C. **Separate Funds.** CMS shall maintain a separate bank account in a local banking institution for all City contributions, operating revenues from all sources, and related expenses associated with the operation of the CT. CMS shall also maintain separate financial statements reflecting all revenues and expenses related to the CT, including a balance sheet and income statement, and shall provide copies of such statements to the City on a monthly basis.
- D. **Invoice.** Payment by the City shall be made only upon receipt of a monthly invoice from CMS. CMS shall submit invoices to the City's Finance Department no later than the third Tuesday of the month following the month for which payment is requested. Each invoice shall be supported by documentation reasonably acceptable to the City and shall include a report detailing the services provided during the billing period, as outlined in Exhibit "C". Each invoice shall include, at a minimum:
- i. A list of the uses of and events held at the CT during the billing period;
 - ii. A list of the uses and events booked during the billing period; and
 - iii. An accounting of all damage deposits, fees, commissions, concession revenues, and any other charges collected, refunded, retained, or remitted by CMS during the billing period.

Payment shall be made within thirty (30) days after receipt of a properly submitted invoice, provided the services have been satisfactorily performed and the invoice is acceptable to the City.

- E. **Additional Compensation.** As additional compensation for services rendered under this Agreement, CMS may retain the fees and charges collected for use of the CT as follows:
- i. For events and uses for which fees or commissions are paid while this Agreement is in effect and which events or uses will occur while this Agreement is in effect:
 - a. Damage deposits, which shall be in the minimum amount of Five Hundred Dollars (\$500.00) per event, and other revenues received by CMS that are to be returned to the user upon completion of the use, shall be retained by CMS but returned to the user, upon the completion of the use. However, if damage occurs during an event, the deposit shall be returned to the City to apply towards the damage.
 - b. Fees and commissions that are not refundable to the user shall be retained by CMS.
 - ii. For events and uses for which fees are paid while this Agreement is in effect but which event or use shall occur after the expiration or termination of this Agreement, then, upon the expiration or termination of this Agreement, CMS shall pay all such monies to the City.
 - iii. Concessions – CMS shall purchase, inventory and restock all items to be sold at the concession stands, to include food, non-alcoholic drinks, cups, packing, supplies and related materials. CMS shall provide staff to operate concessions stands for all movies, events or rentals. CMS shall retain one hundred percent (100%) of all concession sales for this renewal.
- F. **City Portion of Fees.** CMS shall provide to the City all monies, if any, owed to the City pursuant to Subparagraph 8. above, at the same time that CMS submits its invoice to the City, with such submission to occur no later than the 15th day of the month following the month for which the report is made. Each submission shall be delivered to the City Finance Department accompanied by a report in a form mutually agreed to by the parties, fully documenting and accounting for the monies submitted to the City by CMS.
- G. **Future Contract Terms.** Not later than ninety (90) days before the expiration of the then-current renewal term, the parties shall commence discussions regarding any further renewal of this Agreement, including compensation, revenue sharing, concession revenues, operational responsibilities, and any other terms the parties

desire to modify. Nothing contained herein shall obligate either party to agree to a further renewal.

- H. **Event Fees Payable to the City.** CMS shall collect and remit to the City the **Event Fee of Two Dollars (\$2.00)** for each ticket sold for a Live Event conducted at the CT. The Event Fee shall be separately identified as a City fee on the ticket or receipt, or other customer confirmation if commercially practicable. The City of Carlsbad Event Fee collected by CMS are the property of the City, shall be held in trust for the benefit of the City, shall not be commingled with CMS's operating funds, and shall be remitted to the City within fifteen (15) days after the end of each calendar quarter.

If a ticket for a Live Event is refunded or voided before the applicable Event Fee is remitted to the City, no Event Fee shall be due for that refunded or voided transaction. If an Event Fee has already been remitted to the City for a refunded or voided transaction, the amount may be credited against the next quarterly remittance.

As outlined in Exhibit "C," CMS shall submit, together with each quarterly remittance to the City, an accounting identifying: (i) the number of tickets for Live Events sold during the reporting period; (ii) the gross Event Fees collected; (iii) any Event Fee credits claimed for refunded or voided ticket sales, identifying the applicable event and amount of each credit; and (iv) the net Event Fees remitted to the City.

9. **Audit.** Annually, the City may perform and/or have a third party perform an independent audit of all financial transactions, and of expenditures and revenues made and received pursuant to this Agreement. CMS shall cooperate fully with such audit and shall provide access to and copies of all records, documents, and other information of any form or type reasonably necessary to conduct and complete such an audit. CMS will prepare audit workpaper schedules as requested by the auditor. The audit may include an evaluation of the system of internal controls and accounting procedures. If the auditor's report or management letter includes any issues with respect to CMS's accounting controls or systems, CMS will correct the issues within a reasonable period of time.

10. **Use of the CT.**

- A. **Permitted Uses.** CMS shall use the CT solely for the operation, management, promotion, scheduling, and rental of the CT in accordance with this Agreement. CMS shall not use, or permit the use of, the CT for any purpose outside the scope of this Agreement without the prior written approval of the City Manager. If CMS becomes aware of any unauthorized use of the CT or any use inconsistent with this Agreement, CMS shall promptly notify the City in writing.
- B. **Applicable Laws.** Every use of the CT shall be consistent with all applicable

laws, ordinances, rules, regulations, and policies and as they are now and as they may be made or amended from time to time.

- C. **Unsafe Conditions.** CMS shall not knowingly permit the use of any portion of the CT that CMS reasonably believes presents an unreasonable risk of injury or is unsuitable for its intended use. CMS shall promptly notify the City of any unsafe condition or condition requiring maintenance or repair that comes to CMS's attention.
- D. **Hazardous Uses.** No use of the CT shall create an unreasonable risk to the health or safety of any person or unreasonably interfere with the lawful use and enjoyment of surrounding public or private property.

11. **Signs.**

- A. **Display Areas.** The exterior of the CT includes a marquee and poster display boxes (collectively, the "**Display Areas**"). CMS shall use the Display Areas to advertise, publicize, and promote the CT, events conducted at the CT and other cultural, educational, entertainment, or community events approved by the City. CMS shall keep the Display Areas in a clean, orderly, and well-maintained appearance and shall install, update, and remove promotional materials as necessary to accurately reflect scheduled events. CMS's use of the Display Areas shall comply with all applicable laws, ordinances, codes, rules, regulations, and City policies.
- B. **City Use.** The City reserves the right to use the Display Areas, without charge, to advertise or announce City-sponsored events, public notices, emergency information, or other governmental communications, provided such use does not unreasonably interfere with previously scheduled promotional displays for CT events.
- C. **Temporary Signs.** CMS may display temporary promotional signs, banners, posters, and similar materials customarily associated with CT events, provided such displays comply with all applicable laws, ordinances, codes, rules, regulations, and City policies.
- D. **Permanent Signage.** CMS shall not install, erect, or maintain any permanent sign, banner, monument sign, or other exterior signage at the CT without the prior written approval of the City Manager. Any approved permanent signage shall remain in compliance with all applicable laws, ordinances, codes, rules, regulations, and City policies.

12. **Additions, Alterations, and Improvements.** The CT is a City-owned public facility. CMS acknowledges the historic significance of the CT and agrees that nothing in this Agreement authorizes CMS to perform any work affecting the CT or any structural component, building system, fixture, or other permanent feature of the CT except as expressly authorized in writing by the City.

If the City authorizes any such activity, the following requirements shall apply:

- A. **Prior Approval.** No addition, alteration, improvement, construction, repair, installation, or demolition on the CT shall be performed without the prior written approval of the City Manager.
- B. **Standard of Work.** All authorized work shall be performed in a good and workmanlike manner and in compliance with this Agreement, applicable law, and any conditions imposed by the City in granting its approval.
- C. **City Approval.** The plans and specifications for any authorized work shall be submitted to the City Manager for written approval prior to commencing the work;
- D. **Permits and Approvals.** Before commencement of any authorized work, CMS shall obtain, at its sole cost and expense, all approvals, permits, licenses, and other governmental authorizations required by applicable law. To the extent required by the authority having jurisdiction, CMS shall submit all plans and specifications for review and approval before commencing such work.
- E. **Licensed Contractor.** All authorized work shall be done by appropriately licensed contractors and shall be done in accordance with all applicable laws, ordinances, codes, rules, regulations, and policies.

13. **Title to Improvements and Personal Property.**

- A. **Improvements and Permanent Fixtures.** Except as otherwise expressly provided in this Agreement, all additions, alterations, improvements, and fixtures intended to become a permanent part of the CT and the sole property of the City without compensation to CMS. Notwithstanding the foregoing, the City may authorize the removal of such improvement or fixture in accordance with Section 13 of this Agreement.
- B. **CMS Personal Property and Equipment.** Except as provided in this Agreement. Furniture, furnishings, office equipment, concession equipment, computers, displays, portable audiovisual equipment, trade fixtures, tools, inventory, and other personal property purchased, installed, or owned by CMS shall remain the sole property of CMS unless otherwise agreed in writing by the parties. Nothing in this Agreement shall be construed to transfer ownership of such property to the City except as provided in this Agreement.
- C. **City Property.** All furniture, furnishings, equipment, fixtures, improvements, and other personal property owned by the City and located at the CT shall remain the sole property of the City regardless of whether such property is used, maintained, repaired, or improved by CMS.

14. **Removal of Improvements.**

- A. **Removal During the Term.** Provided CMS is not in default under this Agreement, CMS may request the City's written consent to remove any improvements, fixtures, equipment, or personal property installed by CMS at the CT. CMS shall submit a written request at least thirty (30) days before the proposed removal describing the property to be removed and the proposed method of removal. The City shall not unreasonably withhold, condition, or delay its consent.

Any removal shall be performed at CMS's sole cost and expense in a safe and workmanlike manner. CMS shall promptly repair any damage caused by the removal and restore the affected portion of the CT to substantially the same condition existing immediately before installation of the removed property, reasonable wear and tear excepted.

- A. **Removal Upon Expiration or Termination.** Upon the expiration or earlier termination of this Agreement:
- A. CMS shall remove all of its moveable fixtures and personal property from the CT within thirty (30) days unless the City agrees in writing that such property may remain.
 - B. Permanent improvements that have become part of the CT pursuant to Section 12 shall remain the property of the City unless the City, in its sole discretion, directs CMS in writing to remove all or a portion of such improvements.
 - C. If the City directs CMS to remove any improvements or other property, CMS shall complete the removal within thirty (30) days after receipt of the City's written notice, unless the City approves a longer period in writing.
 - D. CMS shall perform all removal work in a safe and workmanlike manner and, at its sole cost and expense, shall repair all damage caused by the removal and restore the affected portions of the CT to substantially the same condition existing immediately before installation of the removed property, reasonable wear and tear excepted.
 - E. If CMS fails to timely remove property required to be removed under this Section, the City may remove the property, restore the CT, and invoice CMS for all reasonable costs incurred. Such costs shall be due and payable within thirty (30) days after CMS's receipt of the City's invoice.
 - F. Any moveable fixtures or personal property of CMS remaining at the CT more than thirty (30) days after expiration or termination of this Agreement, or after expiration of any extension approved by the City,

may, at the City's sole option, be deemed abandoned and become the property of the City without compensation to CMS. The City may alternatively remove and dispose of such property at CMS's expense.

15. **Taxes, Licenses, and Permits.** CMS shall be solely responsible for:
 - A. **Taxes.** The timely payment of any and all taxes, if any, which may be assessed against equipment, merchandise, or other property belonging to CMS located at the CT.
 - B. **Licenses and Permits.** Obtaining, maintaining, and paying for all licenses, permits, certifications, fees, or other authorizations or charges as required or are necessary under federal, state, or local ordinances, laws, codes, rules, regulations, or policies insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder. CMS shall provide the City with copies of all such permits, licenses, and certifications.
 - C. **Compliance.** CMS shall maintain all required licenses, permits, certifications, and approvals in good standing throughout the term of this Agreement. Suspension, expiration, revocation, or failure to obtain any required license, permit, certification, or approval that materially affects CMS's ability to perform this Agreement shall constitute a default under this Agreement unless cured within the applicable notice and cure period.
16. **Right to Enter and Inspect.** The City, through its officers, employees, agents, contractors, consultants, or other authorized representatives, shall have the right to enter the CT at any reasonable time, upon reasonable notice when practicable, for the purpose of inspecting the CT, verifying CMS's compliance with this Agreement, conducting maintenance or repairs, performing testing or investigations, or carrying out any other lawful governmental purpose. The City may also authorize third parties acting on its behalf to enter and inspect the CT for such purposes. Except in the event of an emergency or as otherwise authorized by this Agreement, the City shall use reasonable efforts to conduct any entry or inspection in a manner that minimizes interference with CMS's operations and scheduled events.
17. **Damage or Destruction.** In the event the CT or any portion of it is totally destroyed or so partially destroyed or damaged as to render it incapable of reasonable use, then the City may, at its sole discretion, elect to: (a) repair or restore the CT or the damaged portion thereof within such time as the City determines is reasonable under the circumstances; or (b) terminate this Agreement upon written notice to CMS, without penalty or further liability to either party, except for obligations that expressly survive termination.

Pending the City's determination, CMS shall suspend operations at the CT to the extent necessary to protect public health and safety and to prevent further damage to the CT. If the City elects to repair or restore the CT, CMS shall cooperate with the City and its contractors to facilitate the work, and the obligations of the parties under this Agreement shall be suspended to the extent they cannot reasonably be performed during the period of repair or restoration.

18. **Insurance.** During the term of this Agreement and for any further time that CMS shall operate, manage, or hold the CT:
- A. **Commercial General Liability Insurance.** CMS shall, at its sole cost and expense, obtain and maintain commercial general liability insurance, written on an occurrence basis, covering claims for bodily injury, personal injury, property damage, contractual liability, and other risks arising out of or relating to CMS's operation, management, and use of the CT. Such insurance shall name the City, its officers, employees, and agents as additional insureds and shall be primary and noncontributory with respect to any insurance maintained by the City. The insurance shall provide limits of not less than **One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) general aggregate**, or such greater limits as may be required by the City or applicable law.
 - B. **Liquor Liability Insurance.** If alcoholic beverages are sold, served, furnished, or otherwise made available at the CT by or through CMS, its employees, agents, contractors, concessionaires, or any event sponsor, CMS shall maintain, or shall require the applicable concessionaire, caterer, event sponsor, or other responsible party to maintain, liquor liability insurance with limits of not less than **One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate**. Such insurance shall name the City, its officers, officials, employees, and agents as additional insureds and shall be primary and noncontributory with respect to any insurance maintained by the City. Prior to any event involving the sale, service, furnishing, or consumption of alcoholic beverages, CMS shall provide the City with a Certificate of Insurance evidencing the required coverage or shall obtain and retain such certificate from the responsible concessionaire, caterer, or event sponsor and make it available to the City upon request.
 - C. **CMS Content Insurance.** CMS shall at its sole cost and expense, obtain and maintain insurance covering all furniture, furnishings, equipment, inventory, merchandise, and other personal property owned by CMS and located at the CT. Except to the extent caused by the negligence or willful misconduct of the City, the City shall not be responsible for any loss of or damage to CMS's personal property. CMS acknowledges that it is solely responsible for determining the nature and amount of insurance necessary to protect its personal property.

- D. Insurance Required of Third Parties.** CMS shall require every concessionaire, caterer, vendor, contractor, event sponsor, renter, licensee, or other third party using or occupying any portion of the CT pursuant to an agreement with CMS to obtain and maintain Commercial General Liability Insurance, in amounts reasonably required by the City, covering claims arising out of such party's use or occupancy of the CT. The policy shall name the City and CMS as additional insureds. Prior to such party's use or occupancy of the CT, CMS shall provide the City with a Certificate of Insurance and any required additional insured endorsement evidencing the required coverage.
- E. Certificates of Insurance.** All insurance required by this Agreement shall be issued by one or more insurance companies authorized to transact business in the State of New Mexico and having a financial rating acceptable to the City. No later than the Effective Date of this Agreement, CMS shall provide the City Manager with one or more Certificates of Insurance evidencing the coverages required by this Section 18. Thereafter, CMS shall furnish updated Certificates of Insurance to the City Manager annually and upon each renewal or replacement of any required policy.
- CMS shall promptly notify the City Manager of any cancellation, nonrenewal, material modification, or reduction in coverage of any required insurance policy and shall provide evidence of replacement coverage before the effective date of any cancellation, nonrenewal, or lapse in coverage.
- If CMS fails to obtain or maintain any insurance required by this Agreement, the City may, but shall not be obligated to, obtain such insurance to protect its interests. Any premiums or other costs incurred by the City in obtaining such insurance shall be reimbursed by CMS upon demand and may be recovered by the City as a debt owed by CMS.
- F. Self-Insurance.** CMS may self-insure by filing with the City a letter of credit in the amounts listed above and in the form approved by the City, or by filing another approved promissory or escrowed monetary instrument.
- G. City Property Insurance.** The City shall obtain and maintain property insurance covering the CT building and the City's permanently installed building systems and equipment in such amounts and with such coverages as the City determines appropriate and as may be required by applicable law.
- H. New Mexico Tort Claims Act.** The rights, obligations, liabilities, and remedies of the parties under this Agreement are subject to the provisions of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30, as amended. Nothing contained in this Agreement shall be construed as a waiver of any immunity, defense, limitation of liability, or other protection afforded to the City or its public employees, as defined in the New Mexico Tort Claims Act, or otherwise available under applicable law. No provision of this Agreement shall be

interpreted to enlarge the City's liability beyond that authorized by the New Mexico Tort Claims Act or other applicable law.

19. **Indemnification.** To the fullest extent permitted by law, CMS shall indemnify, defend, and hold harmless the City and its elected officials, officers, employees, and agents from and against any and all third-party claims, demands, actions, damages, liabilities, judgments, liens, losses, costs, and expenses, including reasonable attorneys' fees and litigation expenses, to the extent arising out of or resulting from any of the following:
- A. **Failure to Perform.** Any breach or failure by CMS to perform or comply with this Agreement.
 - B. **Injury or Property Damage.** Any injury to or death of any person or damage to or destruction of property arising out of or relating to CMS's use, occupancy, operation, management, maintenance, or promotion of the CT.
 - C. **Violations of Law.** Any violation by CMS of applicable law, ordinance, code, rule, regulation, governmental requirement, permit, license, or approval.
 - D. **Liens.** Any mechanic's lien, materialman's lien, security interest, or similar claim arising from labor, services, materials, equipment, alterations, or improvements furnished or undertaken by or on behalf of CMS.
 - E. **Intellectual Property.** Any claim, demand, action, damage, liability, judgment, penalty, royalty, license fee, settlement, cost, expense, or reasonable attorneys' fees arising out of or relating to CMS's failure to comply with Section 3(E) of this Agreement or any actual or alleged infringement, misappropriation, or unauthorized use of any copyright, trademark, patent, trade secret, right of publicity, or other intellectual property right arising from activities conducted by or through CMS or by any sponsor, promoter, renter, licensee, exhibitor, performer, concessionaire, contractor, vendor, or other third party using the CT pursuant to an agreement with CMS.

This subsection shall not apply to activities or events produced solely by the City unless CMS has expressly agreed in writing to obtain or administer the applicable intellectual property rights on the City's behalf.
 - F. **Exceptions.** CMS's obligations under this Section shall not apply to the extent a claim, loss, or liability is caused by the negligence or willful misconduct of the City or its elected officials, officers, employees, or agents. Nothing in this Section shall be construed as a waiver of any immunity, defense, or limitation of liability available to the City or its public employees under the New Mexico Tort Claims Act or other applicable law.
 - G. **Survival.** CMS's obligations under this Section shall survive the expiration or earlier termination of this Agreement.

20. **Release of Liability.** Except to the extent otherwise provided by the New Mexico Tort Claims Act or other applicable law, CMS assumes the risk of loss or damage to its own personal property, furniture, furnishings, fixtures, equipment, supplies, and other personal property located at the CT. The City shall not be liable to CMS for any loss of or damage to such property arising from any cause other than the gross negligence or willful misconduct of the City.

Except as otherwise provided by applicable law, CMS releases the City and its elected officials, officers, employees, and agents from any claims by CMS for injury to CMS or damage to CMS's property arising out of CMS's use, occupancy, operation, management, or promotion of the CT, except to the extent caused by the gross negligence or willful misconduct of the City.

Nothing contained in this Section shall be construed as a waiver of any immunity, defense, or limitation of liability available to the City or its public employees under the New Mexico Tort Claims Act.

21. **Records.** CMS shall create and maintain complete and accurate books, records, accounts, contracts, financial records, correspondence, reports, incident reports, accident reports, injury reports, inspection reports, and other documents relating to its performance under this Agreement and its management, operation, promotion, and use of the CT.

CMS shall retain such records throughout the term of this Agreement and for a period of ten (10) years following the expiration or termination of this Agreement, unless a longer retention period is required by applicable law or written notice from the City relating to pending or reasonably anticipated litigation, claims, audits, investigations, or public records requests.

Upon reasonable notice, CMS shall make such records available to the City for inspection, copying, and audit during normal business hours. To the extent the records constitute public records under the New Mexico Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-12, CMS shall cooperate with the City in responding to requests for inspection or production of such records.

22. **Compliance with Laws.** CMS shall comply with all applicable federal, state, and local laws, ordinances, codes, rules, regulations, and written City policies applicable to its performance under this Agreement. CMS shall obtain and maintain, at its sole expense, all permits, licenses, approvals, and certifications required for its management, operation, promotion, and use of the CT.

CMS shall require its officers, employees, agents, contractors, concessionaires, volunteers, and other persons acting under its direction or control to comply with all applicable federal, state, and local laws, ordinances, codes, rules, regulations, and written City policies while performing activities under this Agreement.

CMS shall be responsible for any fines, penalties, or other governmental assessments imposed as a result of its violation of applicable law or the violation of applicable law by persons acting under its direction or control.

23. **Assignment.** CMS shall not assign or transfer this Agreement or any of its rights or obligations under this Agreement, in whole or in part, whether voluntarily, involuntarily, or by operation of law, without the prior written consent of the City.

Any approved assignment or transfer shall not relieve CMS of any duty, obligation, or liability under this Agreement unless the City expressly agrees otherwise in writing. CMS shall remain fully responsible for the performance of all terms and conditions of this Agreement.

The City's consent to any assignment or transfer shall apply only to the specific transaction approved and shall not constitute consent to any subsequent assignment or transfer. Any attempted assignment or transfer made without the City's prior written consent shall be void and of no force or effect.

24. **Default or Breach.** Each of the following events shall constitute a default or breach of this Agreement:

- A. **Voluntary Proceedings.** If CMS, during the term of this Agreement, shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for the benefit of creditors.
- B. **Involuntary Proceedings.** If involuntary proceedings under any bankruptcy law or insolvency act shall be instituted against CMS, or if a receiver or trustee shall be appointed for all or substantially all of the property of CMS and such proceedings shall not be dismissed or the receivership or trusteeship vacated within sixty (60) days after the institution or appointment.
- C. **Failure to Comply.** If either party fails to perform or comply with any of the conditions of this Agreement, and if the nonperformance shall continue for a period of fifteen (15) days after notice thereof by the non-defaulting party to the defaulting party, or if the performance cannot be reasonably had within the fifteen (15) day period, and the defaulting party shall not have in good faith commenced performance within the fifteen (15) day period and then diligently proceeded to completion of performance.
- D. **Vacation of CT.** If CMS shall vacate or abandon the CT, or any portion thereof.
- E. **Transfer of Agreement.** If this Agreement shall be transferred to or shall pass to or devolve to any other person or party, except in the manner specified herein.

25. **Effect of Default.** Upon the occurrence of an event of default under Section 24, the rights and remedies of the non-defaulting party shall be as follows:
- A. **Termination of Agreement.** If the defaulting party fails to cure an event of default within the applicable cure period set forth in Section 24, the non-defaulting party may terminate this Agreement by providing written notice of termination to the defaulting party. The notice shall identify the event of default and state the effective date of termination. Upon the effective date of termination, this Agreement shall terminate, and the defaulting party's rights under this Agreement shall cease, except for those obligations that expressly survive termination or that by their nature are intended to survive, including any obligation for payment of amounts due, indemnification, record retention, or other accrued liabilities.
 - B. **Self-Help.** If the defaulting party fails to perform any obligation required under this Agreement, the non-defaulting party may, but shall not be obligated to, perform such obligation or take such action as is reasonably necessary to cure the default. To the extent reasonably necessary to accomplish such cure, the non-defaulting party may enter the CT and remain for such period as is reasonably necessary to complete the corrective work. Any costs and expenses reasonably incurred by the non-defaulting party in curing the default, together with interest at the maximum rate permitted by applicable law from the date incurred until paid, shall be reimbursed by the defaulting party upon demand. The exercise of any self-help remedy shall not constitute a waiver of the default or limit any other remedy available under this Agreement or applicable law.
26. **Waiver.** Failure of a party to insist upon strict performance of any of the terms and conditions hereof shall be deemed a waiver of the rights or remedies that party may have regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or default in any term or condition.
27. **Surrender of the CT.** Upon the expiration or earlier termination of this Agreement, CMS shall immediately cease its management and operation of the CT and shall peacefully surrender control of the CT to the City. CMS shall remove its furniture, furnishings, equipment, supplies, trade fixtures, and other personal property, unless otherwise directed by the City, and shall repair any damage caused by such removal.

CMS shall return the CT to the City in at least as good condition as existed on the Effective Date of this Agreement, ordinary wear and tear excepted, and shall deliver all keys, access devices, security codes, records required to be maintained under this Agreement, and other City property in CMS's possession or control.

Upon expiration or termination of this Agreement, the City shall be entitled to assume immediate management and operation of the CT without further notice or legal process.

The obligations of CMS under this Section shall survive the expiration or termination of this Agreement until fully performed.

28. **Notices.** Any notice, demand, request, consent, approval, or other communication required or permitted under this Agreement shall be in writing and shall be deemed given: (a) when personally delivered; (b) one (1) business day after being deposited with a nationally recognized overnight delivery service; (c) three (3) business days after being deposited in the United States mail, certified mail, return receipt requested, postage prepaid; or (d) upon transmission by electronic mail, provided the sender does not receive a notice of non-delivery and the recipient confirms receipt by reply electronic mail or other written acknowledgment.

If to the City:

City of Carlsbad
c/o City Manager
P.O. Box 1569
Carlsbad, NM 88221-1569
Email: wdaustin@cityofcarlsbad.nm

If to CMS:

CARLSBAD MAINSTREET
c/o MARY GARWOOD, President
102 S. Canyon
Carlsbad, NM 88220
Email: garwoodmary@yahoo.com

The incumbent holding any office or position designated in this Section shall automatically succeed as the notice recipient upon assuming such office or position. Either party may change the applicable mailing address or email address by providing written notice to the other party in accordance with this Section.

29. **Independent Contractor; Employment Responsibilities.**

- A. **Independent Contractor Status.** CMS is an independent contractor and is not an employee, officer, or agent of the City. All officers, employees, representatives, agents, and subcontractors of CMS performing services under this Agreement shall be deemed officers, employees, representatives, agents, or subcontractors of CMS only and shall not be considered employees, officers, or agents of the City for any purpose. Nothing contained in this Agreement shall be construed to create a partnership, joint venture, agency, or employer-employee relationship between the City and CMS.
- B. **No City Employment Benefits.** Neither CMS nor its officers, employees, representatives, agents, or subcontractors shall accrue or be entitled to any compensation, leave, retirement benefits, insurance, workers' compensation coverage through the City, unemployment benefits through the City, bonding, use of City vehicles, or any other compensation, rights, privileges, or benefits provided to City officers or employees.
- C. **Employment Responsibilities.** CMS shall be solely responsible for the recruitment, hiring, selection, supervision, scheduling, compensation, discipline,

and termination of its officers, employees, representatives, agents, and subcontractors. CMS shall be solely responsible for the payment of all wages, salaries, employee benefits, payroll taxes, Social Security taxes, unemployment insurance contributions, workers' compensation premiums, and all other employment-related taxes, contributions, and obligations required by applicable law.

- D. **Compliance with Employment Laws.** CMS shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations relating to employment, civil rights, equal employment opportunity, nondiscrimination, immigration, employment eligibility verification, workplace safety, wage and hour requirements, and all other employment-related matters.
30. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the parties concerning its subject matter and supersedes all prior or contemporaneous negotiations, representations, understandings, and agreements, whether written or oral, concerning that subject matter. Neither party has relied upon any representation, promise, or agreement concerning the subject matter of this Agreement except as expressly set forth herein. This Agreement may be amended only by a written instrument executed by duly authorized representatives of both parties.
31. **Successors and Permitted Assigns.** Subject to the restrictions on assignment contained in this Agreement, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
32. **WAIVER OF JURY TRIAL.** THE PARTIES HEREBY WAIVE THE RIGHT TO A JURY TRIAL ON ANY ISSUE ARISING OUT OF OR RELATING, DIRECTLY OR INDIRECTLY, TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
33. **New Mexico Law and Venue.** The parties agree this Agreement shall be construed, controlled, and governed exclusively by the laws of the state of New Mexico. The parties further agree that legal actions, if there be any, arising out of this agreement shall be brought in the District Court of Eddy County, New Mexico for the Fifth Judicial District. The parties expressly consent to both in personam and subject matter jurisdiction of the Eddy County District Court and agree that venue shall properly lie in the Eddy County, New Mexico District Court.
34. **Savings Clause.** If any term, clause or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then it is the intention of the parties hereto that the remainder of this Agreement, or the application of such term, clause or provision to persons or circumstances other than those to which it is held illegal, invalid, or unenforceable, shall not be affected thereby, and its applicability to persons or circumstances other than those to which it is held illegal, invalid,

or unenforceable shall not be affected thereby. It is also the intention of the parties hereto that, in lieu of such term, clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a term, clause, or provision as similar in terms to such illegal, invalid, or unenforceable term, clause, or provision as may be possible so that said provision be legal, valid, and enforceable.

35. **Non-appropriation.** The funding of this Agreement is subject to the availability and appropriation of funds by the City Council of Carlsbad, New Mexico. If sufficient funding is not available or not appropriated by the City Council, then this Agreement is terminated and the City shall not incur any penalty or further liability.
36. **Captions.** The captions of any articles, paragraphs or sections hereof are made for convenience only and shall not control or affect the meaning or construction of any of the provisions thereof.
37. **Exhibits.** Any instrument or document attached to or referred to by this Agreement shall constitute a part hereof as though set forth in full in the body of this Agreement, whether made a part hereof by reference or whether made a part hereof by attachment.

IN WITNESS WHEREOF, the parties have executed this First Amended and Restated Agreement as of the date first written above.

APPROVED BY THE CITY COUNCIL OF THE CITY OF CARLSBAD, NEW MEXICO, ADOPTED ON _____, 2026.

CITY OF CARLSBAD, NEW MEXICO

By: _____
Richard D. Lopez, Mayor
Date: _____

ATTEST:

Nadine Mireles, City Clerk

CARLSBAD CMS PROJECT, INC.

By: Mary Garwood
Mary Garwood, PRESIDENT

STATE OF NEW MEXICO)
) ss.
COUNTY OF EDDY)

The foregoing instrument was acknowledged before me this 15th day of September, 2026, by Mary Gannon, President, CARLSBAD CMS.

My Commission Expires:

12/03/2029

Vera Ramirez
NOTARY PUBLIC



STATE OF NEW MEXICO
NOTARY PUBLIC
VERA RAMIREZ
COMMISSION # 2008110
EXPIRES 12/03/2029

EXHIBIT “A”

LEGAL DESCRIPTION OF CT PROPERTY INCLUDED IN AGREEMENT

A legal description of the property commonly known as the Cavern Theatre, 210 S. Canyon St., Carlsbad, NM 88220 is located in Eddy County, NM:

Subd: EDDY TOWNSHIP 1ST ADDITION Lot: 2 Block: 26 Quarter: NE S: 06 T: 22S R: 27E;

Subd: EDDY TOWNSHIP 1ST ADDITION Lot: 4 Block: 26 Quarter: NE S: 06 T: 22S R: 27E;
and

Subd: EDDY TOWNSHIP 1ST ADDITION Lot: 6 Block: 26 Quarter: NE S: 06 T: 22S R: 27E

EXHIBIT “B”

MAINTENANCE AND REPAIR RESPONSIBILITIES

CMS’s Responsibilities.

CMS shall be responsible for the maintenance, repair, and replacement of the following:

1. The security camera system.
2. Office furniture, furnishings, equipment, computers, printers, and other information technology equipment owned or furnished by CMS.
3. Concession equipment owned or furnished by CMS.
4. Portable audiovisual equipment owned or furnished by CMS.
5. All other supplies, tools, equipment, furnishings, inventory, consumable materials, and personal property owned or furnished by CMS.

City’s Responsibilities.

The City shall be responsible for the maintenance, repair, and replacement of the following:

- | | |
|---|--|
| 1. Structural components. | 11. Fire alarm, fire detection, sprinkler, and other fire suppression systems. |
| 2. Roof. | 12. Emergency lighting and illuminated exit signs. |
| 3. Interior and exterior walls. | 13. Sidewalks. |
| 4. Windows. | 14. Parking lots and parking lot lighting. |
| 5. Interior and exterior painting. | 15. Marquee and poster display boxes. |
| 6. Floor coverings, carpeting, and tile. | 16. Landscape irrigation systems. |
| 7. Drop ceilings. | 17. Grounds maintenance. |
| 8. Water, sewer, natural gas, plumbing, and electrical systems. | 18. Light bulbs, lamps, tubes, and similar building lighting components. |
| 9. Electrical fixtures, including outlets, switches, dimmers, breakers, and general house lighting. | 19. The City's sound system, stage lighting system, projection equipment, theatrical rigging, stage control systems, and other |
| 10. Heating, ventilation, and air conditioning (HVAC) systems. | |

permanently installed technical theater equipment.

EXHIBIT “C”

CONTENT OF MONTHLY REPORTS

Monthly Operation and Management Report

CMS shall provide a management report each month to the Director of Community Services:

1. A list of the uses of and events held at the CT during the time period covered by the report including the number of persons attending each event; and
2. A list of the uses and events booked the time period covered by the report; and
3. A schedule of all events to be held at the CT including the name of the host, sponsor, and person or entity booking the event; and
4. A list of all previously scheduled events that have been cancelled; and
5. An accounting of all damage deposits, fees, or other charges collected, charged, and/or returned by CMS during the time period covered by the report; and
6. Income and expenses for the time period covered by the report; and
7. Such other reporting as requested by the City.

Monthly Event Fees Report

CMS shall provide an event fees report each month to the Director of Community Services:

1. The number of tickets for Live Events sold during the reporting period;
2. The gross Event Fees collected;
3. Any Event Fee credits claimed for refunded or voided ticket sales, identifying the applicable event and amount of each credit; and
4. The net Event Fees remitted to the City.

EXHIBIT “D”

EQUIPMENT AND FURNISHINGS

Equipment:

Light Bulb Scaffolding

Audio/Visual Equipment List*:

USC-6R Universal Sequencing Controller by MIDDLE ATLANTIC PRODUCTS

CX-Q Series Q-SYS Network Amps

DN-900R Network SD/USB TASCAM Audio Recorder

DN-500CB TASCAM CD Player

DN-500BD MKII DENON Blu-Ray Player

SQ-6 ALLEN&HEATH Digital Mixer

AR2412 ALLEN&HEATH Audio Rack

ULXD4Q Quad Channel SHURE Wireless Receiver

ULXD2 SHURE Wireless Mics & Accessories

LW-100P-02 LISTEN Technologies Audio Server ZyPerUHD ZEEVEE Video Encoder

Move 4K Video Streaming Cameras by PTZOptics

UDX-W32 BARCO Large Venue Projector

HQ50A SAMSUNG Hospitality TV

Mainstreet Cavern Theatre SM58 Cardioid Dynamic SHURE Microphones

BETA 87A Supercardioid Condenser SHURE Microphones

SM57 Cardioid Dynamic SHURE Microphones

SM81 Cardioid Condenser SHURE Microphone SM137 Cardioid Condenser SHURE Microphones MD 421-II Dynamic SENNHEISER Microphones D2 Dynamic Instrument AUDIX Microphones

D4 Dynamic Instrument AUDIX Microphones

JDI Mk3 Passive Direct Box with Jensen Transformer by PROTEL

TSC-G3 Series **Network** Q-SYS Touch Screen Controllers

CX-**8K8** | CX-Q Series Q-SYS Channel Amplifiers

NETGEAR AV Line Switches

NETGEAR WAX620 Wireless Access Point

DN-900R Network DENON Audio Recorder

DN-500CB Network DENON Audio Recorder

*This list does not include individual details for: lights, lighting controls, speakers, or woofers.



CITY OF CARLSBAD

FY 2026 – 2027

DEPARTMENT OF UTILITIES

JULY 2026

Ivan M. Abell, Director of Utilities

ENVIRONMENTAL SERVICES REPORT

July 2026

<i>Environmental Services:</i>	<i>Current Month</i>	<i>Previous Month</i>	<i>Calendar Year to Date</i>
State and Federal Environmental Violations by City	1	1	2
Environmental Assessments (CDBG, P&Z, Drilling)	0	0	0
Environmental Compliance Inspections	0	0	0
Criminal Complaints Filed	0	0	0
Environmental Projects or Programs (HHWC & CCR)	0	0	3
Grease Interceptors Inspections	1	3	14

<i>Laboratory:</i>	<i>Current Month</i>	<i>Previous Month</i>	<i>Calendar Year to Date</i>
<i>Municipal Water Sampling/Analysis:</i>			
Wellfield Chemical Characteristic Analysis	44	48	313
Partial Wellfield Chemical Characteristics	33	37	248
Monitoring Wells Chemical Analysis	8	0	24
Total Coliform Analysis	40	40	280
Fecal Coliform Analysis	0	0	0
Chlorine Residual Tests (DE)	4	4	45
Special Chemicals (BTEx, Ammonia, Nitrite, Cyanide)	12	14	52

<i>Municipal Wastewater Sampling/Analysis (Reads):</i>	<i>Current Month</i>	<i>Previous Month</i>	<i>Calendar Year to Date</i>
Chemical Oxygen Demand Tests	0	0	0
Biochemical Oxygen Demand	15	12	90
Total Suspended Solids Tests	15	12	90
Volatile Alkalinity Tests	0	0	0
E-Coli on Effluent	15	12	90
Metals/TCLP/PCB/M2 Sampling on Sludge	0	0	0
Fecal Coliform Analysis on Sludge (Compost)	0	1	6
Effluent Chemical Characteristic Analysis	1	1	7

<i>DMR Bench Sheet:</i>	<i>Current Month</i>	<i>Previous Month</i>	<i>Calendar Year to Date</i>
Influent BOD Avg. (Lbs.)	7,538	6,560	51,524
Effluent BOD Avg. (Lbs.)	909.40	237	1,395
BOD Removal (%)	87.94	96	681
Influent TSS Avg. (Lbs.)	10,535	10,293	66,135
Effluent TSS Avg. (Lbs.)	479.54	116	844
TSS Removal (%)	95.45	99	692

ENVIRONMENTAL SERVICES REPORT

July 2026

Private Well Analysis:	Current Month	Previous Month	Calendar Year to Date
Total Coliform Analysis	42	42	297
Total Coliform Analysis (Construction)	1	0	4
Number of Positives for Confirmation	1	0	3
Chemical Characteristics Analysis	0	0	1
Environment Department Mediated Tests	0	0	0
Lake Carlsbad E-Coli Analysis Performed	60	54	125
Lake Carlsbad Beach Closures Due to Bacterial Count	0	0	0

Golf Course (Reclaimed) Water Analysis (NMED Groundwater Discharge Permit):	Current Month	Previous Month	Calendar Year to Date
Nitrate	5	26	31
Total Kjeldahl Nitrogen	0	0	0
Total Dissolved Solids	1	6	7
E-Coli Analysis	14	77	91
Chemical Characteristics	1	6	7
Other NMED-Required Testing (Chlorides, etc.)	1	6	7

Remarks:



Digitally signed by Richard Aguilar
DN: cn=Richard Aguilar, o, ou,
email=rlaguilar@cityofcarlsbadnm.com, c=US
Date: 2026.08.06 08:50:58 -06'00'

Richard Aguilar,
Environmental Svcs. Superintendent

Solid Waste Department Summary

July 2026

	<u>This Month</u>	<u>Previous Month</u>	<u>Last Year</u>	<u>Calendar Year to Date</u>
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Garbage Collection (ARC)

Number of ARC Trucks in Operation	18 OF 27	20 OF 27	15 of 28	
Tons Collected and Delivered to Landfill	2,540.66	2534.44	2157.17	16,450.10
Number of Trips to Landfill	305	298	264	#REF!

Residential and Commercial Services

Number of Residential Services	201	192	542	1,202
Number of Commercial Services	15	14	57	87
Number of New Residential Services	9	9	11	69
Number of New Commercial Services	1	1	0	6

Container Maintenance

Number of 3 CuYard Containers Repaired	5	11	19	199
Number of 3 CuYard Containers Replaced	2	13	15	111
Number of 1.5 CuYard Containers Repaired	0	0	0	14
Number of 1.5 CuYard Containers Replaced	0	0	0	0
Number of 96 gallon Containers Repaired	80	71	146	791
Number of 96 gallon Containers Replaced	146	206	198	1,198
Number of 96 gallon Lids Replaced	39	43	78	501
Number of 96 gallon Wheels Replaced	41	28	68	290
Number of 1.5 CuYard Lids Repaired	0	0	0	14
Number of 3 CuYard Lids Repaired	0	3	3	107
Number of New 96 Gallon Roll-outs	9	9	11	66

Trash/Yard Waste Residential Collection (Grappler)

Number of Trucks in Operation	6 OF 7	6 OF 7	6 of 9	
Tons of Trash Delivered to Landfill	172.23	139.74	148.49	1,431.67
Number of Trips to Landfill	70	69	47	583.00
Green Waste Collected and Delivered to WWTP (TONS)	0.00	0	0	0.00
Number of trips to WWTP	0	0	0	0.00

Solid Waste Department Summary

July 2026

This MonthPrevious MonthThis MonthCalendar
Year to Date**Sandpoint Landfill Operation**

Waste Received from Carlsbad (Tons)	5,254.16	5,281.00	5,840.44	33,945.75
Waste Received from Artesia (Tons)	1,923.10	2,145.52	2,192.06	13,517.54
Waste Received from Eddy County (Tons)	4,241.12	3,784.24	4,677.74	24,684.62
Waste Received from Others (Tons)	438.38	544.68	0.00	2,611.74
Tipping Fees received at Gate	\$2,094.84	2,715.68	3,270.64	23,634.73
Tipping fees Billed	\$151,454.56	154,969.86	41,452.45	948,843.30
Solid Waste Facility Permit Violations	0	0.00	0.00	0.00

Convenience Station

Tons of Trash Collected and Delivered to Landfill	340.36	369.54	354.88	2,136.56
CuYards of Glass	0.00	0.00	0.00	0.00
Tons of Metal	235.76	180.48	204.60	1,133.64
Green Waste Collected and Delivered to WWTP (TONS)	0.00	0.00	594.97	0.00
Number of trips to WWTP	0	0.00	0.00	0.00

Roll Off Rentals

Fees Billed	\$70,025.45	\$75,342.36	44951.65	\$353,460.82
Tons of Refuse Collected and Delivered to Landfill	405.03	\$389.07	338.51	\$1,919.26
No. of 40 CuYard Containers Rented	0	\$0.00	0	\$0.00
No. of 30 CuYard Containers Rented	56	\$56.00	55	\$320.00
No. of 25 CuYard Containers Rented	0	\$0.00	0	\$0.00
No. of 15 CuYard Containers Rented	0	\$0.00	0	\$0.00

REMARKS: *No data available



Albert Moisa, Solid Waste Superintendent

8-4-2026

Date

Carlsbad Municipal Water System Report

Jul-26

Acre Ft.

Production Figures:

This Month Previous Month Year to Date

Pumped from Sheep's Draw (Ac. Ft.)	1037.36	890.59	5,705.66
Water Imported from Double Eagle (Ac. Ft.)	24.96	21.09	105.32
Water delivered to Livestock (Ac. Ft.)	0.34	0.24	46.96
Water Sold to Apartments (Ac. Ft.)	19.05	14.42	104.90
Water Sold to Commercial Accounts (Ac. Ft.)	207.54	189.19	1,098.88
Water Sold to Government Accounts (Ac. Ft.)	70.17	61.56	308.42
Water Sold to Industrial Accounts (Ac.Ft.)	0.06	0.03	0.63
Water Sold to Residential Accounts (Ac.Ft.)	661.84	518.90	3,040.81
Record Only Accounts (Ac.Ft.)	2.83	1.34	9.13
Water Sold to Semi-Commercial Accounts (Ac.Ft.)	14.03	11.52	82.92
Safe Drinking Water Act Violations	0	0.00	0.00

Wells:

Number in Operation (Sheep's Draw) **	9/9	9/9	
KWH Consumed	802,080	727,600	4,566,080
Capitan Aquifer Level (Ft. from Surface @ #6)	390'6"	390'6"	
Number of New Water Services Installed	19	17	108

Meters:

Total in Service	13,250	13,623	
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Fire Hydrants:

In Service	879	879	
Out of Service	0	0	
Repaired	0	0	0

Remarks:


Anthony Hernandez, Water Superintendent

CARLSBAD WATER SYSTEM WELL OPERATION
Jul-26

WELL	POWER CONSUMPTION X 400			WATER PRODUCTION X 1000				ENGINE HOUR CLOCK			WATER LEVELS			
	CURRENT MONTH	LAST MONTH	KWH CONSUMED	CURRENT MONTH	LAST MONTH	GALLONS PUMPED	ACRE FEET	CURRENT MONTH	LAST MONTH	HOURS RUN	GPM	STATIC	PUMPED per Hour Meter (gal)	gal/kwh
1	267	197	28,000	313,799	301,812	11,987,000	36.79	3158.9	3037.4	121.5	1,750		12,757,500	525
2	359	287	28,800	150,815	140,372	10,443,000	32.05	14240.4	14083.1	157.3	1,200		11,325,600	420
3	109	108	400	712,073	711,886	187,000	0.57	40613.9	40611.8	2.1	1,600		201,600	375
4	2847	2435	164,800	2,334,798	2,270,041	64,757,000	198.73	68550.4	67935.2	615.2	1,750		64,596,000	257
5	3435	3010	170,000	3,578,375	3,494,252	84,123,000	258.16	81467.2	80798.5	668.7	1,200		48,146,400	348
6	801	543	41,280	1,405,986	1,389,394	16,592,000	50.92			22.2	2,800	390.6	3,722,880	421
7	3538	3047	196,400	2,902,308	2,820,367	81,941,000	251.47	22025.2	22025.2	0.0	1,950		0	424
8	1356	976	152,000	1,491,941	1,431,053	60,888,000	186.86	20955.6	20955.6	0.0	1,350		0	389
9	2018	1967	20,400	1,897,306	1,890,201	7,105,000	21.80			101.4	1,600		9,730,560	324
10												401.70		
TOTAL KWH CONSUMED			802,080	TOTAL PUMPED		338,023,000	1,037.36	TOTAL HOURS RUN		1,688.3	OIL		TOTAL CHLORINE USED	
											57		2,178	
Reservoir No. 4 Meter				Total Gallons Pumped Comparison				Total Rainfall			Notes			
Inlet This Month X 1000		13,685,715		THIS MONTH		338,023,000	1,037.36	0.86			Wells #4 and #5 on State Trust Land			
Inlet Last Month X 1000		13,359,377		LAST YEAR, SAME MONTH		302,172,000	927.33							
				DIFFERENCE		35,851,000	110.03							
Total Inlet		326,338,000		* corrected										

MUNICIPAL WATER SYSTEM WATER RIGHTS PUMPED (C-76) ACRE FEET

(9867 Acre Ft. Available Per Year)

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2002	297.16	268.70	440.91	704.96	958.06	1,066.88	1,341.56	1,074.79	774.52	485.05	280.99	155.99	7849.57
2003	270.84	203.99	505.94	1,064.03	1,206.94	1,122.78	1,343.98	1,076.39	775.41	685.53	305.27	409.57	8970.67
2004	385.42	439.36	489.06	680.19	948.71	1,063.84	1,068.05	798.52	772.40	451.14	364.15	414.64	7875.48
2005	332.30	318.24	425.71	655.91	878.61	1,123.12	1,338.81	773.36	830.12	609.54	478.07	445.90	8209.69
2006	395.24	416.50	606.61	799.07	1,145.49	1,165.26	1,141.96	699.68	536.40	574.84	453.79	372.30	8307.14
2007	386.96	350.66	480.44	665.57	629.51	1,062.65	841.31	964.52	740.42	672.37	485.02	446.90	7726.33
2008	452.24	668.55	705.92	934.92	1,060.06	1,454.74	1,040.96	900.29	768.43	684.45	505.09	456.16	9631.81
2009	458.70	519.36	694.55	871.85	1,095.02	1,202.19	951.06	980.82	809.14	666.16	529.67	420.61	9199.13
2010	422.56	352.26	539.69	327.39	1,150.19	1,219.15	848.31	1,057.28	738.68	677.68	503.09	461.84	8298.12
2011	474.73	536.44	800.88	973.90	1,238.89	1,355.98	1,423.54	1,226.62	886.11	776.71	540.43	454.95	10689.18
2012	466.85	431.44	701.69	810.10	828.11	1,185.27	901.47	1,013.28	806.85	652.17	480.34	461.15	8738.72
2013	423.91	412.36	633.53	822.91	947.12	1,047.09	800.86	925.05	727.29	611.46	451.84	377.93	8,181.35
2014	388.31	383.82	557.69	701.51	872.84	1,031.98	1,122.07	893.82	552.90	541.69	414.16	391.00	7,851.79
2015	428.54	369.38	490.96	711.13	732.60	903.17	919.01	994.43	789.98	522.56	432.59	418.96	7,713.31
2016	408.24	364.58	449.03	573.56	672.93	921.77	1,157.49	791.59	541.42	587.72	443.39	442.94	7,354.66
2017	394.41	415.24	615.73	768.14	921.14	883.20	1,007.00	726.66	715.10	536.59	482.95	484.39	7,950.55
2018	484.78	402.92	640.20	750.65	991.56	1,023.15	954.69	853.04	684.90	530.89	386.73	404.76	8,108.27
2019	392.03	408.30	501.88	712.74	920.31	919.36	931.82	860.57	880.60	570.04	425.02	400.18	7,922.85
2020	424.96	402.62	508.41	896.76	983.81	1,161.49	1,242.85	1,055.78	1,045.26	625.06	411.27	463.48	9,221.75
2021	368.52	418.64	712.43	726.13	809.60	837.98	793.40	764.24	715.36	652.05	455.84	403.35	7,657.54
2022	336.78	376.58	515.94	882.91	973.98	975.97	1,147.87	848.51	773.62	493.31	404.67	435.85	8,165.99
2023	330.74	313.20	484.97	823.91	916.36	1,079.94	1,232.41	1,223.34	819.91	621.07	486.28	470.52	8,802.65
2024	436.56	468.06	651.21	871.40	1,184.72	1,080.20	1,111.10	1,164.73	813.57	778.98	577.92	470.44	9,608.89
2025	541.75	547.72	656.13	797.44	993.74	857.61	927.33	1,054.58	889.55	745.37	543.82	527.65	9,082.69
2026	500.80	544.33	778.70	911.78	1,042.10	890.59	1,037.36						5,705.66

Sheep Draw Water Pumped - Acre Feet 9867 Acre Feet Available Per Year

	January	February	March	April	May	June	July	August	September	October	November	December	Total	Difference
														9867
1999	259.97	275.11	485.12	694.64	798.54	839.80	903.86	1,102.11	751.40	534.43	395.59	253.70	7,294.27	2,572.73
Total		535.08	1,020.20	1,714.84	2,513.38	3,353.18	4,257.04	5,359.15	6,110.55	6,644.98	7,040.57	7,294.27		
2000	303.85	377.05	592.71	710.82	1,063.12	1,168.66	1,072.41	1,134.64	886.90	487.13	260.33	278.46	8,336.08	1,530.92
Total		680.90	1,273.61	1,984.43	3,047.55	4,216.21	5,288.62	6,423.26	7,310.16	7,797.29	8,057.62	8,336.08		
2001	379.10	340.60	389.50	714.80	1,129.68	1,083.53	1,341.71	1,074.96	612.54	662.35	356.80	276.27	8,361.84	1,505.16
Total		719.70	1,109.20	1,824.00	2,953.68	4,037.21	5,378.92	6,453.88	7,066.42	7,728.77	8,085.57	8,361.84		
2002	297.16	268.70	440.91	704.96	958.06	1,066.88	1,341.56	1,074.79	774.52	485.05	280.99	155.99	7,849.57	2,017.43
Total		565.86	1,006.77	1,711.73	2,669.79	3,736.67	5,078.23	6,153.02	6,927.54	7,412.59	7,693.58	7,849.57		
2003	270.84	203.99	505.94	1,064.03	1,206.94	1,122.78	1,343.98	1,076.39	775.41	685.53	305.27	409.57	8,970.67	896.33
Total		474.83	980.77	2,044.80	3,251.74	4,374.52	5,718.50	6,794.89	7,570.30	8,255.83	8,561.10	8,970.67		
2004	385.42	439.36	489.06	680.19	948.71	1,063.84	1,068.05	798.52	772.40	451.14	364.15	414.64	7,875.48	1,991.52
Total		824.78	1,313.84	1,994.03	2,942.74	4,006.58	5,074.63	5,873.15	6,645.55	7,096.69	7,460.84	7,875.48		
2005	332.30	318.24	425.71	655.91	878.61	1,123.12	1,338.81	773.36	830.12	609.54	478.07	445.90	8,209.69	1,657.31
Total		650.54	1,076.25	1,732.16	2,610.77	3,733.89	5,072.70	5,846.06	6,676.18	7,285.72	7,763.79	8,209.69		
2006	395.24	416.50	606.61	799.07	1,145.49	1,165.26	1,141.96	699.68	536.40	574.84	453.79	372.30	8,307.14	1,559.86
Total		811.74	1,418.35	2,217.42	3,362.91	4,528.17	5,670.13	6,369.81	6,906.21	7,481.05	7,934.84	8,307.14		
2007	386.96	350.66	480.44	665.57	629.51	1,062.65	841.31	964.52	740.42	672.37	485.02	446.90	7,726.33	2,140.67
Total		737.62	1,218.06	1,883.63	2,513.14	3,575.79	4,417.10	5,381.62	6,122.04	6,794.41	7,279.43	7,726.33		
2008	452.24	668.55	705.91	934.92	1,060.06	1,454.74	1,040.96	900.29	768.43	684.45	505.09	456.16	9,631.80	235.20
Total		1,120.79	1,826.70	2,761.62	3,821.68	5,276.42	6,317.38	7,217.67	7,986.10	8,670.55	9,175.64	9,631.80		
2009	458.70	519.36	694.55	871.85	1,095.02	1,202.19	951.06	980.82	809.14	666.16	529.67	420.61	9,199.13	667.87
Total		978.06	1,672.61	2,544.46	3,639.48	4,841.67	5,792.73	6,773.55	7,582.69	8,248.85	8,778.52	9,199.13		

Sheep Draw Water Pumped - Acre Feet 9867 Acre Feet Available Per Year														Difference	
	January	February	March	April	May	June	July	August	September	October	November	December	Total		
2010	422.56	352.26	539.69	327.39	1,150.19	1,219.15	848.31	1,057.28	738.68	677.68	503.09	461.84	8,298.12	9,867.00	
Total		774.82	1,314.51	1,641.90	2,792.09	4,011.24	4,859.55	5,916.83	6,655.51	7,333.19	7,836.28	8,298.12		1,568.88	
2011	474.73	536.44	800.88	973.90	1,238.89	1,355.98	1,423.54	1,226.62	886.11	776.71	540.43	454.95	10,689.18	-822.18	
Total		1,011.17	1,812.05	2,785.95	4,024.84	5,380.82	6,804.36	8,030.98	8,917.09	9,693.80	10,234.23	10,689.18			
2012	466.85	431.44	701.69	810.10	828.11	1,185.27	901.47	1,013.28	806.85	652.17	480.34	461.15	8,738.72	1,128.28	
Total		898.29	1,599.98	2,410.08	3,238.19	4,423.46	5,324.93	6,338.21	7,145.06	7,797.23	8,277.57	8,738.72			
2013	423.91	412.36	633.53	822.91	947.12	1,047.09	800.86	925.05	727.29	611.46	451.84	377.93	8,181.35	1,685.65	
Total		836.27	1,469.80	2,292.71	3,239.83	4,286.92	5,087.78	6,012.83	6,740.12	7,351.58	7,803.42	8,181.35			
2014	388.31	383.82	557.69	701.51	872.84	1,031.98	1,122.07	893.82	552.90	541.69	414.16	391.00	7,851.79	2,015.21	
Total		772.13	1,329.82	2,031.33	2,904.17	3,936.15	5,058.22	5,952.04	6,504.94	7,046.63	7,460.79	7,851.79			
2015	482.54	369.38	490.96	711.13	732.60	903.17	919.01	994.43	789.98	522.56	432.59	418.96	7,767.31	2,099.69	
Total		851.92	1,342.88	2,054.01	2,786.61	3,689.78	4,608.79	5,603.22	6,393.20	6,915.76	7,348.35	7,767.31			
2016	408.24	364.58	449.03	573.56	672.93	921.77	1,157.49	791.59	541.42	587.72	443.39	442.94	7,354.66	2,512.34	
Total		772.82	1,221.85	1,795.41	2,468.34	3,390.11	4,547.60	5,339.19	5,880.61	6,468.33	6,911.72	7,354.66			
2017	394.41	415.24	615.73	768.14	921.14	883.20	1,007.00	726.66	715.10	536.59	482.95	484.39	7,950.55	1,916.45	
Total		809.65	1,425.38	2,193.52	3,114.66	3,997.86	5,004.86	5,731.52	6,446.62	6,983.21	7,466.16	7,950.55			
2018	484.78	402.92	640.20	750.65	991.56	1,023.15	954.69	853.04	684.90	530.89	386.73	404.76	8,108.27	1,758.73	
Total		887.70	1,527.90	2,278.55	3,270.11	4,293.26	5,247.95	6,100.99	6,785.89	7,316.78	7,703.51	8,108.27			
2019	392.03	408.30	501.88	712.74	920.31	919.37	931.82	860.57	880.60	570.04	425.02	400.18	7,922.86	1,944.14	
Total		800.33	1,302.21	2,014.95	2,935.26	3,854.63	4,786.45	5,647.02	6,527.62	7,097.66	7,522.68	7,922.86			
2020	438.73	387.20	523.69	928.40	1,015.17	1,177.81	1,120.57	1,062.19	1,066.47	539.88	430.40	463.48	9,153.99	713.01	
Total		825.93	1,349.62	2,278.02	3,293.19	4,471.00	5,591.57	6,653.76	7,720.23	8,260.11	8,690.51	9,153.99			
2021	368.01	418.64	712.43	726.13	809.60	837.98	793.40	764.24	715.36	652.05	455.84	403.35	7,657.03	2,209.97	
Total		786.65	1,499.08	2,225.21	3,034.81	3,872.79	4,666.19	5,430.43	6,145.79	6,797.84	7,253.68	7,657.03			
2022	336.78	376.58	515.94	882.91	973.98	975.97	1,147.87	848.51	773.62	493.31	404.67	435.85	8,165.99	1,701.01	
Total		713.36	1,229.30	2,112.21	3,086.19	4,062.16	5,210.03	6,058.54	6,832.16	7,325.47	7,730.14	8,165.99			
2023	330.74	313.20	484.97	823.91	916.36	1,079.94	1,232.41	1,223.34	819.91	621.07	486.28	470.52	8,802.65	1,064.35	
Total		643.94	1,128.91	1,952.82	2,869.18	3,949.12	5,181.53	6,404.87	7,224.78	7,845.85	8,332.13	8,802.65			
2024	436.56	468.06	651.21	871.40	1,184.72	1,080.20	1,111.10	1,164.73	813.57	778.98	577.92	470.44	9,608.89	258.11	
Total		904.62	1,555.83	2,427.23	3,611.95	4,692.15	5,803.25	6,967.98	7,781.55	8,560.53	9,138.45	9,608.89			
2025	541.75	547.72	656.13	797.44	993.74	857.61	927.33	1,054.58	889.55	745.37	543.82	527.65	9,082.69	784.31	
Total		1,089.47	1,745.60	2,543.04	3,536.78	4,394.39	5,321.72	6,376.30	7,265.85	8,011.22	8,555.04	9,082.69			
2026	500.80	544.33	778.70	911.78	1,042.10	890.59	1,037.36						5,705.66	4,161.34	
Total		1,045.13	1,823.83	2,735.61	3,777.71	4,668.30	5,705.66	5,705.66	5,705.66	5,705.66	5,705.66	5,705.66			

**MUNICIPAL WATER SYSTEM
WATER SOLD
ACRE FEET**

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2002	361.07	373.67	374.24	527.03	956.91	1164.77	996.81	977.93	1153.18	607.92	431.21	301.17	8225.93
2003	391.07	304.91	404.05	598.44	999.69	1030.55	1061.59	1169.02	1046.52	731.67	559.33	342.90	8639.75
2004	418.82	310.23	337.47	479.72	685.58	983.31	984.35	814.65	763.90	475.02	413.97	302.17	6969.19
2005	368.27	275.02	299.95	503.81	693.61	840.97	1296.63	886.95	754.89	658.48	468.42	377.74	7424.74
2006	414.11	677.07	450.26	678.99	725.58	1280.61	1083.09	705.47	564.79	572.49	430.08	334.08	7916.62
2007	354.13	318.22	380.07	437.50	653.63	756.31	899.69	774.47	896.99	541.76	530.36	344.60	6887.72
2008	326.32	375.13	413.71	627.22	842.55	1025.43	943.54	855.66	605.32	559.79	494.03	0.00	7068.68
2009	439.03	352.25	614.56	2321.13	1268.55	1211.80	1099.85	927.66	1030.30	765.46	976.92	564.86	11572.39
2010	567.77	471.98	547.89	757.41	1272.59	1066.67	1081.09	913.03	1105.63	1031.30	950.35	786.38	10552.09
2011	444.27	760.40	774.56	1233.94	1338.54	1352.52	1717.55	1405.40	1347.32	924.66	874.25	677.51	12850.91
2012	565.38	642.97	581.75	926.04	848.01	1000.31	1440.24	1151.94	1237.78	866.01	865.02	670.56	10796.01
2013	616.99	671.05	645.27	975.32	1,049.04	1,249.35	944.16	951.65	1,058.15	785.76	592.98	469.93	10009.65
2014	475.55	470.88	507.96	653.04	920.21	1,041.43	1,157.15	978.54	953.20	558.14	550.55	417.07	8683.72
2015	554.03	282.77	520.21	624.18	758.14	800.23	985.58	863.21	1,068.91	639.91	478.42	448.68	8024.27
2016	456.11	302.09	482.13	615.67	708.66	828.42	1,071.60	820.33	623.25	460.13	368.12	305.64	7042.15
2017	389.78	306.60	440.10	639.30	654.47	838.50	1,049.46	698.97	675.47	504.34	369.98	684.50	7251.47
2018	422.34	332.74	345.80	670.09	971.05	975.33	966.38	858.30	871.28	451.67	438.60	355.77	7659.35
2019	393.08	359.27	350.49	565.35	639.70	890.80	994.24	830.84	887.72	711.06	476.89	347.64	7447.08
2020	336.09	374.53	311.89	657.80	838.33	1,080.68	1,158.21	1,069.16	1,120.70	917.05	479.84	350.70	8694.98
2021	414.83	317.62	365.17	767.91	768.47	825.78	709.15	954.68	597.34	740.70	354.75	355.25	7171.65
2022	367.25	360.67	349.75	693.40	752.88	1,174.27	944.39	940.34	746.92	652.02	422.08	417.17	7821.14
2023	415.22	425.35	388.23	673.31	718.62	934.58	1,252.39	1,033.06	956.03	1,031.98	452.53	368.91	8650.21
2024	384.41	379.02	475.27	574.00	915.24	1,068.20	887.98	1,089.86	980.43	700.51	677.08	451.04	8583.04
2025	393.36	439.02	443.56	631.97	810.03	944.17	735.05	1,006.97	787.84	729.49	607.11	440.70	7969.27
2026	395.13	394.09	428.59	870.29	785.09	796.97	975.51						4645.67

MUNICIPAL WATER SYSTEM METERS IN SERVICE

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2002	10,385	10,398	10,360	10,396	10,485	10,486	10,492	10,479	10,512	10,468	10,448	10,534
2003	10,453	10,420	10,550	10,505	10,549	10,682	10,604	10,670	10,688	10,631	10,586	10,606
2004	10,608	10,541	10,617	10,624	10,627	10,678	10,700	10,730	10,671	10,672	10,684	10,597
2005	10,581	10,552	10,635	10,618	10,645	10,733	10,757	10,747	10,725	10,695	10,692	10,669
2006	10,676	10,669	10,663	10,704	10,687	10,759	10,720	10,746	10,739	10,711	10,670	10,645
2007	10,633	10,661	10,679	10,717	10,726	10,814	10,801	10,786	10,740	10,735	10,761	10,753
2008	10,804	10,784	10,809	10,826	10,836	10,880	10,861	10,875	10,820	10,758	10,713	
2009	10,747	10,881	11,126	11,179	11,156	11,232	11,160	11,184	11,158	11,169	11,182	11,107
2010	11,132	11,105	11,201	11,157	11,208	11,221	11,216	11,225	11,201	11,205	11,184	11,165
2011	11,271	11,292	11,256	11,270	11,281	11,349	11,331	11,333	11,327	11,300	11,267	11,224
2012	11,249	11,229	11,277	11,305	11,333	11,353	11,368	11,370	11,319	11,332	11,344	11,321
2013	11,290	11,361	11,415	11,405	11,412	11,450	11,488	11,527	11,507	11,478	11,482	11,442
2014	11,501	11,709	11,803	11,807	11,848	11,893	11,919	11,988	12,001	12,022	11,892	11,993
2015	11,865	11,871	11,916	12,014	11,957	12,153	12,062	12,087	12,020	11,968	11,825	11,978
2016	11,854	12,116	12,166	12,125	12,143	12,224	12,170	12,219	12,162	12,076	11,979	11,948
2017	12,053	12,014	12,173	12,213	12,173	12,223	12,205	12,376	12,213	12,300	12,204	12,288
2018	12,315	12,307	12,329	12,384	12,452	12,531	12,472	12,479	12,467	12,408	12,577	12,352
2019	12,440	12,386	12,556	12,508	12,653	12,656	12,698	12,827	12,644	12,804	12,708	12,653
2020	12,769	12,731	12,859	12,827	12,844	12,926	12,912	13,057	12,996	13,265	12,812	12,799
2021	12,830	12,920	12,945	13,205	13,026	13,162	*	*	*	*	*	*
2022	*	*	*	*	*	*	*	*	*	*	*	12,980
2023	12,572	12,604	12,610	12,646	12,627	12,676	12,706	12,717	12,723	12,736	12,773	12,815
2024	12,803	12,811	12,826	12,843	12,877	12,906	12,912	12,939	12,943	12,981	12,989	12,981
2025	12,995	13,008	13,022	13,066	13,045	13,097	13,091	13,113	13,123	13,150	13,165	13,147
2026	13,134	13,179	13,211	13,230	13,234	13,623	13,250					

11

* No info available due to transition of new billing system.

**AIRPORT WELLS
WATER RIGHTS PUMPED
ACRE FEET**

(61.24 Acre Ft. Available Per Year)

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2012	0.59	0.62	1.08	0.83	1.83	3.64	2.31	3.67	2.27	2.01	1.67	1.87	22.41
2013	0.89	2.32	2.26	1.18	1.28	1.73	1.9	3.69	2.01	2.62	1.99	1.06	22.93
2014	1.86	0.73	1.04	1.55	0.66	0.20	3.17	0.96	0.37	1.89	0.80	0.61	13.84
2015	0.03	0.07	0.03	1.02	1.59	2.47	2.57	2.96	2.13	1.35	2.46	1.57	18.25
2016	1.14	2.21	3.25	3.48	2.43	1.45	0.064	0.031	0.002	0.016	0.00	0.058	14.13
2017	0.07	0	0.16	0.31	0	0.51	0.55	0.022	0.00	0	0.18	0.14	1.94
2018	0.00	0.07	0.06	0.082	0.303	0.00	0.002	0.002	0.002	0.002	0.001	0.002	0.53
2019	0.00	0.023	0.36	0.56	1.17	2.72	2.13	2.67	2.60	2.60	1.33	1.99	18.15
2020	0.48	1.04	0.49	1.47	0.61	1.37	0	0.99	1.55	2.03	0.46	0.35	10.84
2021	0.77	0.34	0.45	0.71	0.94	2.01	1	1.56	0.92	0.83	1.21	0.61	11.35
2022	0.89	0.62	0.95	0.27	0.21	0.33	0.9	0.08	0.12	0.01	0.03	0	4.41
2023	0.00	0.00	0.00	0.40	0.52	3.75	3.61	1.76	0.09	0.08	0.00	0.00	10.21
2024	0.58	0.03	0.00	0.05	0.00	0.07	0.01	0.00	0.00	0.00	0.00	0.00	0.74
2025	0.00	0.00	0.00	0.04	0.00	0.00	0.00	0.00	0.01	0.00	0.00	0.00	0.05
2026	0.03	0.02	0.05	0.00	0.01	0.00	0.01						0.12

**AIRPORT WELLS
WATER SOLD
ACRE FEET**

2011	1.18	1.09	3.76	3.87	3.32	3.91	3.32	1.69	3.5	3.25	3.99	0.81	33.69
2012	2.36	2.65	3.77	3.84	1.27	3.02	2.66	4.22	2.62	2.3	2.65	1.28	32.64
2013	1.32	1.11	0.88	0.49	0.64	1.67	1.78	2.70	1.22	0.97	1.20	0.95	14.93
2014	1.15	0.05	1.51	0.82	0.07	0	0.44	0.27	0.01	0.02	0.01	0.01	4.36
2015	0.01	0	0	0	0	1.04	1.78	3.12	1.12	1.60	2.07	1.25	11.99
2016	1.4	2.14	2.86	3.35	2.18	1.22	0.04	0.03	0	0.02	0	0	13.235
2017	0	0	0.15	0	0	0.48	0.53	0.00	0	0.00	0.00	0	1.16
2018	0	0	0	0	0	0	0	0.00	0	0.00	0.00	0	0
2019	0	0	0.33	0.052	0	0.031	0.031	0.00	0.37	0.29	0.51	0.08	1.694
2020	0.04	6.27	0.38	1.21	0.58	1.17	0.31	0.00	1.5	1.75	0.40	0.29	13.9
2021	0.84	0.17	0.42	0.73	0.92	1.9	1.36	1.26	1.17	0.64	0.95	0.79	11.15
2022	*	*	*	*	*	*	*	*	*	*	*	*	0
2023	0	0	0	0	0.73	0.55	1.35	3.70	0.95	0.15	0.00	0.00	7.43
2024	1.77	0.52	0	0.03	0	0.04	0.01	0.00	0	0.00	0.00	0.00	2.37
2025	0	0	0	0.04	0	0	0	0.00	0	0.00	0.00	0.00	0.04
2026	0	0	0	0	0	0	0						0

Note: Water Sold Report is always one month behind.

*no info available

WATER CUTOFFS

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2012		227	231	299	198	270	216	274	219	504	293	408	3139
2013	260	309	321	438	267	362	267	315	236	254	362	291	3682
2014	343	360	433	239	353	185	363	399	288	373	484	307	4127
2015	397	254	252	355	256	273	299	303	266	307		535	3497
2016	414	440	298	297	360	239	345	163	177	212	240	172	3357
2017	268	210	265	279	158	231	170	195	166	228	221	177	2568
2018	241	301	120	139	235	153	227	152	206	216	368	199	2557
2019	257	270	334	143	238	147	222	251	235	256	341	217	2911
2020	172	172	235	0	0	0	0	0	0	643	0	0	1222
2021	0	0	0	428	341	255	0	0	0	0	0	0	1024
2022	0	0	797	324	394	345	457	285	276	0	0	0	2878
2023	506	275	291	318	305	277	319	232	223	248	0	0	2994
2024	372	306	296	286	209	193	265	198	212	222	185	230	2974
2025	329	310	295	0	232	0	349	281	229	261	230	265	2781
2026	308	295	190	202	192	0	375						1562

**SHOOTING RANGE WELL
WATER RIGHTS PUMPED
ACRE FEET**

(3 Acre Ft. Available Per Year)

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2013	0.05	0.03	0.12	0.16	0.18	0.28	0.21	0.32	0.16	0.20	0.08	0.05	1.84
2014	0.07	0.10	0.16	0.10	0.13	0.29	0.34	0.31	0.17	0.18	0.11	0.10	2.06
2015	0.08	0.07	0.12	0.12	0.11	0.12	0.12	0.26	0.21	0.12	0.08	0.09	1.50
2016	0.07	0.08	0.10	0.07	0.10	0.22	0.16	0.09	0.04	0.04	0.037	0.031	1.04
2017	0.009	0.01	0.03	0.02	0.04	0.10	0.04	0.055	0.046	0.05	0.03	0.034	0.47
2018	0.04	0.02	0.04	0.02	0.02	0.03	0.02	0.03	0.025	0.025	0.034	0.058	0.37
2019	0.061	0.05	0.06	0.05	0.03	0.03	0.01	0.02	0.02	0.02	0.086	0.080	0.51
2020	0.003	0.00	0	0	0.00	0.00	0.05	0.06	0.06	0.043	0.043	0.000	0.26
2021	0	0	0	0	0.00	0.03	0.02	0.02	0.09	0.03	0.02	0.04	0.25
2022	0.01	0.01	0.02	0.02	0.02	0.01	0.2	0.01	0.02	0.02	0.02	0.02	0.38
2023	0.01	0.02	0.02	0.02	0.06	0.02	0.02	0.02	0.02	0.02	0.01	0.01	0.25
2024	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.04	0.03	0.04	0.04	0.03	0.32
2025	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.03	0.01	0.24
2026	0.01	0.02	0.02	0.02	0.02	0.01	0.02						0.12

**SUNSET GARDEN WELL
WATER RIGHTS PUMPED
ACRE FEET**

(28.2 Acre Ft. Available Per Year)

2012											10.75	0	10.75
2013	0.00	0.00	0.00	1.51	4.53	4.47	2.98	5.09	1.73	0.51	0.00	0.00	20.82
2014	0.00	0.00	0.00	0.00	0.00	0.00	6.81	2.58	0.53	0.00	0.00	0.00	9.92
2015	0.00	0.00	0.07	2.68	2.84	1.93	1.13	2.72	4.71	1.47	2.17	0.26	19.98
2016	0.13	1.89	3.37	4.30	4.49	4.11	4.66	0.82	0.00	0.00	0.00	0.00	23.77
2017	0.00	0.00	2.60	3.92	3.87	3.63	4.18	2.97	0.33	0.00	0.00	1.38	22.88
2018	0.00	0.07	0.00	1.48	3.53	3.74	1.57	3.46	2.79	1.00	0.00	0.00	17.64
2019	0.00	0.00	0.04	2.56	4.36	4.57	2.72	4.60	3.06	1.04	0.28	0.00	23.23
2020	0.13	0.55	1.06	2.53	3.77	1.58	3.97	3.97	3.81	2.46	0.78	0.29	24.90
2021	0.0045	0.00	1.06	2.23	3.09	3.29	3.36	2.23	2.60	1.07	1.49	1.41	21.84
2022	0.03	0.00	0.31	1.88	3.20	3.74	3.45	2.60	2.30	0.64	0.47	0.70	19.32
2023	0.00	0.02	0.73	2.40	3.43	3.49	0.83	3.03	2.09	0.81	0.00	0.00	16.83
2024	0.31	1.04	1.20	1.64	3.48	2.63	3.42	3.34	1.33	1.21	0.41	0.21	20.22
2025	0.53	0.21	0.82	2.45	1.84	1.01	1.14	2.46	2.97	1.72	0.21	1.37	16.73
2026	0.00	0.00	0.00	0.29	3.80	2.23	4.31						10.63

WOOD FARM WELLS

1,000,000 325850

*1,000,000 /325850 Formula do not delete

2011	0.08	0.90	11.80	9.78	22.64	22.54	18.60	19.88	37.60	8.30	2.20	0.02	154.34
2012	0.00	4.81	9.11	11.16	11.79	18.76	10.00	11.69	15.24	1.89	0.05	0.64	95.13
2013	0.35	0.61	7.29	12.51	16.04	16.64	10.62	16.57	8.61	4.90	2.34	0.27	96.75
2014	1.36	1.79	6.64	10.62	16.04	22.07	21.01	13.50	3.31	4.42	0.12	0.25	101.13
2015	0.29	1.31	4.58	13.01	37.20	2.17	11.54	20.96	8.74	1.62	0.44	0.55	102.41
2016	0.27	2.67	14.42	13.03	22.09	30.57	33.17	15.94	8.18	15.31	1.38	1.44	158.47
2017	1.62	0.93	11.50	17.68	24.58	29.33	29.59	11.05	14.91	8.18	1.56	1.43	152.36
2018	5.02	3.40	12.61	15.47	26.22	28.31	27.69	24.12	34.65	5.79	11.50	1.96	196.74
2019	4.11	2.42	0.01	14.42	49.65	0.70	25.05	21.72	26.74	13.96	7.00	7.03	172.81
2020	1.14	3.17	12.31	28.72	29.58	30.38	32.01	27.83	27.48	11.13	10.67	5.49	219.91
2021	6.43	4.67	13.65	12.36	10.29	18.34	18.00	12.59	17.68	14.25	9.66	0.00	137.92
2022	1.30	2.77	10.51	18.12	17.91	21.45	25.31	19.20	11.97	11.94	10.19	5.43	156.10
2023	10.89	6.93	13.21	15.06	19.29	27.86	35.38	30.59	17.55	10.27	5.52	34.34	226.89
2024	4.29	7.87	10.12	14.43	25.54	24.23	22.29	26.53	18.45	19.86	13.03	6.83	193.47
2025	4.67	6.99	8.99	11.87	16.46	15.00	13.87	20.00	15.02	15.52	10.77	10.89	150.05
2026	8.25	4.79	9.32	12.78	16.63	13.95	19.25						84.97

Water Department Summary
Double Eagle Water System
Jul-26
Acre Ft.

Production Figures:

This Month Previous Month Year to Date

Water:

Pumped from Double Eagle (Ac. Ft.)	44.91	95.69	548.70
Water Exported to Carlsbad Municipal System	24.96	21.09	105.32
Water delivered to "Paying Livestock Water" Customers (Ac. Ft.)	0.37	0.41	4.42
Water delivered to "Free Livestock Water" Customers (Ac. Ft.)	0.53	1.21	4.74
Water sold to "Governmental Domestic Water" Customers (Ac. Ft.)	0.31	0.53	1.93
Water sold "Commercial Domestic Water" Customers (Ac. Ft.)	0.00	0.00	0.01
Water sold to "Industrial Water" customers (Ac. Ft.)	3.11	4.31	28.86
Water delivered to WIPP (Ac. Ft.)	1.92	5.72	15.98

Wells:

Wells in Operation	18	18	
KWH consumed	44,319	88030	541,819
Total No. of Wells	23	23	
Ogallala Aquifer Level at Hudson 1	130.7'	129.5'	
Tatum Aquifer Level	132.5'	131.7'	
Meters in Service	66	66	

Distribution Figures:

Transmission Lines:

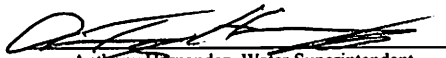
Line Extension (feet)	0	0	0
Line Replacement (feet)	0	0	5
Leaks (Main Lines)	9	8	35
Number of Isolating Valves Operated	2	4	15
Number of Pressure Reducing Valves Serviced	0	4	12
Number of Air Relief Valves Serviced	0	0	2

Remarks:

Wells Down - C-3, AMB-1, AMB-3, CR-16, CR-17

* Not available

** No info available due to billing transitioning to new system.


Anthony Hernandez, Water Superintendent

Double Eagle Well Operation Jul-26

Well	Status	Water Production				Power Consumption			Motor Hours			
		Present Read	Previous Read	Water Pumped		Present Read	Previous Read	KWH	Current	Previous	Hours Run	Avg GPM
				Gallons	Acre Ft.							
AMBASSADOR # 1	Neptune/ Trident											off
AMBASSADOR # 4	Well Inoperable											
AMBASSADOR # 3	Well Inoperable					14,989	14,739	250	3,648.6	3,648.6	0	off
C-11	McCrometer	63,211,773	63,211,773	0	0.00	256,933	256,799	134	3,608.0	3,608.0	0	
C-10	McCrometer	74,093,116	73,733,765	359,351	1.10	322,437	321,017	1,420	6,436.7	6,316.4	120.3	
C-6	Mc Crometer	61,973,086	61,973,086	0	0.00	85,165	85,075	90	22,861.7	22,861.7	0	140
CAPROCK # 19	Mc Crometer Mag	44,178,551	44,116,369	62,182	0.19	63,361	63,170	191	23,423.3	23,382.7	40.6	25
CAPROCK # 13	Mc Crometer	271,210,118	270,180,278	1,029,840	3.16	574,307	571,940	2,367	41,914.5	41,791.9	122.6	140
C-9	McCrometer	83,092,166	82,661,759	430,407	1.32	270,220	269,054	1,166	11,580.4	11,418.4	162	
CAPROCK # 20	Sensus/ Omni	53,496,682	51,583,246	1,913,436	5.87	111,817	107,910	3,907	18,008.1	17,808.3	199.8	150
CAPROCK # 10	Mc Crometer	18,578,902	18,578,902	0	0.00	68,624	68,615	9	941.3	941.3	0	90
C-8	McCrometer	87,194,132	86,404,465	789,667	2.42	267,925	266,202	1,723	9,051.5	8,819.4	232.1	
C-7	McCrometer	49,907,795	49,541,349	366,446	1.12	181,774	180,754	1,020	8,809.8	8,625.4	184.4	
CAPROCK # 18	Sensus/ Omni	36,001,464	35,699,604	301,860	0.93	131,012	130,189	823	1,362.0	1,306.1	55.9	90
CAPROCK # 6	Neptune/ Trident	11,693,992	11,521,141	172,851	0.53	117,766	117,238	528	30,783.9	30,762.2	21.7	105
CAPROCK # 4	McCrometer	85,745,028	84,784,805	960,223	2.95	227,219	224,386	2,833	35,654.2	35,264.6	389.6	45
CAPROCK # 1	Mc Crometer	63,105,887	62,302,591	803,296	2.47	224,481	222,433	2,048	30,769.3	30,399.7	369.6	30
Frontier # 2	Mc Crometer	63,884,923	62,327,280	1,557,643	4.78	77,736	73,919	3,817	27,236.1	26,573.8	662.3	30
Frontier # 1	Sensus/ Omni	55,926,587	53,181,086	2,745,501	8.43	143,843	137,091	6,752	41,328.7	40,663.7	665	50
FRONTIER # 3	Mc Crometer	35,822,015	35,822,007	8	0.00	77,067	73,255	3,812	1,245.4	1,245.4	0	140
C-2	Mc Crometer	17,511,418	17,511,413	5	0.00	83,374	83,304	70	1,779.7	1,779.7	0	160
HUDSON # 1	Octave	62,333,538	62,333,530	8	0.00	342,617	342,554	63	18,584.3	18,584.3	0	130
CAPROCK # 14	Mc Crometer	88,019,176	88,019,176	0	0.00	19,284	19,284	0	13,589.3	13,589.3	0	110
CAPROCK # 15A	Mc Crometer	16,477,572	16,477,398	174	0.00	43,062	42,989	73	11,988.7	11,988.7	0	130
CAPROCK # 21	Mc Crometer	723,462	723,462	0	0.00	387,400	387,317	83	25,290.8	25,290.8	0	65
C-1	Mc Crometer	61,795,694	58,653,913	3,141,781	9.64	244,402	238,037	6,365	24,622.8	24,271.4	351.4	110
CAPROCK # 2	Well Inoperable											
CAPROCK # 3	Well Inoperable											
CAPROCK # 5	Well Inoperable											
C-5	Well Inoperable											
C-4	McCrometer											
C-3	Mc Crometer											
CAPROCK # 17	Mc Crometer											80
CAPROCK # 16	Mc Crometer											off
Boosters			0	0	0.00	640,749	636,005	4,744	10999.9	10,999.9	0	
2 MG RESERVOIR						361	330	31				
Totals				14,634,679	44.91			44,319			3,577.3	

Meter Reads In Barrells

Ambassadors #1 & #3 - Wells Inoperable

C-3, & Caprock #16 - Wells Inoperable

Meter Changed Out

Meter removed.

15

DOUBLE EAGLE WATER SYSTEM WATER RIGHTS PUMPED ACRE FEET

7648 Acre Ft. Available Per Year

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2003	122.27	104.02	106.63	131.16	131.94	108.31	137.27	122.89	129.50	122.80	83.40	125.20	1,425.39
2004	94.10	99.14	108.96	88.59	85.29	104.91	80.47	96.62	108.99	99.07	84.00	132.98	1,183.12
2005	81.06	73.83	91.00	90.00	110.71	129.71	103.80	125.81	89.55	91.54	92.55	103.75	1,183.31
2006	99.66	92.01	109.29	75.35	137.85	132.18	86.22	98.53	96.51	96.88	103.45	82.69	1,210.62
2007	73.12	78.65	99.85	73.60	97.46	93.25	114.77	141.58	113.26	111.06	98.79	109.92	1,205.31
2008	108.28	117.41	93.89	110.54	91.87	107.59	103.60	134.80	114.37	126.79	119.45	139.80	1,368.39
2009	115.53	83.87	105.70	112.09	109.80	124.02	128.01	105.62	101.64	134.59	96.48	98.93	1,316.28
2010	98.23	113.03	134.55	139.75	121.56	152.79	139.33	180.08	160.27	158.58	167.75	151.88	1,717.80
2011	171.89	131.01	144.73	160.28	185.57	170.30	157.83	137.34	139.25	135.26	137.58	117.98	1,789.02
2012	112.77	108.16	110.15	110.62	111.76	186.92	141.80	163.02	72.61	134.45	161.72	175.64	1,589.62
2013	164.38	146.44	142.20	145.50	142.80	124.28	97.54	94.88	109.18	103.89	93.63	85.58	1,450.30
2014	85.93	86.42	87.69	97.98	125.16	108.77	144.13	120.58	98.47	114.24	102.38	107.72	1,279.47
2015	89.83	63.29	89.61	87.98	64.58	50.44	70.24	51.81	37.52	33.59	30.08	30.07	699.04
2016	30.64	38.22	36.18	26.75	28.85	34.75	32.22	33.35	23.61	26.72	29.06	31.03	371.38
2017	25.7	35.61	28.01	23.74	32.89	38.88	31.35	39.17	34.97	35.18	35.9	30.94	392.34
2018	40.13	23.75	34.02	35.14	39.33	42.3	31.46	43.72	38.41	37.23	35.01	31.7	432.20
2019	38.5	31.43	38.88	47.10	47.95	27.52	54.21	65.54	52.22	48.53	47.46	38.97	538.31
2020	33.11	23.96	37.75	38.84	68.02	54.59	77.21	59.61	62.09	51.36	93.76	34.66	634.96
2021	62.14	65.22	46.43	96.87	69.61	96.94	91.63	56.41	120.17	121.64	87.7	85.52	1,000.28
2022	68.37	81.29	92.93	110.89	112.75	115	78.14	79.49	131.9	119.22	93.76	138.36	1,222.10
2023	108.02	142.18	195.09	128.58	88.51	93.44	86.57	75.07	55.22	73.24	70.51	62.8	1,179.23
2024	66.48	43.37	49.18	69.18	51.52	63.67	62.94	123.19	98.03	100.9	77.15	58.82	864.43
2025	65.02	81.27	85.94	118.18	69.47	66.83	76.66	138.25	99.95	140.97	74.43	93.36	1,110.33
2026	96.99	70.60	99.58	73.38	67.55	95.69	44.91						548.70

**DOUBLE EAGLE WATER SYSTEM
WATER SOLD/PROVIDED
ACRE FEET**

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2003	103.16	118.81	92.16	100.16	106.02	121.98	117.48	118.48	96.98	96.27	117.92	65.14	1,255
2004	77.06	132.54	98.28	113.37	95.77	156.29	95.71	102.28	75.52	133.76	82.88	78.70	1,242
2005	95.53	53.68	62.88	76.56	70.95	68.86	107.91	88.42	76.59	66.83	88.31	60.69	917
2006	68.06	68.09	64.04	74.07	54.60	73.13	70.56	65.77	63.28	71.94	70.15	67.72	811
2007	63.47	71.20	43.33	64.06	81.36	83.03	80.18	72.46	89.35	38.88	49.77	115.89	853
2008	73.31	54.99	170.85	58.17	113.89	87.58	112.17	93.30	54.07	113.46	87.57	0.00	1,019
2009	133.68	134.89	193.91	128.57	124.42	147.29	149.87	144.41	403.39	204.34	216.64	205.47	2,187
2010	166.20	147.23	156.74	206.90	262.81	159.74	235.21	209.27	261.26	289.04	249.98	202.71	2,547
2011	273.88	296.83	197.17	305.62	293.17	356.46	306.39	341.59	373.96	299.28	332.79	115.34	3,492
2012	70.53	108.07	365.95	127.64	147.59	169.53	110.81	151.82	168.33	94.88	158.73	145.76	1,820
2013	304.62	105.90	114.03	89.49	91.59	72.45	66.60	67.58	58.66	52.40	62.94	49.32	1,136
2014	60.02	54.78	73.24	66.94	80.62	76.05	68.73	80.55	75.86	58.67	67.36	63.32	826
2015	59.07	47.81	31.75	28.16	38.17	18.94	17.79	19.48	17.51	11.21	9.04	8.54	307
2016	11.61	8.13	9.02	7.07	5.58	4.20	7.95	6.37	7.11	4.21	3.57	3.61	78
2017	4.28	4.14	3.55	4.95	3.85	8.38	7.79	4.46	4.83	3.69	4.76	7.98	63
2018	6.59	9.34	3.65	6.59	7.74	7.76	11.90	10.94	10.64	4.89	8.53	4.29	93
2019	8.82	6.04	3.21	5.81	9.53	6.98	9.20	9.01	13.52	11.29	9.57	11.67	105
2020	8.15	8.88	6.63	7.80	8.57	11.79	12.75	11.66	9.38	8.64	8.64	11.87	115
2021	4.34	2.25	8.89	9.73	16.09	8.99	13.45	7.96	8.14	6.35	18.20	7.44	111.83
2022	4.86	4.86	7.35	8.99	11.39	11.67	13.44	12.63	11.79	7.41	8.69	5.88	108.96
2023	9.35	7.06	7.84	10.60	8.74	9.70	13.87	13.02	14.00	10.60	7.83	6.68	119.29
2024	6.61	6.90	6.47	5.51	8.12	10.96	12.28	13.17	12.51	11.93	11.20	7.97	113.63
2025	6.16	7.35	7.50	7.32	7.94	11.27	17.59	11.23	14.31	11.04	11.19	10.05	122.95
2026	6.97	7.95	8.27	10.74	10.13	6.22	13.22						63.50

Note: Free Stock Included

17

** Number includes Paying Livestock/Free Livestock/Gov Domestic/Comm Domestic/Industrial/WIPP

WASTEWATER TREATMENT PLANT REPORT

July 2026

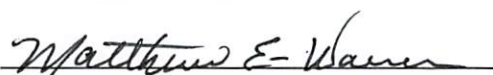
Wastewater:	Current Month	Previous Month	Calendar Year to Date
Total Effluent Discharge to Pecos River (Acre Ft.)	239.02	191.50	1,222.54
Treated Reuse Delivered to Mun. Golf Course (Acre Ft.)	33.05	38.39	249.51
Treated Reuse Sold to Rockhouse Ranch (Acre Ft.)	0.00	9.13	126.47
WWTP Irrigation Meter (Acre Ft.)	0.08	0.00	1.19
Total Reuse Pumped	33.13	47.52	377.17
After Hours Control Panel Alarms	4.00	2.00	18.00
KWH Consumed 958x160=	153,280	152640.00	1,156,780.00
NPDES Permit Violations	23.00	3.00	26.00
Sodium Hypochloride for Reuse (Gallons)	60.00	50.00	310.00

Septage Disposal Report:	Current Month	Previous Month	Calendar Year to Date
Total Number of Loads	237	202.00	1,449.00
Taxed Gallons 363476.00x \$.10	\$36,347.60	29,503.10	225,223.80
Taxed Manifest Books / \$30.00 6 x \$30.00	\$180.00	240.00	1,080.00
Subtotal	\$36,527.60	29,743.10	226,303.80
5% Tax	\$1,826.38	1,487.16	11,315.20
Taxed Billing	\$38,353.98	31,230.26	237,619.00
Tax Exempt Gallons 40025.00 X .10	\$4,002.50	2,122.00	17,817.00
Tax Exempt Manifest Books / \$30.00 0x \$30.00	\$0.00	90.00	0.00
Taxed Exempt Billing	\$4,002.50	2,212.00	17,937.00
Total Billing	\$42,356.48	33,442.26	255,556.00

Biosolids:	Current Month	Previous Month	Calendar Year to Date
Total Compost Produced (Cu. Yds.)	0.00	0.00	869.00
Amount of Sludge Sent to Compost Operation (Gals.)	281343.00	285602.00	1,997,698.00

Wastewater Discharge Characteristics:	Previous Month	Permit Limit
Average Biochemical Oxygen Demand (Lbs./Day)	237.01	293.00
Average Total Suspended Solids (Lbs./Day)	116.26	1,051.00
Average Flow (Million Gallons/Day)	2.00	NA
E.Coli (30 Day Avg.)	442.27	126.00

Remarks:


 Matthew E. Warner, WW Superintendent

SEWER COLLECTIONS REPORT

Jul 26

Calendar

This Month Previous Month Year to Date

Collection Lines:

Total Mileage of Main Line in System			139
Line Extension (Ft.)	0	200	200
Line Replacement (Ft.)	0	7	27
Repairs on Main Lines	0	1	5
Main Line Stoppages	4	2	21
Number of Manholes and Cleanouts	0	0	0
Manholes Flushed	0	0	0
Manholes Repaired	1	0	7
Customer Service Repairs	1	1	3
Customer Complaints, All Other	4	4	29
Carlsbad Line Location Service	0	0	0
Double Eagle Line Location Service	0	0	0
Ft. Sewer Liner Cleaned/Rodded	7,410	1,400	34,965
Sewer Tap Inspections	0	0	0
Total No. of Customer Services	0	0	0
Total No. of New Cust. Services Installed	0	0	0

Lift Stations:

Total in Service			
Number of After-Hour Control Panel Alarms	64	30	187
Number of Repairs	0	0	3
KWH Consumed, Primary Lift Station	61,920	16,320	163,680
KWH Consumed, All Other Lift Stations	14,320	11,971	68,110

 8-5-26
 Anthony Hernandez, Water Superintendent

Page 19

EFFLUENT DISCHARGE TO PECOS RIVER ACRE / FEET

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2000	275.31	248.42	260.88	233.80	316.16	282.37	276.77	278.69	311.94	258.03	349.52	325.73	3,417.62
2001	272.21	204.60	217.67	191.40	142.09	236.98	244.68	224.77	225.64	195.79	254.84	265.78	2,676.45
2002	266.35	232.01	263.62	256.99	225.81	190.74	250.02	214.79	206.30	244.07	207.28	239.84	2,797.82
2003	195.98	143.44	168.79	155.94	169.64	151.16	185.64	183.40	174.65	209.24	209.88	236.34	2,184.10
2004	232.32	213.56	223.88	291.51	274.82	213.81	209.05	186.17	199.53	241.73	280.59	208.26	2,775.23
2005	184.13	164.12	178.11	168.66	206.41	168.17	167.37	181.58	157.77	173.60	147.12	169.92	2,066.96
2006	141.87	127.02	172.99	140.40	140.92	169.70	174.86	188.76	197.39	185.97	178.88	182.23	2,000.99
2007	175.29	153.32	169.55	166.88	207.94	153.26	271.96	303.14	316.00	351.48	364.76	305.84	2,939.42
2008	259.44	239.22	252.53	246.40	228.69	180.08	206.35	210.09	240.35	261.89	258.89	171.21	2,755.14
2009	358.99	231.11	189.22	175.11	196.47	196.37	167.43	158.99	147.30	182.56	165.29	186.18	2,355.02
2010	179.80	164.40	171.85	172.47	136.28	138.37	220.04	174.07	196.08	190.49	192.02	181.35	2,117.22
2011	177.75	161.00	153.44	128.22	131.87	132.52	140.71	144.86	149.98	149.77	158.14	176.47	1,804.73
2012	177.26	133.35	158.96	132.17	197.54	139.17	163.09	149.43	143.97	124.39	140.86	183.20	1,843.39
2013	174.54	155.21	161.36	131.65	121.07	133.60	175.46	164.14	177.28	206.07	240.30	209.81	2,050.49
2014	210.63	150.47	156.04	153.06	160.67	157.52	218.21	280.09	284.34	255.76	244.57	224.53	2,495.89
2015	251.82	212.71	212.94	169.98	208.69	201.13	216.44	237.77	198.80	221.07	202.61	233.28	2,567.24
2016	250.84	215.81	203.86	199.36	220.94	213.33	202.97	238.61	251.05	230.03	217.11	202.17	2,646.08
2017	226.02	195.23	190.92	172.18	121.62	114.39	132.83	166.44	166.80	172.02	164.66	171.59	1,994.70
2018	180.72	134.33	132.78	116.31	115.83	119.59	129.91	152.77	160.73	184.72	166.96	175.48	1,770.13
2019	187.77	147.18	151.39	141.14	122.93	147.25	156.34	163.47	171.70	196.57	190.31	181.66	1,957.71
2020	171.87	152.55	144.74	108.70	129.17	128.14	127.36	133.91	137.49	147.44	150.85	168.11	1,700.33
2021	176.88	166.70	155.81	141.66	147.77	138.68	213.38	233.23	213.59	229.06	205.63	201.46	2,223.85
2022	215.85	180.58	165.29	88.93	133.36	132.40	154.29	155.42	159.82	200.87	194.49	193.65	1,974.95
2023	195.33	175.90	127.53	162.53	166.59	105.31	32.91	101.38	64.63	215.46	212.03	193.65	1,753.25
2024	72.18	28.76	55.80	93.47	16.25	40.56	161.56	151.24	187.60	214.54	240.34	244.17	1,506.47
2025	114.35	155.05	167.87	109.21	91.88	58.64	93.15	145.00	233.85	198.00	212.26	233.17	1,812.43
2026	186.04	178.63	169.50	157.27	100.33	191.50	239.02						1,222.29

**EFFLUENT REUSE
ACRE / FEET**

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
2000	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2001	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2002	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2003	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2004	18.94	15.45	17.52	25.36	40.46	43.55	50.58	38.81	31.31	20.14	7.82	8.08	318.02
2005	6.96	5.99	14.35	35.49	31.91	43.54	45.14	30.45	37.52	25.95	25.12	20.74	323.16
2006	22.68	22.17	23.21	37.40	49.95	99.47	207.81	72.92	23.20	34.28	20.50	17.75	631.34
2007	13.63	13.91	24.14	31.79	27.52	49.34	36.59	38.53	32.68	25.42	12.77	13.64	319.96
2008	15.06	20.54	21.83	41.29	46.49	48.50	35.56	40.95	22.85	38.63	26.92	7.18	365.80
2009	16.77	20.71	26.54	40.51	39.84	41.08	44.08	51.38	49.33	43.70	27.62	11.71	413.27
2010	16.58	8.89	23.08	31.79	62.07	61.63	15.10	49.33	28.02	29.55	21.36	18.51	365.91
2011	14.69	8.13	38.05	54.54	56.44	52.72	55.45	50.42	49.73	44.67	23.78	7.38	456.00
2012	5.82	10.40	24.91	46.25	37.18	50.67	42.51	59.86	50.03	26.67	15.56	8.15	378.01
2013	8.68	7.48	21.68	38.81	58.76	53.68	37.15	36.50	21.42	29.52	12.20	14.36	340.24
2014	19.88	23.44	34.05	32.20	47.27	54.26	67.18	45.85	21.00	32.05	19.69	28.04	424.91
2015	7.33	13.31	21.93	47.89	49.49	75.50	63.51	46.70	44.23	16.48	17.41	12.08	415.86
2016	7.43	17.65	41.85	42.00	37.41	34.82	53.26	35.94	29.90	29.75	21.56	18.97	370.54
2017	10.85	15.78	32.93	38.92	58.76	70.39	69.88	42.35	41.26	32.46	17.40	10.48	441.46
2018	25.29	45.73	62.15	81.04	88.81	83.84	93.81	74.15	55.54	42.74	34.22	15.62	702.94
2019	18.09	35.37	50.54	63.17	87.76	78.14	89.60	85.06	68.66	48.29	26.89	27.94	679.51
2020	28.16	29.07	40.67	66.70	70.90	67.84	77.07	74.77	58.73	42.58	23.60	10.88	590.97
2021	7.76	6.75	44.46	41.16	47.64	63.50	37.20	40.37	10.15	33.27	30.33	13.21	375.80
2022	6.81	14.04	38.29	48.19	67.72	82.38	70.77	77.47	75.39	27.51	15.31	14.71	538.59
2023	12.63	10.61	83.36	56.85	58.04	127.63	177.03	111.88	140.74	1.90	29.15	29.41	839.23
2024	76.73	133.77	117.15	76.28	191.34	168.34	60.29	72.52	38.05	28.83	17.83	2.39	983.52
2025	102.73	54.99	63.55	115.15	157.26	99.42	58.32	76.66	36.55	40.04	18.26	13.51	836.44
2026	51.98	17.52	43.98	50.9	132.14	47.5	33.13						377.15



**CITY OF CARLSBAD
AGENDA BRIEFING
MEMORANDUM**

Council Meeting Date: September 8, 2026

DEPARTMENT: Grants	BY: Angie Barrios-Testa	DATE: 08/28/2026
SUBJECT: Consider Approval to accept a Grant Agreement from the New Mexico Department of Transportation Aviation Division for the Cavern City Air Terminal Runway 3-21, Mill, Overlay, and Lighting Reconstruction Project		
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) The City of Carlsbad submitted an application to the Federal Aviation Administration (FAA) and the New Mexico Department of Transportation (NMDOT) Aviation Division for the Cavern City Air Terminal Runway 3-21 Mill, Overlay, and Lighting Reconstruction Project. The project was selected as the Cavern City Air Terminal's top project in its Capital Improvement Plan (CIP). Molzen Corbin, Inc., the airport's engineering consultant, assisted in preparing the applications under its existing contract and recently completed the plan and design funded by previous FAA and NMDOT Aviation Division grants. As is customary for airport projects, the City went through the bidding process to determine the construction budget. Once the bid process is complete, the City submits the application to the FAA and NMDOT Aviation Division for approval. Once the FAA and NMDOT Aviation Division award the funding, it is distributed among the following four grant programs: Airport Improvement Program (AIP), AIP Supplemental, Infrastructure Investment and Jobs Act (IIJA), and Airport Improvement Grant (AIG). These are either annual federal and state apportionments or appropriations that provide competitive grants for airports. The first grant award is for an estimated total of \$7,207,759, with the FAA covering ninety-five (95) percent, the state covering four (4) percent of the non-federal match, and the City covering the remaining one (1) percent. Enclosed is also an updated Engineer's Estimate titled Sponsors Budget Analysis, which provides the grand total of \$7,420,901 for all project elements. The projected total match for the City remains \$72,071, which would reduce the match to less than 1% if all requested funding is awarded. Note that the FAA Project total in the sponsor's budget analysis is \$7,207,129, and the enclosed agreement shows \$7,207,759, a discrepancy of \$630 to be reconciled in the final FAA agreements. The state's portion should remain at \$288,285, or be amended if needed. The enclosed draft agreement, now being awarded, covers the state's portion of the funding for this project. By accepting this award, the City agrees to comply with all terms and conditions set forth in the enclosed draft agreement. Implementation of this construction project is contingent		

on receiving the FAA funding. The FAA award is pending, and it will be brought before the council for approval at a later date.

DEPARTMENT RECOMMENDATION:

If it is the will of the City Council, approve the enclosed project grant agreement and delegate the City Manager or her designee to execute the enclosed grant agreement and related documents. The signatures will be submitted through DocuSign.

BOARD/COMMISSION/COMMITTEE ACTION:

-

Reviewed by:

City Manager: Wendy D Austin

Date: September 3, 2026

Attachments:

1. Cavern City Air Terminal _ 2026 CIP
2. Spons Bud Analysis CNM RW 321 Const No Renumber
3. CNM-27-01 - RUNWAY 3-21 REHAB AND MIRL REPLACEMENT - CONSTRUCTION
(1)

5 Year Capital Improvement Plan (CIP)

Airport Name (LOC ID), ST:

Cavern City Air Terminal (CNM)

CIP START YEAR:

2026

\$27,155 2022 NPE (Expires FY 25)

\$150,000 2023 NPE (Expires FY 26)

\$150,000 2024 NPE (Expires FY 27)

\$537,618 Estimated NPE (for planning through 2030)

\$118,250 2023 AIG (Expires FY26)

\$292,000 2024 AIG (Expires FY27)

\$292,000 2025 AIG (Expires FY28)

\$292,000 2026 AIG (for planning through 2026)

Fed FY	Available		Funding Source	ODO Project Component/Phase	Estimated Cost	Funding Plan						
	NPE	AIG				NPE	AIG	Additional AIP	State	Local	Match	
2026	\$864,773	\$994,250	AIP/BIL	RW 3-21 Rehabilitation Phase III - Construction, 3-21 MIRL, Replacement, MALSR & LOC Relocation Phase II - Construction	\$7,576,213	\$864,773	\$994,250	\$5,338,379	\$340,930	\$37,881	\$378,811	
			Local	Terminal TSA Improvements - Phase I	\$1,000,000				\$1,000,000			
	Total = \$1,859,023											
	\$0	\$0	Remaining Funds		2026 Annual Subtotals:	\$8,576,213	\$864,773	\$994,250	\$5,338,379	\$340,929	\$1,037,881	\$378,810
2027	\$537,618	\$0	AIP	Taxiway C Extension Phase I - Environmental, PER, & Design	\$160,000	\$152,000	\$0	\$0	\$7,200	\$800	\$8,000	
			Local	T-Hangar Development Phase I - Design	\$100,000	\$0	\$0	\$0	\$100,000	\$100,000		
			State	Terminal Rennovations Design	\$250,000			\$125,000	\$125,000	\$250,000		
	Total = \$537,618		AIP	Airport Master Plan Update	\$600,000	\$385,618		\$184,382	\$27,000	\$3,000	\$30,000	
	\$0	\$0	Remaining Funds		2027 Annual Subtotals:	\$1,110,000	\$537,618	\$0	\$184,382	\$159,200	\$228,800	\$388,000
2028	\$537,618	\$0	State	Maintenance Items	\$22,222	\$0	\$0	\$0	\$20,000	\$2,222	\$22,222	
			Local	T-Hangar Development Phase II - Construction	\$550,000	\$0	\$0	\$0	\$0	\$500,000	\$500,000	
			State	Terminal Rennovations/Expansion	\$5,500,000	\$0	\$0	\$0	\$2,750,000	\$2,750,000	\$5,500,000	
	Total = \$537,618											
	\$537,618	\$0	Remaining Funds		2028 Annual Subtotals:	\$6,072,222	\$0	\$0	\$0	\$2,769,999	\$3,252,222	\$6,022,222
2029	\$1,075,236	\$0	AIP	Taxiway C Extension Phase II - Construction	\$4,000,000	\$300,000	\$0	\$3,450,000	\$225,000	\$25,000	\$250,000	
	Total = \$1,075,236											
	\$775,236	\$0	Remaining Funds		2029 Annual Subtotals:	\$4,000,000	\$300,000	\$0	\$3,450,000	\$225,000	\$25,000	\$250,000
2030	\$1,312,854	\$0	AIP	Runway 3-21 Extension, Glideslope Antenna Relocation, MALSR Relocation, Phase 1- Environmental	\$150,000	\$142,500	\$0	\$0	\$6,750	\$750	\$7,500	
			AIP	Runway 3-21 Extension, Glideslope Antenna Relocation, MALSR Relocation, Phase 2- PER	\$300,000	\$285,000	\$0	\$0	\$13,500	\$1,500	\$15,000	
	Total = \$1,312,854											
	\$885,354	\$0	Remaining Funds		2030 Annual Subtotals:	\$450,000	\$427,500	\$0	\$0	\$20,250	\$2,250	\$22,500
5 Year CIP Totals:					\$20,208,435	\$2,129,891	\$994,250	\$8,972,761	\$3,515,378	\$4,546,153	\$7,061,532	

SPONSOR SIGNATURE:

Wendy Austin

DATE:

7-31-2025

SPONSORS BUDGET ANALYSIS

LOCATION	Cavern City Air Terminal
AIP PROJECT NUMBER	3-35-0007-037-2026
AIP PROJECT NUMBER	3-35-0007-038-2026
AIG PROJECT NUMBER	3-35-0007-039-2026
AIP PROJECT NUMBER	3-35-0007-040-2026

LAND ACQUISITION	\$
CONSTRUCTION	6,897,768
ENGINEERING	225,962
ADMINISTRATIVE (IFE)	10,000
INSPECTION	187,171
TESTING	-
EQUIPMENT	-
OTHER (SPECIFY) ILS, Procedures, and PAPI Flight Check	100,000
	-
TOTAL	\$ 7,420,901

REMARKS:

Runway 3-21 Mill, Overlay, and Lighting Reconstruction
All costs include applicable NMGR Rates
Grant 37 is for 3-21 Runway Paving and Grading as well as Engineering,
Observation and Flight Check Costs, Grant 38 is for 3-21 Observation and
Lighting, Grant 39 is for Pavement, Grant 40 is for Marking on
Runways 3-21

PROJECT COSTS:	\$ 7,207,129
FAA Eligible	\$ 7,207,129
FAA Ineligible	

Total FAA share (95% of Eligible)	\$ 6,846,773
Grant 37 (AIP, PE and NPE Entitlements)	\$ 3,427,155
Grant 38 (AIP, Supplemental)	\$ 1,984,038
Grant 39 (IIJA AIG)	\$ 1,110,097
Grant 40 (AIP, PE and/or NPE Entitlements)	\$ 325,483

STATE share of FAA elibigle (4%)	288,285
STATE share of FAA ineligibgle (90%)	-

STATE share total	288,285
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SPONSOR share (.5% of FAA Eligible and 10% of Ineligibile)	72,071
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7,207,129

		Eligible	Ineligible
Paving	\$ 4,381,991.36	\$ 4,381,991.36	\$ -
Striping	\$ 342,614.08	\$ 342,614.08	
Lighting	\$ 1,959,391.27	\$ 1,959,391.27	\$ -
Engineering, RA,s and Observation and Testing	\$ 523,132.74	\$ 523,132.74	\$ -
Total	\$ 7,207,129.45	\$ 7,207,129.45	\$ -

NEW MEXICO DEPARTMENT OF TRANSPORTATION
Aviation Grant Agreement Form



Date

Project Location

Sponsor

Address

City NM Zip Code

Participation

Funding Breakdown

Contract No. _____

Project No.

Vendor No.

Expiration Date _____

Purchase Order No: _____

AVIATION GRANT AGREEMENT

This Agreement is between the New Mexico Department of Transportation, acting through its Aviation Division (Department), and the Sponsor. This Agreement is effective pursuant to Section 7, below.

Now Therefore, pursuant to the New Mexico Aviation Act, NMSA 1978, Section 64-1-11 et seq., and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq., the parties agree as follows:

1. Purpose.

The purpose of this Agreement is to provide funding, authorized in Section 64-1-13, NMSA 1978, to the Sponsor to assist in financing an aviation project.

a. Project Description:

RUNWAY 3-21 REHAB AND MIRL REPLACEMENT - CONSTRUCTION

b. Site of Development. The site of development is identified on the property map, attached as Exhibit A.

c. Funding. Below is the funding for the Project. The State's contribution is the maximum amount that the Department will contribute. Attached as Exhibit B is the engineer's cost estimate.

State	Sponsor	Other	Total
\$ 288,285	\$ 72,701	\$ 6,846,773	\$ 7,207,759

2. The Sponsor Shall:

- Pay all costs, perform all labor, and supply all material, except as described in the Engineers Estimate attached as EXHIBIT B.
- Provide a representative from its organization who shall serve as the single point of contact for the Department.
- Establish and maintain a resolution by which the Sponsor agrees to establish an airport maintenance program and appoint an individual to be responsible for management of the program.
- Initiate engineering, survey, and all other design activities, inspect Project construction and, coordinate all meetings.
- Be responsible for all design and pre-construction activities.
- Initiate and cause to be prepared all necessary documents including plans, specifications, estimates (PS&E), and reports for this Project.
- Assure that all design and PS&E are performed under the direct supervision of a Registered New Mexico Professional Engineer.
- Design the Project in accordance with State and Federal guidelines and/or advisory circulars, hereby incorporated into this Agreement. Construction projects will be accomplished in accordance with the Federal Aviation Administration's Standards for Specifying Construction of Airports (Advisory Circular 150/5370-10, current edition).

- i. Notify the Department when the plans and specifications are sufficiently complete for review.
- j. Make no changes in design or scope of work without documented approval of the Department.
- k. Advertise for and contract for the construction of the Project in accordance with federal and state laws or local ordinances.
- l. Require the Engineer to prepare a final detailed estimate of the work, indicating the bid items, the quantity in each item, the unit bid price and cost of the items based on low acceptable bid prices. Progress estimates shall be submitted to the Department in acceptable form so that details of quantities allowed on various items of work shall be shown on each progress payment.
- m. The Sponsor shall submit to the Department one complete set of plans and specifications which incorporate all comments and recommendations received during pre-bid activities and which have been fully executed by all involved parties.
- n. The Sponsor shall take all steps, including litigation if necessary, to recover State funds spent in violation of state laws and rules. The Sponsor shall return any recovered state funds to the Department. It shall furnish to the Department, upon request, all documents and records pertaining to the determination of the amount of the state's share of any settlement, litigation, negotiation, or the efforts taken to recover such funds. All settlements or other final dispositions by the Sponsor, in court or otherwise, involving the recovery of such state funds shall be approved in advance by the Department.
- o. The Sponsor shall, upon reasonable notice, allow the Department the right to inspect the Project for the purposes of determining if it is being constructed in a good and workmanlike manner, and if the approved plans and specifications are being complied with satisfactorily. If an inspection discloses a failure to substantially meet such requirements and standards the Department may terminate payment or payments until a mutually satisfactory remedy is reached.

3. The Department Shall:

- a. Assign a contact person for this project.
- b. Provide timely reviews of all submittals of scopes, plans, specifications, investigations or other documents.
- c. The Department shall not provide an extensive check of any plans submitted by the Sponsor. The Department's concurrence of the Project plans does not relieve the Sponsor or its Consultant of their responsibility for errors and omissions.

4. Both Parties Agree:

- a. The allowable costs of this Project shall not include costs determined by the Department to be ineligible for consideration under the Aviation Act.
- b. The expenditure of any State money is subject to approval by the Department.
- c. Funds granted under the Local Governments Road Fund, NMSA 1978 Section 67-3-28.2, shall not be used to administer this Project or used to meet the local match.

5. Method of Payment - Reimbursement.

The Department shall reimburse the Sponsor in accordance with the terms of this agreement. Claims for reimbursement shall be completed on form A-1159, Request for Reimbursement. Each request for reimbursement shall contain proof of payment for valid expenditures for services rendered by a third party or items of tangible property received by the Sponsor for the implementation of the Project. The Department reserves the right to withhold reimbursement on requests that are incorrect and/or incomplete. The Final reimbursement request must be received no later than thirty (30) days after completion of the project or the expiration of this Agreement.

The Sponsor shall not be reimbursed for any costs incurred prior to the full execution of the Agreement, after the expiration of the Agreement or in excess of the maximum dollar amount of the agreement unless the maximum dollar amount is duly amended prior to incurring the service or deliverable. Any unexpended portion of funds subject to this Agreement shall revert to the State Aviation Fund.

6. Accountability of Receipts and Disbursements.

There shall be strict accountability for all receipts and disbursements. The Sponsor shall maintain all records and documents relative to the Project for a minimum of three (3) years after completion of said Project. The Sponsor shall furnish the Department or State Auditor, upon demand, all records which support the terms of this Agreement.

7. Term.

The Agreement becomes effective upon signatures of all parties. The Agreement's effective date is the date opposite of the NMDOT Cabinet Secretary or Designee's signature on the signature page. This agreement shall expire two (2) years from the effective date, unless terminated pursuant to Sections 8 and 17, below.

8. Termination for Cause.

The Department has the option to terminate this Agreement if the Sponsor fails to comply with any provision of this Agreement. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the Sponsor's breaches on which the termination is based.

The Department may provide the Sponsor a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Sponsor has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Sponsor has not begun and proceeded in good faith to correct the breach, the Department may declare the Sponsor in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law.

By such termination neither party may nullify obligations already incurred for performance or failure to perform for the work rendered prior to the date of termination. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination.

9. Disposition of Property.

- a. Upon termination of this Agreement, the Sponsor shall account for any remaining property, materials or equipment belonging to the Department and dispose of them as directed by the Department.
- b. Any equipment, materials or supplies procured under this Agreement shall be used solely for aviation purposes maintained according to the manufacturers guidelines and stored at the airport.

10. Representations and Certification.

The Sponsor, by signing this Agreement, represents and certifies the following:

- a. Legal Authority - The Sponsor has the legal power and authority to: (1) do all things necessary in order to undertake and carry out the Project in conformity with the provisions stated in the New Mexico Aviation Act and Rules and Regulations pursuant thereto; (2) accept, receive and disburse grant funds from the State of New Mexico in aid of the Project; and (3) carry out all provisions stated in this Aviation Grant Agreement.
- b. Defaults - The Sponsor is not in default on any obligation to the State of New Mexico relative to the development, operation or maintenance of any airport or aviation project.
- c. Possible Disabilities - The Sponsor states, by execution of this Agreement, there are no facts or circumstance (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project.
- d. Land - The Sponsor holds the property interest in the areas of land which are to be developed or used as part of or in connection with the Project and is identified in a current Airport Property Map. The Sponsor further certifies that the aforementioned is based on a title examination by a qualified attorney or title company who has determined that the Sponsor holds the stated property interests.

11. Assurances.

The Sponsor, by signing this Agreement, covenants and agrees to the following Assurances:

- a. That it will operate the airport for the use and benefit of the public on fair and reasonable terms and without unjust discrimination.
- b. That it will keep the airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds, and classes. The Sponsor shall establish fair, equal and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation.

- c. Neither it nor any person or organization occupying space at the airport will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of the facility and, further that any person, firm or corporation rendering service to the public on the airport will do so on a fair, equal and not unjustly discriminatory basis.
- d. Operate and maintain in a safe and serviceable condition the airport and all facilities which are necessary to serve the aeronautical users and will not permit any activity which would interfere with its use for airport purposes.
- e. By acquisition of land interest, acquisition of easements, airspace zoning, or other accepted means, protect the runway approaches and the airspace in the immediate vicinity of the airport from the construction, alteration, erection or growth of any structure which would interfere with the use or operation of the airport.
- f. Comply with the New Mexico Aviation Act and associated provisions, NMSA 1978 Sections 64-1-1 to 64-5-4 and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq.
- g. That it shall not award the contract nor give bidding documents to any contractor who is subject to suspension or debarment by the U.S. Department of Transportation or the Department at the time of the bidding or award of the contract. Violation of this provision shall void this Agreement.

12. Third Party Beneficiaries.

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

13. New Mexico Tort Claims Act.

As between the Department and the Sponsor, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq.* This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

14. Scope of Agreement.

This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior Agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Terms of this Agreement.

The terms of this Agreement are lawful; performance of all duties and obligations shall conform with and do not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

16. Equal Opportunity Compliance.

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States shall, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

17. Appropriations and Authorizations of State and Federal Funds.

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Sponsor, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Sponsor, Legislature or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given by one party to the other. The Department and the Sponsor are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

18. Severability.

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

19. Applicable Law.

The Laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

20. Principal Contacts and Notices.

The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail) and shall be given to the principal contacts listed below.

Address: New Mexico Department of Transportation - Aviation Division
3501 Access Rd C.
Albuquerque, NM 87106
General Office: (505) 795-1401
Fax: (505) 244-1790
E-mail: Aviation.Division@dot.nm.gov

Name BOBBY ESPINOZA
Title AIRPORT MANAGER
Sponsor CARLSBAD, CITY OF
Address PO BOX 1569
City CARLSBAD NM Zip Code 88221
Office Phone +1 (575) 887-3060 Fax
E-Mail respinoza@cityofcarlsbadnm.com

21. Amendment.

This Agreement shall not be altered, modified, or amended except by an instrument in writing and executed by the parties.

In witness whereof, each party is signing this Agreement on the date stated opposite of that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Cabinet Secretary or Designee

Date: _____

Recommended by:

By: _____
Aviation Division Director
or Designee

Date: _____

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: _____
Assistant General Counsel

Date: _____

SPONSOR

Print Name: _____

By: _____

Date: _____

Title: _____

EXHIBIT B PROJECT COST

Project Location

CNM - CAVERN CITY AIR TERMINAL

Project Description

RUNWAY 3-21 REHAB AND MIRL REPLACEMENT - CONSTRUCTION

State		Sponsor		Other		Total	
\$	288,285	\$	72,701	\$	6,846,773	\$	7,207,759



**CITY OF CARLSBAD
AGENDA BRIEFING
MEMORANDUM**

Council Meeting Date: September 8, 2026

DEPARTMENT: Grants	BY: Angie Barrios-Testa	DATE: 08/25/2026
SUBJECT: Consider Approval of Resolution 2026-54, a Resolution authorizing Project SAP 26-K2425-GF for the East Greene Street Area Waterline Improvement Project, and the assignment of authorized Officers and Agents		
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) The State of New Mexico Legislature appropriated \$1,516,000 for Capital Outlay SAP 26-K2425-GF in the Laws of 2026, Chapter 71, Section 43, Subsection 43, <i>"to plan, design, construct and improve water lines in east Greene street area in Carlsbad in Eddy county"</i> . The \$1,516,000 is now being made available through a grant agreement between the New Mexico Environmental Department (NMED) and the City of Carlsbad. The City is required to spend the funds in advance and submit reimbursement for eligible expenses to NMED. Approval of the enclosed resolution accepts the grant agreement and authorizes the assignment of authorized officers and agents. The City must comply with all terms and conditions set forth in the attached agreement. In anticipation of the appropriated funding, the project was budgeted in FY27 under Project No. 101715. Previous Funding: In 2025, the City received \$4,620,000 in Capital Outlay Appropriations for five City projects. In 2026, the City is expecting a total of \$3,169,750 for three Infrastructure Capital Outlay and three Senior Capital Outlay. The \$1,516,000 is the first of the six grant agreements still pending.		
DEPARTMENT RECOMMENDATION: If it is the will of the City Council, approve the enclosed Resolution authorizing the project grant agreement, and delegate the Mayor or his designee to execute the enclosed grant agreement and related documents, as well as authorize officers and agents to sign all the other documents necessary to fulfill the grant agreement and project requirements.		
BOARD/COMMISSION/COMMITTEE ACTION: -		
Reviewed by:		
City Manager: Wendy D Austin		Date: September 3, 2026

Attachments:

1. GrantAgreement_SAP 26-K2425-GF_08-18-2026

NEW MEXICO CAPITAL OUTLAY GRANT AGREEMENT CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the State of New Mexico, New Mexico Environment Department, ("**Department**") and City of Carlsbad, ("**Grantee**") (individually "**Party**" and collectively "**Parties**"). This Agreement shall be effective as of the date the Department executes it ("**Effective Date**").

WITNESSETH

WHEREAS, in the Laws of 2026, Chapter 71, Section 43, Subsection 36, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of funds from this appropriation, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

AGREEMENT

I. PROJECT DESCRIPTION, GRANT AMOUNT, AND REVERSION

- A. SAP 26-K2425-GF ("**Project**") **June 30, 2030** ("**Reversion Date**"). Laws of 2026, Chapter 71, Section 43, Subsection 36, One Million Five Hundred Sixteen Thousand Dollars, (\$1,516,000.00), to plan, design, construct and improve water lines in the east Greene street area in Carlsbad in Eddy county;.
- B. Grantee's total reimbursements shall not exceed One Million Five Hundred Sixteen Thousand Dollars \$1,516,000.00 ("**Appropriation Amount**") minus the allocation for Art in Public Places ("**AIPP amount**"), if applicable, No Dollars, \$0.00, which equals One Million Five Hundred Sixteen Thousand Dollars, \$1,516,000.00 ("**Adjusted Appropriation Amount**").
- C. In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I, the language of the laws cited herein shall control.

The information contained in Article I is referred to collectively as the "**Project Description**."

II. DISBURSEMENT LIMITATION

- A. Upon the Effective Date, the Grantee shall submit to the Department a comprehensive procurement plan and expenditure plan, detailing a Project timeline with milestones, required procurements, and identifying expected expenditures per milestone (collectively, "**Project Budget**"). The Department shall review and approve the Project Budget by approving a Notice of Department's Obligation ("**Notice of Obligation**"), in accordance with the Project Description, a sample of which is attached hereto as **Exhibit B** and incorporated herein by reference. After receipt of approved Notice of Obligation, the Grantee may be reimbursed for allowable costs up to the Adjusted Appropriation Amount. This Agreement and any reimbursements up to the Adjusted Appropriation Amount are expressly conditioned upon the following:
 - a. Irrespective of any Notice of Obligation, Grantee's expenditures shall be made in accordance with the Project Budget, on or before the Reversion Date and/or, if applicable, any Early Termination Date; and

- b. The total amount received by Grantee shall not exceed the lesser of:
 - i. the Adjusted Appropriation Amount identified in Article I (B) herein; or
 - ii. the total of all amounts stated in the Notice(s) of Obligation evidencing the Department has received and accepted Grantee's Third Party Obligation(s); and
 - c. Grantee's expenditures are made and accounted for pursuant to the State Procurement Code, State's Model Accounting Practices, and execution of binding written obligations or purchase orders with third-party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project ("**Third Party Obligations**"); and
 - d. Grantee's submittal of timely Requests for Payment and supporting documentation in accordance with the procedures set forth in this Agreement; and
 - e. In the event capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - i. must be approved by the applicable oversight entity (if any) in accordance with §§ 13-6-2, 13-6-2.1, and 13-6-3; or
 - ii. If no oversight entity is required to approve the transaction, the Department of Finance and Administration's Infrastructure Planning Development Division (IPDD) must approve it as complying with the law.
- B. Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(e) (i) or (ii) herein, the Department may, in its sole and absolute discretion, unless inconsistent with State Board of Finance imposed conditions, reimburse Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, limited to planning and design expenditures; and
- C. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
- a. Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation, and request the Third Party to begin work after issuance of a Notice of Obligation by the Department.
 - b. Grantee acknowledges and agrees that any Third Party Obligations agreed to prior to receiving a Notice of Obligation are its sole responsibility.
 - c. Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
 - d. Department may, in its sole and absolute discretion, issue a Notice of Obligation for the particular amount of a Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is incorporated herein and attached hereto as **Exhibit B**.
- D. Grantee shall provide all necessary qualified personnel, materials, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- E. Prior to entering into this Agreement, the Department conducted a risk assessment on the Grantee and a project readiness review for the Project. In accordance with State Model Accounting Practices, FIN 9.2, if the Department determines that the expenditure of Project funds by the Grantee requires special conditions, those conditions are identified and listed in **Exhibit C**, which is attached and incorporated by reference. The Parties agree that, to the extent the Department, in its sole and absolute discretion, determines additional special conditions are necessary or that existing special conditions are no longer

required, it may update **Exhibit C** from time to time without the need for a formal amendment of this Agreement.

- F. Project funds shall not be used for purposes other than those authorized by the Department in accordance with the Project Description.
- G. Project funds cannot be used to reimburse the Grantee for indirect Project costs unless specifically allowed by law.

III. NOTICES

The following provisions shall apply whenever written notices, including written decisions, are to be given or received related to this Agreement.

- A. The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee:	City of Carlsbad
Name:	Angie Barrios-Testa
Title:	Director of Grant Programs
Address:	P.O. Box 1569, Carlsbad, NM 88221
Email:	abtesta@cityofcarlsbadnm.com
Telephone:	(575) 887-1191 x7904

- B. The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee:	City of Carlsbad
Name:	Melissa Salcido
Title:	Director of Finance
Address:	P.O. Box 1569, Carlsbad, NM 88221
Email:	mmsalcido@cityofcarlsbadnm.com
Telephone:	(575) 887-1191

- C. The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Environment Department
Name: Bertha Aragon
Program Administrator
NMENV-cpbsap@state.nm.us or bertha.aragon@env.nm.gov
Telephone: 505-670-3615

Environment Department
Name: Brandon Kalinowski
Project Manager
Email: brandon.kalinowski@env.nm.gov
Telephone: 505-670-3571

Environment Department

Sara Rhoton
Technical Section Manager
Sara.rhoton@env.nm.gov
Telephone: 505-469-2687

The Parties agree that all notices, including written decisions, related to this Agreement shall be sent to the persons named above by email or regular mail. For mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five (5) calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of the email.

IV. TERM & DEADLINE TO EXPEND FUNDS

- A. The term of this Agreement shall begin on the Effective Date and terminate on the 30th day of June during the calendar year of the Reversion Date unless Terminated Before Reversion Date ("**Early Termination**") pursuant to Article V herein (collectively "**Term**").
- B. The Project's funds must be expended on or before the Reversion Date and, if applicable, the Early Termination Date of this Agreement.
 - a. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Reversion Date or Early Termination Date.
 - b. For purposes of this Agreement, an expenditure of funds has occurred on the date the particular quantity of goods is delivered to and received by the Grantee, title to the goods is transferred to the Grantee, and/or as of the date particular services are rendered to and accepted by the Grantee.
 - c. For purposes of this Agreement, an encumbrance of funds pursuant to a contract or purchase order with a third party does not qualify as an expenditure.

V. EARLY TERMINATION

- A. General Provision. The Department may terminate this Agreement before the Reversion Date based on the Completion of the Project, Complete Expenditure of the Adjusted Appropriation, and/or Violation of this Agreement. Early Termination hereunder includes:
 - a. Termination due to completion of the Project before the Reversion Date;
 - b. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date;
 - c. Termination for violation of the terms of this Agreement; or
 - d. Termination for suspected mishandling of public funds, including but not limited to fraud, waste, abuse, and conflicts of interest.
- B. Non-appropriation. This Agreement is expressly contingent upon the New Mexico State Legislature making sufficient appropriations and authorizations for the Project Description.
 - a. If the Legislature does not appropriate the Appropriation Amount, this Agreement shall terminate upon the Department giving the Grantee written notice of such termination. Such termination shall be effective as of the effective date of the law making the non-appropriation.
 - i. The Department's decision as to whether sufficient appropriations or authorizations are available shall be final. Grantee hereby waives any rights to assert an impairment of

contract claim against the State of New Mexico in the event of Early Termination of this Agreement.

- b. As used herein, “non-appropriate” or “non-appropriation” includes the following actions by the New Mexico Legislature:
 - i. Deauthorization, reauthorization, or revocation of a prior authorization.

- C. Grant Disbursements in the Event of Early Termination. In the event of Early Termination, the Department’s sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II above.
- D. Notice. Either Party may terminate this Agreement prior to the Reversion Date by providing the other Party with a minimum of fifteen (15) days advance written notice of the Early Termination. Grantee hereby waives any rights to assert an impairment of contract claim against the State of New Mexico in the event of Early Termination of this Agreement by the Department.

VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

- A. Department, in its sole and absolute discretion, may provide written notice to Grantee to suspend entering into further obligations. Upon the receipt of such written notice by the Grantee:
 - a. Grantee shall immediately suspend entering into new or further written obligations with third parties;
 - b. Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
 - c. Department may direct the Grantee to implement a corrective action plan in accordance with Article VI (D) herein.
- B. In the event of Suspension of this Agreement, the Department’s sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.
- C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for a Notice of Obligation.
- D. Corrective Action Plan in the Event of Suspension. Where the Department, in its sole and absolute discretion, directs Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension.
 - a. Such a corrective action plan must be approved by the Department and be signed by the Grantee.
 - b. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(c).
 - c. A corrective action plan shall be in addition to, and not in lieu of, any other equitable or legal remedy authorized hereunder or at law, including but not limited to Early Termination.

VII. AMENDMENTS

Unless expressly stated otherwise herein, this Agreement shall not be altered, changed, or amended except by an instrument in writing duly executed by both parties hereto with the same formalities as this agreement.

VIII. REPORTING

A. Database Reporting

- a. Grantee shall provide the Department with quarterly reports of Project activity, entering the required Project information directly into a database required by the Department.
- b. Additionally, Grantee shall certify on each Request for Payment form, attached hereto as **Exhibit A** and incorporated herein, that all information provided in the database is true and accurate, updates to the database have been maintained, and all Project activity complies with applicable law and the terms of this Agreement.
- c. Grantee hereby acknowledges that failure to perform and/or certify updates to the database will jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of fourteen (14) days' advance written notice of any changes to the information the Grantee is required to report.
- d. At the Department's discretion, all reports required hereunder may be directed to and facilitated through an electronic database.
- e. Quarterly reports shall be due on the last day of the month, that is, 30 days prior to the end of the quarter following the execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- i. request such additional information regarding the Project as it deems necessary; and
- ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

B. Requests for Additional Information/Project Inspection

- a. During the term of this Agreement and the Record Retention Period, the Department may:
 - i. Request additional information regarding the Project as it deems necessary and
 - ii. Conduct on-site inspections of the Project at reasonable times and upon reasonable notice.
- b. Grantee shall respond to such requests for additional information within the time established by the Department.

IX. REQUEST FOR PAYMENT PROCEDURES

- A. Grantee shall request payment by submitting the form attached hereto as **Exhibit A**. Payment requests are subject to the following procedures:

- a. Each Request for Payment must be in accordance with the Project Budget and contain proof of payment by the Grantee or liabilities incurred by the Grantee.
 - i. Proof of payment must demonstrate the validity of an expenditure or liabilities incurred by Grantee.

- ii. However, Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
 - iii. The Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or in a shorter period than the Department may prescribe in writing.
 - iv. The Department reserves the right to make such payments directly to the contractors or vendors as a special condition under this Agreement.
 - v. The Grantee is required to certify to the Department proof of payment to the third-party contractor or vendor within five (5) business days from the date the Department reimburses the Grantee.
- B. Until the Project is fully planned, designed, and all necessary procurements identified in the Project Budget are completed, Grantee's reimbursements will be limited to the planning, design, and procurement costs outlined in the Project Budget. Once the planning, designing, and procuring stages are complete, the Grantee must obligate at least ten percent (10%) of the Adjusted Appropriation Amount within one (1) year and must have utilized at least eighty-five percent (85%) of the Adjusted Appropriation Amount six (6) months before the reversion date.
- C. Deadlines. Grantee shall submit requests for Payments to the Department on the earlier of:
 - a. Immediately as Grantee receives them, but at a maximum of thirty (30) days from when Grantee incurred the expenditure or liability; or
 - b. Twenty (20) days from the date of Early Termination or Reversion Date for expenditures or liabilities incurred before the Early Termination date or Reversion Date.
- D. Grantee's failure to abide by the requirements set forth in Article II and Article IX herein may result in the denial of its Request for Payment. Department reserves the right to reject a payment request for the Project unless and until it is satisfied that the expenditures or liabilities are for permissible purposes within the meaning of the Project Description, identified within the Project Budget, and that the Grantee is otherwise in compliance with this Agreement.
 - a. Department's authority to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department under this Agreement, at law, or in equity.

X. PROJECT CONDITIONS AND RESTRICTIONS

- A. The following general conditions and restrictions shall apply to the Project:
 - a. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code.
 - b. The Project's expenditures and liabilities must be accounted for in accordance with the State's Model Accounting Practices, as amended from time to time.
 - c. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable.
 - d. The Project must provide a public benefit above and beyond any incidental benefit to private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico.

- e. Without prior written approval from the Department and State Board of Finance, for the useful life of any asset purchased under this Agreement, Grantee shall not convert any property acquired, built, renovated, repaired, designed, or developed with Project funds to uses other than those specified in the Project Description.
 - i. In addition to other remedies available at law or in equity, any disposal or conversion of property acquired, built, renovated, repaired, designed, or developed with Project funds without the Department's and the Board of Finance's express written approval will trigger the Department's right to reimbursement from Grantee of the Appropriated Amount, transfer proceeds from any disposition of property to the State, or otherwise provide consideration to the State for the Appropriated Amounts.
- f. Grantee shall comply with all applicable federal and state laws, rules, and regulations pertaining to civil rights and equal employment opportunity.
 - i. In accordance with all such laws, rules, and regulations, the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age, or handicap, be excluded from participation in the Project, use of the Project, employment with Grantee, or otherwise be denied benefits/subject to discrimination for any activity performed under this Agreement.
- g. Where the Department, in its sole and absolute discretion, determines Grantee has failed to comply with the above conditions and restriction, Grantee agrees to take appropriate steps to correct any deficiencies immediately. The Grantee's failure to implement such appropriate steps within a reasonable time, but no longer than thirty (30) days after notice from the Department, constitutes a breach of this Agreement and grounds for Early Termination.

XI. REPRESENTATIONS AND WARRANTIES

A. Reliance by Department.

- a. Grantee expressly acknowledges that the Department relies on the representations and warranties made by Grantee in this Agreement. Grantee acknowledges that such representations and warranties are a material inducement for the Department to enter into this Agreement and provide the Appropriated Amount.
- b. Grantee shall ensure all representations and warranties provided herein are true, accurate, and complete as of the date of the Effective Date and shall remain so throughout the Term of this Agreement. Grantee is responsible for promptly notifying the Department in writing of any changes or inaccuracies in the representations and warranties contained herein.

B. Grantee hereby represents and warrants the following:

- a. Grantee has taken all necessary steps to attain the legal authority to receive and expend the Project's funds.
- b. Grantee has duly authorized this Agreement, and the person executing it has authority to do so. Once executed by Grantee, this Agreement shall constitute a binding obligation of Grantee, enforceable according to its terms.
- c. Grantee's obligations hereunder do not conflict with any law, ordinance, or resolution applicable to Grantee, Grantee's charter (if applicable), or any judgment or decree to which Grantee is subject.
- d. Grantee has independently confirmed that the Project Description, including, but not limited to, the Appropriated Amount and Reversion Date, is consistent with the underlying appropriation in law.
- e. Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign and submit Requests for Payment on behalf of Grantee.

- f. Grantee will abide by New Mexico laws regarding conflicts of interest, governmental conduct, and whistleblower protection.
 - i. Grantee agrees explicitly none of its officers or employees or its designees or agents, no member of the governing body, and no other public official of Grantee who exercises any function or responsibility with respect to this Agreement, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for the Project.
 - ii. Further, Grantee will require all of its contractors to incorporate the language set forth in this paragraph prohibiting conflicts of interest in all subcontracts.
 - g. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of the State, any agency, or body in connection with the awarding of any Third Party Obligation.
 - i. Grantee will require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans, and cooperative agreements.
- C. **Consequences of False or Misleading Representations.** If any representation or warranty made by Grantee is found to be false or misleading, the Department shall have the right to exercise any or all of the following remedies:
- a. **Termination of Agreement:** Department may terminate this Agreement immediately upon written notice to the Grantee.
 - b. **Repayment of Grant Funds:** Grantee shall repay all Appropriated Amounts disbursed under this Agreement, upon demand by the Department.
 - c. **Other Remedies:** Department may pursue any other remedies available at law or in equity.
- D. **Survival of Representations and Warranties.** The representations and warranties made by the Grantee shall survive the Early Termination or expiration of this Agreement.

XII. PROJECT RECORDS

- A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles and the State's Model Accounting Practices and, if feasible, maintain a separate bank account or fund with a separate organizational code to ensure separate budgeting and accounting of the funds.
- B. For six (6) years following the Project's completion ("**Record Retention Period**"), Grantee shall maintain all Project-related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the Appropriated Amount from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department may prescribe.
- C. Grantee shall make all Project records available to the Department, the Department's Independent Public Accountant, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department finds any funds were improperly expended, Grantee shall be required to reimburse the State all amounts found to be improperly expended.

XIII. IMPROPERLY REIMBURSED FUNDS

If the Department determines part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation,

misuse, violation of law by the Grantee, after ten (10) days' notice to Grantee and the opportunity to return such funds to the Department, the Department may offset any funds due to Grantee from the State, until the Appropriation Amount is fully repaid.

XIV. LIABILITY

Neither Party shall be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

XV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Parties concerning the subject matter hereof. The Agreement supersedes all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

XVI. REQUIRED NON-APPROPRIATIONS CLAUSE

- A. Grantee acknowledges and agrees to include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:
 - a. "The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of the State of New Mexico ("**Legislature**") for the performance of this Agreement.
 - b. If the Legislature does not make sufficient appropriations and authorization, City of Carlsbad may immediately terminate this Agreement by giving Contractor written notice of such termination.
 - c. City of Carlsbad's decision as to whether sufficient appropriations are available shall be final and accepted by the Contractor. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Carlsbad or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Carlsbad or the State Department of Finance and Administration."

XVII. REQUIRED TERMINATION CLAUSE

- A. Grantee acknowledges and agrees to include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:
 - a. "This contract is funded in whole or in part by funds made available by the State of New Mexico ("**State**"). Should the State terminate its Agreement with City of Carlsbad, City of Carlsbad may terminate this contract immediately by providing Contractor written notice of such termination.
 - b. In the event of termination pursuant to this paragraph, City of Carlsbad only liability to Contractor shall be for goods and services delivered and accepted prior to the termination date."

XVIII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA

- A. Throughout the term of this Agreement, Grantee shall:
 - a. Submit all reports of annual audits and agreed-upon procedures required by § 12-6-3(A)-(B), NMSA 1978 by the due dates established in § 2.2.2 NMAC, reports of which must be a public

record pursuant to § 12-6-5(A), NMSA 1978 within forty-five (45) days of delivery to the State Auditor;

- b. Have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
- c. Timely submit all required financial reports to its budgetary oversight agency (if any); and
- d. Use accounting methods and procedures consistent with Generally Accepted Accounting Principles and the State's Model Accounting Principals to expend the Appropriated Amount in accordance with applicable law and account for and safeguard Project funds and assets acquired with Project funds.

B. In the event Grantee fails to comply with the requirements of subparagraph A of this Article XVIII, Department may take one or more of the following actions:

- a. Suspend new or further obligations pursuant to Article VI(A) of this Agreement;
- b. Require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
- c. Impose special conditions to address the non-compliance by giving Grantee notice of such special conditions in accordance with Article III of this Agreement;
 - i. The Parties agree that any special conditions imposed to address non-compliance shall be incorporated into this Agreement, through **Exhibit C**, upon notice to Grantee, without need for formal amendment of this Agreement;
 - ii. Special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III or
- d. Terminate this Agreement pursuant to Article V(A) of this Agreement.

XIX. SEVERANCE TAX AND GENERAL OBLIGATION BONDS

A. Grantee acknowledges and agrees that the underlying appropriation for the Project may originate from the issuance of tax-exempt severance tax bonds or general obligation bonds by the State. Proceeds from such bonds are administered by the New Mexico State Board of Finance ("**SBOF**"), an entity separate and distinct from the Department.

- a. Grantee acknowledges and agrees:
 - i. It is Grantee's responsibility to determine through SBOF what (if any) conditions are currently imposed on the Project;
 - ii. Department's failure to inform Grantee of an SBOF-imposed condition does not affect the validity or enforceability of the condition;
 - iii. The SBOF may in the future impose further or different conditions upon the Project;
 - iv. All SBOF conditions are attached to the Project and Appropriation Amount without the need for formal amendment of this Agreement;
 - v. All applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s) and
 - vi. The Department's obligation to reimburse Grantee from the Project is expressly contingent upon the satisfaction of the then-current SBOF conditions.

B. Grantee acknowledges and agrees SBOF may, at its sole and absolute discretion, require reimbursement or remove eligibility for bond proceeds for the Project if the Project doesn't proceed sufficiently.

- a. Grantee must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by Grantee in the Bond Questionnaire and Certification documents submitted to the SBOF.

- b. Failure to comply may result in the reassignment of the bond proceeds. Upon reassignment of bond proceeds, this Agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.
- C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, § 2.61.6, NMAC, as may be amended from time to time or re-codified.

XX. GENERAL PROVISIONS

- A. Assignment: Grantee's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Agreement.
- B. Subcontractors: Grantee shall not enter any subgrant or subcontract in connection with its obligations under this Agreement without the prior written approval of the State. Upon request, Grantee shall submit to the Department a copy of each such subgrant or subcontract.
- C. Binding Effect: Except as otherwise provided, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.
- D. Authority: Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.
- E. Captions and References: The captions and headings in this Agreement are for the convenience of reference only and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits, or other attachments are references to sections, subsections, exhibits, or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.
- F. Counterparts: This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute the same agreement.
- G. Digital Signatures: If any signatory signs this agreement using a digital signature in accordance with the State Policies regarding the use of digital signatures, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.
- H. Modification: Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment, properly executed and approved in accordance with applicable New Mexico law and State fiscal policies and rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the State.
- I. Statutes, Regulations, Fiscal Rules, and Other Authority: Any reference in this Agreement to a statute, regulation, policy, or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended after the Effective Date of this Agreement.
- J. External Terms and Conditions: Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Grantee's or a subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.
- K. Severability: The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and

effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.

- L. **Survival of Certain Agreement Terms:** Any provision of this Agreement that imposes an obligation on a Party after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.
- M. **Third Party Beneficiaries:** Except for the Parties' respective successors and assigns described in this Agreement, it does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits that third parties receive as a result of this Agreement are incidental to this Agreement and do not create any rights for such third parties.
- N. **Waiver:** A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.
- O. **Standard and Manner of Performance:** Grantee shall perform its obligations under this Agreement in accordance with the highest standards of care, skill, and diligence in Grantee's industry, trade, or profession.
- P. **Licenses, Permits, and Other Authorizations:** Grantee shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement and shall ensure that all employees, agents, and subcontractors secure and maintain at all times during the term of their employment, agency or subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.
- Q. **Publicity:** Any Publicity regarding the subject matter of this Agreement may not be released without prior written approval from the Department. For purposes of this agreement, "**Publicity**" means notices, informational pamphlets, press releases, email responses, research, reports, signs, and similar public notices prepared by or for the Grantee or jointly with others.
 - a. Grantee shall obtain written approval prior to issuing any press release or making any public announcement regarding this agreement. Grantee agrees to obtain approval of the Department in advance with respect to all Public Relations, all communications with media, or all communications with any other member of the public with respect to this agreement, except to acknowledge that an agreement does exist.
 - b. For purposes of this agreement, "Public Relations" includes community relations and means those activities dedicated to maintaining the Department's image or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.
 - c. Violations of either Article XX (Q)(a) or (b) shall constitute a material Breach of Agreement.
- R. **Data Sharing:** The State intends to secure and collate specific data generated by Grantee under this Agreement to use in support of the State's organizational, policy-making, and management of public resource functions. State, in accordance with **Exhibit E**, attached hereto and incorporated herein by reference, reserves the right to require Grantee and/or its subcontractors to provide specific data relevant to the above-listed functions. Data provided by Grantee may be incorporated into existing or future

developed State integrated analysis tools or databases, including but not limited to geographic information system (GIS) networks and databases accessible by the public. Dissemination of data collected may include historical data and projections based on such historical data.

- a. To the extent any data transferred as part of this Agreement is legally determined to be the property of Subrecipient or its subcontractors, Subrecipient and/or its subcontractors grants State a nonexclusive, fully paid-up right and license to reproduce, use, distribute, do derivative works based on, and archive data transferred as part of this Agreement.

- S. Venue and Choice of Law: This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, without regard to any conflict of law provisions. Any legal suit, action, or proceeding arising out of or related to this Agreement shall be instituted exclusively in the district courts located in Santa Fe, New Mexico. The Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such suit, action, or proceeding. The Parties waive any objection to the laying of the venue of any such suit, action, or proceeding in the district courts of Santa Fe, New Mexico, and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

[SIGNATURE PAGE AND EXHIBITS FOLLOW]
[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Department's date of execution.

APPROVED BY GRANTEE:

City of Carlsbad
Entity Name

Official with Authority to Bind Grantee:

Signature

Richard D. Lopez,
(Print Name)

Mayor
(Title)

Date

Fiscal Officer or Chief Financial Officer: (OPTIONAL)

Signature

Melissa Salcido,
(Print Name)

Director of Finance
(Title)

Date

Legal Counsel: (OPTIONAL)

Signature

Barbara Hodgson
(Print Name)

City Attorney
(Title)

Date

APPROVED BY DEPARTMENT:

New Mexico Environment Department

Dennis Romero, P.E., Bureau Chief, NMED Construction Programs Bureau

Signed pursuant to the July 20, 2026, Secretary of Environment Delegation Order

Rev. July 2025			NEW MEXICO ENVIRONMENT DEPARTMENT CONSTRUCTION PROGRAMS BUREAU						
NMED DISBURSEMENT REQUEST SPECIAL APPROPRIATIONS PROGRAM (SAP)									
A. NAME OF ENTITY			C. DISBURSEMENT REQUEST NUMBER						
B. PROJECT NUMBER			D. GRANT AMOUNT						
PROJECT BUDGET		PREVIOUS EXPENDITURES		CURRENT EXPENDITURES		CUMULATIVE		FUNDS REMAINING	
NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS
Engineer Fees									
Other Professional									
Service Fees									
Inspection Fees									
Property Acquisition									
Construction Cost									
Planning Cost									
Equipment									
Other Costs (specify)									
Contingencies									
TOTAL									
Article IX.A. (iii). By checking this box you are stating that payment has NOT been paid to the vendors associated with this request. Upon receipt of payment from NMED, certification of payment will be sent within 10 days from the date of receiving reimbursement.						Article IX. A. (ii). By checking this box you are certifying that the vendors associated with this request have been paid.			
Certification: I hereby certify that all conditions and requirements for Payments outlined in the Agreement have been met, including but not limited to: a.Submission and approval of a Project Budget as per Article IV. Section A of the Agreement. b.Compliance with the Project Budget and expenditure of funds in accordance with the State Procurement Code and the State's Model Accounting Practices. c.Submission of supporting documentation as required by the Agreement. d.Maintenance of all necessary records and documentation as stipulated in the Agreement.									
Certification: I attest that the information provided is correct; expenditures are properly documented and valid or actual receipts, and that the activity fully complies with Article IX, Sec. 14 of the New Mexico Constitution, known as the "anti-donation" clause.									
Certification: I hereby certify that all representations and warranties made in the Agreement remain true, accurate, and complete as of the date of this request, and will continue to be so throughout the term of the Agreement. I acknowledge that these representations and warranties are a material inducement for the Department to approve this pay request.									
Reporting Certification: I hereby certify to the best of my knowledge and belief, that the database reporting is up to date; to include the accuracy of the expenditures and grant balance, project status, project phase, achievements and milestones, and in compliance with Article VIII of the Capital Outlay Grant Agreement.									
Signature of Official Representative:			Typed or Printed Name:			Phone:		Date:	
X									

EXHIBIT B

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT B**

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, Grant Manager

FROM: Grantee Entity: _____
Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: _____
Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: \$ 0.00

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: Grant Manager

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Revised 7/2025

EXHIBIT E

Data Sharing Provisions

Data Sharing Provisions for New Mexico Capital Outlay Agreements

I. Introduction:

This Data Sharing Provisions Exhibit ("Exhibit") is incorporated into the New Mexico Capital Outlay Agreements ("Agreements") between the State of New Mexico ("State") and [Insert Partner Name] ("Partner"). This Exhibit outlines the terms and conditions under which data will be shared between the Parties to ensure compliance with New Mexico state laws and regulations, focusing on data privacy, security, and compliance.

II. Definitions:

- a. **Authorized User:** An employee, agent, assign, representative, independent contractor, or other person or entity authorized by Partner or State to access, use, or disclose information through this exhibit.
- b. **Confidential Information:** All data or information shared in confidence, with the expectation that it will not be disclosed in an identifiable form. This includes data that is exempt from public disclosure under the New Mexico Inspection of Public Records Act (§ 14-2-1 et seq. NMSA 1978) or other relevant laws.
- c. **Data Storage:** Electronic media that hold recorded information.
- d. **Data Transmission:** The process of moving information over a network from its source to one or more destinations.
- e. **Direct Identifier:** Records or data containing personal identifiers such as names, addresses, and social security numbers.
- f. **Disclosure:** Permission to access, release, transfer, or otherwise communicate confidential information by any means to any third party, except as authorized by the Party that controls the record.
- g. **Encryption** involves using algorithms to encode data, rendering it unreadable without a specific key. It may be necessary during data transmission and/or storage.
- h. **Information:** Any data, figures, statistics, or other facts provided or learned about someone or something, including Confidential Information, that may be legally transmitted under this Exhibit.
- i. **Limited Dataset:** A data file that omits Direct Identifiers.
- j. **Protected Personally Identifiable Information:** Sensitive personal details such as social security numbers and financial account numbers, with specific exclusions as outlined in the Agreements.

III. Purpose:

The purpose of this exhibit is to promote transparency, facilitate information sharing between the parties, support better policy and decision-making, and enhance public services through collaborative data analysis from various sources.

IV. Use of Information:

- a. Use of Information obtained or created under this exhibit shall be strictly limited to the purposes stated herein and in the agreements. The parties agree not to sell Information to third parties or use it for commercial, solicitation, or political purposes.
- b. Each Party shall serve as the custodian of the Information and comply with all conditions for its use, including security measures to prevent unauthorized access.
- c. The Parties shall follow all relevant federal and state laws and regulations governing the use of such Information.

V. Safeguarding Information:

- a. Confidentiality: Access to Confidential Information shall be limited to the minimum necessary to accomplish the purposes of this Exhibit. Authorized Users must adhere to the confidentiality requirements.
- b. Security: Security practices shall comply with the requirements of the New Mexico Department of Information Technology Act and related regulations. The Parties agree to notify each other within three business days of any suspected or actual security breach.
- c. Information Storage and Transmission: Data Storage and Transmission shall take place on an encrypted server with appropriate security controls.

VI. Re-Disclosure of Information:

The Parties agree not to disclose Information except as required by law or with prior written approval of the other Party. If there is a public records request, the Party receiving it shall notify the other Party within three business days.

VII. Ownership of Information:

Legal title to Information shall remain with the provider. The Partner grants the State a royalty-free, non-exclusive, non-transferable license to use the Information in furtherance of the purposes outlined in this Exhibit.

Capital Appropriations Certification Document

Article IX. A. (ii) and (iii)

(City of Carlsbad SAP 26-K2425-GF)

Payment Request No _____

I certify that payment to all vendors on the above referenced payment request were paid no more than ten (10) days after receiving reimbursement from NMED.

Official Representative, Signed Name, Printed Name, Date

ATTACHMENT A
NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU

PROJECT BUDGET

GRANTEE: City of Carlsbad

PROJECT NO: SAP 26-K2425-GF

Please provide a comprehensive procurement plan and expenditure plan, detailing a Project timeline with milestones, required procurements, and identifying expected expenditures per milestone, referred to collectively as the "Project Budget." While it can be difficult to estimate costs and timelines, setting a plan for these can help keep realistic expectations and goals to keep a project moving forward to achieve the project scope and objectives. Contact your NMED-CPB Project Manager with questions.

- 1) Expenditure Plan.** Indicate what expenses funding will be used.

Detailed Expenditure Plan		
USES OF FUNDS	NMED PROGRAM	OTHER FUNDS
Engineer Fees		
Other Professional		
Service Fees		
Inspection Fees		
Property Acquisition		
Construction Cost	\$1,516,000.00	
Planning Cost		
Equipment		
Other Costs (specify)		
Contingencies		
TOTAL	\$ 1,516,000.00 -	\$ -

- 2) **Procurement Plan.** Describe how engineering or professional services, construction contractors, equipment, or other goods or services will be procured.

Chief Procurement Officer

All Public Bodies are required by 13-1-95.2 NMSA 1978 to have a Chief Procurement Officer to conduct all procurement activities.

Who is your Chief Procurement Officer (CPO)? Matthew Fletcher, Purchasing Manager.

Describe how you will secure CPO services, if you currently do not have a CPO. N/A

Professional Services

Have engineering or professional services already been procured and contracted? The City has an On-Call Engineering Services Contract in place with multiple vendors.

If not, describe how you will procure engineering or professional services: N/A

Reminders:

- COSTS ABOVE \$60,000, require solicitation of services via a Request for Proposal (RFP).
- COSTS BELOW \$60,000 must adhere to 13-1-125 NMSA 1978 and procurements cannot be artificially divided into smaller units to circumvent legal requirements, such as formal solicitation.
- MULTI-TERM CONTRACTS can be renewed for up to four years 13-1-150 NMSA 1978. Monitor the remaining time on your contracts and plan for renewal in advance.

Construction

Contractors must be hired using a public bidding process for any project over \$60,000 (13-1-125 NMSA 1978) and procurements cannot be artificially divided into smaller units to circumvent legal requirements, such as formal solicitation.

Equipment Purchase

Equipment purchase must follow proper procurement code. Please see Chapter 13 Public Purchase and Property NMSA 1978.

- 3) **Project Timeline.** Setting a timeline can help keep a project on track to meet required expenditure deadlines. *(An example schedule is provided below.)*

Project Timeline:

OVERALL – MILESTONES		EXPECTED EXPENDITURE PER MILESTONE
ESTIMATED START DATE	Month 1	
5% FUNDS OBLIGATED*	Months 1-2	\$75,800.00
ESTIMATED END DATE	Months 12-24	
DETAILED – PHASES		
Construction Phase 1	Months 1-24	\$1,516,000.00
TOTAL		\$ 1,516,000.00

***Disclaimer:** You have accepted grant funds on the condition that 5% of these funds are to be obligated in a Notice of Obligation within 6 months of bond issuance in accordance with XIX.B.(STB's only) and at least 10% within one (1) year in accordance with IX.B (all projects).

You can obligate funds by entering into a contract with an engineer or contractor. State Procurement Code must be followed for the purchase of all goods and services.

Your NMED-CPB project manager will be happy to help you navigate these requirements, so that your grant money can be spent, and your project successfully completed.

Example Timeline:

OVERALL – MILESTONES		EXPECTED EXPENDITURE PER MILESTONE
ESTIMATED START DATE	Month 0	
5% FUNDS OBLIGATED*	+ 6 months from start date = Month 6	\$100,000
ESTIMATED END DATE	Use detailed schedule below. 2.5- 3 years	
DETAILED – PHASES		
HIRE AN ENGINEER	4 months	
PLANNING DOCUMENT	6 months	\$25,000
DESIGN, PERMIT	9 months	\$60,000
ADVERTISE FOR BID, AWARD PROJECT	6 months (allow for rebid)	
CONSTRUCTION AND ENGINEERING CONSTRUCTION PHASE SERVICES (START TO FINISH)	Varies widely. 6 months to a year, or more.	\$750,000 and \$15,000
CLOSEOUT CONSTRUCTION/ FUNDS	1 month at end of construction schedule.	
TOTAL		\$850,000

- 4) **Additional Information.** Please use this space below to provide any additional details about your project you would like to share to show your project plan and readiness.

Grantee Signatory Authority

Richard D. Lopez, Mayor

Print Name

ATTACHMENT B
TECHNICAL REQUIREMENTS
NEW MEXICO ENVIRONMENT DEPARTMENT
CAPITAL OUTLAY

ARTICLE 1 REVIEW

Upon execution of the grant agreement, the Grantee will follow the procedures listed below unless waived in writing by the New Mexico Environment Department (NMED) (payment may be withheld if any of these procedures are not followed by the Grantee).

- A. The Grantee must submit copies to NMED of all unexecuted contracts or quotes the Grantee intends to enter in that are related to the project for the creation of a notice of obligation. Only approved eligible expenditures incurred after the effective date of the Grant Agreement shall be reimbursed or paid from these funds.
- B. If grant funds are used for construction, a site certificate must be submitted prior to project bid advertisement that certifies all necessary easements, rights-of-way, and/or property upon or through which the project is being constructed have been obtained. The Site Certificate must be signed by an attorney, engineer, surveyor, or title abstractor.
- C. If grant funds are used for meter installation, the Grantee must follow the NMED Guidelines for Meter Upgrade Projects. Meters must be installed before payment can be made. Request a copy of the Guidelines from your NMED Project Manager.
- D. If grant funds are used for construction, the Grantee will submit notice of the award and a copy of the executed construction contract documents.
- E. The Grantee will provide a full-time construction inspector during construction of the project unless NMED determines that part time inspection is adequate for the project. This must be requested and approved by NMED prior to the start of construction.
- F. All daily construction inspection reports shall be made available to the NMED upon request.
- G. Notwithstanding the inspections performed by the Grantee and its engineer, NMED will have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans but will be a general NMED review as described in Article 2 below.

ARTICLE 2 NMED OVERSIGHT

NMED oversight is only for purposes of compliance with applicable state grant requirements, procedures, statutes, and regulations. NMED approval will not be interpreted as a warranty or guarantee of any kind. Responsibility for the design of the project will lie solely with the engineer of record. All defects and their correction will be the responsibility of the Grantee and its contractors and engineers or consultants. Any questions raised by NMED during its inspections and reviews shall be resolved exclusively by the Grantee. The Grantee and its contractors and engineers or consultants will remain responsible for the completion and success of the project. No action by NMED shall relieve the owner, engineer, or contractor of legal responsibilities for the overall integrity of the project, adequacy of the design, safety, or compliance with all applicable regulations.

ARTICLE 3 CLOSEOUT

- A. The project will not be considered complete until the work as defined in this agreement has been fully performed, and finally and unconditionally accepted by the Grantee and the engineer of record.

- B. If the grant funds are used for purchase of equipment, final payment will be made after receipt of the equipment and equipment title, if applicable. Appraisal reports are required for the purchase of used equipment.
- C. If the grant funds are used for construction, final payment will be made after the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:
- i. A certificate of substantial completion including punch list items.
 - ii. A final certified construction pay request prepared by the Grantee's project engineer and approved by the Grantee.
 - iii. A written consent of the surety, if any, to final payment.
 - iv. Complete and legally effective releases or waivers (satisfactory to the Grantee) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished there under. In lieu thereof and as approved by the Grantee, contractor(s) may furnish receipts or releases in full; an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Grantee or its property might in any way be responsible, have been paid or otherwise satisfied.
 - v. Certification letter by the Grantee and contractor that the Labor Standards Contract Provisions have been met.
 - vi. Certification letter of project acceptance by the Grantee and the Grantee's project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Grantee, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Grantee and contractors will be submitted to NMED.
 - vii. Certification letter from the Grantee confirming receipt and acceptance of the record drawings and operation and maintenance manuals.

CITY OF CARLSBAD
RESOLUTION NO. 2026-54

**A RESOLUTION AUTHORIZING PROJECT SAP 26-K2425-GF FOR THE EAST GREENE STREET AREA
WATERLINE IMPROVEMENTS IN CARLSBAD, AND THE ASSIGNMENT OF AUTHORIZED OFFICER(S)
AND AGENT(S)**

Whereas, the City Council of the City of Carlsbad of Eddy County of the State of New Mexico shall enter into a Grant Agreement with the State of New Mexico Environment Department, and

Whereas, the Agreement is identified as Project SAP 26-K2425-GF was authorized, *"to plan, design, construct, and improve water lines in the east Greene street area in Carlsbad in Eddy County"*.

NOW THEREFORE, BE IT RESOLVED by the City of Carlsbad, City Council that:

1. Richard D. Lopez, or his successor is hereby authorized to sign the Grant Agreement for this project, and
2. Angie Barrios-Testa, Director of Grant Programs, or Ivan Mike Abell, Director of Utilities, or their successors are the OFFICAL REPRESENTATIVE(S) who are authorized to sign all other documents necessary to fulfill the Grant Agreement and the requirements of the SAP 26-K-2425-GF East Greene Street Area project, Disbursements and to act as the project contact, and
3. Angie Barrios-Testa, Director of Grant Programs, or Jayden Whitzel, Grant Compliance Accountant, or their successor are the DFA Database contact who are designated to update the database quarterly per Article VIII. A. of the Intergovernmental Grant Agreement.
4. Angie Barrios-Testa, Director of Grant Programs, or Jayden Whitzel, Grant Compliance Accountant or their successors are the CONTACT who are designated to receive Notice of Obligations (NOOs).

PASSED, APPROVED, AND ADOPTED: This 8th, day of September 2026

Richard D. Lopez, Mayor

(Signature)

Date

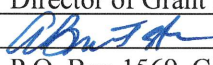
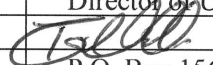
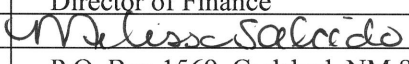
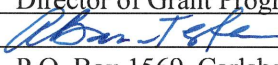
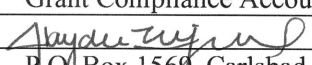
(SEAL)

ATTEST:

Nadine Mireles, City Clerk

Name of Grantee: City of Carlsbad Project Number: SAP 26-K2425-GF

Current Authorized Signatures (submit with Signature Resolution, update when necessary)

Authorized to Sign Agreement			
Name	Richard D. Lopez	Name	N/A
Title	Mayor	Title	
Signature		Signature	N/A
Address	101 N. Halagueno St., Carlsbad, NM 88220	Address	
Email	mayor.office@cityofcarlsbadnm.com	Email	
Phone	(575) 887-1191	Phone	
Official Representatives authorized to sign Disbursement Requests and all other documents.			
Name	Angie Barrios-Testa	Name	Ivan Mike Abell
Title	Director of Grant Programs	Title	Director of Utilities
Signature		Signature	
Address	P.O. Box 1569, Carlsbad, NM 88221	Address	P.O. Box 1569, Carlsbad, NM 88221
Email	abtesta@cityofcarlsbadnm.com	Email	imabell@cityofcarlsbadnm.com
Phone	(575) 887-1191 x7904	Phone	(575) 885-6313
Alternate Official Representative, to sign Disbursement Requests and all other documents and act as the Point of Contact.			
Name	Melissa Salcido	Name	
Title	Director of Finance	Title	
Signature		Signature	
Address	P.O. Box 1569, Carlsbad, NM 88221	Address	
Email	mmsalcido@cityofcarlsbadnm.com	Email	
Phone	(575) 887-1191 x7922	Phone	
Designated Agent or Employee that will make DFA database updates			
Name	Angie Barrios-Testa	Name	Jayden Whitzel
Title	Director of Grant Programs	Title	Grant Compliance Accountant
Signature		Signature	
Address	P.O. Box 1569, Carlsbad NM 88221	Address	P.O. Box 1569, Carlsbad, NM 88221
Email	abtesta@cityofcarlsbadnm.com	Email	jbwhitzel@cityofcarlsbadnm.com
Phone	(575) 887-1191 x7904	Phone	(575) 887-1191 x7960
Notice of Obligations			
Name		Name	
Title		Title	
Signature	No Signature Required	Signature	No Signature Required
Address		Address	
Email		Email	
Phone		Phone	



**CITY OF CARLSBAD
AGENDA BRIEFING
MEMORANDUM**

Council Meeting Date: September 8, 2026

DEPARTMENT: Grants	BY: Angie Barrios-Testa	DATE: 08/25/2026
SUBJECT: Consider Approval of Resolution 2026-55, a Resolution authorizing Project SAP 26-K2426-GF for the West Shaw Street Lift Station, and the assignment of authorized Officers and Agents		
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) The State of New Mexico Legislature appropriated \$420,000 for Capital Outlay SAP 26-K2426-GF in the Laws of 2026, Chapter 71, Section 43, Subsection 37 <i>"to plan, design, construct and equip the Shaw street lift station in Carlsbad in Eddy county"</i> . The \$420,000 is now being made available through a grant agreement between the New Mexico Environmental Department (NMED) and the City of Carlsbad. The City is required to spend the funds in advance and submit reimbursement for eligible expenses to NMED. Approval of the enclosed resolution accepts the grant agreement and authorizes the assignment of authorized officers and agents. The City must comply with all terms and conditions set forth in the attached agreement. In anticipation of the appropriated funding, the project was budgeted in FY27 under Project No. 101732 Previous Funding: In 2025, the City received \$4,620,000 in Capital Outlay Appropriations for five City projects. In 2026, the City is expecting a total of \$3,169,750 for three Infrastructure Capital Outlay and three Senior Capital Outlay. The \$420,000 is the second of the six grant agreements still pending.		
DEPARTMENT RECOMMENDATION: If it is the will of the City Council, approve the enclosed Resolution authorizing the project grant agreement, and delegate the Mayor or his designee to execute the enclosed grant agreement, and related documents, as well as authorized officers and agents to sign all the other documents necessary to fulfill the grant agreement and project requirements.		
BOARD/COMMISSION/COMMITTEE ACTION: -		
Reviewed by: Wendy D Austin		

Attachments:

1. GrantAgreement_SAP 26-K2426-GF_09-01-2026 (2)

NEW MEXICO CAPITAL OUTLAY GRANT AGREEMENT CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the State of New Mexico, New Mexico Environment Department, (“**Department**”) and City of Carlsbad, (“**Grantee**”) (individually “**Party**” and collectively “**Parties**”). This Agreement shall be effective as of the date the Department executes it (“**Effective Date**”).

WITNESSETH

WHEREAS, in the Laws of 2026, Chapter 71, Section 43, Subsection 37, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of funds from this appropriation, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

AGREEMENT

I. PROJECT DESCRIPTION, GRANT AMOUNT, AND REVERSION

- A. SAP 26-K2426-GF (“**Project**”) **June 30, 2030** (“**Reversion Date**”). Laws of 2026, Chapter 71, Section 43, Subsection 37, Four Hundred Twenty Thousand Dollars, (\$420,000.00), to plan, design, construct and equip the Shaw street lift station in Carlsbad in Eddy county;.
- B. Grantee’s total reimbursements shall not exceed Four Hundred Twenty Thousand Dollars \$420,000.00 (“**Appropriation Amount**”) minus the allocation for Art in Public Places (“**AIPP amount**”), if applicable, No Dollars, \$0.00, which equals Four Hundred Twenty Thousand Dollars, \$420,000.00 (“**Adjusted Appropriation Amount**”).
- C. In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I, the language of the laws cited herein shall control.

The information contained in Article I is referred to collectively as the “**Project Description**.”

II. DISBURSEMENT LIMITATION

- A. Upon the Effective Date, the Grantee shall submit to the Department a comprehensive procurement plan and expenditure plan, detailing a Project timeline with milestones, required procurements, and identifying expected expenditures per milestone (collectively, “**Project Budget**”). The Department shall review and approve the Project Budget by approving a Notice of Department’s Obligation (“**Notice of Obligation**”), in accordance with the Project Description, a sample of which is attached hereto as **Exhibit B** and incorporated herein by reference. After receipt of approved Notice of Obligation, the Grantee may be reimbursed for allowable costs up to the Adjusted Appropriation Amount. This Agreement and any reimbursements up to the Adjusted Appropriation Amount are expressly conditioned upon the following:
 - a. Irrespective of any Notice of Obligation, Grantee’s expenditures shall be made in accordance with the Project Budget, on or before the Reversion Date and/or, if applicable, any Early Termination Date; and

- b. The total amount received by Grantee shall not exceed the lesser of:
 - i. the Adjusted Appropriation Amount identified in Article I (B) herein; or
 - ii. the total of all amounts stated in the Notice(s) of Obligation evidencing the Department has received and accepted Grantee's Third Party Obligation(s); and
 - c. Grantee's expenditures are made and accounted for pursuant to the State Procurement Code, State's Model Accounting Practices, and execution of binding written obligations or purchase orders with third-party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project ("**Third Party Obligations**"); and
 - d. Grantee's submittal of timely Requests for Payment and supporting documentation in accordance with the procedures set forth in this Agreement; and
 - e. In the event capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - i. must be approved by the applicable oversight entity (if any) in accordance with §§ 13-6-2, 13-6-2.1, and 13-6-3; or
 - ii. If no oversight entity is required to approve the transaction, the Department of Finance and Administration's Infrastructure Planning Development Division (IPDD) must approve it as complying with the law.
- B. Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(e) (i) or (ii) herein, the Department may, in its sole and absolute discretion, unless inconsistent with State Board of Finance imposed conditions, reimburse Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, limited to planning and design expenditures; and
- C. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
- a. Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation, and request the Third Party to begin work after issuance of a Notice of Obligation by the Department.
 - b. Grantee acknowledges and agrees that any Third Party Obligations agreed to prior to receiving a Notice of Obligation are its sole responsibility.
 - c. Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
 - d. Department may, in its sole and absolute discretion, issue a Notice of Obligation for the particular amount of a Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is incorporated herein and attached hereto as **Exhibit B**.
- D. Grantee shall provide all necessary qualified personnel, materials, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- E. Prior to entering into this Agreement, the Department conducted a risk assessment on the Grantee and a project readiness review for the Project. In accordance with State Model Accounting Practices, FIN 9.2, if the Department determines that the expenditure of Project funds by the Grantee requires special conditions, those conditions are identified and listed in **Exhibit C**, which is attached and incorporated by reference. The Parties agree that, to the extent the Department, in its sole and absolute discretion, determines additional special conditions are necessary or that existing special conditions are no longer

required, it may update **Exhibit C** from time to time without the need for a formal amendment of this Agreement.

- F. Project funds shall not be used for purposes other than those authorized by the Department in accordance with the Project Description.
- G. Project funds cannot be used to reimburse the Grantee for indirect Project costs unless specifically allowed by law.

III. NOTICES

The following provisions shall apply whenever written notices, including written decisions, are to be given or received related to this Agreement.

- A. The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee:	City of Carlsbad
Name:	Angie Barrios-Testa
Title:	Director of Grant Programs
Address:	P.O. Box 1569, Carlsbad, NM 88221
Email:	abtesta@cityofcarlsbadnm.com
Telephone:	(575) 887-1191 x7904

- B. The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee:	City of Carlsbad
Name:	Melissa Salcido
Title:	Director of Finance
Address:	P.O. Box 1569, Carlsbad, NM 88221
Email:	mmsalcido@cityofcarlsbadnm.com
Telephone:	(575) 887-1191

- C. The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Environment Department
Name: Bertha Aragon
Program Administrator
NMENV-cpbsap@state.nm.us or bertha.aragon@env.nm.gov
Telephone: 505-670-3615

Environment Department
Name: Brandon Kalinowski
Project Manager
Email: brandon.kalinowski@env.nm.gov
Telephone: 505-670-3571

Environment Department

Sara Rhoton
Technical Section Manager
Sara.rhoton@env.nm.gov
Telephone: 505-469-2687

The Parties agree that all notices, including written decisions, related to this Agreement shall be sent to the persons named above by email or regular mail. For mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five (5) calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of the email.

IV. TERM & DEADLINE TO EXPEND FUNDS

- A. The term of this Agreement shall begin on the Effective Date and terminate on the 30th day of June during the calendar year of the Reversion Date unless Terminated Before Reversion Date ("**Early Termination**") pursuant to Article V herein (collectively "**Term**").
- B. The Project's funds must be expended on or before the Reversion Date and, if applicable, the Early Termination Date of this Agreement.
 - a. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Reversion Date or Early Termination Date.
 - b. For purposes of this Agreement, an expenditure of funds has occurred on the date the particular quantity of goods is delivered to and received by the Grantee, title to the goods is transferred to the Grantee, and/or as of the date particular services are rendered to and accepted by the Grantee.
 - c. For purposes of this Agreement, an encumbrance of funds pursuant to a contract or purchase order with a third party does not qualify as an expenditure.

V. EARLY TERMINATION

- A. General Provision. The Department may terminate this Agreement before the Reversion Date based on the Completion of the Project, Complete Expenditure of the Adjusted Appropriation, and/or Violation of this Agreement. Early Termination hereunder includes:
 - a. Termination due to completion of the Project before the Reversion Date;
 - b. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date;
 - c. Termination for violation of the terms of this Agreement; or
 - d. Termination for suspected mishandling of public funds, including but not limited to fraud, waste, abuse, and conflicts of interest.
- B. Non-appropriation. This Agreement is expressly contingent upon the New Mexico State Legislature making sufficient appropriations and authorizations for the Project Description.
 - a. If the Legislature does not appropriate the Appropriation Amount, this Agreement shall terminate upon the Department giving the Grantee written notice of such termination. Such termination shall be effective as of the effective date of the law making the non-appropriation.
 - i. The Department's decision as to whether sufficient appropriations or authorizations are available shall be final. Grantee hereby waives any rights to assert an impairment of

contract claim against the State of New Mexico in the event of Early Termination of this Agreement.

- b. As used herein, “non-appropriate” or “non-appropriation” includes the following actions by the New Mexico Legislature:
 - i. Deauthorization, reauthorization, or revocation of a prior authorization.

- C. Grant Disbursements in the Event of Early Termination. In the event of Early Termination, the Department’s sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II above.
- D. Notice. Either Party may terminate this Agreement prior to the Reversion Date by providing the other Party with a minimum of fifteen (15) days advance written notice of the Early Termination. Grantee hereby waives any rights to assert an impairment of contract claim against the State of New Mexico in the event of Early Termination of this Agreement by the Department.

VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

- A. Department, in its sole and absolute discretion, may provide written notice to Grantee to suspend entering into further obligations. Upon the receipt of such written notice by the Grantee:
 - a. Grantee shall immediately suspend entering into new or further written obligations with third parties;
 - b. Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
 - c. Department may direct the Grantee to implement a corrective action plan in accordance with Article VI (D) herein.
- B. In the event of Suspension of this Agreement, the Department’s sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.
- C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for a Notice of Obligation.
- D. Corrective Action Plan in the Event of Suspension. Where the Department, in its sole and absolute discretion, directs Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension.
 - a. Such a corrective action plan must be approved by the Department and be signed by the Grantee.
 - b. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(c).
 - c. A corrective action plan shall be in addition to, and not in lieu of, any other equitable or legal remedy authorized hereunder or at law, including but not limited to Early Termination.

VII. AMENDMENTS

Unless expressly stated otherwise herein, this Agreement shall not be altered, changed, or amended except by an instrument in writing duly executed by both parties hereto with the same formalities as this agreement.

VIII. REPORTING

A. Database Reporting

- a. Grantee shall provide the Department with quarterly reports of Project activity, entering the required Project information directly into a database required by the Department.
- b. Additionally, Grantee shall certify on each Request for Payment form, attached hereto as **Exhibit A** and incorporated herein, that all information provided in the database is true and accurate, updates to the database have been maintained, and all Project activity complies with applicable law and the terms of this Agreement.
- c. Grantee hereby acknowledges that failure to perform and/or certify updates to the database will jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of fourteen (14) days' advance written notice of any changes to the information the Grantee is required to report.
- d. At the Department's discretion, all reports required hereunder may be directed to and facilitated through an electronic database.
- e. Quarterly reports shall be due on the last day of the month, that is, 30 days prior to the end of the quarter following the execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- i. request such additional information regarding the Project as it deems necessary; and
- ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

B. Requests for Additional Information/Project Inspection

- a. During the term of this Agreement and the Record Retention Period, the Department may:
 - i. Request additional information regarding the Project as it deems necessary and
 - ii. Conduct on-site inspections of the Project at reasonable times and upon reasonable notice.
- b. Grantee shall respond to such requests for additional information within the time established by the Department.

IX. REQUEST FOR PAYMENT PROCEDURES

- A. Grantee shall request payment by submitting the form attached hereto as **Exhibit A**. Payment requests are subject to the following procedures:

- a. Each Request for Payment must be in accordance with the Project Budget and contain proof of payment by the Grantee or liabilities incurred by the Grantee.
 - i. Proof of payment must demonstrate the validity of an expenditure or liabilities incurred by Grantee.

- ii. However, Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
 - iii. The Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or in a shorter period than the Department may prescribe in writing.
 - iv. The Department reserves the right to make such payments directly to the contractors or vendors as a special condition under this Agreement.
 - v. The Grantee is required to certify to the Department proof of payment to the third-party contractor or vendor within five (5) business days from the date the Department reimburses the Grantee.
- B. Until the Project is fully planned, designed, and all necessary procurements identified in the Project Budget are completed, Grantee's reimbursements will be limited to the planning, design, and procurement costs outlined in the Project Budget. Once the planning, designing, and procuring stages are complete, the Grantee must obligate at least ten percent (10%) of the Adjusted Appropriation Amount within one (1) year and must have utilized at least eighty-five percent (85%) of the Adjusted Appropriation Amount six (6) months before the reversion date.
- C. Deadlines. Grantee shall submit requests for Payments to the Department on the earlier of:
 - a. Immediately as Grantee receives them, but at a maximum of thirty (30) days from when Grantee incurred the expenditure or liability; or
 - b. Twenty (20) days from the date of Early Termination or Reversion Date for expenditures or liabilities incurred before the Early Termination date or Reversion Date.
- D. Grantee's failure to abide by the requirements set forth in Article II and Article IX herein may result in the denial of its Request for Payment. Department reserves the right to reject a payment request for the Project unless and until it is satisfied that the expenditures or liabilities are for permissible purposes within the meaning of the Project Description, identified within the Project Budget, and that the Grantee is otherwise in compliance with this Agreement.
 - a. Department's authority to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department under this Agreement, at law, or in equity.

X. PROJECT CONDITIONS AND RESTRICTIONS

- A. The following general conditions and restrictions shall apply to the Project:
 - a. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code.
 - b. The Project's expenditures and liabilities must be accounted for in accordance with the State's Model Accounting Practices, as amended from time to time.
 - c. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable.
 - d. The Project must provide a public benefit above and beyond any incidental benefit to private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico.

- e. Without prior written approval from the Department and State Board of Finance, for the useful life of any asset purchased under this Agreement, Grantee shall not convert any property acquired, built, renovated, repaired, designed, or developed with Project funds to uses other than those specified in the Project Description.
 - i. In addition to other remedies available at law or in equity, any disposal or conversion of property acquired, built, renovated, repaired, designed, or developed with Project funds without the Department's and the Board of Finance's express written approval will trigger the Department's right to reimbursement from Grantee of the Appropriated Amount, transfer proceeds from any disposition of property to the State, or otherwise provide consideration to the State for the Appropriated Amounts.
- f. Grantee shall comply with all applicable federal and state laws, rules, and regulations pertaining to civil rights and equal employment opportunity.
 - i. In accordance with all such laws, rules, and regulations, the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age, or handicap, be excluded from participation in the Project, use of the Project, employment with Grantee, or otherwise be denied benefits/subject to discrimination for any activity performed under this Agreement.
- g. Where the Department, in its sole and absolute discretion, determines Grantee has failed to comply with the above conditions and restriction, Grantee agrees to take appropriate steps to correct any deficiencies immediately. The Grantee's failure to implement such appropriate steps within a reasonable time, but no longer than thirty (30) days after notice from the Department, constitutes a breach of this Agreement and grounds for Early Termination.

XI. REPRESENTATIONS AND WARRANTIES

A. Reliance by Department.

- a. Grantee expressly acknowledges that the Department relies on the representations and warranties made by Grantee in this Agreement. Grantee acknowledges that such representations and warranties are a material inducement for the Department to enter into this Agreement and provide the Appropriated Amount.
- b. Grantee shall ensure all representations and warranties provided herein are true, accurate, and complete as of the date of the Effective Date and shall remain so throughout the Term of this Agreement. Grantee is responsible for promptly notifying the Department in writing of any changes or inaccuracies in the representations and warranties contained herein.

B. Grantee hereby represents and warrants the following:

- a. Grantee has taken all necessary steps to attain the legal authority to receive and expend the Project's funds.
- b. Grantee has duly authorized this Agreement, and the person executing it has authority to do so. Once executed by Grantee, this Agreement shall constitute a binding obligation of Grantee, enforceable according to its terms.
- c. Grantee's obligations hereunder do not conflict with any law, ordinance, or resolution applicable to Grantee, Grantee's charter (if applicable), or any judgment or decree to which Grantee is subject.
- d. Grantee has independently confirmed that the Project Description, including, but not limited to, the Appropriated Amount and Reversion Date, is consistent with the underlying appropriation in law.
- e. Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign and submit Requests for Payment on behalf of Grantee.

- f. Grantee will abide by New Mexico laws regarding conflicts of interest, governmental conduct, and whistleblower protection.
 - i. Grantee agrees explicitly none of its officers or employees or its designees or agents, no member of the governing body, and no other public official of Grantee who exercises any function or responsibility with respect to this Agreement, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for the Project.
 - ii. Further, Grantee will require all of its contractors to incorporate the language set forth in this paragraph prohibiting conflicts of interest in all subcontracts.
 - g. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of the State, any agency, or body in connection with the awarding of any Third Party Obligation.
 - i. Grantee will require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans, and cooperative agreements.
- C. **Consequences of False or Misleading Representations.** If any representation or warranty made by Grantee is found to be false or misleading, the Department shall have the right to exercise any or all of the following remedies:
- a. **Termination of Agreement:** Department may terminate this Agreement immediately upon written notice to the Grantee.
 - b. **Repayment of Grant Funds:** Grantee shall repay all Appropriated Amounts disbursed under this Agreement, upon demand by the Department.
 - c. **Other Remedies:** Department may pursue any other remedies available at law or in equity.
- D. **Survival of Representations and Warranties.** The representations and warranties made by the Grantee shall survive the Early Termination or expiration of this Agreement.

XII. PROJECT RECORDS

- A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles and the State's Model Accounting Practices and, if feasible, maintain a separate bank account or fund with a separate organizational code to ensure separate budgeting and accounting of the funds.
- B. For six (6) years following the Project's completion ("**Record Retention Period**"), Grantee shall maintain all Project-related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the Appropriated Amount from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department may prescribe.
- C. Grantee shall make all Project records available to the Department, the Department's Independent Public Accountant, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department finds any funds were improperly expended, Grantee shall be required to reimburse the State all amounts found to be improperly expended.

XIII. IMPROPERLY REIMBURSED FUNDS

If the Department determines part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation,

misuse, violation of law by the Grantee, after ten (10) days' notice to Grantee and the opportunity to return such funds to the Department, the Department may offset any funds due to Grantee from the State, until the Appropriation Amount is fully repaid.

XIV. LIABILITY

Neither Party shall be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

XV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Parties concerning the subject matter hereof. The Agreement supersedes all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

XVI. REQUIRED NON-APPROPRIATIONS CLAUSE

- A. Grantee acknowledges and agrees to include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:
 - a. "The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of the State of New Mexico ("**Legislature**") for the performance of this Agreement.
 - b. If the Legislature does not make sufficient appropriations and authorization, City of Carlsbad may immediately terminate this Agreement by giving Contractor written notice of such termination.
 - c. City of Carlsbad's decision as to whether sufficient appropriations are available shall be final and accepted by the Contractor. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Carlsbad or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Carlsbad or the State Department of Finance and Administration."

XVII. REQUIRED TERMINATION CLAUSE

- A. Grantee acknowledges and agrees to include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:
 - a. "This contract is funded in whole or in part by funds made available by the State of New Mexico ("**State**"). Should the State terminate its Agreement with City of Carlsbad, City of Carlsbad may terminate this contract immediately by providing Contractor written notice of such termination.
 - b. In the event of termination pursuant to this paragraph, City of Carlsbad only liability to Contractor shall be for goods and services delivered and accepted prior to the termination date."

XVIII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA

- A. Throughout the term of this Agreement, Grantee shall:
 - a. Submit all reports of annual audits and agreed-upon procedures required by § 12-6-3(A)-(B), NMSA 1978 by the due dates established in § 2.2.2 NMAC, reports of which must be a public

record pursuant to § 12-6-5(A), NMSA 1978 within forty-five (45) days of delivery to the State Auditor;

- b. Have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
- c. Timely submit all required financial reports to its budgetary oversight agency (if any); and
- d. Use accounting methods and procedures consistent with Generally Accepted Accounting Principles and the State's Model Accounting Principals to expend the Appropriated Amount in accordance with applicable law and account for and safeguard Project funds and assets acquired with Project funds.

B. In the event Grantee fails to comply with the requirements of subparagraph A of this Article XVIII, Department may take one or more of the following actions:

- a. Suspend new or further obligations pursuant to Article VI(A) of this Agreement;
- b. Require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
- c. Impose special conditions to address the non-compliance by giving Grantee notice of such special conditions in accordance with Article III of this Agreement;
 - i. The Parties agree that any special conditions imposed to address non-compliance shall be incorporated into this Agreement, through **Exhibit C**, upon notice to Grantee, without need for formal amendment of this Agreement;
 - ii. Special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III or
- d. Terminate this Agreement pursuant to Article V(A) of this Agreement.

XIX. SEVERANCE TAX AND GENERAL OBLIGATION BONDS

A. Grantee acknowledges and agrees that the underlying appropriation for the Project may originate from the issuance of tax-exempt severance tax bonds or general obligation bonds by the State. Proceeds from such bonds are administered by the New Mexico State Board of Finance ("**SBOF**"), an entity separate and distinct from the Department.

- a. Grantee acknowledges and agrees:
 - i. It is Grantee's responsibility to determine through SBOF what (if any) conditions are currently imposed on the Project;
 - ii. Department's failure to inform Grantee of an SBOF-imposed condition does not affect the validity or enforceability of the condition;
 - iii. The SBOF may in the future impose further or different conditions upon the Project;
 - iv. All SBOF conditions are attached to the Project and Appropriation Amount without the need for formal amendment of this Agreement;
 - v. All applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s) and
 - vi. The Department's obligation to reimburse Grantee from the Project is expressly contingent upon the satisfaction of the then-current SBOF conditions.

B. Grantee acknowledges and agrees SBOF may, at its sole and absolute discretion, require reimbursement or remove eligibility for bond proceeds for the Project if the Project doesn't proceed sufficiently.

- a. Grantee must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by Grantee in the Bond Questionnaire and Certification documents submitted to the SBOF.

- b. Failure to comply may result in the reassignment of the bond proceeds. Upon reassignment of bond proceeds, this Agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.
- C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, § 2.61.6, NMAC, as may be amended from time to time or re-codified.

XX. GENERAL PROVISIONS

- A. Assignment: Grantee's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Agreement.
- B. Subcontractors: Grantee shall not enter any subgrant or subcontract in connection with its obligations under this Agreement without the prior written approval of the State. Upon request, Grantee shall submit to the Department a copy of each such subgrant or subcontract.
- C. Binding Effect: Except as otherwise provided, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.
- D. Authority: Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.
- E. Captions and References: The captions and headings in this Agreement are for the convenience of reference only and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits, or other attachments are references to sections, subsections, exhibits, or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.
- F. Counterparts: This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute the same agreement.
- G. Digital Signatures: If any signatory signs this agreement using a digital signature in accordance with the State Policies regarding the use of digital signatures, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.
- H. Modification: Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment, properly executed and approved in accordance with applicable New Mexico law and State fiscal policies and rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the State.
- I. Statutes, Regulations, Fiscal Rules, and Other Authority: Any reference in this Agreement to a statute, regulation, policy, or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended after the Effective Date of this Agreement.
- J. External Terms and Conditions: Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Grantee's or a subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.
- K. Severability: The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and

effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.

- L. **Survival of Certain Agreement Terms:** Any provision of this Agreement that imposes an obligation on a Party after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.
- M. **Third Party Beneficiaries:** Except for the Parties' respective successors and assigns described in this Agreement, it does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits that third parties receive as a result of this Agreement are incidental to this Agreement and do not create any rights for such third parties.
- N. **Waiver:** A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.
- O. **Standard and Manner of Performance:** Grantee shall perform its obligations under this Agreement in accordance with the highest standards of care, skill, and diligence in Grantee's industry, trade, or profession.
- P. **Licenses, Permits, and Other Authorizations:** Grantee shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement and shall ensure that all employees, agents, and subcontractors secure and maintain at all times during the term of their employment, agency or subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.
- Q. **Publicity:** Any Publicity regarding the subject matter of this Agreement may not be released without prior written approval from the Department. For purposes of this agreement, "**Publicity**" means notices, informational pamphlets, press releases, email responses, research, reports, signs, and similar public notices prepared by or for the Grantee or jointly with others.
 - a. Grantee shall obtain written approval prior to issuing any press release or making any public announcement regarding this agreement. Grantee agrees to obtain approval of the Department in advance with respect to all Public Relations, all communications with media, or all communications with any other member of the public with respect to this agreement, except to acknowledge that an agreement does exist.
 - b. For purposes of this agreement, "Public Relations" includes community relations and means those activities dedicated to maintaining the Department's image or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.
 - c. Violations of either Article XX (Q)(a) or (b) shall constitute a material Breach of Agreement.
- R. **Data Sharing:** The State intends to secure and collate specific data generated by Grantee under this Agreement to use in support of the State's organizational, policy-making, and management of public resource functions. State, in accordance with **Exhibit E**, attached hereto and incorporated herein by reference, reserves the right to require Grantee and/or its subcontractors to provide specific data relevant to the above-listed functions. Data provided by Grantee may be incorporated into existing or future

developed State integrated analysis tools or databases, including but not limited to geographic information system (GIS) networks and databases accessible by the public. Dissemination of data collected may include historical data and projections based on such historical data.

- a. To the extent any data transferred as part of this Agreement is legally determined to be the property of Subrecipient or its subcontractors, Subrecipient and/or its subcontractors grants State a nonexclusive, fully paid-up right and license to reproduce, use, distribute, do derivative works based on, and archive data transferred as part of this Agreement.

- S. Venue and Choice of Law: This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, without regard to any conflict of law provisions. Any legal suit, action, or proceeding arising out of or related to this Agreement shall be instituted exclusively in the district courts located in Santa Fe, New Mexico. The Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such suit, action, or proceeding. The Parties waive any objection to the laying of the venue of any such suit, action, or proceeding in the district courts of Santa Fe, New Mexico, and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

[SIGNATURE PAGE AND EXHIBITS FOLLOW]
[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Department's date of execution.

APPROVED BY GRANTEE:

City of Carlsbad
Entity Name

Official with Authority to Bind Grantee:

Signature

Richard D. Lopez
(Print Name)

Mayor
(Title)

Date

Fiscal Officer or Chief Financial Officer: (OPTIONAL)

Signature

Melissa Salcido
(Print Name)

Director of Finance
(Title)

Date

Legal Counsel: (OPTIONAL)

Signature

Barbara Hodgson
(Print Name)

City Attorney
(Title)

Date

APPROVED BY DEPARTMENT:

New Mexico Environment Department

Dennis Romero, P.E., Bureau Chief, NMED Construction Programs Bureau

Signed pursuant to the July 20, 2026, Secretary of Environment Delegation Order

Rev. July 2025						NEW MEXICO ENVIRONMENT DEPARTMENT					
						CONSTRUCTION PROGRAMS BUREAU					
NMED DISBURSEMENT REQUEST											
SPECIAL APPROPRIATIONS PROGRAM (SAP)											
A. NAME OF ENTITY						C. DISBURSEMENT REQUEST NUMBER					
B. PROJECT NUMBER						D. GRANT AMOUNT					
		PROJECT BUDGET		PREVIOUS EXPENDITURES		CURRENT EXPENDITURES		CUMULATIVE		FUNDS REMAINING	
		NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS
Engineer Fees											
Other Professional											
Service Fees											
Inspection Fees											
Property Acquisition											
Construction Cost											
Planning Cost											
Equipment											
Other Costs (specify)											
Contingencies											
TOTAL											
Article IX.A. (iii). By checking this box you are stating that payment has NOT been paid to the vendors associated with this request. Upon receipt of payment from NMED, certification of payment will be sent within 10 days from the date of receiving reimbursement.								Article IX. A. (ii). By checking this box you are certifying that the vendors associated with this request have been paid.			
Certification: I hereby certify that all conditions and requirements for Payments outlined in the Agreement have been met, including but not limited to: a. Submission and approval of a Project Budget as per Article IV, Section A of the Agreement. b. Compliance with the Project Budget and expenditure of funds in accordance with the State Procurement Code and the State's Model Accounting Practices. c. Submission of supporting documentation as required by the Agreement. d. Maintenance of all necessary records and documentation as stipulated in the Agreement.											
Certification: I attest that the information provided is correct; expenditures are properly documented and valid or actual receipts, and that the activity fully complies with Article IX, Sec. 14 of the New Mexico Constitution, known as the "anti-donation" clause.											
Certification: I hereby certify that all representations and warranties made in the Agreement remain true, accurate, and complete as of the date of this request, and will continue to be so throughout the term of the Agreement. I acknowledge that these representations and warranties are a material inducement for the Department to approve this pay request.											
Reporting Certification: I hereby certify to the best of my knowledge and belief, that the database reporting is up to date; to include the accuracy of the expenditures and grant balance, project status, project phase, achievements and milestones, and in compliance with Article VIII of the Capital Outlay Grant Agreement.											
				Signature of Official Representative:		Typed or Printed Name:		Phone:		Date:	
				X							

EXHIBIT A
Request for Payment Form and Certification

EXHIBIT B

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT B**

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, Grant Manager

FROM: Grantee Entity: _____
Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: _____
Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: \$ 0.00

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: Grant Manager

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Revised 7/2025

OPTIONAL EXHIBIT C SPECIAL CONDITIONS

The capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired with such appropriations.

This Capital Outlay Special Grant Condition(s) **Exhibit C** is necessary pursuant to Public Finance Accountability Act (HB 493), due to the Grantees' material weaknesses, significant deficiencies, or findings that raised concerns as to the ability to expend grant funds in accordance with applicable law in the organization's FY2025 audit. The Special Conditions identified below apply to the authorized agent, North Central Solid Waste Authority.

EXHIBIT E

Data Sharing Provisions

Data Sharing Provisions for New Mexico Capital Outlay Agreements

I. Introduction:

This Data Sharing Provisions Exhibit ("Exhibit") is incorporated into the New Mexico Capital Outlay Agreements ("Agreements") between the State of New Mexico ("State") and [Insert Partner Name] ("Partner"). This Exhibit outlines the terms and conditions under which data will be shared between the Parties to ensure compliance with New Mexico state laws and regulations, focusing on data privacy, security, and compliance.

II. Definitions:

- a. **Authorized User:** An employee, agent, assign, representative, independent contractor, or other person or entity authorized by Partner or State to access, use, or disclose information through this exhibit.
- b. **Confidential Information:** All data or information shared in confidence, with the expectation that it will not be disclosed in an identifiable form. This includes data that is exempt from public disclosure under the New Mexico Inspection of Public Records Act (§ 14-2-1 et seq. NMSA 1978) or other relevant laws.
- c. **Data Storage:** Electronic media that hold recorded information.
- d. **Data Transmission:** The process of moving information over a network from its source to one or more destinations.
- e. **Direct Identifier:** Records or data containing personal identifiers such as names, addresses, and social security numbers.
- f. **Disclosure:** Permission to access, release, transfer, or otherwise communicate confidential information by any means to any third party, except as authorized by the Party that controls the record.
- g. **Encryption** involves using algorithms to encode data, rendering it unreadable without a specific key. It may be necessary during data transmission and/or storage.
- h. **Information:** Any data, figures, statistics, or other facts provided or learned about someone or something, including Confidential Information, that may be legally transmitted under this Exhibit.
- i. **Limited Dataset:** A data file that omits Direct Identifiers.
- j. **Protected Personally Identifiable Information:** Sensitive personal details such as social security numbers and financial account numbers, with specific exclusions as outlined in the Agreements.

III. Purpose:

The purpose of this exhibit is to promote transparency, facilitate information sharing between the parties, support better policy and decision-making, and enhance public services through collaborative data analysis from various sources.

IV. Use of Information:

- a. Use of Information obtained or created under this exhibit shall be strictly limited to the purposes stated herein and in the agreements. The parties agree not to sell Information to third parties or use it for commercial, solicitation, or political purposes.
- b. Each Party shall serve as the custodian of the Information and comply with all conditions for its use, including security measures to prevent unauthorized access.
- c. The Parties shall follow all relevant federal and state laws and regulations governing the use of such Information.

V. Safeguarding Information:

- a. Confidentiality: Access to Confidential Information shall be limited to the minimum necessary to accomplish the purposes of this Exhibit. Authorized Users must adhere to the confidentiality requirements.
- b. Security: Security practices shall comply with the requirements of the New Mexico Department of Information Technology Act and related regulations. The Parties agree to notify each other within three business days of any suspected or actual security breach.
- c. Information Storage and Transmission: Data Storage and Transmission shall take place on an encrypted server with appropriate security controls.

VI. Re-Disclosure of Information:

The Parties agree not to disclose Information except as required by law or with prior written approval of the other Party. If there is a public records request, the Party receiving it shall notify the other Party within three business days.

VII. Ownership of Information:

Legal title to Information shall remain with the provider. The Partner grants the State a royalty-free, non-exclusive, non-transferable license to use the Information in furtherance of the purposes outlined in this Exhibit.

Capital Appropriations Certification Document

Article IX. A. (ii) and (iii)

(City of Carlsbad SAP 26-K2426-GF)

Payment Request No _____

I certify that payment to all vendors on the above referenced payment request were paid no more than ten (10) days after receiving reimbursement from NMED.

Official Representative, Signed Name, Printed Name, Date

ATTACHMENT A**NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU****PROJECT BUDGET****GRANTEE:** City of Carlsbad**PROJECT NO:** SAP 26-K2426-GF

Please provide a comprehensive procurement plan and expenditure plan, detailing a Project timeline with milestones, required procurements, and identifying expected expenditures per milestone, referred to collectively as the "Project Budget." While it can be difficult to estimate costs and timelines, setting a plan for these can help keep realistic expectations and goals to keep a project moving forward to achieve the project scope and objectives. Contact your NMED-CPB Project Manager with questions.

1) Expenditure Plan. Indicate what expenses funding will be used.

Detailed Expenditure Plan		
USES OF FUNDS	NMED PROGRAM	OTHER FUNDS
Engineer Fees	\$100,000.00	
Other Professional		
Service Fees		
Inspection Fees		
Property Acquisition		
Construction Cost	\$320,000.00	
Planning Cost		
Equipment		
Other Costs (specify)		
Contingencies		
TOTAL	\$ 420,000.00	\$ -

- 2) **Procurement Plan.** Describe how engineering or professional services, construction contractors, equipment, or other goods or services will be procured.

Chief Procurement Officer

All Public Bodies are required by 13-1-95.2 NMSA 1978 to have a Chief Procurement Officer to conduct all procurement activities.

Who is your Chief Procurement Officer (CPO)? Matthew Fletcher, Purchasing Manager

Describe how you will secure CPO services, if you currently do not have a CPO. N/A

Professional Services

Have engineering or professional services already been procured and contracted? The City has an On-Call Engineering Services Contract in place with multiple vendors. The City will obtain a task order from an existing contractor to begin immediately upon grant execution.

If not, describe how you will procure engineering or professional services: N/A

Reminders:

- COSTS ABOVE \$60,000, require solicitation of services via a Request for Proposal (RFP).
- COSTS BELOW \$60,000 must adhere to 13-1-125 NMSA 1978 and procurements cannot be artificially divided into smaller units to circumvent legal requirements, such as formal solicitation.
- MULTI-TERM CONTRACTS can be renewed for up to four years 13-1-150 NMSA 1978. Monitor the remaining time on your contracts and plan for renewal in advance.

Construction

Contractors must be hired using a public bidding process for any project over \$60,000 (13-1-125 NMSA 1978) and procurements cannot be artificially divided into smaller units to circumvent legal requirements, such as formal solicitation.

Equipment Purchase

Equipment purchase must follow proper procurement code. Please see Chapter 13 Public Purchase and Property NMSA 1978.

- 3) **Project Timeline.** Setting a timeline can help keep a project on track to meet required expenditure deadlines. *(An example schedule is provided below.)*

Project Timeline:

OVERALL – MILESTONES		EXPECTED EXPENDITURE PER MILESTONE
ESTIMATED START DATE	Month 1	
5% FUNDS OBLIGATED*	Month 1	\$100,000.00
ESTIMATED END DATE	Month 24	
DETAILED – PHASES		
Task Order for Engineering Services	Months 1-2	
Design Updates	Months 2-3	\$10,100.00
Bid Phase Services	Months 3-6	\$28,200.00
Construction Phase Services	Months 6-24	\$48,200.00
Construction	Months 6-24	\$320,000.00
Closeout of Project & Grant	Month 24-26	\$13,500.00
TOTAL		\$ 420,000.00

***Disclaimer:** You have accepted grant funds on the condition that 5% of these funds are to be obligated in a Notice of Obligation within 6 months of bond issuance in accordance with XIX.B.(STB's only) and at least 10% within one (1) year in accordance with IX.B (all projects).

You can obligate funds by entering into a contract with an engineer or contractor. State Procurement Code must be followed for the purchase of all goods and services.

Your NMED-CPB project manager will be happy to help you navigate these requirements, so that your grant money can be spent, and your project successfully completed.

Example Timeline:

OVERALL – MILESTONES		EXPECTED EXPENDITURE PER MILESTONE
ESTIMATED START DATE	Month 0	
5% FUNDS OBLIGATED*	+ 6 months from start date = Month 6	\$100,000
ESTIMATED END DATE	Use detailed schedule below. 2.5- 3 years	
DETAILED – PHASES		
HIRE AN ENGINEER	4 months	
PLANNING DOCUMENT	6 months	\$25,000
DESIGN, PERMIT	9 months	\$60,000
ADVERTISE FOR BID, AWARD PROJECT	6 months (allow for rebid)	
CONSTRUCTION AND ENGINEERING CONSTRUCTION PHASE SERVICES (START TO FINISH)	Varies widely. 6 months to a year, or more.	\$750,000 and \$15,000
CLOSEOUT CONSTRUCTION/ FUNDS	1 month at end of construction schedule.	
TOTAL		\$850,000

- 4) **Additional Information.** Please use this space below to provide any additional details about your project you would like to share to show your project plan and readiness.

Grantee Signatory Authority

Richard D. Lopez, Mayor

Print Name

ATTACHMENT B
TECHNICAL REQUIREMENTS
NEW MEXICO ENVIRONMENT DEPARTMENT
CAPITAL OUTLAY

ARTICLE 1 REVIEW

Upon execution of the grant agreement, the Grantee will follow the procedures listed below unless waived in writing by the New Mexico Environment Department (NMED) (payment may be withheld if any of these procedures are not followed by the Grantee).

- A. The Grantee must submit copies to NMED of all unexecuted contracts or quotes the Grantee intends to enter in that are related to the project for the creation of a notice of obligation. Only approved eligible expenditures incurred after the effective date of the Grant Agreement shall be reimbursed or paid from these funds.
- B. If grant funds are used for construction, a site certificate must be submitted prior to project bid advertisement that certifies all necessary easements, rights-of-way, and/or property upon or through which the project is being constructed have been obtained. The Site Certificate must be signed by an attorney, engineer, surveyor, or title abstractor.
- C. If grant funds are used for meter installation, the Grantee must follow the NMED Guidelines for Meter Upgrade Projects. Meters must be installed before payment can be made. Request a copy of the Guidelines from your NMED Project Manager.
- D. If grant funds are used for construction, the Grantee will submit notice of the award and a copy of the executed construction contract documents.
- E. The Grantee will provide a full-time construction inspector during construction of the project unless NMED determines that part time inspection is adequate for the project. This must be requested and approved by NMED prior to the start of construction.
- F. All daily construction inspection reports shall be made available to the NMED upon request.
- G. Notwithstanding the inspections performed by the Grantee and its engineer, NMED will have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans but will be a general NMED review as described in Article 2 below.

ARTICLE 2 NMED OVERSIGHT

NMED oversight is only for purposes of compliance with applicable state grant requirements, procedures, statutes, and regulations. NMED approval will not be interpreted as a warranty or guarantee of any kind. Responsibility for the design of the project will lie solely with the engineer of record. All defects and their correction will be the responsibility of the Grantee and its contractors and engineers or consultants. Any questions raised by NMED during its inspections and reviews shall be resolved exclusively by the Grantee. The Grantee and its contractors and engineers or consultants will remain responsible for the completion and success of the project. No action by NMED shall relieve the owner, engineer, or contractor of legal responsibilities for the overall integrity of the project, adequacy of the design, safety, or compliance with all applicable regulations.

ARTICLE 3 CLOSEOUT

- A. The project will not be considered complete until the work as defined in this agreement has been fully performed, and finally and unconditionally accepted by the Grantee and the engineer of record.

- B. If the grant funds are used for purchase of equipment, final payment will be made after receipt of the equipment and equipment title, if applicable. Appraisal reports are required for the purchase of used equipment.
- C. If the grant funds are used for construction, final payment will be made after the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:
 - i. A certificate of substantial completion including punch list items.
 - ii. A final certified construction pay request prepared by the Grantee's project engineer and approved by the Grantee.
 - iii. A written consent of the surety, if any, to final payment.
 - iv. Complete and legally effective releases or waivers (satisfactory to the Grantee) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished there under. In lieu thereof and as approved by the Grantee, contractor(s) may furnish receipts or releases in full; an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Grantee or its property might in any way be responsible, have been paid or otherwise satisfied.
 - v. Certification letter by the Grantee and contractor that the Labor Standards Contract Provisions have been met.
 - vi. Certification letter of project acceptance by the Grantee and the Grantee's project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Grantee, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Grantee and contractors will be submitted to NMED.
 - vii. Certification letter from the Grantee confirming receipt and acceptance of the record drawings and operation and maintenance manuals.

**CITY OF CARLSBAD
RESOLUTION NO. 2026-55**

**A RESOLUTION AUTHORIZING PROJECT SAP 26-K2426-GF FOR THE W. SHAW STREET SEWER
IMPROVEMENT PROJECT IN CARLSBAD, AND THE ASSIGNMENT OF AUTHORIZED OFFICER(S) AND
AGENT(S)**

Whereas, the City Council of the City of Carlsbad of Eddy County of the State of New Mexico shall enter into a Grant Agreement with the State of New Mexico Environment Department, and

Whereas, the Agreement is identified as SAP 26-K2426-GF was authorized, "*to plan, design, construct and equip the Shaw street lift station in Carlsbad in Eddy county*".

NOW THEREFORE, BE IT RESOLVED by the City of Carlsbad, City Council that:

1. Richard D. Lopez, or his successor is hereby authorized to sign the Grant Agreement for this project, and
2. Angie Barrios-Testa, Director of Grant Programs or Ivan Mike Abell, Director of Utilities or their successors are the OFFICAL REPRESENTATIVE(S) who are authorized to sign all other documents necessary to fulfill the Grant Agreement and the requirements of the SAP 26-K2426-GF W. Shaw Street Sewer Improvement Project, Disbursements, and to act as the project contact, and
3. Angie Barrios-Testa, Director of Grant Programs, or Jayden Whitzel, Grant Compliance Accountant, or their successor as the DFA Database contact who are designated to update the database quarterly per Article VIII. A. of the Intergovernment Grant Agreement.
4. Angie Barrios-Testa, Director of Grant Programs, or Jayden Whitzel, Grant Compliance Accountant, or their successors are the Contact(s) who are designated to receive Notice of Obligations (NOOs).

PASSED, APPROVED, AND ADOPTED: This 8th day of September 2026

Richard d. Lopez, Mayor

(Signature)

Date

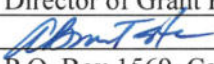
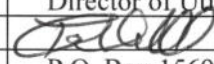
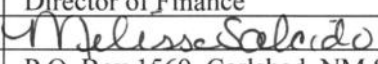
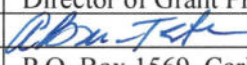
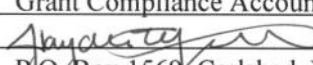
(SEAL)

ATTEST:

(Municipal Clerk)

Name of Grantee: City of Carlsbad Project Number: SAP 26-K2426-GF

Current Authorized Signatures (submit with Signature Resolution, update when necessary)

Authorized to Sign Agreement			
Name	Richard D. Lopez	Name	N/A
Title	Mayor	Title	
Signature		Signature	N/A
Address	101 N. Halagueno St. Carlsbad, 88221	Address	
Email	mayor.office@cityofcarlsbadnm.com	Email	
Phone	(575) 887-1191	Phone	
Official Representatives authorized to sign Disbursement Requests and all other documents.			
Name	Angie Barrios-Testa	Name	Ivan Mike Abell
Title	Director of Grant Programs	Title	Director of Utilities
Signature		Signature	
Address	P.O. Box 1569, Carlsbad, NM 88221	Address	P.O. Box 1569, Carlsbad NM 88221
Email	abtesta@cityofcarlsbadnm.com	Email	imabell@cityofcarlsbadnm.com
Phone	(575)887-1191 x7904	Phone	(575) 885-6313
Alternate Official Representative, to sign Disbursement Requests and all other documents and act as the Point of Contact.			
Name	Melissa Salcido	Name	N/A
Title	Director of Finance	Title	
Signature		Signature	N/A
Address	P.O. Box 1569, Carlsbad, NM 88221	Address	
Email	mmsalcido@cityofcarlsbadnm.com	Email	
Phone	(575) 887-1191 x7922	Phone	
Designated Agent or Employee that will make DFA database updates			
Name	Angie Barrios-Testa	Name	Jayden Whitzel
Title	Director of Grant Programs	Title	Grant Compliance Accountant
Signature		Signature	
Address	P.O. Box 1569, Carlsbad, NM 88221	Address	P.O. Box 1569, Carlsbad, NM 88221
Email	abtesta@cityofcarlsbadnm.com	Email	jbwhitzel@cityofcarlsbadnm.com
Phone	(575) 887-1191 x7904	Phone	(575) 887-1191 x7960
Notice of Obligations			
Name		Name	
Title		Title	
Signature	No Signature Required	Signature	No Signature Required
Address		Address	
Email		Email	
Phone		Phone	



**CITY OF CARLSBAD
AGENDA BRIEFING
MEMORANDUM**

Council Meeting Date: September 8, 2026

DEPARTMENT: Planning & Zoning	BY: Jeff Patterson	DATE: 09/02/2026
SUBJECT: Consider Approval of Resolution 2026-56, a Resolution vacating approximately 2,214 square feet (0.051) acres of platted alley right-of-way, and authorizing the execution and completion of a land swap between the City of Carlsbad and Viper Bit Services, LLC a New Mexico Limited Liability Company		
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) Applicant: Viper Bit Services, LLC 845 E. Laredo St. Chandler, AZ 85225-8124 Applicant/Agent: 840 S. Canyon LLC George Hainsworth, member 16310 Bratton Ln. Bldg. 1, Suite 100A Austin, TX 78728 The applicant is requesting the vacation of approximately 2,214 square feet (0.051 acres) of a platted alley right-of-way (ROW) between Lots 21, 22, 23 and 24, Block 185, Bock Subdivision, as seen on the attached Exhibit A "Alley Vacation Plat", located at 840 S. Canyon St. The ROW to be vacated is approximately 117.13' in length and 20' in width. The reason for the vacation request is to convert the property into real property that could be absorbed into the surrounding lots. The alley runs north-south between the lots in question. There are overhead electric lines that run through the alley at this location, and the applicant has contacted Xcel Energy to obtain an acknowledgment sign-off from that entity. Vacation of this ROW will result in this ROW becoming real property with an associated legal description. The applicant has also approached the City of Carlsbad with a proposal to swap portions of property located at 840 S. Canyon St. The applicant currently owns Lots 21, 22, 23, and 24 of Block 185, Bock Subdivision, which lies just north of the MLK Park along S. Canyon St. A portion of Lots 21 and 23 (approximately 6,740 sq. ft./0.154 acres) encroach into the MLK Park boundary (see attached Exhibit A). The applicant wishes to exchange this portion of Lots 21 and 23 for the portion of platted alley right-of-way that would be vacated with approval of the		

proposed resolution. The applicant has provided title commitment documents that confirm ownership of Lots 21 and 23, and illustrate the applicant's ability to convey ownership of portions of these lots to the City.

Approval of Resolution #2026-56 would approve the vacation of the platted alley right-of-way as identified on the attached Exhibit A and provided maps, and authorize the City Manager to perform all necessary actions required to complete and finalize an exchange of properties at the subject location.

Attached in this packet is a copy of Resolution #2026-56, Exhibit A, maps, title commitment documents, and other application materials.

DEPARTMENT RECOMMENDATION:

If it is the will of the Governing Body, City staff recommends approval of Resolution #2026-56, approving the vacation of platted alley right-of-way and the exchange of real property between the City of Carlsbad and Viper Bit Services, LLC.

BOARD/COMMISSION/COMMITTEE ACTION:

-

Reviewed by:

City Manager: Wendy D Austin

Date: September 9, 2026

Attachments:

1. RESOLUTION PACKET - 2026-56 - Alley Vacation and Land Swap - 840 S. Canyon St
2. 26-573_ViperBoundary-corrected

RESOLUTION 2026-56

A RESOLUTION VACATING APPROXIMATELY 2.214 SQUARE FEET (0.051 ACRES) OF PLATTED ALLEY RIGHT-OF-WAY, AND AUTHORIZING THE EXECUTION AND COMPLETION OF A LAND SWAP BETWEEN THE CITY OF CARLSBAD AND VIPER BIT SERVICES, LLC, A NEW MEXICO LIMITED LIABILITY COMPANY

WHEREAS, the City of Carlsbad owns and maintains public rights-of-way throughout the City, including platted alley rights-of-way; and,

WHEREAS, the City of Carlsbad owns and maintains various public park properties throughout the City; and,

WHEREAS, the public park property located along South Canyon Street and Plaza Street, commonly known and Martin Luther King Park, is owned by the City; and,

WHEREAS, the City has been approached Viper Bit Services, LLC, a New Mexico Limited Liability Company which owns property adjacent to and encroaching within the Martin Luther King Park property, with a land swap proposal; and,

WHEREAS, the proposed land swap would include approximately 2,214 square feet (0.051 acres) of platted alley right-of-way between Lots 21, 22, 23 and 24, Block 185, Bock Subdivision, and approximately 6,740 square feet of real property from Lots 21 and 23, Block 185, Bock Subdivision owned by Viper Bit Services, LLC; and,

WHEREAS, it has been determined that the vacation of approximately 2,214 square feet (0.051 acres) of platted alley right-of-way between Lots 21, 22, 23 and 24, Block 185, Bock Subdivision, and the exchange of this City-owned property for approximately 6,740 square feet of real property from Lots 21 and 23, Block 185, Bock Subdivision is beneficial to the City of Carlsbad and promotes the continued access and operation of public park space;

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD THAT, IN ACCORDANCE WITH 3-20-12 and 3-18-18 NMSA 1978:

1. Approximately 2,214 square feet (0.051 acres) of platted alley right-of-way between Lots 21, 22, 23, and 24, Block 185, Bock Subdivision (as seen on the attached Exhibit A) shall be vacated and made real property.
2. The City of Carlsbad shall agree to deed ownership of the vacated alley right-of-way property to Viper Bit Services, LLC, a New Mexico Limited Liability Company.
3. Viper Bit Services, LLC, shall agree to deed ownership of approximately 6,740 square feet of real property from Lots 21 and 23, Block 185, Bock Subdivision (as seen on the attached Exhibit A) to the City of Carlsbad.

4. The City Manager is authorized to arrange the completion and execution of all required documents and perform all necessary actions in order to finalize this transaction.

PASSED, APPROVE, AND ADOPTED on this 8th day of September, 2026.

RICHARD D. LOPEZ, MAYOR

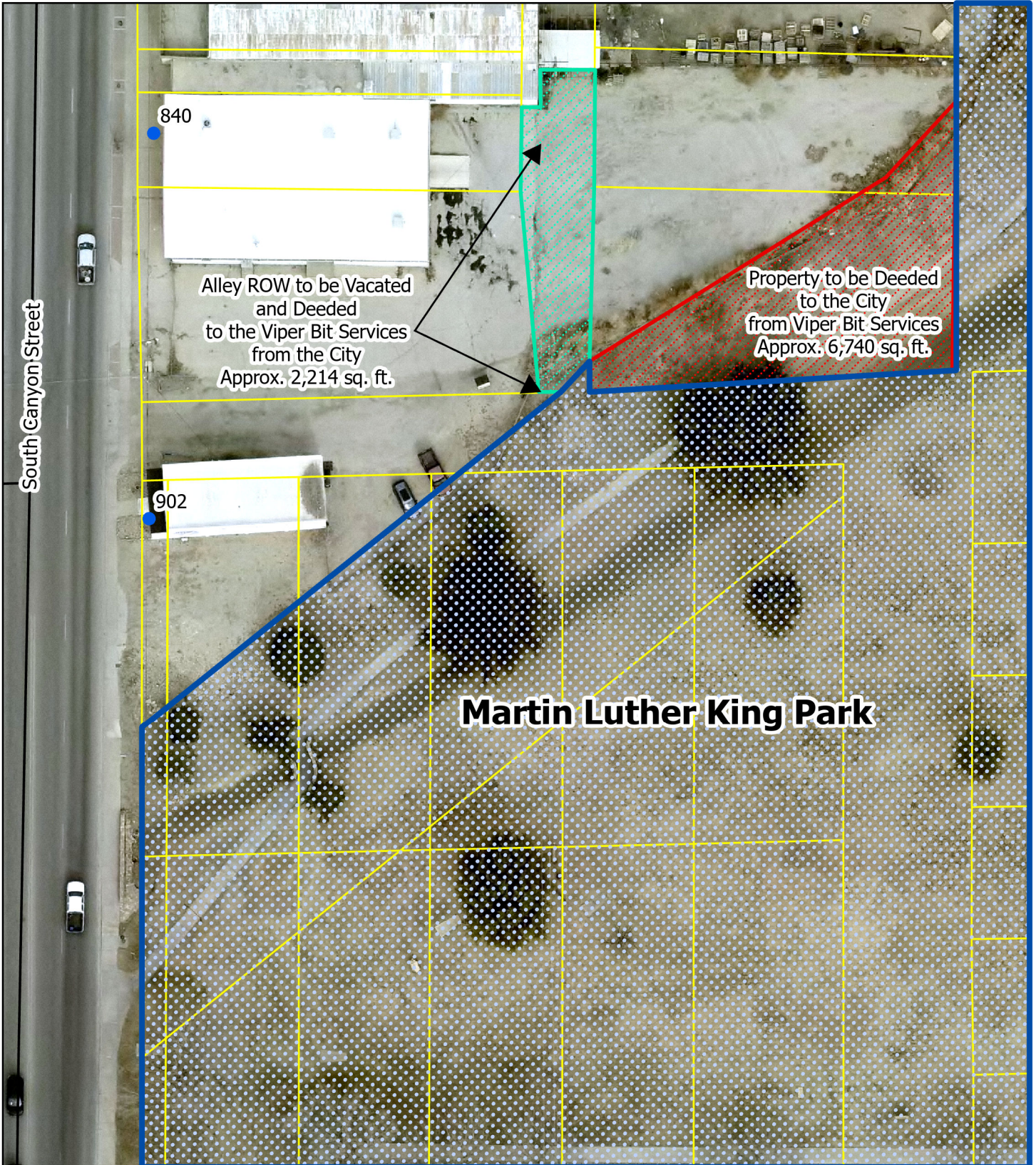
ATTEST:

NADINE MIRELES, CITY CLERK



**Vacation and Land Swap
840 S. Canyon Street
Carlsbad, NM**

9/2/2026



0 50 100
Feet

Legend

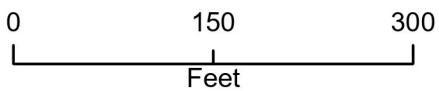
- Roads
- Property Lines





**Vacation and Land Swap
840 S. Canyon Street
Carlsbad, NM**

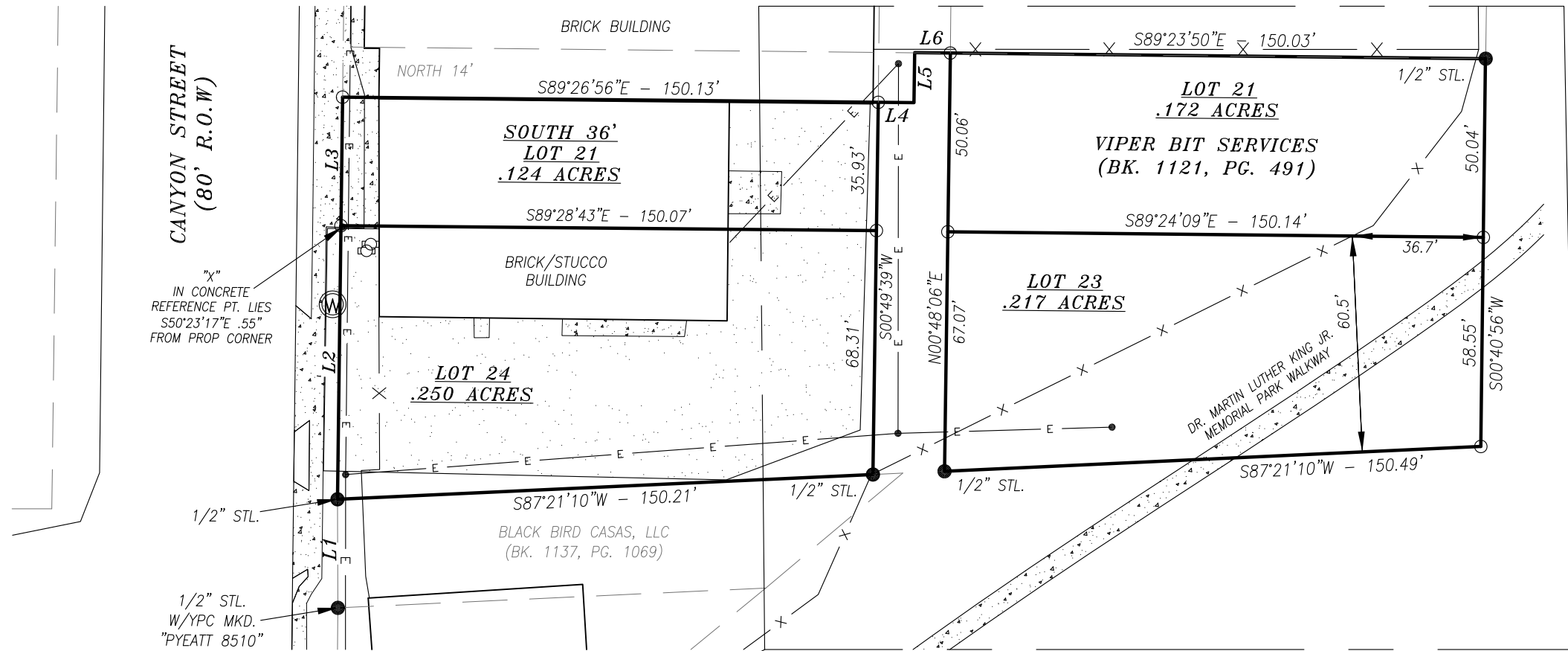
9/2/2026



Legend

- Roads
- Property Lines





LINE	BEARING	DISTANCE
L1	N00°14'35"W	30.41'
L2	N00°43'48"E	76.61'
L3	N00°43'48"E	36.00'
L4	S89°26'56"E	10.00'
L5	N00°44'43"E	14.00'
L6	S89°23'50"E	10.00'

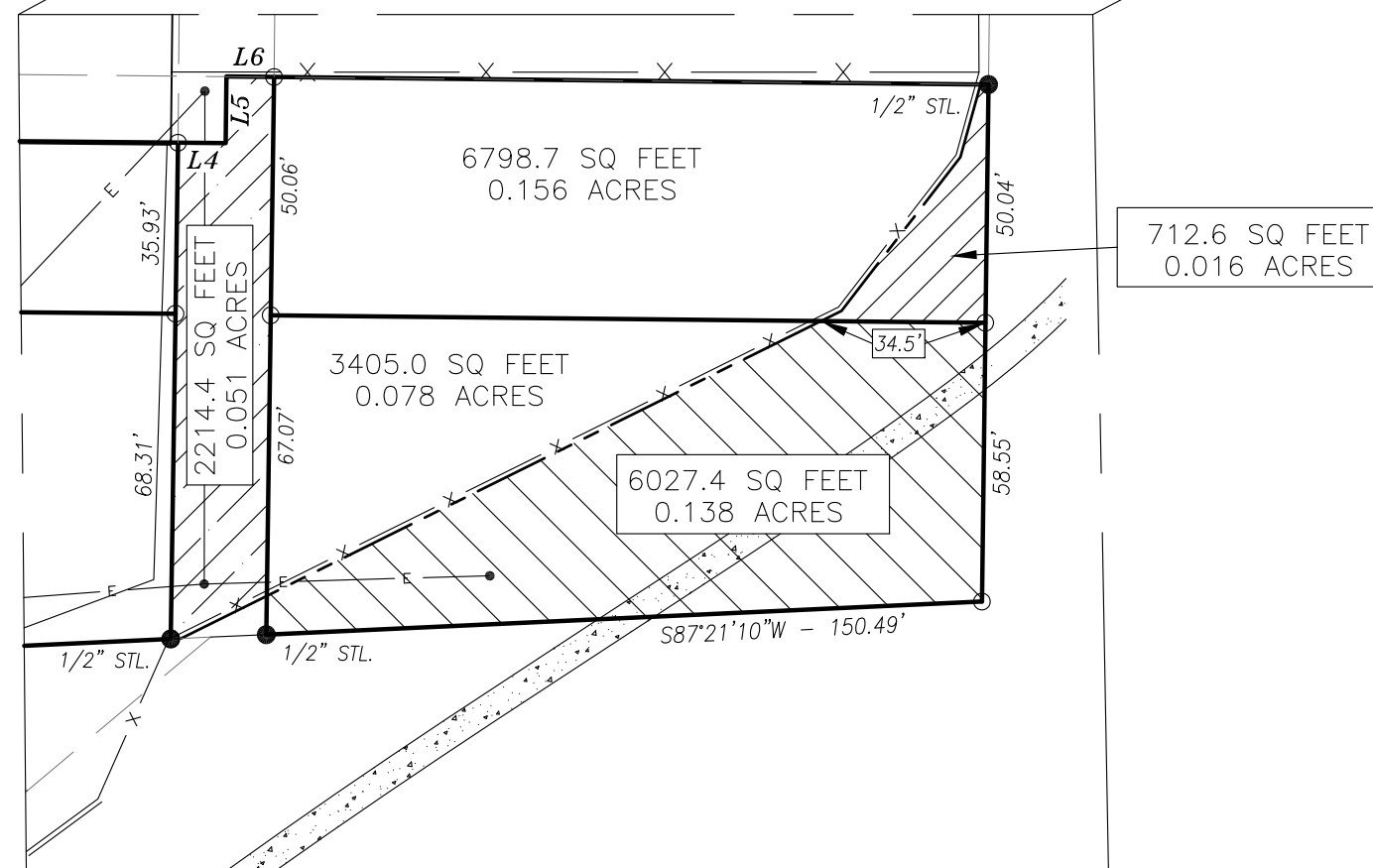


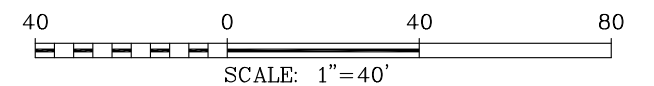
EXHIBIT A

LEGEND

- CLEANOUT
- WATER METER
- FOUND MONUMENT AS NOTED
- SET 1/2" STL W/ORANGE CAP MKD: "HARCROW PLS 17777"
- CHAIN LINK FENCE
- ELECTRIC LINE W/POWER POLE
- ASPHALT
- CONCRETE



HARCROW SURVEYING, LLC
2316 W. MAIN ST. ARTESIA, N.M. 88210
PH: (575) 746-2158
c.harcrow@harcrowsurveying.com



Map of Bock Subdivision
of part of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of
Sec. 7, Twp. 22 S., Rge. 27 E.
Eddy County, New Mexico.

Scale 1 in. = 200 ft.

DEDICATION.

This is to certify that the subdivision into blocks, lots, streets and alley of a portion of the Northwest quarter (NW $\frac{1}{4}$) of the Northeast quarter (NE $\frac{1}{4}$) of section 7, Twp. 22 S., Rge. 27 E., N.M.P.M., as the same appears on this map, is with the free consent and in accordance with the desire of the undersigned owner's and proprietors thereof.
In witness whereof we have hereunto set our hands and seals on this the 22nd day of March, 1937.

Paul Gibson
Catherine Gibson
J.S. Gibson
Ruth Gibson
Owner's

State of New Mexico
County of Eddy

On this the 22nd day of March, 1937,
before me personally appeared Paul Gibson and Catherine Gibson, his wife, J.S. Gibson and Ruth Gibson, his wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this the day and year in this certificate first above written.

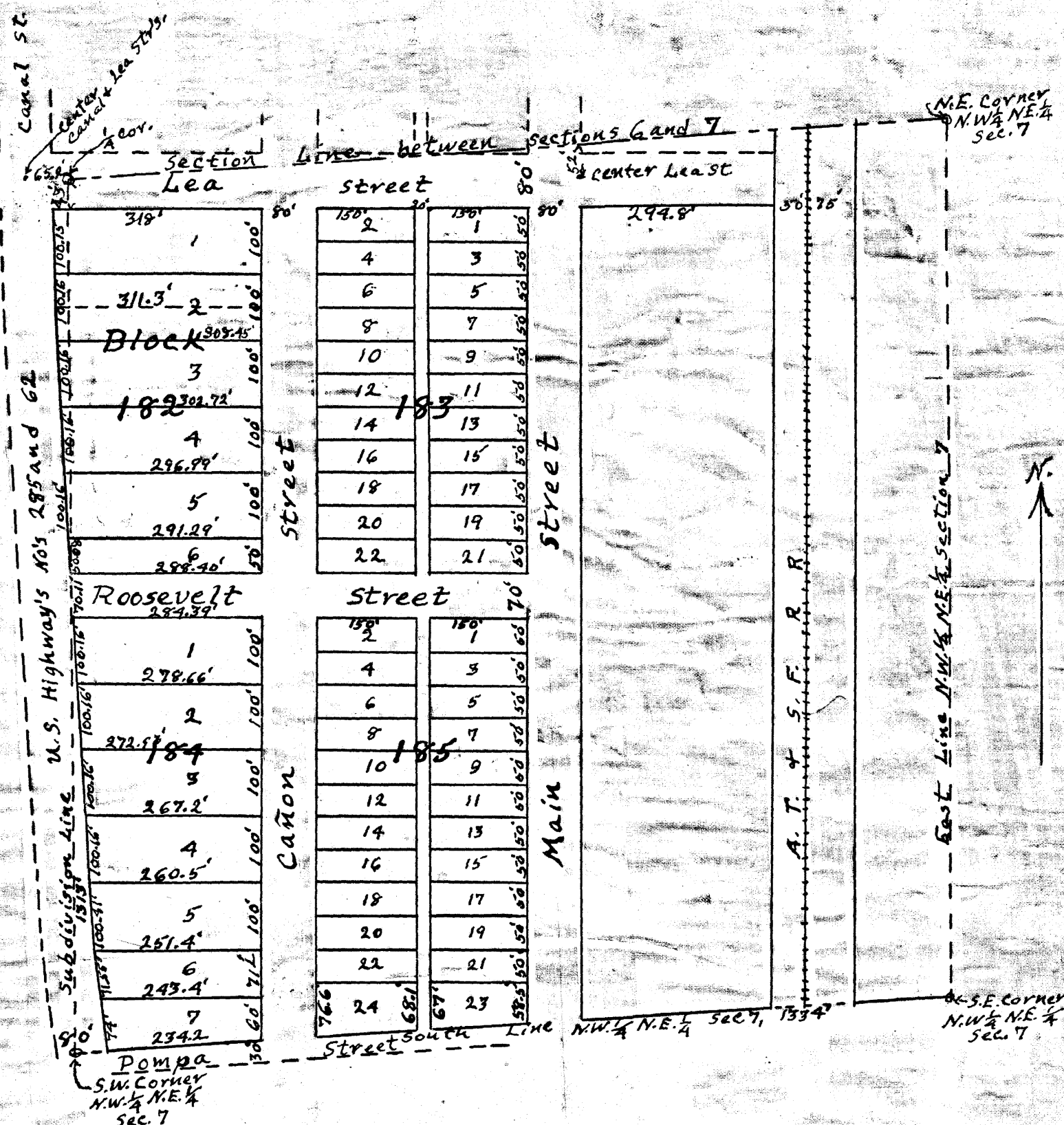
Notary Public.

My Commission Expires
May 29, 1940.

SEAL OF NEW MEXICO
County of Eddy
Filed for record on the
day of March A.D. 1937
at 1:50 P.M. and was duly
recorded in Book 2 of Records of
Maps Page 86 A
R.A. Wiley
M.W. Ingle

39844

Block 313 Pg 205
4/16/98





Receipt Date Stamp

City of Carlsbad
Planning and Regulation Department
PO Box 1569
Carlsbad, New Mexico 88221
Phone (575) 885-1185

VACATION APPLICATION

Application Date: 6/24/2026 Fee: None Choose One: ☒ Subdivision ☐ Right of Way

PROPERTY LOCATION: (ADDRESS OR LEGAL DESCRIPTION)

840 S. Canyon Street
See attached

APPLICANT INFORMATION

840 S. Canyon, LLC 16310 Bratton Lane Bldg 1 Suite 100A
NAME ADDRESS
Austin, TX 78728 (512) 964-2430 gbh2008@gmail.com
CITY STATE ZIP PHONE EMAIL

Signature(s) by George Hainsworth, member

Signature(s): _____

A submittal letter signed by the applicant and notarized providing the following information:

- ☐ A statement of the reason why the vacation is being requested and a description of any benefits that will accrue to the public and adjacent property owner(s).
- ☐ A statement explaining any limitation to direct property access that may result from the granting of the vacation.
- ☐ A statement that the applicant will pay the cost of an appraisal to determine the value of the land area to be vacated, if necessary.

The following documentation shall be provided:

- ☐ A statement by the applicants' attorney and/or land surveyor regarding the basis of the control exercised by the public over the property to be vacated and disposition of the ownership rights should the property be vacated as requested. A copy of the original document that transferred ownership and/or control to the City must be provided.
- ☐ Legal Description in narrative format of the street, alley or public easement, or portion thereof, to be vacated. This description shall be sealed by a land surveyor registered in the State of New Mexico.
- ☐ A plat suitable for recording showing the street, alley, easement, or part thereof, depicting graphically the results of the survey of the area to be vacated and showing all monuments found and/or set and adjacent property ownership. The plat shall be sealed by a land surveyor registered in the State of New Mexico.
- ☐ A map showing all properties (particularly that of the applicant(s)) within a radius of 500' (minimum) of the boundary of the property to be vacated.
- ☐ Written confirmation from all public utilities holding a city franchise (City Utilities, Valor Telecom, Excel Energy, PNM and US Cable) or private easement to determine whether or not the utility has any interest in maintaining current or placing future infrastructure under their franchise agreement with the city within the area proposed to be vacated. Should such interest be expressed, the applicant must accommodate the appropriate right-of-way.

840 S. Canyon Street – Legal Description

LOT 21 AND THE SOUTH 36 FEET OF LOT 22 AND ALL OF LOTS 23 AND 24, BLOCK 185, BOCK SUBDIVISION, TO THE CITY OF CARLSBAD, EDDY COUNTY, NEW MEXICO, AS SHOWN ON THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF EDDY COUNTY, NEW MEXICO.

840 S. Canyon, LLC

Statement in Support of Partial Alley Vacation

June 24, 2026

City of Carlsbad
Planning and Regulation Department
P.O. Box 1569
Carlsbad, NM 88221

RE: Application for Partial Alley Vacation

Property: 840 South Canyon Street, Carlsbad, New Mexico

I, **George Hainsworth**, as the authorized representative of **840 S. Canyon, LLC**, submit this statement in support of the Application for Vacation of a portion of the public alley adjacent to the above-referenced property. This statement is provided to satisfy the requirements of the City of Carlsbad Vacation Application.

1. Statement of Reason for the Vacation and Public Benefit

840 S. Canyon, LLC is acquiring the property located at 840 South Canyon Street for renovation and redevelopment as an Encore service and operations facility. The requested vacation is limited to approximately 2,214.4 square feet (0.051 acres), consisting of the northern fourteen (14) feet of the existing public alley adjacent to the property.

This portion of the alley no longer serves a meaningful public transportation purpose and is not required for through traffic or public circulation. Vacating this portion will eliminate an unnecessary public right-of-way, resolve an irregular property configuration, and allow for a more efficient redevelopment of the property.

The Applicant is also aware of existing boundary conditions involving adjacent City-owned property that may warrant future discussion with the City. Approval of the requested partial alley vacation will assist in resolving long-standing property configuration issues and facilitate the orderly redevelopment of the site while preserving the City's interests and allowing both parties to address any remaining boundary matters cooperatively.

The proposed redevelopment will return an underutilized commercial property to productive use, support local industry, create skilled employment opportunities, increase private investment within the City of Carlsbad, and expand the local tax base while maintaining access to surrounding properties.

2. Statement Regarding Property Access

The requested partial vacation will not limit or impair direct access to the subject property or any adjoining property. The subject property maintains direct vehicular access from South Canyon Street. Adjacent properties will continue to have access from existing public streets and the remaining public alley. The proposed vacation does not create a landlocked parcel, eliminate existing vehicular access, or adversely affect public circulation or access to neighboring properties.

3. Statement Regarding Appraisal Costs

The Applicant acknowledges that, should the City determine that an appraisal is necessary to determine the value of the land proposed to be vacated, 840 S. Canyon, LLC agrees to pay the cost of such

appraisal as required by the City of Carlsbad.

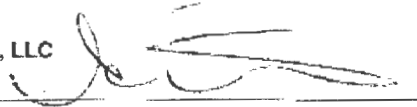
Conclusion

The Applicant respectfully requests approval of this partial alley vacation. Approval of this request will facilitate the redevelopment of the property into a modern commercial service facility while preserving public access and providing long-term economic benefits to the City of Carlsbad.

The Applicant looks forward to working collaboratively with the City to resolve any remaining property boundary matters in a manner that benefits both the public and the continued redevelopment of this commercial property.

Respectfully submitted,

840 S. Canyon, LLC

By: 

George Hainsworth
Authorized Representative

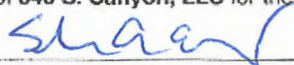
Date: June 28, 2026

NOTARY ACKNOWLEDGMENT

State of Texas

County of TRAVIS

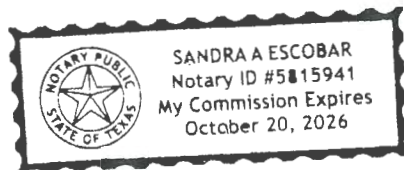
Subscribed and sworn to (or affirmed) before me on this 28 day of June, 2026, by **George Hainsworth**, who acknowledged that he executed this instrument as the authorized representative of **840 S. Canyon, LLC** for the purposes stated herein.

Notary Public: 

Printed Name: Sandra A. Escobar

My Commission Expires: 10/20/2026

(Seal)

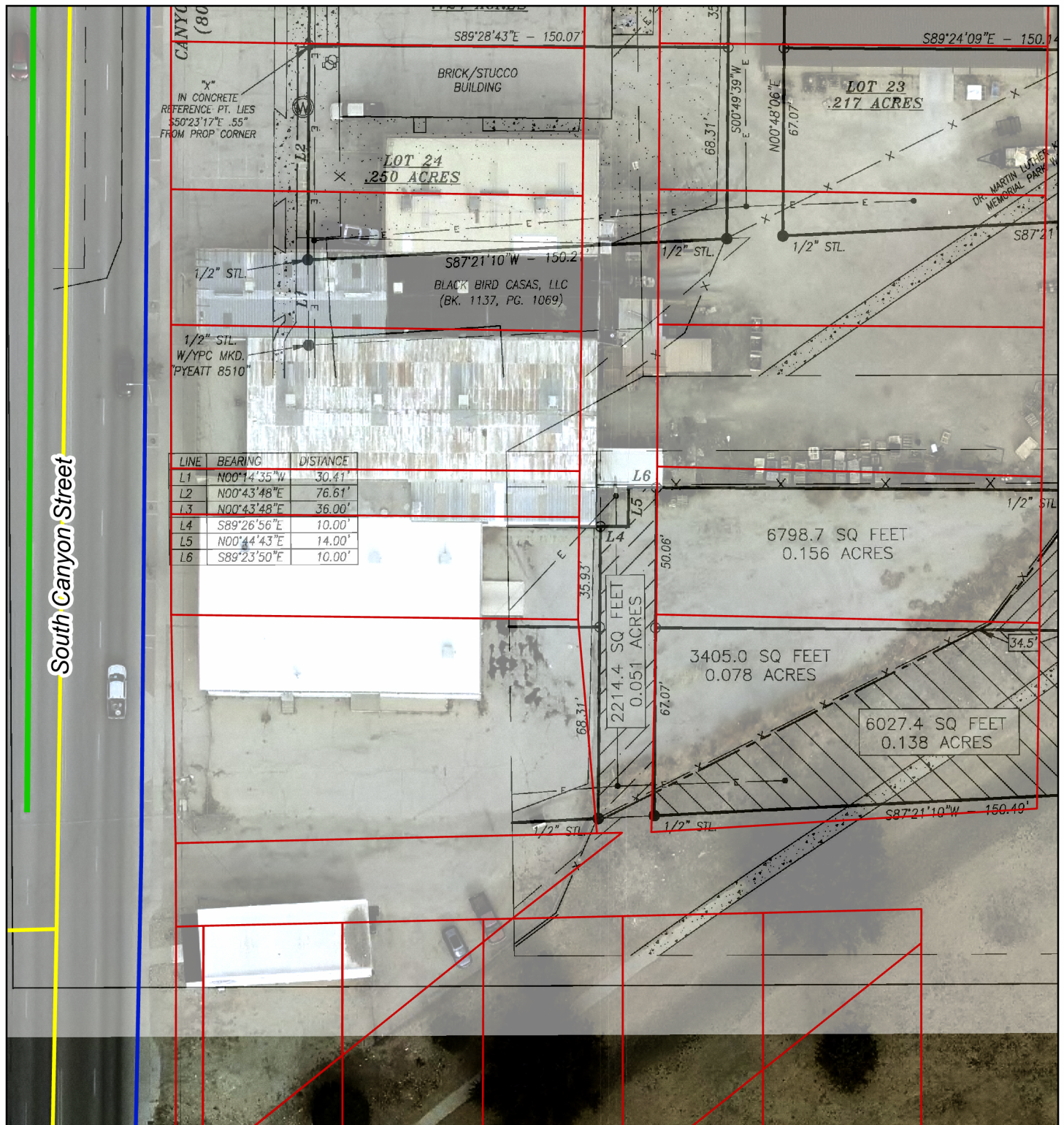


1 inch = 50 feet

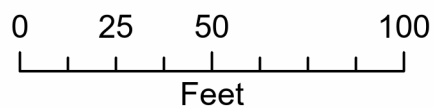
Proposed Vacation

Map # 3553_ed01

Date: 7/17/2026



-  Parcel
-  Roads
-  Water Main
-  Sewer Main



IMPORTANT: Maps and data are NOT
survey quality, do not guarantee accuracy,
and are only to be used as a reference.



Pursuant to the New Mexico title insurance law Section 59A-30-4 NMSA 1978, and title insurance rule 13.14.18.9 NMAC, no part of any title insurance commitment, policy or endorsement form promulgated by the New Mexico superintendent of insurance may be added to, altered, inserted in or typed upon, deleted or otherwise changed from the title insurance form promulgated by the New Mexico superintendent of insurance, nor issued by a person or company not licensed with regard to the business of title insurance by the New Mexico superintendent of insurance, nor issued by a person or company who does not own, operate or control an approved title abstract plant as defined by New Mexico law and regulations for the county wherein the property is located, except as authorized by law.

NM FORM 6: COMMITMENT FOR TITLE INSURANCE
issued by
ALLIANT NATIONAL TITLE INSURANCE COMPANY

Issuing Office File Number: **26-2204a**

Commitment for Title Insurance
NM Form 6

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Issuing Agent: **Network Closing Services, Inc. dba Pioneer Title and Escrow**

Issuing Office: **102 W. Hagerman Street, Ste. C, Carlsbad, NM 88220**

Issuing Office's ALTA® Registry ID: **1048905**

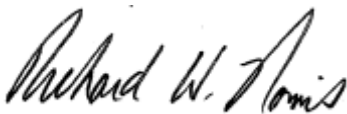
Issuing Office File Number: **26-2204a**

Property Address: **840 S. Canyon Street, Carlsbad, NM 88220**

SCHEDULE A

1. Commitment Date: **July 30, 2026, at 8:00 am**
2. Policy to be issued:
 - a. NM FORM 1 Owner's Policy
Proposed Insured: **The City of Carlsbad**
Proposed Amount of Insurance: **TBD**
The estate or interest to be insured: **Fee Simple**
3. The estate or interest in the Land at the Commitment Date is: **Fee Simple**
4. The Title is, at the Commitment Date, vested in **Viper Bit Services, LLC, a New Mexico Limited Liability Company**
and, as disclosed in the Public Records, has been since **April 1, 2019**
5. The Land is described as follows:
SEE ATTACHED EXHIBIT "A"

ALLIANT NATIONAL TITLE INSURANCE COMPANY

By: 

Authorized Signatory

This page is only a part of a NM Form 6 Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Modeled on, but not necessarily identical to, ALTA Commitment for Title Policy Form, 2021 v. 01.00
(adopted 07-01-2021)

NM FORM 6 Commitment for Title Insurance - SCHEDULES (NEW MEXICO 01-01-24) WITH ADDED EXCEPTIONS

NM FORM 6: COMMITMENT FOR TITLE INSURANCE
issued by
ALLIANT NATIONAL TITLE INSURANCE COMPANY

Commitment for Title Insurance
NM Form 6

EXHIBIT "A"

The Land is described as follows:

THE SURFACE ESTATE ONLY OF:

A PROPOSED AREA BEING PORTIONS OF LOT 21, LOT 23, AND A PORTION OF A VACATED ALLEY IN BLOCK 185, BOCK SUBDIVISION, TO THE CITY OF CARLSBAD, EDDY COUNTY, NEW MEXICO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT LIES N87°21'10"E A DISTANCE OF 0.28' FROM THE SOUTHEAST CORNER OF LOT 24; THENCE N63°36'56"E A DISTANCE OF 156.38'; THENCE N37°42'23"W A DISTANCE OF 40.51'; THENCE N15°27'09"E A DISTANCE OF 15.47'; THENCE S89°28'30"E A DISTANCE OF 2.44' TO THE NORTHEAST CORNER OF LOT 21; THENCE S00°42'10"W A DISTANCE OF 108.60' TO THE SOUTHEAST CORNER OF LOT 23; THENCE S87°12'11"W a DISTANCE of 150.49' TO THE SOUTHWEST CORNER OF LOT 23; THENCE S87°21'10"W A DISTANCE OF 19.78' TO POINT OF BEGINNING.

This page is only a part of a NM Form 6 Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Modeled on, but not necessarily identical to, ALTA Commitment for Title Policy Form, 2021 v. 01.00
(adopted 07-01-2021)

NM FORM 6 Commitment for Title Insurance - SCHEDULES (NEW MEXICO 01-01-24) WITH ADDED EXCEPTIONS

NM FORM 6: COMMITMENT FOR TITLE INSURANCE
issued by
ALLIANT NATIONAL TITLE INSURANCE COMPANY

Commitment for Title Insurance
NM Form 6

SCHEDULE B, PART I—Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
 - a. **Warranty Deed from Viper Bit Services, LLC, a New Mexico Limited Liability Company to The City of Carlsbad conveying the subject property. *ADDITIONAL FEES WILL BE REQUIRED.*
[*CURRENT DEED*](#)**
 - b. **Affidavit in recordable form from Viper Bit Services, LLC, a New Mexico Limited Liability Company establishing that there are no adverse matters against them recorded in the Office of the County Clerk of Eddy County, New Mexico.**
5. **Release AND Closure of Mortgage from Viper Bit Services, LLC, a New Mexico Limited Liability Company to Bank of the Southwest, dated 3/25/2019, recorded in Book 1121, Page 492 of the Office of the County Clerk of Eddy County, New Mexico, in the maximum amount of \$1,221,415.02.**
6. **Affidavit in recordable form establishing that there are no adverse matters against the Owners of Record recorded in the Office of the County Clerk of Eddy County, New Mexico, in which the subject property is situated.**
7. **Evidence in satisfactory form indicating payment to a current date of all maintenance charges, recreational fees or other Association assessments applicable to the land.**
8. **Proof of payment of service charges for water, sewer, waste and gas, if any, through the date of closing.**
9. **If survey coverage is required - a Survey or Improvement Location Report, acceptable to the company, must be provided prior to closing. Please confirm with your closer which type of Survey is acceptable.**
10. **Authorization to close - updated title commitment to be requested and received by customer prior to closing.**
11. **Satisfactory proof, acceptable to the Company, must be furnished showing the following company to be existing and in good standing under the laws of the State of New Mexico: Viper Bit Services, LLC.**
12. **Company Resolution from Viper Bit Services, LLC establishing who has the authority to sign on behalf of the company.**

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(adopted 07-01-2021)

NM FORM 6 Commitment for Title Insurance - SCHEDULES (NEW MEXICO 01-01-24) WITH ADDED EXCEPTIONS

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Commitment for Title Insurance
NM Form 6

- 13. Resolution from The City of Carlsbad establishing who has the authority to sign on behalf of the company.**
- 14. Provide EIN for Viper Bit Services, LLC AND complete bankruptcy search prior to funding.**
- 15. Taxes for the year 2025 were Paid in the amount of \$267.61, with a remaining balance due in the amount of \$6.36, good through 06/10/2026. (Lot 23)**

NOTICE: PLEASE BE AWARE THAT DUE TO THE CONFLICT BETWEEN FEDERAL AND STATE LAWS CONCERNING THE CULTIVATION, DISTRIBUTION, MANUFACTURE OR SALE OF MARIJUANA, THE COMPANY IS NOT ABLE TO CLOSE OR INSURE ANY TRANSACTION INVOLVING LAND THAT IS ASSOCIATED WITH THESE ACTIVITIES.

NOTE: FEDERAL LAW MAY REQUIRE THE COLLECTION AND REPORTING OF SPECIFIC INFORMATION IN CONNECTION WITH CERTAIN REAL ESTATE TRANSACTIONS TO COMPLY WITH ANTI-MONEY LAUNDERING REPORTING REQUIREMENTS ADMINISTERED BY THE FINANCIAL CRIMES ENFORCEMENT NETWORK (FINCEN) OF THE U.S. DEPARTMENT OF THE TREASURY.

IF THIS TRANSACTION IS SUBJECT TO ANY SUCH REPORTING REQUIREMENTS, THE SETTLEMENT AGENT MAY BE REQUIRED UNDER APPLICABLE LAW TO REQUEST SPECIFIC INFORMATION FROM ONE OR MORE PARTIES TO THE TRANSACTION PRIOR TO CLOSING. PARTIES MAY BE ASKED TO PROVIDE SUCH INFORMATION IN ORDER FOR THE SETTLEMENT AGENT TO COMPLY WITH FEDERAL REPORTING REQUIREMENTS.

THIS NOTICE IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY, IS NOT A CONDITION TO THE ISSUANCE OF ANY TITLE INSURANCE POLICY AND DOES NOT AFFECT CLOSING REQUIREMENTS OR TIMELINES UNDER THIS COMMITMENT. THE TITLE INSURER DOES NOT PROVIDE LEGAL, TAX, OR REGULATORY ADVICE AND MAKES NO REPRESENTATION REGARDING WHETHER ANY ANTI-MONEY LAUNDERING OR OTHER REPORTING REQUIREMENTS APPLY TO THIS TRANSACTION. THE TITLE INSURER HAS NO OBLIGATION TO DETERMINE WHETHER ANY SUCH REQUIREMENTS APPLY. THE SETTLEMENT AGENT, ACTING IN ITS INDEPENDENT CAPACITY AND NOT AS AN AGENT OF THE TITLE INSURER FOR COMPLIANCE PURPOSES, IS SOLELY RESPONSIBLE FOR IDENTIFYING AND COMPLYING WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL REPORTING OBLIGATIONS.

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SCHEDULE B, PART II—Exceptions

Some historical land records contain discriminatory covenants that are illegal and unenforceable by law. This commitment and the policy treat any discriminatory covenant in a document referenced in schedule b as if each discriminatory covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document will be excepted from coverage.

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Encroachments, overlaps, conflicts in boundary lines, or other matter which would be disclosed by an accurate survey and inspection of the premises.
4. Any lien, claim or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy).
6. Water rights, claims or title to water.
7. Taxes for the year **2026**, and thereafter. (See 13.14.5.12 NMAC)
8. Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.
9. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
10. Subject to restrictions, reservations, easements and covenants of record, if any.

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Standard exceptions 1, 2, 3, and or 4, may be deleted from any policy upon compliance with all provisions of the applicable rules, upon payment of all additional premiums required by the applicable rules, upon receipt of the required documents and upon compliance with the company's underwriting standards for each such deletion. Standard exception 5 may be deleted from the policy if the named insured in the case of an owner's policy, or the vestee, in the case of a leasehold or loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee. Except for the issuance of a U.S. policy form (NM form 34), any policy to be issued pursuant to this commitment will be endorsed or modified in schedule B by the company to waive its right to demand arbitration pursuant to the conditions and stipulations of the policy at no cost or charge to the insured. The endorsement or the language added to schedule B of the policy shall read: "In compliance with Subsection D of 13.14.18.10 NMAC, the company hereby waives its right to demand arbitration pursuant to the title insurance arbitration rules of the American land title association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the company and the insured."

11. **Restrictions, reservations, easements, setbacks and other matters indicated and/or shown on that certain Plat recorded in [Plat Cabinet 1, Slide 97-2](#), of the Office of the County Clerk of Eddy County, New Mexico.**
12. **Grant of Easement recorded in [Book 233, Page 118](#), of the Office of the County Clerk of Eddy County, New Mexico.**
13. **Ordinance No. 98-01 recorded in [Book 313, Page 225](#), of the Office of the County Clerk of Eddy County, New Mexico.**
14. **Subject to any and all recorded and unrecorded leases, rights or claims of parties in possession shown and not shown by the public records.**
15. **Any possible city water, garbage and sewer, and weed or structure removal assessments, which may be a lien by law, but have not been filed for record in the office of the county clerk of Eddy County, New Mexico.**
16. **Matters shown on the Boundary Survey titled BOCK SUBDIVISION, BLOCK 185, LOT 21 AND THE SOUTH 36 FEET OF LOT 22 AND ALL OF LOTS 23 & 24, BOUNDARY SURVEY CARLSBAD, EDDY COUNTY, NEW MEXICO, Completed by Chad Harcrow NMPS No 17777, dated 06/15/2026 bearing work order number 26-573:**
 - Chain link fence traverses from the Northeast corner of Lot 21 running diagonally through Lot 23 to the Southwest corner across the Alley as shown on the Plat recorded in [Plat Cabinet 1, Slide 97-2](#), then along the Southern boundary line of the vacated area as described in Ordinance No. 98-01 recorded in [Book 313, Page 225](#), of the Office of the County Clerk of Eddy County, New Mexico.
 - Concrete shown to run from the southern boundary of Lot 23 across to the Northeast boundary.

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NOTE: The following is for informational purposes only and is not to be considered as part of the coverage afforded by this binder/policy.

NOTE: Taxes for the year 2025 were Paid in the amount of \$267.61, with a remaining balance due in the amount of \$6.40, good through 09/10/2026; Tax I.D. Number 4-157-128-328-132; Assessed Value \$7,500.00. [*TAX BILL*](#)

Taxes are issued and fully payable on November 10th, late after December 10th and 2nd half due by April 10th and late after May 10th.

Tax Payment Address:
Eddy County Administration Complex
101 W Greene Street
Suite 117
Carlsbad, NM 88220
Phone: 575-885-3913

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NM FORM 6 Commitment for Title Insurance - SCHEDULES (NEW MEXICO 01-01-24) WITH ADDED EXCEPTIONS

BOCK SUBDIVISION, BLOCK 185,
LOT 21 AND THE SOUTH 36 FEET
OF LOT 22 AND ALL OF LOTS 23
& 24, BOUNDARY SURVEY
CARLSBAD, EDDY COUNTY, NEW MEXICO

SUBJECT PROPERTY
LOT 21 AND THE SOUTH 36 FEET OF LOT 22 AND ALL OF LOTS 23 AND 24, BLOCK 185, BOCK SUBDIVISION AS DESCRIBED BY WARRANTY DEED FILED IN BOOK 1121, PAGE 491, OFFICIAL RECORDS OF EDDY COUNTY, NEW MEXICO.

NOTES:
1) LOCATIONS OF UTILITIES ARE BASED ON ABOVE GROUND PHYSICAL EVIDENCE.
2) RECORD AND FIELD MEASUREMENTS ARE SIMILAR UNLESS OTHERWISE NOTED.

BASIS OF BEARING:
BEARINGS SHOWN ARE GRID SPC, NEW MEXICO EAST ZONE (3001), NAD 1983.
DISTANCES ARE SURFACE VALUES.
Convergence = -00°03'56.5"

DOCUMENTS USED FOR THIS SURVEY:
BOCK SUBDIVISION (CAB. 1, SLIDE 97-2)
BOUNDARY SURVEY BY MELVIN R. PYEATT (CAB. 3, SLIDE 225-2)
BOUNDARY SURVEY BY MELVIN R. PYEATT (CAB. A, SLIDE 502-1)
WARRANTY DEED (BK. 1158, PG. 975)

SECTION:
SECTION 7, TOWNSHIP 22 SOUTH, RANGE 27 EAST, N.M.P.M.

CERTIFICATION
I, CHAD HARCROW, A NEW MEXICO REGISTERED PROFESSIONAL SURVEYOR CERTIFY THAT I DIRECTED AND AM RESPONSIBLE FOR THIS SURVEY, THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THIS SURVEY AND PLAT MEET THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO. I FURTHER CERTIFY THAT THIS IS A BOUNDARY SURVEY PLAT OF AN EXISTING TRACT. THIS SURVEY IS NOT A LAND DIVISION OR A SUBDIVISION, AS DEFINED IN THE NEW MEXICO SUBDIVISION ACT.

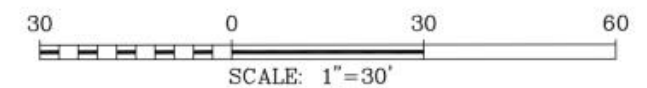
Chad Harrow
CHAD HARCROW N.M.P.S. NO. 17777
6/15/26
DATE



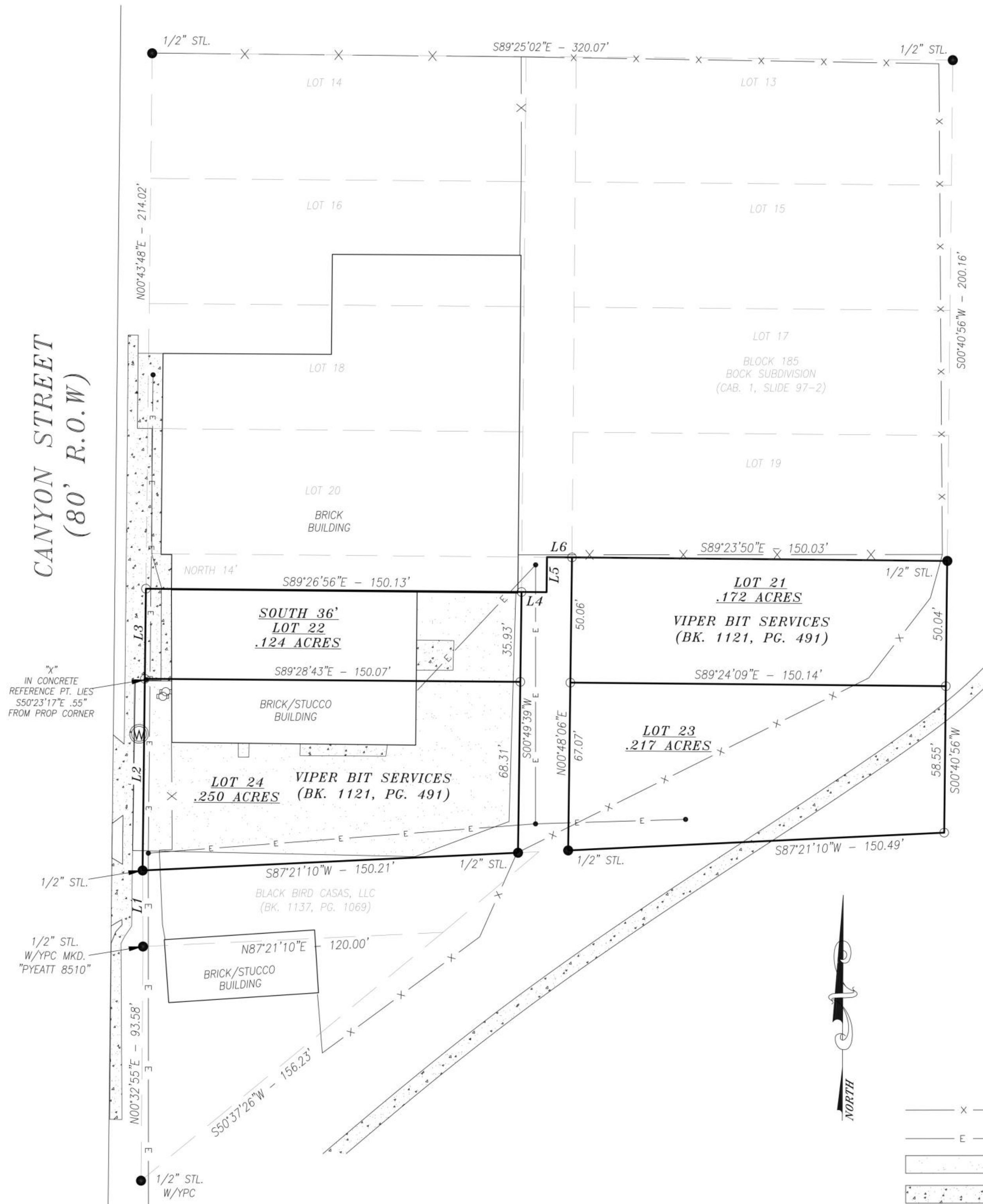
LEGEND

- CLEANOUT
- WATER METER
- FOUND MONUMENT AS NOTED
- SET 1/2" STL W/ORANGE CAP MKD: "HARCROW PLS 17777"
- CHAIN LINK FENCE
- ELECTRIC LINE W/POWER POLE
- ASPHALT
- CONCRETE

HARCROW SURVEYING, LLC
2316 W. MAIN ST, ARTESIA, N.M. 88210
PH: (575) 746-2158
c.harcrow@harcrowsurveying.com



FILING AND RECORDING	
SURVEY DATE: JUNE 9, 2026	BNDY. SURVEY
REV.DRAFTING DATE: AUGUST 7, 2026	PAGE: 1 OF 1
APPROVED BY: CH	DRAWN BY: VD
	WO: 26-573



PUBLIC COMMENTS AND ANNOUNCEMENTS

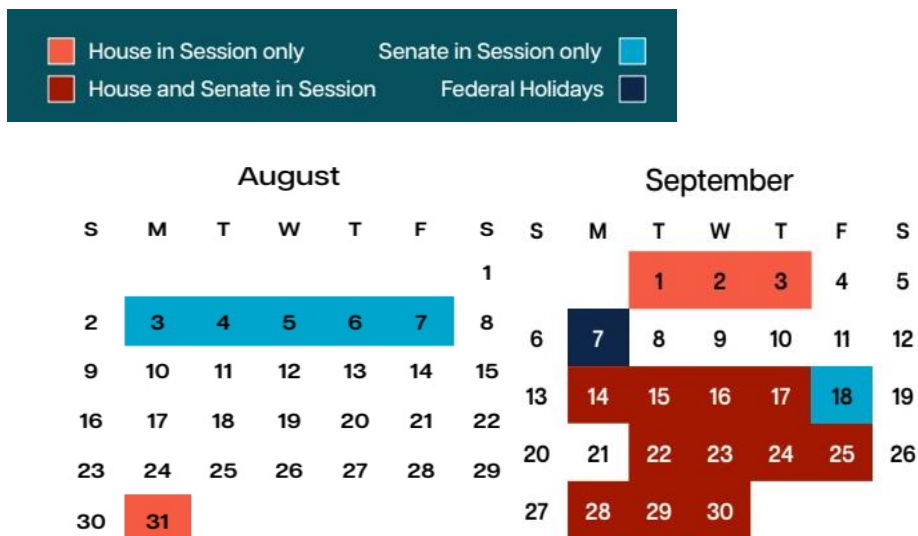
Committee Reports



MEMORANDUM

TO: Mayor Lopez, City of Carlsbad
FROM: Jeff Murray
RE: Monthly Consulting Report, August, 2026

Congressional Schedule



U.S. Government Affairs Report: August 2026

Issue priorities for August: CR

Note: August is traditionally a “break” month for Congress, taking most of the month off. The Senate stayed in session an additional week to address Federal funding (considering a Continuing Resolution) which they passed on August 8th.

Continuing Resolution:

On August 8, the U.S. Senate overwhelmingly voted 90-6 to pass a Continuing Resolution (CR) to fund the government through December 11 or until applicable appropriations acts are passed to fund the government through Fiscal Year (FY) 2027 – whichever comes first. The bill continues funding at FY 2026 levels for the 12 major appropriations divisions, while including a series of targeted funding allocations, rescissions and program-specific provisions.

Importantly, the CR delays the implementation of an Office of Management and Budget (OMB) Rule overhauling Uniform Guidance, which governs how federal grants can be administered, until December 11. This marks a major win for counties, who have serious concerns about the new rule's implications on how they can administer federal funds. The CR next moves to the U.S House of Representatives for consideration after it passed its own version of a CR that would fund the government only until December 4. The House's CR did not include some other provisions.

The CR process will move quickly following Congress' August recess. When Congress members return on August 31, they will have just a month before government funding expires on October 1. To pass this CR, the House will need to reconcile any differences between the Senate's CR and their own CR, passed on July 21, before the bill can move to the president's desk for a signature.

The CR would prevent a funding lapse leading to a government shutdown if Congress does not pass all necessary appropriations bills before the end of the fiscal year on September 30 (which is highly likely). So far, Congress has not passed any appropriations bills through both chambers.

This CR continues funding levels for most government agencies and programs at the same levels as FY2026. It also allows for necessary increases in budget to maintain operations and extensions for the Livestock Mandatory Reporting and National Flood Insurance programs.

The Senate CR includes more line-item provisions and specific allocations for programs compared to a CR passed by the House on July 21 — a clean CR that

would fund the government through December 4 and does not delay the OMB Rule.

Defense

- Prevents the Department of Defense (DoD) from spending increases from the FY 2026 levels and requires that any new multi-year contracts for military equipment receive Congressional approval
- Authorizes nearly \$2.61 billion for navy shipbuilding programs
- Authorizes nearly \$2.85 billion for national security procurement
- Allows for necessary spending to maintain nuclear security weapons activities

Nutrition Assistance Programs

- Continues Supplemental Nutrition Assistance Program (SNAP) funding at current program levels and allows for a 30-day grace period for mandatory payments
- Allows for necessary spending to maintain participation in Special Supplemental Nutrition Program for Women, Infants and Children (WIC)
- Allows for necessary spending to maintain current caseload for the Commodity Assistance Program

Agriculture

- Allows for necessary spending to accommodate approved applications for farm ownership loans under the Agricultural Credit Insurance Fund Program
- Extends the Livestock Mandatory Reporting program until Dec. 11

Housing

- Authorizes the Department of Housing and Urban Development (HUD) to use unobligated funds from certain tenant-based rental assistance accounts to prevent shortfalls in core Housing Choice Voucher renewals; this does not include HUD-VASH vouchers or family unification program vouchers
- Authorizes HUD to use tenant protection vouchers to support households impacted by expiring Emergency Housing vouchers.
- Extends availability of homelessness assistance grant funding (such as Continuum of Care and Emergency Solutions Grant funding) through FY27
- Authorizes nearly \$6.3 million in competitive funding through FY 29, to forgive or restructure flexible subsidy (Flex Sub) loans for small, non-profit owned affordable housing properties
-

Transportation

- Allows for necessary payments to air carriers to maintain essential Air Service Program
- Removes specific earmark language from FY 2026 appropriations
- Rescinds remaining unspent allocations for highway infrastructure and Federal Aviation Administration (FAA) research and development
- Does not extend advanced appropriations through Division J of the Infrastructure Investment and Jobs Act; overall transportation funding would be significantly cut unless new appropriations are made

Energy & Environment

- Allows for necessary spending to maintain the planned launch schedule for the National Oceanic and Atmospheric Administration (NOAA) weather satellite system (GeoXO)
- Allows for necessary spending to continue atomic energy environmental cleanup
- Allows for necessary spending to support wildfire management and suppression activities
- Allows for necessary spending for the Federal Emergency Management Agency (FEMA) Disaster Relief Fund to comply with the Robert T. Stafford Disaster Relief and Emergency Assistance Act
- Extends the National Flood Insurance Program until Dec. 11

Finance

- Allows for necessary spending to accommodate increased demand for the Small Business Administration loans program
- Blocks the proposed OMB Rule rewrite on Uniform Guidance which governs grant administration for all federal grants

Indian Affairs

- Allocates \$75,774,000 to Indian Health Services (IHS) and \$8,296,000 to Indian Health Facilities to support staffing and operating costs for recently opened or renovated IHS facilities
- Makes sufficient funds available for the Office of Navajo and Hopi Indian Relocation program to ensure its completion

Government Operations

- Allows for necessary spending for the Census Bureau to continue preparations for the 2030 Census

- Allocates legal expense funds to the Department of Justice, including for Federal Bureau of Investigation (FBI) salaries in preparation for the 2028 Olympic games
- Allows for necessary spending to pay Department of the Treasury salaries in preparation for the G7 Financial Summit
- Allows for necessary spending to protect federal employees can be protected from furlough, given the agency has already exhausted other administrative cost cuts
- Permits D.C. to spend its own funds for programs and activities according to its FY 2027 budget
- Prevents cost-of-living adjustments for Members of Congress
- Approves payments for the widows of Former Rep. David A. Scott (D-Ga.) and Former Sen. Lindsey O. Graham (R-S.C.)

How Does This Impact Carlsbad/Eddy?

Carlsbad and Eddy rely on reliable and timely funding from Congress to properly administer programs and services. This CR allows for more certainty in federal funding by avoiding a potential government shutdown.

The CR also delivers a major win for municipalities in giving them more time to prepare for the potentially debilitating changes to federal grant administration from the changes to Uniform Guidance.

2026 Elections:

With the November elections two months away – below is a snapshot of where each of the major political parties stand in their efforts to control both the US House and Senate (BASED ON *COOK POLITICAL REPORT ANALYSIS*).

US House:

SOLID SEATS	D - 181	R - 177
LIKELY/LEAN SEATS	D - 19	R - 21
TOSS-UP OR WORSE	D - 11	R - 18

US Senate:

SOLID SEATS	D – 9	R – 14
LIKELY/LEAN	D – 4	R – 2
TOSS-UP	D – 1	R - 5

Activities:

.E/C

Prepared meeting target list for September
Washington DC visit

Cambiar Consulting

City of Carlsbad Monthly Report – August 2026

Legislative / Government Affairs

Led the Carlsbad Chamber of Commerce Government Relations Committee meeting, including planning for the 2027 Eddy County Legislative Reception. The reception was scheduled for January 26, 2027, at 5:30 p.m. at La Fonda Hotel in Santa Fe.

Continued coordination and planning for the upcoming 2027 New Mexico Legislative Session, including engagement with local business and community stakeholders.

Participated in the Permian Road Safety Coalition New Mexico update meeting, discussing plans for 2027 road safety campaigns and Lunch & Learn events.

Attended the Mayor's Nuclear Task Force meeting, continuing to stay engaged on nuclear-related issues and opportunities affecting Carlsbad and the region.

Participated in the Carlsbad Chamber of Commerce Board meeting, providing continued engagement on business and government affairs issues affecting the Carlsbad community.

Continued participation in regional organizations and meetings that provide opportunities to monitor state and federal issues, strengthen relationships, and advocate for the interests of Carlsbad and Southeast New Mexico.

Economic Development

Attended the Carlsbad Economic Development Corporation (CEDC) monthly board meeting, remaining engaged in local economic development initiatives and opportunities.

Attended an introductory meeting between the Eddy-Lea Energy Alliance (ELEA) and RW Energy, supporting relationship-building and continued awareness of potential energy-related economic development opportunities in the region.

Participated in a meeting organized by Dr. Washburn with industry representatives. Dr. Washburn provided a high-level update on the new organizational structure at Carlsbad Municipal Schools (CMS) and its potential implications for continued collaboration with industry and the community.

Continued participation in community and regional organizations that support economic development, workforce development, industry engagement, infrastructure, and quality of life in Carlsbad and Southeast New Mexico.

Attended the Southeast New Mexico College (SENNMC) Safety Conference, supporting continued engagement with industry, workforce, and safety partners.

August Activities

August 5

Led the Carlsbad Chamber of Commerce Government Relations Committee meeting, including planning for the upcoming Eddy County Legislative Reception.

The Eddy County Legislative Reception was scheduled for January 26, 2027, at 5:30 p.m. at La Fonda Hotel in Santa Fe.

Attended the Permian Road Safety Coalition New Mexico update meeting. Discussion included plans for upcoming 2027 road safety campaigns and Lunch & Learn events.

August 6

Attended the Carlsbad Economic Development Corporation (CEDC) monthly board meeting.

Attended a meeting organized by Dr. Washburn with industry representatives. Dr. Washburn provided a high-level update on the new organizational structure at Carlsbad Municipal Schools (CMS).

August 10

Attended an introductory meeting between the Eddy-Lea Energy Alliance (ELEA) and RW Energy.

Attended the Carlsbad Solid Waste Board meeting.

August 18

Attended the Mayor's Nuclear Task Force meeting.

August 21

Attended the Southeast New Mexico College (SENNMC) Safety Conference.

August 26

Attended the Carlsbad Chamber of Commerce Board meeting.

**NO DOCUMENT FOR THIS
AGENDA ITEM**

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AGENDA ITEM**

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AGENDA ITEM**