



# City of Las Vegas

1700 N. Grand Avenue | Las Vegas, NM 87701 | T 505.454.1401 | lasvegasnm.gov

## Madam Mayor Tonita Gurulé-Girón

**CITY OF LAS VEGAS  
REGULAR CITY COUNCIL AGENDA  
June 19, 2019–Wednesday– 6:00 p.m.  
City Council Chambers  
1700 N. Grand Avenue**

*(The City Council shall act as the Housing Authority Board of Commissioners on any matters on the Agenda concerning the Housing Department.)*

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **MOMENT OF SILENCE**
- V. **APPROVAL OF AGENDA**
- VI. **APPROVAL OF MINUTES (May 8<sup>th</sup> Work Session, May 15<sup>th</sup> Regular and May 22<sup>nd</sup>, 2019 Budget Hearing)**
- VII. **MAYOR'S APPOINTMENTS/REPORTS**
- VIII. **MAYOR'S RECOGNITIONS/PROCLAMATIONS**
- IX. **PUBLIC INPUT**  
**(not to exceed 3 minutes per person and persons must sign up at least fifteen (15) minutes prior to meeting)**
- X. **PRESENTATIONS (Not to exceed 10 minutes per person)**
  - Presentation by Utilities Director Maria Gilvarry on the 2018 Water Consumer Confidence Report.
- XI. **CITY MANAGER'S REPORT**
- XII. **FINANCE REPORT**
- XIII. **CONSENT AGENDA**  
**(Items may be moved to New Business at the request of any Councilor with approval of the Governing Body)**

1. Approval of Resolution No. 19-27 assigning official representatives and signatory authority for the SAP 19-D2520-GF grant agreement with the State of New Mexico Environment Department.

***Maria Gilvarry, Utilities Director*** This resolution is required by the funding agency to assign representatives and signatory authority for the grant agreement.

2. Approval to reject request for bids #2019-11 for the Valley & Chavez Street gas line replacement.

***Maria Gilvarry, Utilities Director*** This project will allow for the much needed replacement of the gas lines on Valley and Chavez Streets. The Utilities Department has determined that the Gas division has the manpower and equipment to perform the project and it would be in the City's best interest to allow the division to complete the project. This determination was made after the project had already been bid out and bids were received and opened. Therefore, the City must reject the bids received.

#### **XIV. BUSINESS ITEMS**

1. Approval/Disapproval of Resolution No. 19-17 to transfer vehicles to New Mexico Highlands University Police/Security Department.

***David T. Bibb III, Police Chief*** The Las Vegas Police Department wishes to transfer four vehicles to New Mexico Highlands University Police/Security Department. Said vehicles are excess and have no value to the Police Department and would serve a much needed purpose to New Mexico Highlands University Police/Security Department.

2. Approval/Disapproval of Resolution No. 19-26 for the approval of a loan agreement and closing documents between the City of Las Vegas New Mexico and the New Mexico Finance Authority that was initiated during the March 20, 2019 Council Meeting.

***Billy Montoya, Fire Chief*** The Las Vegas Fire Department is moving forward in replacing an aging Fire Apparatus at an estimated cost \$403,677.00. The loan amount from the New Mexico Finance Authority is \$219,196.00.

3. Approval /Disapproval of Resolution No. 19-31 assuring the available matching funds, amount being \$253,556.00, state \$190,167.00, City \$63,389.00 which is 25% of total cost of Phase II.

**Daniel Gurule, Interim Public Works Director** as part of the Municipal Arterial Program (MAP) Agreement submittal criteria for New Mexico Department of Transportation, a Resolution of support is required from our Local Governing Body assuring matching funds accompany agreement. In complying with the criteria, staff is requesting that this resolution be approved for the Plan, Design, Construction, Construction Management, Reconstruction, Pavement Rehabilitation, Drainage and Misc. Improvements to Mountain View Drive, for this II phase of the project. Budgetary provisions will be made in this Public Works Department, during the 2019/2020 fiscal cycle.

4. Approval/Disapproval of Resolution No. 19-32 participation in Local Government Road Fund Program and request for Match Waiver administered by New Mexico Department of Transportation (NMDOT).

**Daniel Gurule, Interim Public Works Director** the City of Las Vegas has a limited tax base, which limits the funding for meeting the proportional matching share; and, a fund exists in the NMDOT appropriated by New Mexico State Legislature for the Public Entities in need of "Hardship" match money and the City of Las Vegas requests participation in this Match Waiver Program in the amount of \$63,389.00.

5. Approval /Disapproval of Resolution No. 19-33 assuring the available matching funds, amount being \$51,053.00, state \$38,290.00, City \$12,763.00 which is 25% of total cost of Phase III.

**Daniel Gurule, Interim Public Works Director** as part of the Cooperative Agreement submittal criteria for New Mexico Department of Transportation, a resolution of support is required from our Local Governing Body assuring matching funds accompany agreement. In complying with the criteria, staff is requesting that this resolution be approved for the Plan, Design, Construction, Construction Management, Reconstruction, Pavement Rehabilitation, Drainage and Misc. Improvements to West National Avenue, for this III phase of the project. Budgetary provisions will be made in this Public Works Department, during the 2019/2020 fiscal cycle.

6. Approval/Disapproval of Resolution No. 19-34 participation in Local Government Road Fund Program and request for Match Waiver administered by New Mexico Department of Transportation (NMDOT)..

**Daniel Gurule, Interim Public Works Director** the City of Las Vegas has a limited tax base, which limits the funding for meeting the proportional matching share; and, a fund exists in the NMDOT appropriated by New Mexico State Legislature for the Public Entities in need of "Hardship"

match money and the City of Las Vegas requests participation in this Match Waiver Program in the amount of \$12,763.00.

7. Approval /Disapproval of Resolution No. 19-36, acceptance of Capital Outlay Grant in the amount of \$652,214.00.

*Daniel Gurule, Interim Public Works Director* as part of DFA and the New Mexico Department of Transportation submittal criteria it is required that a resolution of support is required from our Local Governing Body accompanies agreement. In complying with the criteria, staff is requesting that this resolution be approved for the Plan, Design, Construction, Construction Management, Reconstruction, Pavement Rehabilitation, Drainage and Misc. Improvements to Salazar Street and Romero Street from Grant Street to West National Street.

**XV. COUNCILORS' REPORTS**

**XVI. EXECUTIVE SESSION**

**THE COUNCIL MAY CONVENE INTO EXECUTIVE SESSION IF SUBJECT MATTER OF ISSUES ARE EXEMPT FROM THE OPEN MEETINGS REQUIREMENT UNDER § (H) OF THE OPEN MEETINGS ACT.**

- A. **Personnel matters, as permitted by Section 10-15-1 (H) (2) of the New Mexico Open Meetings Act, NMSA 1978.**
- B. **Matters subject to the attorney client privilege pertaining to threatened or pending litigation in which the City of Las Vegas is or may become a participant, as permitted by Section 10-15-1 (H) (7) of the New Mexico Open Meetings Act, NMSA 1978.**
- C. **Matters pertaining to the discussion of the sale and acquisition of real property, as permitted by Section 10-15-1 (H) (8) of the Open Meetings Act, NMSA 1978.**

**XVII. ADJOURN**

**ATTENTION PERSONS WITH DISABILITES:** The meeting room and facilities are accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office prior to the meeting so that arrangements may be made.

**ATTENTION PERSONS ATTENDING COUNCIL MEETING:** By entering the City Chambers, you consent to photography, audio recording, video recording and

its/their use for inclusion on the City of Las Vegas Web-site, and to be televised on Comcast.

**NOTE:** A final agenda will be posted 72 hours prior to the meeting. Copies of the Agenda may be obtained from City Hall, Office of the City Clerk, 1700 N. Grand Avenue, Las Vegas, NM 87701

**MINUTES OF THE CITY OF LAS VEGAS CITY COUNCIL WORK SESSION MEETING  
HELD ON WEDNESDAY, MAY 8, 2019 AT 5:30 P.M. IN THE CITY COUNCIL  
CHAMBERS**

**MAYOR:** Tonita Gurulé-Girón

**COUNCILORS:** David G. Romero  
Barbara A. Casey  
Vincent Howell  
David A. Ulibarri, Jr.

**ALSO PRESENT:** Ann Marie Gallegos, Interim City  
Manager-*Absent*  
Danielle Sena, Recorder  
Esther Garduno Montoya, City Attorney  
Martin Gallegos, Deputy Chief of Police

**CALL TO ORDER**

**ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**MOMENT OF SILENCE**

Councilor Howell asked to keep in mind and in our soul to help our community, community leaders, community businesses and keep in mind the community members we have lost.

**APPROVAL OF AGENDA**

Councilor Casey made a motion to approve the agenda as presented. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David A. Ulibarri, Jr.	Yes	Vincent Howell	Yes
David G. Romero	Yes	Barbara Casey	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

### **PUBLIC INPUT**

Kyra Geissler spoke about her concerns with the Carsons and Barnes Circus at the Santa Fe Events Center on May 2nd and 3rd. Ms. Geissler advised they did research and found a long list of animal abuse and neglect committed by the circus and in some cases resulted to paying fines to the USDA for animal neglect. Ms. Geissler advised some videos show trainers sinking bullhooks, long sticks with sharp pointed ends into the belly of elephants until they screamed in pain. Ms. Geissler advised the documented cases of animal abuse was not specific to Carsons and Barnes Circus but are standard practices in the circus industry.

Ms. Geissler advised aside from pure animal abuse, the nature of the business itself is harmful to both animals and humans. Ms. Geissler advised they do not want circuses in their community and passed out flyers to circus goers with information on animal abuse the circus has committed. Ms. Geissler advised they made a petition urging local governments to no longer permit circuses. Ms. Geissler advised other local governments banned exotic animals from circuses in Las Cruces and Santa Fe. Ms. Geissler advised they are asking to do all that is in the governing body's power to stop circuses from coming.

### **DISCUSSION ITEMS**

1. Crack sealing project on Mills Avenue from Grand Avenue to Hot Springs Boulevard. Total amount \$61,844.37.

Interim Public Works Director Daniel Gurule advised the crack sealing will help to prolong the life expectancy of roads. Interim Public Works Director Gurule advised

Dismuke Construction is the only contractor in New Mexico that does crack sealing.

Discussion and questions took place regarding potholes along Grand to Hot Springs.

Councilor Howell asked if Grand to Hot Springs belonged to NMDOT.

Interim Public Works Director Gurule advised no, that NMDOT gave it to the City and the City maintains it.

Interim Public Works Director Gurule advised Dismuke will address all the potholes in those areas.

Councilor Romero asked how they determined that was the road most needed for crack seal.

Interim Public Works Director Gurule advised they had Dismuke go out and assess the roads at no cost and see which roads could be crack sealed.

Discussion took place regarding the process of crack sealing.

The governing body agreed to place the item as a consent agenda item.

2. Award request for bid #2019-10 for the solid waste tipping fees for municipal solid waste per ton to GGH Wagon Mound, LLC, as the primary landfill and Waste Management of NM, Inc. as the secondary landfill.

Utilities Director Maria Gilvarry advised there were 2 respondents, GGH out of Wagon Mound and Waste Management of NM out of Rio Rancho. Utilities Director Gilvarry advised they also contacted Estancia who was a previous backup provider and they did not submit a bid.

Utilities Director Gilvarry advised Waste Management of NM came back at \$2.06 less expensive than Wagon Mound but due to the distance to Rio Rancho, the overall cost of a trip is less expensive to Wagon Mound than it is to Rio Rancho.

Utilities Director Gilvarry advised a truck load to Wagon Mound and back would take a 2 hour period, whereas to Rio Rancho and back would take a 5 hour period and would not be able to keep up with the amount of trash they get.

Utilities Director Gilvarry advised they can make 3 trips to Wagon Mound with one vehicle, whereas they would only make one trip in a normal work hour, so she recommends to the council to approve Wagon Mound as their primary landfill and would also like Waste Management of Rio Rancho as their secondary landfill.

Utilities Director Gilvarry advised due to high winds in the Wagon Mound area there are several times when they can't deliver due to winds but in Rio Rancho they rarely shut down so having them as a backup would be beneficial to the City.

Discussion and questions took place regarding how much a trip costs to Wagon Mound and back and to Rio Rancho and back, how many trips a month they go to the landfill and if it was budgeted.

The governing body agreed to place the item as a consent agenda item.

3. Resolution 19-20 of the Governing Body authorizing the application submission of a New Mexico Community Development Block Grant Program to the Department of Finance and Administration and authorizing the Mayor of the City of Las Vegas as the authorized Chief Executive Officer and Authorized Representative to participate in the Community Development Block Grant (CDBG) program.

Interim Community Development Director Virginia Marrujo advised they need a resolution to submit the application and the deadline for the application is June 20th.

Discussion and questions took place regarding using the money for paving when it was first mentioned a year ago.

Interim Community Development Director Marrujo stated it was part of the ICIP plan.

The governing body agreed to place the item as a consent agenda item.

**EXECUTIVE SESSION**

City Attorney Esther Garduno Montoya advised there was no need for executive session.

**ADJOURN**

Councilor Casey made a motion to adjourn. Councilor Ulibarri, Jr., seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	Barbara Casey	Yes
Vincent Howell	Yes	David A. Ulibarri, Jr.	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

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Mayor Tonita Gurulé-Girón

ATTEST:

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Casandra Fresquez, City Clerk

**MINUTES OF THE CITY OF LAS VEGAS REGULAR CITY COUNCIL MEETING HELD ON WEDNESDAY, MAY 15, 2019 AT 6:00 P.M. IN THE CITY OF LAS VEGAS COUNCIL CHAMBERS**

**MAYOR:** Tonita Gurulé-Girón

**COUNCILORS:** David G. Romero  
Barbara A. Casey  
Vincent Howell  
David A. Ulibarri, Jr.-*Absent (Councilor Ulibarri, Jr. joined the meeting in session via phone call at 7:45 p.m.)*

**ALSO PRESENT:** Ann Marie Gallegos, Interim City Manager  
Danielle Sena, Recorder  
Esther Garduno Montoya, City Attorney  
David T. Bibb III, Sergeant at Arms

**CALL TO ORDER**

**ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**MOMENT OF SILENCE**

Councilor Howell asked for a moment of silence for prayers in guidance to make good decisions as the Governing Body and to keep in our minds, the community members who had passed away this month.

**APPROVAL OF AGENDA**

Councilor Casey made a motion to approve the agenda as is. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	Barbara A. Casey	Yes
Vincent Howell	Yes	David A. Ulibarri, Jr.	Absent

Recorder Danielle Sena re-read the motion and advised that the motion carried.

**APPROVAL OF MINUTES**

Councilor Casey made a motion to approve the minutes of April 10th, Work Session, April 17th Regular and April 26th, 2019 Special, with no errors. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

Vincent Howell	Yes	David G. Romero	Yes
Barbara A. Casey	Yes	David A. Ulibarri, Jr.	Absent

Recorder Danielle Sena re-read the motion and advised that the motion carried.

**MAYOR’S APPOINTMENTS/REPORTS**

None at this time.

**MAYOR’S RECOGNITIONS/PROCLAMATIONS**

Deputy Clerk Danielle Sena read a Certificate of Recognition to West Las Vegas High School Dons Varsity Coed Cheer Team for placing first at the 2019 State Competition in the 3-A Division for their third consecutive State Championship win, presented to:

Kryten Cavazos, Amelia Madrid, Preciosa Chavez, Jennifer Chavez, Kennedy Branchal, Christiana Garcia, Olivia Gallegos, Cilia Lovato, Andrea Ulibarri, Allena Gomez, Kandee Gonzales, Nathean Urioste, Andrea Gomez, Aron Parra, Julianne Lucero, Angelina Garcia, Tiffany Montano, Alicia Urioste, Marissa Hernandez, Hailey Marquez, Aysa Vigil, Amber Trujillo, Elizabeth Rodriguez, Jeslyn Padilla, Josephine Morales, Luna Gonzales. Head Coach: Isabel Cavazos, Asst. Coaches: Candice Maestas and Lawrence Valdez.

**PUBLIC INPUT**

Pat Romero made a comment regarding his opposition of spot zoning, had property in the area of the proposed zone change (7th & 8th Streets) and did not want change to the residential zone.

Dr. Mary Schipper spoke regarding the reinforcement of the protest petition sent to the Governing Body against the commercial rezoning in the 21 acre parcel

between 7th & 8th Streets and was against spot zoning. She asked those who were against the zone change to stand and be seen.

Jeri Braccialarghe spoke against the proposed zone change (7th & 8th Streets.) She read a letter on behalf of San Miguel County Commissioner, Max Trujillo in support of the proposed property to remain residential.

City Attorney Esther Garduno Montoya advised that since they would be conducting a public hearing, could they refrain having everyone in Public Input to wait until the actual Public Hearing.

Mayor Gurulé-Girón advised that under the rules of Public Hearing, that everyone had their right to their public hearing input, she was not going to refrain at this point in time. She stated if they wanted to speak twice during the actual public input process and also during the public input hearing, that was their decision. Mayor Gurulé-Girón stated that also during public input hearing they could have one spokesperson for all who would speak and it was up to them but they could not deny the public input participation, once signed up.

Douglas Hughes spoke in regards to the City of Las Vegas to adopt a policy not to allow retail stores the use of disposable plastic bags which were ending up in the waterways and our planet and spoke of the importance of saving humankind and the planet.

Carol Bess, volunteer with Gallinas River Collaborative advised that the Gallinas River Park and the creation of Green Space was being revitalized and that it was a good reflection of the community. She urged the City to financially support this project and to commit to the care of the park.

AWC Board President Marshall Poole with Animal Welfare Coalition gave a detailed report for the month of April 2019.

Diana Springer spoke in support of the Tierra Encantada having their Farmers Market at the Hot Springs Boulevard location that would benefit the West side and stated that they offer 20 hour community service education in gardening with NMSU Instructors at the West side Farmers Market.

Georgina Ortega spoke briefly about the food desert on the West side, the community not having access to fresh food and was in support of the Hot Springs Boulevard zone change.

Miguel Angel spoke in favor of the rezoning of the property on Hot Springs Boulevard in order to accommodate the Tierra Encantada Farmers Market and that the Council should be supportive of the zone change.

Patricia Minor stated she was pleased that both farmers markets were making profit and was in support of the proposed zone change on the Hot Springs location and stated that the zone change should be permanent.

Andy Trujillo spoke briefly regarding being against the zone change in the area of 7th and 8th Streets and felt that the neighborhood would diminish with residents leaving if the zone was changed to a C-3.

Bill Rogers spoke in regards to the opposition of the zone change on the 21 acres on 7th and 8th, he stated that the developer did not have a development plan and thought that the surrounding residents had a right to know what the plan entailed.

Dr. Jim Alarid spoke regarding the area of the zone change (7th & 8th Sts.) and some of the issues that would take place with the change. He stated he had nothing against the bank although he would like the bank to withdraw their proposal and thought discussion should have taken place between residents and the Community 1st Bank in the beginning of this process and asked Council to deny the proposed zone change.

Joe Cooney spoke regarding his support of both farmers markets and thought the location for the Tierra Encantada was a good location due to being in a commercial area. Mr. Cooney also stated that he had previously spoken in regards to opposing the zone change of the 21 acre property, along with his fellow neighbors due to there not being any commercial development there. He also mentioned two petitions that had been submitted opposing the zone change.

Wid Slick gave a detailed outline on the role the New Mexico True advertising had taken in the annual increase of Lodgers Tax collections, reporting it had a 60% increase that totaled \$136,000.00 and asked the Governing Body to vote to continue NM True Advertising.

Emilio Aragon advised that he had donated a trash receptacle to Gallinas River Park although asked if the City could donate at least four more for the park area. He supported the comment made earlier regarding the control of the use of plastic and praised Ms. Lindsey and Ms. Sammeth for their work at the West side farmers market and hoped the Governing Body would support in the zoning.

## **PRESENTATIONS**

Presentation by Lori Ann Encinias, Gina Harris and Zachary McNellis of the winners of the Carnegie Library 3rd Annual Book Reading Contest winner awards as follows: Miles Kavanaugh, David Tenorio, Deirdra Tenorio, Isaac Benavidez, Brayden Chavez, Diego Tenorio, Joanna Lucero, Ariana Lucero, Pauline Abeyta and Marissa Jaramillo.

Presentation by Chief of Police David T. Bibb III on certificates of Appreciation honoring those who took part in giving full honors at the funeral of Judge Matt Sandoval, a pillar of the community who recently passed away, those presented were as follows: Fire Chief Billy Montoya-LV Fire Dept., Deputy Eric Esquibel, SM Sheriff's Dept., Sheriff Amos Espinoza, Mora County Sheriff's Dept., Sergeant Theo Chavez-NM Highlands University Police Dept., Sergeant Mark Allsfield NM State Police District 2 and Officer Richard Johnson of the Santa Fe Police Dept.

Mayor Gurulé-Girón thanked everyone who took part in honoring the Sandoval family and thanked them for their service, dedication and commitment to the community.

Presentation by Utilities Director Maria Gilvarry on certificates of appreciation to Water and Wastewater division for their exemplary work during the recent power outage at the Wastewater Treatment in February 2019 and their part in providing quality water and keeping our community safe. Those presented were as follows: Frank Baca, Dominic Mares, Jesus Hathaway, Michael Helm, Isaac Trujillo, Angelo Alirez, Archie Allemand, Travis Hern, Robert Espinoza, David Palomino, Bernadette Gold and Cody Stumberg. Team Leaders: Marvin Martinez and Keith Hill.

Utilities Director Maria Gilvarry gave a detailed presentation regarding the City of Las Vegas Peak Shaving Plant that is no longer used and the decommission of the plant.

Questions were asked regarding the location and status of the life of the propane.

## **CITY MANAGER'S REPORT**

Interim City Manager Gallegos gave a detailed report on updates on current events and projects as follows:

- Budget Hearing (Preliminary Budget 2020-5/22/19 @ 1:30 p.m.-City Council Chambers)
- Summer Youth Program-50 applications received
- NM Game & Fish Dept-Youth Safety Training ATVs June 28-30 @ Rodriguez Park
- Employee Safety Training Classes-5/22/19 & /5/30/19
- Abe Montoya Rec. Ctr. Summer Youth Program
- NM Game & Fish-Family Outdoor Day-5/25/19 @ Harris Pond
- 4 BMW Motorcycles donated to LVPD by Rio Rancho Police Dept.
- ICIP Training on 5/17/19
- Liquor License Renewals-Deadline: 6/30/19
- Solid Waste Amnesty Day-5/18/19
- Preparation Of RFP (Gasoline Fleet Repair)
- Utility Billing Process (Business Item #1 Reg. Mtg. 5/22/19)
- Planning: 4th of July Fiestas & Rough Rider Motorcycle Rally
- Little League Opening took place: 4/13/19
- Las Vegas,NM to host: Baseball District 6/15-6/21/19. NM State Championship Tournament 7/19-7/26/19
- Installation: Donated Batting Cage @ Rodriguez Park
- Heritage Week-1st week of August

**FINANCE REPORT**

Interim Finance Director Tana Vega presented the Finance Report for the month ending April 30, 2019 (83.33% of year lapsed) reporting General Fund revenue at 86% and expenditures at 68%. Ms. Vega advised that the Enterprise Funds revenue was at 85% and reported expenditures at 74%. Interim Finance Director Vega reported the Recreation Department revenue to be at 73% and expenditures were at 63%.

Brief discussion and questions were asked regarding GRT increases and lower costs for licensing fees.

**CONSENT AGENDA**

Councilor Casey made a motion to approve the Consent Agenda and asked that they be read into the record by the Clerk. Councilor Howell and Councilor Romero seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	Vincent Howell	Yes
Barbara A. Casey	Yes	David A. Ulibarri, Jr.	Absent

Recorder Danielle Sena re-read the motion and advised that the motion carried.

Recorder Danielle Sena read the Consent Agenda into the record as follows:

1. Approval of Crack Sealing Project on Mills Avenue from Grand Avenue to Hot Springs Boulevard. Total amount \$61,844.37.
2. Approval to award request for bid #2019-10 for the solid waste tipping fees for municipal solid waste per ton to GGH Wagon Mound, LLC, as the primary landfill and Waste Management of NM. as the secondary landfill.
3. Approval of Resolution 19-20 of the Governing Body authorizing the application submission of a New Mexico Community Development Block Grant Program to the Department of Finance and Administration and authorizing the Mayor of the City of Las Vegas as the authorized Chief Executive Officer and Authorized Representative to participate in the Community Development Block Grant (CDBG) program.

Resolution 19-20 was presented as follows:

**RESOLUTION NO. 19-20**

**A RESOLUTION OF THE COUNCIL OF CITY OF LAS VEGAS, NEW MEXICO, AUTHORIZING THE SUBMISSION OF A NEW MEXICO COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM APPLICATION TO THE DEPARTMENT OF FINANCE AND ADMINISTRATION/LOCAL GOVERNMENT DIVISION; AND AUTHORIZING THE MAYOR TO ACT AS THE CITY OF LAS VEGAS CHIEF EXECUTIVE OFFICER AND AUTHORIZED REPRESENTATIVE IN ALL MATTERS PERTAINING TO THE CITY OF LAS VEGAS PARTICIPATION IN THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.**

**WHEREAS**, the need exists within the City of Las Vegas for neighborhood improvement projects in several low and moderate income neighborhoods, and the City of Las Vegas desires to apply to the Housing and Urban Development's Community Development Block Grant Program to obtain funding for neighborhood improvement projects; and

**WHEREAS**, the City has held (4) four public hearings for public input and comment on March 27, 2018 at 10:00 a.m. and 5:00 p.m. and March 28, 2018 at 10:00 a.m. and 5:00 p.m. prior to the 2019 application process and the public hearings have been authorized by DFA to be used in the 2019 application; and

**WHEREAS**, the Council finds that there is a significant need to undertake the 2019 CDBG Street and Drainage Improvements – Hot Springs Blvd. from Mora Street to Bernalillo Street to provide adequate services to the community; and

WHEREAS, the Council determines that the 2019 CDBG Street and Drainage Improvements – Hot Springs Blvd. from Mora Street to Bernalillo Street meets the requirements of the Community Development Block Grant Program.

**NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS VEGAS, NEW MEXICO, that**

1. The City of Las Vegas is hereby authorized to prepare and submit a Community Development Block

Grant application to the New Mexico Department of Finance and Administration/Local Government Division

(DFA) for the 2019 CDBG Street and Drainage Improvements – Hot Springs Blvd. from Mora Street to Bernalillo Street;

2. That the Council directs and designates the Mayor as the City of Las Vegas' Chief Executive Officer and Authorized Representative to act in all matters in connection with this application and the City of Las Vegas' participation in the New Mexico Community Development Block Grant Program;

3. The City of Las Vegas officials and staff are directed to do any and all acts necessary to carry out the intent of this Resolution;

4. That the full application amount the City is requesting will be for (\$750,000.00) from DFA and the Phase I project cost of three phases is estimated at (\$665,971.35);

5. That it further be stated, that the City of Las Vegas is committing a Match of 10% which is \$75,000 to carry out the 2019 CDBG Street and Drainage Improvements – Hot Springs Blvd. from Mora Street to Bernalillo Street for this 2019 CDBG Street and Drainage Improvements – Hot Springs Blvd. from Mora Street to Bernalillo Street;

**PASSED, ADOPTED AND APPROVED** this        day of        , 2019.

Signature, Chief Elected Official

Applicant Entity (County or Municipality)

Name (Typed or Printed)

Title                      Date

SWORN TO AND SUBSCRIBED  
Of \_\_\_\_\_, 20

Place Seal Here Before me on this day

Notary Public

My commission expires

Mayor Gurulé-Girón called for a 5 minute recess.

Meeting was reconvened (7:45p.m.), Mayor Gurulé-Girón announced that Councilor Ulibarri, Jr. was now participating in the meeting via telephonic conference.

### **BUSINESS ITEMS**

1. Approval/Disapproval of Resolution No. 19-25 assuring available funds for NMDOT call for projects. Total project cost \$4,122,505.42, 5% City Match \$206,125.27.

Interim Public Works Director Daniel Gurule advised that as per NMDOT submittal criteria for call for projects, it is required that a resolution of support from our Local Governing Body be attached to application. In complying with this criteria staff is requesting that this resolution be approved for the plan, design, construction, construction management, reconstruction, pavement rehabilitation, drainage improvements and miscellaneous construction to Legion Drive from Grand Avenue to 7th Street. National Avenue from 12th Street down Bridge Street, around Plaza Park, to include Camino De Las Escuelas, South Gonzales and South Pacific Street to end at Moreno Street and Hot Springs Blvd. and North Gonzales to end at Valencia St.

Questions and brief discussion took place regarding the locations of repairs. Councilor Casey called attention to several type errors on the draft Resolution 19-25 and asked that they be corrected.

Interim Public Works Director Gurulé advised that the corrections would be made to the resolution.

Councilor Casey made a motion to approve Resolution 19-25 assuring available funds for NMDOT call for projects. Total project cost \$4,122,505.42, 5% City Match \$206,125.27. Councilor Howell seconded the motion.

Resolution 19-25 was presented as follows:

**CITY OF LAS VEGAS  
RESOLUTION NO. 19-25**

A resolution declaring the eligibility and intent of the City of Las Vegas to submit an application to the New Mexico Department of Transportation (NMDOT) for Fiscal Year 2019/2020 Local Government Transportation Project Fund.

**WHEREAS;** the City of Las Vegas has the legal authority to apply for, receive and administer state funds; and

**WHEREAS;** the City of Las Vegas is submitting an application for Fiscal Year 2019/2020. New Mexico funds in the amount of \$4,122,505.42 as set forth by State legislation; and

**WHEREAS;** the Legion Drive Rehabilitation project (from Grand Avenue to 7<sup>th</sup> Street) and the National Avenue/Bridge Street Rehabilitation project (National Avenue from 12<sup>th</sup> Street down Bridge Street, around Plaza Park, to include Camino De Las Escuelas, South Gonzales and South Pacific Street to end at Moreno Street, Hot Springs Blvd. and North Gonzales to end at Valencia Street) named in the Local Government Transportation Project Fund Application is an eligible project under New Mexico Local Government Transportation Project Fund requirements; and

**WHEREAS;** the City of Las Vegas acknowledges availability of the required local match of 5% for the State of New Mexico; and

**WHEREAS;** the City of Las Vegas agrees to maintain the project constructed with Local Government Transportation Project Fund for the usable life of the project;

**NOW THEREFORE, BE IT RESOLVED;** by the governing body of the City of Las Vegas, that:

1. The City of Las Vegas authorizes Mayor or City Manager to submit an application for Fiscal Year 2019/2020 New Mexico Local Government Transportation Project Fund funds in the amount \$4,122,505.42 from the New Mexico Department of Transportation (NMDOT) on behalf of the City of Las Vegas.
2. That the City of Las Vegas assures the NMDOT that if Local Government Transportation Project Fund is awarded, sufficient funding for the local match is available. That the City of Las Vegas assures the NMDOT that if awarded Local Government Transportation Project Fund, sufficient funding for the operation and maintenance of the Local Government Transportation Fund project will be available for the life of the project.
3. That Mayor or City Manager is authorized to enter into a Cooperative Project Agreement with the NMDOT for the Local Government Transportation Project Fund project using these funds as set forth by state legislation on behalf of the citizens of the City of Las Vegas. Mayor or City Manager is also authorized to submit additional information as may be required and act as the official representative of the City of Las Vegas in this and subsequent related activities.

4. That the City of Las Vegas assures that the City of Las Vegas is willing and able to administer all activities with the proposed project.

**PASSED, APPROVED, AND ADOPTED THIS \_\_\_\_\_ DAY OF MAY, 2019.**

**CITY OF LAS VEGAS**

**ATTEST:**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Casandra Fresquez, City Clerk

Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	David A. Ulibarri, Jr.	Yes
Vincent Howell	Yes	Barbara A. Casey	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

2. Approval/Disapproval of Resolution No. 19-16 Abatement of nuisances located at 1221 San Francisco St.

Interim Community Development Director Virginia Marrujo advised that the property noted above has several nuisances on the property. The property owner is deceased and the property has not been cleaned or maintained. Request to grant abatement.

Questions were asked and lengthy discussion took place regarding the costs of abatement, who would pay for the abatement, rodent issues and the timeline of the abatement process.

Councilor Casey made a motion to approve Resolution 19-16 Abatement of nuisances located at 1221 San Francisco St. Councilor Howell and Councilor Ulibarri, Jr. seconded the motion.

Resolution 19-16 was presented as follows:

**CITY OF LAS VEGAS  
RESOLUTION NO. 19-16**

**A RESOLUTION DECLARING 1221 San Francisco St. WHICH IS OWNED AND CONTROLLED BY Adelina & Alice Crespín C/O Raymond Sanchez TO BE**

**DANGEROUS, COVERED WITH RUINS, RUBBISH, WRECKAGE AND DEBRIS AND A NUISANCE REQUIRING ABATEMENT**

**WHEREAS, pursuant to Section 3-18-5, NMSA, 1978, whenever any building or structure is ruined, or any premise is covered with ruins, rubbish wreckage or debris, the governing body of a municipality may by resolution find that the ruined, damaged and dilapidated building, structure or premises is a menace to the public comfort, health, peace or safety and require the removal from the municipality the building, structure, ruins, rubbish, wreckage or debris; and**

**WHEREAS, the Las Vegas City Council has received evidence from the Police Department/ Enforcement Service Specialist as to the condition of a parcel of land described herein, which are owned, occupied or controlled by Adelina & Alice Crespin whose address is 1221 San Francisco St. according to the records at the San Miguel County Assessor's Office and described in said records as Lopez Sulzbacher and Rosenwald add Lot 2-5 Block 12.**

**WHEREAS, the property is a public nuisance and the premises are a menace to the public comfort, health, peace or safety of the community and is in violation of City of Las Vegas Ordinance 301-6 Sections, Littering(A), Unsanitary Premises(B), Hazardous Premises(C) and Accumulation of Solid Waste(D). Items on the premises and visible from the public right of way in violations of City ordinances include but are not limited to excessive papers,weeds, trees, dead branches, wood, pallets, boards, vehicle parts, cinder blocks, chicken wire and other debris.**

**WHEREAS, the City has attempted to notify the legal property owner, Adelina & Alice Crespin via certified mail, and postings of the violations requiring abatement.**

**WHEREAS, proper notices personally served upon the property included: a Red Tag Notice on 1/30/2019; a Notice of Pending Abatement on March 21<sup>st</sup>,2019 In the face of these notices, the owner has allowed the nuisance to remain and has done no work within 30 days to correct the violations.**

**NOW, THEREFORE, the City Council, the governing body of the City of Las Vegas, New Mexico does hereby resolve:**

**A. That the above described parcel of land is a nuisance pursuant to Section 3-18-5, NMSA, 1978, is a menace to the public comfort, health, peace or safety and requires abatement as follows: All Wreckage, Rubbish and Debris creating a nuisance to the surrounding neighbors since 7/25/2018 (the date the above inventory was taken) must be removed and properly disposed of and the premises must be left in a clean, level and safe condition.**

**B. The City shall serve a copy of this resolution on the owner, occupant or agent, including Adelina & Alice Crespin in charge of the premises as shown by the records of the County Clerk. If the owner occupant or agent in charge of the building, structure or premises**

cannot be served within the municipality, a copy of the resolution shall be posted on the building, structure or premises and a copy of the resolution shall be published one time.

C. Thereafter, and within ten (10) days after receipt of a copy of this resolution or of the posting and publishing of a copy of the resolution, the owner occupant or agent, in charge of the building, structure or premises shall commence removing the ruins, rubbish, wreckage and debris or file a written objection with the Municipal Clerk asking for a hearing before the governing body of the City of Las Vegas. .

D. That if a written objection is filed, the Governing Body shall follow the provisions as set forth of 3-18-5 D. NMSA 1978; fix a date for a hearing in its resolution and objection; consider all evidence for and against the removal resolution at the hearing; and determine if its resolution should be enforced or rescinded.

E. Any person aggrieved by the determination of the governing body may appeal to the district court by: giving notice of appeal to the governing body within 5 days after the determination made by the governing body; filing a petition in the district court within twenty days after the determination made by the governing body. The district court shall hear the matter de novo and enter judgment in accordance with its findings.

F. If the owner occupant or agent in charge of the building, structure or premises fails to commence removing the ruins, rubbish wreckage and debris as provided under NMSA 3-18-5 F, the municipality may remove ruins, rubbish wreckage and debris at the cost and expense of the owner. The reasonable cost of removal shall constitute a lien against the building, structure, ruins, rubbish wreckage and debris so removed and against the lots or parcels of land from which it was removed. The lien shall be foreclosed in the manner provided in sections 3-36-1 through 3-36-6 NMSA 1978.

F. The municipality may pay for the costs of removal of any condemned building, structure, wreckage, rubbish or debris by granting to the person removing such materials, the legal title to all salvageable materials in lieu of all other compensation.

H. Any person or firm removing any condemned building, structure, wreckage, rubbish or debris shall leave the premises from which the material has been removed in a clean, level and safe condition, suitable for further occupancy or construction and with all excavations filled.

PASSED, APPROVED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2019

\_\_\_\_\_  
Tonita Gurule-Giron, Mayor

ATTEST:

\_\_\_\_\_  
Cassandra Fresquez, City Clerk

**REVIEWED AND APPROVED BY:**

**Esther Garduno Montoya, City Attorney**

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Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

Vincent Howell	Yes	Barbara A. Casey	Yes
David G. Romero	Yes	David A. Ulibarri, Jr.	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried. Councilor Romero stated that there would be two hot items coming up on the agenda and asked for clarification regarding if there was a policy or ordinance that allowed for the call-in.

Mayor Gurulé-Girón advised that it was a state statute policy that she had cited to Council in an actual memorandum during the re-organizational meeting, where all the statutes were cited.

3. Approval/Disapproval of Resolution No. 19-24 MOU for the New Mexico True FY20 grant.

Interim Community Development Director Marrujo advised that the City of Las Vegas officials and staff, per MOU, will provide the funding match, creative assets, design work and submission of all creative work due as scheduled.

Councilor Casey called attention to several type errors on the draft Resolution 19-24 and asked that they be corrected.

Interim Community Development Director Marrujo advised that the corrections would be made to the resolution.

Councilor Howell made a motion to approve Resolution No. 19-24 MOU for the New Mexico FY20 grant. Councilor Romero and Councilor Casey seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David A. Ulibarri, Jr.	Yes	Barbara A. Casey	Yes
Vincent Howell	Yes	David G. Romero	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

4. Conduct a Public Hearing and Approval/Disapproval to adopt Ordinance #19-02, amendment to the Official Zoning Map for rezone of a property located at 2513 Hot Springs Blvd., Las Vegas, New Mexico.

Councilor Casey made a motion to approve to go into Public Hearing. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	David A. Ulibarri, Jr.	Yes
Vincent Howell	Yes	Barbara A. Casey	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

Mayor Gurulé-Girón stated “before moving forward I would like to include any public input statements made earlier during the actual public input process to be included into the record proper for both public hearings but I know at this point in time you would have to swear in every single individual who wants their statement included in the record proper.”

City Attorney Esther Garduno asked whoever wished to speak on the issue, stand and be sworn in. Maria Perea and Virginia Marrujo were sworn in.

Planning and Zoning Coordinator Maria Perea advised that the City of Las Vegas, the owner of Lot 4, 5, 6, 7 & 8, Block 2, Miguel Romero Y Baca Addition and known as 2513 Hot Springs Blvd., Las Vegas, New Mexico appeared before the Las Vegas Planning & Zoning Commission on March 25, 2019. The city of Las Vegas is requesting that said property be rezoned from the present R-2 (Multi-Family Residential Zone) to a C-1 (Neighborhood Commercial Zone) with the intention of accommodating a Farmer’s Market in the parking lot of above property for the Old Town residents.

Councilor Casey asked if the farmers market was using a special events permit to function with.

Interim Community Development Director Virginia Marrujo advised they were using the permit up to the time of realizing it should be approached in a different way and stated that a special event permit was required for that event.

Councilor Casey asked if they were functioning under a special permit, why was the zone change required and asked what the result was regarding the appeal done by the former City Attorney.

Ms. Marrujo advised that it had originally changed to a C-3 and they were looking to change to a C-1, to be geared more as community based and stated that the appeal resulted in a reverse, back to an R-2.

Councilor Casey asked if the farmers market provided their own insurance or were they covered under the City's insurance.

Ms. Marrujo advised that they provided their own insurance as well as their site map.

Councilor Romero asked pertaining to the transfer, if the building once belonged to the Housing Department.

Planning & Zoning Coordinator Perea advised, that to her understanding, the Housing Department (Lawrence Quintana) at that time had purchased the property for a Veterans Transitional although was denied by HUD and that the Finance Department could explain as to how the City purchased the property.

Councilor Romero stated that he had researched the minutes and did not find where the Housing Authority approved the transfer to the City of Las Vegas.

Interim City Manager Gallegos advised that she believed that Urban Housing came in and mandated the City to purchase the building, so it currently belonged to the City of Las Vegas and not the Housing and that it was part of the agreement.

Councilor Romero stated that the transfer did not take place until September 20th, which Mayor Gurulé-Girón signed off on.

Interim Finance Director Tana Vega advised Councilor Romero, that took place in 2013, after a special review report was prepared on behalf of the City and HUD

made the determination and at that time the General fund paid \$150,000.00 to the Housing Department for that building and the property.

Councilor Romero asked Ms.Vega if we had those records.

Ms. Vega advised that they did have the records.

Councilor Romero asked City Attorney Garduno Montoya to review Exhibit 4 on the Quitclaim Deed, that the Mayor had signed off on and had a concern regarding the document not having the signature of a Notary Public

City Attorney Garduno Montoya stated that she saw the notary stamp but did not see the notary signature and said it looked like there was something written under the word "notary public".

Planning & Zoning Coordinator Perea stated that she would have to look at the original and thought that they did sign it although was not sure.

Mayor Gurulé-Girón stated that usually verifications and signature pages were separate and those were added at the end.

Councilor Romero stated that by looking at the stamp, it looked like the individual that was in charge of Housing at the time was the one that signed off on that and he did not know if that was a conflict.

Mayor Gurulé-Girón stated "no, as long as it's within the.."

Planning & Zoning Coordinator Maria Perea asked if Lorraine Ortiz was in charge of Housing in 2017.

Interim Finance Director Tana Vega stated, "No".

Mayor Gurulé-Girón stated, "No, no she wasn't".

Ms. Perea stated, "actually, she worked with the Legal Department, didn't she"?

Mayor Gurulé-Girón stated, "Yea she did, actually she did, under Dave Romero."

City Attorney Garduno Montoya advised Councilor Romero she could pull the actual document and have an answer for him.

Mayor Gurulé-Girón stated “ it is legally bound, I have seen it when they brought it to us in 2013”.

Councilor Romero advised he did not have anything against the Farmers Market although his issues were with the transfers from the Housing to the City, and that it was public that the City had that issue with Housing, that he just wanted to make sure that the transfer was legal and that we had the documentation. He stated that the other issue he had was that he requested the minutes of the meeting from Planning and Zoning and did not receive all of them.

Planning & Zoning Coordinator Perea advised that she had been overwhelmed by having to carry the whole Planning and Zoning Department on her own and could not get the minutes done in a timely manner.

Discussion took place regarding the use of the building on Hot Springs Boulevard as an event with the use of a special events permit.

Councilor Romero asked why that property was singled out for the use of the Farmers Market.

Mayor Gurulé-Girón advised that a critical aspect of the farmers market being on that property, was because it qualified as a “Food Desert”, also opening up the door for federal funding, to be able to repair and expand that area. She stated that It provided a service to the people of the West side to purchase good healthy organic food and she did not think it was a problem and did not think there was a problem with the anti-donation clause within that specific area.

Councilor Romero asked City Attorney Garduno Montoya if she felt that the anti-donation clause had been violated, being that the City maintained the property and provided bathrooms as well.

City Attorney Garduno Montoya stated that she felt that the anti-donation clause had not been violated due to them using a Special Event permit and felt they were providing a service to the community.

Interim Community Development Director Marrujo advised that they were not donating or giving them the property, it was just the use of the property.

Councilor Romero stated “ let me ask you this, since you’re under oath, both of you, do you feel that you have been asked by the Mayor to go above and beyond to get this zone change done?”

Ms. Marrujo stated “ I’m not going to answer that because that’s something that we should discuss in... that’s a personal opinion...well, actually I will answer that, no it’s not because of that, I took this job to help our community in any way possible that we can, I’ve always been a fan of the Farmers Market, I’ve always been a fan of any other organization, non-profit, anything like that, I fight above and beyond for every situation that comes across my desk, it has no personal issues, I might not like some people, I mean I had issues with Wid at first but we worked through it, we worked through whatever issue it is, I don't use any of my personal opinions, my personal feelings or my personal relationships which I don't have any to be honest with you, I don't have any political relationships within here.”

Mayor Gurulé-Giron stated, “so essentially you operate unilaterally, treating everyone fairly and equitably.”

Ms. Marrujo agreed with the Mayor’s statement.

Councilor Ulibarri, Jr. thanked Cordia Sammeth and Diane Lindsey for their work on the West Side farmers market and thought it was a good location for the market.

Councilor Casey stated that in reviewing some of the paperwork, the City’s 5-year plan did specify that rezoning for the good of the people was allowed and recommended and in her opinion, zoning from an R-2 to a neighborhood commercial zone was good for the people and would provide them a service that was not available to them otherwise. She stated that in terms of using the building, it was a dangerous building, it should not be used at all and that the City did provide restrooms. She added that until the City had money to fix that building, it should be boarded up and not used for anything and did not want anyone getting hurt but in terms of just rezoning to have a neighborhood commercial zone was a good idea.

Brief discussion took place regarding parking issues and rodent issues in the parking area.

Councilor Howell stated that fresh food was very important for the community's health and welfare and was an important resource needed.

Councilor Romero had questions regarding the insurance and Matt Martinez being listed on the insurance.

Ms. Marrujo stated that Mr. Martinez asked that he be additionally insured and they would address that.

Romero stated "I'm gonna go on Tana and Ms. Gallegos, that they're going to assure me that they have been transferred over legally under oath, everything from the Housing to the City."

Interim Finance Director Tana Vega and Interim City Manager Ann Marie Gallegos both replied "Yes Sir".

Mayor Gurulé-Girón stated " they actually brought it to the Council and they had provided us a copy with actual, all certifications and verifications, and I did see it myself as well."

Cordia Sammeth spoke briefly of what their mission was and stated for the record that they were volunteering their time to run the market and their concern was bringing good food to people, helping the farmers, had support from the community and hoped that the Governing Body would support the zone change.

Brief discussion took place regarding the meaning of a "food desert".

Delfinio Velasquez, Anton Chico Landgrant spoke briefly regarding his support of the farmers markets and the benefits to the community with reasonable prices and the community walk-ins.

Councilor Casey made a motion to accept the record proper. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	Vincent Howell	Yes
David A. Ulibarri, Jr.	Yes	Barbara A. Casey	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

Councilor Casey made a motion to close Public Hearing and reconvene into regular session. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David A. Ulibarri, Jr.	Yes	David G. Romero	Yes
Barbara A. Casey	Yes	Vincent Howell	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

Councilor Casey made a motion to approve to adopt Ordinance #19-02, amendment to the Official Zoning Map for rezone of a property located at 2513 Hot Springs Blvd., Las Vegas, New Mexico. Councilor Howell and Councilor Ulibarri, Jr. seconded the motion.

Resolution 19-02 was presented as follows:

**CITY OF LAS VEGAS, CITY COUNCIL  
ORDINANCE NO. 19-02**

**AN ORDINANCE AMENDING THE CITY OF LAS VEGAS OFFICIAL ZONING MAP FROM AN R-2 (MULTI-FAMILY RESIDENTIAL ZONE) TO A C-1 (NEIGHBORHOOD COMMERCIAL ZONE) FOR LOTS 4, 5, 6, 7 AND 8, BLOCK 2, OF THE MIGUEL ROMERO Y BACA ADDITION, ALSO KNOWN AS 2513 HOT SPRINGS BLVD., LAS VEGAS, NEW MEXICO AS REQUESTED BY THE CITY OF LAS VEGAS, (APPLICANT/OWNER).**

**WHEREAS**, The City of Las Vegas, has applied for an amendment to the official zoning map for property located at 2513 Hot Springs Blvd., Las Vegas, New Mexico, for accommodating a Farmers Market, pursuant to the provisions of the Las Vegas City Zoning Code §450, and;

**WHEREAS**, on March 25, 2019, the City of Las Vegas Planning and Zoning Commission, following adequate public notice, held a public hearing to receive testimony concerning the amendment of the Official Zoning Map to rezone the property located at 2513 Hot Springs Blvd. from an R-2 (Multi-Family Residential Zone) to a C-1 (Neighborhood Commercial Zone), and on March 25, 2019 adopted a motion recommending approval of the proposed amendment.

**WHEREAS**, on May \_\_, 2019, the Governing Body of the City of Las Vegas, following adequate public notice, held a public hearing to receive testimony concerning the recommendations of the Planning and Zoning Commission.

**NOW, THEREFORE BE IT ORDAINED** that the Governing Body of the City of Las Vegas, New Mexico, hereby **GRANTS** the amendment to the Official Zoning Map by rezoning and changing the district classification of certain property located at 2513 Hot Springs Blvd. from an R-2 (Multi-Family Residential Zone) to a C-1 (Neighborhood Commercial Zone), and more fully described as follows:

Lots 4, 5, 6, 7 and 8, Block 2, of the Miguel Romero Y Baca Addition

**BE IT FURTHER ORDAINED** that the Governing Body of the City of Las Vegas, New Mexico, hereby adopts the following findings of fact upon which the Council's decision is based:

1. The boundaries of the zones established by the City's Ordinances, the classification of property herein, or other provisions of said Ordinances may be amended whenever public necessity, convenience, or general welfare require.
2. That duly public notice and public hearings were in accordance with the legal requirements and a site plan for the zone change has been provided which is acceptable to the City Council.

**PASSED, APPROVED AND ADOPTED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.**

**ATTEST:**

\_\_\_\_\_  
Casandra Fresquez, City Clerk

\_\_\_\_\_  
Tonita Gurulé-Girón, Mayor

**REVIEWED AND APPROVED  
AS TO LEGAL SUFFICIENCY ONLY**

\_\_\_\_\_  
Esther Garduno-Montoya, City Attorney

Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	Vincent Howell	Yes
Barbara A. Casey	Yes	David A. Ulibarri, Jr.	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

5. Conduct a Public Hearing and Approval/Disapproval to adopt Ordinance #19-03, amendment to the Official Zoning Map for a 21.277 acre+/- parcel located north of Ridge Runner Road between 7th Street and 8th Street, Las Vegas, New Mexico.

Councilor Casey made a motion to go into Public Hearing. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David A. Ulibarri, Jr.	Yes	David G. Romero	Yes
Barbara A. Casey	Yes	Vincent Howell	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

City Attorney Esther Garduno asked city staff, applicants or anyone who wanted to speak in support or in opposition of, to raise their right hand and she stated “do you solemnly affirm that the testimony you shall give or have given, to be the truth, the whole truth and nothing but the truth.” Maria Perea, Virginia Marrujo, Eugenio Mathis and Mike Fields were sworn in.

Mayor Gurulé-Girón asked City Attorney Garduno Montoya for clarification regarding that they would include the public input statements into the record proper.

City Attorney Garduno Montoya stated “that’s correct, we’re attempting to clarify that the statements they gave were under oath.”

Planning and Zoning Coordinator Maria Perea advised that Community 1st Bank-Las Vegas, the owner of a 21.277 acre +/- parcel located north of Ridge Runner Road between 7th Street and 8th Street, Las Vegas, New Mexico, is requesting that the property be rezoned from the present R-1 (Single Family Residential Zone)/ R-R (Restricted Residential Zone) to a C-3 (General Commercial Zone) with the intention of selling the property for commercial development. She added that this was heard before Planning & Zoning on March 25, 2019 and turned it over to the applicants, Mr. Fields and Mr. Mathis.

Eugenio Mathis, Attorney for Community 1st Bank stated that there were important matters to discuss which included that the Public Hearing was not being done in a timely fashion, that City ordinance required 47 days from the date, in essence of the Planning and Zoning hearing, to conduct a public hearing. He added that the Planning and Zoning Commission hearing was on March 25th, 47 days from that day would have been Saturday, May 11th, which would have been extended to the following Monday, May 13th and were here today, May 15th and

stated that his basis for that was a reading of Sections 450-110 and 450-114 of the Las Vegas Municipal Code.

Mr. Mathis stated that the second matter was that he believed it was pretty well settled that you could not administer an oath to someone after they have testified. He advised that the oath to tell the truth must be impressed upon anyone before they gave any testimony and the attempt to circumvent that, they believed was improper.

Mr. Mathis asked the Governing Body that they treat the Community 1st Bank as they would treat any other individual that would appear before them in the matter of this type and added that they pay taxes, just like everyone else and asked for fairness from them.

Mr. Mathis stated that he disagreed with previous comments regarding Courts looking at Spot Zoning unfavorably although that what was universally disfavored, was the lack of due process. He advised that the bank understood the emotional appeal of the opponents and the information that was being disseminated and provided to Council in some cases on numerous occasions, was violative of the bank's right to due process.

Mr. Mathis advised that the Community 1st Bank became the owner of the property by virtue of a foreclosure and that the previous owner's intent was to develop the entirety of the property although the fact that he could not, did not mean that the bank should not be in jeopardy of coming before the Governing Body with a proper request for a zone change.

Mr. Mathis advised that since the Planning & Zoning Commission voted on March 25, 2019 to approve the bank's application, by a vote of 3 to 1, with only one dissenter, who was Diane Lydsey who lives on Sperry Drive, as she did not want to go against her neighbors these individuals. He added that those who opposed the bank's application had been allowed to present their side of the story to the Body on multiple occasions and that they believed this had created an atmosphere of oppression and prejudice to the bank. Mr. Mathis advised that Dr. Alarid and Mr. Rogers appeared before the governing body on April 10th, were not sworn in at that time but were allowed to present comments to the body that was given the authority to decide on the issue, stating the nature of their opposition to the zone change.

Mr. Mathis stated that on April 17th, the date that this matter was originally scheduled before the governing body, six individuals appeared before them during public comment of the meeting, again, not under oath and expressed their opposition to the zone change. He advised that those individuals were several who appeared before them earlier tonight, who were Andy Trujillo, Joe Cooney, Dr. Alarid, Mr. Rogers, Pat Romero and Corinna Laszlo-Henry and stated that they objected to the allowance of individuals who opposed the bank's application from appearing multiple times before this body and stating their objections. Mr. Mathis added that they were afraid that this body would not give the due consideration that it should, to the bank's application on its merits because of the repeated efforts by opponents to appear before this body and provide unsworn testimony as to the nature of the bank's application.

Mr. Mathis advised that they were informed on the morning of April 17th that they had not received notice of the meeting and was the reason the meeting was tabled on April 17th. He stated that City Attorney Garduno Montoya informed the Governing Body that they probably should not allow these individuals to speak during Public Input, for fear of this matter just raised. He advised that he spoke with Ms. Garduno Montoya regarding the petitions received against the bank's application that would be presented at the meeting and of the confirmation of the bank not receiving notice. Mr. Mathis added that despite the fact that they were notified of the meeting not taking place, several individuals (6), appeared before the Governing Body on April 17th and were allowed during the Public Comment portion of the meeting to state their specific objections to the bank's application. Mr. Mathis stated because they were informed that the matter would not be taken up by the City Council on that day, no one from the bank felt that there was a need to appear and defend its position and that testimony was presented to them, unsworn.

Mr. Mathis stated that they were also concerned that information other than information on presentations made that night and at other meetings, would be considered by the governing body, in making their decision. He stated that they were aware of the letter from Mr. Cooney to Mayor and Council dated April 1, 2019, which was not in the record before them and that the petition was not included on the agenda, on the City's website.

Mr. Mathis advised that there had been a suggestion that individuals should send written or electronic correspondence to Mayor and Council, voicing their objections and that they believed this was a patently unfair manner in which to

make and decide the serious decision before them. He stated that if they had received any communication concerning this matter, that they hoped that each of them would disclose the name of the individual who contacted them and the substance of communications with them. He advised that the danger in that was the example of an elected official stating their opposition through a letter and thought that was the epitome of hearsay and felt that the bank found itself in this type of atmosphere and they were just asking for fairness in their decision.

Mr. Mathis spoke on allegations made regarding situation of nefarious types of businesses that would be allowed to open if the application was approved. He advised that they were asking Council to disregard those allegations and to recognize that this municipality and the adoption of a zoning ordinance had allowed special types of businesses to operate in a C-3 zone.

Mr. Mathis advised that they did not know what development would go up although stated that he could guarantee 100%, that it would not be a strip club, massage parlor or liquor store. He stated that this property was unique and misleading because it was described as bounded on 7th on the East, 8th on the West and that this parcel was irregular in shape with a small bottleneck on 8th Street and a larger bottleneck on 7th Street. He added that the small bottleneck on 8th near Melinda Lane was the only piece of this property that bordered 8th Street.

Mr. Mathis explained in detail the zone change property to the Governing Body on a larger scale map and mentioned that Mr. Fields had offered 1 acre for a park in that area and that they were willing to work with the community.

Councilor Casey stated that there had been conversations from the community with the bank regarding dividing the parcel in half so that the property closer to the 7th street entrance could be used for commercial and the rest could be residential and asked if the bank would be willing to do that.

Mr. Mathis stated that his conversation with Mr. Swanson was regarding that they could consider the idea although they did not agree to it and that the property had not been subdivided.

Mr. Fields advised that if you would use the 7th Street entrance, it was 56 feet, so it was big enough for two lanes for access to it. He stated that the problem was if you divided that part for the commercial, it was not big enough to develop

anything and that basically from 7th street to about the middle of the property was very narrow, with no acreage and no square footage to develop.

Mr. Fields informed that the government buildings on the South side where there was access, that a developer could get with those people to have the road continue through. He advised that the reason for the C-3 was because they had no one interested in residential, whatsoever. Mr. Fields mentioned if you got in to the middle of the property, you had the access and could use that piece of property for government or some type of commercial and would flow right with it.

Mr. Fields stated that they wanted to be good neighbors, that was why they had offered the 1 acre of land and if it took a little more for the park, they could have discussion of donating the land. He informed they had been trying to sell the property and had been on the market for 8 years with no buyers and right now was not meeting the full potential for tax revenue. Mr. Fields explained they were paying taxes on it but if it would be commercial, the benefit would be the GRT, jobs and opportunities that were needed in the City.

Mr. Mathis stated that there was misapprehension regarding that if the application would be approved that it would result in many traffic issues although he had shown how the property was situated to where there could not be any access off of 8th Street, Highlands, Sperry or Keen Drive.

Mr. Mathis spoke of the City ordinance requirements regarding the site development plan and that they had substantially complied with and stated that this was a difficult decision for the governing body and that there was a lot of emotion and thought it was based on the misapprehension and misconception of what was going to be brought in. He advised that they were not bringing in a strip club, that the bank was more conscientious than that. Mr. Mathis stated that the governing body had a say so of what would go in there and that this was a preliminary decision to zone the property as commercial.

Councilor Casey had questions of the parcel not being large enough to develop commercial on 7th st.

Mr. Fields clarified that he was regarding to the entrance being divided in half which would be on 7th street side and that it would be too narrow to divide.

Councilor Casey stated that there was a “For Sale” sign that stated that it was zoned commercial and felt that that was false advertisement and it should be changed to reflect on what would happen that evening.

Councilor Casey advised that she was concerned on spot zoning and that it was singling out a piece of land for a use classification totally different to what was existing in that area and it was to benefit the owner of the property but would be to the detriment of the other owners in the area. She added that the seller of the property could not guarantee what type of development would be going in and that was a real concern and they could not restrict on who you sell it to you, and anything could happen. Councilor Casey recognized that the Community 1st Bank had been good and generous to the community although thought those were issues we needed to think about, what would be good for the community and the bank should have discussion of some other options regarding that property so that everyone would benefit.

Mr. Fields stated that he felt it was not spot zoning, due to the County having business on the North side and that on the South side of it, was government buildings and did not agree and also being that the property was in the middle of two commercial areas. He added that the governing body had the option of what businesses came in and was bothered by the City losing businesses all the time, population going down due to not moving ahead, no growth and no jobs for young people. Mr. Fields stated that their main goal was making sure the town was growing and supporting opportunity and more jobs.

Lengthy discussion took place regarding the purpose of the Metropolitan Plan, the involvement of Community 1st Bank with the plan and of reasons on the need to sell the property as commercial.

Mr. Fields advised he had not attended meetings which included discussion the Metropolitan Plan, due to at that time, the bank was going through difficult times although stated that they would now be more involved.

Councilor Casey spoke about what the Metropolitan Plan was about and brought up the fact of the property being on the market for 8 years.

Lengthy discussion took place regarding the situation of the property and reasons of why they felt the need of selling the property as commercial.

Councilor Howell asked if the developer decided to widen the section of the ingress, could he do that?

Mr. Mathis stated that would be contingent upon the people who own the property on either side and he believed that they objected to the application, so it would be unlikely that they would give permission for him to do that.

Councilor Howell asked City Attorney Garduno Montoya, if this would not go through, was there an appeal process for the applicant?

City Attorney Garduno Montoya replied "Yes".

Councilor Howell asked what legal ramifications would happen if we disapproved this.

Mr. Mathis stated that he would need to have a discussion with the representatives of the bank to determine whether they wished to appeal a decision that would disapprove their application and based upon their decision, either go forward with an appeal in district court or not go forward.

Councilor Howell stated that this property was in his ward district and added that he had received many calls regarding the rezone and asked Mr. Fields if he had received many calls.

Mr. Fields advised that they have heard some comments from their customers or off the street and taken those into consideration which brought forth him offering the 1 acre land for the park. He added that he believed it would be very appealing to have a park entrance into the commercial area.

Lengthy discussion took place regarding alternative options of trading properties and of concerned residents' issues.

Councilor Romero stated that he understood the concerns of both sides of this issue and asked a question regarding the public input being put into the testimony and asked if the public input would not be put into this record proper.

City Attorney Garduno Montoya advised that they would ask anyone who wanted to speak, they could be sworn in and advised that the public input would not be

included in the record proper, due to it not being sworn testimony at the time, which she tried to prevent from happening.

Councilor Romero asked if this was approved tonight, would the commercial business have to come through Council.

Planning & Zoning Coordinator Perea advised that their plats had to be approved through the Development Review Team and make sure that it was feasible for the community. She stated that building setbacks, water and sewer were looked at and that it would also involve D.O.T. and advised that the businesses could bring it to Council although they did not have to. Ms. Perea advised that the final approval of the building would go through Construction Industries Division.

Councilor Romero asked if they had the authority tonight, to request buffer walls, or that certain entrances not exist to ensure less traffic on 8th Street.

Ms. Perea thought it was required by ordinance to have buffers areas within the commercial and residential areas and believed Council could make recommendations regarding the ordinance.

Discussion took place regarding Council making recommendations to amend ordinances.

Council Romero stated that in that, we could refer that to Planning & Zoning to ensure those changes.

City Attorney Garduno Montoya stated that that would be an option, to either retain a vote tonight or refer it back to Planning & Zoning Commission.

Further discussion took place regarding the process of changes to the ordinance and going through the Planning & Zoning Commission.

Mr. Fields advised that once, being a project manager for the bank, during the bank's renovation he worked with the City and that they had a lot of control on what and how the establishment was opened. He added that if the development plan would go back to the table, they could not offer it as a commercial site and that was the hurdle the bank was trying to get over.

Council Casey advised that she was concerned because Mr. Mathis had stated that people spoke at other meetings about the rezoning issue. She stated that this governing body allowed public input and that her personal belief was that we live in a democracy and the democratic ideal was best served by a well informed public and also by well informed elected officials that have to make decisions for that well informed public. Councilor Casey informed that she did not see the people who gave public input as being discounted because they were not sworn in. She added that anyone who wanted to attend a meeting and speak about anything was allowed to, they listen to everyone and that she did not see that it was an issue, if in fact that the bank decided that they wanted to file suit against the City. Councilor Casey stated that it was the public's right to make Council aware of their concerns whenever they were allowed to have public input and said that she did not agree with Mr. Mathis.

Mr. Mathis advised that he thought it was different in a Public Hearing, that they had moved to be in a Public Hearing and they had made the attempt to incorporate public comments that were not under oath into the record for this hearing and that it was entirely improper.

Councilor Casey stated that the comments would be a part of the record anyway, being included in the minutes and she suggested, along with what the Mayor was about to propose, regarding to allow those who were still present, who would like to make comments as sworn testimony.

Mayor Gurulé-Girón stated that they would be allowed to restate their comments, in the way of being done and conducted properly.

Mr. Mathis asked what they would do about the people who were no longer present that spoke in public input, that were not sworn in?

Councilor Casey advised that that would just be a part of public input and not part of the record proper.

City Attorney Garduno Montoya asked anyone who wished to speak on the issue, to please stand and be sworn in. Jeri Braccialarghe, Andy Trujillo, Jose Patricio Ernesto Romero, Dr. Mary Schipper and Dr. James Alarid were sworn in.

Jeri Braccialarghe, a Registered/Psychiatric Nurse stated that as a community member speaking in an open forum with the freedom to speak, felt extremely

uncomfortable and intimidated due to an attorney questioning her and questioning the Governing Body's process. She added she did not have the freedom to speak now, she had a lot of information she wanted to share but the information that she did share, that she quoted was used, including her name that was brought up and how this Council was not acting appropriately and an implication by an attorney was that it was something unlawful and she thought it created a frightening atmosphere.

Ms. Braccialarghe stated she came with the intention of being able to share, and not have an attorney make this feel like it was a trial, a judgement or have her name taken down, that this was where she could speak her truth without fearing retaliation. She advised that she had a meeting last year with Mr. Fields and would have liked to share that although now was concerned about expressing anything.

City Attorney Garduno Montoya advised Ms. Braccialarghe, that she could speak freely , that she was under oath, that this was a public hearing for purposes of a possible appeal and that they needed to make a record of what her opposition was.

Ms. Braccialarghe stated that she had copies from two days ago of the realty company that was carrying this property and stated that you could see on the document that there was a squiggly line, so that you really could not tell how it had been zoned, and that underneath that, it clearly said "parcel B rezoning from residential" with the implication being that it was done. She added that she was told by the realtor, that this was not taken through zoning due to it being too politically unstable here last year, and that she had contact with Ms. Perea about this, and she asked the realtor about why the change to commercial, he said that it was worth more as commercial. She stated that the information regarding the acreage on the sign was an error and she advised that that error had not been corrected and added that errors where it noted what it was zoned as were corrected the next day but that it had been actively marketed as commercial.

Ms. Braccialarghe informed that when she asked Community 1st Bank about the original loan, they advised that they thought it was zoned commercial and that there had been an appraisal done on that property as commercial and she had the name of the appraiser. She stated that to her understanding, Spot Zoning was not possible and that the sense of the community was that this was a done deal, that

the community had no say so, that it had been marketed as commercial, as though they had nothing to say, nor did the Council, other than to just agree.

Ms. Braccialarghe stated that she found it strangely disturbing that an Attorney was brought into this when it was supposed to be an open forum, and assumed that the bank had people that could speak of their concerns. She added that one of her main concerns was the exposure of children to the high risk environment from traffic to crime and noted the amount of abandoned, vacant buildings in the City. Ms. Braccialarghe thought the questions being raised on things not being done in a timely fashion were an apt distraction from the real issue and asked Council to focus on the issue and once it was rezoned it was out of the people's hands. She stated that the people here were concerned they had no say so in this and was extremely disconcerting to her, that they did not feel that they needed an attorney, and that hopefully the that they would listen to the needs of the people, that this was in their front yards and that elders were extremely frightened of the potential of issues regarding traffic to crime.

Andy Trujillo stated most of his feelings had already been heard, that it helped to hear some of the plans and that Attorney Mathis mentioned that everything required was included with the preliminary plan. He stated that he could not see how everything was there and it had not yet been addressed. Mr. Trujillo stated that if they decided to change to a C-3, it would be out of Council's hands and that the business did not have to come back to Council for approval, that it was not required and could become whatever they want it to. He was thankful for the 1 acre although thought it would not be enough for a park or buffer zone. Mr. Trujillo suggested that it stay residential until they had a commercial buyer.

Pat Romero stated that he was on the hot seat now and it reminded him of being on the school board and remembered that someone asked him why he did not have a lawyer with him at board meetings, with his response being , that they did not intend to do anything illegal. He stated that he always lived by the fact that you do the right thing for the right reasons and that people should have a little bit of freedom living in Las Vegas, New Mexico by not having to be afraid of someone taking them to court because we had said something to say, which he did not agree with although could happen. Mr. Romero was concerned that he was not notified about the zone change and did not know this was happening until later and that he had property that was very close to the zone change. He thought maybe trading land would be another option and that were many vacant properties that could not be sold and suggested to look into more recreation for

the youth of the community. He stated his name "Jose Patricio Ernesto Romero" for the record.

Dr. Mary Schipper stated that she wanted their neighborhood to stay stable and safe and that officially during public hearing time she wanted to once again bring the attention to the written protest and according to Ordinance 450-116; notwithstanding other provisions of this chapter, if the owners of 20 percent or more of the area of the lots of land included the area proposed to be changed by a zoning regulation or within 100 ft, excluding public right of way of the area proposed to be changed by a zoning regulation, protest in writing the proposed change in the zoning regulations, the proposed change in zoning shall not become effective unless the change is approved by a majority of the members of the City Council. She advised that they had the written protest with the signatures of all the permanent land owners of the land in question and she called for the attention from City Council to do that.

Dr. James Alarid advised he had lived at 2811 8th Street, since 1993, which was 100 feet from the ingress of the proposed property and bought the land with the premise of the property being R-R residential. Dr. Alarid praised Mr. Mathis for his representation of the Community 1st Bank and that he never had issues with the bank trying to unload that piece of property although felt that they were making them speculate about what would happen if the property was sold. He stated that he thought that there was still a great opportunity for a residential center and that it was determined that the property was odd although that designers and architects were creative enough to determine how to parcel it out to what they want.

Dr. Alarid stated that he felt that the Eastern side loaned itself to commercial property, the Westside to residential and the Southern to residential R-1 RR and believed that some houses could be built in the future. He advised that this had brought people together with a strong voice. He advised that he was never given notice of the Planning & Zoning meeting although he had made time to leave work and attend meetings. Dr. Alarid advised that he would like to think that Community 1st bank was really a community bank and would like for them to withdraw their proposal, go back and plan for something positive, so that everyone would win. He advised that several residents including himself have invested a lot of money into their properties and into that area, he stated everyone had had their due process, thanked Council for their service which was making difficult decisions and asked that they deny the proposal.

Councilor Casey made a motion to accept the record proper. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David A. Ulibarri, Jr.	Yes	David G. Romero	Yes
Vincent Howell	Yes	Barbara A. Casey	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

Councilor Casey made a motion to close Public Hearing and reconvene into Regular Session Councilor Howell and Council Ulibarri, Jr. Seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

Barbara A. Casey	Yes	David G. Romero	Yes
David A. Ulibarri, Jr.	Yes	Vincent Howell	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

Councilor Casey made a motion to disapprove to adopt Ordinance #19-03, amendment to the Official Zoning Map for a 21.277 acre +/- parcel located north of Ridge Runner Road between 7th Street and 8th Street, Las Vegas, New Mexico. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	David A. Ulibarri, Jr.	Yes
Barbara A. Casey	Yes	Vincent Howell	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

### **COUNCILORS' REPORTS**

Councilor Casey took the opportunity to recognize and publicly commend, Chris Rodarte, Streets Director and his staff. She advised that Mr. Rodarte went above and beyond to help the City of Las Vegas and helped people at every turn. She stated that he was very attentive to everyone and was a wonderful employee and representative of the City.

Councilor Casey informed that at last month's meeting from Virginia Marrujo advised that she would provide information regarding the Lodger's Tax Expenditures and amounts that had been approved and asked when they would be receiving it.

Community Development Director Virginia Marrujo advised that part of the report was provided to them in their packet along with the FY 20 grant process and would review the breakdown and put it in their boxes the next morning.

Councilor Casey requested from Ms. Marrujo an update on the agenda items that they discussed yesterday at the Lodger's Tax meeting, what actions were taken, how much money was approved and for what.

Ms. Marrujo advised that she would provide that information.

Councilor Casey stated that an IPRA request that was done about a month ago, was not completed to date and we were told that it would have been completed within a week that it was requested by Mr. Aragon and felt it needed to be worked on due to their being statutory guidelines that needed to be met.

Councilor Casey asked if we have a City employee who had attended training that was paid for by the City and that person resigned their position, was there anything in policy that stated they have to repay that money that was paid to them for out of state training.

Interim City Manager Ann Marie advised that that was part of the personnel policy and that they had to pay back the money.

Councilor Casey advised that Gallinas Riverwalk Committee and Hermit's Peak Watershed Alliance was trying to raise money (\$140,000.00) to complete restorations at the riverwalk/park area and that they needed \$40,000.00. She added that she had received emails from Leah Knutson requesting solidifying their relationship with them (MOU) and encouraged the Governing Body to do that and to try and budget \$40,000.00 in order to complete their work at the riverwalk.

Mayor Gurulé-Girón stated that discussion had taken place that day regarding the riverwalk and commitments the City had made with the Hermit's Peak Watershed Alliance.

Interim City Manager Ann Marie advised that they had come to the City for funding and that they did submit a Legislative appropriation request and through the efforts of the City, they were awarded \$70,000.00 and stated that she believed that they were going to be a partnership between the County, the City and several other entities and would follow up with Ms. Knutson on how much everyone has given.

Brief discussion took place regarding Lodger's Tax funding and how much they gave watershed alliance.

Councilor Howell stated that when he asked about the legalities to Mr. Mathis, was due to him feeling threatened also in regards to what he was saying and led him to the right decision that he had made. He stated that our voices were important and that it was important that we do speak and apologized to anyone affected, and that Council encouraged community members to freely come and speak about any issues. Councilor Howell advised that he felt that good points that were brought up, such as why would we have to do the zone changes now and to get a development plan done and he felt good about our Governing body, that they listen to the community's voices.

Councilor Ulibarri, Jr. thanked Streets Director Chris Rodarte for his work on many of potholes throughout the city and thanked all City employees as well and stated that he had concerns regarding the Valencia water tank drainage issues.

Mayor Gurulé-Girón advised Councilor Ulibarri, Jr. that his concerns had been noted and Interim City Manager Gallegos would follow up with Maria Gilvarry. She thanked every employee and everyone for staying during the late meeting, being patient and persistent and stated that these were tough decisions and felt they were the right decisions and to those for never giving up on the fight. Mayor Gurulé-Girón thanked Maria Gilvarry, Christy Rodarte and their crews, all City staff and advised that the Governing Body was there to serve the community.

### **EXECUTIVE SESSION**

Councilor Romero made a motion to go into Executive Session to discuss personnel matters regarding the Community Development Director, as permitted by Section 10-15-1 (H) (2) of the New Mexico Open Meetings Act, NMSA 1978.

Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

Barbara A. Casey	Yes	David A. Ulibarri, Jr.	Yes
Vincent Howell	Yes	David G. Romero	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

Discussion took place regarding what the process would be considering the fact that Councilor Ulibarri, Jr. was participating via telephonic.

Mayor Gurulé-Girón made the recommendation of reconvening into Executive Session in City Manager’s Office and advised Councilor Ulibarri, Jr. that he would not be participating in the Executive Session discussion.

Councilor Ulibarri, Jr. agreed with Mayor Gurulé-Girón’s recommendation.

Councilor Romero made a motion to reconvene into Regular Session and stated that only matters personnel matters regarding the Community Development Director were discussed and no action was taken. Councilor Howell and Councilor Casey seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

Barbara A. Casey	Yes	Vincent Howell	Yes
David G. Romero	Yes	David A. Ulibarri, Jr.	Absent

Recorder Danielle Sena re-read the motion and advised that the motion carried.

**ADJOURN**

Councilor Casey made a motion to adjourn. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

Barbara A. Casey	Yes	David G. Romero	Yes
Vincent Howell	Yes	David A. Ulibarri, Jr.	Absent

Recorder Danielle Sena re-read the motion and advised that the motion carried.

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Mayor Tonita Gurulé-Girón

ATTEST:

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Casandra Fresquez, City Clerk

**MINUTES OF THE CITY OF LAS VEGAS CITY COUNCIL BUDGET HEARING MEETING  
HELD ON WEDNESDAY, MAY 22, 2019 AT 1:30 P.M. IN THE CITY COUNCIL  
CHAMBERS**

**MAYOR:** Tonita Gurulé-Girón

**COUNCILORS:** David G. Romero  
Barbara A. Casey  
Vincent Howell  
David A. Ulibarri, Jr.

**ALSO PRESENT:** Ann Marie Gallegos, Interim City Manager  
Danielle Sena, Recorder  
Esther Garduno Montoya, City Attorney  
David T. Bibb III, Chief of Police

**CALL TO ORDER**

Mayor Pro Tem Vincent Howell called the meeting to order at 1:31 PM, and Mayor Tonita Gurulé-Girón arrived at 1:36 PM.

**ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**MOMENT OF SILENCE**

Councilor Ulibarri, Jr. asked for a moment of silence for our residents who have passed away, Vidal Crespín and Leroy “Carro” Armijo who was a basketball player, baseball player and teacher and to keep their families in mind and to pray for them.

**APPROVAL OF AGENDA**

Councilor Casey made a motion to approve the agenda as presented. Councilor Ulibarri, Jr., seconded the motion. Mayor Pro Tem Howell asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	David A. Ulibarri, Jr.	Yes
Vincent Howell	Yes	Barbara Casey	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

### **PRESENTATION/DISCUSSION ITEMS**

1. Discussion of water billing issues and detailed explanation of procedures from meter reading to actual billing is being reviewed and audited regularly for accuracy.

Utilities Director Maria Gilvarry and Customer Service Manager Jodi Marquez presented on the process for billing, which starts with meter reading to how they address customers concerns.

Utilities Director Gilvarry advised they will go over collecting data, the quality assurance processes they have for the billing data, reporting on the billing data and how they address customers concerns.

Utilities Director Gilvarry advised the first step in the billing process is the consumption clerk who has numerous responsibilities such as loading routes and initiating the process of collecting data for four cycles. Utilities Director Gilvarry advised all four cycles are meter read, every meter is read every week, to keep up to date information.

Utilities Director advised particular cycles for a certain week begins the process for billing, which then allows for up to date information for leak reasons or customer concerns.

Councilor Ulibarri, Jr., asked if the readings went into a system.

Utilities Director Gilvarry advised the data is uploaded to the Tyler system and retained.

Discussion took place regarding the amount and types of meters read every week and the areas that the City covers such as Las Vegas, Watrous, Wagon Mound and Montezuma.

Utilities Director advised the automated meter reading process includes the collections personnel, such as a field customer service supervisor and customer service representative II and III.

Discussion took place regarding the type of devices that are used to collect data on a weekly basis.

Utilities Director Gilvarry advised the data that is collected is exported onto a flash drive and then provided to the consumption clerk to upload the data into the computer system to store, evaluate and assess the data.

Discussion and questions took place regarding what can cause a misread and since no data is received the customer would not be charged since they aren't sure how much water was used.

Utilities Director advised when misreads occur, a visual read is done to the meters and data is then taken to the consumption clerk to combine with data previously collected.

Discussion took place regarding if data does not coincide from all devices then another reread is done to figure out why the data is not coinciding and less than one percent of meters need to be reread.

Utilities Director Gilvarry discussed the process of uploading the data into the system, reporting data and non-billable data.

Discussion took place regarding the difference between normal and abnormal water consumption and the process to notify a customer.

Utilities Director Gilvarry discussed the process of bill development, the billing packet process done by the customer service manager and the reviewing of the

billing done by four different staff members at least five different times for each account.

Discussion took place regarding how long it takes for the bill to be sent out to customers and what the four staff members do to review the billing.

Utilities Director Gilvarry discussed the leak detection process and the different types of graphs that show either a toilet leaking or a water line break.

Discussion and questions took place regarding the process if there was a major water leak or major consumption increase situation, the life span for meters and the City ordinance that states, "if a customer has a concern about the meter, the City can have it sent out to test at the expense of the customer, where if the device is found to be inaccurate then the City will cover the cost but if there is no issue with the meter then the customer will cover the cost of the test."

Utilities Director Gilvarry discussed the procedure for home audit work orders, adjustment requests, shut off notices and the collection of outstanding balances from previous owners/renters.

Brief discussion took place regarding waste water charges being calculated by a winter quarter average.

Councilor Howell requested the information be placed inside customers bills so they are aware of procedures.

Councilor Romero thanked Utilities Director Gilvarry for her presentation and also thanked Mayor Gurulé-Girón for allowing the presentation to be on the agenda and advised it answered a lot of his questions.

Councilor Romero requested having the presentation placed separately on the website so customers can refer back to it.

Mayor Gurulé-Girón advised to post the powerpoint presentation on the website so customers can view the slides.

Utilities Director Gilvarry advised she will post it in PDF form, on the Utilities Facebook page, will give it to I.T. to post on the website and will look at bulleted advertisement on the back of the billing.

2. Presentation by Interim City Manager and Interim Finance Director on Preliminary Fiscal Year 2020 Budget.

Interim Finance Director Tana Vega gave a presentation over general information on the proposed 2020 Preliminary Budget.

Discussion and questions took place regarding increases to the budget due to associated costs from increased health insurance, PERA and the minimum wage requirement. Interim Finance Director Vega responded to the following questions which were previously emailed to her by Councilor Casey.

Interim Finance Director Vega advised the City Clerk's department budget increased for election costs.

Interim Finance Director Vega advised the Police department budget increased due to associated costs from the FOP contract.

Interim Finance Director Vega advised the Fire department budget increased due to the minimum wage requirement.

Interim Finance Director Vega advised the Municipal Airport budget increased due to anticipated maintenance issues.

Interim Finance Director Vega advised the Library budget increased due to adding an additional full-time staff member.

Interim Finance Director Vegas advised General Services increased due to insurance deductibles and changing of phone providers.

Interim Finance Director Vega advised the reserve was a reflection of total expenditures for the General fund and are required to reserve one twelfth of total expenditures.

Councilor Casey advised she appreciated Interim Finance Director Vega for answering her questions that she emailed her.

Interim Finance Director Vega presented on behalf of the Executive department's budget starting with the Governing Body and Mayor's departments separately being budgeted for benefits.

Discussion and questions took place regarding why two employees were listed in multiple departments and an explanation about grants or additional funding used for certain employees salary and when budget adjustments need to be done.

Interim Finance Director Vega presented on behalf of the City Attorney's budget which decreased from last year.

Discussion and questions took place regarding the City Attorney's salary which was budgeted to include the paralegal and administrative aide's salary.

Interim Finance Director Vega presented on behalf of the Human Resources department's budget which mirrored last year's budget but had an increase in contractual services for pre-employment drug testing.

Interim Finance Director Vega presented on behalf of the Finance department's budget which increased due to the use of paper and data supplies.

Interim Community Development Director Virginia Marrujo presented on the Community Development and Code Enforcement department's budget which decreased due to vacancies within the department.

Discussion and questions took place regarding cross training and hiring within the department.

Interim Community Development Director Marrujo presented on the Lodger's Tax budget which had a slight increase and advised the board agreed to have a rolling budget like the previous year.

Discussion and questions took place regarding actuals for the current year, the meaning of a rolling budget, non-profit funding and the Lodger's tax board having input for the budget.

Interim Finance Director Vega advised why there were substantial increases to the Police department's budget.

Police Chief David T. Bibb III and Finance Specialist Marla Martinez presented on behalf of the Police department's budget which increased mainly due to full time employees, medical expenses, insurance deductibles and utilities.

Discussion and questions took place regarding the increase for utilities, two vehicles that were budgeted for patrol, grants for the new fiscal year and vacancies within the department.

Fire Chief Billy Montoya thanked the Governing Body for their assistance with helping accomplish a Deputy Fire Chief/Inspector position and the replacement of two aging fire trucks.

Fire Chief Billy Montoya presented on behalf of the Fire department's budget which they agreed on a flat budget, the Fire museum project and help with moving forward on a pay plan.

Discussion and questions took place regarding negotiations, if there was money set aside for a pay plan, a plan for a fire training center and vacancies within the department.

Brief discussion took place regarding the annual State Fire Grant, EMS fund and Fire prevention fund.

Public Works Interim Directors Daniel Gurule and Chris Rodarte presented on behalf of the Public Facilities, Streets and Airport department budgets which would be a flat budget with increases to vehicles, GPS for vehicles, and two grants that carried over.

Discussion and questions took place regarding full time employees, vacancies within the department, the sweeper, the PAPI and storage for the snow removal equipment at the airport and also an airfield rehab for the airport.

Brief discussion took place regarding potholes, equipment to help with potholes, possibly getting full roads construction through different grants, the zipper equipment and vacancies within the department.

Discussion and questions took place regarding payments towards loans.

Senior Center Manager Wanda Salazar presented on behalf of the Senior Center departments budget, all federal would stay consistent, home delivery program would be increased for the federal, an increase to all units for all programs to better reflect what they are serving, tai chi program, increase to salaries due to minimum wage, and the rate of reimbursement per program would increase.

Senior Center Manager Salazar advised there was an increase to the San Miguel Senior Center, which will be open full time effective July 1st.

Discussion and questions took place regarding working with Comedor De San Pascual to provide food, if the seniors were enjoying the pool tables and a bingo machine.

Recreation Manager Sonia Gomez presented on behalf of the Recreation Center's and advised they had a good turn out with memberships and programs offered by the recreation center, and the budget stayed flat.

Discussion and questions took place regarding treadmill equipment, the use of the concession stand, how much longer for construction to replace the roof and the contract regarding the construction being done.

Housing Finance Specialist Natasha Padilla presented on behalf of the Housing department's budget which stayed flat but the subsidy and dwelling rent was increased.

Discussion and questions took place regarding separating employee expenditures between administrative and maintenance, utilities was also separated per HUD, the telephone system increase and site improvements.

Utilities Director Maria Gilvarry advised all budget did have an increase due to full time employee salary increases, health insurance and PERA.

Utilities Director Gilvarry presented on behalf of the Utilities Administrative's budget which had increases due to moving employees around but the budget stayed the same and are planning for the move to the old State Police building this fiscal year.

Utilities Director Gilvarry presented on behalf of the Utilities Service's budget which stayed consistent with increases due to full time employee salary increases, health insurance and PERA.

Discussion and questions took place regarding vacancies within the Utilities Admin., and Services department.

Utilities Director Gilvarry presented on behalf of the Waste Water department's budget which increased for contracted management services for Souder Miller and advised the vacancies within the department.

Discussion and questions took place regarding vacancies being budgeted within the departments, how long they project using Souder Miller and what happens if they get someone for the position that Souder Miller is currently filing and the hourly rate for a level IV operator.

Utilities Director Gilvarry presented on behalf of the Gas department's budget which was budgeted the same as last year but budgeted revenues for less and the vacancies within the department.

Utilities Director Gilvarry presented on behalf of the Solid Waste department's budget which increased for tipping fees and a correction was made under recycling which will make expenditures the same as last year and vacancies within the department.

Discussion and questions took place regarding a recycling program, and what is being done with the money from vacancies.

Utilities Director Gilvarry presented on behalf of the Water department's budget which is divided between water distribution and water treatment budget, water projects and vacancies within the department.

Discussion and questions took place regarding why positions have not been filled, the process of applying for a position and vacancies within the HR department.

Utilities Director Gilvarry advised in the 646 fund revenues were reduced due to not having as much funding as last year, Bradner Dam and Cabin Site Tank projects were completed and are finishing up smaller projects.

Discussion took place regarding upcoming projects for the fiscal year, leak detection, the Water Treatment Plant security system, an emergency response plan and water line repairs.

Discussion and questions took place regarding the amount of divisions Utilities Director Gilvarry had and the decrease in property taxes in the general fund.

Discussion took place regarding the closing of the golf course and how the City can be a part of the solution.

Mayor Gurulé-Girón stated, "I was very disappointed with President Minner, he came to the City and made a proposal that the City should help them."

Mayor Gurulé-Girón stated, "I asked him on three or four occasions to set up a meeting with me and Ann Marie and he hasn't, during a meeting I had at Highlands I ran into both President Minner and Max Baca and I again confronted President Minner."

Mayor Gurulé-Girón advised she wanted it on the record so President Minner knows that she is calling him out.

Mayor Gurulé-Girón stated, "If he is going to come to the City and call us out on helping him with funding then he also needs to be called out on being unresponsive to his own needs."

Mayor Gurulé-Girón advised she ran into President Minner again and said, "President Minner when are you going to set up a meeting and he said, I'll be calling."

Mayor Gurulé-Girón advised Max Baca was bold enough to make a statement saying what they need from the City is free water.

Mayor Gurulé-Girón stated, "That's a tall order considering that every constituent in the City is paying for their water and you're asking for free water and I said I don't know that we can do that."

Mayor Gurulé-Girón stated, "I told President Minner I would like to set up a meeting with you and again he stated, I'll be calling, so the ball is in his court."

Discussion took place regarding participation at the golf course and setting up a meeting with President Minner to discuss the golf course.

Interim City Manager Gallegos advised they would be submitting the preliminary budget by May 31st and then bring the final budget back to council with recommendations made by Mayor and Council in July for approval.

### **PUBLIC INPUT**

John Spencer spoke about hazard mitigation and forest renewal and advised hearing good news about 10,000 being in the budget for the tree board. Mr. Spencer advised a big advantage is that they have proof that the City is helping which will make a huge difference. Mr. Spencer advised he was pleased to see it happen and are proud of Mayor and Council. Mr. Spencer advised three important things are to protect the citizens of the City, preserve the legacy of trees and the future of the City.

Mayor Gurulé-Girón thanked Interim City Manager Gallegos and Interim Finance Director Vega for getting that money in.

Emilio Aragon spoke about submitting a letter to the City Attorney entitled appropriated monies from proceeds of sale of citizen property. Mr. Aragon advised the City of Las Vegas was complicit in appropriating the proceeds from the sale of his property at 1022 Douglas Avenue in 2014. Mr. Aragon advised the previous administration, City Council and Utilities department did collude by their lack of due diligence and due process and a little malfeasance, and took \$19,781.50 from the proceeds of those sales. Mr. Aragon advised additionally said entities violated city ordinance in its own waiver of landlord's responsibility. Mr. Aragon advised that said entities violated the Las Vegas, New Mexico city ordinance which states, "a lien shall be filed after six months of delinquency," but he was billed for tenant arrears from 1984 with no prior notice to him.

Mr. Aragon advised the Utilities department refuses to provide the ledger account of the monies received from the City of illegal appropriations or the proceeds of sale from his rental properties. Mr. Aragon advised the Utilities department transferred the money owed by previous tenants onto his current account at 200 Washington Street and continue to send him two bills under the same account number, one bill is for \$524 and the other for \$648. Mr. Aragon advised the City was billing tenants five months after they appropriated his money.

Mr. Aragon stated, "I hereby request the monies appropriated be returned to me the undersigned, please include \$6,000 for attorney fees plus \$3,000 in costs incurred and penalty and interest added to the \$19,781.50." Mr. Aragon advised Attorney Dave Romero stone walled his attorney's repeated efforts to acquire public records, accounting records, City copy of waiver of landlord responsibility and copy of the City ordinance. Mr. Aragon advised, said stone walling cost him extra money and by mutual agreement him and his first attorney parted ways.

Mayor Gurulé-Girón advised she would look into it.

**EXECUTIVE SESSION**

City Attorney Esther Garduno Montoya advised there was need for executive session pertaining to pending litigation regarding Dave Romero.

Councilor Casey made a motion to convene into executive session for the purpose of discussing matters subject to the attorney client privilege pertaining to threatened or pending litigation regarding former City Attorney Dave Romero in which the City of Las Vegas is or may become a participant, as permitted by Section 10-15-1 (H) (7) of the New Mexico Open Meetings Act, NMSA 1978. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David A Ulibarri, Jr.	Yes	Vincent Howell	Yes
David G. Romero	Yes	Barbara Casey	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

Councilor Casey made a motion to reconvene into Regular session after being in Executive session to discuss matters subject to the attorney client privilege pertaining to threatened or pending litigation regarding former City Attorney Dave Romero in which the City of Las Vegas is or may become a participant, as permitted by Section 10-15-1 (H) (7) of the New Mexico Open Meetings Act, NMSA 1978. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David G. Romero	Yes	David A. Ulibarri, Jr.	Yes
Barbara Casey	Yes	Vincent Howell	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

**ADJOURN**

Councilor Casey made a motion to adjourn. Councilor Howell seconded the motion. Mayor Gurulé-Girón asked for roll call. Roll Call Vote was taken and reflected the following:

David A. Ulibarri, Jr.	Yes	Vincent Howell	Yes
David G. Romero	Yes	Barbara Casey	Yes

Recorder Danielle Sena re-read the motion and advised that the motion carried.

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Mayor Tonita Gurulé-Girón

ATTEST:

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Casandra Fresquez, City Clerk

~~Regular or Special~~

**CITY COUNCIL MEETING AGENDA REQUEST**

**DATE:** 05/31/19

**DEPT:** Utilities

**MEETING DATE:** 06/19/19

**ITEM/TOPIC:** Presentation on the 2018 Water Consumer Confidence Report.

**ACTION REQUESTED OF COUNCIL:** N/A

**BACKGROUND/RATIONALE:** Utilities Director Maria Gilvarry will be presenting to the governing body on the 2018 Water Consumer Confidence Report.

**STAFF RECOMMENDATION:** N/A

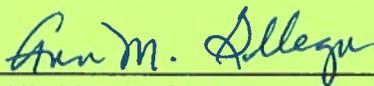
**COMMITTEE RECOMMENDATION:** N/A

**THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.**

  
\_\_\_\_\_  
**SUBMITTER'S SIGNATURE**

**REVIEWED AND APPROVED BY:**

  
\_\_\_\_\_  
**TONITA GURULÉ-GIRÓN**  
**MAYOR**

  
\_\_\_\_\_  
**ANN MARIE GALLEGOS**  
**INTERIM CITY MANAGER**

\_\_\_\_\_  
**TANA VEGA**  
**INTERIM FINANCE DIRECTOR**  
**(PROCUREMENT)**

\_\_\_\_\_  
**PURCHASING AGENT**  
**(FOR BID/RFP AWARD)**

\_\_\_\_\_  
**ESTHER GARDUNO-MONTOYA,**  
**CITY ATTORNEY**  
**(ALL CONTRACTS MUST BE**  
**REVIEWED)**

**GENERAL FUND REVENUE COMPARISON  
THRU MAY 31, 2019 92% (91.63%) OF YEAR LAPSED (11 of 12 months)  
FISCAL YEAR 2019**

Total Budget to Actual Comparison

	A	B	C	D	E	G (E/B) FY 2019 % REV
	FY 2018 BUDGET	FY 2019 BUDGET	FY 2019 YTD - BUDGET	FY 2018 YTD - ACTUAL	FY 2019 YTD - ACTUAL	
PROPERTY TAX	1,291,000	1,485,000	1,361,250	1,308,831	1,214,743	82%
GROSS RECEIPT TAX 1.225	3,550,000	3,550,000	3,254,167	3,368,145	3,255,387	92%
FRANCHISE TAX	775,000	750,000	687,500	658,781	755,374	101%
GROSS RECEIPT TAX .75	2,440,000	2,332,500	2,138,125	2,212,663	2,416,964	104%
1/8 INFRASTRUCTURE	360,000	372,000	341,000	351,938	354,289	95%
GRT .25 (JAN 2011)	725,000	1,060,000	971,667	994,043	1,000,235	94%
GRT -HOLD HARMLESS (JULY 2015)	(110,400)	-	0	(101,200)	-	
LICENSE & FEES	61,000	83,500	76,542	91,257	46,210	55%
INTERGOVERNMENTAL	83,716	77,144	70,715	80,288	75,828	98%
LOCAL-FINES	77,000	66,500	60,958	53,694	56,224	85%
LOCAL-MISC	1,737,235	1,648,800	1,511,400	1,617,406	1,672,405	101%
TOTAL	10,989,551	11,425,444	10,473,324	10,635,846	10,847,659	95%

(License& Fees-Business Licenses, Liquor Licenses and Building Permits,Development Fees)  
(Local Fines- Court Fines, Library Fines, Traffic Safety Fines)

**FISCAL YEAR 2019**

Total Budget to Actual Comparison

	A	B	C	D	E	F	H (E/B) % BDGT
	FY 2018 BUDGET	FY 2019 BUDGET	FY 2019 YTD - BUDGET	FY 2018 YTD - ACTUAL	FY 2019 YTD - ACTUAL	FY 2019 AVAIL. BAL.	
JUDICIAL	307,959	294,648	270,094	251,317	261,727	32,921	89%
GOVERNING BODY	73,038	66,952	66,952	67,618	67,618	5,420	93%
MAYOR	60,736	55,675	55,675	51,796	51,796	8,940	85%
MANAGER	261,412	239,628	239,628	179,270	179,270	82,142	69%
EXECUTIVE	397,969	0	0	323,032	0	0	0%
MUNICIPAL CLERK	272,858	222,499	203,957	221,119	210,884	11,615	95%
CITY ATTORNEY	231,944	229,704	210,562	140,946	128,334	101,370	56%
PERSONNEL/HR	278,960	245,259	224,821	234,799	176,909	68,350	72%
FINANCE	452,393	467,223	428,288	381,941	386,363	80,860	83%
COMMUNITY DEV.	533,845	528,706	484,647	340,960	309,523	219,183	59%
POLICE	3,854,744	4,006,680	3,672,790	3,225,379	3,520,097	486,583	88%
CODE ENFORCEMENT	136,113	150,334	137,806	93,526	98,050	52,284	65%
ANIMAL SHELTER	135,490	135,490	124,199	123,296	124,418	11,072	92%
FIRE	1,257,365	1,357,467	1,244,345	1,036,655	1,095,790	261,677	81%
PUBLIC WORKS/AIRPORT	474,004	450,832	413,263	310,611	383,561	67,271	85%
PARKS	286,222	290,709	266,483	229,995	192,605	98,104	66%
AIRPORT	0	0	0	0	0	0	0%
LIBRARY	205,217	200,046	183,376	140,746	178,121	21,925	89%
MUSEUM	150,845	148,116	135,773	115,174	121,401	26,715	82%
GENERAL SERVICES	2,358,248	3,161,410	2,897,959	1,683,494	1,717,843	1,443,567	54%
SALARY CONTINGENCY	0	0	0	0	0	0	0%
TRANSFERS	719,667	751,352	688,739	632,494	687,227	64,125	91%
TOTAL	12,053,843	13,035,661	11,949,356	9,485,484	9,891,534	3,144,127	76%

**ENTERPRISE FUNDS-REVENUE COMPARISON  
THRU MAY, 2019 92% (91.63%) YEAR LAPSED (11 of 12 months)  
FISCAL YEAR 2019**

	<u>Total Budget to Actual Comparison</u>						G
	A	B	C	D	E		(E/B) %
	FY 2018 BUDGET	FY 2019 BUDGET	FY 2019 YTD - BUDGET	FY 2018 YTD - ACTUAL	FY 2019 YTD - ACTUAL		BUDGET
WASTE WATER (610)	2,866,100	2,966,100	2,718,925	3,002,811	2,765,445		93%
NATURAL GAS (620)	5,236,000	5,036,000	4,616,333	5,063,106	4,996,486		99%
SOLID WASTE (630)	3,419,400	3,419,400	3,134,450	3,476,583	3,123,145		91%
WATER (640)	4,800,150	5,138,950	4,710,704	5,033,739	4,636,802		90%
<i>Total of Enterprise Funds</i>	16,321,650	16,560,450	15,180,413	16,576,239	15,521,877		94%

**ENTERPRISE FUNDS-EXPENDITURES COMPARISON  
THRU MAY, 2019 92% (91.63%) YEAR LAPSED (11 of 12 months)  
FISCAL YEAR 2019**

	<u>Total Budget to Actual Comparison</u>						H
	A	B	C	D	E	F	(E/B) %
	FY 2018 BUDGET	FY 2019 BUDGET	FY 2019 YTD - BUDGET	FY 2018 YTD - ACTUAL	FY 2019 YTD - ACTUAL	FY 2019 AVAIL. BAL.	BUDGET
WASTE WATER(610)	3,297,778	3,317,958	3,041,462	2,540,131	2,811,236	506,722	85%
NATURAL GAS (620)	5,938,908	6,179,773	5,664,792	3,944,940	4,558,775	1,620,998	74%
SOLID WASTE (630)	3,733,787	3,760,097	3,446,756	2,825,083	2,918,528	841,569	78%
WATER (640)	5,681,820	4,707,663	4,315,358	4,319,143	3,862,560	845,103	82%
<i>Total of Enterprise Funds</i>	18,652,293	17,965,491	16,468,367	12,007,561	14,151,099	3,814,392	79%

**RECREATION DEPARTMENT-REVENUE COMPARISON  
THRU MAY 31, 2019 - 92% (91.63%) OF YEAR LAPSED 11 OF 12 MONTHS  
FISCAL YEAR 2019**

	A	B	C	D	E	G (E/B) % REV
	FY 2018 BUDGET	FY 2019 BUDGET	FY 2019 YTD - BUDGET	FY 2018 YTD - ACTUAL	FY 2019 YTD - ACTUAL	
RECREATION-TAXES (Cig)	0	0	0	0	0	0%
WELLNESS CENTER	115,000	115,000	105,417	108,910	98,370	95%
OPEN SWIM	20,000	20,000	18,333	8,535	8,199	43%
YAFL	0	0	0	0	0	0%
YABL	20,000	16,500	15,125	4,570	6,977	28%
SUMMER FUN PROGRAM	20,000	26,000	23,833	33,887	37,390	130%
RECREATION-OTHER	108,964	85,000	77,917	31,313	23,589	37%
GEN FUND TRANSFER	400,000	400,000	366,667	366,520	366,520	92%
TOTAL	683,964	683,964	607,292	553,735	541,044	81%

**RECREATION DEPARTMENT- EXPENDITURE COMPARISON  
THRU MAY 31, 2019 - 92% (91.63%) OF YEAR LAPSED 11 OF 12 MONTHS  
FISCAL YEAR 2019**

	A	B	C	D	E	F	H (E/B) % BDGT
	FY 2018 BUDGET	FY 2019 BUDGET	FY 2019 YTD - BUDGET	FY 2018 YTD - ACTUAL	FY 2019 YTD - ACTUAL	FY 2019 AVAIL. BAL.	
EMPLOYEE EXP.	594,089	633,166	580,402	450,047	452,007	181,159	71%
YAFL	0	0	0	0	0	0	0%
YABL	4,050	8,500	7,792	2,850	6,491	2,009	76%
OTHER OPERATING EXP.	138,562	95,350	87,404	67,454	62,657	32,693	66%
CAPITAL OUTLAY	8,000	9,500	8,708	2,821	4,729	4,771	50%
TOTAL	744,701	746,516	684,306	523,172	525,883	220,633	70%

**Regular or Special**

**CITY COUNCIL MEETING AGENDA REQUEST**

**DATE:** 05/31/19

**DEPT:** Utilities

**MEETING DATE:** 06/19/19

**ITEM/TOPIC:** Resolution No. 19-27 assigning official representatives and signatory authority for the SAP 19-D2520-GF grant agreement with the State of New Mexico Environment Department.

**ACTION REQUESTED OF COUNCIL:** Approval / Disapproval of Resolution No. 19-27.

**BACKGROUND/RATIONALE:** This resolution is required by the funding agency to assign representatives and signatory authority for the grant agreement.

**STAFF RECOMMENDATION:** Approval of Resolution No. 19-27.

**COMMITTEE RECOMMENDATION:** This item was discussed at the Utility Advisory committee meeting on June 10, 2019. Their recommendation will be provided at the Council Meeting.

**THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.**

  
\_\_\_\_\_  
**SUBMITTER'S SIGNATURE**

**REVIEWED AND APPROVED BY:**

  
\_\_\_\_\_  
**TONITA GURULÉ-GIRÓN**  
**MAYOR**

  
\_\_\_\_\_  
**ANN MARIE GALLEGOS**  
**INTERIM CITY MANAGER**

\_\_\_\_\_  
**TANA VEGA**  
**INTERIM FINANCE DIRECTOR**  
**(PROCUREMENT)**

\_\_\_\_\_  
**PURCHASING AGENT**  
**(FOR BID/RFP AWARD)**

\_\_\_\_\_  
**ESTHER GARDUNO-MONTOYA,**  
**CITY ATTORNEY**  
**(ALL CONTRACTS MUST BE**  
**REVIEWED)**

**CITY OF LAS VEGAS  
RESOLUTION NO. 19-27**

**A RESOLUTION OF THE CITY OF LAS VEGAS, NEW MEXICO AUTHORIZING THE ASSIGNMENT OF AUTHORIZED OFFICE(S), SIGNATORY AUTHORITY(IES), AND AGENTS(S)**

**WHEREAS**, the Governing Body of the City of Las Vegas of San Miguel County of the State of New Mexico shall enter into a grant agreement with the State of New Mexico Environment Department and;

**WHEREAS**, the City Municipal Charter as adopted March 2, 2012, provides for powers and duties of official city representatives related to succession and;

**WHEREAS**, the agreement is identified as Project Number SAP 19-D2520-GF.

**NOW, THEREFORE, BE IT RESOLVED** by the named applicant that:

Interim City Manager Ann Marie Gallegos or her successor is authorized to sign the grant agreement for this project, and

Interim Finance Director Tana Vega or successors are the AUTHORIZED OFFICER(S) who are authorized to sign all other documents necessary to fulfill the grant agreement and the promissory note requirements and to act as the project contact, and

Interim City Manager Ann Marie Gallegos and/or Interim Finance Director Tana Vega or successors are the SIGNATORY AUTHORITY (IES) who are authorized to sign reimbursement requests for this project.

PASSED, APPROVED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Mayor Tonita Gurulé-Girón

ATTEST:

\_\_\_\_\_  
Cassandra Fresquez, City Clerk

APPROVED AS TO LEGAL SUFFICENCY ONLY:

\_\_\_\_\_  
Esther Garduño-Montoya, City Attorney

**Las Vegas Water Sys &**

**Project Name**     Main Replace    

**Project No.**     SAP 19-D2520-GF    

<b>Authorized Officer(s)</b>	
Name	Ann Marie Gallegos, Interim City Manager
Title	
Signature	
Address	1700 North Grand Ave. Las Vegas, NM 87701
E-mail	amgallegos@lasvegasnm.gov
Phone	505-454-1401
Name	Tana Vega, Interim Finance Director
Title	
Signature	
Address	1700 North Grand Ave. Las Vegas, NM 87701
E-mail	tvega@lasvegasnm.gov
Phone	505-454-1401
Name	
Title	
Signature	
Address	
E-mail	
Phone	
Name	
Title	
Signature	
Address	
E-mail	
Phone	

<b>Authorized Agent(s) or Employee(s) for reimbursement requests</b>	
Name	Ann Marie Gallegos, Interim City Manager
Title	
Signature	
Address	1700 North Grand Ave. Las Vegas, NM 87701
E-mail	amgallegos@lasvegasnm.gov
Phone	505-454-1401
Name	Tana Vega, Interim Finance Director
Title	
Signature	
Address	1700 North Grand Ave. Las Vegas, NM 87701
E-mail	tvega@lasvegasnm.gov
Phone	505-454-1401
Name	
Title	
Signature	
Address	
E-mail	
Phone	
Name	
Title	
Signature	
Address	
E-mail	
Phone	



## **SPECIAL APPROPRIATIONS PROGRAM CHECKLIST To Execute a Grant Agreement**

This checklist is designed to assist in the process of submitting required documentation to the New Mexico Environment Department (NMED) Construction Programs Bureau (CPB) for Capital Outlay funding.

This checklist is for your records and does not need to be returned.

If you have any questions or need assistance, contact NMED at (505) 827-2806 or by email at [nmenv-cpbsap@state.nm.us](mailto:nmenv-cpbsap@state.nm.us).

### **I. DOCUMENTS THAT NEED TO BE CREATED, SIGNED, COMPLETED AND SUBMITTED TO NMED – *Original signed documents must be mailed.***

- 1) \_\_\_\_\_ Grant Agreement Authorization page (page 13)- Must be signed and notarized by Official with Authority to Bind Grantee. Please provide two signed originals; one will be returned to community when fully executed.
- 2) \_\_\_\_\_ Resolution authorizing the assignment of Authorized Officer(s) and Agent(s) (page 24)– NMED Attachment F. *All forms/documents other than the Grant Agreement must be signed by the person listed as authorized on this form.*
- 3) \_\_\_\_\_ SAP Signature Page—NMED Attachment G (or G-FA if a Fiscal Agent is required, page 25).

### **II. FORMS/DOCUMENTS TO BE SIGNED, COMPLETED AND SUBMITTED TO NMED (*forms can be returned electronically*)**

- 4) \_\_\_\_\_ Project Description Form –NMED Attachment A

### **III. SUPPORTING DOCUMENTATION TO BE SUBMITTED TO NMED (*forms can be returned electronically*)**

- 5) \_\_\_\_\_ Special Conditions: If required, required documentation must be provided prior to grant agreement execution. Requirements will be detailed on NMED Attachment H. Documents may be returned electronically.
- 6) \_\_\_\_\_ Fiscal Agent: If a Fiscal Agent is required, complete and return NMED Attachments I and J. Documents may be returned electronically.

Please note: NMED will not disburse any funds until all items on this checklist have been received and approved by NMED.

**STATE OF NEW MEXICO  
DEPARTMENT OF ENVIRONMENT]  
FUND 89200 CAPITAL APPROPRIATION PROJECT  
LAS VEGAS WATER SYS & MAIN REPLACE  
SAP 19-D2520-GF**

**THIS AGREEMENT** is made and entered into as of this [\_\_\_\_] day of [\_\_\_\_\_], 20[\_\_\_], by and between the New Mexico Environment Department hereinafter called the “Department” or “NMED”, and City of Las Vegas hereinafter called the “Grantee”. This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2019, Chapter 277, Section 26, Paragraph 93, 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; and

**WHEREAS**, NMED is empowered pursuant to Section 74-1-6 B, NMSA 1978 to contract in its own name.

**AGREEMENT**

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

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

**SAP 19-D2520-GF (\$400,000.00) APPROPRIATION REVERSION DATE: June 30, 2023  
Laws of 2019 Chapter 277, Section 26, Paragraph 93, Four Hundred Thousand Dollars (\$400,000.00):**

to plan, design and construct water system improvements and replace water mains in Las Vegas in San Miguel county

The Grantee’s total reimbursements shall not exceed Four Hundred Thousand Dollars (\$400,000.00) minus the allocation for Art in Public Places<sup>1</sup>, if applicable, No Dollars (\$0.00) which equals Four Hundred Thousand Dollars (\$400,000.00) (the “Adjusted Appropriation Amount”).

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<sup>1</sup> The AIPP amount is “an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000).” Section 13-4A-4 NMSA 1978.

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(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third-Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code 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, hereinafter referred to as "Third-Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that 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:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures

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<sup>2</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a Third-Party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third-Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

- a. The 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.**
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third-Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
- c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that 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 attached to this Agreement as Exhibit 2.
- d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the 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. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

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

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

Grantee: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Please provide this information in the Resolution and Signature page; this page does NOT need to be completed.

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: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_

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

Department: New Mexico Environment Department  
Name: Bertha Aragon  
Title: Project Administrator  
Address: Construction Program Bureau  
NMED, Harold Runnels Building  
1190 St. Francis Drive S-2072  
Santa Fe, NM 87502

Email: [bertha.aragon@state.nm.us](mailto:bertha.aragon@state.nm.us)  
Telephone: 505-827-2815

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above-named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five 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 email.

**ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the

Department. It shall terminate on June 30, 2023 the Reversion Date unless Terminated Before Reversion Date (“Early Termination”) pursuant to Article V herein.

B. The Project’s funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project’s Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a Third-Party.

## **ARTICLE V. EARLY TERMINATION**

### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days’ advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

### **B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term “non-appropriate” or “non-appropriation” includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department’s decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

### **C. Limitation on Department’s Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department’s sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

## **ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The 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 Notice of Obligation.

### **D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the 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. Such corrective action plan must be approved by the Department and be signed by the Grantee. 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)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

## **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

## **ARTICLE VIII. REPORTS**

### **A. Database Reporting**

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

**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.

**ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a Third-Party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the 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) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a Third-Party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, 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 such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the Third-Party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

**C. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a Third-Party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third-Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability 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 due to Grantee's violation of this Agreement.

**ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

- A. The following general conditions and restrictions are applicable to the Project:
- (i) 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 (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit 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, the "Anti-Donation Clause."
  - (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. 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 employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
  - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
  - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
  - (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
  - (v) The 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 the Agreement and to sign Requests for Payment.
  - (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
  - (vii) 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 this or any agency or body in connection with the awarding of any Third-Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all sub awards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the 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 total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, 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 of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. 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.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

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

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges, warrants, and agrees that Grantee shall 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:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Las Vegas may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Las Vegas's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Las Vegas or the New Mexico Environment Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Las Vegas or the Department"

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges, warrants, and agrees that Grantee shall 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:

“This contract is funded in whole or in part by funds made available under a New Mexico Environment Department Grant Agreement. Should the New Mexico Environment Department early terminate the grant agreement, the City of Las Vegas may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Las Vegas’s only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

**ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 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 Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

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

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. 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;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES (Applicable only if the appropriation is funded by Severance Tax Bonds or General Obligations Bonds).**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee’s sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department’s failure to inform

Grantee of a 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 effective without 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 contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant 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, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

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Authorization Page

LAS VEGAS WATER SYS & MAIN REPLACE SAP 19-D2520-GF

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

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

\_\_\_\_\_  
Entity Name

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**NEW MEXICO ENVIRONMENT DEPARTMENT**

\_\_\_\_\_  
By:

Its: Cabinet Secretary or Designee

\_\_\_\_\_  
Date

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 1**

I. Grantee Information	II. Payment Computation
A. Grantee: City of Las Vegas	A. Payment Request No.
B. Address:	B. Grant Amount: \$400,000.00
	C. AIPP Amount (if Applicable): \$0.00
	D. Funds Requested to Date:
C. Phone No:	E. Amount Requested this Payment:
D. Grant No: SAP 19-D2520-GF	F. Reversion Amount (if Applicable):
E. Project Title: LAS VEGAS WATER SYS & MAIN REPLACE	G. Grant Balance:
F. Grant Expiration Date: 6/30/2023	H. <input type="checkbox"/> GF <input type="checkbox"/> GOB <input checked="" type="checkbox"/> STB (attach wire if first draw)
	I. <input type="checkbox"/> Final Request for Payment (if Applicable)
III. Fiscal Year:	
<i>(The State of NM Fiscal Year is July 1, 20XX through June 30 20XX of the following year)</i>	
IV. <input type="checkbox"/>	<b>Reporting Certification:</b> I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.
V. <input type="checkbox"/>	<b>Compliance Certification:</b> Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.
Grantee Fiscal Officer or Fiscal Agent (if Applicable):	Grantee Representative:
Printed Name:	Printed Name:
Date:	Date:
(State Agency Use Only)	
Vendor Code	Fund Code 89200
I certify that the State Agency financial and vendor file information agree with the above submitted information.	
Division (SAP PA) Fiscal Officer/ Date:	Division (CPB) Project Manager/Date:

**SAMPLE NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee [# 1]**

DATE: [\_\_\_\_\_]

TO: Department Representative: Andrea Telmo

FROM: Grantee: City of Las Vegas

Grantee Official Representative: [\_\_\_\_\_]

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: SAP 19-D2520-GF

Grant Termination Date: June 30, 2023

As the designated representative of the Department for Grant Agreement number SAP 19-D2520-GF 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: [\_\_\_\_\_] ]

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: [\_\_\_\_\_] ]

*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: [\_\_\_\_\_] ]  
Signature: [\_\_\_\_\_] ]  
Date: [\_\_\_\_\_] ]

<sup>1</sup> 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.

**NMED ATTACHMENT A**  
**NEW MEXICO ENVIRONMENT DEPARTMENT**  
**CONSTRUCTION PROGRAMS BUREAU**  
**PROJECT DESCRIPTION**

**Name of Grantee:** City of Las Vegas  
**Project Number:** SAP 19-D2520-GF

**X**

**X**

---

**Official Representative/Date**

**NMED Project Manager Approval/Date**

**NMED ATTACHMENT B – NMENV TECHNICAL REQUIREMENTS  
TO  
STATE OF NEW MEXICO  
CAPITAL APPROPRIATION FUND AGREEMENT**

**REVIEW**

Upon execution of the 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 a detailed project description to NMED Construction Programs Bureau prior to committing to expenditures from these funds. The detailed description will be provided on the Attachment A form. The Grantee must submit copies to NMED of all executed contracts entered into by the Grantee prior to this agreement, that are related to the project, for review and, if appropriate, approval.
- B. If these grant funds are to be used for engineering and/or other professional services, the Grantee must submit documentation regarding the hiring process to be used and the Request for Proposals (RFP), if applicable, to NMED for review and approval **prior to** selecting engineering and/or other professional services. An RFP for engineering services and/or other professional services must be performed in compliance with the New Mexico Procurement Code [Sections 13-1-21 et seq. NMSA 1978]. If, for any one circumstance, engineering fees will exceed \$60,000, excluding gross receipt taxes, the Grantee is also required to contact the Professional Technical Advisory Board (PTAB) for assistance in the preparation of the RFP package. (PTAB: phone (505) 888-6161 and e-mail [ptab@acecnm.org](mailto:ptab@acecnm.org).)
- C. If these grant funds are to be used for engineering and/or other professional services, the Grantee must submit a draft of any engineering agreement and/or other professional services contract, or a letter certifying that the Grantee's staff will be used for design, to NMED for review and approval **prior to** executing the agreement/contract or using Grantee's staff. The required engineering agreement format is the "Publicly Funded Project" form prepared by NMED and posted on the website at [www.nmenv.state.nm.us/cpb/cpbttop.html](http://www.nmenv.state.nm.us/cpb/cpbttop.html).
- D. A preliminary engineering report (PER) or study by a registered New Mexico Professional Engineer may be required. If a PER or study is to be prepared, the Grantee and their consultant shall meet with NMED before starting any work for a "scoping" meeting to fully discuss the scope and extent of the PER. The consultant shall present their preliminary outline for the PER, including the alternatives to be considered. The Grantee must submit the final PER and/or study to NMED for review and approval before preparation of plans and specifications. The purpose of the PER and/or study is to analyze and choose the most technically feasible and cost effective solution for the project. The PER must follow USDA RUS Bulletin 1780-2.
- E. Grantee agrees not to start the preparation of plans and specifications until NMED approval of the PER, study, or waiver of the report requirement has been received.
- F. If the grant funds are to be used for engineering design or for construction, the Grantee must submit all plans, specifications, and any addenda for this project (prepared by a registered New Mexico Professional Engineer) to NMED for review and approval **before** the project is advertised for construction bids.

- G. The Grantee must submit all work related to easements, rights-of-ways, other property rights, and financing provisions associated with the project to NMED for review **prior to** advertising for construction. A site certificate certifying that all necessary easements and/or property upon or through which the project is being constructed have been obtained must be submitted prior to the advertisement for bid of the project. The Site Certificate must be signed by an attorney, engineer, surveyor, or title abstractor. The Grantee must submit the recommendation of award, certified bid tabulation, a copy of bid bond for the selected contractor and evidence of full project financing to NMED for review and approval **prior to** awarding the contract. Grantee shall not award the contract until NMED has concurred in writing with the award. Competitive bidding, in accordance with applicable state laws (including local wage determinations as provided for in Section 13-4-11 NMSA 1978), will be used for awarding construction contracts. Contracts will be awarded to the responsive, responsible bidder who submits the lowest acceptable bid, or as provided for by State Law.
- H. Following NMED approval of the proposed award, the Grantee will submit the notice of the award and the minutes of the meeting in which the award was made, the notice of a pre-construction conference, a copy of the executed construction contract documents (including payment and performance bonds), and the notice to contractor to proceed to NMED for review. The selected contractor will be required to post a performance and payment bond in accordance with requirements of Section 13-4-18 NMSA 1978.
- I. The selected contractor will submit a construction schedule to the Grantee and NMED if requested at the pre-construction conference with a copy to NMED. The Grantee will submit all modifications to plans and contract by change orders to the NMED project manager promptly for review and approval **prior to** implementation of such modification or change. The decision by NMED will be rendered promptly in writing to the Grantee. In cases necessitating immediate action, a verbal decision will be rendered by NMED and followed by a written confirmation to the Grantee.
- J. The Grantee will provide a full-time construction inspector during construction of the project. The Grantee will be required to submit the inspector's résumé to NMED for review and approval. All daily inspection reports shall be made available to the NMED Project Manager upon request.
- K. 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.
- L. If applicable, the Grantee (or the system owner) will employ qualified utility operators and will comply with all provisions of the New Mexico Utility Operators Certification Act, Section 61-33-1 et seq. NMSA 1978.
- M. If the grant funds are to be used for construction of wastewater collection lines or water distribution lines, the Grantee will assure NMED that the existing population will connect to the collection system or distribution system within reasonable time after project completion. This will be accomplished by adoption and annual review of an ordinance and user charge system or other legal documents or other official act requiring such connection to the system, to the extent permitted by law.
- N. NMED will reimburse the grantee its actual costs when NMED determines, in its sole discretion, that expenditures were appropriate under the terms of the Agreement and that the expenditures were properly documented.

## **NMED OVERSIGHT**

NMED inspection, review and approval are only for purposes of compliance with applicable state grant requirements, procedures, statutes and regulations. NMED approval will not be interpreted as any warranty or guarantee of any kind. Approval of plans and design of the project means only that plans are complete and in compliance with applicable state grant requirements, procedures and regulations. NMED will bring to the Grantee's attention, any obvious defects in the project's design, materials or workmanship, but all such defects and their correction will be the responsibility of the Grantee and its contractors and consultants. Any questions raised by NMED during its inspections and reviews shall be resolved exclusively by the Grantee. The Grantee and its contractors and consultants will remain responsible for the completion and success of the project. Approval does not relieve the owner or engineer of legal responsibilities for the overall integrity of the project, adequacy of the design, safety, or compliance with all applicable regulations.

## **CLOSEOUT**

- O. 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 NMED.
- P. If the grant funds are to be used for preparation of a PER, a study, or plans and specifications, final payment will be made after approval by NMED of the PER, study, or plans and specifications. Payments do not constitute approval of any of these documents.
- Q. If the grant funds are to be used for purchase of equipment, final payment will be made after approval by NMED of receipt of equipment title and appraisal reports for used equipment.
- R. If the grant funds are to be used for construction, final payment will be made after the final inspection has been conducted by NMED and the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:
  - i. Operation and maintenance manuals or a letter from the owner certifying receipt and acceptance of the operation and maintenance manuals;
  - ii. A final reimbursement request including the final certified construction pay request prepared by the Grantee's project engineer and approved by the Grantee;
  - iii. A certificate of substantial completion including punch list items;
  - iv. A letter certifying 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 for final review and approval;
  - v. Certification letter by the Grantee that the Labor Standards Contract Provisions have been met;
  - vi. Record drawings prepared by the Grantee's project engineer or a letter from the owner certifying receipt and acceptance of the record drawings;
  - vii. 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;

- viii. A written consent of the surety, if any, to final payment; and
- ix. Grantee's ledger sheets including all payments made by the Grantee may be requested with the final reimbursement request and before the final reimbursement request can be processed by NMED.

With the exception of easements (See Article 1.G above), when real property is acquired by the Grantee, either through purchase or donation as a part of this project and within the project period, the Grantee will submit documentation of the acquisition to NMED, including a legal description of the property, the date the property will be acquired, evidence of clear title, and an appraisal report prepared by a qualified appraiser who was selected through applicable procurement procedures. These documents must be reviewed and approved by NMED **prior to** the acquisition of any real property. After real property acquisition, the Grantee will make available to NMED all documents of title pertaining to the acquired property and all easements or rights-of-way necessary for the completion of work under this grant agreement.

NMED Attachment C  
NMED Contact Information Sheet  
Project Number SAP 19-D2520-GF  
Grantee City of Las Vegas

Project Manager: Andrea Telmo  
Project Manager Address: 121 Tijeras Ave NE, Ste 1000  
Albuquerque, NM 87102  
Phone: 505-222-9512  
Email: [andrea.telmo@state.nm.us](mailto:andrea.telmo@state.nm.us)

Project Administration: Bertha Aragon  
Project Admin Address: 1190 St. Francis Drive S-2072  
Santa Fe, NM 87502  
Phone: 505-827-2815  
Email: [bertha.aragon@state.nm.us](mailto:bertha.aragon@state.nm.us)

For General Assistance, please call 505-827-2806 and ask for “Special Appropriations” or email:  
[NMENV-cpbsap@state.nm.us](mailto:NMENV-cpbsap@state.nm.us)

**NMED ATTACHMENT D DISBURSEMENT REQUEST  
SPECIAL APPROPRIATIONS PROGRAM (SAP)**

A. NAME OF ENTITY

C. DISBURSEMENT REQUEST NUMBER

B. PROJECT NUMBER

D. GRANT AMOUNT

	PREVIOUS EXPENDITURES			CURRENT EXPENDITURES			CUMULATIVE			FUNDS REMAINING		
	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										\$	-	\$
<b>TOTAL</b>	\$	-	\$	-	-	\$	-	-	\$	-	-	\$

Article IX.A. (ii). 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.

Certification: Under penalty of law, I certify that all the above expenditures are true and correct and are for appropriate purposes in accordance with the terms and conditions of the pertinent Loan/Grant Agreement; that all of the above expenses are properly documented, and are actual invoices; that payment has not been received; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti-donation" clause.

Signature of Authorized Official	Typed or Printed Name:	Phone:	Date:
X			

NMED Attachment E  
New Mexico Environment Department (NMED)  
Capital Appropriations Certification Document  
Article IX. A. (ii) and (iii)  
Project SAP 19-D2520-GF  
Grantee City of Las Vegas  
Payment Request No \_\_\_\_\_

I certify that payment to all vendors on the above referenced payment request were paid no more than five (5) days after receiving reimbursement from NMED.

---

Official Representative, Signed Name, Printed Name, Date

**Regular or Special**

**CITY COUNCIL MEETING AGENDA REQUEST**

**DATE:** 05/30/19

**DEPT:** Utilities

**MEETING DATE:** 06/19/19

**ITEM/TOPIC:** Reject request for bids #2019-11 for the Valley & Chavez Street gas line replacement.

**ACTION REQUESTED OF COUNCIL:** Approval / Disapproval to reject request for bids #2019-11 to allow City staff to complete the project.

**BACKGROUND/RATIONALE:** This project will allow for the much needed replacement of the gas lines on Valley and Chavez Streets. The Utilities Department has determined that the Gas division has the manpower and equipment to perform the project and it would be in the City's best interest to allow the division to complete the project. This determination was made after the project had already been bid out and bids were received and opened. Therefore, the City must reject the bids received.

Advertised: 03/27/19 – Las Vegas Optic, Albuquerque Journal and City website  
Bid Opening: May 1, 2019  
Number of Bidders: 2 – DUB-L-EE, LLC; Hays Plumbing & Heating, Inc.  
Amount: DUB-L-EE: \$241,689.67; Hays Plumbing & Heating, Inc.:  
\$205,750.00 - see attached bid tabulation  
Funding Source: City Funding  
Budget Line Item: 627-0000-650-8010

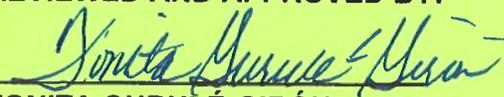
**STAFF RECOMMENDATION:** Approval to reject request for bids #2019-11 to allow City staff to complete the project.

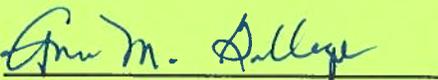
**COMMITTEE RECOMMENDATION:** This item was discussed at the Utility Advisory committee meeting on June 10, 2019. Their recommendation will be provided at the Council Meeting.

**THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.**

  
\_\_\_\_\_  
**SUBMITTER'S SIGNATURE**

**REVIEWED AND APPROVED BY:**

  
\_\_\_\_\_  
**TONITA GURULÉ-GIRÓN**  
**MAYOR**

  
\_\_\_\_\_  
**ANN MARIE GALLEGOS**  
**INTERIM CITY MANAGER**

\_\_\_\_\_  
**TANA VEGA**  
**INTERIM FINANCE DIRECTOR**  
**(PROCUREMENT)**

\_\_\_\_\_  
**PURCHASING AGENT**  
**(FOR BID/RFP AWARD)**

\_\_\_\_\_  
**ESTHER GARDUNO MONTOYA,**  
**CITY ATTORNEY**  
**(ALL CONTRACTS MUST BE**  
**REVIEWED)**

**REQUEST FOR BIDS**

The City of Las Vegas, New Mexico will open Sealed Bids at 2:00 p.m., May 1, 2019, at the City Council Chambers, 1700 North Grand Avenue, Las Vegas, New Mexico, or other designated area at the City Offices; ON THE FOLLOWING:

**VALLEY & CHAVEZ STREET GAS LINE REPLACEMENT**

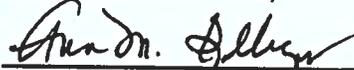
The BIDDING FORMS AND TECHNICAL SPECIFICATIONS may be examined at the following location: City Clerk's Office at 1700 North Grand Avenue, Las Vegas, NM 87701

Copies of the BIDDING FORMS AND TECHNICAL SPECIFICATIONS may be examined at the following location: City Clerk's Office at 1700 North Grand Avenue, Las Vegas, NM 87701

Mailed bids should be addressed to the City Clerk, 1700 N. Grand Ave., Las Vegas, New Mexico 87701; with the envelope marked: **VALLEY & CHAVEZ STREET GAS LINE REPLACEMENT**, Opening No. 2019- 11; on the lower left-hand corner of the submitted envelope. It shall be the responsibility of the Offeror to see that their bid is delivered to the City Clerk by the date and time set for the bid request. If the mail or delivery of bid request is delayed beyond the opening date and time, bid thus delayed will not be considered. A public opening will be held and any bidder or their authorized representative is invited to attend.

The City of Las Vegas reserves the right to reject any/or all bids submitted.

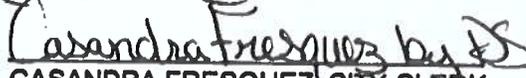
CITY OF LAS VEGAS,



ANN MARIE GALLEGOS, INTERIM CITY MANAGER



ESTHER GARDUÑO-MONTOYA CITY ATTORNEY



CASANDRA FRESQUEZ, CITY CLERK



TANA VEGA, INTERIM FINANCE DIRECTOR



HELEN VIGIL, PURCHASING OFFICER

Opening No. 2019- 11

Date Issued: March 21, 2019

Published: LAS VEGAS OPTIC  
ALBUQUERQUE JOURNAL  
www.lasvegasnm.gov

March 27, 2019  
March 27, 2019  
March 27, 2019

**BIDDER INFORMATION**

OFFEROR: \_\_\_\_\_

AUTHORIZED AGENT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER (\_\_\_\_) \_\_\_\_\_

FAX NUMBER (\_\_\_\_) \_\_\_\_\_

DELIVERY: \_\_\_\_\_

STATE PURCHASING RESIDENT CERTIFICATION NO.: \_\_\_\_\_

NEW MEXICO CONTRACTORS LICENSE NO.: \_\_\_\_\_

BID ITEM (S):     **VALLEY & CHAVEZ STREET GAS LINE REPLACEMENT**    

ITEM (S) UNDER THIS BID ARE TO BE F.O.B. LAS VEGAS, NEW MEXICO 87701. THE CITY OF LAS VEGAS RESERVES THE RIGHT REJECT ANY OR ALL BIDS AND TO WAIVE ANY TECHNICAL IRREGULARITY IN THE FORM OF THE BID.

**AFFIDAVIT FOR FILING WITH COMPETITIVE BID**

STATE OF \_\_\_\_\_ }

} ss

COUNTY OF \_\_\_\_\_ }

I, \_\_\_\_\_ of lawful age, being of first duly sworn in oath, say that I am the agent authorized by the bidder to submit the attached bid. Affiant further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any city official or employee as to the terms of said prospective contract, or any other terms of said prospective contract; or in any discussion between bidders with any city official concerning an exchange of money or any other thing of value for special consideration in the letting of a contract.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me, this \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public Signature

My Commission Expires: \_\_\_\_\_

## STANDARD BID CLAUSES

### AWARDED BID

Awarding of bid shall be made to the responsible Bidder whose Bid best meets the required specifications. The City of Las Vegas (City) reserves the right to reject or accept any of all Bid specifications and to waive any insubstantial irregularity in the form of the Bid.

### TIMETABLE

Bid pursuant to this request must be received at the City Clerk's Office at 1700 North Grand Avenue, Las Vegas, New Mexico, on or before: May 1, 2019; 2:00 p.m.; at which time all bids received will be opened. An opening will occur at the City's Council Chambers or other designated area at the City Offices. Awarding of Bid is projected for \_\_\_\_\_, 2019. The successful Bidder will be notified by mail.

### ENVELOPES

Sealed Bid envelopes shall be clearly marked on the lower left-hand corner, identified by the Bid Name and Opening Number. Failure to comply with this requirement may result in the rejection of the submitted Bid.

### BRIBERY AND KICKBACK

The Procurement Code of New Mexico (Section 13-1-28 through 13-1-199 N.M.S.A. 1978) impose a third degree felony penalty for bribery of a public official or public employee. In addition, the New Mexico Criminal Statutes (Section 30-4-1, N.M.S.A. 1978) states that it is a third degree felony to commit the offense of demanding or receiving a bribe by a public official or public employee. And (Section 30-24-2 N.M.S.A. 1978): It is a fourth degree felony to commit the offense of soliciting or receiving illegal kickbacks. Also (Section 30-41-1 through 30-413, N.M.S.A. 1978): states that it is a fourth degree felony to commit the offense of offering or paying illegal kickbacks.

### NON-COLLUSION

In signing their Bid and Affidavit, the Bidder certifies that he/she has not, either directly or indirectly entered into action of restraint of free competition, in connection with the submitted bid.

### RESPONSIBILITY OF BIDDER

At all times it shall be the responsibility of the Bidder to see that their bid is delivered to the City Clerk by the Date and Time scheduled for opening. If the mail or delivery of said Bid is delayed beyond the scheduled opening date and time set, this bid will not be considered.

### CLARIFICATION OF BID

Bidder requiring clarification or interpretation of Bid specifications shall make a written request to the Department involved in this bid request at least five (5) days prior to the scheduled bid opening date; with a copy forwarded to the Finance Department. Any interpretation, corrections, or changes of said Bid Specifications, Opening Date, or Time Change will be made by Addendum only. Interpretations, Corrections or changes of said bid made in any other manner will not be binding and the Bidder shall not rely upon such interpretation, corrections and changes.

### MODIFICATION OF BID

Bids may be withdrawn upon receipt of written request prior to the scheduled bid opening for the purpose of making any corrections or changes. Such corrections must be properly identified and signed or initialed by the Bidder. Resubmission must be prior to the scheduled bid opening time in

order to be considered. After bid opening, no price modifications of submitted bids or other provisions shall be permitted.

**WITHDRAWAL OF BID**

A low Bidder alleging a material mistake of fact, after bids have been opened may request their bid be withdrawn upon receipt of a written request to the Finance Department prior to the scheduled awarding date.

**INSPECTION**

Final inspection and acceptance will be made at the City's discretion. Products rejected for nonconformance with the specifications shall be removed by the Bidder; at his/her risk and expense promptly after notice of rejection.

**FEDERAL TAX IDENTIFICATION NUMBER**

Pursuant to IRS requirements, Bidder shall provide their Federal Tax ID Number if Bidder is incorporated. If Bidder is a sole proprietorship or partnership they then shall provide their Social Security Number.

FEDERAL TAX ID NUMBER: \_\_\_\_\_  
SOCIAL SECURITY NUMBER: \_\_\_\_\_

**NEW MEXICO TAX IDENTIFICATION NUMBER**

Payment may be withheld under (Section 7-10-5, N.M.S.A. 1978) if you are subject to New Mexico Gross Receipts Tax and have not registered for New Mexico (CRS) Tax Identification Number. Contact the New Mexico Taxation & Revenue Department at (505) 827-0700 for registering instructions.

NEW MEXICO TAX IDENTIFICATION NO. (CRS): \_\_\_\_\_

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Bidder shall submit a complete Campaign Contribution Disclosure Form Pursuant to Chapter 81, Laws of 2006.

### COMMERCIAL WARRANTY

The Bidder agrees that the products or services furnished under a Purchase Order shall be covered by the most favorable commercial warranties that the Bidder gives to any customer for such products or services. And that the rights and remedies provided therein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of its Purchase Order. Bidder agrees not to disclaim warranties of fitness for any particular purpose or merchantability.

Furthermore, Bidder agrees that its warranty for all products furnished under a Purchase Order pursuant to this Call for Bids shall be for a period of one year following the installation of said products by others. Also a receipt of a notice by the City's Engineer that the products have been installed correctly and have been demonstrated to be capable of performing their intended function.

### SPECIAL NOTICE

To preclude possible errors and/or misinterpretations, bid prices must be affixed in ink or typewritten legibly. Enclose one (1) original and Four (4) copies of Bid documents.

### DEFAULT

The City reserves the right to cancel all or any part of an order without cost to the City if the Bidder fails to meet the provision of the City's Purchase Order or the product specifications and to hold the Bidder liable for any excess costs occasioned due to the Bidder's default. The Bidder shall not be liable for any excess costs if failure to perform on an order arises out of cause beyond the control and without fault or negligence of the Bidder. Such causes include but are not restricted to acts of GOD or public enemy; acts of State or Federal Government; fires, floods, epidemics, quarantine restrictions, strikes, embargoes, unusually severe weather, or defaults of subcontractors. Due to any of the above unless the City shall determine that the supplies or services to be furnished by the subcontractor are obtainable from other sources in the City in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law.

### BID PROTESTS

If any bidder is of the opinion that the specifications as written preclude him/her from submitting a bid, his/her opinion should be made known to the Department involved in this bid request at least fifteen (15) days prior to the scheduled bid opening date with a copy forwarded to the Finance Department. Bid protests will not be considered from parties who do not also furnish satisfactorily documentation with their protest that their proposed system fully meets the functional intent of the TECHNICAL SPECIFICATIONS which accompany a Call for Bids.

### NON-EXCLUSION

Specifications of the bid request are not meant to exclude any Bidder or Manufacturer. Where a brand name or equal is indicated, it is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to restrict competition. "No Substitute" specifications may be authorized, only if required to match existing equipment.

If any Bidder is of the opinion that the specifications as written preclude him/her from submitting a bid, his/her opinion should be made known to the Department involved in this bid request at least five (5) day prior to the scheduled bid opening date; with a copy forwarded to the Finance Department.

Brand names and numbers are for reference only and equivalents will be considered. If bidding "EQUIVALENT" Bidder must be prepared to furnish complete data upon request, preferably with the bid to avoid awarding delay.

**CONTRACT**

When the City issues a Purchase Order in response to an awarded Bid a binding contract is created (unless a specific contract has been created).

**TERMINATION**

This Price Agreement may be terminated by either party upon signing a written notice to the other party at least thirty (30) days in advance of the date of termination. Notice of termination of this Price Agreement shall not affect any outstanding orders.

**TAXES:**

Bidder must pay all applicable taxes.

**NOTE:**

If bidder is from outside the City of Las Vegas, the successful bidder must pay Gross Receipts Tax in the City of Las Vegas.

**CITY OF LAS VEGAS  
BIDFORM**

**BID ITEM (S): VALLEY & CHAVEZ STREET GAS LINE REPLACEMENT**

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A.	_____	\$	_____
B.	_____	\$	_____
C.	_____	\$	_____
D.	_____	\$	_____
E.	_____	\$	_____
F.	_____	\$	_____
G.	_____	\$	_____
H.	_____	\$	_____
I.	_____	\$	_____
J.	_____	\$	_____
K.	_____	\$	_____
L.	_____	\$	_____

***NOTE:***

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## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a bid or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

**THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

**"Applicable public official"** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed bid or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive bid.

**"Campaign Contribution"** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**"Contract"** means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

**"Family member"** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

**"Pendency of the procurement process"** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**"Person"** means any corporation, partnership, individual, joint venture, association or any other private legal entity.

**"Prospective contractor"** means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

**"Representative of a prospective contractor"** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

**DISCLOSURE OF CONTRIBUTIONS:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Name of Applicable Public Official: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_

(The above fields are unlimited in size) \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)

-OR-

**NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE** to an applicable public official by me, a family member or representative.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (Position)

Copy

CITY OF LAS VEGAS  
RFP/BID/OPENING

DATE: 1-May-2019

OPENING NO.: 2019-11

TIME: 2:00 PM

DEPARTMENT: UTILITIES

LOCATION: City of Las Vegas Chambers  
1700 N. Grand Ave.  
Las Vegas, NM 87701

ITEM(S): VALLEY & CHAVEZ STREET  
GAS LINE REPLACEMENT

RECEIVED FROM:	AMOUNT	SUB CONTRACTOR LIST	BID BOND	AFFIDAVIT NOTARIZED	CAMPAIGN DISC. FORM
1 DUB-LEE LLC	241,689.67		✓	✓	✓
2 HAYS PLUMBING & HEATING	205,750.00		✓	✓	✓
3					
4					
5					
6					

COMPANY REPRESENTATIVE

COMPANY NAME

Dominic Chang	CLV
Randy Hays	HAYS ID 4
Jonah Ruybalid	molzera corb, 4
Jon Jones	JK Associates, Inc.
Helen Vigil	CLV Purchasing
Yupri Supodaca	CLV Utility
Man Chlan	CLV P/M
Debrajuey	CLV Gas
Shah	CLV Gas

(use other side of form when full)

ORIGINALS TAKEN BY CITY CLERK:

Yupri Supodaca  
DATE: 5/1/19

OPENED BY: FINANCE DEPARTMENT

Yupri Supodaca  
DATE: 5/1/19

COPIES TAKEN BY DEPT:

Man Chlan  
DATE: 5/1/19

Bid Tabulation  
Valley & Chavez Street Gas Line Replacement  
City of Las Vegas

Lot No. 1		Description		Unit	Qty	Engineer's Estimate		Hays Plumbing & Heating, Inc.		DUB-L-EE, LLC	
Item No.						Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1			Mobilization	LS	1	\$15,000.00	\$15,000.00	\$10,000.00	\$10,000.00	\$2,040.06	\$2,040.06
2			Demobilization and Cleanout	LS	1	\$3,000.00	\$3,000.00	\$5,000.00	\$5,000.00	\$2,040.06	\$2,040.06
3			Construction Staking	LS	1	\$1,500.00	\$1,500.00	\$500.00	\$500.00	\$515.02	\$515.02
4			Traffic/Pedestrian Control	LS	1	\$7,500.00	\$7,500.00	\$5,000.00	\$5,000.00	\$2,575.08	\$2,575.08
5			Concrete Removal and Disposal	SY	60	\$16.00	\$960.00	\$15.75	\$945.00	\$27.78	\$1,666.80
6			Prevent Removal and Disposal	SY	625	\$10.00	\$6,250.00	\$9.60	\$6,000.00	\$7.64	\$4,775.00
7			Curb and Gutter Removal	LF	125	\$10.00	\$1,250.00	\$7.00	\$875.00	\$20.23	\$2,528.75
8			4-inch Concrete Sidelwalk including Subgrade Prep, CIP	SY	60	\$65.00	\$3,900.00	\$60.00	\$3,600.00	\$71.62	\$4,297.20
9			24" Concrete Curb and Gutter	LF	125	\$25.00	\$3,125.00	\$18.00	\$2,250.00	\$44.40	\$5,550.00
10			4" HMA SP-IV 6" Base Course, 12" Subgrade Prep including compaction, CIP	SY	625	\$45.00	\$28,125.00	\$60.00	\$37,500.00	\$23.71	\$14,818.75
11			2" HDPE Gas Pipe, including all fittings, tracer wire, warning tapes, materials	LF	1,200	\$4.00	\$4,800.00	\$4.50	\$5,400.00	\$3.05	\$3,660.00
12a			Trench and Backfill, including installation of new gas pipe (estimated 18' trench depth)	LF	1,200	\$14.00	\$16,800.00	\$9.00	\$10,800.00	\$58.19	\$69,828.00
12b			Trench and Backfill, including installation of new gas pipe (estimated 18' trench depth) and rock excavation	CF	1,500	\$21.00	\$31,500.00	\$6.00	\$9,000.00	\$11.83	\$17,745.00
13			Gas service line including 1 inch HDPE service pipe, tapping tee, excess flow valve, tracer wire, caution tape, anodeless riser, and gas valve	EA	25	\$600.00	\$15,000.00	\$800.00	\$20,000.00	\$377.84	\$9,446.00
14a			Trench and Backfill, including installation including handwork of new gas service pipe	LF	500	\$12.00	\$6,000.00	\$20.00	\$10,000.00	\$89.53	\$44,765.00
14b			Trench and Backfill, including installation including handwork of new gas service pipe and rock excavation	CF	750	\$21.00	\$15,750.00	\$10.00	\$7,500.00	\$11.72	\$8,790.00
15			Pipe Bedding materials	CY	135	\$18.00	\$2,430.00	\$18.00	\$2,430.00	\$48.96	\$6,609.60
16			All work associated with abandoning or removing existing gas service line	EA	25	\$250.00	\$6,250.00	\$250.00	\$6,250.00	\$51.50	\$1,287.50
17			Provide connections to existing gas line	EA	5	\$2,500.00	\$12,500.00	\$1,000.00	\$5,000.00	\$1,030.03	\$5,150.15
18			Cap ends of existing gas line and any work associated with abandoning line in place	LS	1	\$5,000.00	\$5,000.00	\$500.00	\$500.00	\$1,287.54	\$1,287.54
19			Pressure Test 2" gas line	LF	1,200	\$1.60	\$1,920.00	\$1.00	\$1,200.00	\$1.72	\$2,064.00
20			Pressure Test service line	LF	500	\$1.60	\$800.00	\$1.00	\$500.00	\$4.12	\$2,060.00
21			Traffic Control	LS	1	\$7,500.00	\$7,500.00	\$5,000.00	\$5,000.00	\$5,150.16	\$5,150.16
22			Relocation of Underground Utilities	ALLOW	1	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
23			Laboratory Testing Allowance	ALLOW	1	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
24			Pre-Authorized Construction Changes	ALLOW	1	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00
						\$719,860.00	\$719,860.00	\$205,750.00	\$205,750.00	\$241,689.67	\$241,689.67
						\$18,459.01	\$18,459.01	\$17,274.56	\$17,274.56	\$20,291.78	\$20,291.78
						\$238,319.01	\$238,319.01	\$223,024.56	\$223,024.56	\$261,981.45	\$261,981.45
						Subtotal		Gross Receipts Tax @ 8.3958%			
						\$719,860.00	\$719,860.00	\$205,750.00	\$205,750.00	\$241,689.67	\$241,689.67
						\$18,459.01	\$18,459.01	\$17,274.56	\$17,274.56	\$20,291.78	\$20,291.78
						\$238,319.01	\$238,319.01	\$223,024.56	\$223,024.56	\$261,981.45	\$261,981.45
						TOTAL		TOTAL			

For Ranking Purposes: Resident Contractor Pref. (5%):		Yes: 5%	No
For Ranking Purposes: Resident Veteran Contractor Pref. (10%):		Yes: 5%	No
BID AMOUNT RANKING AFTER PREFERENCE:		Yes: 5%	No
		No	#1
		No	#2

I hereby certify that the above figures are the same as those submitted in the Bid Proposals except for corrected items marked with an (\*)

Jon Jones, P.E. \_\_\_\_\_ Date

**BID EVALUATION SUMMARY**

BID DATE: May 1, 2019  
 ENGINEER: Molzen-Corbin & Associates

OWNER: City of Las Vegas  
 PROJECT: Valley & Chavez Street Gas Line Replacement

	HAYS PLUMBING & HEATING	DUB-L-EE,LLC
Bid Signed?	Yes	Yes
Bid bond provided?	Yes	Yes
Contractor's License No noted in Bid	8243	373895
NMDOL Registration No.	002369720111209	1746820150218
Verification of Contractor's License and Classifications per NM Construction Industries	EL01, ES03, ES04, ES05, ES06, GA01, GB98, GF02, GF03, GF04, GF05, GF09, GF98, MM98	GA02, GA03, GB98, GF08, GF09, MM98
Subcontractors Listed in Bid	No subs	No subcontractor list in bid
Are subcontractors registered with NMDOL	N/A	N/A
Does Bidder have required Classifications as Determined by NM Construction Industries?	Yes	Yes
Verification of Bid Bond	Insurors Indemnity Company NAIC# 43273 with the underwriting limitation of \$2,106,000.00	Granite Re, Inc. NAIC# 26310 with the underwriting limitation of \$4,157,000.00
Total Base Bid Amount excluding NMGR	\$205,750.00	\$241,689.67
Resident Contractor Preference?	Yes	No
Resident Veteran Contractor Preference?	No	No
Amount with Preferences	\$195,462.50	\$241,689.67
Bid Amount Correct?	Yes	Yes

**NOTE: Verification with New Mexico Construction Industries per the Internet.**

**BID FORM**

PROJECT IDENTIFICATION: Valley & Chavez Street Gas Line Replacement

**ARTICLE 1 – BID RECIPIENT**

1.01 This Bid is submitted to: City of Las Vegas  
1700 N. Grand Avenue  
Las Vegas, New Mexico 87701

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

**ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS**

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner. Bidder will sign and submit the Agreement and the Bonds and other documents required by the Bidding Requirements within ten days after the date of Owner's Notice of Award.

**ARTICLE 3 – BIDDER’S REPRESENTATIONS**

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in

SC-4.02, and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in SC-4.06.

- E. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 3.01.E above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

#### **ARTICLE 4 – BIDDER'S CERTIFICATION**

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

## ARTICLE 5 – BASIS OF BID

5.01 Bidder shall complete the Work in accordance with the Contract Documents for the following price(s):

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
1	Mobilization	LS	1	\$ 2060.06	\$ 2060.06
2	Demobilization and Closeout	LS	1	\$ 2060.06	\$ 2060.06
3	Construction Staking	LS	1	\$ 515.02	\$ 515.02
4	Traffic/Pedestrian Control	LS	1	\$ 2575.08	\$ 2575.08
5	Concrete Removal and Disposal	SY	60	\$ 27.78	\$ 1,666.80
6	Pavement Removal and Disposal	SY	625	\$ 7.64	\$ 4,775.00
7	Curb and Gutter Removal	LF	125	\$ 20.23	\$ 2,528.75
8	4-inch Concrete Sidewalk including Subgrade Prep, CIP	SY	60	\$ 71.62	\$ 4,297.20
9	24" Concrete Curb and Gutter	LF	125	\$ 44.40	\$ 5,550.00
10	4" HMA SP-IV, 6" Base Course, 12" Subgrade Prep including compaction, CIP	SY	625	\$ 23.71	\$ 14,818.75
11	2" HDPE Gas Pipe, including all fittings, tracer wire, warning tape, materials	LF	1,200	\$ 3.05	\$ 3,660.00
12a	Trench and Backfill, including installation of new gas pipe (estimated 18" trench depth)	LF	1,200	\$ 58.19	\$ 69,828.00
12b	Trench and Backfill, including installation of new gas pipe (estimated 18" trench depth) and rock excavation	CF	1,500	11.83	17,745.00
13	Gas service line including 1 inch HDPE service pipe, tapping tee, excess flow valve, tracer wire, caution tape, anodeless riser, and gas valve	EA	25	\$ 377.84	\$ 9,446.00
14a	Trench and Backfill, including installation including handwork of new gas service pipe	LF	500	\$ 89.53	\$ 44,765.00
14b	Trench and Backfill, including installation including handwork of new gas service pipe and rock excavation	CF	750	\$ 11.72	\$ 8790.00
15	Pipe bedding materials	CY	135	\$ 48.96	\$ 6609.60
16	All work associated with abandoning or removing existing gas service line	EA	25	\$ 51.50	\$ 1287.50

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
17	Provide connections to existing gas line	EA	5	\$ 1030.03	\$ 5150.15
18	Cap ends of existing gas line and any work associated with abandoning line in place	LS	1	\$ 1287.54	\$ 1287.54
19	Pressure Test 2" gas line	LF	1200	1.72	2064.00
20	Pressure Test service Line	LF	500	4.12	2060.00
21	Traffic Control	LS	1	5150.16	5150.16
22	Relocation of Underground Utilities	ALLOW	1	\$ 5,000.00	\$ 5,000.00
23	Laboratory Testing Allowance	ALLOW	1	\$ 3,000.00	\$ 3,000.00
24	Pre-Authorized Construction Changes	ALLOW	1	\$ 15,000.00	\$ 15,000.00

TOTAL BID AMOUNT (Exclusive of New Mexico Gross Receipts Tax)

\$ 241,689.67

Unit Prices have been computed in accordance with Paragraph 11.03.B of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

5.02 This Contract will be awarded on the basis of the lowest responsive total Bid received from a responsible Bidder. If the lowest acceptable Bid exceeds available funds, the Owner retains the right to reject all Bids or negotiate a change of scope with the lowest responsive Bidder. Owner may only negotiate up to 10% higher than the budgeted project funds. Such negotiation shall not be allowed if the lowest Bid is more than 10% over the budgeted project funds. If a change of scope is negotiated and effected, it will be in the form of a formal Change Order to the Contract. If these conditions are not satisfied, the Owner is required to reject all Bids and re-bid the project to comply with State procurement requirements.

5.03 This Contract includes two (2) preferences for the award of the Bid: (1) New Mexico Resident Contractor Preference and (2) Resident Veterans Preference Certification.

A. To receive a Resident Contractor preference pursuant to Section 13-4-2 NMSA 1978 or a Resident Veteran Contractor preference pursuant to Section 13-1-21 NMSA 1978, a Bidder shall submit with its Bid a copy of a valid Resident Contractor Certificate or Resident Veteran Contractor Certificate issued by the Taxation and Revenue Department. In addition, if the Bidder is seeking the Resident Veteran Contractor preference, the Bidder shall submit with its Bid the Resident Veterans Preference Certification form.

B. For the purpose of awarding, the following shall apply:

1. A Bid submitted by a Resident Contractor shall be deemed to be five percent (5%) lower than the Bid actually submitted.
2. A Bid submitted by a Resident Veteran Contractor with annual revenues of up to Three Million Dollars (\$3,000,000) in the preceding tax year shall be deemed to be ten percent (10%) lower than the Bid actually submitted.

3. A public body shall not award a Bidder both a Resident Contractor preference and a Resident Veteran Contractor preference.
4. When a Joint Bid is submitted by a combination of Resident Veteran and Resident or Nonresident Contractor, the preference shall be calculated in proportion to the percentage of the Contract, based on the dollar amount of the Bid provided under the Contract that will be performed by each business as specified in the Joint Bid.

For information on obtaining a Resident Contractor Certificate or Resident Veteran Certificate, the potential Bidder should contact the State of New Mexico Taxation and Revenue Department, P.O. Box 5373, Santa Fe, New Mexico 87502-5374, telephone (505) 827-0951, or on the web at <http://www.tax.newmexico.gov/forms-and-publications/pages/recently-updated.aspx>.

- 5.04 Gross receipts tax rates will be adjusted by the Contractor during the construction period to reflect the actual applicable rates issued by the New Mexico Taxation and Revenue Department.

#### **ARTICLE 6 – TIME OF COMPLETION**

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

#### **ARTICLE 7 – ATTACHMENTS TO THIS BID**

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid Security
  - B. List of Proposed Subcontractors for compliance with New Mexico Subcontractor's Fair Practices Act
  - C. Resident Contractor Certificate issued by the Taxation and Revenue Department (if seeking preference)
  - D. Resident Veteran Contractor Certificate issued by the Taxation and Revenue Department (if seeking preference)

#### **ARTICLE 8 – DEFINED TERMS**

- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

**ARTICLE 9 – BID SUBMITTAL**

9.01 This Bid is submitted by:

If Bidder is:

An Individual

Name (typed or printed): \_\_\_\_\_

By: \_\_\_\_\_

(Individual's signature)

Doing business as: \_\_\_\_\_

A Partnership

Partnership Name: \_\_\_\_\_

By: \_\_\_\_\_

(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

A Corporation

Corporation Name: DUB-LEE, LLC (SEAL)

State of Incorporation: New Mexico

Type (General Business, Professional, Service, Limited Liability): LLC

By: [Signature]

(Signature -- attach evidence of authority to sign)

Name (typed or printed): Edward W. Saiz

Title: President

(CORPORATE SEAL)

Attest \_\_\_\_\_

A Joint Venture

Name of Joint Venture: \_\_\_\_\_

First Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

Second Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature of second joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address 98 Hwy 66 East  
Albuquerque, NM 87123

Phone No. (505) 292-1684 Fax No. (505) 717-2599

E-mail esaiz@dub-tee.com

SUBMITTED on May 1, 2019.

9.02 Contractor License Information:

New Mexico Contractor's License Number 373895

License Classifications GA02, GA03, GB98, GF09, MM98

New Mexico Department of Workforce Solutions Registration Number 1746820150218

Federal Identification Number (FEIN #) 45-4953530

**ARTICLE 10 – PREFERENCES**

10.01 Resident Contractor Preference:

Is Bidder claiming Resident Contractor Preference? NO

If Yes, provide a copy of your Resident Contractor Certificate issued by the Taxation and Revenue Department.

10.02 Resident Veteran Contractor Preference:

Is Bidder claiming Resident Veteran Contractor Preference? NO

If Yes, provide a copy of your Resident Veteran Contractor Certificate issued by the Taxation and Revenue Department.

**BID BOND**

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

**BIDDER** (Name and Address):  
DUB-L-EE, LLC  
98 Highway 66E  
Albuquerque, NM 87123-9587

**SURETY** (Name and Address of Principal Place of Business):  
Granite Re, Inc.  
14001 Quailbrook Dr.  
Oklahoma City, OK 73134

**OWNER** (Name and Address):  
City of Las Vegas  
1700 N. Grand Avenue  
Las Vegas, NM 87701

**BID**  
Bid Due Date: May 1, 2019  
Description (Project Name and Include Location): Valley And Chavez Street Gas Line Replacement  
Las Vegas, NM

**BOND**  
Bond Number: BID  
Date (Not later than Bid due date): May 1, 2019  
Penal sum Five Percent Of The Amount Bid (Words) \$ 5% (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

**BIDDER**  
DUB-L-EE, LLC  
\_\_\_\_\_  
Bidder's Name and Corporate Seal

**SURETY**  
Granite Re, Inc. (Seal) \_\_\_\_\_ (Seal)  
Surety's Name and Corporate Seal

By: \_\_\_\_\_  
Signature  
Eddie Saiz Sr.  
\_\_\_\_\_  
Print Name  
Managing Member  
\_\_\_\_\_  
Title

By: *Susan J. Vance*  
\_\_\_\_\_  
Signature (Attach Power of Attorney)  
Susan J. Vance  
\_\_\_\_\_  
Print Name  
Attorney-In-Fact  
\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Title

Note: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.



**BIDDER INFORMATION**

OFFEROR: Hays Plumbing & Heating, Inc.

AUTHORIZED AGENT: Gordon Hays, President

ADDRESS: 600 Railroad Ave. Las Vegas, NM 87701

TELEPHONE NUMBER (505) 425-7535

FAX NUMBER ( ) \_\_\_\_\_

DELIVERY: \_\_\_\_\_

STATE PURCHASING RESIDENT CERTIFICATION NO.: L1311969232

NEW MEXICO CONTRACTORS LICENSE NO.: 8243

BID ITEM (S): VALLEY & CHAVEZ STREET GAS LINE REPLACEMENT

ITEM (S) UNDER THIS BID ARE TO BE F.O.B. LAS VEGAS, NEW MEXICO 87701. THE CITY OF LAS VEGAS RESERVES THE RIGHT REJECT ANY OR ALL BIDS AND TO WAIVE ANY TECHNICAL IRREGULARITY IN THE FORM OF THE BID.

**AFFIDAVIT FOR FILING WITH COMPETITIVE BID**

STATE OF New Mexico }

} ss

COUNTY OF San Miguel }

I, Gordon Hays of lawful age, being of first duly sworn in oath, say that I am the agent authorized by the bidder to submit the attached bid. Affiant further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any city official or employee as to the terms of said prospective contract, or any other terms of said prospective contract; or in any discussion between bidders with any city official concerning an exchange of money or any other thing of value for special consideration in the letting of a contract.

Gordon Hays  
Signature

Subscribed and sworn to before me, this 1st day of May, 2019.

[Signature]  
Notary Public Signature

(SEAL)  
OFFICIAL SEAL  
DIANE TRUJILLO  
NOTARY PUBLIC-State of New Mexico  
My Commission Expires 4-16-23

My Commission Expires: 04-16-2023

order to be considered. After bid opening, no price modifications of submitted bids or other provisions shall be permitted.

**WITHDRAWAL OF BID**

A low Bidder alleging a material mistake of fact, after bids have been opened may request their bid be withdrawn upon receipt of a written request to the Finance Department prior to the scheduled awarding date.

**INSPECTION**

Final inspection and acceptance will be made at the City's discretion. Products rejected for nonconformance with the specifications shall be removed by the Bidder; at his/her risk and expense promptly after notice of rejection.

**FEDERAL TAX IDENTIFICATION NUMBER**

Pursuant to IRS requirements, Bidder shall provide their Federal Tax ID Number if Bidder is incorporated. If Bidder is a sole proprietorship or partnership they then shall provide their Social Security Number.

FEDERAL TAX ID NUMBER: 85-0168958  
SOCIAL SECURITY NUMBER: \_\_\_\_\_

**NEW MEXICO TAX IDENTIFICATION NUMBER**

Payment may be withheld under (Section 7-10-5, N.M.S.A. 1978) if you are subject to New Mexico Gross Receipts Tax and have not registered for New Mexico (CRS) Tax Identification Number. Contact the New Mexico Taxation & Revenue Department at (505) 827-0700 for registering instructions.

NEW MEXICO TAX IDENTIFICATION NO. (CRS): 01-705574-001

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a bid or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

**THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

**"Applicable public official"** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed bid or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive bid.

**"Campaign Contribution"** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**"Contract"** means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

**"Family member"** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

**"Pendency of the procurement process"** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**"Person"** means any corporation, partnership, individual, joint venture, association or any other private legal entity.

**"Prospective contractor"** means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

**"Representative of a prospective contractor"** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

**DISCLOSURE OF CONTRIBUTIONS:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Name of Applicable Public Official: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_

(The above fields are unlimited in size) \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)

-OR-

**NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE** to an applicable public official by me, a family member or representative.

  
\_\_\_\_\_  
Signature

05/01/2019  
\_\_\_\_\_  
Date

President  
\_\_\_\_\_  
Title (Position)

**BID FORM**

**PROJECT IDENTIFICATION:** Valley & Chavez Street Gas Line Replacement

**ARTICLE 1 – BID RECIPIENT**

1.01 This Bid is submitted to: City of Las Vegas  
1700 N. Grand Avenue  
Las Vegas, New Mexico 87701

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

**ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS**

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner. Bidder will sign and submit the Agreement and the Bonds and other documents required by the Bidding Requirements within ten days after the date of Owner’s Notice of Award.

**ARTICLE 3 – BIDDER’S REPRESENTATIONS**

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

## ARTICLE 5 – BASIS OF BID

5.01 Bidder shall complete the Work in accordance with the Contract Documents for the following price(s):

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
1	Mobilization	LS	1	\$ 10,000.00	\$ 10,000.00
2	Demobilization and Closeout	LS	1	\$ 5,000.00	\$ 5,000.00
3	Construction Staking	LS	1	\$ 500.00	\$ 500.00
4	Traffic/Pedestrian Control	LS	1	\$ 5,000.00	\$ 5,000.00
5	Concrete Removal and Disposal	SY	60	\$ 15.75	\$ 945.00
6	Pavement Removal and Disposal	SY	625	\$ 9.60	\$ 6,000.00
7	Curb and Gutter Removal	LF	125	\$ 7.00	\$ 875.00
8	4-inch Concrete Sidewalk including Subgrade Prep, CIP	SY	60	\$ 60.00	\$ 3,600.00
9	24" Concrete Curb and Gutter	LF	125	\$ 18.00	\$ 2,250.00
10	4" HMA SP-IV, 6" Base Course, 12" Subgrade Prep including compaction, CIP	SY	625	\$ 80.00	\$ 50,000.00
11	2" HDPE Gas Pipe, including all fittings, tracer wire, warning tape, materials	LF	1,200	\$ 4.50	\$ 5,400.00
12a	Trench and Backfill, including installation of new gas pipe (estimated 18" trench depth)	LF	1,200	\$ 9.00	\$ 10,800.00
12b	Trench and Backfill, including installation of new gas pipe (estimated 18" trench depth) and rock excavation	CF	1,500	6.00	9,000.00
13	Gas service line including 1 inch HDPE service pipe, tapping tee, excess flow valve, tracer wire, caution tape, anodeless riser, and gas valve	EA	25	\$ 800.00	\$ 20,000.00
14a	Trench and Backfill, including installation including handwork of new gas service pipe	LF	500	\$ 20.00	\$ 10,000.00
14b	Trench and Backfill, including installation including handwork of new gas service pipe and rock excavation	CF	750	\$ 30.00	\$ 22,500.00
15	Pipe bedding materials	CY	135	\$ 18.00	\$ 2,430.00
16	All work associated with abandoning or removing existing gas service line	EA	25	\$ 250.00	\$ 6,250.00

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
17	Provide connections to existing gas line	EA	5	\$ 1,000.00	\$ 5,000.00
18	Cap ends of existing gas line and any work associated with abandoning line in place	LS	1	\$ 500.00	\$ 500.00
19	Pressure Test 2" gas line	LF	1200	1.00	1,200.00
20	Pressure Test service Line	LF	500	1.00	500.00
21	Traffic Control	LS	1	5,000.00	5,000.00
22	Relocation of Underground Utilities	ALLOW	1	\$ 5,000.00	\$ 5,000.00
23	Laboratory Testing Allowance	ALLOW	1	\$ 3,000.00	\$ 3,000.00
24	Pre-Authorized Construction Changes	ALLOW	1	\$ 15,000.00	\$ 15,000.00

**TOTAL BID AMOUNT (Exclusive of New Mexico Gross Receipts Tax) \$ 205,750.00**

Unit Prices have been computed in accordance with Paragraph 11.03.B of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

5.02 This Contract will be awarded on the basis of the lowest responsive total Bid received from a responsible Bidder. If the lowest acceptable Bid exceeds available funds, the Owner retains the right to reject all Bids or negotiate a change of scope with the lowest responsive Bidder. Owner may only negotiate up to 10% higher than the budgeted project funds. Such negotiation shall not be allowed if the lowest Bid is more than 10% over the budgeted project funds. If a change of scope is negotiated and effected, it will be in the form of a formal Change Order to the Contract. If these conditions are not satisfied, the Owner is required to reject all Bids and re-bid the project to comply with State procurement requirements.

5.03 This Contract includes two (2) preferences for the award of the Bid: (1) New Mexico Resident Contractor Preference and (2) Resident Veterans Preference Certification.

A. To receive a Resident Contractor preference pursuant to Section 13-4-2 NMSA 1978 or a Resident Veteran Contractor preference pursuant to Section 13-1-21 NMSA 1978, a Bidder shall submit with its Bid a copy of a valid Resident Contractor Certificate or Resident Veteran Contractor Certificate issued by the Taxation and Revenue Department. In addition, if the Bidder is seeking the Resident Veteran Contractor preference, the Bidder shall submit with its Bid the Resident Veterans Preference Certification form.

B. For the purpose of awarding, the following shall apply:

1. A Bid submitted by a Resident Contractor shall be deemed to be five percent (5%) lower than the Bid actually submitted.
2. A Bid submitted by a Resident Veteran Contractor with annual revenues of up to Three Million Dollars (\$3,000,000) in the preceding tax year shall be deemed to be ten percent (10%) lower than the Bid actually submitted.

**ARTICLE 9 – BID SUBMITTAL**

9.01 This Bid is submitted by:

If Bidder is:

An Individual

Name (typed or printed): \_\_\_\_\_

By: \_\_\_\_\_  
(Individual's signature)

Doing business as: \_\_\_\_\_

A Partnership

Partnership Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of general partner -- attach evidence of authority to sign)

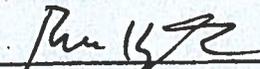
Name (typed or printed): \_\_\_\_\_

A Corporation

Corporation Name: Hays Plumbing & Heating, Inc. (SEAL)

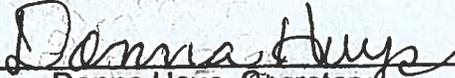
State of Incorporation: New Mexico

Type (General Business, Professional, Service, Limited Liability): \_\_\_\_\_

By:   
(Signature – attach evidence of authority to sign)

Name (typed or printed): Randy Hays

Title: Treasurer  
(CORPORATE SEAL)

Attest   
Donna Hays, Secretary

**A Joint Venture**

Name of Joint Venture: \_\_\_\_\_

First Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

Second Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature of second joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address 600 Railroad Ave. Las Vegas, NM 87701

Phone No. 505-425-7535 Fax No. \_\_\_\_\_

E-mail hays\_plumbing@hotmail.com

SUBMITTED on May 1, 2019.

9.02 Contractor License Information:

New Mexico Contractor's License Number 8243

License Classifications EL01, ES03, ES04, ES05, ES06, GA01, GB98, GF02, GF03, GF04, GF05, GF09, GF98, MM98

New Mexico Department of Workforce Solutions Registration Number 002369720111209

Federal Identification Number (FEIN #) 85-0168958

**ARTICLE 10 – PREFERENCES**

10.01 Resident Contractor Preference:

Is Bidder claiming Resident Contractor Preference? YES

If Yes, provide a copy of your Resident Contractor Certificate issued by the Taxation and Revenue Department.

10.02 Resident Veteran Contractor Preference:

Is Bidder claiming Resident Veteran Contractor Preference? \_\_\_\_\_

If Yes, provide a copy of your Resident Veteran Contractor Certificate issued by the Taxation and Revenue Department.

**LIST OF PROJECT SUBCONTRACTORS FOR  
AMOUNTS EXCEEDING THE LISTING THRESHOLD**

---

**Subcontract Category**                     No Subcontractors                      
**Estimated Value of Work** \_\_\_\_\_  
**Subcontractor's Name** \_\_\_\_\_  
**Business Address** \_\_\_\_\_  
\_\_\_\_\_  
**Phone Number** \_\_\_\_\_  
**E-mail Address** \_\_\_\_\_  
**Federal Identification No. (FEIN #)** \_\_\_\_\_  
**New Mexico Contractor's License No.** \_\_\_\_\_  
**License Categories** \_\_\_\_\_  
**New Mexico Dept. of Workforce Solutions Registration No.** \_\_\_\_\_  
(list only if value of work is in excess of \$60,000)

---

**Subcontract Category** \_\_\_\_\_  
**Estimated Value of Work** \_\_\_\_\_  
**Subcontractor's Name** \_\_\_\_\_  
**Business Address** \_\_\_\_\_  
\_\_\_\_\_  
**Phone Number** \_\_\_\_\_  
**E-mail Address** \_\_\_\_\_  
**Federal Identification No. (FEIN #)** \_\_\_\_\_  
**New Mexico Contractor's License No.** \_\_\_\_\_  
**License Categories** \_\_\_\_\_  
**New Mexico Dept. of Workforce Solutions Registration No.** \_\_\_\_\_  
(list only if value of work is in excess of \$60,000)

---

P&C 877 282 1625  
Bonds 800 933 7444

225 South Fifth Street  
PO Box 2683  
Waco, Texas 76702-2683

## BID BOND (NEW MEXICO)

Bond No. CNB-33976-00

KNOW ALL MEN BY THESE PRESENTS:

THAT we, Hays Plumbing & Heating, Inc, as Principal, hereinafter called the Principal, and INSURORS INDEMNITY COMPANY, Waco, Texas, as Surety, hereinafter called the Surety, are held and firmly bound unto City of Las Vegas, as Obligee, hereinafter called the Obligee, in the amount of 5 % of the amount of this bid not to exceed 5% of the Greatest Amount Bid Dollars (\$ 5% of G.A.B ), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the principal has submitted a bid for

1,200 L.F. of gas line appurtenances, replace existing line pavement, curb, gutter, sidewalk removal

NOW, THEREFORE, If the contract be timely awarded to the Principal and the Principal shall within such time as specified in the bid, enter into a contract in writing and give bond with good and sufficient surety, or, in the event of the failure of the Principal to enter into such Contract and give such bond or bonds; if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect

PROVIDED, HOWEVER, unless the bid documents require the bid security remain in effect for a longer period of time, Surety shall have no liability hereon if a contract for the bid amount is not awarded to Principal within 60 days of the date hereof.

SIGNED, SEALED AND DATED this 1st day of May, 2019.

Principal:

Hays Plumbing & Heating, Inc

(Seal)

By: Borden Hoy

(title)

Surety:

INSURORS INDEMNITY COMPANY

(Seal)

By: Sherryl L. Quint

Sherryl L. Quint, Attorney-in-Fact

## IMPORTANT NOTICE - AVISO IMPORTANTE

To obtain information or make a complaint:

You may call Insurors Indemnity Company's toll-free telephone number for information or to make a complaint at:

1-877-816-2800

You may also write to Insurors Indemnity Company at:

P.O. Box 32577  
Waco, TX 76703-4200  
Or  
225 South Fifth Street  
Waco, TX 76701

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at

1-800-252-3439

You may write the Texas Department of Insurance at:

Consumer Protection (111-1A)  
P.O. Box 149091  
Austin, TX 78714-9091  
Fax: 512-490-1007

Web: <http://www.tdi.texas.gov>

E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

### PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the agent or the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

### ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de Insurors Indemnity Company's para informacion o para someter una queja al

1-877-816-2800

Usted tambien puede escribir a Insurors Indemnity Company:

P.O. Box 32577  
Waco, TX 76703-4200  
O  
225 South Fifth Street  
Waco, TX 76701

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

Consumer Protection (111-1A)  
P.O. Box 149091  
Austin, TX 78714-9091  
Fax: 512-490-1007

Web: <http://www.tdi.texas.gov>

E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

### DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concemiente a su prima o a un reclamo, debe comunicarse con el agente o la compania primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

### UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

**POWER OF ATTORNEY of INSURORS INDEMNITY COMPANY  
Waco, Texas**

**KNOW ALL PERSONS BY THESE PRESENTS:**

**Number:** CNB-33976-00

That INSURORS INDEMNITY COMPANY, Waco, Texas, organized and existing under the laws of the State of Texas, and authorized and licensed to do business in the State of Texas and the United States of America, does hereby make, constitute and appoint

Sherry L. Quint of the City of Albuquerque, State of NM

as Attorney in Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, all of the following classes of document, to-wit:

Indemnity, Surety and Undertakings that may be desired by contract, or may be given in any action or proceeding in any court of law or equity; Indemnity in all cases where indemnity may be lawfully given and with full power and authority to execute consents and waivers to modify or change or extend any bond or document executed for this Company.

INSURORS INDEMNITY COMPANY

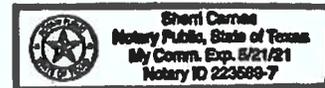
Attest: Tammy Tieperman  
Tammy Tieperman, Secretary

By: Dave E. Talbert  
Dave E. Talbert, President

State of Texas  
County of McLennan

On the 11<sup>th</sup> day of November, 2014, before me a Notary Public in the State of Texas, personally appeared Dave E. Talbert and Tammy Tieperman, who being by me duly sworn, acknowledged that they executed the above Power of Attorney in their capacities as President, and Corporate Secretary, respectively, of Insurors Indemnity Company, and acknowledged said Power of Attorney to be the voluntary act and deed of the Company.

Sherry Carnes  
Notary Public, State of Texas



Insurors Indemnity Company certifies that this Power of Attorney is granted under and by authority of the following resolutions of the Company adopted by the Board of Directors on November 11, 2014:

RESOLVED, that all bonds, undertakings, contracts or other obligations may be executed in the name of the Company by persons appointed as Attorney in Fact pursuant to a Power of Attorney issued in accordance with these Resolutions. Said Power of Attorney shall be executed in the name and on behalf of the Company either by the Chairman and CEO or the President, under their respective designation. The signature of such officer and the seal of the Company may be affixed by facsimile to any Power of Attorney, and, unless subsequently revoked and subject to any limitation set forth therein, any such Power of Attorney or certificate bearing such facsimile signature and seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signature and seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached.

RESOLVED, that Attorneys in Fact shall have the power and authority, subject to the terms and limitations of the Power of Attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and any such instrument executed by such Attorneys in Fact shall be binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary or Assistant Secretary of the Company.

I, Tammy Tieperman, Secretary of Insurors Indemnity Company, do hereby certify that the foregoing is a true excerpt from the Resolutions of the said Company as adopted by its Board of Directors on November 11, 2014, and that this Resolution is in full force and effect. I certify that the foregoing Power of Attorney is in full force and effect and has not been revoked.

In Witness Whereof, I have set my hand and the seal of INSURORS INDEMNITY COMPANY on this 1st day of May, 2019.

Tammy Tieperman  
Tammy Tieperman, Secretary

NOTE: IF YOU HAVE ANY QUESTION REGARDING THE VALIDITY OR WORDING OF THIS POWER OF ATTORNEY, PLEASE CALL 800 933 7444 OR WRITE TO US AT P. O. BOX 2683, WACO, TEXAS 76702-2683 OR EMAIL US AT [CONFIRMATION@INSURORS.COM](mailto:CONFIRMATION@INSURORS.COM).

**RESOLUTION**

**WHEREAS**, all of the shareholders and officers of Hays Plumbing and Heating, Inc., a New Mexico for profit corporation (the "Corporation"), met to discuss their desire to bestow upon the shareholders and officers of the Corporation named herein, the authority to enter into agreements, legal or otherwise, on behalf of and binding upon the Corporation.

**UPON** motion duly made and seconded, it is

**RESOLVED** that the shareholders and directors of Hays Plumbing and Heating, Inc., and the Corporation hereby consent and agree that Gordon Hays as President, Jason Dale as Vice President, Randy Joe Hays as Treasurer, and Donna Hays as Secretary of the Corporation, hold the requisite authority to execute and enter into any and all agreements, contracts, and other documents, legal or otherwise, for the management and operation of the Corporation, on behalf of and binding upon the Corporation.

Dated: January 4, 2019

By: Gordon Hays  
Gordon Hays, President  
Hays Plumbing and Heating, Inc.

By: Jason Dale  
Jason Dale, Vice President  
Hays Plumbing and Heating, Inc.

By: Randy Joe Hays  
Randy Joe Hays, Treasurer  
Hays Plumbing and Heating, Inc.

By: Donna Hays  
Donna Hays, Secretary  
Hays Plumbing and Heating, Inc.

**STATE OF NEW MEXICO**

TAXATION AND REVENUE DEPARTMENT

**RESIDENT CONTRACTOR CERTIFICATE**

Issued to: HAYS PLUMBING & HEATING INC  
DBA: HAYS PLUMBING & HEATING INC  
600 RAILROAD AVE  
LAS VEGAS, NM 87701-4531

Expires: **14-Feb-2021**

Certificate Number:

**L0517511984**



John Monforte, Acting Cabinet Secretary

THIS CERTIFICATE IS NOT TRANSFERABLE

# STATE OF NEW MEXICO

## CONSTRUCTION INDUSTRIES DIVISION

### HAYS PLUMBING & HEATING, INC

LICENSE NUMBER

**8243**

Qualifying Party(S)

HAYS RANDY  
HAYS RANDY  
DALE JASON OLE  
HAYS HOWARD L.

EXPIRES

**08/31/2021**

CLASSIFICATION(S)

-EL01, ES03, ES04, ES05  
-ES06, GA01, GB98, GF02  
-GF03, GF04, GF05, GF09  
-GF98, MM98



*Martin Romero*

DIRECTOR

This card is the property of the CID and shall be surrendered upon demand

# *Certificate of Contractor Registration*



This is to certify that

## **Hays Plumbing & Heating, Inc.**

600 RAILROAD AVE

LAS VEGAS, NM, 87701-4531

has registered with the Department of Workforce Solutions

**Registration Date: 1/11/2019**

**Registration Number: 002369720111209**

**This certificate does not show the current status of the company.  
To see the current status for this company please go to the Public Works  
and Apprenticeship Application (PWAA) at  
<https://www.dws.state.nm.us/pwaa>**

CITY COUNCIL MEETING AGENDA REQUEST

DATE 6/11/19

DEPT: Police

MEETING DATE: 6/19/19

ITEM/TOPIC: Resolution # 19-17 to transfer the following vehicles to New Mexico Highlands University Police/Security Department:

- 2008 Ford Crown Victoria Police Interceptor VIN# 2FAFP71V98X139037
- 2008 Ford Crown Victoria Police Interceptor VIN# 2FAFP71V18X139077
- 2007 Ford Crown Victoria Police Interceptor VIN# 2FAFP71WX7X126773
- 1996 Dodge Van VIN# 2B74B21Y8TK136005

**ACTION REQUESTED OF COUNCIL:** Approval / Disapproval of Resolution # 19-17 to transfer the above mentioned vehicles to New Mexico Highlands University Police / Security Department.

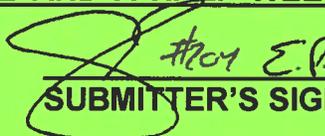
**BACKGROUND/RATIONALE:**

The Las Vegas Police Department wishes to transfer four vehicles to New Mexico Highlands University Police/Security Department. Said vehicles are excess and have no value to the Police Department and would serve a much needed purpose to New Mexico Highlands University Police/Security Department.

**STAFF RECOMMENDATION:** Approval of Resolution # 19-17

**COMMITTEE RECOMMENDATION:**

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

  
SUBMITTER'S SIGNATURE

**REVIEWED AND APPROVED BY:**

  
TONITA GURULE-GIRON  
MAYOR

\_\_\_\_\_  
TANA VEGA, INTERIM  
FINANCE DIRECTOR  
(PROCUREMENT)

  
ANN MARIE GALLEGOS,  
INTERIM CITY MANAGER

\_\_\_\_\_  
PURCHASING AGENT  
(FOR BID/RFP AWARD)

\_\_\_\_\_  
ESTHER GARDUNO MONTOYA,  
CITY ATTORNEY  
(ALL CONTRACTS MUST BE  
REVIEWED)

CITY OF LAS VEGAS

RESOLUTION NUMBER 19-17

A RESOLUTION DONATING TWO 2008 FORD CROWN VICTORIA POLICE INTERCEPTOR, ONE 2007 FORD CROWN VICTORIA POLICE INTERCEPTOR, AND ONE 1996 DODGE VAN BELONGING TO THE CITY LAS VEGAS TO NEW MEXICO HIGHLANDS UNIVERSITY POLICE / SECURITY DEPARTMENT AND DIRECTING THE CITY OF LAS VEGAS POLICE DEPARTMENT TO TRANSFER SAID PROPERTY TO NEW MEXICO HIGHLANDS UNIVERSITY POLICE / SECURITY DEPARTMENT.

WHEREAS, the City of Las Vegas wishes to transfer said vehicles to New Mexico Highlands University, and are described as follows:

2008 Ford Crown Victoria Police Interceptor VIN# 2FAFP71V98X139037 – mileage 112605

2008 Ford Crown Victoria Police Interceptor VIN# 2FAFP71V18X139047 – odometer broken

2007 Ford Crown Victoria Police Interceptor VIN# 2FAFP71WX7X126773 – mileage 114447

1996 Dodge Van VIN# 2B74B21Y8TK136005 – mileage 65545

WHEREAS, the following described item is property, which is excess and not needed for any essential government function, it is no longer being used by the City of Las Vegas Police Department.

WHEREAS, when this property is transferred to another agency, it shall be understood that the property listed above may or may not meet current standards. The City of Las Vegas shall not be responsible for any cost associated with bringing said equipment up to standards, and the City of Las Vegas shall be released from any liability associated with this equipment.

WHEREAS, the receiving agency accepts this equipment on an “AS IS” basis, and accepts any and all costs associated with bringing said equipment up to standards prior to placing equipment in to service.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS VEGAS, NEW MEXICO, that the above described item belonging to the City of Las Vegas Police Department is hereby declared excess property and not needed for any City purpose of function and that said property should be transferred.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF LAS VEGAS:

\_\_\_\_\_  
Tonita Gurule-Giron, Mayor

ATTEST:

\_\_\_\_\_  
Casandra Fresquez, City Clerk

Approved as to Legal Sufficiency Only

\_\_\_\_\_  
Esther Garduno Montoya, City Attorney



City of Las Vegas

318 Moreno Street • Las Vegas New Mexico 87701 • Ph# (505) 425-7504 • Fax # (505) 425-6346



David T. Bibb III  
Chief of Police

TO: Tana Vega, Finance Department

Thru: David T. Bibb III *David T. Bibb III*  
3-28-19

From: *Eric N. Padilla*  
Eric N. Padilla  
Commander

DATE: March 28, 2019

RE: Disposition of Police Department Vehicles

Mrs. Vega,

Listed are several vehicles that have become of no use or of value to the Las Vegas Police Department. They are high mileage and were not purchased by any federal grant monies. These vehicles are still operable. We have been updating our fleet and wish to dispose of the vehicles, and if possible transfer or donate to a governmental agency within San Miguel Country, which may have use for them. New Mexico Highlands University Police Department (NMHUPD) and Luna Community College (LCC) have asked for the police department to assist them in donating transfer our excess vehicles. Listed next to the vehicles information will have NMHUPD or LCC on which we will donate transfer over. We would like this unusable property to go through the proper resolution process for a smooth transfer to NMHUPD and LCC.

- NMHUPD 2008 Ford Crown Victoria PIU VIN# 2FAFP71V98X139037
- NMHUPD 2008 Ford Crown Victoria PIU VIN# 2FAFP71V18X139047
- NMHUPD 2007 Ford Crown Victoria PIU VIN# 2FAFP71WX7X126773
- NMHUPD 1996 Dodge Van VIN# 2B74B21Y8TK136005
- LCC 2007 Ford Crown Victoria PIU VIN# 2FAFP71W07X126765

Thank you for your attention to this matter.

XC: Marla Martinez, Finance Specialist  
File



**NMHU**  
**Police/Security Department**  
**PO Box 9000, Las Vegas, NM 87701**  
**505-454-3278**

Clarence Romero  
Chief NMHU  
Las Vegas, N.M. 87701  
March 13, 2019

David T. Bibb III  
Chief of Police  
Las Vegas Police Department  
318 Moreno Street  
Las Vegas, N.M. 87701

Dear David T. Bibb III:

As per our conversation, I truly appreciate your generous offer in reaching out to New Mexico Highlands University Police /Security Department to assist in obtaining vehicles in your inventory that are excess property and have no value to your department. The following vehicles that we talked about as follows:

2008 Ford Crown Victoria Police Interceptor VIN#2FAFP71V98X139037

2008 Ford Crown Victoria Police Interceptor VIN#2FAFP71V18X139077

2007 Ford Crown Victoria Police Interceptor VIN#2FAFP71WX7X126773

1996 Dodge Van VIN#2B74B21Y8TK136005

These vehicles would be transferred over to our department as is and our department would take over all maintenance and other cost associated to make them part of police/security inventory property.

In the mean- time please let me know how I can assist in the matter.

Sincerely,

Clarence Romero Chief NMHU Police/Security

**CITY COUNCIL MEETING AGENDA REQUEST**

**DATE: 06/11/2019**

**DEPT: Fire Department**

**MEETING DATE: 06/19/2019**

**ITEM/TOPIC:** Resolution No. 19-26 for the approval of a loan agreement and closing documents between the City of Las Vegas New Mexico and the New Mexico Finance Authority that was initiated during the March 20, 2019 Council meeting.

**ACTION REQUESTED OF COUNCIL:** *Approval*

**BACKGROUND/RATIONALE:** The Las Vegas Fire Department is moving forward in replacing an aging Fire Apparatus at an estimated cost \$403,677.00. The loan amount from New Mexico Finance Authority is \$219,196.00.

**STAFF RECOMMENDATION:** Approval

**COMMITTEE RECOMMENDATION:** N/A

**THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.**

  
SUBMITTER'S SIGNATURE

**REVIEWED AND APPROVED BY:**

  
TONITA GURULE-GIRON  
MAYOR

\_\_\_\_\_  
TANA VEGA, INTERIM  
FINANCE DIRECTOR  
(PROCUREMENT)

  
ANN MARIE GALLEGOS,  
INTERIM CITY MANAGER

\_\_\_\_\_  
PURCHASING AGENT  
(FOR BID/RFP AWARD)

\_\_\_\_\_  
ESTHER GARDUNO MONTOYA,  
CITY ATTORNEY  
(ALL CONTRACTS MUST BE  
REVIEWED)

SUTIN THAYER  BROWNE  
A PROFESSIONAL CORPORATION  
LAWYERS

IRWIN S. MOISE (1906-1984)  
LEWIS R. SUTIN (1908-1992)  
FRANKLIN JONES (1919-1994)  
RAYMOND W. SCHOWERS (1948-1995)  
GRAHAM BROWNE (1935-2003)  
NORMAN S. THAYER (1933-2018)  
STEPHEN CHARNAS (1934-2018)

ROBERT G. HEYMAN (Of Counsel)

ANDREW J. BARANOWSKI  
LILIANA BENITEZ DE LUNA  
ANNE P. BROWNE  
SUZANNE WOOD BRUCKNER

STEFAN R. CHACÓN  
MARIA MONTOYA CHAVEZ  
OSCAR COBOS  
EDUARDO A. DUFFY  
TINA MUSCARELLA GOOCH  
JESSE D. HALE  
SUSAN M. HAPKA  
WADE L. JACKSON  
DAVID H. JOHNSON  
ROBERT J. JOHNSTON  
JACQUELINE K. KAFKA  
CHRISTINA M. LOONEY  
STEVAN DOUGLAS LOONEY

DEBORAH E. MANN  
BRANA L. MEECH  
LYNN E. MOSTOLLER  
CHARLES J. PIECHOTA  
JAY D. ROSENBLUM  
FRANK C. SALAZAR  
JUSTIN R. SAWYER  
ANDREW J. SIMONS  
MARIPOSA PADILLA SIVAGE  
BENJAMIN E. THOMAS  
L. CURTIS VERNON

6100 UPTOWN BLVD NE, SUITE 400  
ALBUQUERQUE, NEW MEXICO 87110  
POST OFFICE BOX 1945  
ALBUQUERQUE, NEW MEXICO 87103  
505-883-2500  
FAX 505-888-6565

150 WASHINGTON AVE, SUITE 210  
SANTA FE, NEW MEXICO 87501  
POST OFFICE BOX 2187  
SANTA FE, NEW MEXICO 87504  
505-988-5521  
FAX 505-982-5297

WWW.SUTINFIRM.COM

June 10, 2019

**FEDERAL EXPRESS**

Ms. Casandra Fresquez, City Clerk  
Ms. Tana Vega, Interim Finance Director  
1700 North Grand Ave.  
Las Vegas, New Mexico 87701

**New Mexico Finance Authority Loan (PPRF-4952)**

Dear Casandra and Tana:

Enclosed are final versions of the documents listed below for the loan from the New Mexico Finance Authority. The documents, except for the Resolution, are dated July 26, 2019, which is the date the loan will close. The signature pages have been marked for execution by the City officials designated.

1. **Resolution** - for completion of the quorum and vote information on pages 1 and 12, and for signature by the Mayor and City Clerk on the marked pages— please seal as well and add the meeting agenda as Exhibit A. I only need a copy of this. You may retain the original in your records.
2. **Loan Agreement** - for signature by the Mayor and City Clerk – please seal as well.
3. **Intercept Agreement** - for signature by the Mayor and City Clerk – please seal as well.
4. **General and No Litigation Certificate** - for signature by the Mayor, Interim Finance Director, City Clerk, and the City Attorney – please seal as well.
5. **Delivery, Deposit and Cross-Receipt Certificate** - for signature by the Mayor, Interim Finance Director and City Clerk – please seal as well.
6. **Arbitrage and Tax Certificate** – for signature by the Mayor, Interim Finance Director and City Clerk – please seal as well.
7. **Form 8038-G** – for signature by the Mayor.

June 10, 2019  
Page 2

Please have each of the signature pages signed and sealed where designated and return all of the documents and signature pages to me by **Monday, July 1, 2019**.

Thank you for your assistance in this process. If you have any questions, please don't hesitate to call me at (505) 883-3313.

Very truly yours,

SUTIN, THAYER & BROWNE  
A Professional Corporation

By   
Stacy Camacho  
Paralegal  
Albuquerque Office

Enclosures  
5122816.docx

**SUTIN THAYER & BROWNE**  
A PROFESSIONAL CORPORATION  
LAWYERS

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WWW.SUTINFIRM.COM

July 26, 2019

New Mexico Finance Authority  
207 Shelby St.  
Santa Fe, NM 87501

City of Las Vegas  
1700 North Grand Ave.  
Las Vegas, NM 87701

\$219,196 New Mexico Finance Authority  
Loan to City of Las Vegas, New Mexico  
(PPRF-4952)

Ladies and Gentlemen:

We have acted as Loan Counsel to the New Mexico Finance Authority (the "Finance Authority") in connection with the \$219,196 Loan Agreement (the "Loan Agreement") between the City of Las Vegas, New Mexico (the "Governmental Unit") and the Finance Authority. The Loan Agreement is executed and delivered by the Governmental Unit pursuant to Sections 3-31-1 through 3-31-12 and Sections 59A-53-1 through 59A-53-19, NMSA 1978, as amended, and the Governmental Unit's Resolution No. 19-26, adopted on June 19, 2019 (the "Resolution"). The Loan Agreement has been executed and delivered to provide funds for purchasing a new firefighting apparatus and related equipment and to pay the Processing Fee, as described in the Loan Agreement.

We have examined the Loan Agreement, Resolution and such other law and certified proceedings and other documents as we deem necessary to deliver this opinion. As to all questions of fact material to the opinions set forth herein, we have relied upon representations of the Governmental Unit contained in the Resolution and certified proceedings and other documents furnished to us, without undertaking to verify the same by independent investigation. In addition, we have relied upon statements of law made by the Governmental Unit's legal counsel in the certified proceedings.

Based on our examination, we are of the opinion that, under existing laws, regulations, rulings and judicial decisions as of the date hereof, subject to the provisions of federal bankruptcy law and other laws affecting creditors' rights and further subject to the exercise of

July 26, 2019

Page 2

judicial discretion in accordance with general principles of equity and the assumptions, qualifications and limitations contained in this opinion:

1. The Resolution creates a valid and binding special limited obligation of the Governmental Unit enforceable in accordance with its terms and creates the pledge of the State Fire Protection funds (the “Pledged Revenues”) which it purports to create.

2. The Loan Agreement is a valid and binding special limited obligation of the Governmental Unit, enforceable in accordance with its terms and provisions and the terms and provisions of the Resolution.

3. The Loan Agreement is a valid and binding special limited obligation of the Finance Authority, enforceable against the Finance Authority in accordance with its terms and provisions.

4. The Loan Agreement is payable solely from, and such payment is secured by a valid and binding first lien (but not an exclusive first lien) on the Pledged Revenues and on a parity with the lien thereon of other outstanding obligations secured by a first lien on the Pledged Revenues as set forth in the Loan Agreement. The Finance Authority has no right to have taxes levied by the Governmental Unit for the payment of principal of or interest on the Loan Agreement and the Loan Agreement does not represent or constitute a debt or a pledge of, or a charge against, the general credit of the Governmental Unit.

5. Assuming continuing compliance by the Finance Authority and the Governmental Unit with the requirements of the Internal Revenue Code of 1986, as amended (the “Code”), with the covenants of the Governmental Unit regarding the use, expenditure and investment of Loan Agreement proceeds and assuming the accuracy of certain representations of the Finance Authority and the Governmental Unit, interest on the Loan Agreement is excludable from gross income of the owners of the Loan Agreement for purposes of federal income taxation. Failure of the Governmental Unit to comply with its covenants and with the requirements of the Code may cause interest on the Loan Agreement to become includable in gross income for federal income tax purposes retroactive to the date of the Loan Agreement.

6. Interest on the Loan Agreement is excluded from net income of the owners thereof for State of New Mexico income tax purposes.

7. The Loan Agreement may be pledged as an “Additional Pledged Loan” or as a “Loan” under the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and BOKF, NA, as successor trustee (the “Trustee”), or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a pledge notification or supplemental indenture.

July 26, 2019

Page 3

We express no opinion with respect to the provisions of the Loan Agreement and the Resolution with respect to indemnification, provisions requiring that amendments be in writing or payment of attorneys' fees. Other than as described in this opinion, we have not addressed nor are we opining on the tax consequences to any person of the investment in, or the receipt of interest on, the Loan Agreement.

This opinion letter is limited to matters expressly stated in this opinion letter and no opinion is inferred or may be implied beyond the matters expressly stated in this opinion letter.

We express no opinion as to, or the effect or applicability of, any laws other than the laws of the State of New Mexico and the federal laws of the United States of America. The opinions expressed herein are based only on the laws in effect as of the date hereof, and in all respects are subject to and may be limited by future legislation, as well as developing case law. We undertake no obligation to update or modify this opinion for any future events or occurrences, including, but not limited to, determining or confirming continuing compliance by the Finance Authority and the Governmental Unit with the requirements of the Code.

The foregoing opinions represent our legal judgment based upon a review of existing legal authorities that we deem relevant to render such opinions and are not a guarantee of results.

We understand that this opinion is being relied upon by the addressees hereof, and we consent to such reliance, but this opinion may not be delivered to or relied upon by any other person or entity without our written consent.

Very truly yours,

SUTIN, THAYER & BROWNE  
A Professional Corporation

\$219,196  
CITY OF LAS VEGAS, NEW MEXICO  
NEW MEXICO FINANCE AUTHORITY  
PUBLIC PROJECT REVOLVING FUND LOAN  
Loan No. PPRF-4952

Closing Date: July 26, 2019

TRANSCRIPT OF PROCEEDINGS  
INDEX

1. Open Meeting Act Resolution No. 19-01 adopted January 16, 2019
2. Loan Resolution No. 19-26, adopted June 19, 2019, Agenda, and the Affidavit of Publication of the Notice of Adoption of Resolution in the *Las Vegas Optic*
3. Loan Agreement
4. Intercept Agreement
5. General and No Litigation Certificate
6. Arbitrage and Tax Certificate with Form 8038-G and evidence of filing and Finance Authority Tax Representations Certificate
7. Delivery, Deposit and Cross-Receipt Certificate
8. Approving Opinion of Sutin, Thayer & Browne A Professional Corporation, Loan Counsel to the Finance Authority
9. Finance Authority Application and Project Approval (informational only)

TRANSCRIPT DISTRIBUTION LIST

City of Las Vegas, New Mexico  
New Mexico Finance Authority  
BOKF, NA  
Sutin, Thayer & Browne A Professional Corporation

STATE OF NEW MEXICO  
CITY OF LAS VEGAS  
SAN MIGUEL COUNTY

The City Council (the "Governing Body") of the City of Las Vegas, New Mexico, met in regular session in full conformity with law and the rules and regulations of the Governing Body at Council Chambers, 1700 North Grand Ave., Las Vegas, New Mexico 87701, being the meeting place of the Governing Body for the regular meeting held on June 19, 2019, at the hour of 6:00 p.m. Upon roll call, the following members were found to be present:

Present:

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Absent:

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Also Present:

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Thereupon, there was officially filed with the City Clerk a copy of a proposed resolution in final form.

CITY OF LAS VEGAS, NEW MEXICO  
RESOLUTION NO. 19-26

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF LAS VEGAS, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF \$219,196 TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF PURCHASING A NEW FIREFIGHTING APPARATUS AND RELATED EQUIPMENT FOR THE GOVERNMENTAL UNIT, PAYING A LOAN PROCESSING FEE, AND PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTION OF STATE FIRE PROTECTION FUND REVENUES DISTRIBUTED BY THE STATE TREASURER TO THE GOVERNMENTAL UNIT PURSUANT TO SECTION 59A-53-7, NMSA 1978; PROVIDING FOR THE DISTRIBUTION OF STATE FIRE PROTECTION FUND REVENUES TO BE REDIRECTED BY THE STATE TREASURER TO THE FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND INTERCEPT AGREEMENT; SETTING THE MAXIMUM INTEREST RATE OF THE LOAN; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Resolution unless the context requires otherwise.

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing municipality under the general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and its residents that the Loan Agreement and Intercept Agreement be executed and delivered and that the financing of the acquisition of the Project take place by executing and delivering the Loan Agreement and Intercept Agreement; and

WHEREAS, the Governmental Unit may use the Pledged Revenues to finance the Project; and

WHEREAS, the Governing Body has determined pursuant to the Act that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement; and

WHEREAS, other than as described in Exhibit "A" to the Loan Agreement, the Pledged Revenues have not been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the full faith and credit of the Governmental Unit or the State; and

WHEREAS, the Governmental Unit desires to provide that distributions of the Pledged Revenues be redirected to the Finance Authority or its assigns pursuant to the Intercept Agreement between the Governmental Unit and the Finance Authority (the "Intercept Agreement") for the payment of amounts due under the Loan Agreement; and

WHEREAS, other than the Pledged Revenues, no tax revenues collected by the Governmental Unit shall be pledged to the Loan Agreement; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Resolution and the forms of the Loan Agreement and Intercept Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Governing Body intends by this Resolution to authorize the execution and delivery of the Loan Agreement in the amount and for the purposes set forth herein; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority (or its assigns) for the payment of the amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement and Intercept Agreement which are required to have been obtained by the date of this Resolution, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS VEGAS, NEW MEXICO:

Section 1. Definitions. As used in this Resolution, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Act" means the general laws of the State, Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, Sections 59A-53-1 through 59A-53-19, NMSA 1978, as amended, and enactments of

the Governing Body relating to the Loan Agreement and Intercept Agreement, including this Resolution.

“Aggregate Annual Debt Service Requirement” means the total principal and interest payments due and payable pursuant to the Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

“Authorized Officers” means the Mayor, Mayor Pro Tem, City Clerk, Finance Director or Interim Finance Director.

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse the Loan Agreement.

“Closing Date” means the date of execution, delivery and funding of the Loan Agreement.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

“Completion Date” means the date of final payment of the cost of the Project.

“Distributing State Agency” means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues on behalf of the Governmental Unit.

“Expenses” means the cost of issuance of the Loan Agreement and the costs of issuance of the Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority in administering the Loan Agreement, including legal fees.

“Finance Authority” means the New Mexico Finance Authority.

“Finance Authority Debt Service Account” means the debt service account in the name of the Governmental Unit established under the Indenture and held by the Finance Authority to pay principal and interest, if any, on the Loan Agreement as the same become due.

“Fiscal Year” means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit as its fiscal year.

“Governing Body” means the City Council of the Governmental Unit, or any future successor governing body of the Governmental Unit.

“Governmental Unit” means the City of Las Vegas, New Mexico.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to this entire Resolution and not solely to the particular section or paragraph of this Resolution in which such word is used.

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, as successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

“Intercept Agreement” means the Intercept Agreement, dated the Closing Date, between the Governmental Unit and Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

“Loan” means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

“Loan Agreement” means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee and any amendments or supplements thereto, and including the exhibits attached to the Loan Agreement.

“Loan Agreement Principal Amount” means the original principal amount of the Loan Agreement as shown on the Term Sheet.

“NMSA” means the New Mexico Statutes Annotated, 1978, as amended and supplemented.

“Parity Obligations” means the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on parity with the Loan Agreement, including those obligations described on the Term Sheet.

“Pledged Revenues” means the State Fire Protection Fund revenues distributed to the Governmental Unit, which is utilizing the Project and benefiting from the Loan Agreement, which distribution is made periodically by the State Treasurer pursuant to Section 59A-53-7, NMSA 1978, as amended, in the amount certified by the State Fire Marshal or the New Mexico Public Regulation Commission.

“Processing Fee” means the processing fee to be paid on the Closing Date by the Governmental Unit to the Finance Authority for the costs of originating and servicing the Loan, as shown on the Term Sheet.

“Program Account” means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of the Loan Agreement for disbursement to the Governmental Unit for payment of the costs of the Project.

“Project” means the project described on the Term Sheet.

“Resolution” means this Resolution No. 19-26 adopted by the Governing Body on June 19, 2019, approving the Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement as shown on the Term Sheet, as supplemented and amended from time to time.

“State” means the State of New Mexico.

“Term Sheet” means Exhibit “A” to the Loan Agreement.

“Trustee” means BOKF, NA, Albuquerque, New Mexico, or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

Section 2. Ratification. All actions heretofore taken (not inconsistent with the provisions of this Resolution) by the Governing Body and officers of the Governmental Unit directed toward the acquisition of the Project and the execution and delivery of the Loan Agreement and the Intercept Agreement, be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Project, the Loan Agreement and the Intercept Agreement. The acquisition of the Project and the method of financing the Project through execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Governmental Unit.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Governmental Unit and its residents and the issuance and delivery of the Loan Agreement is necessary and advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the cost of acquiring the Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

D. It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

E. The Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety and welfare of the residents of the Governmental Unit.

F. The Governmental Unit will acquire the Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from the Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement and the Intercept Agreement.

H. The net effective interest rate on the Loan does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Loan Agreement and Intercept Agreement - Authorization and Detail.

A. Authorization. This Resolution has been adopted by the affirmative vote of at least a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and acquiring the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and the Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount of \$219,196 plus interest thereon, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the acquisition of the Project; (ii) pay the Processing Fee; and (iii) make a deposit to the Finance Authority Debt Service Account. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Loan shall be in an original aggregate principal amount of \$219,196, shall be payable in installments of principal due on May 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on November 1 and May 1 of each year, beginning on November 1, 2020, at the rates designated in Exhibit "B" to the Loan Agreement.

Section 6. Approval of Loan Agreement and Intercept Agreement. The forms of the Loan Agreement and the Intercept Agreement, as presented at the meeting of the Governing Body at which this Resolution was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and the Intercept Agreement, with such changes, insertions and omissions that are consistent with this Resolution as may be approved by such individual Authorized Officers, and the City Clerk is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and the Intercept Agreement and attest the same. The execution of the Loan Agreement and the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Resolution and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Resolution or in the Loan Agreement, or any

other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Resolution, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefore to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds: Completion of Acquisition of the Project.

A. Program Account, Finance Authority Debt Service Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held by the Finance Authority and to the Program Account to be held by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves: (i) the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account; and (ii) the payment of the Processing Fee to the Finance Authority, all as set forth in Exhibit "A" to the Loan Agreement.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Program Account and Finance Authority Debt Service Account and the Processing Fee shall be paid to the Finance Authority, all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the purpose of acquiring the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will acquire the Project with all due diligence.

B. Completion of Acquisition of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that acquisition of and payment for the Project have been completed. As soon as practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

C. Finance Authority and Trustee Not Responsible. The Finance Authority and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues, Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. Pursuant to the Intercept Agreement, Pledged Revenues shall be paid directly by the Distributing State Agency to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay the principal and interest due under the Loan Agreement.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amount in the Finance Authority Debt Service Account totals a sum at least equal to the entire aggregate amount to become due as to principal, interest on, and any other amounts due under, the Loan Agreement in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section and any payments required by outstanding Parity Obligations, any moneys remaining in the Finance Authority Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged to, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest and any other amounts due under the Loan Agreement, subject to the uses hereof permitted by and the priorities set forth in this Resolution. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues as set forth herein and therein and the Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Resolution, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution, the Loan Agreement and Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the publication of the summary of this Resolution set out in Section 17 of this Resolution (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Resolution. Prior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Resolution may be supplemented or amended by resolution of the Governing Body with respect to any changes which are not

inconsistent with the substantive provisions of this Resolution. This Resolution may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Resolution Irrepealable. After the Loan Agreement and Intercept Agreement have been executed and delivered, this Resolution shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as herein provided.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 15. Repealer Clause. All bylaws, orders, resolutions, and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Resolution, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Resolution (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and said Resolution shall be in full force and effect thereafter, in accordance with law.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Resolution shall be published in substantially the following form:

(Form of Summary of Resolution for Publication)

City of Las Vegas, New Mexico  
Notice of Adoption of Resolution

Notice is hereby given of the title and of a general summary of the subject matter contained in Resolution No. 19-26, duly adopted and approved by the Governing Body of the City of Las Vegas, New Mexico, on June 19, 2019. A complete copy of the Resolution is available for public inspection during the normal and regular business hours of the City Clerk, 1700 North Grand Ave., Las Vegas, New Mexico 87701.

The title of the Resolution is:

CITY OF LAS VEGAS, NEW MEXICO  
RESOLUTION NO. 19-26

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF LAS VEGAS, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF \$219,196 TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF PURCHASING A NEW FIREFIGHTING APPARATUS AND RELATED EQUIPMENT FOR THE GOVERNMENTAL UNIT, PAYING A LOAN PROCESSING FEE, AND PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTION OF STATE FIRE PROTECTION FUND REVENUES DISTRIBUTED BY THE STATE TREASURER TO THE GOVERNMENTAL UNIT PURSUANT TO SECTION 59A-53-7, NMSA 1978; PROVIDING FOR THE DISTRIBUTION OF STATE FIRE PROTECTION FUND REVENUES TO BE REDIRECTED BY THE STATE TREASURER TO THE FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND INTERCEPT AGREEMENT; SETTING THE MAXIMUM INTEREST RATE OF THE LOAN; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

A general summary of the subject matter of the Resolution is contained in its title. This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

PASSED, APPROVED AND ADOPTED THIS JUNE 19, 2019.

CITY OF LAS VEGAS, NEW MEXICO

By \_\_\_\_\_  
Tonita Gurulé-Girón, Mayor

[SEAL]

ATTEST:

By \_\_\_\_\_  
Casandra Fresquez, City Clerk

Councilor \_\_\_\_\_ then moved adoption of the foregoing Resolution, duly seconded by Councilor \_\_\_\_\_.

The motion to adopt said Resolution, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Those Voting Nay: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Those Absent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ ( ) members of the Governing Body having voted in favor of said motion, the Mayor declared said motion carried and said Resolution adopted, whereupon the Mayor and the City Clerk signed the Resolution upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Resolution, the meeting on the motion duly made, seconded and unanimously carried, was adjourned.

CITY OF LAS VEGAS, NEW MEXICO

By \_\_\_\_\_  
Tonita Gurulé-Girón, Mayor

[SEAL]

ATTEST:

By \_\_\_\_\_  
Casandra Fresquez, City Clerk

**EXHIBIT "A"**

Meeting Agenda  
of the June 19, 2019  
City Council Meeting

(See attached)

STATE OF NEW MEXICO  
CITY OF LAS VEGAS  
SAN MIGUEL COUNTY

I, Casandra Fresquez, the duly qualified and acting City Clerk of the City of Las Vegas, New Mexico (the “Governmental Unit”), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council of the City of Las Vegas, New Mexico (the “Governing Body”), constituting the governing body of the Governmental Unit had and taken at a duly called regular meeting held at Council Chambers, 1700 North Ave., Las Vegas, New Mexico 87701, on June 19, 2019, at the hour of 6:00 p.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement and Intercept Agreement, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of said meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the Governmental Unit’s open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 19<sup>th</sup> day of June, 2019.

CITY OF LAS VEGAS, NEW MEXICO

By \_\_\_\_\_  
Casandra Fresquez, City Clerk

[SEAL]

5085961.docx

\$219,196

LOAN AGREEMENT

dated

July 26, 2019

by and between

NEW MEXICO FINANCE AUTHORITY

and the

CITY OF LAS VEGAS, NEW MEXICO

Certain interests of the New Mexico Finance Authority under this Loan Agreement may be assigned to BOKF, NA as trustee under the Indenture, as defined in Article I of this Loan Agreement.

## LOAN AGREEMENT

THIS LOAN AGREEMENT dated July 26, 2019, is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), and the CITY OF LAS VEGAS, NEW MEXICO (the "Governmental Unit"), a political subdivision duly organized and existing under the laws of the State of New Mexico (the "State").

### WITNESSETH:

WHEREAS, the Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized and created under and pursuant to the laws of the State, particularly Section 6-21-1 et seq., NMSA 1978, as amended (the "Finance Authority Act"); and

WHEREAS, one of the purposes of the Finance Authority Act is to implement a program to permit qualified entities, such as the Governmental Unit, to enter into agreements with the Finance Authority to facilitate financing of public projects; and

WHEREAS, the Governmental Unit is a political subdivision duly organized and existing under and pursuant to the laws of the State and is a qualified entity under the Finance Authority Act; and

WHEREAS, the Governing Body of the Governmental Unit, has determined that it is in the best interests of the Governmental Unit and its residents that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan from the Finance Authority to finance the costs of purchasing a new firefighting apparatus and related equipment as more fully described on the Term Sheet attached hereto as Exhibit "A"; and

WHEREAS, the Act authorizes the Governmental Unit to use the Pledged Revenues to finance the Project and to enter into this Loan Agreement; and

WHEREAS, the Finance Authority has determined that the Project is important to the overall capital needs of the residents of the State and that the Project will directly enhance the health and safety of the residents of the Governmental Unit; and

WHEREAS, the Governmental Unit is a disadvantaged qualified entity within the meaning of Section 8(B)(4)(b) of the Finance Authority's Amended and Restated Rules and Regulations Governing the Public Project Revolving Fund Program.

WHEREAS, the Governmental Unit has entered into the Intercept Agreement by and between the Finance Authority and the Governmental Unit whereby the Pledged Revenues due to the Governmental Unit from the Distributing State Agency are intercepted by the Finance Authority, or the Trustee, as its assignee, to make payments due under this Loan Agreement; and

WHEREAS, the Finance Authority may assign and transfer this Loan Agreement to the Trustee pursuant to the Indenture; and

WHEREAS, except as described on the Term Sheet, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose at the time of the execution and delivery of this Loan Agreement, and the Governmental Unit desires to pledge the Pledged Revenues toward the payment of this Loan Agreement; and

WHEREAS, the obligation of the Governmental Unit hereunder shall constitute a special, limited obligation of the Governmental Unit, limited to the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of the Governmental Unit or a charge against the general credit or ad valorem taxing power of the Governmental Unit or the State; and

WHEREAS, the execution, performance and delivery of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Governing Body pursuant to the Resolution; and

WHEREAS, the execution and performance of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Finance Authority; and

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the parties hereto agree:

#### ARTICLE I DEFINITIONS

Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Loan Agreement, unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Loan Agreement, including the foregoing recitals, unless the context clearly requires otherwise.

“Act” means the general laws of the State, including Sections 3-31-1 through 3-31-12 and Sections 59A-53-1 through 59A-53-19, NMSA 1978, as amended, and enactments of the Governing Body relating to this Loan Agreement and Intercept Agreement, including the Resolution.

“Additional Payment Obligations” mean payments in addition to Loan Agreement Payments required by this Loan Agreement, including, without limitation, payments required pursuant to the provisions of Article IX and Article X hereof.

“Aggregate Annual Debt Service Requirement” means the total principal, interest, and premium payments, if any, due and payable pursuant to this Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

“Authorized Officers” means, in the case of the Governmental Unit, Mayor, Mayor Pro Tem, City Clerk, Finance Director or Interim Finance Director and, in the case of the Finance Authority, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

“Blended Interest Rate” means the rate of interest on this Loan Agreement as shown on the Term Sheet.

“Bond Counsel” means nationally recognized bond counsel experienced in matters of municipal law satisfactory to the Trustee and listed in the list of municipal bond attorneys, as published semi-annually by The Bond Buyer’s Municipal Marketplace, or any successor publication, acting as Loan Counsel to the Finance Authority.

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse the Loan Agreement.

“Closing Date” means the date of execution, delivery and funding of this Loan Agreement as shown on the Term Sheet.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

“Distributing State Agency” means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Governmental Unit.

“Event of Default” means one or more events of default as defined in Section 10.1 of this Loan Agreement.

“Expenses” means the costs of issuance of this Loan Agreement and the Bonds, if any, and periodic and regular fees and expenses incurred by the Finance Authority in administering this Loan Agreement, including legal fees.

“Finance Authority Debt Service Account” means the debt service account established in the name of the Governmental Unit within the Debt Service Fund, as defined in the Indenture, held and administered by the Finance Authority to pay principal and interest, if any, on this Loan Agreement as the same become due.

“Fiscal Year” means the period beginning on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit as its fiscal year.

“Governing Body” means the duly organized City Council of the Governmental Unit and any successor governing body of the Governmental Unit.

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

“Independent Accountant” means: (i) an accountant employed by the State and under the supervision of the State Auditor; or (ii) any certified public accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the Governmental Unit who (a) is, in fact, independent and not under the domination of the Governmental Unit; (b) does not have any substantial interest, direct or indirect, with the Governmental Unit; and (c) is not connected with the Governmental Unit as an officer or employee of the Governmental Unit, but who may be regularly retained to make annual or similar audits of the books or records of the Governmental Unit.

“Intercept Agreement” means the Intercept Agreement, dated July 26, 2019, between the Governmental Unit and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of the Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, and any amendments or supplements to the Intercept Agreement.

“Interest Component” means the portion of each Loan Agreement Payment paid as interest on this Loan Agreement as shown on Exhibit “B” hereto.

“Loan” means the funds in the Loan Agreement Principal Amount to be loaned to the Governmental Unit by the Finance Authority pursuant to this Loan Agreement.

“Loan Agreement” means this loan agreement and any amendments or supplements hereto, including the exhibits attached to this loan agreement.

“Loan Agreement Balance” means, as of any date of calculation, the Loan Agreement Principal Amount less the aggregate principal amount paid or prepaid pursuant to the provisions of this Loan Agreement.

“Loan Agreement Payment” means, collectively, the Principal Component and the Interest Component, if any, to be paid by the Governmental Unit as payment of this Loan Agreement as shown on Exhibit “B” hereto.

“Loan Agreement Payment Date” means each date a payment is due on this Loan Agreement as shown on Exhibit “B” hereto.

“Loan Agreement Principal Amount” means the original principal amount of this Loan Agreement as shown on the Term Sheet.

“Loan Agreement Term” means the term of this Loan Agreement as provided under Article III of this Loan Agreement.

“NMSA” means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented.

“Parity Obligations” means this Loan Agreement, and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with this Loan Agreement, including any such obligations shown on the Term Sheet.

“Permitted Investments” means securities which are at the time legal investments of the Governmental Unit for the money to be invested, as applicable, including but not limited to the following, if permitted by law: (i) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank, federal home loan banks or the student loan marketing association or that are backed by the full faith and credit of the United States government; (ii) negotiable securities of the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody’s Investors Service, Inc., or Standard & Poor’s Rating Group; and (iv) the State Treasurer’s short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, and operated, maintained and invested by the office of the State Treasurer.

“Pledged Revenues” means revenues distributed to the Governmental Unit pledged to payment of the Loan Agreement Payments pursuant to the Resolution and described on the Term Sheet.

“Principal Component” means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement as shown on Exhibit “B” hereto.

“Processing Fee” means the processing fee to be paid on the Closing Date by the Governmental Unit to the Finance Authority for the costs of originating and servicing the Loan, as shown on the Term Sheet attached to this Loan Agreement as Exhibit “A”.

“Program Account” means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of the Loan Agreement for disbursement to the Governmental Unit for payment of the costs of the Project.

“Project” means the projects described on the Term Sheet.

“Resolution” means the Governmental Unit Resolution No. 19-26 adopted by the Governing Body on June 19, 2019, approving this Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

“Term Sheet” means Exhibit “A” attached hereto.

“Trustee” means BOKF, NA, Albuquerque, New Mexico, or any successor trust company, national or state banking association or financial institution at the time appointed Trustee by Finance Authority.

“Unassigned Rights” means the rights of the Finance Authority to receive payment of the Processing Fee, administrative expenses, reports and indemnity against claims pursuant to the provisions of this Loan Agreement which are withheld in the granting clauses of the Indenture from the pledge, assignment and transfer of this Loan Agreement to the Trustee.

## ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Governmental Unit.  
The Governmental Unit represents, covenants and warrants:

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit by the provisions of this Loan Agreement and the Resolution shall be exercised or performed by the Governmental Unit or by such members, officers, or officials of the Governmental Unit as may be required by law to exercise such powers and to perform such duties.

(b) Personal Liability. No covenant, stipulation, obligation or agreement contained in this Loan Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Governmental Unit or member of the Governing Body in his or her individual capacity, and neither the members of the Governing Body nor any officer, agent or employee of the Governmental Unit executing this Loan Agreement shall be liable personally on this Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

(c) Authorization of Loan Agreement and Intercept Agreement. The Governmental Unit is a political subdivision of the State and is duly organized and existing under the statutes and laws of the State. Pursuant to the Act, as amended and supplemented from time to time, the Governmental Unit is authorized to enter into the transactions contemplated by this Loan Agreement and the Intercept Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement, the Intercept Agreement, and the other documents related to the transaction.

(d) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the proceeds of this Loan Agreement to the acquisition of the Project.

(e) Payment of Loan Agreement. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in Exhibit "B" hereto, according to the true intent and meaning of this Loan Agreement. Loan Agreement Payments are payable solely from (i) the Pledged Revenues, (ii) special reserve funds of the Finance Authority (as determined by the Finance Authority, and subject to repayment from the Pledged Revenues), or (iii) the proceeds of refunding bonds or other refunding obligations which the Governmental Unit may hereafter issue in its sole discretion and which are payable from the Pledged Revenues; and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit to pay Loan Agreement

Payments from any general or other fund of the Governmental Unit other than such special funds. Nothing contained in this Loan Agreement, however, shall be construed as prohibiting the Governmental Unit in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Acquisition and Completion of Project. The Project will consist of acquiring a new firefighting apparatus and related equipment. The Project will be acquired and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the acquisition and completion of the Project and to the use of the Pledged Revenues. The Project complies with Sections 59A-53-1 through 59A-53-19, NMSA 1978, as amended.

(g) Necessity of Project. The acquisition of the Project under the terms and conditions provided for in this Loan Agreement is necessary, convenient and in furtherance of the governmental purposes of the Governmental Unit and is in the best interests of the Governmental Unit and its residents.

(h) Legal, Valid and Binding Special Obligation. The Governmental Unit has taken all required action necessary to authorize the execution and delivery of this Loan Agreement and the Intercept Agreement, and this Loan Agreement and the Intercept Agreement constitute legal, valid and binding special obligations of the Governmental Unit enforceable in accordance with their terms.

(i) Loan Agreement Term. The weighted average maturity of 6.326 years of the Loan Agreement does not exceed 120% of the reasonably expected life of the Project which is at least six (6) years.

(j) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting the Governmental Unit as a whole.

(k) No Private Activity. The Governmental Unit is a “governmental unit” within the meaning of Sections 103 and 141(b)(6) of the Code. In addition, no amounts disbursed from the Program Account and used to finance the Project shall be used in the trade or business of a person who is not a “governmental unit” within the meaning of Sections 103 and 141(b)(6) of the Code.

(l) No Excess Loan Agreement Proceeds. The amount loaned to the Governmental Unit under this Loan Agreement as set forth on the Term Sheet does not exceed the sum of: (i) the cost of the Project; and (ii) an amount necessary to pay the Processing Fee and the costs related to issuance of the Bonds, if any.

(m) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement and the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions in this Loan Agreement and the Intercept Agreement, nor the consummation of the transactions contemplated herein and therein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Governmental Unit is a party or by which the Governmental Unit is bound or any laws, ordinances, governmental rules or regulations or court

or other governmental orders to which the Governmental Unit or its properties are subject, or constitutes a default under any of the foregoing.

(n) Irrevocable Enactments. While this Loan Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Loan Agreement, including the Resolution shall be irrevocable until this Loan Agreement has been paid in full as to both principal and interest, and shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of Loan Agreement Payments.

(o) Outstanding Debt. Except for the Parity Obligations, if any, described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the Governmental Unit which are payable from and secured by a parity lien on the Pledged Revenues. No additional indebtedness, bonds or notes of the Governmental Unit payable on a priority ahead of the indebtedness herein authorized out of the Pledged Revenues shall be created or incurred while this Loan Agreement remains outstanding.

(p) No Litigation. To the knowledge of the Governmental Unit, no litigation or proceeding is pending or threatened against the Governmental Unit or any other person affecting the right of the Governmental Unit to execute or deliver this Loan Agreement or the Intercept Agreement or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreement by the Governmental Unit, nor compliance by the Governmental Unit with the obligations under such agreements, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(q) No Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Loan Agreement and the Intercept Agreement, would constitute an Event of Default on the part of the Governmental Unit under this Loan Agreement or the Intercept Agreement.

(r) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, is not needed or budgeted to pay current or anticipated operational or other expenses of the Governmental Unit.

(s) Expected Coverage Ratio. The Pledged Revenues (giving credit for any increase in the Pledged Revenues which has received final approval of the Governing Body and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed, one hundred twenty-five percent (125%) of the maximum Aggregate Annual Debt Service Requirement.

(t) No Extension of Interest Payments. The Governmental Unit will not extend or be a party to the extension of the time for paying any interest on this Loan Agreement.

(u) Governmental Unit's Existence. The Governmental Unit will maintain its corporate identity and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of the

Governmental Unit without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.

(v) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to, annual audits, operational data required to update information in any disclosure documents used to assign or securitize the Loan Agreement Payments by issuance of Bonds by the Finance Authority pursuant to the Indenture, and notification of any event deemed material by the Finance Authority.

(w) Tax Covenants. The Governmental Unit covenants that it shall restrict the use of the proceeds of this Loan Agreement in such manner and to such extent, if any, as may be necessary so that this Loan Agreement will not constitute an arbitrage bond under Section 148 of the Code and that it shall pay any applicable rebate to the Internal Revenue Service. Authorized Officers of the Governmental Unit are hereby authorized and directed to execute an Arbitrage and Tax Certificate as may be required by the Finance Authority and such additional certificates as shall be necessary to establish that this Loan Agreement is not an “arbitrage bond” within the meaning of Section 148 of the Code and the Treasury Regulations promulgated or proposed with respect thereto, including Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149 and 1.150 as the same currently exist, or may from time to time hereafter be amended, supplemented or revised. The Governmental Unit covenants to comply with the provisions of any such Arbitrage and Tax Certificate and the provisions thereof will be incorporated herein by reference to the same extent as if set forth herein. The Governmental Unit covenants that no use will be made of the proceeds of this Loan Agreement, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148-1(b)) of this Loan Agreement, which use, if it had been reasonably expected on the Closing Date, would have caused this Loan Agreement to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code. Pursuant to this covenant, the Governmental Unit obligates itself to comply throughout the Loan Agreement Term with the requirements of Sections 103 and 141 through 150 of the Code and the regulations proposed or promulgated with respect thereto. The Governmental Unit further represents and covenants that no bonds or other evidence of indebtedness of the Governmental Unit payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date. The Governmental Unit hereby further represents and covenants to comply with Section 7.6 hereof, which designates this Loan Agreement as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code.

(x) Use of Fire Protection Fund Revenues. The Governmental Unit will take no action with respect to the Project that would constitute a violation of the terms of Sections 59A-53-7 through 59A-53-10, NMSA 1978, as the same may be amended or recompiled from time to time.

Section 2.2 Representations, Covenants and Warranties of the Finance Authority. The Finance Authority represents, covenants and warrants for the benefit of the Governmental Unit as follows:

(a) Authorization of Loan Agreement and Intercept Agreement. The Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized, existing and in good standing under the laws of the State, has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Loan Agreement and the Intercept Agreement and, by proper action, has duly authorized the execution and delivery of this Loan Agreement and the Intercept Agreement based upon the Finance Authority's findings that:

(i) The Governmental Unit is a disadvantaged qualified entity in that its median household income is \$23,904, which is less than eighty percent (80%) of the State median household income of \$44,963.

(ii) The Project is important to the overall capital needs of the State and directly enhances the health and safety of the residents of the Governmental Unit.

(b) Assignment of Rights. The Finance Authority may not pledge or assign the Pledged Revenues, the Loan Agreement Payments or any of its other rights under this Loan Agreement and the Intercept Agreement except to the Trustee pursuant to the Indenture.

(c) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement or the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement or the Intercept Agreement, nor the consummation of the transactions contemplated in this Loan Agreement or the Intercept Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Finance Authority is a party or by which the Finance Authority is bound or constitutes a default under any of the foregoing and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or resolution of any court, government or governmental authority having jurisdiction over the Finance Authority or its property and which conflict or violation will have a material adverse effect on the Finance Authority or the financing of the Project.

(d) No Litigation. To the knowledge of the Finance Authority, there is no litigation or proceeding pending or threatened against the Finance Authority or any other person affecting the right of the Finance Authority to execute or deliver this Loan Agreement or the Intercept Agreement or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreement by the Finance Authority, nor compliance by the Finance Authority with its obligations under this Loan Agreement and the Intercept Agreement requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

(e) Legal, Valid and Binding Obligations. This Loan Agreement and the Intercept Agreement constitute the legal, valid and binding obligations of the Finance Authority enforceable in accordance with their terms.

(f) Tax-Exempt Reimbursement of Amount Loaned. The Finance Authority intends to reimburse the public project revolving fund (as defined in the Finance Authority Act)

for the amount of the Loan from the proceeds of tax-exempt bonds which the Finance Authority expects to issue within eighteen (18) months of the Closing Date.

#### ARTICLE III LOAN AGREEMENT TERM

The Loan Agreement Term shall commence on the Closing Date and shall not terminate until this Loan Agreement has been paid in full or provision for the payment of this Loan Agreement has been made pursuant to Article VIII hereof.

#### ARTICLE IV LOAN; APPLICATION OF MONEYS

On the Closing Date, the Finance Authority shall transfer the Loan Agreement Principal Amount as follows:

(a) To the Trustee, the amount shown on the Term Sheet as the Program Account Deposit shall be deposited in the Governmental Unit's Program Account to be disbursed by the Trustee pursuant to the Indenture and disbursed pursuant to Section 6.2 hereof at the direction of the Governmental Unit as needed by the Governmental Unit for the Project; and

(b) To the Finance Authority, the amount shown on the Term Sheet as the Finance Authority Debt Service Account deposit shall be deposited into the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 hereof; and

(c) To the Finance Authority, payment in the amount shown on the Term Sheet as the Processing Fee.

#### ARTICLE V LOAN TO THE GOVERNMENTAL UNIT; PAYMENTS BY THE GOVERNMENTAL UNIT

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount equal to the Loan Agreement Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein or special reserve funds of the Finance Authority (as determined by the Finance Authority, and subject to repayment from the Pledged Revenues), the Loan Agreement Payments as herein provided. The Governmental Unit does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to: (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the Finance Authority Debt Service Account, such account being held by the Finance Authority; (iii) the Program Account, such accounts being held by the Trustee; and (iv) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if the Governmental Unit, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the

manner contemplated by this Loan Agreement, according to the true intent and meaning hereof, or shall provide, as permitted by Article VIII of this Loan Agreement for the payment hereof and shall pay all other amounts due or to become due under this Loan Agreement in accordance with its terms and provisions, then, upon such final payment or provision for payment by the Governmental Unit, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Principal Component and Interest Component when due, the payment schedule of which is attached hereto as Exhibit "B."

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Governmental Unit and the Finance Authority acknowledge and agree that the Loan Agreement Payments of the Governmental Unit hereunder are limited to the Pledged Revenues, and that this Loan Agreement shall constitute a special, limited obligation of the Governmental Unit. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Governmental Unit within the meaning of any constitutional or statutory debt limitation. No provision of this Loan Agreement shall be construed to pledge or to create a lien on any class or source of Governmental Unit moneys other than the Pledged Revenues, nor shall any provision of this Loan Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Governmental Unit moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Governmental Unit hereunder, the Pledged Revenues may be utilized by the Governmental Unit for any other purposes permitted by law.

Section 5.2 Payment Obligations of Governmental Unit. As provided in the Intercept Agreement, the Distributing State Agency shall cause to be transferred from the Pledged Revenues or special reserve funds of the Finance Authority (as determined by the Finance Authority, and subject to repayment from the Pledged Revenues) the amounts provided in subsections (a)(i) and (ii) of this Section 5.2 for deposit into the Finance Authority Debt Service Account. The Finance Authority Debt Service Account shall be established and held by the Finance Authority on behalf of the Governmental Unit. All Pledged Revenues received by the Finance Authority pursuant to the Intercept Agreement shall be accounted for and maintained on an ongoing basis by the Finance Authority in the Finance Authority Debt Service Account or used for repayment of Loan Agreement Payments paid by the special reserve funds of the Finance Authority, and all Loan Agreement Payments shall be remitted to the Trustee. The amounts on deposit in the Finance Authority Debt Service Account shall be expended and used by the Finance Authority or the Trustee, as the case may be, only in the manner and order of priority specified below.

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Governmental Unit shall remit to the Finance Authority and the Finance Authority shall transfer and deposit into the Finance Authority Debt Service Account the following from the Pledged Revenues received pursuant to the Intercept Agreement from the Governmental Unit, which the Finance Authority shall transfer to the Trustee in accordance with the Indenture:

(i) Interest Components. Amounts necessary to pay the Interest Components coming due on this Loan Agreement on May 1 and November 1 of each Fiscal Year beginning with the Fiscal Year ending June 30, 2021, as described in Exhibit "B;"

(ii) Principal Payments. Amounts necessary to pay the Principal Components coming due on this Loan Agreement on May 1 of each Fiscal Year beginning with the Fiscal Year ending June 30, 2021, as described in Exhibit "B."

(b) Each Loan Agreement Payment shall be transferred by the Finance Authority from the Finance Authority Debt Service Account to the Trustee.

(c) Subject to the foregoing deposits, the Finance Authority or the Trustee shall annually use the balance of the Pledged Revenues received, if any, at the request of the Governmental Unit: (i) to credit against upcoming Loan Agreement Payments; or (ii) to distribute to the Governmental Unit's account in the Fire Protection Fund maintained by the State Treasurer for any purpose permitted by law.

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address designated in Section 11.1 herein, for remittance to the Trustee. The obligation of the Governmental Unit to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Governmental Unit, the Finance Authority, the Trustee, any vendor or any other person, the Governmental Unit shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 5.4 Disposition of Payments by the Trustee. The Trustee shall deposit all moneys received from the Finance Authority under this Loan Agreement in accordance with the Indenture.

Section 5.5 Additional Parity Obligations. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations which refund subordinate obligations as provided in Section 5.6 hereof), it must be determined that:

(a) The Governmental Unit is then current in all of the accumulations required to be made into the Finance Authority Debt Service Account as provided herein.

(b) No default shall exist in connection with any of the covenants or requirements of the Resolution or this Loan Agreement.

(c) The Pledged Revenues received by or credited to the Governmental Unit for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of the issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing two hundred percent (200%) of the combined maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

(d) A written certification or opinion by the Governmental Unit's Treasurer or chief financial officer or by an Independent Accountant that the Pledged Revenues for the Historic Test Period are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the Governmental Unit to authorize, issue, sell and deliver the Parity Obligations proposed to be issued.

(e) No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.6 hereof.

(f) The Governmental Unit shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to this Loan Agreement.

Section 5.6 Refunding Obligations. The provisions of Section 5.5 hereof are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Loan Agreement, or any part thereof, is outstanding, the Governmental Unit shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Loan Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Loan Agreement or bonds to be refunded may not be compelled to surrender this Loan Agreement or their bonds, unless this Loan Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the Governmental Unit's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (e) of Section 5.5 hereof and in subparagraphs (b) and (c) of this Section.

(b) No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on a parity with this Loan Agreement unless:

(i) The outstanding obligations so refunded are Parity Obligations and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof.

(c) The refunding bonds or other obligations so issued shall enjoy complete equality of lien on the Pledged Revenues with the portion of this Loan Agreement or any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of this Loan Agreement or the bonds or other obligations of the same issue refunded thereby. If only a part of this Loan Agreement or the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof; or

(iii) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

(d) Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the Governmental Unit may provide by ordinance or resolution, but without any impairment of any contractual obligations imposed upon the Governmental Unit by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, but not necessarily limited to, this Loan Agreement).

Section 5.7 Investment of Governmental Unit Funds. Money on deposit in the Finance Authority Debt Service Account established by the Finance Authority may be invested by the Finance Authority in Permitted Investments at the discretion of the Finance Authority. Money on deposit in the Program Account held by the Trustee and created hereunder may be invested by the Trustee in Permitted Investments at the written direction of the Finance Authority or at the discretion of the Trustee. Any earnings on any of said accounts shall be held and administered in each respective account and utilized in the same manner as the other moneys on deposit therein.

Section 5.8 Governmental Unit May Budget for Payments. The Governmental Unit may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to defray any insufficiency of the Pledged Revenues to pay Loan Agreement Payments; provided, however, the Governmental Unit has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

## ARTICLE VITHE PROJECT

Section 6.1 Agreement To Acquire and Complete the Project. The Governmental Unit hereby agrees that to effectuate the purposes of this Loan Agreement and to effectuate the acquisition of the Project, it shall make, execute, acknowledge and transmit any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and, in general, do all things which may be requisite or proper to complete the Project. The Governmental Unit agrees to acquire the Project through the application of moneys to be disbursed from the Program Account pursuant to Section 6.2 of this Loan Agreement.

Section 6.2 Disbursements From the Program Account. So long as no Event of Default shall occur, the Trustee shall disburse moneys from the Program Account in accordance with Section 6.2 of the Indenture upon receipt by the Trustee of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of the Governmental Unit.

No disbursement shall be made from the Program Account without the approval of Bond Counsel: (i) to reimburse the Governmental Unit's own funds for expenditures made prior to the Closing Date; (ii) to refund or advance refund any tax-exempt obligations issued by or on behalf of the Governmental Unit; (iii) to be used, directly or indirectly, to finance a project used or to be used in the trade or business of a person who is not a "governmental unit," within the meaning of Section 141(b)(6) of the Code; or (iv) to expend funds after the date that is three (3) years after the execution and delivery of this Loan Agreement.

Section 6.3 Completion of Acquisition of the Project. Upon completion of the acquisition of the Project, an Authorized Officer of the Governmental Unit shall deliver a certificate to the Finance Authority and the Trustee substantially in the form of Exhibit "D" attached hereto stating that, to the best of his or her knowledge, the Project has been completed and accepted by the Governmental Unit, and all costs have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 6.4 Application of Loan Agreement Proceeds Subsequent to Completion of the Project. Upon completion of the Project as signified by delivery of the completion certificate contemplated in Section 6.3 hereof, or in the event that the Finance Authority and the Trustee shall not have received a certificate of completion as required by Section 6.3 hereof by the date three (3) years from the Closing Date (or such later date as is approved in writing by Bond Counsel), the Trustee shall transfer the amounts remaining in the Program Account (except amounts necessary for payment of amounts not then due and payable) to the Finance Authority Debt Service Account and such amounts shall be used for the payment of Loan Agreement Payments.

## ARTICLE VII COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1 Further Assurances and Corrective Instruments. The Finance Authority and the Governmental Unit agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof.

Section 7.2 Finance Authority and Governmental Unit Representatives. Whenever under the provisions hereof the approval of the Finance Authority or the Governmental Unit is required, or the Governmental Unit or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Governmental Unit by an Authorized Officer of the Finance Authority or the Governmental Unit, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 7.3 Requirements of Law. During the Loan Agreement Term, the Governmental Unit and the Finance Authority shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties hereto, the Project or the Pledged Revenues.

Section 7.4 First Lien; Equality of Liens. The Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. The Governmental Unit covenants that the Loan Agreement Payments and any Parity Obligations herein authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance of such obligations, it being the intention of the Governmental Unit that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

Section 7.5 Expeditious Completion. The Governmental Unit shall complete the Project with all practical dispatch.

Section 7.6 Bank Designation of Loan Agreement. For purposes of and in accordance with Section 265 of the Code, the Governmental Unit hereby designates this Loan Agreement as an issue qualifying for the exception for certain qualified tax-exempt obligations to the rule denying banks and other financial institutions 100% of the deduction for interest expenses which is allocable to tax-exempt interest. The Governmental Unit reasonably anticipates that the total amount of tax exempt obligations (other than obligations described in Section 265(b)(3)(C)(ii) of the Code) which will be issued by the Governmental Unit and by any aggregated issuer during the current calendar year will not exceed \$10,000,000. For purposes of this Section 7.6, "aggregated issuer" means any entity which: (i) issues obligations on behalf of the Governmental Unit; (ii) derives its issuing authority from the Governmental Unit; or (iii) is controlled directly or indirectly by the Governmental Unit within the meaning of Treasury Regulation Section 1.150-1(e). The Governmental Unit hereby represents that: (a) it has not created and does not intend to create and does not expect to benefit from any entity formed or availed of to avoid the purposes of Section 265(b)(3)(C) or (D) of the Code; and (b) the total amount of obligations so designated by the Governmental Unit, and all aggregated issuers for the current calendar year does not exceed \$10,000,000.

Section 7.7 Arbitrage Rebate Exemption. The Governmental Unit hereby certifies and warrants, for the purpose of qualifying for the exception contained in Section 148(f)(4)(D) of the Code, to the requirement to rebate arbitrage earnings from investments of the proceeds of the

Loan Agreement (the “Rebate Exemption”), that: (i) this Loan Agreement is issued by the Governmental Unit which has general taxing powers; (ii) neither this Loan Agreement nor any portion thereof is a private activity bond as defined in Section 141 of the Code (“Private Activity Bond”); (iii) all of the net proceeds of this Loan Agreement are to be used for local government activities of the Governmental Unit (or of a governmental unit, the jurisdiction of which is entirely within the jurisdiction of the Governmental Unit); and (iv) neither the Governmental Unit nor any aggregated issuer has issued or is reasonably expected to issue any Tax-Exempt Bonds other than (A) Private Activity Bonds (as those terms are used in Section 148(f)(4)(D) of the Code) and (B) issued to refund (other than to advance refund (as used in the Code)) any bond to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, during the current calendar year, which would in the aggregate amount exceed \$5,000,000. For purposes of this paragraph, “aggregated issuer” means any entity which: (a) issues obligations on behalf of the Governmental Unit; (b) derives its issuing authority from the Governmental Unit; or (c) is controlled directly or indirectly by the Governmental Unit within the meaning of Treasury Regulation Section 1.150-1(e). The Governmental Unit hereby represents that it has not created, does not intend to create and does not expect to benefit from any entity formed or availed of to avoid the purposes of Section 148(f)(4)(D) of the Code.

Accordingly, with respect to the Loan Agreement, the Governmental Unit will qualify for the rebate exemption granted under Section 148(f)(4)(D) of the Code and the Governmental Unit shall be treated as meeting the requirements of paragraphs (2) and (3) of Section 148(f) of the Code relating to the required rebate of arbitrage earnings to the United States.

The Governmental Unit hereby further represents and covenants that if it is determined that rebatable arbitrage, as that term is defined under Section 148 of the Code and related regulations, is required to be paid to the United States, that it will pay such rebatable arbitrage.

## ARTICLE VIII PREPAYMENT OF LOAN AGREEMENT PAYMENTS

Section 8.1 Prepayment. There is no option to prepay this Loan Agreement in whole or in part.

Section 8.2 Defeasance. Should the Governmental Unit pay or make provision for payment of the Loan such that all amounts due pursuant to this Loan Agreement shall be deemed to have been paid and defeased, then the Loan Agreement Payments hereunder shall also be deemed to have been paid, the Governmental Unit’s payment obligations hereunder shall be terminated, this Loan Agreement and all obligations contained herein shall be discharged and the pledge hereof released. Such payment shall be deemed made when the Governmental Unit has deposited with an escrow agent, in trust, (i) moneys sufficient to make such payment, and/or (ii) noncallable Governmental Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and when all necessary and proper expenses of the Finance Authority have been paid or provided for. In the event the Governmental Unit makes provisions for defeasance of this Loan Agreement, the Governmental Unit shall cause to be delivered (1) a report of an independent nationally recognized certified public accountant verifying the sufficiency of the escrow established to pay this Loan Agreement in full when due or upon an irrevocably designated prepayment date, and

(2) an opinion of Bond Counsel to the effect that this Loan Agreement is no longer outstanding, each of which shall be addressed and delivered to the Finance Authority. Governmental Obligations within the meaning of this Section 8.2, unless otherwise approved by the Finance Authority, shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – “SLGs”), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

#### ARTICLE IX INDEMNIFICATION

From and to the extent of the Pledged Revenues, and to the extent permitted by law, the Governmental Unit shall and hereby agrees to indemnify and save the Finance Authority and the Trustee harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition or operation of the Project during the Loan Agreement Term, from: (i) any act of negligence or other misconduct of the Governmental Unit or breach of any covenant or warranty by the Governmental Unit hereunder; and (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the Project in excess of the Loan Agreement proceeds and interest on the investment thereof. The Governmental Unit shall indemnify and save the Finance Authority and the Trustee harmless, from and to the extent of the available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority or the Trustee, shall defend the Finance Authority or the Trustee, as applicable, in any such action or proceeding.

#### ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. Any one of the following shall be an Event of Default under this Loan Agreement:

(a) Failure by the Governmental Unit to pay any amount required to be paid under this Loan Agreement on the date on which it is due and payable;

(b) Failure by the Governmental Unit to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the Governmental Unit by the Finance Authority or the Trustee unless the Finance Authority and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Finance Authority or the Trustee but cannot be cured within the applicable thirty (30) day period, the Finance Authority and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Governmental Unit is unable to carry out the agreements on its part herein contained, the Governmental Unit shall not be deemed in default under this paragraph (b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default);

(c) Any warranty, representation or other statement by or on behalf of the Governmental Unit contained in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement is false or misleading in any material respect;

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests;

(e) The Governmental Unit files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(f) The Governmental Unit admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Governmental Unit for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the Finance Authority or the Trustee may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any agreement of the Governmental Unit in this Loan Agreement or the Intercept Agreement:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the Finance Authority and the Trustee under this Loan Agreement and the Intercept Agreement against the Governmental Unit, and compel the Governmental Unit to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein; or

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority or the Trustee; or

(c) Intervene in judicial proceedings that affect this Loan Agreement or the Pledged Revenues; or

(d) Cause the Governmental Unit to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

(e) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and thereafter to become due under this Loan Agreement or to enforce any other of its rights thereunder; or

(f) Apply any amounts in the Program Account toward satisfaction of any of the obligations of the Governmental Unit under this Loan Agreement.

Section 10.3 Limitations on Remedies. A judgment requiring a payment of money entered against the Governmental Unit may reach only the available Pledged Revenues.

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 hereof, no remedy herein conferred upon or reserved to the Finance Authority or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority or the Trustee to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The Finance Authority or the Trustee may in its discretion waive by written waiver any Event of Default hereunder and the consequences of such an Event of Default provided, however, that there shall not be waived: (i) any Event of Default in the payment of the principal of this Loan Agreement at the date when due as specified herein; or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payments of principal and all expenses of the Finance Authority or the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority and the Trustee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Governmental Unit shall default under any of the provisions hereof and the Finance Authority or the Trustee shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Governmental Unit herein contained, the Governmental Unit agrees that it shall on demand therefor pay to the Finance Authority or the Trustee, as applicable, the fees of such attorneys and such other expenses so incurred, to the extent that such attorneys' fees and

expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Governmental Unit under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

## ARTICLE XIMISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows: if to the Governmental Unit, 1700 North Grand Ave., Las Vegas, New Mexico, Attention: City Manager; if to the Finance Authority, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and if to the Trustee, BOKF, NA, 100 Sun Avenue N.E., Suite 500, Albuquerque, New Mexico 87109, Attention: Trust Division. The Governmental Unit, the Finance Authority, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, the Governmental Unit and their respective successors and assigns, if any.

Section 11.3 Amendments. The Governmental Unit agrees that this Loan Agreement will not be amended without the prior written consent of the Finance Authority, and, if the Loan has been pledged under the Indenture (as defined herein), without the prior written consent of the Trustee (as defined herein), the Finance Authority and the Governmental Unit, pursuant to the Indenture.

Section 11.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, either directly or through the Finance Authority, or against any officer, employee, director, trustee or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute, constitution or otherwise, of any such officer, employee, director, trustee or member of the Governing Body or of the Finance Authority is hereby expressly waived and released by the Governmental Unit and by the Finance Authority as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.5 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit to pay hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.6 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Assignment by the Finance Authority. Pursuant to the Indenture, this Loan Agreement and the Intercept Agreement may be assigned and transferred by the Finance

Authority to the Trustee, which assignment and transfer is hereby acknowledged and approved by the Governmental Unit.

Section 11.8 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.9 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.10 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

[Signature pages follow]

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as approved by the Board of Directors of the Finance Authority on April 25, 2019, has executed this Loan Agreement in its corporate name by its duly authorized officer; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
John Gasparich, Interim Chief Executive Officer

PREPARED FOR EXECUTION BY OFFICERS OF  
THE NEW MEXICO FINANCE AUTHORITY:  
Sutin, Thayer & Browne A Professional Corporation  
As Loan Counsel

By \_\_\_\_\_  
Suzanne Wood Bruckner

APPROVED FOR EXECUTION BY OFFICERS OF THE  
NEW MEXICO FINANCE AUTHORITY:

By \_\_\_\_\_  
Daniel C. Opperman, General Counsel

CITY OF LAS VEGAS, NEW MEXICO

[SEAL]

By \_\_\_\_\_  
Tonita Gurulé-Girón, Mayor

ATTEST:

By \_\_\_\_\_  
Casandra Fresquez, City Clerk

5085723.docx

**EXHIBIT "A"**

**TERM SHEET**

New Mexico Finance Authority Loan No. PPRF-4952

Governmental Unit:	City of Las Vegas, New Mexico
Project Description:	Purchasing a new firefighting apparatus and related equipment for the Governmental Unit
Loan Agreement Principal Amount:	\$219,196
Disadvantaged Funding Amount:	\$150,000
Pledged Revenues:	The distribution of State Fire Protection Funds to the Governmental Unit made periodically by the State Treasurer pursuant to Section 59A-53-7, NMSA 1978.
Coverage Ratio:	125%
Distributing State Agency:	State Treasurer
Currently Outstanding Parity Obligations:	None
Additional Parity Bonds Test:	200%
Authorizing Legislation:	Resolution No. 19-26 adopted on June 19, 2019
Closing Date:	July 26, 2019
Blended Interest Rate:	0.305143%
Program Account Deposit:	\$217,552.00
Finance Authority Debt Service Account Deposit:	\$0.03
Processing Fee:	\$1,643.97
First Interest Payment Date:	November 1, 2020
First Principal Payment Date:	May 1, 2021
Final Payment Date:	May 1, 2030

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PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS UNLESS A  
LATER DATE IS APPROVED IN WRITING TO THE TRUSTEE AND THE FINANCE  
AUTHORITY BY BOND COUNSEL TO THE FINANCE AUTHORITY

**EXHIBIT "B"**

**DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT**

[SEE ATTACHED]

**EXHIBIT "C"**

**FORM OF REQUISITION**

RE: \$219,196 Loan Agreement by and between the City of Las Vegas, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: BOKF, NA  
c/o New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, New Mexico 87501  
Attn: Accounting

You are hereby authorized to disburse from the Program Account – the City of Las Vegas, New Mexico (2019 Fire Equipment Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO. PPRF-4952

CLOSING DATE: July 26, 2019

REQUISITION NUMBER: \_\_\_\_\_

NAME AND ADDRESS OF PAYEE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AMOUNT OF PAYMENT: \$ \_\_\_\_\_

PURPOSE OF PAYMENT: \_\_\_\_\_

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – the City of Las Vegas, New Mexico (2019 Fire Equipment Loan).

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the City of Las Vegas, New Mexico, is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the City of Las Vegas, New Mexico shall and understands its obligation to complete the acquisition of the Project from other legally available funds.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: \_\_\_\_\_

By \_\_\_\_\_  
Authorized Officer

Title \_\_\_\_\_  
(Print Name and Title)

**EXHIBIT "D"**

**CERTIFICATE OF COMPLETION**

RE: \$219,196 Loan Agreement by and between the City of Las Vegas, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, New Mexico 87501  
Attn: Accounting

Susan Ellis  
Assistant Vice President, Corporate Trust  
BOKF, NA  
100 Sun Avenue NE, Suite 500  
Albuquerque, New Mexico 87109

LOAN NO.: PPRF-4952

CLOSING DATE: July 26, 2019

In accordance with Section 6.3 of the Loan Agreement, the undersigned states, to the best of his or her knowledge, that the acquisition of the Project has been completed and accepted by the Governmental Unit, and all costs have been paid as of the date of this Certificate. Notwithstanding the foregoing, this certification is given without prejudice to any rights against third parties which exist at the date of this Certificate or which may subsequently come into being.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: \_\_\_\_\_

By \_\_\_\_\_

Authorized Officer of Governmental Unit

Title \_\_\_\_\_

Print Name and Title

## INTERCEPT AGREEMENT

This INTERCEPT AGREEMENT is made and entered into July 26, 2019, by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), a public body politic and corporate constituting a governmental instrumentality separate and apart from the State of New Mexico (the "State") under the laws of the State and the CITY OF LAS VEGAS, NEW MEXICO, a political subdivision duly organized and existing under the laws of the State (the "Governmental Unit").

### W I T N E S S E T H:

WHEREAS, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, authorized the creation of the Finance Authority within the State to assist in financing the cost of public projects of participating qualified entities, including the Governmental Unit, such as the acquisition of a new firefighting apparatus and related equipment for use by the Governmental Unit; and

WHEREAS, pursuant to Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, and Sections 3-31-1 through 3-31-12, NMSA 1978, as amended (collectively, the "Act"), the Finance Authority and the Governmental Unit are authorized to enter into agreements to facilitate the financing of the Project as described in the Loan Agreement by and between the Finance Authority and the Governmental Unit of even date herewith (the "Loan Agreement"); and

WHEREAS, the Governmental Unit desires to acquire the Project and such acquisition is permitted under the Act; and

WHEREAS, the Finance Authority has established its Loan Program (the "Program") funded by its public project revolving fund (as defined in the Act) for the financing of infrastructure and equipment projects upon the execution of the Loan Agreement and the assignment of loan agreements to a trustee (the "Trustee"); and

WHEREAS, the Governmental Unit desires to borrow \$219,196 from the Program for the purpose of financing the acquisition of the Project, which Loan is to be governed by this Intercept Agreement and by the Loan Agreement; and

WHEREAS, the Act confers upon the Finance Authority the authority to loan funds to the Governmental Unit to finance the Project, and Section 59A-53-7, NMSA 1978, as amended, authorizes the Governmental Unit to direct that its distribution of State Fire Protection funds (the "Pledged Revenues") from the State Treasurer (the "Distributing State Agency") be paid to the Finance Authority or its assignee, to secure payments under the Loan Agreement;

NOW THEREFORE, the parties hereto agree:

Unless otherwise defined in this Intercept Agreement and except where the context by clear implication otherwise requires, capitalized terms used in this Intercept Agreement shall have for all purposes of this Intercept Agreement the meanings assigned thereto in the Loan Agreement and the Indenture, as defined in the Loan Agreement.

Section 1. Authorization to the Finance Authority. The Governmental Unit hereby recognizes that the Finance Authority has made a Loan to the Governmental Unit in the amount of \$219,196 to finance the acquisition of the Project. Pursuant to the Loan Agreement and this Intercept Agreement, the Loan and all Loan Agreement Payments on the Loan made by or on behalf of the Governmental Unit shall be collected by the Finance Authority and remitted to the Trustee. All payments due on the Loan from the Pledged Revenues shall be paid by the Distributing State Agency to the Finance Authority or its designee, on behalf of the Governmental Unit, from scheduled distributions of the Pledged Revenues in accordance with the Intercept Schedule attached hereto as Exhibit "A" (the "Intercept Schedule"), or shall be made from special reserve funds of the Finance Authority (as determined by the Finance Authority, and subject to repayment from the Pledged Revenues).

This Intercept Agreement shall be deemed a written certification, authorization and request by the Governmental Unit to the Distributing State Agency to pay to the Finance Authority, on behalf of the Governmental Unit, sums shown on the Intercept Schedule from periodic distributions of the Pledged Revenues pursuant to Section 59A-53-7, NMSA 1978, as amended, or from special reserve funds of the Finance Authority (as determined by the Finance Authority, and subject to repayment from the Pledged Revenues) to insure compliance with the Loan Agreement and repayment of the Loan. Upon written notice to the Distributing State Agency from the Finance Authority, the amount of the Pledged Revenues to be paid to the Finance Authority shall be increased from the amounts shown on Exhibit "A" to defray any delinquencies in the Finance Authority Debt Service Account or Loan Agreement Reserve Account, if any, established for the Governmental Unit. Any accumulation of the Pledged Revenues in an amount in excess of the next Loan Agreement Payment and the Loan Agreement Reserve Requirement, if any, shall be redirected by the Finance Authority to the benefit of the Governmental Unit on a timely basis as provided in Section 5.2 of the Loan Agreement.

To the extent applicable and to the extent that the Pledged Revenues are insufficient to meet the debt service requirements due on the Loan and other Parity Obligations (as defined in the Loan Agreement) now or hereafter issued or incurred, the amounts intercepted under this Intercept Agreement shall be applied to allow partial payment on a pro-rata basis of the debt service due and owing on the Loan Agreement and other Parity Obligations.

Section 2. Term; Amendments. This Intercept Agreement will remain in full force and effect from its effective date as herein provided until such time as the Loan made pursuant to the Loan Agreement and this Intercept Agreement have been paid in full. Nothing herein shall be deemed in any way to limit or restrict the Governmental

Unit from issuing its own obligations, providing its own program or participating in any other program for the financing of public projects which the Governmental Unit may choose to finance. This Intercept Agreement may be amended only by written instrument signed by the parties hereto.

Section 3. Authorization. The execution and performance of the terms of this Intercept Agreement have been authorized and approved by Resolution No. 19-26, passed and adopted on June 19, 2019, by the Governing Body of the Governmental Unit, which Resolution is in full force and effect on the date hereof.

Section 4. Severability of Invalid Provisions. If any one or more of the provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separable from the remaining provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 5. Counterparts. This Intercept Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6. Further Authorization. The Governmental Unit agrees that the Finance Authority shall do all things necessary or convenient to the implementation of the Program to facilitate the Loan to the Governmental Unit.

Section 7. Effective Date. This Intercept Agreement shall take effect on the Closing Date of the Loan.

Section 8. Initial Intercept Date. As indicated on the Intercept Schedule, the periodic distribution of the Pledged Revenues that is to be intercepted by the Distributing State Agency under the terms of this Intercept Agreement consist of Pledged Revenues due to the Governmental Unit distributed in the Fiscal Year ending June 30, 2021.

Section 9. Final Intercept Date. Once the Loan has been fully paid off and satisfied, Finance Authority shall provide written notice to the Distributing State Agency to discontinue the interception of the Governmental Unit's Pledged Revenues.

[Remainder of page left intentionally blank]

[Signature page follows]

IN WITNESS WHEREOF, the parties to this Intercept Agreement have caused their names to be affixed hereto by the proper officers thereof as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
John Gasparich, Interim Chief Executive Officer

CITY OF LAS VEGAS, NEW MEXICO

By \_\_\_\_\_  
Tonita Gurulé-Girón, Mayor

(SEAL)

Attest:

By \_\_\_\_\_  
Casandra Fresquez, City Clerk

Acknowledged:

By \_\_\_\_\_  
State Treasurer, Tim Eichenberg

By \_\_\_\_\_  
State Fire Marshal, Don Shainin

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT "A"

INTERCEPT SCHEDULE  
CITY OF LAS VEGAS, NEW MEXICO

Fiscal Year Ending June 30	Pledged Revenues	Annual Amount
2021	The distribution of State Fire Protection Fund Revenues to the City of Las Vegas, New Mexico pursuant to Section 59A-53-7, NMSA, 1978, which distributions are made by periodically by the State Treasurer	\$22,342.80
2022		\$22,342.54
2023		\$22,342.96
2024		\$22,343.12
2025		\$22,342.58
2026		\$22,342.38
2027		\$22,343.14
2028		\$22,342.90
2029		\$22,342.60
2030		\$22,342.32

\$219,196  
CITY OF LAS VEGAS, NEW MEXICO  
NEW MEXICO FINANCE AUTHORITY LOAN

STATE OF NEW MEXICO            )  
SAN MIGUEL COUNTY            ) ss. GENERAL AND NO LITIGATION  
CITY OF LAS VEGAS            ) CERTIFICATE

IT IS HEREBY CERTIFIED by the undersigned, the duly elected and chosen, Mayor, City Clerk, Interim Finance Director and Attorney for the City of Las Vegas, New Mexico (the “Governmental Unit”) in San Miguel County, and the State of New Mexico (the “State”) (provided, that the Attorney for the Governmental Unit is certifying only as to Paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, 18, 20, 21, 22, 24 and 25 hereof):

Capitalized terms used in this Certificate have the same meaning as defined in Governmental Unit Resolution No. 19-26 adopted on June 19, 2019 (the “Resolution”) unless otherwise defined in this Certificate or the context requires otherwise.

1. The Governmental Unit is a political subdivision of the State and is duly organized and validly existing under and pursuant to the laws of the State, its full name being “City of Las Vegas.”
2. The Governmental Unit was incorporated in the year 1888.
3. From at least March 5, 2019 (except as otherwise noted), to and including the date of this Certificate, the following were and now are the duly chosen, qualified and acting officers of the Governmental Unit:

Mayor:	Tonita Gurulé-Girón
Councilors:	David A. Ulibarri, Jr. Vincent Howell (Mayor Pro Tem) Barbara Casey David G. Romero
Interim City Manager:	AnnMarie Gallegos
Interim Finance Director:	Tana Vega
Attorney:	Esther Garduno-Montoya, Esq.
City Clerk:	Casandra Fresquez

4. The population of the Governmental Unit's jurisdictional and service area is not less than seventy-five percent (75%) English speaking and is less than twenty-five percent (25%) Spanish speaking.

5. There is no reason within our knowledge, after due inquiry with respect thereto, why the Governmental Unit may not enter into the Loan Agreement and the Intercept Agreement with the New Mexico Finance Authority (the "Finance Authority"), as authorized by the Resolution.

6. The Governmental Unit has duly authorized the execution, delivery and performance of its obligations under the Loan Agreement and the Intercept Agreement. The Loan Agreement and the Intercept Agreement have been duly authorized, executed and delivered by the Governmental Unit.

7. The Resolution has been duly signed and adopted in accordance with all applicable laws and has not been repealed, rescinded, revoked, modified, amended or supplemented in any manner except as set forth in the Resolution. The Resolution constitutes valid and sufficient legal authority for the Governmental Unit to carry out and enforce the provisions of the Loan Agreement and Intercept Agreement. No referendum petition has been filed with respect to the Resolution under the provisions of the laws, bylaws or regulations or charter of the Governmental Unit and the laws of the Governmental Unit or the State.

8. No event will result from the execution and delivery of the Loan Agreement or the Intercept Agreement that constitutes a default or an event of default under either the Loan Agreement, the Intercept Agreement or the Resolution, and no event of default and no default under the Loan Agreement, the Intercept Agreement or the Resolution has occurred and is continuing on the date of this Certificate.

9. The Governmental Unit has duly authorized and approved the consummation by it of all transactions and has complied with all requirements and satisfied all conditions, which are required by the Loan Agreement and the Intercept Agreement to have been authorized, approved, performed or consummated by the Governmental Unit at or prior to the date of this Certificate. The Governmental Unit has full legal right, power and authority to carry out and consummate the transactions contemplated by the Resolution, the Loan Agreement and the Intercept Agreement.

10. A. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the enforceability of the Loan Agreement or the Intercept Agreement or to any of the actions required to be taken by the Resolution, the Loan Agreement or the Intercept Agreement on or prior to the date of this Certificate have been obtained and are in full force and effect; and

B. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the financing of the Project have been obtained and are in full force and effect.

11. None of the following does or will conflict with, or constitute a breach by the Governmental Unit of, or default by the Governmental Unit under any law, court decree or order,

governmental regulation, rule or order, resolution, agreement, indenture, mortgage or other instrument to which the Governmental Unit is subject or by which it is bound:

A. The Governmental Unit's adoption of the Resolution; or

B. Any action contemplated by or pursuant to the Resolution, the Loan Agreement, or the Intercept Agreement.

12. No material adverse change has occurred, nor has any development occurred involving a prospective material and adverse change in, or affecting the affairs, business, financial condition, results of operations, prospects, or properties of the Governmental Unit or the Pledged Revenues since the date of the Resolution.

13. To the best of our knowledge and belief, after due inquiry with respect thereto, none of the events of default referred to in Article X of the Loan Agreement has occurred.

14. Subsequent to the adoption of the Resolution, the Governmental Unit has not pledged or otherwise encumbered the Pledged Revenues. On the date of this Certificate there are no other outstanding obligations with a lien or encumbrance against the Pledged Revenues senior to or on a parity with the lien of the Loan Agreement except as set forth in the Term Sheet attached as Exhibit "A" to the Loan Agreement.

15. The Loan Agreement prohibits the Governmental Unit from issuing any bonds or other obligations with a lien on Pledged Revenues senior to the lien thereon of the Loan Agreement on the Pledged Revenues. The Loan Agreement permits the Governmental Unit to issue additional bonds or other obligations with a lien on the Pledged Revenues on a parity with or subordinate to the lien of the Loan Agreement on the Pledged Revenues upon satisfaction of the conditions set forth in the Loan Agreement.

16. There is no threatened action, suit, proceeding, inquiry or investigation against the Governmental Unit, at law or in equity, by or before any court, public board or body, nor to the Governmental Unit's knowledge is there any basis therefor, affecting the existence of the Governmental Unit or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the pledge of revenues or assets of the Governmental Unit pledged or to be pledged to pay the principal, premium, if any, and interest on the Loan Agreement, or in any way materially adversely affecting or questioning: (a) the territorial jurisdiction of the Governmental Unit; (b) the use of the proceeds of the Loan Agreement for the Project and to pay certain costs of the Finance Authority associated with the administration of its public projects revolving fund loan program; (c) the validity or enforceability of the Loan Agreement, the Intercept Agreement or any proceedings of the Governmental Unit taken with respect to the Loan Agreement, the Intercept Agreement or the Resolution; (d) the execution and delivery of the Loan Agreement or the Intercept Agreement; or (e) the power of the Governmental Unit to carry out the transactions contemplated by the Loan Agreement, the Intercept Agreement or the Resolution.

17. The Governmental Unit has complied with all the covenants and satisfied all the conditions on its part to be performed or satisfied at or prior to the date hereof, and the representations and warranties of the Governmental Unit contained in the Loan Agreement and in the Resolution are true and correct as of the date hereof.

18. The Governmental Unit is not in default, and has not been in default within the ten (10) years immediately preceding the date of this Certificate, in the payment of principal of, premium, if any, or interest on any bonds, notes or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, if any, or interest except that no representation is made with respect to industrial revenue bonds or conduit bonds payable solely from installment sale or lease payments, loan repayments or other amounts received by the Governmental Unit from private entities.

19. To the best of our knowledge and belief, neither the Mayor, City Clerk, Interim Finance Director, any member of the Governing Body, nor any other officer, employee or other agent of the Governmental Unit is interested (except in the performance of his or her official rights, privileges, powers and duties), directly or indirectly, in the profits of any contract, or job for work, or services to be performed and appertaining to the Project.

20. Regular meetings of the Governing Body have been held in the Council Chambers, 1700 North Grand Ave., Las Vegas, New Mexico 87701, the principal meeting place of the Governing Body.

21. The Governing Body has no rules of procedure which would invalidate or make ineffective the Resolution or other action taken by the Governing Body in connection with the Loan Agreement. Open Meetings Act Resolution No. 19-01, as adopted and approved by the Governing Body on January 16, 2019, establishes notice standards as required by Sections 10-15-1 through 10-15-4, NMSA 1978. Open Meetings Act Resolution No. 19-01 has not been amended or repealed. All action of the Governing Body with respect to the Loan Agreement, the Intercept Agreement and the Resolution was taken at meetings held in compliance with Open Meetings Act Resolution No. 19-01.

22. The *Las Vegas Optic* is a legal newspaper which maintains an office and is of general circulation in the Governmental Unit's jurisdictional and service area.

23. The Pledged Revenues from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded, and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed one hundred twenty-five percent (125%) of the maximum Aggregate Annual Debt Service Requirement.

24. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

25. The Mayor, City Clerk and Interim Finance Director, on the date of the signing of the Loan Agreement and the Intercept Agreement and on the date of this Certificate, are the duly chosen, qualified and acting officers of the Governmental Unit authorized to execute such agreements.

26. The Governmental Unit understands that Sutin, Thayer & Browne A Professional Corporation represents the Finance Authority in this Loan and the Governmental Unit has had the opportunity to consult other counsel in connection with the Loan.

27. This Certificate is for the benefit of the Finance Authority.
28. This Certificate may be executed in counterparts.

[Signature page follows]

WITNESS our hands and the seal of the Governmental Unit this 26<sup>th</sup> day of July, 2019

CITY OF LAS VEGAS, NEW MEXICO

By \_\_\_\_\_  
Tonita Gurulé-Girón, Mayor

By \_\_\_\_\_  
Casandra Fresquez, City Clerk

By \_\_\_\_\_  
Tana Vega, Interim Finance Director

[SEAL]

APPROVED:

Paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, 18, 20, 21, 22, 24 and 25 are approved and confirmed.

\_\_\_\_\_  
Esther Garduno-Montano, Attorney for the  
City of Las Vegas, New Mexico

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WITNESS our hands this July 26, 2019.

CITY OF LAS VEGAS, NEW MEXICO

[SEAL]

By \_\_\_\_\_  
Tonita Gurulé-Girón, Mayor

By \_\_\_\_\_  
Casandra Fresquez, City Clerk

By \_\_\_\_\_  
Tana Vega, Interim Finance Director

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It is hereby certified by the undersigned, a duly qualified and acting official of the New Mexico Finance Authority, that, the undersigned has, on the date of this Certificate, received from the City of Las Vegas, New Mexico the Loan Agreement and the Intercept Agreement.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
John Gasparich, Interim Chief Executive Officer

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\$219,196  
CITY OF LAS VEGAS, NEW MEXICO  
NEW MEXICO FINANCE AUTHORITY LOAN

STATE OF NEW MEXICO            )  
SAN MIGUEL COUNTY            ) ss.  ARBITRAGE AND TAX  
  )    CERTIFICATE

On behalf of the City of Las Vegas, New Mexico (the “Governmental Unit”), and in connection with the Loan Agreement dated July 26, 2019 (the “Loan Agreement”), relating to the financing the cost of purchasing a new firefighting apparatus and related equipment for use by the Governmental Unit and paying the Processing Fee (the “Project”) as described in the Loan Agreement, and evidencing the Governmental Unit’s obligation in the aggregate principal amount of \$219,196, the Governmental Unit hereby certifies as follows:

Capitalized terms used in this Certificate have the same meanings as defined in Resolution No. 19-26 adopted on June 19, 2019, unless otherwise defined in this Certificate or the context requires otherwise.

1.    The Project. The Governmental Unit is entering into the Loan Agreement simultaneously with delivery of this Certificate. The Loan Agreement evidences the loan (the “Loan”) made by the New Mexico Finance Authority (the “Finance Authority”) to provide funds to pay the costs of acquiring the Project described in Exhibit “A” attached to the Loan Agreement and to pay certain costs incurred in connection with the execution and delivery of the Loan Agreement.

2.    Security for the Loan Agreement. Debt service on the Loan Agreement will be secured by the pledged revenues described in Exhibit “A” attached to the Loan Agreement (the “Pledged Revenues”) sufficient to pay debt service due in connection with the Loan, which Pledged Revenues have been pledged to the Finance Authority pursuant to the Loan Agreement.

3.    Finance Authority Public Project Revolving Fund Program. The Governmental Unit acknowledges that the Finance Authority may assign and transfer the Loan Agreement to the BOKF, NA, as successor trustee (the “Trustee”) pursuant to the Indenture, as defined in the Loan Agreement, and all Supplemental Indentures thereto, between the Finance Authority and the Trustee (collectively, the “Indenture”). Pursuant to the Indenture, the Loan Agreement may be pledged as an Additional Pledged Loan to the Trustee as additional security for the payment of amounts due on the Finance Authority’s Public Project Revolving Fund Revenue Bonds outstanding at the time of such pledge.

4.    Sources and Uses of Loan Funds. The Governmental Unit has received Loan proceeds from the public project revolving fund, as defined in the New Mexico Finance Authority Act, Sections 6-21-1, *et seq.*, NMSA 1978, as amended and supplemented, in the amount of \$219,196 from the Finance Authority (the “Proceeds”). The Proceeds do not exceed the amount reasonably necessary for the purposes for which the Loan Agreement was entered into.

5. Expenditure Expectations. The Governmental Unit expects to incur a substantial binding obligation within six (6) months of the date hereof with regard to the Project, which obligation involves the expenditure of no less than five percent (5%) of the Proceeds. The Governmental Unit reasonably expects that the \$217,552 of Proceeds deposited into the Governmental Unit's Program Account in the Program Fund together with other legally available funds and anticipated earnings from the investment of such Proceeds until they are spent, are expected to be expended within three (3) years of the date hereof.

The estimated total costs of the Project will not be less than \$217,552 plus investment earnings thereon during the acquisition period.

Proceeds in the amount of \$1,643.97 will be deducted from the Proceeds and paid directly to the Finance Authority as the Processing Fee for the costs of originating and servicing the Loan.

Proceeds in the amount of \$0.03 will be deposited into the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 of the Loan Agreement.

6. Investment of Proceeds. Except for the investment of the Proceeds (i) in the Program Account established under the Indenture with respect to the Loan Agreement pending the payment of the costs of the Project, and (ii) in the Finance Authority Debt Service Account established and administered by the Finance Authority pending the payment of debt service on the Loan Agreement, there will be no investment of the Proceeds.

7. Bona Fide Debt Service Fund. Debt service payments on the Loan Agreement will be paid from the Pledged Revenues of the Governmental Unit deposited to the Finance Authority Debt Service Account created with respect to the Loan Agreement. Because the Pledged Revenues of the Governmental Unit for any year will exceed debt service on the Loan Agreement, it is assumed that current debt service paid by the Governmental Unit for deposit in the Finance Authority Debt Service Account will be derived entirely from the current Pledged Revenues. The Finance Authority Debt Service Account will be depleted at least once a year except for an amount not to exceed the greater of the earnings on the Finance Authority Debt Service Account for the immediately preceding bond year or one-twelfth (1/12<sup>th</sup>) of debt service on the Loan for the immediately preceding bond year. The Governmental Unit has not created or established, nor does it expect to create or establish, any debt service fund, redemption fund, replacement fund, sinking fund or other similar fund which is reasonably expected to be used to pay principal or interest on the Loan Agreement or pledged therefor, except for the Finance Authority Debt Service Account.

8. No Disposition of Project. The undersigned reasonably expect that no part of the Project acquired with the Proceeds will be sold or otherwise disposed of, in whole or in part, during the term of the Loan Agreement.

9. General Tax Covenant. The Governmental Unit has covenanted in the Loan Agreement that no use will be made of the Proceeds, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury

Regulation Section 1.148(b)) of the Loan Agreement, which use, if it had been reasonably expected on the date hereof, would have caused the Loan Agreement to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code. The Governmental Unit has further obligated itself in the Loan Agreement to comply throughout the term of the Loan Agreement with the requirements of Sections 103 and 141 through 150 of the Code and regulations proposed or promulgated with respect thereto. Pursuant to the Loan Agreement, the Governmental Unit shall be liable for any rebatable arbitrage payable pursuant to Section 103 and 141 through 150 of the Code and regulations proposed or promulgated with respect thereto.

10. Private Business Use Limitations. None of the Proceeds will be used by a private business or any entity other than a governmental unit or secured by payments from or property of a private business or any entity other than a governmental unit except pursuant to a management contract which conforms with Revenue Procedure 2017-13 of the United States Treasury. For purposes of the preceding sentence a governmental unit does not include the United States Government or any agency or instrumentality thereof.

11. No Common Plan of Financing. There are no other obligations which are being issued or sold at substantially the same time as the Loan Agreement pursuant to a common plan of financing with the Loan Agreement and that will be paid out of the Pledged Revenues or will have substantially the same claim to be paid out of the Pledged Revenues as the Loan Agreement.

12. No Federal Guarantees. The Loan is not federally guaranteed within the meaning of Section 149(b) of the Code.

13. Information Filing. Loan Counsel for the Finance Authority, on behalf of the Governmental Unit, will timely file the Form 8038-G with respect to the Loan Agreement attached hereto as Exhibit “A” with the Internal Revenue Service. The Finance Authority has verified certain information necessary to complete the Form 8038-G as shown on the Finance Authority Certificate attached hereto as Exhibit “B”.

14. Hedge Bonds. The Loan is not a hedge bond as defined in Section 149 of the Code.

15. No Reimbursement. None of the Proceeds will be used to reimburse the Governmental Unit for costs paid for the Project more than sixty (60) days prior to the date hereof.

16. No Refunding. Proceeds of the Loan are not being used to refund any other obligation of the Governmental Unit.

17. Economic Life of Project. The weighted average maturity of 6.326 years of the Loan Agreement does not exceed 120% of the reasonably expected economic life of the Project, which is at least six (6) years.

18. Qualified Tax-Exempt Obligations. The Loan Agreement is a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code. The Governmental Unit represents that the reasonably anticipated amount of qualified tax-exempt obligations which will

be issued by the Governmental Unit during the current calendar year does not exceed \$10,000,000 and the Governmental Unit will not designate more than \$10,000,000 of “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. For purposes of this Section, “aggregated issuer” means any entity which: (i) issues obligations on behalf of the Governmental Unit; (ii) derives its issuing authority from the Governmental Unit; or (iii) is controlled directly or indirectly by the Governmental Unit within the meaning of Treasury Regulation Section 1.150-1(e).

19. Rebate Exception. The Governmental Unit is a governmental unit with general taxing powers, no part of the Loan Agreement is a private activity bond, ninety-five percent (95%) or more of the proceeds are to be used for local governmental activities of the Governmental Unit and, the aggregate face amount of all tax-exempt obligations issued by the Governmental Unit during the current calendar year is not reasonably expected to exceed \$5,000,000. There are no subordinate entities of the Governmental Unit which are authorized to issue tax-exempt obligations. If the Governmental Unit fails to satisfy all of the provisions of this paragraph 19 for any reason, as provided in the Loan Agreement and consistent with the covenants of the Governmental Unit contained therein, any rebate owed to the United States Treasury will be paid in the amounts and at the times provided in Section 148 of the Code.

20. Record Retention. The Governmental Unit will manage and retain records related to the Loan as follows:

A. Records will be retained for the life of the Loan, including any refunding loans related thereto, plus three (3) years. Records may be in the form of documents or electronic copies of documents, appropriately indexed to the Loan and compliance functions;

B. Basic records relating to the Loan transaction, including transcript documents executed in connection with the issuance of the Loan (i.e., the authorizing documents, Form 8038-G, the tax certificate, and any elections made with respect to the Loan, if applicable), any amendments, and copies of rebate calculations and records of payments, including Forms 8038-T;

C. Records pertaining to the use of Loan-financed facilities by public and private sources including copies of management agreements and research agreements;

D. Records pertaining to expenditures of Loan proceeds including requisitions, appraisal and property purchase contracts, account statements, invoices, payment vouchers, and the final allocation of proceeds to expenditures;

E. Records pertaining to all sources of payment or security for the Loan; and

F. Records pertaining to investments including guaranteed investment contract documents under the Treasury Regulations, records of purchase and sale of other investments, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.

[Signature page follows]

This certificate is being executed and delivered to establish the reasonable expectations of the Governmental Unit for purposes of Sections 103 and 141 through 148 of the Code, and the undersigned officers of the Governmental Unit are the officers of the Governmental Unit charged with the responsibility of entering into the Loan Agreement. The foregoing is based upon the reasonable expectations of the undersigned on the date hereof, and to the best of our knowledge, information and belief, the above expectations are reasonable.

Dated: July 26, 2019.

CITY OF LAS VEGAS, NEW MEXICO

[SEAL]

By \_\_\_\_\_  
Tonita Gurulé-Girón, Mayor

By \_\_\_\_\_  
Casandra Fresquez, City Clerk

By \_\_\_\_\_  
Tana Vega, Interim Finance Director

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**EXHIBIT "B"**

**NEW MEXICO FINANCE AUTHORITY TAX REPRESENTATIONS CERTIFICATE**

The undersigned hereby certifies as follows with respect to the \$219,196 Loan Agreement dated July 26, 2019 (the "Loan") from the New Mexico Finance Authority (the "Finance Authority") to City of Las Vegas, New Mexico (the "Governmental Unit");

1. The Finance Authority is making the Loan for its own account (and not on behalf of another) in the principal amount of \$219,196, without accrued interest. The Finance Authority is not acting as an Underwriter with respect to the Loan. The Finance Authority has no present intention to sell, reoffer, or otherwise dispose of the Loan (or any portion of the Loan or any interest in the Loan). The Finance Authority has not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Loan and the Finance Authority has not agreed with the Governmental Unit pursuant to a written agreement to sell the Loan to persons other than the Finance Authority, therefore the "issue price" of the Loan is \$219,196.

2. The Arbitrage Yield on the Loan, calculated in accordance with the applicable U.S. Treasury Regulations from interest to be paid on the Loan, is 0.306378%.

3. The Weighted Average Maturity of the Loan, calculated in accordance with the applicable U.S. Treasury Regulations, is 6.326 years.

4. The undersigned understands that the statements made herein will be relied upon by the Governmental Unit in its effort to complete the Information Return for Tax-Exempt Governmental Obligations (Form 8038-G), required to be filed for the Loan pursuant to the Internal Revenue Code of 1986, as amended, and with regard to establishing facts and circumstances relied on by the Governmental Unit and bond counsel in connection with the execution and delivery of the Loan and the exclusion of interest on the Loan from gross income for federal income tax purposes. Such reliance is hereby authorized and approved.

Dated this July 26, 2019.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
John Gasparich, Interim Chief Executive Officer

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<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name <b>City of Las Vegas, New Mexico</b>		2 Issuer's employer identification number (EIN) <b>85-6000149</b>	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address) <b>1700 North Grand Avenue</b>	Room/suite	5 Report number (For IRS Use Only) <b>3</b>	
6 City, town, or post office, state, and ZIP code <b>Las Vegas, New Mexico 87701</b>		7 Date of issue <b>07/26/2019</b>	
8 Name of issue <b>New Mexico Finance Authority 2019 Fire Equipment Loan</b>		9 CUSIP number	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) <b>AnnMarie Gallegos, Interim City Manager</b>		10b Telephone number of officer or other employee shown on 10a <b>505-454-1401</b>	

**Part II Type of Issue (enter the issue price).** See the instructions and attach schedule.

11	Education	11		
12	Health and hospital	12		
13	Transportation	13		
14	Public safety	14	219,196	00
15	Environment (including sewage bonds)	15		
16	Housing	16		
17	Utilities	17		
18	Other. Describe	18		
19a	If bonds are TANs or RANs, check only box 19a			<input type="checkbox"/>
19b	If bonds are BANs, check only box 19b			<input type="checkbox"/>
20	If bonds are in the form of a lease or installment sale, check box			<input type="checkbox"/>

**Part III Description of Bonds.** Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	05/01/2030	\$ 219,196	\$ 219,196	6.326 years	0.306378 %

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)**

22	Proceeds used for accrued interest	22		
23	Issue price of entire issue (enter amount from line 21, column (b))	23	219,196	00
24	Proceeds used for bond issuance costs (including underwriters' discount)	24	1,643	97
25	Proceeds used for credit enhancement	25		
26	Proceeds allocated to reasonably required reserve or replacement fund	26		
27	Proceeds used to refund prior tax-exempt bonds. Complete Part V	27		
28	Proceeds used to refund prior taxable bonds. Complete Part V	28		
29	Total (add lines 24 through 28)	29	1,643	97
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	217,552	03

**Part V Description of Refunded Bonds.** Complete this part only for refunding bonds.

31	Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded	_____	years
32	Enter the remaining weighted average maturity of the taxable bonds to be refunded	_____	years
33	Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY)	_____	
34	Enter the date(s) the refunded bonds were issued (MM/DD/YYYY)	_____	

**Part VI Miscellaneous**

<b>35</b> Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . . . .	<b>35</b>		
<b>36a</b> Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC). See instructions . . . . .	<b>36a</b>		
<b>b</b> Enter the final maturity date of the GIC ▶ (MM/DD/YYYY) _____			
<b>c</b> Enter the name of the GIC provider ▶ _____			
<b>37</b> Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units . . . . .	<b>37</b>		
<b>38a</b> If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ <input type="checkbox"/> and enter the following information:			
<b>b</b> Enter the date of the master pool bond ▶ (MM/DD/YYYY) _____			
<b>c</b> Enter the EIN of the issuer of the master pool bond ▶ _____			
<b>d</b> Enter the name of the issuer of the master pool bond ▶ _____			
<b>39</b> If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . . ▶			<input checked="" type="checkbox"/>
<b>40</b> If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . . ▶			<input type="checkbox"/>
<b>41a</b> If the issuer has identified a hedge, check here ▶ <input type="checkbox"/> and enter the following information:			
<b>b</b> Name of hedge provider ▶ _____			
<b>c</b> Type of hedge ▶ _____			
<b>d</b> Term of hedge ▶ _____			
<b>42</b> If the issuer has superintegrated the hedge, check box . . . . . ▶			<input type="checkbox"/>
<b>43</b> If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . . ▶			<input type="checkbox"/>
<b>44</b> If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . . ▶			<input type="checkbox"/>
<b>45a</b> If some portion of the proceeds was used to reimburse expenditures, check here ▶ <input type="checkbox"/> and enter the amount of reimbursement . . . . . ▶ _____			
<b>b</b> Enter the date the official intent was adopted ▶ (MM/DD/YYYY) _____			

**Signature and Consent**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

Signature of issuer's authorized representative: \_\_\_\_\_ Date: \_\_\_\_\_  
 Type or print name and title: **Tonita Gurulé-Girón, Mayor**

<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Suzanne Wood Bruckner				PO1629036
	Firm's name ▶ Sutln, Thayer & Browne A Professional Corporation	Firm's EIN ▶		85-0225124	
	Firm's address ▶ 6100 Uptown Boulevard NE, Suite 400, Albuquerque, NM 87110	Phone no.		505-883-2500	

**Regular or Special  
CITY COUNCIL MEETING AGENDA REQUEST**

**DATE: 06/10/19**

**DEPT: PUBLIC WORKS**

**MEETING DATE: 06/19/19**

**ITEM/TOPIC: Approval of Resolution No.19-31 assuring the available matching funds, amount being \$253,556.00, state \$190,167.00 , City \$63,389.00 which is 25% of total cost of phase II.**

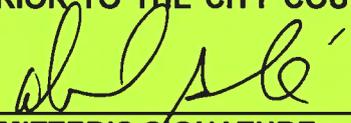
**ACTION REQUESTED OF COUNCIL: Approve/Disapprove of Resolution 19-31**

**BACKGROUND/RATIONALE: as part of the Municipal Arterial Program (MAP) Agreement submittal criteria for New Mexico Department of Transportation, a Resolution of support is required from our Local Governing Body assuring matching funds accompany agreement. In complying with the criteria, staff is requesting that this Resolution be approved for the Plan, Design, Construction, Construction Management, Reconstruction, Pavement Rehabilitation, Drainage and Misc. Improvements to Mountain View Drive, for this II phase of the project. Budgetary provisions will be made in this Public Works Department, during the 2019/2020 fiscal cycle.**

**STAFF RECOMMENDATION: Approve Resolution 19-31**

**COMMITTEE RECOMMENDATION: N/A**

**THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.**



**SUBMITTER'S SIGNATURE**

**REVIEWED AND APPROVED BY:**

  
**TONITA GURULÉ-GIRÓN  
MAYOR**

**TANA VEGA  
INTERIM FINANCE DIRECTOR  
(PROCUREMENT)**

  
**ANN MARIE GALLEGOS,  
INTERIM CITY MANAGER**

**ESTHER GARDUNO MONTOYA,  
CITY ATTORNEY (ALL  
CONTRACTS, ORDINANCES AND  
RESOLUTIONS MUST BE  
REVIEWED)**

**CITY OF LAS VEGAS, NM  
RESOLUTION NO.19-31**

A Resolution Supporting the New Mexico Department of Transportation Municipal Arterial Program(MAP) for the Plan Design, Construction Management, Construction, Reconstruction, Pavement Rehabilitation, Drainage Improvements and Miscellaneous Construction for Mountain View Drive for this second phase of five.

**Whereas**, the cost of the program stated in this resolution is Two Hundred Fifty Three Thousand, Five Hundred Fifty Six, (\$253,556.00); and

**Whereas**, the City of Las Vegas Governing Body has declared improvements are needed to Mountain View Drive a necessity for the good and well being of citizens of Las Vegas, New Mexico and to support this Agreement for funding to accomplish the work; and

**Whereas**, the City of Las Vegas will work in accordance with the funding requirements of the Municipal Arterial program, and will budget \$63,389.00 which is 25% of total cost of project of \$253,556.00.

**NOW, THEREFORE, BE IT RESOLVED**, by the local governing body of the City of Las Vegas that the Agreement for the above funding be submitted to the New Mexico Department of Transportation.

**PASS, APPROVED, AND ADOPTED** this \_\_\_\_\_ day of June, 2019

CITY OF LAS VEGAS

\_\_\_\_\_  
TONITA GURULE-GIRON  
MAYOR

ATTEST:

\_\_\_\_\_  
Casandra Fresquez, CITY CLERK



# City of Las Vegas

1700 N. Grand Avenue | Las Vegas, NM 87701 | T 505.454.1401 | [lasvegasnm.gov](http://lasvegasnm.gov)

## Madam Mayor Tonita Gurulé-Girón

June 10, 2019

John Herrera  
NMDOT LGRF  
District 4 Office  
Las Vegas, NM 87701

Dear Mr. Herrera,

The City of Las Vegas is interested in applying for the Local Government fund Match Waiver per New Mexico Administration code 18.27.3.8 for our FY 2019/2020, Control No. L400474 is as follows:

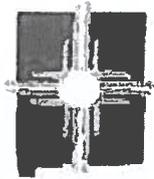
Total Project:	\$253,556.00
State Share:	\$190,167.00
City of Las Vegas:	\$63,389.00

We have included a Resolution for analysis by the Department of Finance and Administration in consideration of this Match Waiver request.

If should have any questions please feel free to contact me at your convenience at 505-454-1401 ext.1002.

Sincerely,

Ann Marie Gallegos  
Interim City Manager



*New Mexico* DEPARTMENT OF  
**TRANSPORTATION**

May 28, 2019

Mr. Chris Cavazos, Project Manager  
City of Las Vegas  
1700 N Grand Ave  
Las Vegas, New Mexico 87701

Dear Mr. Chris Cavazos:

We are pleased to inform you that your application for Municipal Arterial Program (MAP) funds for the project scope: '**Planning, Design, Construction, Reconstruction, Pavement Rehabilitation, Construction Management, Drainage and Misc. Improvements-Mountain View Drive Improvements - Phase II**' was approved by the State Transportation Commission on May 22, 2019, and will be included in the New Mexico Department of Transportation's FY20 LGRF Program.

Your project has been assigned Control No. **L400474**. Please be sure to reference this number in all communications with the New Mexico Department of Transportation regarding this project.

The total estimated cost for your project is **\$253,556.00** the Department has allocated **\$190,167.00** in MAP funds, with a local match requirement of **\$63,389.00**.

The Project Oversight Division will develop a project agreement and forward to you for signature. If you have any questions or comments please contact me at (505) 699-9946.

Sincerely,

Clarissa Martinez  
Project Oversight Division, Statewide LGRF Manager

C: Heather Sandoval, LGRF Coordinator  
Mr. James Gallegos, Acting District 4 Engineer

**Michelle Lujan  
Grisham**  
Governor

**Michael R. Sandoval**  
Cabinet Secretary

**Commissioners**

**Jennifer Sandoval**  
Commissioner, Vice-Chairman  
District 1

**Bruce Ellis**  
Commissioner  
District 2

**Keith Mortensen**  
Commissioner  
District 3

**Walter G. Adams**  
Commissioner, Chairman  
District 4

**Vacant**  
Commissioner  
District 5

**Charles Lundstrom**  
Commissioner, Secretary  
District 6

**Phase 2 MAP 2019-2020 Construction Super 8 to Longview Drive June 10, 2019**

**10-Jun-19**

Item No.	NMDOT Spec No.	Description	Unit	Estim. Quantity	Unit Price	Amount
1	207000	12 inch Subgrade prep	SY	260	\$ 3.40	\$ 884.00
2	208000	Miscellaneous Grading	SY	100	\$ 3.00	\$ 300.00
3	303010	Base Course 12-inch	SY	260	\$ 16.00	\$ 4,160.00
4		Geogrid textile	SY	260	\$ 6.00	\$ 1,560.00
5	407000	Tack Coat Material	TON	2	\$ 425.00	\$ 850.00
6	408100	Prime Coat Material	TON	1	\$ 450.00	\$ 450.00
7	414129	Cold Milling 2 inch	SY	3800	\$ 8.00	\$ 30,400.00
8	414130	Cold Milling 4 inch	SY	260	\$ 13.00	\$ 3,380.00
9	423282	HMA SP-IV 2 inch	SY	3800	\$ 14.00	\$ 53,200.00
10	423282	HMA SP-III 4 inch	SY	260	\$ 25.00	\$ 6,500.00
11	570000	Curb and Gutter	LF	100	\$ 26.00	\$ 2,600.00
12	601000	Removal of Structures and Obstructions	LS	1	\$ 2,500.00	\$ 2,500.00
13	601110	Removal of Surfacing (concrete, turnouts, etc.)	SY	250	\$ 9.00	\$ 2,250.00
14	603281	SWPPP Prep and Maintenance	LS	1	\$ 2,500.00	\$ 2,500.00
15	608000	4-inch Concrete Sidewalk	SY	200	\$ 45.00	\$ 9,000.00
16	608240	Detectable Warning Surface	SF	30	\$ 23.00	\$ 690.00
17	617000	Video Taping	LS	1	\$ 1,500.00	\$ 1,500.00
18	618000	Traffic Control Management	LS	1	\$ 12,500.00	\$ 12,500.00
19	621000	Mobilization, Demobilization, Closeout	LS	1	\$ 15,000.00	\$ 15,000.00
20	623000	Drop Inlet	EA	2	\$ 5,500.00	\$ 11,000.00
21	701000	Panel Signs	SF	25	\$ 30.00	\$ 750.00
22	701100	Steel Post and Base Post for Aluminum Panel Sign	LF	54	\$ 12.00	\$ 648.00
23	704000	Retroreflectorized Markings 4" White	LF	3000	\$ 0.55	\$ 1,650.00
24	704000	Retroreflectorized Markings 4" Yellow	LF	3000	\$ 0.55	\$ 1,650.00
25	704763	Retroreflectorized Pavement Marking 24" Wide	LF	100	\$ 7.00	\$ 700.00
26	801000	Construction Staking by the Contractor	LS	1	\$ 3,000.00	\$ 3,000.00
27	802000	Post Construction Plans	LS	1	\$ 1,500.00	\$ 1,500.00
28		Utility Adjustment/Relocation	ALLOW	1	\$ 2,500.00	\$ 2,500.00
29		Laboratory Testing	ALLOW	1	\$ 5,000.00	\$ 5,000.00
30		Pre-Authorized Construction Changes	ALLOW	1	\$ 10,000.00	\$ 10,000.00

Subtotal	\$ 188,622.00
NMGRT (8.3958%)	\$ 15,836.33
<b>Total Construction Cost</b>	<b>\$ 204,458.33</b>

<b>Engineering Services</b>						
1		Design 60%-100% Design				\$ 12,500.00
2		Bid and Award				\$ 5,000.00
3		Construction Phase Services				\$ 14,000.00
4		Construction Observation (part time)				\$ 14,000.00

Subtotal	\$ 45,500.00
NMGRT (7.5%)	\$ 3,412.50
<b>Total Engineering Services Cost</b>	<b>\$ 48,912.50</b>

<b>Total Project Cost</b>	<b>\$ 253,370.83</b>
---------------------------	----------------------

Contract No. \_\_\_\_\_  
Vendor No. 0000054343  
Control No. L400474

**MUNICIPAL ARTERIAL PROGRAM  
COOPERATIVE AGREEMENT**

**This Agreement** is between the **New Mexico Department of Transportation** (Department) and **City of Las Vegas** (Public Entity). This Agreement is effective as of the date of the last party to sign it on the signature page below.

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-28.2 and the State Transportation Commission Policy No. 44-12, the parties agree as follows:

**1. Purpose.**

The purpose of this Agreement is to provide Local Government Road Funds to the Public Entity for the Planning, Design, Construction, Reconstruction, Pavement Rehabilitation, Construction Management, Drainage and Misc. Improvements. This Project will be referred to interchangeably as "Project" or "Project Control No. L400474 ." The Project is a joint and coordinated effort for which Department and the Public Entity each have authority or jurisdiction. This Agreement specifies and delineates the rights and duties of the parties.

**2. Project Funding.**

- a. The estimated total cost for the Project is Two Hundred Fifty Three Thousand Five Hundred Fifty Six Dollars and No Cents (**\$253,556**) to be funded in proportional share by the parties as follows:

1. Department's share shall be 75% \$190,167

Planning, Design, Construction, Reconstruction, Pavement Rehabilitation,  
Construction Management, Drainage and Misc. Improvements

2. The Public Entity's required proportional matching  
Share shall be 25% \$63,389  
For purpose stated above

3. Total Project Cost **\$253,556**

- b. The Public Entity shall pay all Project costs, which exceed the total amount of Two Hundred Fifty Three Thousand Five Hundred Fifty Six Dollars and No Cents (**\$253,556**)
- c. Any costs incurred by the Public Entity prior to this Agreement are not eligible for reimbursement and are not included in the amount listed in this Section 2.
- d. If the Project is not completed by the termination date in Section 6, the Public Entity shall return any unexpended funds.

### 3. The Department Shall:

Make disbursement(s) to the Public Entity after receipt of a cover letter requesting funds, Notice of Award/Work Order, Notice to Proceed, Estimated Summary of Costs and Quantities, and verification of available funds. All required documents must include Department Project and Control Numbers.

### 4. The Public Entity Shall:

- a. Act in the capacity of lead agency for the purpose as described in Section 1.
- b. Pay all costs, perform all labor and supply all material, except as provided in Section 2, for the purpose as described in Section 1 and the construction work specified in the Project's plans.
- c. Adopt a written Resolution of support for the Project, including an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project, which is attached as **Exhibit C**.
- d. Initiate the preliminary engineering, survey, and all design activities, and coordinate Project construction.
- e. Consider provisions for pedestrian, bicycle and equestrian facilities in the Project design in accordance with NMSA 1978, Section 67-3-62.
- f. Be responsible for performing or directing the performance of all design and pre-construction activity, including, but not limited to, the following:
  1. Utility Certification;
  2. Drainage and storm drain design;
  3. Geotechnical design;
  4. Pavement design;
  5. Traffic design;
  6. Structural design;
  7. Environmental and archeological clearances Certification;
  8. Right-of-way maps and acquisition Certification;
  9. Hazardous substance/waste site(s) contamination investigations;
  10. Railroad Certification; and
  11. Intelligent Transportation System (ITS) Certification.
- g. Initiate and cause to be prepared the necessary Plans, Specifications, and Estimates (PS&E) for this Project.
- h. Cause all designs and PS&E's to be performed under the direct supervision of a Registered New Mexico Professional Engineer.
- i. Design the Project in accordance with **Attachment A**, "Minimum Design Standards", which is incorporated into this Agreement.
- j. Adhere to **Exhibit B**, "Minimum Survey and Right of Way Acquisition Requirements", which is incorporated into this Agreement.
- k. Comply with **Attachment C**, "Construction Phase Duties and Obligations", which is incorporated into this Agreement.
- l. Make no changes in design or scope of work, unless for safety reasons and with documented approval of the Department.
- m. Prior to Project construction, furnish the Department's District 4. Office "**Certification of the Pre-Construction Contract Phase**" form, which is attached as Certification No.

- 1.
- n. Within thirty (30) days of completion, furnish the Department's District 4. Office "Certification of Construction Phase" form, which is attached as Certification No. 2.
- o. Within thirty (30) days of completion, furnish the Department's District 4. Office the "AS BUILT Summary of Costs and Quantities" form, which is attached as Certification No. 3. The report should reflect the total cost of project as stated in "Certification of Construction Phase" form.
- p. Failure to timely provide Certifications Nos. 1, 2 and 3, listed above, will be considered a material breach of this Agreement and Public Entity shall reimburse to the Department all funds disbursed in accordance with this agreement.
- q. Obtain all required written agreements or permits relating to any realignment of Public Entity's roads, when applicable, from all public and private entities.
- r. Advertise, let, and supervise the construction of the Project.
- s. Procure and award any contract in accordance with applicable procurement law, rules, regulations and ordinances
- t. Allow the Department to perform a final inspection of the Project to determining if the Project was constructed in accordance with the provisions of this Agreement. Disclosures of any failure to meet requirements and standards as determined by the Department will result in termination of this Agreement, for default, including without limitation its costs for funding, labor, equipment, and materials.
- u. Upon completion, maintain all the Public Entity's facilities constructed or reconstructed under this Agreement.

**5. Both Parties Agree:**

- a. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department will be accounted for and disposed of by the Public Entity as directed by the Department.
- b. Any unexpended or unencumbered balance from the Local Government Road Fund appropriated for this project reverts to the Department. These balances, if any, must be reimbursed to the Department within thirty- (30) days of project completion or expiration of this Agreement, whichever occurs first.
- c. This Project is not being incorporated into the State Highway System and the Department is not assuming maintenance responsibility or liability.
- d. Pursuant to NMSA 1978, Section 67-3-28.2, Local Government Road Funds granted under this provision cannot be used by the Public Entity to meet a required match under any other program.
- e. That the provisions of the Local Government Road Fund Project Handbook (Current Edition), are incorporated by reference and control the contractual rights and obligations of the parties unless in conflict with the specific terms expressed in this Agreement or any amendments.

**6. Term.**

This Agreement becomes effective upon signature of all Parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement terminates on June 30, 2021. In the event an extension to the term is needed, the Public Entity

shall provide written notice along with detailed justification to the Department sixty (60) days prior to the expiration date to ensure timely processing of an Amendment.

#### **7. Termination.**

- a. If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement, by providing thirty (30) days written notice.
- b. The Department may terminate this Agreement if the funds identified in Section 2 have not been contractually committed within one year from the effective date of this agreement.
- c. If sufficient appropriations and authorizations are not made by the Legislature, this Agreement may terminate immediately upon written notice of the Department to the Public Entity.
- d. Neither party has any obligation after termination, except as stated in Sections 4u and 5.

#### **8. Third Party Beneficiary.**

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member of the public 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.

#### **9. New Mexico Tort Claims Act.**

As between the Department and Public Entity, 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.*

#### **10. Contractors Insurance Requirements.**

The Public Entity shall require contractors and subcontractors hired for the Project to have a general liability insurance policy, with limits of liability of at least \$1,000,000 per occurrence. The Department is to be named as an additional insured on the contractors and subcontractor's policy and a certificate of insurance must be provided to the Department and it must state that coverage provided under the policy is primary over any other valid insurance.

To the fullest extent permitted by law, the Public Entity shall require the contractor and subcontractors to defend, indemnify and hold harmless the Department from and against any liability, claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) arising out of or resulting from the negligence, act, error, or omission of the contractor and subcontractor in the performance of the Project, or anyone directly or indirectly employed by the contractor or anyone for whose acts they are liable in the performance of the Project.

#### **11. 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 will be valid or enforceable unless embodied in this Agreement.

**12. Terms of this Agreement.**

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

**13. Legal Compliance.**

The Public Entity shall comply with all applicable federal, state, local, and Department laws, regulations and policies in the performance of this Agreement, including, but not limited to laws governing civil right, equal opportunity compliance, environmental issue, workplace safety, employer-employee relations and all other laws governing operations of the workplace. The Public Entity shall include the requirements of this Section 13 in in each contract and subcontract at all tiers.

**14. 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 will, 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.

**15. Appropriations and Authorizations.**

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

**16. Accountability of Receipts and Disbursements.**

There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five years after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If an audit finding determines that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) days.

**17. Severability.**

In the event that any portion of this Agreement is determined to be void, unconstitutional or

otherwise unenforceable, the remainder of this Agreement will remain in full force and effect.

**18. Applicable Law.**

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

**19. Amendment.**

This Agreement may be altered, modified, or amended by an instrument in writing executed by the parties.

**The remainder of this page is intentionally left blank.**

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

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Cabinet Secretary 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: \_\_\_\_\_

**City of Las Vegas**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT A**  
**Minimum Design Standards**

1. The design shall provide for all facilities as required by law (ADA compliance, bicycle paths, etc.).
2. The pavement shall be designed for a 20-year life as a minimum for new construction or reconstruction, or for a 10-year life as a minimum for rehabilitation.
3. The following documents shall be used as a minimum in the design of this Project:
  - a. FHWA Manual of Uniform Traffic Control Devices, Current Edition as amended;
  - b. AASHTO A Policy on Geometric Design of Highways and Streets, Current Edition ("Green Book");
  - c. AASHTO Guide for the Development of Bicycle Facilities, Current Edition;
  - d. DEPARTMENT'S Regulations for Driveway and Median Opening on Non-Access Controlled Highways, Current Update;
  - e. DEPARTMENT'S Urban Drainage Design Criteria;
  - f. DEPARTMENT'S Geotechnical Manual, Current Update;
  - g. DEPARTMENT'S Action Plan;
  - h. DEPARTMENT'S Local Government Road Fund Project Handbook; Current Edition;
  - i. DEPARTMENT'S Handbook of Hazardous Waste Management, Current Edition;
  - j. DEPARTMENT'S Location Study Procedures;
  - k. AASHTO Guide to Design of Pavement Structures, Current Edition, and;
  - l. Other design publications as outlined in the DEPARTMENT'S Local Government Road Fund Project Handbook.
  - m. The **Public Entity** may use **Public Entity** established local design standards if approved by the District Engineer, for each Project.

## ATTACHMENT B

### Minimum Survey and Right of Way Acquisition Requirements

1. Establish and permanently reference stations and monuments.
2. Determine and record sufficient topography to assure all relevant landmarks are shown. Include items such as buildings, sidewalks, driveways, walls, trees, etc.
3. Obtain and plot existing profile grade and cross-sections where necessary. Plot curb profiles as needed.
4. All utilities above and below ground and their owners shall be shown.
5. The surveyor shall verify, ascertain, and certify the right-of-way design plans.
6. All surveying and right-of-way mapping is to be performed in accordance with the **DEPARTMENT'S** Surveying Requirements, Current Edition, and Minimum Standards for Surveying, NMSA 1978, Sections 61-23-1 to 61023-32.
7. All **DEPARTMENT** Right of Way Handbooks, particularly Right of Way Handbook (Current Edition, Local Public Agencies), shall be adhered to for all R/W operations, including Title Search, Property Survey, Right of Way Mapping, Appraisal, Appraisal Review, Acquisition (including donations), Relocation, and Right of Way Certification. Only qualified personnel may undertake Right of Way functions. **Public Entity** staff or consultants may not be used to perform any R/W functions unless the **Public Entity** certifies that each individual is qualified to perform each individual right of way activity, such as Title search, property survey, mapping, appraisal, etc. Right of Way operations shall conform to State statutes and Federal regulations. Future Federal funding for Project shall be jeopardized if right of way operations do not conform to State statutes and Federal regulations.
8. Obtain and prepare Title Reports that meet **DEPARTMENT** format and standards, for all affected R/W parcels.
9. Right of Way mapping shall be done in accordance with the "Attachment 2" checklist of the **DEPARTMENT'S** Right of Way Mapping Development Procedures Current Update. The surveyor shall verify and certify the checklist and the Right of Way maps.
10. Appraisals shall not begin until the **Public Entity** has 100% complete R/W maps. **Public**

**Entity** or contracted (fee) appraisers shall not be used unless fully qualified.

11. Appraisal Reports shall be prepared in conformance with Federal and Statutes and regulations. In no event shall the appraisal review function be contracted to a consultant. One purpose of appraisal review is to assure that the appraisal meets **DEPARTMENT** requirements prior to the initiation of acquisition.
12. **Public Entity** or contracted (fee) negotiators shall not be used unless fully qualified.
13. The **Public Entity** shall maintain all records and documents relating to the Right of Way acquisition for a minimum of five (5) years, and shall record all transfer of ownership documents with the County Clerk. **DEPARTMENT** personnel shall be provided access to Project R/W files upon reasonable notice.
14. The **Public Entity** shall furnish the **DEPARTMENT** with a written certification (R/W Certification) stating that Right of Way acquisition (and relocations, if applicable) has been performed in compliance with Federal and State laws and regulations.

## ATTACHMENT C

### Construction Phase Duties and Obligations

1. The **Public Entity** shall be responsible for all construction engineering, including Project supervision, surveying, inspection and testing when surveying and testing are not contracting items.
2. The **Public Entity's** general conditions, standard drawings and specifications may be used if approved by the **DEPARTMENT'S** District Engineer.

**CERTIFICATION NO. 1**

**CERTIFICATION OF THE PRE-CONSTRUCTION CONTRACT PHASE**

**Control No. L400474**

I, \_\_\_\_\_, in my capacity as \_\_\_\_\_ of \_\_\_\_\_ do hereby certify with reference to the aforementioned Project Control Number as follows:

1. That the **Public Entity** has complied with the terms and conditions of the pre-construction phase requirements set forth in this Agreement.
2. That the design for this Project is in compliance with all state laws, rules, regulations, and local ordinances and in the rules and regulations of the **DEPARTMENT**.
3. The **Public Entity**(including, but not limited to, Temporary Construction Permits and Construction Maintenance Easements) has acquired that all necessary right(s)-of -way for the construction or reconstruction of this Project in compliance with the **DEPARTMENT’S Right of Way Handbook (Current Edition)] Local Public Agencies,** and Attachment B.
4. That all utilities within the location of this construction Project (check one or both of the following conditions):
  - \_\_\_ a. have been relocated
  - \_\_\_ b. are scheduled for relocation prior to or concurrent with construction of this Project and have been coordinated with the appropriate utility.
5. That the **Public Entity** has encumbered the necessary funds to complete the Project.
6. That the **Public Entity** has fully complied with the requirements of NMSA 67-3-62.
7. That roadway(s) and intersection(s) shall operate at a minimum Level of Service of C or D (LOS C or D) for the Projected 20 year design traffic volumes as specified in A Policy on Geometric Design of Highways and Streets, (Current Edition).
8. That traffic data collection, traffic projections, and traffic impact studies on this Project have been developed in conformance with the **DEPARTMENT’S New Mexico Traffic**

Survey and Standards, (Current Edition).

9. That no angle parking has been provided in this Project.
10. That the **Public Entity** has completed a (check, which of the following conditions exists):
  - \_\_\_\_\_ a. 20 year pavement design; or
  - \_\_\_\_\_ b. 10 year pavement design with provision for extending the pavement life to 20 years, and has incorporated it in the plans and specifications for this Project.
11. That the **Public Entity** has completed a Project drainage report, which meets the **DEPARTMENT'S** minimum drainage criteria as referenced in the **DEPARTMENT'S** Drainage Manual.
12. All drainage costs have been prorated between the **DEPARTMENT** and the **Public Entity** if applicable, according to the **DEPARTMENT'S** Drainage Policy and Administrative Memorandum (Current Update) and prorated calculations have been approved in writing by the **DEPARTMENT'S** Drainage Section.
13. That the **Public Entity** has completed all required Environmental Documentation and clearances for this Project using guidance contained in the **DEPARTMENT'S** Action Plan, (Current Edition).
14. That the **Public Entity** has completed all required Archaeological Documentation and clearances for this Project using guidance contained in the **DEPARTMENT'S** Action Plan, (Current Edition).
15. That the following attached Agreement(s) have been executed, when required, for construction or reconstruction of this Project (attach copies to this certification):
  - a. Lighting;
  - b. signalization;
  - c. storm sewer and lift station;
  - d. landscape;
  - e. road exchange; and
  - f. any other applicable agreements.
16. That the **Public Entity** has complied with and certifies compliance with all applicable provisions of Attachment A.
17. That this certification procedure has been executed prior to advertisements for contract

bids or commencement of this Project.

IN WITNESS WHEREOF, \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ of \_\_\_\_\_ does hereby certify that the aforementioned matters stated herein are true to his/her knowledge and belief and does hereby set his/her hand and seal this day and year specified below:

**City of Las Vegas**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mayor

**ATTEST:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Public Entity Clerk

When completed, send Certification No. 1 to:

**District LGRF Coordinator  
Department of Transportation**

**CERTIFICATION NO. 2**

**CERTIFICATION OF THE CONSTRUCTION PHASE**

**Control No. L400474**

I, \_\_\_\_\_, in my capacity as \_\_\_\_\_ of \_\_\_\_\_ do hereby certify with reference to the aforementioned Project Control Number as follows:

1. That the **Public Entity** has complied with the terms and conditions of the construction phase requirements under this Agreement.
2. That the **Public Entity** has complied with and certifies that the Project plan complies with all publications identified in Attachment A.
3. That all work in Control No. **L400474** was performed in accordance with the Agreement.
4. That the total Project cost of \_\_\_\_\_, with New Mexico Department of Transportation "**DEPARTMENT**" 75% share of \_\_\_\_\_ and the **Public Entity** share of \_\_\_\_\_ (as submitted in attached "As Built Summary of Costs and Quantities") is accurate, legitimate, and appropriate for the Project.
5. That the construction of the Project was completed on \_\_\_\_\_ of \_\_\_\_\_, 20[#]

**IN WITNESS WHEREOF**, \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ of \_\_\_\_\_ does hereby certify the aforementioned matters stated herein are true to his/her knowledge and belief and does hereby set his/her hand and seal this day and year specified below:

**City of Las Vegas**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mayor

**ATTEST:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

**Public Entity Clerk**

When completed, send Certification No. 2 to:

**District LGRF Coordinator, Department of Transportation**



~~Regular or Special~~  
**CITY COUNCIL MEETING AGENDA REQUEST**

DATE: 6/11/19

DEPT: Public Works

MEETING DATE: 06/19/19

**ITEM/TOPIC:** Participation in Local Government Road Fund Program and request for Match Waiver administered by New Mexico Department of Transportation (NMDOT).

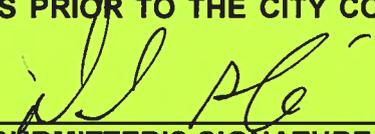
**ACTION REQUESTED OF COUNCIL:** Approval / Disapproval of Resolution No. 19-32

**BACKGROUND/RATIONALE:** The City of Las Vegas has a limited tax base, which limits the funding for meeting the proportional matching share; and, a fund exists in the NMDOT appropriate by New Mexico State Legislature for Public Entities in need of "Hardship" match money and the City of Las Vegas requests participation in this Match Waiver Program in the amount of \$63,389.00.

**STAFF RECOMMENDATION:** Approve Resolution

**COMMITTEE RECOMMENDATION:** N/A

**THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.**

  
\_\_\_\_\_  
SUBMITTER'S SIGNATURE

**REVIEWED AND APPROVED BY:**

  
\_\_\_\_\_  
TONITA GURULÉ-GIRÓN  
MAYOR

\_\_\_\_\_  
TANA VEGA  
INTERIM FINANCE DIRECTOR  
(PROCUREMENT)

  
\_\_\_\_\_  
ANN MARIE GALLEGOS,  
INTERIM CITY MANAGER

\_\_\_\_\_  
ESTHER GARDUNO MONTOYA,  
CITY ATTORNEY (ALL  
CONTRACTS, ORDINANCES AND  
RESOLUTIONS MUST BE  
REVIEWED)

**STATE OF NEW MEXICO**

**CITY OF LAS VEGAS**

**Resolution No.19-32**

**PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM AND REQUEST FOR  
MATCH WAIVER ADMINISTERED BY THE NEW MEXICO DEPARTMENT OF  
TRANSPORTATION**

**WHEREAS, the City of Las Vegas and the New Mexico Department of Transportation (NMDOT) have entered into a Municipal Arterial Program (MAP);**

**WHEREAS, the total cost of the project will be \$253,556.00, NMDOT share being \$190,167.00 and City of Las Vegas share being \$63,389.00 which is 25% of project;**

**WHEREAS, the City of Las Vegas proportional matching share shall be \$63,389.00 25% if a "Hardship" for "Match Waiver" is not deemed to be present by the Department of Finance Administration and the NMDOT;**

**WHEREAS, the City of Las Vegas shall put all costs, which exceed the total amount of \$190,167.00;**

**WHEREAS, the City of Las Vegas has a limited tax base which limits the funding for meeting the proportional matching share and a fund exists in the NMDOT appropriated by the New Mexico State Legislature for Public Entities in need of "Hardship";**

**WHEREAS, the City of Las Vegas requests participation in this Match Waiver Program in the amount of \$63,389.00 to acquire funds;**

**WHEREAS, the project for the MAP Agreement is to be adopted and has a priority standing for the proportional match waiver toward completion of the project;**

**NOW THEREFORE, BE IT RESOLVED, by the City of Las Vegas to enter into the MAP, Control No.L400474, with the NMDOT FY19 Local Government Road Fund Project, for the Plan, Design, Construction, and Construction Management, Pavement Rehabilitation, Drainage and Misc. Construction for Mountain View Drive within the City limits.**

**PASSED, APPROVED, AND ADOPTED THIS \_\_\_\_ DAY OF June, 2019**

**ATTEST:**

**CITY OF LAS VEGAS**

\_\_\_\_\_  
Casandra Fresquez, City Clerk

\_\_\_\_\_  
Tonita Gurule- Giron Mayor



*New Mexico* DEPARTMENT OF  
**TRANSPORTATION**

May 28, 2019

Mr. Chris Cavazos, Project Manager  
City of Las Vegas  
1700 N Grand Ave  
Las Vegas, New Mexico 87701

Dear Mr. Chris Cavazos:

We are pleased to inform you that your application for Municipal Arterial Program (MAP) funds for the project scope: **'Planning, Design, Construction, Reconstruction, Pavement Rehabilitation, Construction Management, Drainage and Misc. Improvements-Mountain View Drive Improvements - Phase II'** was approved by the State Transportation Commission on May 22, 2019, and will be included in the New Mexico Department of Transportation's FY20 LGRF Program.

Your project has been assigned Control No. **L400474**. Please be sure to reference this number in all communications with the New Mexico Department of Transportation regarding this project.

The total estimated cost for your project is **\$253,556.00** the Department has allocated **\$190,167.00** in MAP funds, with a local match requirement of **\$63,389.00**.

The Project Oversight Division will develop a project agreement and forward to you for signature. If you have any questions or comments please contact me at (505) 699-9946.

Sincerely,

Clarissa Martinez  
Project Oversight Division, Statewide LGRF Manager

C: Heather Sandoval, LGRF Coordinator  
Mr. James Gallegos, Acting District 4 Engineer

**Michelle Lujan  
Grisham**  
Governor

**Michael R. Sandoval**  
Cabinet Secretary

**Commissioners**

**Jennifer Sandoval**  
Commissioner, Vice-Chairman  
District 1

**Bruce Ellis**  
Commissioner  
District 2

**Keith Mortensen**  
Commissioner  
District 3

**Walter G. Adams**  
Commissioner, Chairman  
District 4

**Vacant**  
Commissioner  
District 5

**Charles Lundstrom**  
Commissioner, Secretary  
District 6

Contract No. \_\_\_\_\_  
Vendor No. 000054343  
Control No. L400474

## MUNICIPAL ARTERIAL PROGRAM COOPERATIVE AGREEMENT

This Agreement is between the **New Mexico Department of Transportation** (Department) and **City of Las Vegas** (Public Entity). This Agreement is effective as of the date of the last party to sign it on the signature page below.

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-28,2 and the State Transportation Commission Policy No. 44-12, the parties agree as follows:

### 1. Purpose.

The purpose of this Agreement is to provide Local Government Road Funds to the Public Entity for the Planning, Design, Construction, Reconstruction, Pavement Rehabilitation, Construction Management, Drainage and Misc. Improvements. This Project will be referred to interchangeably as "Project" or "Project Control No. L400474 ." The Project is a joint and coordinated effort for which Department and the Public Entity each have authority or jurisdiction. This Agreement specifies and delineates the rights and duties of the parties.

### 2. Project Funding.

- a. The estimated total cost for the Project is Two Hundred Fifty Three Thousand Five Hundred Fifty Six Dollars and No Cents (**\$253,556**) to be funded in proportional share by the parties as follows:

1. Department's share shall be 75% \$190,167

Planning, Design, Construction, Reconstruction, Pavement Rehabilitation,  
Construction Management, Drainage and Misc. Improvements

2. The Public Entity's required proportional matching  
Share shall be 25% \$63,389  
For purpose stated above

3. Total Project Cost **\$253,556**

- b. The Public Entity shall pay all Project costs, which exceed the total amount of Two Hundred Fifty Three Thousand Five Hundred Fifty Six Dollars and No Cents (**\$253,556**)
- c. Any costs incurred by the Public Entity prior to this Agreement are not eligible for reimbursement and are not included in the amount listed in this Section 2.
- d. If the Project is not completed by the termination date in Section 6, the Public Entity shall return any unexpended funds.

~~Regular or Special~~  
**CITY COUNCIL MEETING AGENDA REQUEST**

DATE: 06/10/19

DEPT: PUBLIC WORKS

MEETING DATE: 06/19/19

ITEM/TOPIC: Approval of Resolution No.19-33 assuring the available matching funds, amount being \$51,053.00, state \$38,290.00 , City \$12,763.00 which is 25% of total cost of phase III.

**ACTION REQUESTED OF COUNCIL:** Approve/Disapprove of Resolution 19-33

**BACKGROUND/RATIONALE:** as part of the Cooperative Agreement submittal criteria for New Mexico Department of Transportation, a Resolution of support is required from our Local Governing Body assuring matching funds accompany agreement. In complying with the criteria, staff is requesting that this Resolution be approved for the Plan, Design, Construction, Construction Management, Reconstruction, Pavement Rehabilitation, Drainage and Misc. Improvements to West National Avenue, for this III phase of the project. Budgetary provisions will be made in this Public Works Department, during the 2019/2020 fiscal cycle.

**STAFF RECOMMENDATION:** Approve Resolution 19-33

**COMMITTEE RECOMMENDATION:** N/A

**THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.**



\_\_\_\_\_  
SUBMITTER'S SIGNATURE

**REVIEWED AND APPROVED BY:**



\_\_\_\_\_  
TONITA GURULE-GIRÓN  
MAYOR

\_\_\_\_\_  
TANA VEGA  
INTERIM FINANCE DIRECTOR  
(PROCUREMENT)



\_\_\_\_\_  
ANN MARIE GALLEGOS,  
INTERIM CITY MANAGER

\_\_\_\_\_  
ESTHER GARDUNO MONTOYA,  
CITY ATTORNEY (ALL  
CONTRACTS, ORDINANCES AND  
RESOLUTIONS MUST BE  
REVIEWED)

**CITY OF LAS VEGAS, NM  
RESOLUTION NO.19-33**

A Resolution Supporting the New Mexico Department of Transportation Municipal Cooperative Agreement (COOP) Control No. L400446 for the Plan Design, Construction Management, Construction, Reconstruction, Pavement Rehabilitation, Drainage Improvements and Miscellaneous Construction for West National Avenue for this third phase of five.

**Whereas**, the cost of the program stated in this resolution is Fifty One Thousand Fifty Three (\$51,053.00); and

**Whereas**, the City of Las Vegas Governing Body has declared improvements are needed to West National Avenue a necessity for the good and well being of citizens of Las Vegas, New Mexico and to support this Cooperative Agreement for funding to accomplish the work; and

**Whereas**, the City of Las Vegas will work in accordance with the funding requirements of the Municipal Cooperative Agreement program, and will budget \$12,763.00 which is 25% of total cost of project of \$51,053.00.

**NOW, THEREFORE, BE IT RESOLVED**, by the local governing body of the City of Las Vegas that the Cooperative Agreement for the above funding be submitted to the New Mexico Department of Transportation.

**PASS, APPROVED, AND ADOPTED** this \_\_\_\_\_ day of June, 2019

CITY OF LAS VEGAS

\_\_\_\_\_  
TONITA GURULE-GIRON  
MAYOR

ATTEST:

\_\_\_\_\_  
Casandra Fresquez, CITY CLERK



NEW MEXICO DEPARTMENT OF  
**TRANSPORTATION**

June 6, 2019

Mr. Danny Gurule, Public Works  
City of Las Vegas  
1700 North Grand Avenue  
Las Vegas, NM 87701

Dear Mr. Gurule,

Attached are four original **Municipal Cooperative Agreements** to be entered between the New Mexico Department of Transportation and the **City of Las Vegas #L400446** for your review and signature. **Please return all four agreements along with an updated Estimated Summary, and a Formal Resolution that shall list the scope of work, termini and reference the project amounts.** Execution of these Agreements will not occur without the submittal of the Resolution and Estimate Summary. Counties and municipalities participating in the Local Government Road Fund Program may request waivers of their required match funding for their individual projects. The requests will be reviewed by the Department of Finance and Administration (DFA) to determine whether you are eligible for the match waiver based on financial hardship. In general, DFA will determine if you have sufficient non-earmarked balances in your funds to cover the required twenty-five percent (25%) match of your proposed projects. For municipalities DFA will analyze your general, street, and water/sewer funds and for counties will analyze your general and road funds.

The New Mexico Administrative Code 18 NMAC 27.3.8 is still in effect for the Match Waiver Program and may be used as a guideline for you to determine whether you will be requesting any waivers.

If your county or municipality is interested in applying for a match waiver based on the above DFA criteria and the noted Administrative Code, please provide a written response from your governing bodies and resolution including all project details to our office ASAP.

As always the NMDOT is here to help the entities if help is needed. Should you have any questions, please do not hesitate to contact my office at 505-398-6748.

Sincerely,

*John A. Herrera*

John A. Herrera  
LGRF Coordinator

xc: LGRF Files

**Michelle Lujan  
Grisham**  
Governor

**Michael R. Sandoval**  
Cabinet Secretary

Commissioners

**Jennifer Sandoval**  
Commissioner, Vice-Chairman  
District 1

**Bruce Ellis**  
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**Keith Mortensen**  
Commissioner  
District 3

**Walter G. Adams**  
Commissioner, Chairman  
District 4

**Vacant**  
Commissioner  
District 5

**Charles Lundstrom**  
Commissioner, Secretary  
District 6



# City of Las Vegas

1700 N. Grand Avenue | Las Vegas, NM 87701 | T 505.454.1401 | [lasvegasnm.gov](http://lasvegasnm.gov)

## Madam Mayor Tonita Gurulé-Girón

June 10, 2019

Mr. John Herrera  
NMDOT LGRF  
District 4 Office  
Las Vegas, NM 87701

Dear Mr. Herrera,

The City of Las Vegas is interested in applying for the Local Government fund Match Waiver per New Mexico Administration code 18.27.3.8 for our FY 2019/2020, Control No. L400446 is as follows:

Total Project:	\$51,053.00
State Share:	\$38,290.00
City of Las Vegas:	\$12,763.00

We have included a Resolution for analysis by the Department of Finance and Administration in consideration of this Match Waiver request.

If should have any questions please feel free to contact me at your convenience at 505-454-1401 ext.1002.

Sincerely,

Ann Marie Gallegos  
Interim City Manager

<b>Engineering Services West National (Romero to South Pacific)</b>				
		Design Phase Services (60%)		\$ 47,500.00

Subtotal	\$ 47,500.00
NMGRT (7.5%)	\$ 3,562.50
<b>Total Engineering Services Cost</b>	<b>\$ 51,062.50</b>

Contract No. \_\_\_\_\_  
Vendor No. 54343  
Control No. L400446

**LOCAL GOVERNMENT ROAD FUND  
COOPERATIVE AGREEMENT**

**This Agreement** is between the **New Mexico Department of Transportation** (Department) and **City of Las Vegas** (Public Entity). This Agreement is effective as of the date of the last party to sign it on the signature page below.

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-28.2 and the State Transportation Commission Policy No. 44-12, the parties agree as follows:

**1. Purpose.**

The purpose of this Agreement is to provide Local Government Road Funds to the Public Entity for **Plan design, construction management, construction, reconstruction, pavement rehab, drainage improvements and miscellaneous construction to various city streets**, as described in Control No. **L400446** and the Public Entity's resolution attached as **Exhibit C** (Project). The Project is a joint and coordinated effort for which the Department and the Public Entity each have authority or jurisdiction. This Agreement specifies and delineates the rights and duties of the parties.

**2. Project Funding.**

- a. The estimated total cost for the Project is **Fifty One Thousand, Fifty Three Dollars (\$51,053.00)** to be funded in proportional share by the parties as follows:
1. Department's share shall be 75% **\$38,290.00**

**Plan design, construction management, construction, reconstruction,  
pavement rehab, drainage improvements and miscellaneous construction to  
various city streets**

2. The Public Entity's required proportional matching Share shall be 25% **\$12,763.00**  
For purpose stated above
3. Total Project Cost **\$51,053.00**

- b. The Public Entity shall pay all Project costs, which exceed the total amount of **Fifty One Thousand, Fifty Three Dollars (\$51,053.00)**.
- c. Any costs incurred by the Public Entity prior to this Agreement are not eligible for reimbursement and are not included in the amount listed in this Section 2.

**3. The Department Shall:**

Pay project funds as identified in Section 2, Paragraph a1, to the Public Entity in a single lump sum payment after:

- a. Receipt of a Notice of Award and Notice to Proceed; and,
- b. Verification of available Local Government Road Funds and Public Entity's local matching funds identified in Section 2, Paragraph a2.
- c. All required documents must include Department Project and Control Number.

**4. The Public Entity Shall:**

- a. Act in the capacity of lead agency for the purpose as described in Section 1.
- b. Submit an estimate of the Project, including work to be performed and cost to the District Engineer within thirty (30) days of execution of this Agreement, or as otherwise agreed to in writing by the Parties.
- c. Be solely responsible for all local matching funds identified in Section 2. Certify that these matching funds have been appropriated, budget and approved for expenditure prior to execution of this Agreement.
- d. Pay all costs, perform/supply or contract for labor and material, for the purpose as described in Section 1 and the Project estimate approved by the District Engineer.
- e. Procure and award any contract in accordance with applicable procurement law, rules, regulations and ordinances
- f. Be responsible, for performing or directing the performance, of all pre-construction activities, including, but not limited to, the following:
  - 1. Utility Certification,
  - 2. Drainage and storm drain design,
  - 3. Geotechnical design,
  - 4. Pavement design,
  - 5. Environmental and archaeological clearances Certification,
  - 6. Right of-way acquisition Certification,
  - 7. Hazardous substance/waste site(s) contamination,
  - 8. Railroad Certification,
  - 9. Intelligent Transportation System (ITS) Certification
- g. Cause all designs and plans to be performed under the direct supervision of a Registered New Mexico Professional Engineer, when applicable, as determined by the Department.
- h. Obtain all required written agreements or permits, when applicable, from all public and private entities.
- i. Allow the Department to inspect the Project to determine that the Project is being

constructed in accordance with the provisions of this Agreement. Disclosures of any failure to meet such requirements and standards as determined by the Department, will result in termination, for default, including without limitation the Public Entity's costs for funding, labor, equipment and materials.

- j. Complete the project within eighteen (18) months of approval of funding by the State Transportation Commission.
- k. Within thirty (30) days of completion, provide written certification that all work under this Agreement was performed in accordance with either the New Mexico Department of Transportation's Standard Specification, Current Edition; American Public Works Association (APWA) Specifications; Department approved Public Entity established Specifications; or Department Specifications established for Local Government Road Fund projects, by submitting the **Project Certification of Design, Construction, and Cost form**, which is attached as Exhibit A.
- l. Within thirty (30) days of completion, furnish the Department an **AS BUILT Summary of Costs and Quantities** form, which is attached as Exhibit B. The report should reflect the total cost of project as stated in **Project Certification of Design, Construction, and Cost form**.
- m. Failure to provide the **Project Certification of Design, Construction, and Cost form** and an **AS BUILT Summary of Costs and Quantities** report within thirty (30) days of Project completion will be considered a material breach of this Agreement and Public Entity shall reimburse to the Department all funds disbursed in accordance with this agreement.
- n. Upon completion, maintain all Public Entity facilities that were constructed or reconstructed under this Agreement.

##### **5. Both Parties Agree:**

- a. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department will be accounted for and disposed of by the Public Entity as directed by the Department.
- b. Any unexpended or unencumbered balance from the Local Government Road Fund appropriated for this Project reverts to the Department. These balances, if any, must be reimbursed to the Department within thirty (30) days of project completion or expiration of this Agreement, whichever occurs first.
- c. This Project is not being incorporated into the State Highway System and the Department is not assuming maintenance responsibility or liability.
- d. Pursuant to NMSA 1978, Section 67-3-28.2, Local Government Road Funds granted under this provision can not be used by the Public Entity to meet a required match under any other program.
- e. That the provisions of the Local Government Road Fund Project Handbook (Current Edition), are incorporated by reference and control the contractual rights and obligations of the parties unless in conflict with the specific terms expressed in this Agreement or any amendments.

## **6. Term.**

This Agreement becomes effective upon signature of all Parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement terminates on **December 31, 2020**. In the event an extension to the term is needed, the Public Entity shall provide written notice along with detailed justification to the Department sixty (60) days prior to the expiration date to ensure timely processing of an Amendment.

## **7. Termination.**

- a. If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement, by providing thirty (30) days written notice.
- b. The Department may terminate this Agreement if the funds identified in Section 2 have not been contractually committed within one year from the effective date of this agreement.
- c. If sufficient appropriations and authorizations are not made by the Legislature, this Agreement may terminate immediately upon written notice of the Department to the Public Entity.
- d. Neither party has any obligation after termination, except as stated in Sections 4n and 5.

## **8. Third Party Beneficiary.**

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member of the public 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.

## **9. New Mexico Tort Claims Act.**

As between the Department and Public Entity, 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, Sections 41-4-1, *et seq.*

## **10. Contractors Insurance Requirements.**

The Public Entity shall require contractors and subcontractors hired for the Project to have a general liability insurance policy, with limits of liability of at least \$1,000,000 per occurrence. The Department is to be named as an additional insured on the contractors and subcontractor's policy and a certificate of insurance must be provided to the Department and it must state that coverage provided under the policy is primary over any other valid insurance.

To the fullest extent permitted by law, the Public Entity shall require the contractor and subcontractors to defend, indemnify and hold harmless the Department from and against any liability, claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) arising out of or resulting from the negligence, act, error, or omission of the contractor and subcontractor in the performance of the Project, or anyone directly or indirectly employed by the contractor or anyone for whose acts they are liable in the performance of the Project.

### **11. 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 will be valid or enforceable unless embodied in this Agreement.

### **12. Terms of this Agreement.**

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

### **13. Legal Compliance.**

The Public Entity shall comply with all applicable federal, state, local, and Department laws, regulations and policies in the performance of this Agreement, including, but not limited to laws governing civil right, equal opportunity compliance, environmental issue, workplace safety, employer-employee relations and all other laws governing operations of the workplace. The Public Entity shall include the requirements of this Section 13 in in each contract and subcontract at all tiers.

### **14. 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 will, 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.

### **15. Appropriations and Authorizations.**

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

### **16. Accountability of Receipts and Disbursements.**

There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five years after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If an audit

finding determines that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) days.

**17. Severability.**

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

**18. Applicable Law.**

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

**19. Amendment.**

This Agreement may be altered, modified, or amended by an instrument in writing executed by the parties.

**The remainder of this page is intentionally left blank.**

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

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Cabinet Secretary 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: \_\_\_\_\_

**City of Las Vegas**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

**EXHIBIT A  
PROJECT CERTIFICATION OF  
DESIGN, CONSTRUCTION, AND COST**

TO: New Mexico Department of Transportation  
District \_\_\_\_\_ LGRF Coordinator

Cooperative Agreement No. \_\_\_\_\_ Control No. \_\_\_\_\_  
Joint Powers Agreement No. \_\_\_\_\_ Control No. \_\_\_\_\_

Entity: \_\_\_\_\_

Scope of Work (Including Routes and Termini):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, the undersigned, in my capacity as \_\_\_\_\_ of \_\_\_\_\_  
state that:

1. The design is in compliance with all state laws, rules, regulations, and local ordinances and was performed in accordance with the provisions set forth in this Agreement and in the Local Government Road Fund Project Handbook (Current Edition);
2. Construction of the project was performed in accordance with standards and specifications set forth in:

\_\_\_\_\_

And completed on \_\_\_\_\_, 20\_\_\_\_; and

3. That the total project cost of \_\_\_\_\_, with New Mexico Department of Transportation 75% share of \_\_\_\_\_ and the Public Entity share of \_\_\_\_\_ (as submitted in attached "As Built Summary of Costs and Quantities") is accurate, legitimate, and appropriate for the project.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title





~~Regular or Special~~  
**CITY COUNCIL MEETING AGENDA REQUEST**

DATE: 6/11/19

DEPT: Public Works

MEETING DATE: 06/19/19

**ITEM/TOPIC:** Participation in Local Government Road Fund Program and request for Match Waiver administered by New Mexico Department of Transportation.

**ACTION REQUESTED OF COUNCIL:** Approval / Disapproval of Resolution 19-34

**BACKGROUND/RATIONALE:** The City of Las Vegas has a limited tax base, which limits the funding for meeting the proportional matching share; and, a fund exists in the NMDOT appropriate by New Mexico State Legislature for Public Entities in need of "Hardship" match money and the City of Las Vegas requests participation in this Match Waiver Program in the amount of \$12,763.00.

**STAFF RECOMMENDATION:** Approve Resolution

**COMMITTEE RECOMMENDATION:** N/A

**THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.**



SUBMITTER'S SIGNATURE

**REVIEWED AND APPROVED BY:**



TONITA GURULÉ-GIRÓN  
MAYOR

TANA VEGA  
INTERIM FINANCE DIRECTOR  
(PROCUREMENT)



ANN MARIE GALLEGOS,  
INTERIM CITY MANAGER

ESTHER GARDUNO MONTOYA,  
CITY ATTORNEY (ALL  
CONTRACTS, ORDINANCES AND  
RESOLUTIONS MUST BE  
REVIEWED)

**STATE OF NEW MEXICO  
CITY OF LAS VEGAS  
Resolution No.19-34  
PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM AND REQUEST FOR  
MATCH WAIVER ADMINISTERED BY THE NEW MEXICO DEPARTMENT OF  
TRANSPORTATION**

**WHEREAS, the City of Las Vegas and the New Mexico Department of Transportation (NMDOT) have entered into a Municipal Cooperative Agreement (COOP);**

**WHEREAS, the total cost of the project will be \$51,053.00, NMDOT share being \$38,290.00 and City of Las Vegas share being \$12,763.00 which is 25% of project;**

**WHEREAS, the City of Las Vegas proportional matching share shall be \$12,763.00 25% if a "Hardship" for "Match Waiver" is not deemed to be present by the Department of Finance Administration and the NMDOT;**

**WHEREAS, the City of Las Vegas shall assume all costs, which exceed the total NMDOT awarded amount of \$38,290.00;**

**WHEREAS, the City of Las Vegas has a limited tax base which limits the funding for meeting the proportional matching share and a fund exists in the NMDOT appropriated by the New Mexico State Legislature for Public Entities in need of "Hardship";**

**WHEREAS, the City of Las Vegas requests participation in this Match Waiver Program in the amount of \$12,763.00 to acquire funds;**

**WHEREAS, the project for the COOP program is to be adopted and has a priority standing for the proportional match waiver toward completion of the project;**

**NOW THEREFORE, BE IT RESOLVED, by the City of Las Vegas to enter into the COOP Agreement, Control No. L400446, with the NMDOT FY19 Local Government Road Fund Project, for the Plan, Design, Construction, and Construction Management, Pavement Rehabilitation, Drainage and Misc. Construction for West National Avenue within the City limits.**

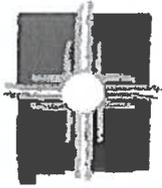
**PASSED, APPROVED, AND ADOPTED THIS \_\_\_\_\_ DAY OF June, 2019.**

**ATTEST:**

**CITY OF LAS VEGAS**

\_\_\_\_\_  
**Casandra Fresquez, City Clerk**

\_\_\_\_\_  
**Tonita Gurule- Giron, Mayor**



*New Mexico* DEPARTMENT OF  
**TRANSPORTATION**

June 6, 2019

Mr. Danny Gurule, Public Works  
City of Las Vegas  
1700 North Grand Avenue  
Las Vegas, NM 87701

Dear Mr. Gurule,

Attached are four original **Municipal Cooperative Agreements** to be entered between the New Mexico Department of Transportation and the **City of Las Vegas #L400446** for your review and signature. **Please return all four agreements along with an updated Estimated Summary, and a Formal Resolution that shall list the scope of work, termini and reference the project amounts.** Execution of these Agreements will not occur without the submittal of the Resolution and Estimate Summary. Counties and municipalities participating in the Local Government Road Fund Program may request waivers of their required match funding for their individual projects. The requests will be reviewed by the Department of Finance and Administration (DFA) to determine whether you are eligible for the match waiver based on financial hardship. In general, DFA will determine if you have sufficient non-earmarked balances in your funds to cover the required twenty-five percent (25%) match of your proposed projects. For municipalities DFA will analyze your general, street, and water/sewer funds and for counties will analyze your general and road funds.

The New Mexico Administrative Code 18 NMAC 27.3.8 is still in effect for the Match Waiver Program and may be used as a guideline for you to determine whether you will be requesting any waivers.

If your county or municipality is interested in applying for a match waiver based on the above DFA criteria and the noted Administrative Code, please provide a written response from your governing bodies and resolution including all project details to our office ASAP.

As always the NMDOT is here to help the entities if help is needed. Should you have any questions, please do not hesitate to contact my office at 505-398-6748.

Sincerely,

*John A. Herrera*

John A. Herrera  
LGRF Coordinator

xc: LGRF Files

**Michelle Lujan  
Grisham**  
Governor

**Michael R. Sandoval**  
Cabinet Secretary

Commissioners

**Jennifer Sandoval**  
Commissioner, Vice-Chairman  
District 1

**Bruce Ellis**  
Commissioner  
District 2

**Keith Mortensen**  
Commissioner  
District 3

**Walter G. Adams**  
Commissioner, Chairman  
District 4

**Vacant**  
Commissioner  
District 5

**Charles Lundstrom**  
Commissioner, Secretary  
District 6

Contract No. \_\_\_\_\_  
Vendor No. 54343  
Control No. L400446

**LOCAL GOVERNMENT ROAD FUND  
COOPERATIVE AGREEMENT**

**This Agreement** is between the **New Mexico Department of Transportation** (Department) and **City of Las Vegas** (Public Entity). This Agreement is effective as of the date of the last party to sign it on the signature page below.

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-28.2 and the State Transportation Commission Policy No. 44-12, the parties agree as follows:

**1. Purpose.**

The purpose of this Agreement is to provide Local Government Road Funds to the Public Entity for **Plan design, construction management, construction, reconstruction, pavement rehab, drainage improvements and miscellaneous construction to various city streets**, as described in Control No. **L400446** and the Public Entity's resolution attached as **Exhibit C** (Project). The Project is a joint and coordinated effort for which the Department and the Public Entity each have authority or jurisdiction. This Agreement specifies and delineates the rights and duties of the parties.

**2. Project Funding.**

- a. The estimated total cost for the Project is **Fifty One Thousand, Fifty Three Dollars (\$51,053.00)** to be funded in proportional share by the parties as follows:
1. Department's share shall be 75% **\$38,290.00**

**Plan design, construction management, construction, reconstruction,  
pavement rehab, drainage improvements and miscellaneous construction to  
various city streets**

2. The Public Entity's required proportional matching Share shall be 25% **\$12,763.00**  
For purpose stated above
3. Total Project Cost **\$51,053.00**

- b. The Public Entity shall pay all Project costs, which exceed the total amount of **Fifty One Thousand, Fifty Three Dollars (\$51,053.00)**.
- c. Any costs incurred by the Public Entity prior to this Agreement are not eligible for reimbursement and are not included in the amount listed in this Section 2.

**3. The Department Shall:**

Pay project funds as identified in Section 2, Paragraph a1, to the Public Entity in a single lump sum payment after:

- a. Receipt of a Notice of Award and Notice to Proceed; and,
- b. Verification of available Local Government Road Funds and Public Entity's local matching funds identified in Section 2, Paragraph a2.
- c. All required documents must include Department Project and Control Number.

**4. The Public Entity Shall:**

- a. Act in the capacity of lead agency for the purpose as described in Section 1.
- b. Submit an estimate of the Project, including work to be performed and cost to the District Engineer within thirty (30) days of execution of this Agreement, or as otherwise agreed to in writing by the Parties.
- c. Be solely responsible for all local matching funds identified in Section 2. Certify that these matching funds have been appropriated, budget and approved for expenditure prior to execution of this Agreement.
- d. Pay all costs, perform/supply or contract for labor and material, for the purpose as described in Section 1 and the Project estimate approved by the District Engineer.
- e. Procure and award any contract in accordance with applicable procurement law, rules, regulations and ordinances
- f. Be responsible, for performing or directing the performance, of all pre-construction activities, including, but not limited to, the following:
  - 1. Utility Certification,
  - 2. Drainage and storm drain design,
  - 3. Geotechnical design,
  - 4. Pavement design,
  - 5. Environmental and archaeological clearances Certification,
  - 6. Right of-way acquisition Certification,
  - 7. Hazardous substance/waste site(s) contamination,
  - 8. Railroad Certification,
  - 9. Intelligent Transportation System (ITS) Certification
- g. Cause all designs and plans to be performed under the direct supervision of a Registered New Mexico Professional Engineer, when applicable, as determined by the Department.
- h. Obtain all required written agreements or permits, when applicable, from all public and private entities.
- i. Allow the Department to inspect the Project to determine that the Project is being

constructed in accordance with the provisions of this Agreement. Disclosures of any failure to meet such requirements and standards as determined by the Department, will result in termination, for default, including without limitation the Public Entity's costs for funding, labor, equipment and materials.

- j. Complete the project within eighteen (18) months of approval of funding by the State Transportation Commission.
- k. Within thirty (30) days of completion, provide written certification that all work under this Agreement was performed in accordance with either the New Mexico Department of Transportation's Standard Specification, Current Edition; American Public Works Association (APWA) Specifications; Department approved Public Entity established Specifications; or Department Specifications established for Local Government Road Fund projects, by submitting the **Project Certification of Design, Construction, and Cost form**, which is attached as Exhibit A.
- l. Within thirty (30) days of completion, furnish the Department an **AS BUILT Summary of Costs and Quantities** form, which is attached as Exhibit B. The report should reflect the total cost of project as stated in **Project Certification of Design, Construction, and Cost form**.
- m. Failure to provide the **Project Certification of Design, Construction, and Cost form** and an **AS BUILT Summary of Costs and Quantities** report within thirty (30) days of Project completion will be considered a material breach of this Agreement and Public Entity shall reimburse to the Department all funds disbursed in accordance with this agreement.
- n. Upon completion, maintain all Public Entity facilities that were constructed or reconstructed under this Agreement.

##### **5. Both Parties Agree:**

- a. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department will be accounted for and disposed of by the Public Entity as directed by the Department.
- b. Any unexpended or unencumbered balance from the Local Government Road Fund appropriated for this Project reverts to the Department. These balances, if any, must be reimbursed to the Department within thirty (30) days of project completion or expiration of this Agreement, whichever occurs first.
- c. This Project is not being incorporated into the State Highway System and the Department is not assuming maintenance responsibility or liability.
- d. Pursuant to NMSA 1978, Section 67-3-28.2, Local Government Road Funds granted under this provision can not be used by the Public Entity to meet a required match under any other program.
- e. That the provisions of the Local Government Road Fund Project Handbook (Current Edition), are incorporated by reference and control the contractual rights and obligations of the parties unless in conflict with the specific terms expressed in this Agreement or any amendments.

## **6. Term.**

This Agreement becomes effective upon signature of all Parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement terminates on **December 31, 2020**. In the event an extension to the term is needed, the Public Entity shall provide written notice along with detailed justification to the Department sixty (60) days prior to the expiration date to ensure timely processing of an Amendment.

## **7. Termination.**

- a. If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement, by providing thirty (30) days written notice.
- b. The Department may terminate this Agreement if the funds identified in Section 2 have not been contractually committed within one year from the effective date of this agreement.
- c. If sufficient appropriations and authorizations are not made by the Legislature, this Agreement may terminate immediately upon written notice of the Department to the Public Entity.
- d. Neither party has any obligation after termination, except as stated in Sections 4n and 5.

## **8. Third Party Beneficiary.**

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member of the public 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.

## **9. New Mexico Tort Claims Act.**

As between the Department and Public Entity, 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, Sections 41-4-1, *et seq.*

## **10. Contractors Insurance Requirements.**

The Public Entity shall require contractors and subcontractors hired for the Project to have a general liability insurance policy, with limits of liability of at least \$1,000,000 per occurrence. The Department is to be named as an additional insured on the contractors and subcontractor's policy and a certificate of insurance must be provided to the Department and it must state that coverage provided under the policy is primary over any other valid insurance.

To the fullest extent permitted by law, the Public Entity shall require the contractor and subcontractors to defend, indemnify and hold harmless the Department from and against any liability, claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) arising out of or resulting from the negligence, act, error, or omission of the contractor and subcontractor in the performance of the Project, or anyone directly or indirectly employed by the contractor or anyone for whose acts they are liable in the performance of the Project.

### **11. 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 will be valid or enforceable unless embodied in this Agreement.

### **12. Terms of this Agreement.**

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

### **13. Legal Compliance.**

The Public Entity shall comply with all applicable federal, state, local, and Department laws, regulations and policies in the performance of this Agreement, including, but not limited to laws governing civil right, equal opportunity compliance, environmental issue, workplace safety, employer-employee relations and all other laws governing operations of the workplace. The Public Entity shall include the requirements of this Section 13 in in each contract and subcontract at all tiers.

### **14. 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 will, 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.

### **15. Appropriations and Authorizations.**

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

### **16. Accountability of Receipts and Disbursements.**

There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five years after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If an audit

finding determines that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) days.

**17. Severability.**

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

**18. Applicable Law.**

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

**19. Amendment.**

This Agreement may be altered, modified, or amended by an instrument in writing executed by the parties.

**The remainder of this page in intentionally left blank.**

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

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Cabinet Secretary 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: \_\_\_\_\_

**City of Las Vegas**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

**EXHIBIT A**  
**PROJECT CERTIFICATION OF**  
**DESIGN, CONSTRUCTION, AND COST**

TO: New Mexico Department of Transportation  
District \_\_\_\_\_ LGRF Coordinator

Cooperative Agreement No. \_\_\_\_\_ Control No. \_\_\_\_\_  
Joint Powers Agreement No. \_\_\_\_\_ Control No. \_\_\_\_\_

Entity: \_\_\_\_\_

Scope of Work (Including Routes and Termini):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, the undersigned, in my capacity as \_\_\_\_\_ of \_\_\_\_\_  
state that:

1. The design is in compliance with all state laws, rules, regulations, and local ordinances and was performed in accordance with the provisions set forth in this Agreement and in the Local Government Road Fund Project Handbook (Current Edition);
2. Construction of the project was performed in accordance with standards and specifications set forth in:

And completed on \_\_\_\_\_, 20\_\_\_\_; and

3. That the total project cost of \_\_\_\_\_, with New Mexico Department of Transportation 75% share of \_\_\_\_\_ and the Public Entity share of \_\_\_\_\_ (as submitted in attached "As Built Summary of Costs and Quantities") is accurate, legitimate, and appropriate for the project.

\_\_\_\_\_  
Name Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title





~~Regular or Special~~  
**CITY COUNCIL MEETING AGENDA REQUEST**

DATE: 06/11/19

DEPT: Public Works

MEETING DATE: 06/19/19

ITEM/TOPIC: Approval of Resolution No.19-36, acceptance of Capital Outlay Grant in the amount of \$652,214.00.

**ACTION REQUESTED OF COUNCIL:** Approve/Disapprove of Resolution 19-36

**BACKGROUND/RATIONALE:** as part of DFA and the New Mexico Department of Transportation submittal criteria it is required that a Resolution of support from our Local Governing Body accompanies agreement. In complying with this criteria, staff is requesting that this Resolution be approved for the Plan, Design, Construction, Construction Management, Reconstruction, Pavement Rehabilitation, Drainage and Misc. Improvements to Salazar Street and Romero Street from Grant Street to West National Street.

**STAFF RECOMMENDATION:** Approve Resolution 19-36

**COMMITTEE RECOMMENDATION:** N/A

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE NO LATER THAN 5:00 P.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.



\_\_\_\_\_  
SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:



\_\_\_\_\_  
TONITA GURULÉ-GIRÓN  
MAYOR

\_\_\_\_\_  
TANA VEGA  
INTERIM FINANCE DIRECTOR  
(PROCUREMENT)



\_\_\_\_\_  
ANN MARIE GALLEGOS,  
INTERIM CITY MANAGER

\_\_\_\_\_  
ESTHER GARDUNO MONTOYA,  
CITY ATTORNEY (ALL  
CONTRACTS, ORDINANCES AND  
RESOLUTIONS MUST BE  
REVIEWED)

**CITY OF LAS VEGAS, NM  
Resolution No.19-36**

**PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM  
BY New Mexico DEPARTMENT OF  
TRANSPORTATION**

**WHEREAS;** the City of Las Vegas and the New Mexico Department of Transportation (NMDOT) with DFA have entered into an agreement;

**WHEREAS;** the total cost of the project will be Six Hundred Fifty Two Thousand, Two Hundred Fourteen Dollars, (\$652,214.00) funding to be administered from DFA and NMDOT Capital Appropriations Funds;

**WHEREAS;** the share amount from DFA and the NMDOT shall be \$652,214.00;

**WHEREAS;** the City of Las Vegas shall pay all costs, which exceed the total amount of \$652,214.00;

**WHEREAS;** the City of Las Vegas will abide with terms and conditions of the Agreement;

**NOW THEREFORE, BE IT RESOLVED,** by the City of Las Vegas to enter into this Agreement Control Number C4193395, Appropriation ID D3395, with DFA and the New Mexico Department of Transportation Capital Appropriations Funds, Laws of 2019 Chapter 277, Section 40 Subsection 125, for the plan, design, construction, and construction management to Salazar Street and Romero Street from Grant to West National Ave. within the control of the City of Las Vegas, in San Miguel County, New Mexico.

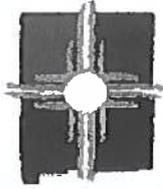
PASSED, APPROVED, AND ADOPTED THIS \_\_\_\_\_ DAY OF JUNE, 2019.

ATTEST:

\_\_\_\_\_  
Casandra Fresquez, City Clerk

CITY OF LAS VEGAS

\_\_\_\_\_  
TONITA GURULE-GIRON  
MAYOR



*New Mexico* DEPARTMENT OF  
**TRANSPORTATION**

May 15, 2019

Mr. Danny Gurle  
Public Works Supervisor  
City of Las Vegas  
1700 North Grand Avenue  
Las Vegas, New Mexico 87701

**RE: Agreement for CN C4193395, Appropriation ID D3395**

Dear Mr. Gurle:

Enclosed for your coordination of signatures are three originals of the Severance Tax Agreement. **Please return them to the District Capital Coordinator. DO NOT fill in the date on the first page of the enclosed Agreements.** An original will be mailed to you at the time they are fully executed. The Agreement contains the standard terms and conditions required by DFA to ensure proper accounting of capital funds to include the reporting requirements listed in Article VIII. The City should review the terms and conditions listed in the Agreement carefully to ensure compliance.

The Department of Finance and Administration is working to improve the management of capital appropriations granted to and administered by local entities. As part of this process, **DFA is requiring monthly electronic reporting using the Capital Project Monitoring System (CPMS).** The City can access CPMS at the following web site <http://cpms.dfa.state.nm.us/Login.aspx>. The City will need to log in as a local entity and report the status on all of the City's open General Fund and Severance Tax projects. The City of Las Vegas should contact Tonantzin Roybal with DFA, State Budget Division Capital Outlay Bureau at (505) 827-4209 or e-mail [Tonantzin.Roybal@state.nm.us](mailto:Tonantzin.Roybal@state.nm.us) to obtain a user id and password.

If you have any questions concerning the Agreement or if I can be of further assistance, please contact me at 505-699-9946.

Sincerely,

*CAM*

Clarissa Martinez  
Capital Outlay Manager  
Project Oversight Division

Concur:

District Capital Coordinator

**Michelle Lujan  
Grisham**  
Governor

**Michael R. Sandoval**  
Cabinet Secretary

**Commissioners**

**Jennifer Sandoval**  
Commissioner, Vice-Chairman  
District 1

**Bruce Ellis**  
Commissioner  
District 2

**Keith Mortensen**  
Commissioner  
District 3

**Walter G. Adams**  
Commissioner, Chairman  
District 4

**Vacant**  
Commissioner  
District 5

**Charles Lundstrom**  
Commissioner, Secretary  
District 6

**Contract Number:** \_\_\_\_\_  
**Vendor Number:** 0000054343  
**Control Number:** C4193395

**STATE OF NEW MEXICO  
DEPARTMENT OF TRANSPORTATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by and between the Department of Transportation, hereinafter called the “Department” or abbreviation such as “NMDOT”, and City of Las Vegas, hereinafter called the “Grantee”. This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2019, Chapter 277, Section 40, Subsection 125, 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; and

**WHEREAS**, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

**AGREEMENT**

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

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID D3395 NMDOT Control Number C4193395 **\$652,214**

APPROPRIATION REVERSION DATE: 6/30/2023

Laws of 2019, Chapter 277, Section 40, Subsection 125, Six Hundred Fifty Two Thousand Two Hundred Fourteen Dollars and No Cents (**\$652,214**), to plan, design and construct pavement and drainage improvements to streets in Las Vegas in San Miguel county .

The Grantee’s total reimbursements shall not exceed Six Hundred Fifty Two Thousand Two Hundred Fourteen Dollars and No Cents **\$652,214** (the “Appropriation Amount”) minus the allocation for Art in Public Places

("AIPP amount")<sup>1</sup>, if applicable, , which equals Six Hundred Fifty Two Thousand Two Hundred Fourteen Dollars and No Cents \$652,214 (the "Adjusted Appropriation Amount").

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(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code 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, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that 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:

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<sup>1</sup> The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

<sup>2</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

- a. must be approved by the applicable oversight entity (if any) in accordance with law; or
- b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

- (vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
- a. The 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.**
  - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
  - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that 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 attached to this Agreement as Exhibit 2.
  - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the 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. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

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

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 Las Vegas  
Name: Danny Gurle  
Title: Public Works Supervisor  
Address: 1700 North Grand Avenue, Las Vegas, New Mexico 87701  
Email: dgurule@ci.las-vegas.nm.us  
Telephone: 505-652-8750

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: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_

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

Department: Department of Transportation District 4 Office  
Name: Heather Sandoval  
Title: Assistant District Four Engineer – Engineering  
Address: P.O. Box 10, Las Vegas, NM 87710  
Email: Heather.Sandoval@state.nm.us  
Telephone: 505-454-3663

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party’s actual receipt or five 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 email.

**ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the “Reversion Date.” Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **6/30/2023** the Reversion Date unless Terminated Before Reversion Date (“Early Termination”) pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

## **ARTICLE V. EARLY TERMINATION**

### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

### **B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

### **C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

## **ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The 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 Notice of Obligation.

#### **D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the 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. Such corrective action plan must be approved by the Department and be signed by the Grantee. 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)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

### **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

### **ARTICLE VIII. REPORTS**

#### **A. Database Reporting**

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

**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.

**ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the 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) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, 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 such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

**C. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability 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 due to Grantee's violation of this Agreement.

#### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

- A. The following general conditions and restrictions are applicable to the Project:
- (i) 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 (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit 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, the "Anti-Donation Clause."
  - (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. 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 employment with Grantee, be excluded

from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
  - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
  - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
  - (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
  - (v) The 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 the Agreement and to sign Requests for Payment.
  - (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
  - (vii) 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 this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the 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 total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, 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 of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. 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.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

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

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges, warrants, and agrees that Grantee shall 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:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Las Vegas may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Las Vegas's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Las Vegas or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Las Vegas or the Department"

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges, warrants, and agrees that Grantee shall 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:

“This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Las Vegas may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Las Vegas only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

**XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

- A. Throughout the term of this Agreement, Grantee shall:
  - 1. submit all reports of annual audits and agreed upon procedures required by Section 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 Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
  - 2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
  - 3. timely submit all required financial reports to its budgetary oversight agency (if any); and
  - 4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.
  
- B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
  - 1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
  - 2. 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;
  - 3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
  - 4. terminate this Agreement pursuant to Article V(A) of this Agreement.

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee’s sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department’s failure to inform Grantee of a 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 effective without 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 contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant 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, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

\_\_\_\_\_  
Entity Name

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
By:

Its: Cabinet Secretary or Designee

\_\_\_\_\_  
Date

**REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE  
DEPARTMENT'S OFFICE OF GENERAL COUNSEL**

*Cynthia A. Christ*  
\_\_\_\_\_  
By: Cynthia Christ

Its: Assistant General Counsel

*5-17-19*  
\_\_\_\_\_  
Date

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 1**

<b>I. Grantee Information</b>				<b>II. Payment Computation</b>			
<i>(Make sure information is complete &amp; accurate)</i>							
A.	Grantee:			A.	Payment Request No.		
B.	Address:			B.	Grant Amount:		
<i>(Complete Mailing, including Suite, if applicable)</i>				C.	AIPP Amount <i>(If Applicable)</i> :		
				D.	Funds Requested to Date:		
				E.	Amount Requested this Payment:		
				F.	Reversion Amount <i>(If Applicable)</i> :		
				G.	Grant Balance:		
City                      State                      Zip				H.	<input type="checkbox"/> GF <input type="checkbox"/> GOB <input type="checkbox"/> STB <i>(attach wire if first draw)</i>		
C.	Phone No:			I.	<input type="checkbox"/> Final Request for Payment <i>(if Applicable)</i>		
D.	Grant No:						
E.	Project Title:						
F.	Grant Expiration Date:						
<b>III. Fiscal Year :</b> _____							
<i>(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)</i>							
<b>IV. <input type="checkbox"/> Reporting Certification:</b> I hereby certify to the best of my know ledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.							
<b>V. <input type="checkbox"/> Compliance Certification:</b> Under penalty of law , I hereby certify to the best of my know ledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.							
<b>Grantee Fiscal Officer</b>				<b>Grantee Representative</b>			
or <b>Fiscal Agent</b> <i>(if applicable)</i>							
Printed Name				Printed Name			
Date:				Date:			
<b>(State Agency Use Only)</b>							
Vendor Code: _____		Fund No.: _____		Loc No.: _____			
I certify that the State Agency financial and vendor file information agree with the above submitted information.							
Division Fiscal Officer				Division Project Manager			
Date				Date			

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee [# 1]**

DATE: [\_\_\_\_\_]

TO: Department Representative: [\_\_\_\_\_]

FROM: Grantee: [\_\_\_\_\_]

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: [\_\_\_\_\_]

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: [\_\_\_\_\_]

*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: [\_\_\_\_\_]

Signature: [\_\_\_\_\_]

Date: [\_\_\_\_\_]

<sup>1</sup> 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.

## **Attachment A**

### **The City of Las Vegas shall agree to comply with the following Provisions:**

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

### **The City of Las Vegas shall agree to comply with the following Lighting and Signal Provisions as applicable:**

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.

10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.