

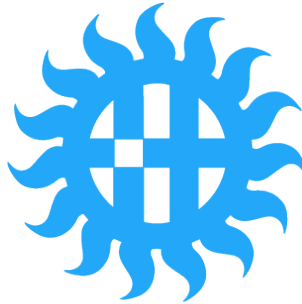
CITY COUNCIL AGENDA

Monday, April 6, 2026 at 1:00 PM
Council Chambers

Mayor
Eric Enriquez

Mayor Pro Tem
John Munoz

Councilors
Cassie McClure
William Mattiace
Michael Harris
Johana Bencomo
Becky Corran



CITY OF LAS CRUCES

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CONSENT AGENDA

Minutes and Items on the Consent Agenda Are Considered Routine Items and Will Be Voted on with One Motion Unless a Councilor Requests That a Specific Item Be Removed. There Will Be No Discussion.

Page

1. OPENING CEREMONIES

- 1.1. Pledge of Allegiance - Councilor Munoz.
- 1.2. Presentation of Certificates of Appreciation/Proclamations - Councilor Munoz.
- 1.3. Departmental Highlights.
- 1.4. Pets of the Week.

2. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)

3. PUBLIC PARTICIPATION

4. ACCEPTANCE OF AGENDA

5. CITY COUNCIL MINUTES

- 5.1. Work Session of February 23, 2026. 4 - 16
[Work Session - Feb 23 2026 - Minutes - Pdf](#)
- 5.2. Regular City Council Meeting of March 2, 2026. 17 - 36

- 5.3. Work Session of March 9, 2026. 37 - 48

[Work Session - Mar 09 2026 - Minutes - Pdf](#)

6. RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA

- 6.1. RESOLUTION NO. 26-120: A RESOLUTION APPROVING A VACATION / DEDICATION PLAT KNOWN AS THE LILLEY - KATERINA COMMERCIAL TRACTS. THE PROPERTY ENCOMPASSES APPROXIMATELY 11.746 ACRES AND LOCATED ON THE SOUTHEAST CORNER OF SONOMA RANCH BOULEVARD AND THURMOND ROAD. SUBMITTED BY GEM SURVEYING, REPRESENTATIVE, ON BEHALF OF DANIEL P. LILLEY AND KATERINA INC., PROPERTY OWNERS. 49 - 58

This resolution will authorize the exchange of equal land among three parcels to enable the City to obtain full control and maintenance responsibility of the South Fork Drain.

[Resolution No. 26-120 - Pdf](#)

- 6.2. RESOLUTION NO. 26-121: A RESOLUTION AMENDING THE FY2026 - 2031 CAPITAL IMPROVEMENTS PROGRAM. 59 - 72

This resolution will approve the reallocation of funds to airport projects.

[Resolution No. 26-121 - Pdf](#)

7. RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION

- 7.1. RESOLUTION NO. 26-122: A RESOLUTION AUTHORIZING A CONTRACT AMENDMENT TO EXTEND THE TERM AND INCREASE THE TOTAL COMPENSATION OF ELECTRONIC FUEL CARD SERVICES FROM WEX BANK DBA WRIGHT EXPRESS FSC (WEX) OF CAROL STREAM, ILLINOIS, VIA NEW MEXICO STATE PURCHASING DIVISION (NMSPD) CONTRACT NO. 20-00000-22-00058, TO AN AMOUNT NOT TO EXCEED \$1,500,000 SUBJECT TO APPROVED BUDGET APPROPRIATIONS, AND A TERM THROUGH DECEMBER 31, 2026. 73 - 208

This resolution will approve the extension of a contract for WEX Electronic Fuel Card Services for the purchase of fuel.

[Resolution No. 26-122 - Pdf](#)

- 7.2. RESOLUTION NO. 26-123: A RESOLUTION REQUESTING BUDGET AUTHORITY FOR THE REVENUE RECEIVED FROM THE GROSS RECEIPTS TAX (GRT) INCREMENT APPROVED BY VOTERS DURING THE NOVEMBER 5, 2024 GENERAL ELECTION. 209 - 214

This resolution will authorize budget authority for the revenue received from the Gross Receipts Tax increment of 0.325% for various proposed projects.

[Resolution No. 26-123 - Pdf](#)

- 7.3. RESOLUTION NO. 26-124: A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY. 215 - 219

This resolution will authorize the submission of an application to the New Mexico Finance Authority (NMFA) for bond financing and City Council approval of the projects to be funded with bond proceeds.

[Resolution No. 26-124 - Pdf](#)

- 7.4. COUNCIL BILL NO. 26-017; ORDINANCE NO. 3109: AN ORDINANCE AMENDING CHAPTER 24, PROCUREMENT CODE, OF THE LAS CRUCES MUNICIPAL CODE. 220 - 321

This ordinance will amend the procurement code related to direct contact of city council and city staff during the bid/proposal process.

[Ordinance No. 3109 - Pdf](#)

8. BOARD APPOINTMENTS

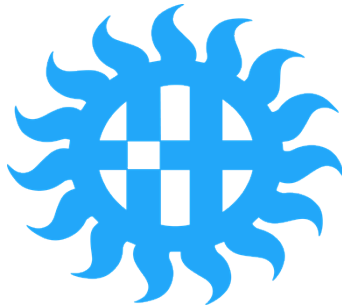
9. NOTICE OF PROPOSED ORDINANCE(S)

- 1) There will be no public discussion.
- 2) A Councilor may ask staff for clarification on the proposed ordinance(s).

10. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

11. CITY MANAGER REPORT

12. ADJOURNMENT



MINUTES

Work Session

Monday, February 23, 2026 @ 1:00 PM

City Council Chambers, City Hall

PRESENT: City Councilor Johana Bencomo, City Councilor Becky Corran, Mayor Eric Enriquez, City Councilor Cassie McClure, City Councilor William Mattiace, City Councilor John Munoz, and City Councilor Michael Harris

ABSENT:

1. AGENDA ITEM

1.1 LAS CRUCES PUBLIC SCHOOLS COMMUNITY SCHOOLS PARTNERSHIP REPORT.

Carol Brey, Quality of Life Director introduced the topic.

Johnny Rivera, Community Schools Manager gave the overhead presentation.

Councilor McClure asked how do you work with our Parks and Rec Department for some of the out of school time?

Johnny Rivera said one of those ways is really a direct relationship with them. One of my neighbors used to work for Park and Rec and I would just go knock on his door and say hey, listen can we do this partnership with you all? We have this afterschool program idea, can we do this? And it was just as simple as that. It is just calling someone directly and I am not familiar with staffing right now, but our coordinators do that. Our Community School coordinators do that direct contact with people throughout city government, and they reach out to the Parks and Rec Department, explain what we would like to see and try to make it happen.

Councilor McClure asked I am just curious if we can support them with more funding? I know what our budget looks like but that 4% might be something that we can talk about in the future but I am also thinking about the swim program we had that we asked for support at the legislature that didn't actually come through but if it is something that we can kind of merge together and give kids an opportunity to learn

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how to swim and give that support, also financially I think that would be a great collaboration especially with our great pool.

Councilor Mattiace said I think it is so vitally important because of the emphasis we need to give our youth programs and this is excellent and again thank you Carol and the Library for the partnership and the other partnerships. I am trying to look at the next two years that I sit on this city council is the impact. In other words, when you spend a million dollars how many people are you reaching? Or you spend \$150,000? You are reaching thousands of children and sometimes we spend \$20/\$30 million and maybe it only impacts 50 or 60 people and that makes for a very tight budget. Whereas when you spend on the library or you spend on youth programs, you spend it on public safety, you spend it on roads, you are reaching thousands of people. You are making their lives better in a large volume and so I really support anything that we can take from our budget and give to this program. I really support it wholeheartedly and thanks for your effort both of you and thanks for the presentation.

Councilor Harris said I am excited to be on the advisory board and to learn more and to help out going forward in the future. There are two community schools in the District 3, and they are great resources for the people who live there. I like that Lynn started it, kicked it all off. Something that stood out to me in one of our previous conversations when I was getting introduced was that the interaction with the students and getting their thoughts on specifically safety around their school and what struck me about that conversation was they seem to have different thoughts than all of the rest of us might have expressed in the past and so that is very interesting and I look forward to that kind of engagement at that level. Another thing that I wanted to mention, when we were in Santa Fe we were talking about afterschool programs, community schools, the whole general idea and something that one of the legislators brought up is that we need to have activities. Actually, specifically not activities, facilities that are open to kids to just be there. So we talk a lot about having afterschool programs and arts and crafts activities and sports and things for them to do but what this conversation was about is we need to also recognize that some kids just need a place to go and exist and maybe they are scrolling on their phone or whatever and sitting in the corner and not talking to somebody but they are there and its helpful and if they want to engage later they can engage. So, I just want to make sure that when we are discussing activities and I think I was talking about this in the board meeting too with some people afterwards and I think they are on it. You know just be open to not everything has to be an activity. You don't have to gather data from a survey from every kid right at the offset. Otherwise, I absolutely am in support, I think this is a great program. I think it is really thinking outside the box on how we do community engagement. Back in the past the schoolhouse was like one of the centers of community and I like that we are bringing that back.

Councilor Bencomo said on the absenteeism chart you showed us, I thought that was really powerful information. I am curious if you all have further data on that? Honestly, I am just really curious about what are the kinds of things leading to absenteeism if you have those sort of in categories recorded?

Johnny Rivera said one of the projects that we have done and I think it is important to

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point out with community schools that is inherent to only community schools is the ability to connect with students on a more intimate level and a more grounded level. One of the research items that we did with Lynn Middle School was we asked a group of students why they are not coming to school, why they are coming to school and what resources they would need to stay at school. So, the reason they were not coming to school, was violence. The reason they were not coming to school was separation within the household, death in families, either to violence or to Covid at the time of the pandemic but also the need for mental health resources to support them. And so when we talked about why they were coming to school they were talking about positive relationships at the campus, they have a teacher that they are just really close to or friends, a strong social circle on the campus that they feel supported on their campus and then also they felt safe on the campus. This was their one space that Councilor Harris touched on. This was a space, one space that they could come to and not have to worry about anything other than just being at school. I wanted ask about other resources to help support them. We talked about all of the resources that we provide as a Community School and so we realized maybe we should educate them more about the resources and this might help out with our chronic absenteeism rate, but this is something that translates with all of our campuses across our community schools at least.

Councilor Bencomo asked when you say violence, it was violence at home not violence at school?

Johnny Rivera said one of them is gun violence. Gun violence in the community. We had a student that was in ISS and I had went and poked my head in there and talked to him and why he was in ISS and found out that really the root cause wasn't that he was just acting out to act out. He had lost a cousin due to gun violence in the community, and he didn't know how to manage his emotions for that instance and ended up acting out in way that ended up in ISS. So, we connected him with other resources to make sure he feels supported on the campus. Obviously we have other instances near the campus that have taken place since then like Young Park and connecting with those students in group session and just giving them that time and space to connect with them and to let them know that we want to hear what your thoughts are and all they have said to us really was we just want to know what is going on and that was it and for me that is where we should start. Just giving them a platform to talk and where they can be treated like people and they are and we treat them as people but I think community schools is that function where we can make those changes and have those conversations with students.

Councilor Bencomo said literally my second question was going to be about gun violence education and I am curious if community schools would be such a perfect place to engage in that kind of work. I know the newly revamped DARE program is out there. I am curious about what kind gun violence or violence diversion education is happening at community schools or if you would be open to those kinds of partnerships in the future?

Johnny Rivera said absolutely we would be open to it. I think community schools as I mentioned earlier is a democratic platform. In our traditional schools we have student

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government and when you think about a high school and how many members are involved you might have 50 members in a student council, student government, that is not representative of 5% of the student population and when we talk about community schools we pull out more students to different committees and we have a stronger engagement with their students and give them a platform so that they can truly talk about what they feel comfortable talking about and something as delicate as gun violence. I think it is very important to have that strong relationship and bond with our students before we can tackle something that heavy.

Councilor Bencomo said I think it is really important given the alarming trends that we have been seeing in the last year certainly. Again, I think it is so important and I am really glad that we have this partnership with you all and I think community schools are really vital to our community and the success of our kids.

Councilor Munoz said there is about 1,335 students in the Cultural Enrichment Program. There is roughly 24,000, maybe 25,000 students district wide I would say and you may or may not have the answer now, but I would love to hear what initiatives or what ideas you have to expand that. How can we work together between the City of Las Cruces and our public school system to increase our net for student services with the afterschool programs?

Johnny Rivera said afterschool programing has been also in the climate of volatility when it comes to grant funding and so with our partnership with NMSU there has been a year-to-year basis for the last couple of years as to what our funding is going to look like. I do think that we need to find sustainable ways to fund these programs because for example at one of our campuses we have 33 programs and if we lost our funding and we lost all of those 33 programs and we can do the math of 33 times approximately 26 students, there is also to students that even how don't have anywhere to go and they also don't have the programs they designed in and so we lose that ownership and buy in from our students and giving them that space that they deserve. As far as expanding on a district level, that is a question for Dr. Wendy Miller-Tomlinson who I would be glad to sit down and talk with but I do think that the conversations begin at our Committee Schools Partnership Board meetings and it is great to have the council members that we have here and I know the Mayor is going to be joining us to have those discussions and that is where it begins.

Carol Brey said what I would like to add from the City's perspective is that I attend all the partnership board meetings and so do several of my staff. We have at any monthly meeting we have one or two people from the museums and from the library outreach teams. Currently our museums are doing programs in the schools already. I believe it is second grade right now that they are working with. They have a curriculum they have developed for second graders. Our libraries come to many of the community school outreach events that they will have and we are looking at ways internally across our department that we can do more to provide afterschool programing and certainly we will consult with Johnny and with his team about how we can do that in a way that would be useful to the community and to the schools as well.

Mayor Enriquez said I look forward to serving on the board and being a part of you

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know throughout the United States there is different charters and different ways of doing things. There is some areas where the schools are under the city, and the mayor, and the council and there are others that are run by the state as we are. A lot of times we feel that there is nothing we can do about it because it is not under our purview, but the truth of the matter is working together, being a community so it is fitting that their community schools so that we can work together as a community and take care of our community. This is great, it is a great step forward and we need to get NMSU involved as well as you said building that relationship for our community is what is going to make it succeed.

1.2 AMADOR HOTEL UPDATE AND AMADOR HOTEL FOUNDATION REPORT.

Carol Brey, Quality of Life Director gave the overhead presentation.

Garland Courts, Deputy Director Quality of Life continued the overhead presentation.

Carol Brey continued the overhead presentation.

Heather Pollard, President of Amador Foundation continued the overhead presentation.

Carol Brey continued the overhead presentation.

Heather Pollard continued the presentation.

Councilor Bencomo asked do you have the numbers of the total amount for public funds that have been invested to date?

Carol Brey said we have spent approximately \$7 million I believe at this time. The phase we are getting into now, finishing up Phase II is another \$3 million and then we have \$4.8 million for Phase III and then I believe Phase IV is going to be another \$3 million. So, it will be about \$21 million, not quite \$17 million. That number fluctuates because of course it is a very old building as we get in there, we sometimes find that we need more than we thought we needed for certain aspects. I know that we have discussed this quite a bit with Public Works and Sreedevi Mohanraj is here and I don't know if she wants to add anything to that but that is where we are right now. So far, we have spent a little over \$7 million and then we are adding the \$3 million we already have. Most of that did come from TIDD funding to do the remainder of Phase II, that puts us about 10 and we this additional \$4.8 so that is almost \$15 plus \$3 for the remainder of what would be Phase IV. So that is about \$18 million.

Councilor Bencomo asked current for the phases you have planned out, how much currently do you have secured?

Carol Brey said we have enough that should get us through most of Phase III and enough to open the facility to the public at this point and that would be basically be \$14.8 million that we will have spent that we once we spend that money and we will

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really just be looking for the remaining funding for the second floor interior and that is all we lack and we can open the facility. A lot of what is needed on the second floor, I believe it is going to be a lot of dry wall and paint. I think they are doing some of the structural work as part of Phase II.

Councilor Bencomo said \$4.8 million from a grant, which congratulations, that is excellent. The other \$3 million is additional TIDD money.

Carol Brey said it is mostly TIDD money. There was some additional legislative funding we got from this but that has been spent.

Councilor Bencomo asked have you all come up with a plan or an approximate proposal for operational funding and what that will be per year?

Carol Brey said we are working on that now, given that we have got three years given before we will be able to open. We have a little time but we will want to have it ready by obviously fiscal year 2028 so that we are ready to roll that into our budget proposal but what we are doing right now, Garland and I are talking about who from the museums could service a liaison into this project beyond us because we are not always as available as when they might need someone and then we also with our museum team and all across the department you know once we are operational we are very skilled at holding events and holding programs and conducting tours and knowing as he mentioned how to create a museum exhibit space. So, we are going to be able to rely a lot on the team we have within the Quality of Life Department. We only envision a staff of, I would say of three to four people, most likely.

Councilor Bencomo said I have to be very honest. I hope that the remaining funds for the remaining the phases that are not secured yet, that I hope they do come from grants. I feel like given the state of the budget and given the state of the infrastructure emergency that we currently have in the city with fire houses, Municipal Court and those kind of things that we should definitely be focusing our investments on some of those emergencies and you know I think at this point that we are nearing about \$15 million of public dollars and I am not saying that it is not important, I am just saying that I really hope that the foundation and all of the folks are prepared to go and try to find those kinds of more grants in order to support this project and in order to supplement the investment that the city has already made. That is just at least my perspective and where I'm coming from given what I hope we are funding in the future and how we are I hope addressing the infrastructure emergency we currently have in the city.

Councilor Harris said I also echo some of the budget concern. I think that it is a great and important project. I am new and all of this happened way before my time, so I appreciate that. I look forward to going and seeing the building. I drive past it every day and I see the progress and it looks exciting and I am excited for what it can become and be this anchor to downtown. So, to that end I was wondering what does this look like as like an everyday integration to the space? I saw the courtyard and it looks like there is cool plans there. I am struggling a little bit to visualize it in my head of how it dovetails with the Visit building and the Amador Live but is this envisioned to

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be open every day so that people can go? Will there be a little café or something to draw people in that is not necessarily event based? Can you speak a little bit about that plan, I know it is not for another four years?

Carol Brey said some of that I can respond to but some of that we don't have the plan for yet. We don't have a plan for a café per se. There is a plan for a catering kitchen. The plan is yes, hold events there but you know we also have talked a lot, and I believe the Amador Hotel Foundation is in agreement with us about basically making sure we have the museum space, that we have space that explains how important this space is to Las Cruces. That we can bring the many students that tour our museums now, bring them there and help them understand one of the earliest important historic spaces in our city that still exists, right? And what Las Cruces was like. We have talked about having Moonlight at the Amador like we have Moonlight at the Museum so that we can have adult events there. We talked about also recreating when the days apparently and I have heard Irene Oliver Lewis talk about this, our local semi-retired actress perhaps talk about as a child remembering and going and being in that parlor in there and there was singing and dancing and performances going on and with the talent we have locally here we could recreate that sort of a parlor space which I think is very exciting for our community. So, you know there is a lot of possibilities and in fact that Kells & Craig plan does outline some of that. We don't think we will need to focus as much on the event space aspect of it, but it would be available for rental for events as well.

Councilor Harris said that is great, I like that we are looking to kind of bring more mass and density of museums and I like the thinking that you can make a whole day out of your field trip by taking kids there and then working on your way down Main Street. Looking forward to getting it finished and getting some events.

Senator Carrie Hamblen, Member of the Public said I wanted to give a little background on the \$4.8 million grant that was received. The Department of Finance and Administration has five new people on staff now that their sole job is to find these pockets of money that are going to projects like this and so I do want to give credit to my assistant, my District Legislative Aide, Andre Gonzales, who is instrumental with really working with the Amador Foundation and the DFA to try and find that money and I recognize Councilor Bencomo's concern and Councilor Harris's concerns about where are we putting this money and understand the challenges that you have as a city government so I wanted to just make sure and commit to you that Andre will continue to do it to help find those pockets of money to help do this because I recognize that there are other things really need to take priority when we talk about public safety but I also feel like this is the last cog in downtown especially since you all were successful in that eye sore of a building getting leveled that when we look at downtown and really the vibrancy that we are able to have a downtown, I feel like this is the last piece of that and so that is why I feel that it is something that is really important and so Andre will continue to work with the foundation to try and find those monies and try and do that so that you can put your budget money to where it really is needed. So, I do appreciate you all considering that and thank you very much for all the hard work from city staff and from the Amador Foundation for really trying to get this gem up. I do strongly encourage you to go and see it, just the history there. My brother's mother-in-law stayed there in the 50s when they were coming down to start

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their life while her husband was working at White Sands and so they had fond memories of that hotel of people who are still in our community who have very fond memories. I appreciate all your efforts and thank you all for your support on this.

Mayor Enriquez said thank you Senator Hamblen. We appreciate all of your efforts and your work in helping the foundation out. Also, I want to say that we all up here have that challenge, of where is the funding coming from and we are always looking at those things. This is something when you look at return on investment, we can also look at return on value. The value, the intangible part that it offers the city of Las Cruces and the history that is so valuable to many of us here in Las Cruces and that is what it provides. So, Ms. Pollard, thank you for all your work, for continuing over 20 years to help this project and the Amador Hotel continue and to open up its doors again.

1.3 9TH SEMI-ANNUAL POLICE AUDIT REPORT PRESENTED BY THE OIR GROUP.

Viola Perea, City Auditor introduced the topic.

Teresa Magula, OIR Group gave the overhead presentation.

Stephen Connelly, OIR Group continued the overhead presentation.

Teresa Magula continued the overhead presentation.

Stephen Connolly continued the overhead presentation.

Councilor Harris said I scanned through most of the report. It is very thorough, so I am going to dive much deeper into it and get to know things that happened before my time here. I would also like to thank the Police Department for cooperating so fully and for being at least compared to a lot of other departments that we all read about in the news. I think they are taking this stuff seriously and really trying to instigate some change. Obviously, there are improvements that can be made but I do appreciate the willingness to go along with this process. I have a few questions and comments. One, I agree with your findings and recommendation that critical instant reviews should be completed for every single incident. I think that is not negotiable to me. In any other industry, in industrial safety and aviation, medical, every single incident gets reviewed and if we don't have the resources to do it, we need make them. We need to get the resources and make them available. Every single one needs to be reviewed and reviewed quickly and in a way, obviously internally we are trying to make things better. Not necessarily place blame on any one person and then seek to discipline them. This is a big thing in industrial safety in particular and aviation is that. We are not trying to find the person who didn't tighten the bolt, it is why did the system allow the bolt to not be tightened. I will also echo the thought that police officers are held to a high standard and they have to be. If I have a bad day at my job, that sucks, maybe I get fired, maybe I piss somebody off, but I don't carry a gun and interact with the public and so really, yes, held to a high standard, you have to be. Your bad day could be somebody's last day. That is just the reality of things. So, I am curious with that in mind, so over the last nine years we have been implementing new policies and things,

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have you seen changes in how the report in how these incidents not necessarily been addressed but like the types of incidents we have? So, nine years ago we had X number of incidents, and they had some severity through all of the things that have been recommending over the last nine years, have we been implementing these policies? Have they been resulting in real change? And I will let you speak to that and I have a couple of follow-ups.

Teresa Magula said I wanted to just clarify on critical incidents, just a point of clarification that all incidents are reviewed. They do receive different groups within the department will review them and they ultimately all result in an internal investigation so an IA, Internal Affairs investigation. The nuance that we are suggesting, recommending is that it is this force review cadre which is a specialized unit conducting yet another layer of review. So just for clarification, all critical incidents are receiving at least some level of fairly rigorous review. As to your last question, I think that there are two sides of it. One is that we are looking at individual officer performance and conduct and the extent that we are tracking the names and the actual personalities that are coming across our desk, we are gratified to see that we are not seeing a lot of reoccurring offenders. There is not a lot of trends in terms of, boy we see this guy every quarter. So as far as remediation working on the individual level? I can't say whether it is because of that process or that process that he or she shifted behavior but certainly it is implied and any training that was received. On a systemic level, the department for the most part agrees with our recommendations and where they go from there, we have seen changes in terms of process, the administrative process. I am spinning up reviews for this type of off duty conduct. We weren't seeing that five years ago prior to Chief Story's tenure and so we are seeing that the department is holding officers more frequently accountable through these internal mechanisms, then we have in the past.

Councilor Harris asked is there certain disciplinary actions that you have seen us take that are better than other departments do or worse than other departments do and do you provide specific guidance on in this instance we believe this behavior warranted a different kind of punishment? Specifically, I read a couple of individual reports from last year maybe and between them it kind of struck me as one of these is worse than the other but the one that was less worse in my mind like weren't to the demotion. It was like this seemed disproportionate.

Stephen Connolly said I will say a couple of things. One is, it is absolutely something that we look at. If there are sustained allegations, we are certainly curious to know what the department's response is and does it seem commensurate with the severity of the allegations. We keep our description of it in terms of public reporting in a pretty high level as opposed to getting in the weeds. We will occasionally talk to the department and have the same reaction you do. Not necessarily why this seemed worse than this and why did this get a different lesser punishment but in an individual case we might say we would have expected the consequence for this to be more significant and then just have that conversation. The other piece of it is that there are some different variables that can account besides the specific policy violation. Are you a repeat offender? Are you a supervisor who should have known better? Or a brand-new officer? And I think the biggest key to your point about actually fixing or correcting as opposed to just giving somebody two days off and teaching him a lesson. I think

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the idea that the department has really leaned into is really almost every case that is sustained and some that aren't even sustained. The department is going to follow up and outside of the disciplinary process address the underlying behavior performance issue and really try to give the officer the tools to make sure it doesn't happen again, so I think there is an evolution in that respect.

Councilor Harris said there were incidents where you found where supervisor should have been paying attention to this because the leadership really does come from the top and flow down. I was reading the report and there was a note that the zip code sample was kind of iffy and the main reason was most of the reports originated from Internal Affairs which was in zip code 88001, shockingly. Do you have any recommendations on different ways that we could geographically map these things by patrol routes, or council districts, or other statistics that we might be interested in?

Teresa Magula said one of the things that we tried to do more recently is look at the underlying police reports so not rely on the memo that says, the complainant is the Police Department in 88001. So we look at who was involved, where was it happening and we are using that zip code more regularly and what I think we need to do is go back over the course of five years and put that data instead and so certainly we will be able to have a little more mapping in the future. We will go back and do that work.

Councilor Harris said that would be appreciated. The zip codes in particular in Cruces are weird and mixed to say the least. I don't know if we would have better geographic descriptors, that is a question to further go on but I think that is it.

Councilor Corran said you mentioned in two separate reports and I noticed these when they were coming through earlier that the use of generative AI to write reports is maybe leading to some problematic things and/or at least not allowing for a clear narration of what people experienced in that that might be problematic of understanding the implications of whatever happens. I am wondering if you can talk a little bit about what you are seeing what other departments do in this context and/or if LCPD has come up in about the last year since we started using this new technology and I understand report writing is terrible but I also don't want us to miss things or have things be glazed over by AI because it is rosy or whatever the situation is. It seems like it might have been the case in some of those things.

Teresa Magula said we are at the cusp of something new like every morning, so this is a work in progress. I think for agencies nationwide and certainly there is that balance because report writing takes an extraordinary amount of time and officers are often tied to that desk writing a report versus being in the field. Supervisor, same thing, tied to the desk, reviewing, checking that report and so I think this is one of those Pandora's box that we opened and officers have access to it and if we were to take it away they would probably not be very happy to go back to the type of report writing they were doing. I think the important part is to have really strict guardrails and very close review and so we are really leaning on departments are really leaning on supervisors to be doing thorough reviews of those reports. Does this make sense? Is it something that is comprehensive and so on. Axon, which is the main vendor of this report writing software although there are various, but Axon is the one most frequently

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used. It is packaged in with the body worn camera contract typically. And they have a lot of safeguards in place in order to kind of test the officer and the supervisor to make sure that they have reviewed the report. They will put in things that are completely wild and out of left field to kind of make sure that those are reviewed. They have been developing safeguards over the course of the year as new things come up they are putting up something to help remediate it but certainly it is something that we have to keep looking at and I think this is just the new world that we live in, not just for law enforcement but all around. So, we will keep looking at it.

Councilor Corran said this is one of those situations where I don't trust the people who made the problem to fix the problem so I feel a little to be a little proactive in thinking about this because I don't want to, I am not proposing that we get rid of it even though I tell my students, you get dumber when you use it. I understand the context that it is in and the value that it has. I just don't want it to be something that interferes with your work, with our understanding of accountability and can actually help make things better for the force so thank you and I look forward to hearing any other interesting updates that might come around related to that.

Councilor Mattiace said you represent quite a lot of cities in different police departments, you touched on a very important segment several times and that is making a police force better, that is training, equipment and tools. It was throughout your entire presentation. So, my question to you and recommendation maybe from you because you are experts, we are thinking of developing and building a new training center. Do you see the correlation? You work with police departments in other cities where they build a state-of-the-art modern training center that it is an improvement in the quality and of the recruiting of the policemen? It is a tough question for you to answer but I just wanted your opinion.

Stephen Connolly said I would say broadly speaking it absolutely makes a difference in so many ways. I think just in terms of morale it is very affirming and a source of enthusiasm for officers to have a place to go for training that is of a really high quality and I think that there are a lot of dividends that can arise from it as you noted and we appreciate that we are huge proponents of looking at these things holistically and you can unpack what happened on this specific day and did this person do this instead of that but you have to look at the broader context of how these people are being trained and how effective the training is and what tools are they being given and I think a robust training program is absolutely essential to an agency that is operating at the highest potential level and to your point more specifically, a quality training facility absolutely is a positive factor in that whole process.

Councilor Bencomo asked are we able to talk about the new contract and if we are I am curious about whether anything is changing in it that you can discuss now? When do we expect it to come to council?

Ikani Taumoepeau, City Manager said that is not on the agenda, unfortunately. So, we can't talk about it.

Councilor Munoz asked when will this be available for public review or consumption or

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will it be available?

Viola Perea said as soon as we finish today’s council meeting, I will have Christine post it on our transparency page.

Councilor Munoz said I would like to add a little more science or a little more math to the presentation. I haven’t read the contract so I am not sure if this is within scope or not but DC Urenda that is probably us as a police department and the city but I would just like some comparative data. Police has about 158,000 calls per year or so, give or take, so in Six Sigma we call this defects, or errors or anomalies. So, I would like to know how we did this year versus last year versus five years ago? How are we doing in comparison to cities our size? So, if that is within your scope and you can provide that I would love to see the progress and regress, if not we can do something internally to look at data like that.

Teresa Magula said I think one of the challenges in framing it that way although we absolutely can do that and we have looked over the past years as well to see relative to calls for service, what is the percentage of complaints? One of the things that is challenging about it is that as a system becomes more effective, we might see an increase and we have seen an increase in the number going up, right? So over time and in particular over the past two years we have seen an increase in internal investigations being launched. Why is that? Are officers actually engaged in more misconduct or is the department now taking the view that these issues need to be documented, formally investigated, formally addressed, right? So sometimes when we see those increases it is not necessarily indicative of something happening worse or going south or being more deficient but just a sign of a healthy system but we can certainly provide those figures.

Mayor Enriquez said anytime that you raise your right hand and you take an oath, you are held to a higher standard and anything that you say, how you behave and how you conduct yourself is always going to be scrutinized. So I thank Chief Story, the Deputy Chiefs, the Police Department for being willing to cooperate and give in order to get better because as a law enforcement, as a code enforcer it is always hard to be audited and to embrace it really takes a lot of professionalism, maturity to say what is it that we are doing wrong? How can we do it better? And you still keep adding to it so that is good from external to the categories, to the cleared cases so that we can review everything and get better because that is what we want the best public safety we can get and the best department, the outcome can come out so again thank you for all that you do and we look forward to seeing how we can get better.

2. ADJOURNMENT

2.1

City Councilor John Munoz moved, seconded by City Councilor Michael Harris, to adjourn at 2:59 p.m.

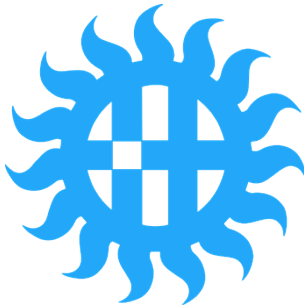
RESULT:	Carried
MOVER:	City Councilor John Munoz
SECONDER:	City Councilor Michael Harris

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AYES:	City Councilor Johana Bencomo, City Councilor Becky Corran, Mayor Eric Enriquez, City Councilor Cassie McClure, City Councilor William Mattiace, City Councilor John Munoz, and City Councilor Michael Harris
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Mayor

City Clerk



MINUTES

City Council

Monday, March 2, 2026 @ 1:00 PM

City Council Chambers, City Hall

PRESENT: Mayor Eric Enriquez, City Councilor Cassie McClure, City Councilor William Mattiace, City Councilor Michael Harris, City Councilor Johana Bencomo, City Councilor Becky Corran, and City Councilor John Munoz

ABSENT:

1. OPENING CEREMONIES

1.1 PLEDGE OF ALLEGIANCE - COUNCILOR BENCOMO.

1.2 PRESENTATION OF CERTIFICATES OF APPRECIATION/PROCLAMATIONS - COUNCILOR BENCOMO.

None.

1.3 DEPARTMENTAL HIGHLIGHTS.

Blake Davenport, Interim Airport Director gave a presentation on the Airport.

Steven Bingham, Parks & Rec Director gave an overhead presentation on Parks & Recreation

1.4 PETS OF THE WEEK.

Carol Nielson, Animal Services Center of the Mesilla Valley presented Pets of the Week.

Dr. Sabine Hirschauer, NMSU Department of Government introduced her Democracy Seminar Group from NMSU.

2. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)

2.1

None.

3. PUBLIC PARTICIPATION

3.1

Lynn Moorer, Member of the Public said at the last meeting Assistant Utilities Director Carl Clark stated that the city's drinking water sampling had never identified any lead level exceedances that he knew of. He also said with respect to sampling associated with the city's 2024 Consumer Confidence Report, "Our water is at 2 parts per billions". Handout 1 shows that in fact things are not that rosy. Our water is actually four times higher. Three homes tested in August 2024, in Las Cruces Municipal Water System were 8,6, and 3 parts per billion, respectively. All are under the current action level of 15 parts per billion, but Mr. Clark mischaracterized this key health information. The record shows that the city does not test drinking each year for each of the city's five water systems, contrary to what Mr. Clark stated. This important fact becomes clear when you compare the sampling results of the CCR reports. Indeed, the city did no sampling at all in 2019 or 2022. Handout 2 shows the timing of sampling and the numerous gaps in the reports. This led to the discovery that the city published false information regarding sampling results in the Las Alturas water system. The 2024 CCR for the Las Alturas system which just repeated the numbers from 2023 because no new sampling was done in 2024, falsely claim that no samples exceeded the action level. In fact, one sample pulled in 2023 showed 24 parts per billion and another 18 parts per billion, both well above the action level of 15. See Handout 1. The CCR also falsely claims that despite these two exceedances, 98th percentile compliance was achieved. This is saying that 90% of the samples were compliant. In reality those two exceedances brought the overall compliance below 90% thus the drinking water in the Las Alturas system was non-compliant in 2023 and 2024. This was hidden from the public. There are also falsehoods in the 2020 CCR which I don't have time to spell out now. What Mr. Clark did not say is the action levels will decrease from 15 parts per billion to 10 parts per billion as of November 1st, 2027. Las Cruces Utilities is now operating on a less strict standard. While this may be lawful at present it is considered inadequate. That is why the water testing standard was strengthened which does not affect the Lead and Copper Rule requirements for competent inspections, honest notices about findings, lead and galvanized pipe removal and publication of a full and accurate inventory. Lead and galvanized pipes must come out regardless of any test results and the public must be truthfully and completely informed in a timely manner. In light of copious false characterizations and huge gaps in sampling I have no real confidence in this city's so-called Consumer Confidence Report.

Liz Rodriguez-Johnson, Member of the Public said it looks more and more like Las Cruces Utilities never intended to uphold its promise to put disadvantaged properties first. A promise made to obtain \$15 million in funding to implement the federal Lead and Copper Rule. It appears that the department may have sought and obtained the \$15 million under false pretenses. What is clear is that the Utilities Department doesn't have its priorities straight. The first handout relates to you what should be happening. The second, third, and fourth handouts relate to what should be happening. The first week of November, city inspectors spent the majority of their time

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and resources inspecting properties that are not disadvantaged. Of 1042 inspections, or 24% were for disadvantaged properties. The first week of December the end balance was much higher. Only one property of 28 inspected or 4% of the total was for disadvantaged properties. Handout A shows the estimated valuations for the non-disadvantaged properties set inspectors examined during these two weeks. Their devotion of time inspecting these genuinely higher value properties that are not designated disadvantaged violates the city's promise made when asking for the \$15 million and violates public trust. Instead of inspecting a property valued at more than \$465,000 on Cheyenne Court and its neighboring \$400,000 properties Utilities inspectors should be inspecting all the properties listed in Handout B. These truly disadvantaged properties have estimated values of less than \$100,000. This adds to the list of less than \$100,000 properties provided at the last meeting. We urge utilities management to direct inspectors to check out these obviously low-income properties posthaste. When all these inspections for these properties are completed Las Cruces Utilities inspectors should work on the properties in disadvantaged neighborhoods with the estimated value of less than \$200,000 is helpfully listed in Handout C. It is both unjust and dishonest to prioritize non-disadvantaged property inspections over the genuinely disadvantaged ones. Finally before even one more property valued at \$300,000 or higher is inspected absent an overriding reason, every one of the properties in Handout D, shows a mobile home community without water hookups in which doesn't appear in the inventory along with every single property on Handout C provided the last meeting should be inspected and added to the map and inventory. The city continually fails to include these lower income folks on the map or in the inventory or even acknowledge their existence. This is obvious and it is also cruel. So maybe cruelty is the point.

Chris Apodaca, Member of the Public said talent agent, Empasario, film and television. You know I was thinking, I have given you information on myself, my background. You really can't put what I do on a resume. I just saw a movie called Air with Matt Damon and that is kind of what I do. You all know that I have been around for a long time in the industry, close to 40 years, as a professional in the big leagues, in the show, in the majors. Not many people have had the opportunities that I have had but I have been truly blessed and I am grateful for the things that I have done in my career and look forward to many years still. When I was in Hollywood fourteen years ago, I was thinking you know I would like to go to Las Cruces maybe and get something going, see what I can develop so I kind of followed you for about four years and eventually moved here to be with my mother who has since passed and I have family here and that is why I choose to live here as well as I was born here. This is home and I love the Mexican food. Can't beat it. There are a lot of big fish in this town or actually a few big fish and a lot of little fish that think they are big fish. They need to swim upstream to the ocean, that is where the whales are, meaning the studios and the money. You need to get up there and give it a shot and see how you do. It is a whole different experience. There was somebody who spoke here a couple of weeks ago and they were talking about the competition and the city and all of this and I just don't get that. You shouldn't have competition here and you have 14 other states doing what you are doing plus California, and no one is working together. I had a lot of information on myself.

Juan Garcia, Member of the Public said thank you Councilor Harris for providing the

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update on Flock. I recognize your concerns, yet it is important to assess questions based on facts and overall impacts to the community rather than focusing on particular “affected groups”. Credit to District Attorney Macias for the convictions of two of the killers responsible for the Young Park massacre. I hope they are done destroying lives. The question is why weren’t laws with real deterrents, real consequences not enacted that could of possibly prevented this tragedy. Look at the price of blood and potential monetary cost to the city over inaction. “Guilty under depraved mind murder”, determining that Nathan Rivas actions showed, “a total and deadly indifference to the value of human life”. I have been saying this time and time again the reason people kill is because life doesn’t matter. And I will repeat it. Total and deadly indifference to the value of human life. We see this often in Las Cruces. The subject of using GRT revenues on quality of life or public safety was recently discussed in these chambers, nice to have parks unless families are afraid to use them due to the out of control crime. In my opinion push back against public safety isn’t about fiscal priorities it is about hostility against law enforcement. That sentiment is voiced by many of our friends on the left and members of the Las Cruces Anti-Police Group. The leader who is a self-proclaimed anarchist claimed they were being “insinuated as part of something organized”. In public comments a speaker warned that this same leader is part of a highly organized group that coordinates efforts to stack local meetings. The leader was credited with busing in over 250 people from El Paso, Silver City and Albuquerque to sway a public event. No doubt those bused were “unpaid concerned citizens”. This same leader tried to team up with LCPS with board member Patrick Nolan to stack a book review board while we advocated for measures of handling age inappropriate books in libraries and in our upside down world thousands of Iranians are celebrating the death of their brutal dictator who killed thousands of Iranians and hundreds of Americans while American leftist are furious that he was killed. Make some sense of this.

Yoli Diaz, Member of the Public said I have provided you Dennis Knox financial assistance file that he had sent to me which is three files and also 6.5 Section of Indigent Care Continuation of Services from the asset purchase agreement and the 2004 MMC Policy. Memorial Medical Center is currently facing several issues. Regarding the subject at hand, one significant problem is that Memorial Medical Center is using Dona Ana County Resolution 2023-68 as their indigent policy. This may represent an update to their policy potentially replacing the one mentioned in Section 6.5 Indigent Care Continuation of Services of the Asset Purchase Agreement and the similar policy revised in year 2010. As of May 2016, Memorial Medical Center began incorporating information from Dona Ana County Resolution 2014-69, a year 2014 Resolution into their 2016 policy which MMC renamed Chap, notably this policy also would exclude cancer care and outpatient dialysis. Dona Ana County Resolution included a “payer of last resort” clause. Defining it as a situation where residents eligible for health coverage for the same type of care do not qualify for the Dona Ana County health care assistance program indigent program. This wording in effect actually excludes all residents which Memorial Medical Center did. Currently as confirmed by documents provided by Dennis Knox and available on the MMC website as of today March 2, 2026, Memorial Medical Center is directly using Resolution 2023-68, the current resolution as its Indigent Care Policy. This resolution also contains the same “pay of last resort” language. Dennis Knox also shared a flow chart used by Memorial Medical Center Admissions Department for screening residents.

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This flow charts asks, do you have health care coverage? If the answer is yes, no further screening is required. One consequence is that Memorial Medical Center has no requirement for financial assistance nor cost adjustments to insure indigent resident medical bills regardless of their indigency status. The 2004 MMC policy pertains to uninsured, underinsured, the indigent and more. So, Dennis Knox has informed all of us that MMC is using Dona Ana County Resolution 2023-68 as their MMC Indigent Care Policy, their workflow as their process and they updated the 15th policy. Was City of Las Cruces notified of the updates of both years 2023 and 2025 and did the City of Las Cruces get involved? Is City of Las Cruces involved now with Dona Ana County now that they are revising the Dona Ana County Indigent Care resolution since city residents are affected?

Lucas Herndon, Member of the Public said I am just here again today as I said I would be two weeks ago to continue advocating on behalf of the community that has spoken loudly about the things that we want to see in our community. I was heartened to hear about the elevator and hot water pool being fixed on some of our resources here. Those are the kinds of things that make a city a city, a home. When my daughter was little, we spent a lot of time at the Aquatic Center. I have fond memories of getting to spend that time with her and take advantage of a shared resource that part of my living here I share with other community members and is provided on behalf of all of us and it is that kind of environment that we can continue to advocate for with our tax dollars with the collected revenue from the GRT to create a space in our town that is welcoming, entertaining, and family friendly. With recent world events and especially the fiscal cost of what we see the federal government doing in foreign places around the world I am reminded of a statement of a budget is a moral document. That how we choose to spend our dollars is a reflection of our values. So I think that what I want to leave here once more saying, this community asks loudly last year when the question was asked, how would you like to engage with us, the city on how we spend this revenue and you all rose to the occasion and asked us to engage with you publicly at six separate meetings and we did and you gave us a really wonderful way to participate. Speaking of democracy, direct democracy into your districts. And you spoke with us and I spoke with you there and many of my friends spoke with you there. You had representatives from all of your departments. Those water guys need a raise by the way, they were excellent advocates for their department and across this city and all six council districts what people want was clearly voted on and that information was presented to you in October of last year. So, I know that you know that. I know that staff knows that. The question remains why that wasn't reflected a month ago at the Work Session and the upcoming vote based on what we were presented? So, I would just ask you to keep those things in mind as you get to that place.

Liz Bennett, Member of the Public said I am a public health social worker. We just came out of a legislative session that failed to pass gun safety regulation and failed to pass meaningful reform for juvenile justice. During a media tour by our Police Chief seeming calling for harsher punishments for young people, we also heard sound bites mentioning the importance of evidence-based strategies like youth development and diversion, cognitive behavioral therapy, and early intervention in school settings. So where then is our city's commitment to investing in those evidence-based prevention strategies for the young people who have been put on blast for the last year. It is my

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understanding that the proposed police training facility could cost somewhere between \$40 to \$60 million but we don't know exactly how much or what for because there isn't an official plan or detailed proposal in place. With this in combination with millions spent on the Real Time Crime Center and the millions allocated from the state capital outlay for the police racetrack I would be interested to see the comparison in the amounts of dollars spent on community-based prevention versus police-initiated response. The \$60 million for a police training facility alone is three times the annual budget for all Parks and Recreation Department. I understand that the city has made an effort to invest in community. The progress towards affordable housing development, outreach to the unhoused, feeding seniors and providing afterschool programs is key and that effort is appreciated. However, business as usual feels like pennies on the dollar and is not enough to meet the moment we are in particularly with our young people. If there is one thing that the Police Chief and I agree on is that collectively we are failing the next generation. We must invest in the expansion of services that meet young people where they are and offer hope for who they can become. I have often heard Chief Story describe to someone who prioritizes evidence-based interventions and the evidence is clear. Investing in the criminalization and incarceration of youth is investing in systems of harm that perpetuate crime and incarceration. Investing in culturally relevant real world, multi systemic support and mentorship is what leads to recovery. The challenges our young people are facing require meaningful and long-term planning and long-term investment. For those of you interested in continuing this conversation I would like to invite you to an event hosted by dream.org and Unlock Civics NM, happening this Friday, from 5 to 9 p.m. at the Hood. The Public Health is Public Safety event is a community center gathering focused on connection, healing and practical solutions that strengthen safety through care. This event brings together youth, families, organizers and those directly impacted to explore how harm reduction, empathy and shared responsibility can create safer, healthier neighborhoods.

George Pearson, Member of the Public said I am Vice President of VeloCruces, a bicycle and pedestrian advocacy organization. At the last P&Z meeting a master plan and preliminary plat was approved for the Soaring Eagle Heights Subdivision. The proposed subdivision is located on the northern part of the city limits on the little carve out of the west side of Elks Drive in Council District 5. It is next to the Vista Middle School and not far from Columbia Elementary School. The county supported with state funding built a multi-use trail that extends from Dona Ana to Columbia Elementary. There is still a small gap up to the city limits and will hopefully be filled in in the not too distant future. At the P&Z meeting there was some discussion about the cross-section design for Elks Drive in front of the subdivision. It was pointed out that the county multi-use trail is nearby and with the middle and elementary schools nearby there is an expectation of school age pedestrians along Elks. Revisiting the Elks cross section was voted down by the P&Z with reasoning by commission members that the proposed section meets design standards. This may be true, but it does not meet improving quality of life of Las Cruces citizens. Realize has recommended cross sections for various roadways but these are minimum standards. Turns out that Elks cross section was decided at the DRC with minutes showing only that the wider turn lane was recommended by staff. To me this design promotes vehicle travel over pedestrian safety. New Mexico is the number in per capita of pedestrian fatalities and getting us off the top of the horrible list is the duty not just of

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NMDOT but also of all of the local governments including and especially Las Cruces. The city talks the talk about traffic safety and Vision Zero, but they do not seem to be walking the walk. Looks like the design is just creating an enforcement problem and not helping with the design elements that would increase safety. What can we do to revisit the decision and improve a design that involves the multi-use trail along Elks Drive in front of the subdivision? This is a problematic area in solving the connectivity problem for the bicyclists along Elks but this is an opportunity that should be grabbed to help with traffic safety. Let's build a 21st century road that prioritizes safety over moving vehicles. Since I have a moment left, there was a grand opening of the Elks trail by the County and Safe Routes to School and there is a great video that the County put together and you can find it either on the County's Facebook page or Safe Routes to School's Facebook page or the VeloCruces Facebook page. So, I was hoping you would take a look at that also.

Jim Hoerst, Member of the Public said I heard one of the speakers say that the protest and the participation of citizens in public comment opportunities were somehow inauthentic and that we were paid and all of that sort of rot. It is simply not so. The protests in this town are authentic, our appearance at school board is authentic, our appearance at County Commission and this body are authentic. Nobody is paid, nobody is bused in. They want to pretend that all societies' ills are the result of liberal intervention and that our policies created the world as it is. It's simply not the case, liberals in local government have generally been the minority until recently. That is a matter of historical fact. We didn't bring segregation and all of the social ills associated with that. We didn't create homelessness, we don't control the capital of this country. The wealth of this country is generally controlled by conservatives. Everybody knows that. Social policy is generally controlled by conservatives. The media is controlled by conservatives. Everybody knows that. The news is controlled by conservatives. Everybody knows that. Get over blaming liberals for the problems. We are just trying to correct them. As Billy Joel said, "We didn't start the fire". Just because we are trying to fight it, we didn't light it. So, stop this crap about us causing all the problems.

Tim Jenkins, Member of the Public said I would like to start by giving you some heartbreaking statistics. We are just barely 60 days into 2026, and 8 police officers were killed in one week alone. Two incidences here in New Mexico last week, 16 officers killed since January 1st, 67 officers ambushed, 22 officers shot in the line of duty, 19 officers stabbed. We are two months into the year and there is a 65% increase nationwide in juvenile crime. This is not federal agents or immigration officials. This is local police fighting to protect our own communities. Behind every uniformed officer is a human being who has chosen a profession rooted in service, sacrifice and responsibility. Supporting our officers is not and I repeat is not a political statement but rather a community responsibility. Modern policing is more complex than ever, and our officers are held to the highest standard humanly possible. Officers don't only serve as law enforcers but also as counselors, mediators, first responders, and crisis intervention specialists. They respond to mental health crisis, domestic disputes, traffic accidents, violent crimes, and community concerns, often all on the same shift. If we expect professionalism and compassion from our officers, then we must ensure that they receive the resources and support necessary to perform at their best. Police safety is not solely the responsibility of law enforcement but rather a

partnership between city leadership, police departments and community. When city council invests in its officers it is investing in a safer and stronger city. Our officers deserve support and our community deserves excellence. Many times in the last two weeks while dealing with our officers I have witnessed time and time again our officers choosing compassion over the rule of law and that is what needs to be celebrated, encouraged, and strengthened. So, let's help each other invest in what brings our community together rather than the things that divide us. We live in a world that feels so angry and divided, in a world where bad news travels at the speed of outrage. Can we please come together as a community and let each one of us be the change that we want to see and remember that our officers are husbands and wives and parents and children of our very own community that deserve a safe place, peaceful place just as much as we do.

4. READ CLOSED MEETING STATEMENT

4.1 READ MARCH 2, 2026 CLOSED MEETING STATEMENT INTO THE RECORD.

The Las Cruces City Council met in closed session and only discussed those items limited to as stated in the posted notice:

1.To discuss pending litigation regarding Paulette Eze and Pamela Eze Sylvestre, as Personal Representatives of the Estate of Presley Eze v. City of Las Cruces, et al, Cause No. D-307-cv-2023-699 (Consolidated with D-307-2023-1137), which is closed pursuant to NMSA 1978, Section 10-15-1H(7).

2.To discuss the purchase, acquisition or disposal of real property or water rights by the public body, which is closed pursuant to NMSA 1978, Section 10-15-1H(8).

5. ACCEPTANCE OF AGENDA

City Councilor John Munoz moved, seconded by City Councilor Becky Corran, to accept the agenda as presented.

RESULT:	Carried
MOVER:	City Councilor John Munoz
SECONDER:	City Councilor Becky Corran
AYES:	Mayor Eric Enriquez, City Councilor Cassie McClure, City Councilor William Mattiace, City Councilor Michael Harris, City Councilor Johana Bencomo, City Councilor Becky Corran, and City Councilor John Munoz

6. CITY COUNCIL MINUTES

6.1 SPECIAL WORK SESSION (BUDGET/CIP RETREAT) OF JANUARY 28, 2026.

6.2 REGULAR CITY COUNCIL MEETING OF FEBRUARY 2, 2026.

7. RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA

7.1 RESOLUTION NO. 26-104: A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW

MEXICO FINANCE AUTHORITY.

- 7.2 **RESOLUTION NO. 26-105: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT VARIOUS BUDGET ADJUSTMENTS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY’S ADOPTED FISCAL YEAR (FY) 2025-26 BUDGET.**
- 7.3 **RESOLUTION NO. 26-106: A RESOLUTION AMENDING THE FY2026 - 2031 CAPITAL IMPROVEMENTS PROGRAM.**

8. **RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION**

- 8.1 **PUBLIC HEARING REQUIRED. RESOLUTION NO. 26-107: A RESOLUTION APPROVING THE REQUEST FOR A TRANSFER OF LOCATION OF CANOPY LIQUOR LICENSE, NO. DIS-000868 WITH PACKAGE SALES ONLY TO BW GAS & CONVENIENCE RETAIL, LLC., D/B/A ALLSUP’S 102507 LOCATED AT 4805 MESA GRANDE DRIVE, LAS CRUCES, NM. 88012.**

Public hearing began at 1:51 p.m. There was no one for or against. Public hearing ended at 1:51 p.m.

Adam Ochoa, Urban Planner gave the overhead presentation.

Councilor Harris asked does the Maverik that is on the other corner have a liquor license or are they trying to get one?

Adam Ochoa said no they do not have one. They do not have a liquor license.

City Councilor Becky Corran moved, seconded by City Councilor John Munoz, to Approve Resolution No. 26-107.

RESULT:	Carried
MOVER:	City Councilor Becky Corran
SECONDER:	City Councilor John Munoz
AYES:	Mayor Eric Enriquez, City Councilor Cassie McClure, City Councilor Michael Harris, City Councilor Johana Bencomo, City Councilor Becky Corran, and City Councilor John Munoz
NAYS:	City Councilor William Mattiace

- 8.2 **RESOLUTION NO. 26-108: A RESOLUTION TO APPROVE THE SUBMISSION OF A GRANT APPLICATION TO THE NEW MEXICO DEPARTMENT OF TRANSPORTATION, MUNICIPAL ARTERIAL PROGRAM, FOR THE FISCAL YEAR 2027, FOR THE AMADOR CROSSING HAWK SIGNAL PROJECT IN THE AMOUNT OF \$300,000, REQUIRING A CITY MATCH IN THE AMOUNT OF \$100,000, FOR A TOTAL APPLICATION AMOUNT OF \$400,000.**

Crystal Silva, Grant Development and Compliance Specialist gave the overhead presentation.

Councilor Corran said I just want to give a shout out, when we have all of these infrastructure conversations I do feel like sometimes we are not necessarily paying attention of how much things cost but this is a HAWK signal which I think I was like

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kind of and I don't want to say it is not very much but it is not like we are redesigning this road. This road is what it is. It will change pedestrian safety and cost about a million dollars. I think from the initial thing it looks like it cost half a million dollars but there is a lot of money behind it. What I am going to spend some time in conversation since there is a bunch of students here from NMSU is sort of talking about like how much things cost in the world today and so that really bear with me while I point out this is a million dollars for one pedestrian crossing. We wish that we had 400 of these, right in the city. Probably we would all ask for some kind of pedestrian intervention in a number of places and I say this because my district is getting a new traffic signal that is \$1.5 million so I say all of this to say just as a note, stuff cost a lot of money if you didn't know and we are trying to figure out constantly how to balance things like people's safety, different types of city income like grants, DOT, state capital outlay and our own GRT money or tax money that we use to match all of this. Of course more of a comment than a question, like all politicians do all the time but I just think it is really telling that this cost \$1 million-ish and in my mind it should be cheap is what I say and that I wish.

Councilor Harris asked on slide 2, what does HAWK stand for?

Jimmy Moreno, Interim Assistant Public Works Director said HAWK is a high intensity crosswalk activation signal. It is a signal that is activated by pedestrians that way it is only in use in times of high pedestrian activity and can be activated to stop traffic.

Councilor Harris said my comment is that I drive that road everyday and having a signal for that crossing would be amazing.

Councilor Bencomo asked can you give us a timeline for this project?

Jimmy Moreno said this project just started design so this will finish late winter, the design and hopefully the construction in the beginning of the calendar year.

Councilor Mattiace asked do we have a HAWK pedestrian crossing in Las Cruces already? Is there one as a sample?

Jimmy Moreno said currently University has a HAWK system in place currently activated and in use.

Councilor Bencomo said West Picacho.

Mayor Enriquez asked isn't there one on Roadrunner across from Veteran's?

Jimmy Moreno said that one is not. That is a beacon however, that is not a HAWK system. You cannot activate it by pedestrians.

George Pearson, Member of the Public said these are questions that might be addressed later during the design, but I will ask them now. Is the location of the HAWK system going to be aligned with the multi-use trail that exists in that general

area and also if a pedestrian refuge would be part of the process? My final question not directly related to this but the roadway segment if speed limit change reductions is being considered for this segment of roadway because the posted speed I believe is 40 miles an hour which is really not conducive to pedestrian travel.

Tim Jenkins, Member of the Public said I travel this road hundreds of times a week. The supply house that I use sits on Amador, Winnelson and when I travel that road I am going to say that there is probably 1% of the people crossing that road use the crosswalk that is there. To me it is hard to justify \$1 million for what we have doesn't ever get used as is right now. Just so you guys know. It is hard for me. We have to slam on our brakes all the time because the crosswalk isn't used so it is hard to justify spending \$1 million on what we have doesn't get used already.

City Councilor Becky Corran moved, seconded by City Councilor Michael Harris, to Approve Resolution No. 26-108.

RESULT:	Carried
MOVER:	City Councilor Becky Corran
SECONDER:	City Councilor Michael Harris
AYES:	Mayor Eric Enriquez, City Councilor Cassie McClure, City Councilor William Mattiace, City Councilor Michael Harris, City Councilor Johana Bencomo, City Councilor Becky Corran, and City Councilor John Munoz

8.3 RESOLUTION NO. 26-109: A RESOLUTION AUTHORIZING AN AMENDMENT ADDING \$10,000 TO THE CONTRACT FOR FILM ECONOMIC DEVELOPMENT SERVICES WITH FILM LAS CRUCES, TO AMEND THE SPENDING LIMIT FROM \$95,000 TO \$105,000 FOR THE FINAL YEAR OF THE CONTRACT, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 23-24-098).

Alicia Hernandez, Purchasing Manager gave the overhead presentation.

Councilor Harris asked do you have an estimate on the return that you expect to see from this advertising campaign?

Andrew Jara said the returns that we are trying to get is we are trying to bring more productions here. We have already had success at similar events. We went to an Albuquerque media event and we were able to bring two productions and so it is similar to the AFM event that we wanted to attend is a collection of producers and industry makers that can make those decisions to come to Las Cruces and so we are just trying to make sure we could be in those meetings and have those conversations.

Councilor Mattiace said I just wanted to thank Councilor Harris for considering ROI. I think it is very important that everything we do has some type of good return of investments but this is more on recruiting. Is this recruiting advisors and special people that actually will get more production here, is that what this is for?

Andrew Jara said yes, in a way. What we are trying to do is not necessarily advisors but the people who are bringing productions. Those are the producers, so a lot of times I am like for example, when we have a production in town, they are trying to hire locals as much as possible but the productions that are bringing in are usually from out of town and the producers, directors and everything like that. So, what we do is

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we try to make sure that they are steering their eyes towards Las Cruces so that they know that we are viable for filming. That we are film friendly and so giving them that information and so they can make those decisions to come here.

Councilor Mattiace asked what kind of process or show or how do you do that? How do you present what we do as Film Las Cruces for these folks that come, do they come individually or do you have a joint meeting of many of them?

Andrew Jara said it is mostly individual meetings. Sometimes there are group meetings. For example sometimes we will reach out to production companies and try to pitch the whole company. A lot of times we are trying to reach out to individual producers with individual projects and get them to come here. The thing about film is that it kind of works in projects like for example there is a movie in town, they will work that movie, they will open offices, they will bring in some of their crew, they will hire others and then once they are done filming they usually go back to wherever they are and finish the film. And so, what we are trying to do is let them know that they can come here. The way we do that is A, we have meetings, we let them know we are film friendly. We talk about how we can do permits, we talk about how we have the infrastructure, but another thing is that we will create location packages for them. So, a location package is when you write a script, you are going to have where the script takes place and so a lot of times, we had a film that took place, right now we have a film that might take place overseas or in a different country. Mexico is a big popular one and we kind of find those locations in Las Cruces that could fit those locations. If it is a gas station, we show them all the gas stations we have here so this way once they come here they have all the locations that they are looking for are available in Las Cruces and that kind of gives them a head start as to where they can begin.

Councilor Munoz asked the net that you are going to cast is at local, regional, national, you kind of walked through the process but what is your target audience?

Andrew Jara said that is one of the things about film is that it is kind of hard to figure out how to market it because we are marketing Las Cruces, but we are not marketing Las Cruces to Las Cruces. We are marketing to people in LA, people in New York, all over the country and all over the world. Last year we even had a production from Finland come in and we helped them. Really it is about trying to let as many people who are making films or in the film industry know about Las Cruces and know that not only do we have the locations, not only do we have the infrastructure but we can help them with permits, we can help them with crew and so it is just, making them aware and of course our state incentives which is very competitive but it is letting them know all about that.

Mayor Enriquez said we are very supportive of the film industry, the excitement, the tourism, the economic value. We talk about ROI. We talked about our students at NMSU and all of that and it is very promising. What is it that you have going on right now in Las Cruces that is taking place with film?

Andrew Jara said it has been a very exciting honestly last two years. Since last year from about January, we have had production every month in one way or another

whether it is preproduction or actual production so there has been a film in town the entire year. That was one of our first goals to make here at Film Las Cruces. It is very good to have that. Since then like I said the calls have grown and increased of people wanting to bring in and we have also had production raised obviously. Even right now we have three productions in town right now that are trying to film and another one that is on the way within a month. Like I said we are very busy right now and on top of that we also have infrastructure growth. We have had a prop house that opened up in the last few years and this year they have decided they needed more room because we are so busy and they have expanded so just those kind of infrastructures, the crew base has grown exponentially and even like being able to use some of the different buildings and stuff here.

City Councilor Becky Corran moved, seconded by City Councilor John Munoz, to Approve Resolution No. 26-109.

RESULT:	Carried
MOVER:	City Councilor Becky Corran
SECONDER:	City Councilor John Munoz
AYES:	Mayor Eric Enriquez, City Councilor Cassie McClure, City Councilor William Mattiace, City Councilor Michael Harris, City Councilor Johana Bencomo, City Councilor Becky Corran, and City Councilor John Munoz

8.4 RESOLUTION NO. 26-110: A RESOLUTION AUTHORIZING A PURCHASE AGREEMENT FOR MEDICAID AMBULANCE REPORTING WITH PUBLIC CONSULTING GROUP, LLC OF BOSTON, MASSACHUSETTS IN AN ANNUAL AMOUNT NOT TO EXCEED \$600,000, PLUS APPLICABLE TAXES, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 25-26-081).

Virginia Barela, Buyer II gave the overhead presentation.

Councilor Corran asked can you go back to the slide that talks about the cost that is \$13 million-ish? This for one year?

Virginia Barela said I believe those reportings were just for calendar year 2024.

Michael Daniels, Fire Chief said that is correct. That is what would be the estimated cost of the calendar year associated with transports at full rate. That takes into account salaries, benefits, depreciation of apparatus, the cost of fuel, every aspect of that transport is what that is taking a look at.

Councilor Corran asked we are hoping to go after 71% reimbursement of that which is like I guess \$9 million-ish?

Chief Michael Daniels said not quite. What this program does is we share in essence through the State Health Care Authority there is a cost associated at the state. The state takes their portion first and then at that point the MCO distributes the remainder to us. This year it has been just over \$2.2 million for calendar year 24, it is right around \$2.3 million for calendar year 24. When we get our funds and then we pay 15% off of our net collected revenue so \$13 million, we have been able to collect about \$2 million. That is what we receive there. A lot of it is based on what is reimbursed by Medicaid. That is what the consultant really hired for is to look and to

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try to maximize our collectable revenue under the program. This is when we had Work Session in July we talked about the Medicaid Reimbursement Program. That is this program so as our transport volumes increase we could in a couple of years expect to see those numbers increase significantly because we transported 3,852, last calendar year just over 4,000 times we transported. We are expecting to see about 12,000 transport this year, between 11 to 12,000 this year but these are generally calculated a year to two back.

Councilor Corran said you are segueing perfectly into the question that I had which is \$600,000 doesn't seem, that seems like we are putting a cap on it like I don't want them to be like we aren't doing the paperwork anymore and then we leave money on the table I guess. The thing that I would worry about that. That is why I was asking and getting at that question. It sounds like enough for now given that reimbursable rate, but we might need to change it in the future.

Chief Michael Daniels said I would guess that in three years we will be seeing different determination of this contract. This is enough to get us through the combined calendar year 24 and 25 which we expect to see potentially the latter part of this fiscal year and then calendar year 26 should align well with this but in 2028, you are correct, I would believe that this could be lower than what we would need.

Virginia Barela said if we do get into a situation where we are still in the term of the agreement and we see that we are coming close to that capping limit and we feel that we are going to exceed it we would come back to council to request an amendment and give the justification for that for approval.

Councilor Harris asked are there any plans to be able to bring in staff to submit these reports in-house in the far future or is it something that is really best left to the consultants who help with this nationwide?

Chief Michael Daniels said right now I don't know that we have the staff or in New Mexico we just started collecting this year, so we don't entirely know the entire framework as well. I don't think anybody in this state does. So, every one of the providers currently in New Mexico is contracting with PCG. I think we are up to 13 providers now. This is what they specialize in, NME gas and rural health care transformation funding opportunities. So right now, I would say no, I am not entirely sure what it would look like for us to build that capacity and also it is a small portion. It is not all the time so I am not sure we would justify an FTE through this. It is somewhat cleaner just to continue that. At least for now that is my recommendation until we understand more about the system.

Councilor Harris said that sounds fair and I am glad to hear that we are kind of pooling with the other municipalities and other providers throughout the state to get value out of this service.

City Councilor Becky Corran moved, seconded by City Councilor Michael Harris, to Approve Resolution No. 26-110.

RESULT:	Carried
MOVER:	City Councilor Becky Corran

SECONDER:	City Councilor Michael Harris
AYES:	Mayor Eric Enriquez, City Councilor Cassie McClure, City Councilor William Mattiace, City Councilor Michael Harris, City Councilor Johana Bencomo, City Councilor Becky Corran, and City Councilor John Munoz

9. BOARD APPOINTMENTS

9.1

None.

10. NOTICE OF PROPOSED ORDINANCE(S)

- 1) There will be no public discussion.
- 2) A Councilor may ask staff for clarification on the proposed ordinance(s).

10.1

None.

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

11.1 COUNCILOR MCCLURE

I wanted to give a quick shoutout to specifically Ikani who when I asked him, hey is there a way for us to be innovative with active transportation. To find a solution that might work especially given the situation at the city and now we have an active transportation team. I am hoping not to steal his thunder by announcing this but I also hope that they could be willing to present much like in the department news that we had today that would be great, see where they are going and get there as they are going it would be really interesting to see how that is happening.

I was also going to say for the Juvenile Justice Board, our continuum, we need board members and I am going to be sending a whole lot of emails to people to poke them into wanting to be a board member because we can't exist as a continuum without board members. So, we are looking for a social service agency representative, youth serving agencies, business community, so people out in the business community, you might get an email from me. Religious organizations, youth and families, people who want to actually do some investigation. So, what does the board do? Analyze local transit, youth at risk, assess community resource gaps. So, if you have any curiosity, we are going to be moving to once-a-month meetings to talk about what kind of gaps in the local community. Please reach out to me. I am the Chair of the board, continuum and we are going to be getting a coordinator here soon and that is going to propel us to kind of make some changes and do some programing that should be really helpful for the future.

11.2 COUNCILOR MATTIACE

I just want to start by saying I really enjoyed spending Saturday in the tree planting. I want to thank Cassie for reminding me and making sure I go but it was Hillrise in District 2 and we did a neighborhood I think 100 trees were donated and 71 trees were planted. At my young age I was able to do about 4 to 5 plantings in the heat and then I said thank you very much and went home but it is quite a program and all the neighbors that received the trees were very complimentary of the program and the city and the volunteers that showed up from I believe the 4H Club. I just want to thank

everyone.

The other thing I want to mention is that I received some information from the French Brothers and maybe Natalie Green would like to and she might have it already, but they are building new homes costing \$190,000. That is quite what we are building for affordable housing, sometimes cost 350 to \$380,000, maybe we should get together with the French Brothers and consider purchasing some of these homes that are \$190,000. That would be two for one advantage.

I would like to say thank you to Johnny Amenzola, the malpractice reform passed and it was really great to watch common sense intelligence overcome stupidity. Kudos to so many legislators and the Patient Primero and the Dona Ana Medical Society. What an accomplishment in Santa Fe this year. The NMDA is National FFA Week. I just wanted to mention that. These are growing future of agriculture. There is also a Tortugas Pueblo that is having an enchilada sale. They are 200 years old. They are in my district. Tickets are \$12 but if you have time March 8th, the event will be held at our Lady of Guadalupe Parish Hall so if you could attend that, eat some enchiladas and you will be helping the Tortugas Pueblo.

Last but not least, I have to mention it. I received I believe a 77-page FY24 Amador Hospitality lease agreement and all of that went on to not get the payment and utilities bills and things like that from the Amador Hospitality lease. I just would like to know from the City Manager, I have a lot of questions. Who do I refer those to, to get some answers? I received this late last week. I did have time to go through the 77 pages, and I had a lot of questions. I just need to know who do I direct them to?

Ikani Taumoepeau, City Manager said you can refer those questions to me, Brad Douglas or Viola and we will get them to the appropriate parties.

11.3 COUNCILOR HARRIS

I have a hand full of things too. I would also like to thank our legislators for this last session. We got a lot of the things that we asked for as a city in terms of capital outlay and other programs and a lot of those have fully funded or partially funded. A lot of the items that we wanted to do with GRT money and GO Bond money so when some of those things disappear from the list sometimes it is for a good reason because they have been funded other ways. Looking forward to the next Work Session that we have on the GRT priorities to really kind of flush that out and make sure that we are getting what the community wants and the other thing that I wanted to bring up is I was glad that somebody brought up Elks. When we are looking at funding these projects and doing roadworks to really look carefully at the cross sections that we are building and make sure that we are prioritizing safety over speed and throughput. Elks isn't in my district, but I grew up in the area and that street is awful for anybody who looks at it from the outside, from the people who live on it, it is not safe for pedestrians. It is not safe for drivers. It is a racetrack and it is like that because it was designed like that. There is two school crossings and lots of kids live down that street and we just need to think very carefully about the kinds of infrastructure that we are building and try and prioritize safety of people.

11.4 COUNCILOR BENCOMO

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I just briefly want to thank the students from NMSU for coming and spending the afternoon with us. I am also an alumni of the Government Department at NMSU so I love to see other young folks engaged and involved. Certainly, professor, you talked about how you were coming here to see people do democracy in a different way, perhaps you didn't necessarily get that fully, but we certainly try our best here. I think local politics and local government frankly is my kind of government because it feels like a laboratory for positive change and for us to really try things that lift up the most vulnerable in the community. So, it is great to have you all here. I hope you come back and certainly stay in touch with us.

I did want to request that thankfully we have folks like Mr. George Pearson who remind us of this often but there was a couple of months ago that we had asked for a Work Session on active transportation. We have not gotten that yet and I do think it is an important conversation for us as you kindly said not just to talk the talk but walk the walk and have a serious conversation about the pedestrian safety crisis that we have in the city. So, thank you for the reminder, George and I would like us to continue thinking about having that Work Session come to council soon.

11.5 COUNCILOR CORRAN

Thank you for coming and sitting it out. Again, please if you need anything please reach out. We are here to help and love to hear from people in our community, so I also don't have a lot except my community meeting is coming next Tuesday evening and it is going to be for District 5 it is going to be at Highland Elementary which is just off of the frontage road on Emerald. It is focused on safe streets in particular. It starts at 6 p.m., departments that will be there include Public Works, Community Development, Police Traffic speed and safety folks, and MPO and their latest hot off the presses for safety and accident-related traffic data. So there will also be an opportunity for people who are there and in particular aimed at residents in District 5 but I am sure everyone is always welcome to engage with those departments and see what the plans are for the future of safe streets and all of the things that everyone highlighted and I think is really important to us to keep moving forward in that way so Highland Elementary, March 10th at 6 p.m.

11.6 COUNCILOR MUNOZ

I want to thank Chief Daniels and the Fire Department, Councilor Harris and I did a tour and visited all the fire houses. Got to meet the incredible men and women of the Fire Department. Got to see some of our facilities, some of the work we need to do with them so definitely that was important as well. The Fire Chief does have openings so if you have friends and family or you yourself are interested, please apply.

Secondly, I want to go back to the legislature short session but there was some productive things that came out of the session. There is still some more work to do. Again, I go back to thanking the department heads, our City Manager, Christine our City Clerk, for organizing our advocacy or lobbying efforts in Santa Fe where I think as a city, we did well in this session. Also thank you to the city team as well for supporting me in my community district meeting. Very positive feedback from our residents, some good action items and I appreciate your attending that with me and taking time away from your family.

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Also, a shoutout to the students that are here. I appreciate you all. I think this next week, or two Councilor Bencomo and Councilor Corran and I will listen to the New America students to have a read out. They spent some time with us, actually spent three or four hours, maybe five with us in our special session and so we are very curious to hear from their perspective what they thought of the session, what they have input on. And my final piece on that with segues, I am working with some councilors here, Councilor McClure on the Youth Advisory Council. We would like to eventually launch a youth congress and so I would like to plant that seed with those students here from NMSU as well. We would like to expose our young adults who are not our future, but our now to how civics and how government works and would love to hear your input.

11.7 MAYOR ENRIQUEZ

Dr. Sabine Hirschauer, students, thank you for being here. Thank you all for being here. Shoutout to Carol, the Munson Center, Quality of Life, the addition that took place last week, Public Works for all of their work and input so that the seniors can have a place for physical fitness, and other activities that will take place long awaited and they were so happy, thrilled and excited, it was great to show up Councilor McClure, thank you for being there and just wanted to give a shoutout for the Munson Center and their addition.

Also today was Dr. Seuss Day, Read Across America at 9 a.m., everyone was to read in school, stop everything they were doing and start reading. I got to go to a charter school and read to the third grade and fourth grade and fifth grade, so you know those are some of the things that can do for our community and instill that for our kids to be active and to read and to get educated.

12. CITY MANAGER REPORT

12.1 IKANI TAUMOEPEAU

On the Active Transportation Coordinator, I must say that it was all staff. Kudos to David Sedillo and to staff for being creative and strategic. They stepped up to the challenge and figured it out. Oscar Guerrero is a PE and will be the prime point of contact. And all this to say that on May 11th we will have a Work Session and have more information and we will work on having this before May announced with the appropriate staff before May. But Oscar Guerrero is a PE and a POC supervised by Vanessa Morales-Romero who is also a PE and supported by additional engineering staff Jeremy Barela and he has an EI, and he is a previous rep to the BPAC. Natashia Billy is a PE, who is also supporting Kyle Arend, another PE so there is a lot of PEs helping out with the Active Transportation Coordinator so that is always great news. A lot of experience. The combined team will work directly with partners in the community and especially our departments as well to ensure that all active transportation matters are considered and we are moving forward with those.

Also, City Clerk, this is kudos, Christine received her Masters of Municipal Clerk Certification two weeks ago. That took her ten years to do. This isn't easy and honestly if you ask any other clerk in the nation who has their MMC, which stands for Master Municipal Clerk, most will say they don't because it is hard to get. This took Christine ten years. It is a ten-year endeavor, there is a lot of requirements needed so

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for all you government students if you are looking to be City Clerk and you want to be MMC, come and talk to Christine. She knows it took her ten years to do and that is because she wasn't just sitting around doing agenda packets all day, she is active doing other stuff and so we appreciate that. Again, she needed to go to conferences, there are classes that she needed to be enrolled in, she needed to teach, she needed to be on panels. There is a lot to go into, so we appreciate your work and it is reflected amongst that, so we appreciate you.

I appreciate the work that Richard Hanway, Sonya working closely with Transit. Transit has six new EV buses that are adding to the circulation which makes it a total of 11 EV fleet and out of 20 in total, but we just wanted to say thank you to our Transit Department. Thank you, city council, for your support. We get grants to get these EV buses but there is always a match. We appreciate the purchase and then maintain to keep these going and then drive themselves into to fix them, so we appreciate the transit for making that happen. Look for that later in March for the six new arrivals to come and you will see them in circulation.

The timeline for GRT for who are interested to come and be heard, opportunity will and obviously you can use public comment but we will have the first resolution on March 16th and then really the main discussion for GRT projects if you are interested will happen on the April 6th and the second read and approval of the ordinance will happen on April 20th so April 6th is really hoping to have a lot of the discussion and decisions made by then but again for anyone new to our government who are looking for a great discussion this is a \$28 million that has to be spent and city council is going to decide and listen to public comments and that decision hopefully will be made on April 6th so come and see what happens with those appropriations.

Last but not least, I just echo some of the councilors. Legislative session went well. We had about \$14 million from legislators and about \$19 million when you include the grants. It was a great session, and I don't want to take too much from the Work Session that will happen at the end of April, but Christine will give a Work Session and give an update. The Governor has all the appropriations on her desk now and she has about 30 days to approve them and then we will come bring them to you council and make sure that you understand what makes it on the list and answer any questions then and we can pivot if we need to talk about and assess and review.

13. ADJOURNMENT

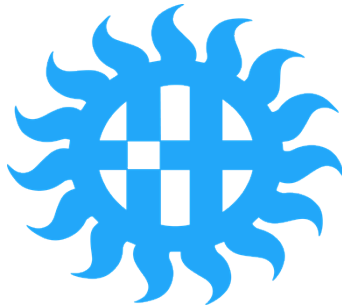
13.1

City Councilor John Munoz moved, seconded by City Councilor Michael Harris, to adjourn at 2:47 p.m.

RESULT:	Carried
MOVER:	City Councilor John Munoz
SECONDER:	City Councilor Michael Harris
AYES:	Mayor Eric Enriquez, City Councilor Cassie McClure, City Councilor William Mattiace, City Councilor Michael Harris, City Councilor Johana Bencomo, City Councilor Becky Corran, and City Councilor John Munoz

Mayor

City Clerk



MINUTES

Work Session

Monday, March 9, 2026 @ 1:00 PM

City Council Chambers, City Hall

PRESENT: City Councilor Johana Bencomo, City Councilor Becky Corran, City Councilor Cassie McClure, City Councilor John Munoz, and City Councilor Michael Harris

ABSENT: Mayor Eric Enriquez and City Councilor William Mattiace

1. AGENDA ITEM

1.1 2026-2030 CONSOLIDATED PLAN & HOUSING NEEDS ASSESSMENT PRELIMINARY FINDINGS

Natalie Green, Housing and Neighborhood Revitalization Administrator introduced the topic.

Avilia Bueno, Root Policy gave the overhead presentation.

Heidi Aggeler, Root Policy gave the overhead presentation.

Avilia Bueno continued the overhead presentation.

Heidi Aggeler continued the overhead presentation.

Councilor Harris said very interesting presentation, it is nice to see kind of the general feeling of living in this town with some actual numbers behind it. So, on slide 4, our packet here is one off from yours, so 14 or 15 maybe? I think this should be a pretty eye-opening slide for everyone who lives or wants to live in town that nobody can afford a median home in this town. That is kind of the takeaway unless you have two incomes and then only in certain industries. I personally would struggle to afford my own house again. I bought it in 2017, and it would be very challenging for me to afford that at its current value. So, I think that is very eye opening and I want to let the true meaning of the slide sink in. So, I guess related to that I think on 15, so when we are talking about the gaps here. I think you said that in, so 121 and over 150% AMI, there

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is red numbers which are a negative gap which means that if theoretically if we had more high end, higher end units that there are folks that would be able to afford \$2,000 month of rent and would pay it and if we had 3,000 more luxury apartments like they would move there instead of where they are currently at and that those would trickle down?

Heidi Aggeler said to answer that question there is quite an ongoing debate about that. Whether or not something called filtering. Would people move into the right priced housing for their income if those units were available? A lot of times with folks who are earning that much money they tend to rent down because they are saving. They are trying to get a down payment and save for a house. They may have childcare needs. They have medical needs. So, in theory, yes there is an opportunity to provide housing at that level. Whether or not people would take advantage of that and move into those higher priced units would be their personal preference.

Councilor Harris said that is kind of what I was thinking. I rented for a very long time and I kind of did that personally. I moved up at the time what was a very expensive apartment for town which is now barely on this list, which is quite unfortunate. I was just asking what the takeaway should be and I am hearing that is probably not what the takeaway should be because it is debatable and I think from my own personal experience I would agree that is probably not what we should take away from this. With that in mind, what would you say some of the blockers are if we wanted to create housing at a certain price point? Do you have suggestions about what we can do or is that not really the scope of this report?

Heidi Aggeler said it is in the scope and it is forthcoming as we wrap up the affordable housing plan. It is not necessarily captured in the HUD document or required in the HUD document because that is real specific to those funding sources. City has an investment strategy that has guided its work over the last few years that I think is fair to say that has been very successful. The city has been really strategic about using city dollars and also state dollars, applying for funds, leveraging those and then keeping that money flowing by trying to structure properties in a way that they don't have so much debt that you can roll over those grant funds and keep applying and keep building homes. So I would argue that the city's recent track record of investing in the right types of housing and building housing that is needed and I think that Natalie can speak more to the lease upgrades but I would argue that they are showing that is very successful in addition to continuing to invest in low income home ownership opportunities to create more stable housing and move people into home ownership who want to achieve that are really central to being able to meet needs. That 0 to 30% though in those truly housing unstable folks who are moving a lot who are precariously housed need both housing and supportive services. So, they need a little more of a sort of a bigger package of delivery of housing so public services are key for that. One of I would say challenges is to being able to meet their needs in particular is the federal funds that came in after the pandemic to stabilize the economy were really useful and were put to great use for a lot of the different housing opportunities. Those obviously are going away. There may not be funds like that in the future so they are just the funding constraint to be able to continue the good work the city is doing particularly from the federal level I think will be a big challenge.

Councilor Harris asked more broadly speaking are there policies that the city should consider enacting to stabilize prices or to influence the private markets of housing? I guess back to the affordability example, that apartment that I lived in, when I moved in the rent actually went down in the 9 years that I lived there since then it has doubled and that owner built the property with a certain business model and certain rents and like I said during that time they reevaluated everybody's rents and were like you know what, maybe we don't actually need to be charging some fees that we are charging and got rid of those and then in 8 eight years they were like cool, rent is now twice as expensive.

Heidi Aggeler said Avilia will talk a little bit about this but one of the things that you can do which she acknowledges is keeping up with demands, so you have to have a really good job which is pretty unusual relative to a lot of cities in building and permitting units and keeping up with your household growth. We talked a little bit earlier about some of the comments that she had received from interviews that she has done. Avilia is doing work in Santa Fe as well where we had developers say just model Las Cruces, Las Cruces' new comprehensive plan in your code. We have some minor recommendations for changes to the code which will come out with the affordable housing plan but for the most part it feels like those changes have been very well received and you are seeing that in the return of appropriate development.

Councilor Harris said that is great to hear and yea I think the new code is a model for cities everywhere and it sounds like we are getting that feedback. So, I guess to that end, so some of the highest needs were repairs, interior and exterior repairs, I guess what are the blockers there? Is it more money? Is it permitting? Is it, I want to add on a little bit but it is hard to get it permitted or maybe it was difficult to get it through the new code or maybe we are doing stuff that is helping now.

Heidi Aggeler said we asked people, why haven't the repairs been made and most people say I couldn't afford it. Occasionally among renters people say they are afraid to tell the property owner for fear of being evicted or their rent increase so there is a segment of the renter population, largely low-income renters who will just tolerate units in fair or poor condition because they are afraid their rent will go up.

Councilor Harris said that is something I hope to be in the report and something I want to look at is ways that we can kind of encourage landlords to improve their properties but at the same time assuage fears of rent increases and make sure that if we want people to live in a certain minimum standard that is not an excuse for somebody to be like well, I need to spend an extra \$1,000 to upgrade this unit so I am going to double your rent. We want to make sure that doesn't happen, but it would be interesting to see in your report.

Councilor Corran said super interesting information I think in terms of compelling us to keep moving forward and I know I really appreciate hearing/seeing the affordability index. I hear that from my students all the time, I will never buy a house, that is not a thing that will happen for me, and I teach at the Community College and that is pretty depressing you know especially when in theory you are training folks to get a better

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wage but that wage will never match the cost of buying a home and it is a bleak picture that I am glad that we are making efforts to address but I was wondering if you could speak about two specific things or one thing and then a secondary thing. I think HOME and CDBG, are both up for some discussion in the federal sort of funding area. Just right now I am wondering if you can talk a little bit about what that means in our context specifically or if you have a sense for what that means in our context and then secondarily I think part of the question about mobile homes and/or livability in places that may not be traditional homes in the way that we think of them or large apartment complexes in the ways that we think of them. I don't know that they have the same access to certain types of funding or support historically or if I misunderstand that but I don't think that we can use some of that federal funding in the case of supporting people who have mobile homes the same way we could for someone who has a home that they are trying to improve or make more livable that is on a foundation so I am wondering if you can talk about those two things? The federal funding thing and then also a little bit about mobile homes. I think we have a little bit of a spot in our plan or work that mobile home folks are really particularly vulnerable in a lot of cases so I am hoping that you can talk a little bit more about that.

Heidi Aggeler said I would also like to acknowledge what not in the slides or survey slides that I presented today. We do ask renters about the barriers to home ownership and we have got quite a bit of detail there and it is inability to come up with down payment assistance is a big one and so there are programs that you can utilize for that or I am afraid I won't be able to afford a mortgage payment. On the federal bill there are two bills in congress right now. One is the Housing for the 21st Century, which I think was the house bill and the Road to Home, I may get this a little off in the Senate. Those are moving forward. I think they are in reconciliation, I might be wrong about that but your Mayor is probably there and would know and is probably involved with this. A couple of things that those do is, I think they would codify CDBGDR, which is the disaster recovery portion of it which we haven't talked about disaster risk. We do acknowledge that quite a bit in the consolidated plan and we talk to County folks about it as we were preparing this plan so codifying CDBGDR is huge because that would allow CDBG dollars to come in and address a lot of rehabilitation, rebuilding infrastructure. There are some modest changes to CDBG and this is a point of much reconciliation that broadens CDBG to be able to use to invest in housing activities more. One, the Senate bill actually ties the continued receipt of CDBG to making progress on housing supply so it has a penalty if for communities and I just saw an analysis a couple of weeks ago that looked at the communities where dollars would be taken away. Las Cruces is one of those to my memory, but it would penalize communities that are not keeping up with housing supply and take away in some of their CDBG. So, it does have a pretty aggressive, this type of thinking around CDBG as a home ownership tool has not occurred to my knowledge since the program was put into place in the 70s. There is some positives there. There is also a lot of reform for HOME. HOME is a complicated program that is difficult to use and in my understanding, there is some reforms that would make Home a little more efficient.

Councilor Corran said thank you, I just wanted to follow up because that is a big topic of conversation and why we have to keep on, I think thinking about this in this context.

Natalie Green said we can use some of our CDBG to work on mobile homes. We

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primarily do ADA ramp improvements for that. We could look at and we have thrown around a replacement program for mobile homes, we just want to make sure that if we take out a mobile home and put a new one that somehow the other one is disposed of or eliminated from the housing market in its entirety. We just don't want to see those get recycled in the open market in the future and then we would have to retool the home rehab program and it be almost we would have to put some thought into it because we currently secured the repairs of our home rehab program against the property and so we would have to structure it a little bit differently for mobile homes in a mobile home park. It is not outside of the possibility we would just have to figure it out.

Councilor Corran said I am not necessarily saying that I think we should embark on a new venture, I just think it is an area where hearing some of what has been reflected here and thinking about what is going on with some of the most vulnerable people that I have heard from my district there is a lot of exploitation and fluidity in the mobile home market that leads to people being in even more tenuous housing situations down the road.

Councilor Bencomo said thank you so much for your work on this, just having lots of thoughts about what all of this means and how we can put it to good use. I think there is a couple of takeaways for me that I will name before I just have a couple of questions. I feel like for me the two biggest takeaways are access, regardless of income that there is just not enough. There is just not enough rental units, whether it is affordable units or fair price units for people who can afford the higher end apartments if you will. So just like access to actual quantity. The second one is access because of economic anxiety, and I spoke briefly about this at the Budget Retreat around and maybe not so much around policies and ordinances that will incentivize more building because I think we already did that with Realize but really more policies and programs that go towards economic mobility of our community. Page 8, our page 8, the fact that in the survey here was 36% had a household income of less than 25,000 to me is deeply concerning and I think that to me poverty is a policy choice. Like I deeply believe that is true and what else could we be doing to improve the quality of life and the economic mobility of so many of our families, whether they are their families, they are single folks whoever or they are single parents, people who are living in overcrowded households, whatever the case is that that to me feels like a huge undertaking that we really must explore and that is probably outside of the scope of your work with us but I think that is important for us as council and city management and Natalie and a lot of us here to really try to tackle because that to me is deeply concerning and we will probably see even more why in the economic outlook after this and then you know as I think about things like the Family Prosperity Program which I am a huge advocate for and have been for a long time. Part of that is because of this huge concern that we are seeing in terms of access because of economic anxiety that our community is facing and then on page 11, our page 11 when I am thinking about what would you need to be able to secure housing, rental assistance, money to make critical repairs is consistently at the top too. So, it is money, it is cash. It is cash in people's pockets that could make their lives so much more stable and to me this is to me the biggest takeaway and you know I had talked about at the Budget Retreat, I wasn't even prepared to have this sort of aha moment but at the Budget Retreat I did speak about institutionalizing the family prosperity

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program because we had a pilot project that was tremendously successful with a couple of non-profit organizations and I just think it is incumbent on us to think about institutionalizing it and making it permanent and I know what folks will say or folks who don't believe in such a program will say but the numbers are right in front of us like this is what people are struggling with the most in order to have more secure and stable housing and us as municipal government should absolutely take that as a challenge and a responsibility to try to address. I just wanted to name that. Natalie, I have a couple of questions for you probably, actually as I see the numbers for our aging population, we also know that, I don't know if this has changed, I think that as of last year that our unhoused population is also more and more seniors experiencing homelessness. To me this is very concerning, right like again, lack of access to just actual access to housing with an ageing population and I think we are making huge strides at that, but I am curious if you can speak to that concern a little bit?

Natalie Green said we do anticipate that that senior homelessness population will continue to rise and the plan does have a specific section if I am correct on housing needs assessment for people experiencing homelessness. I do just want to give next steps too. So after we present this plan and have our 30 day comment period we will adopt the consolidated plan and our 26 action plan we will be submitting that to HUD for review and their correction if there is any and then we will shift focus to the affordable housing plan which will have targeted objectives for each housing type and each housing population. As staff we will use that to inform our affordable housing programming moving forward. So, when developers come to us rather than them telling us what they are building we are going to tell them you need to build X,Y,Z or we are supporting projects that prioritize X, Y, Z. So we will work on finalizing that plan with Heidi and Avilia, we will work on adopting that and submitting that to Housing New Mexico and then on top of that our plan is to bring back all the feedback within both plans and then work on some ordinance and policy changes both programming wise and then whatever we need to do in terms of the affordable housing general oversight ordinance and then we will work on some project implementation to address the strategic plans within both planning documents so we are very much about implementation so we don't let our plans sit on the shelf. We would like to implement our plans and so you will see that work moving forward. But we are concerned about seniors. We saw it with Pedrena. We were 90% leased up day one. We are seeing it a little bit with Peachtree. So, we had 142 applications for 144 units. In the lease data or the application data, Phase I has less three bedrooms, there is more three bedrooms than Phase II. We have 42 applications for 18 three-bedroom units and then for the public who may watch this later we still have availability in the one bedroom, so we are looking to fill those but certainly the need is telling in those pre-leasing numbers for all of the housing developments.

Councilor Bencomo said that is very telling. When can we expect to see the affordable housing plan?

Heidi Aggeler said we have draft sections which will go to review of Natalie and her team so I would say a month to a month and a half before we get to the review process and then the recommendations.

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Councilor Bencomo asked I assume we will have a Work Session?

Natalie Green said yes.

Councilor Bencomo said this is really great data and I know that we have another very localized survey happening. I am wondering if the Public Health Coordinator can speak to how that group plans to coordinate with this? They aren't here, it seems like. I think this is an important conversation for the Public Health Coordinator to be at in the future, especially as we have the Mayor's project on the survey here locally. I want to make sure that these aren't siloed and that we are moving in conjunction together. I think to me that feels particularly important.

Mayor Pro Tem Munoz asked on page 9, I grew up in the 1900's, 1990s, the common thought then was that you are going to get a job and you will get a home and so it pains me to hear my son who just graduated from college and his contemporaries saying I will never afford a home and I don't know if I will get into a house. So obviously we have some work to do together to look at this solution holistically. So, I wanted to talk about the pressure that you see under tenure where it says precariously housed. The population distribution is 18%, 65 +, 75+, we will continue to grow in addition to 65+. I know that as Councilor Harris mentioned or alluded to, I think it is important for landlords in who have to be aware the climate of the environment. Seems like we went from winter to summer all of a sudden and they want happy tenants and tenants who are comfortable and so I think that is important as we look at cooling initiatives throughout the city. I sit on a board. We raise money and we contribute money to help out seniors in our city who need things like grab bars and air conditioning and ramps. It is so hard to get around. I have been fortunate and not as handy, so I am really helping move around tools and materials and things like that. I have had the opportunity to visit some sites and it is difficult to see our seniors that have been there and raised us and have been there for us are struggling to get around and you go into their homes and it is just sweltering hot and they request things like air conditioning, ramps and grab bars and so, we are able to fund that as a non-profit but we can't be reaching a big portion of what is happening in Las Cruces. So, I just wanted to hear from you what pressure do you see under tenure of precariously housed homes? What pressure do you see on the market?

Heidi Aggeler said in terms of the seniors' needs definitely the grab bars, the cooling systems, those overlap a lot with disability and so the incidents of disability once a senior turns 75 goes up dramatically. I do think that there is a bit of a myth that we want to move seniors out of their homes and then they will become available like people like your son to become homeowners. Most surveys show that seniors do want to stay in place and in fact your survey I didn't present this data but showed that the majority of folks do want to stay in their homes as long as they can because they are very happy with where they are living so that does give you even more of an impetus to continue the rehabilitation work that you are doing and address the cooling and the grab bar, the accessibility needs.

Natalie Green said I think we are in our second, going into our third year of the Emergency Handyman Program. So, we specifically launched that program using

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general funds to be able to do emergency repairs for seniors so that they can stay in place. So that handles heating and cooling during the changeovers. We also used some for accessibility and some other things that we determined to be life and safety hazards. It is currently slated to be funded in this year's budget through our general fund and then real quickly because I didn't get a chance I just wanted my entire team is here and I was hoping they will stand and just wave because they are the team that does the work day in and day out so they are managing the home rehab program, the emergency repair program, our home TBRA program, really all of the programs. They do all the work, and I stand up here and talk to all of you guys. So, we do have a program specifically to address that outside of federal funds because we know federal funds can be incredibly challenging to deploy. So, we do have some flexible funding that will let us address those and if there is opportunities to partner with other non-profits, we are always happy to incorporate into our programming.

Councilor Bencomo asked as we are talking about this and there is a lot of survey information in here as well and I was wondering how you are thinking, I know you are spearheading that project and so I am just curious how you are approaching that and then making sure that you know we are working together with this plan and the plan that is upcoming?

Anthony Turner, Public Health Coordinator said the survey that you are mentioning is actually being developed right now in partnership with NMSU. We are waiting on their proposal and then we will move forward with that but at the moment while it is in the development phases there is not too much to that.

Councilor Bencomo asked just to be clear that will be specifically for unhoused folks or are you thinking of expanding that to all folks who are, for example living on couch surfing or living in their car?

Anthony Turner said it will be for all four categories of HUD homelessness. Also, with substance abuse and mental health. So, it covers a wide range. So, there is going to be quite a bit of data in that that we have to cover.

Councilor Bencomo asked do you know if we will have access to the survey before it goes out? Like will we be able to provide feedback?

Anthony Turner said yes, we will be able to provide feedback but right now I believe that Dr. Banner is going to be the principal investigator helping to develop it.

Councilor Harris said just another follow up on surveys and this is for anybody who conducts surveys, maybe everybody. So, there were 742 respondents to this. There is 110/120,000 people who live in the city. How do we go about doing our surveys, thoughts on how we might improve numbers?

Heidi Aggeler said in this kind of a survey what we are looking for, we call this sort of snowball survey, so we get the word out about the survey. People hopefully tell each other, and it picks up like some energy like a snowball rolling down a hill. I don't know if that is the right physics but that is what we say and then that survey kind of the word

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of the survey broadens and people get excited to take it. This is the appropriate type of survey to do for housing needs assessment of this size and magnitude because what we are trying to get is we are capturing and we see you capture those precariously housed and the very low-income people very well and we want their voices captured in the survey. In some cases, and we are doing this right now for a community outside Washington DC. We will do a statistical survey, a significant survey so we use a more precise sample to be able to invite people to take the survey. That type of survey on its own is quite expensive to conduct just the sampling in particular. So, what we hope to do with this survey which we achieved is use the snowball type of approach and just sort of an informal promotion with the city as a partner and non-profits as a partner to get enough of a representation of the people who have housing needs which we did. It is not a matter of the numbers as of the representation of that demographic sample with the statistically significant survey like the magic number for those just to give you some context is about 400 responses and for this one, we got 742. So, we feel really good about the numbers but also the demographic representation.

Natalie Green said for this particular survey staff does make a concerted effort to outreach those least likely to participate so we mailed about 10,000 postcards to low to moderate income census tracts in addition to that we partnered with Casa de Peregrinos who put survey flyers in all of the food pantry boxes so that was about 6,000 households and then we partnered with the County on ads so for those who see the Bulletin weekly we advertised and they advertised and then it was also on both Facebook post and then I actually did a news TV segment with our Communications team that was advertised on the news so we do try and go above and beyond the standard outreach process.

Councilor Harris said I appreciate the focus on the people who need the housing because that is what we actually care about, like randomly sampling 20,000 people in the city is probably all not that helpful if you get mostly people who own their homes and have no needs.

1.2 ECONOMIC OUTLOOK

Monica Torres, Economist gave the overhead presentation.

Councilor Harris asked on slide 8, so we just talked about housing and building more units, so we need more units, but it looks like our residential construction permits are going down? Is that like an absolute number in terms of units or? In the jest of my question does an apartment complex count as just one permit for the purposes of this?

Chris Faivre, Community Development Director said multi-family is considered commercial so this would be.

Councilor Harris said overall the feeling is that units are still getting more units or units have kind of leveled off?

Chris Faivre said so given some of the changes in the land development code we are

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seeing an uptick in multi-family duplexes, triplexes, quadplexes. So, we are seeing more of that so I would expect to see some of that reflected in the numbers as January 1st of this year was when we went exclusively to the new code so I think over the next couple of years we will definitely see those units increase.

Councilor Harris asked on the new business registrations, is there a breakdown in kind of category?

Chris Faivre said our software doesn't really allow us to get that granular but what I will say is some of that isn't just new registrations versus there has been more of an aggressive effort on the part of staff to go out and make sure that those that have expired are now getting their registrations. We can work to try to break down those numbers a little bit more as we kind of figure out industry versus renewal versus new so we can try and get that information to you.

Councilor Harris said that is something that I am interested in, like what kinds of businesses are coming in. The breakdown of renew versus new because 649 feels like a lot of businesses to have opened for not a lot of public facing. It would be interesting to see maybe next quarter like the churn if we could get an idea of if because it is common to see like restaurants open in a place and then run for a year and then close and then another one open so it would I think just be an interesting data point to see that churn.

Chris Faivre said yes, we can certainly look at that. A lot of these are home based businesses so when you think businesses and that was always kind of my first thought too that we are seeing a lot of those too but a lot of it is home based and a lot of it is maybe there has been a lapse so when they come in and renew and so it is not necessarily a new it is a new registration.

Councilor Corran said I really have more of a comment and appreciation of you, and you Dr. Torres. What time to be alive and understand micro-economics. I just appreciate you breaking it down as much as you can for us and I know that economics is a science and that you know I but also thanks for the crystal ball insight that you are trying to throw here. I appreciate you very much for giving us this context and to help us understand this volatile wild place.

Mayor Pro Tem Munoz said looking at the contract forecast here, again your crystal ball. Where do you think we are headed? Increase/decrease? Same thing for interest rates, where do you think those are going to go?

Monica Torres said that is a very difficult question to ask right now, especially with the things happening like right now we have geopolitical conflict, we have a major trading route that just closed that led to a 39% increase in oil prices. This could have some inflationary effect depending on how long it takes. We are also seeing some softening in the labor markets and also indicators are not typically behaving like they did like they used to. DC, which is a preferred measure for inflation for the federal reserve, has been running about 2% target for five years now we are seeing PCI a little lower than PCE when it is typically the opposite case. I think most likely the interest rate is

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going to be kept at the current level for the next meeting, maybe a cut by the end of the year but there is a lot of changes since the pandemic. It has been very difficult to forecast things. We have seen an unprecedented amount of stimulus. Now it is going away but now that we have other things changing and so I probably didn't answer your question, it is just very complicated. If there is more weakening of the labor market probably there is additional cuts on the horizon, but I think they are going to stay for the next meeting.

Councilor Harris said that brought up another question that I had which also is probably a crystal ball question. How sticky do you think some of the inflation and price increases and housing price increases might be in the context of this as I just read to be fair the executive summary of a study that was done in Europe they had actually a situation where they had added a tax to a service and then a few years later removed the tax and so the study was actually looking at the price increases and how sticky they were after the tax was removed. Basically, prices went up immediately after you know the tax went into effect and in this case, it would be tariffs and other like housing pricing increases and then after it was taken out consumers did not see the full benefit of the reductions. So, prices went up by \$4, I think it was for haircuts or something after the tax prices went down by \$2. Just kind of curious your thoughts on that. I know that when I buy electronic components, I see a separate line item for the tariff on there that I have to pay and so that would be pretty hard for the vendor to paper over but if butter costs an extra dollar at Walmart, maybe it still costs an extra dollar next year.

Monica Torres asked can you repeat your question please?

Councilor Harris said with some of the changes that you were bringing up. We have seen some tariffs struck down which obviously impact us. We have seen a lot of housing prices rise for various reasons we are trying to increase supply and other policies. How sticky do you think these changes are? Do you think there is actually a chance in the short to median term of actually seeing price decreases due to these things?

Monica Torres said we see inflation trending down, but the level of prices still elevated. There might be some changes in regulation at the federal level that might help with home prices but still it is nothing like finalized. I don't think I have the information to fully answer your question without making a number of assumptions and I would rather give you a more informed answer that works for you.

2. **ADJOURNMENT**

2.1

City Councilor Michael Harris moved, seconded by City Councilor Becky Corran, to adjourn at 2:20 p.m.

RESULT:	Carried
MOVER:	City Councilor Michael Harris
SECONDER:	City Councilor Becky Corran
AYES:	City Councilor Johana Bencomo, City Councilor Becky Corran, City Councilor Cassie McClure, City Councilor John Munoz, and City Councilor Michael

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ABSENT:	Harris Mayor Eric Enriquez and City Councilor William Mattiace
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Mayor

City Clerk



City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☒ 5 ☐ 6 ☐ N/A
1st Reading:	Adopted: April 6, 2026
Drafter:	Sara Gonzales
	Department: Community Development
Title:	A RESOLUTION APPROVING A VACATION / DEDICATION PLAT KNOWN AS THE LILLEY - KATERINA COMMERCIAL TRACTS. THE PROPERTY ENCOMPASSES APPROXIMATELY 11.746 ACRES AND LOCATED ON THE SOUTHEAST CORNER OF SONOMA RANCH BOULEVARD AND THURMOND ROAD. SUBMITTED BY GEM SURVEYING, REPRESENTATIVE, ON BEHALF OF DANIEL P. LILLEY AND KATERINA INC., PROPERTY OWNERS.

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

Approval of a vacation / dedication plat.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The vacation plat process is to be followed when a request is made to rescind all or part of a dedicated tract or right-of-way in a previously filed subdivision. The process requires approval by City Council via resolution. Pursuant to the Las Cruces Municipal Code Chapter 34, Section 34-2.D, Approval and Appeal Entities, vacation / dedication plats require a recommendation by the Community Development Director and final action by City Council. A hearing before the Planning and Zoning Commission (P&Z) is not required as part of the process.

The proposed vacation / dedication plat will resolve an existing encroachment of the South Fork Drain onto the Lilley and Katerina properties. The original subdivision, known as the Sierra Norte Annexation, was recorded on March 31, 2006. The property had subsequent deeds recorded instead of formal subdivision plats to separate the current parcels. As a result, Dona Ana County’s parcel map currently reflects the property boundaries inaccurately.

This plat will correct the legal descriptions, adjust property lines through a land swap to ensure all drainage infrastructure is located within the City’s designated drainage tract, and facilitate future development under the corrected legal descriptions. The subject property consists of approximately 11.746 acres and is located at the southeast corner of Sonoma Ranch Boulevard and Thurmond Road. The site is zoned NH-3S (Neighborhood 3 Suburban), NH-1S (Neighborhood 1 Suburban), and OS-2S (Open Space 2 Drainage Suburban).

The main benefit to the City of Las Cruces is to obtain full control of the South Fork Drain. Under the current deed, a portion of the drainage area remains in private ownership. Recognizing that clarifying ownership would be advantageous to both parties, the developer approached the City with two options to revise the boundary and establish clear ownership of the drainage area, as shown in Attachment C. City staff selected Option 1 because it enables the City’s Public Works Department to assume responsibility for the channelized drainage and guard fence on the east side of Sonoma Ranch Boulevard, ensuring proper and consistent maintenance.

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On February 17, 2026, the Community Development Director evaluated staff's comments and recommends approval of the proposed vacation / dedication plat. All reviewing departments agree that the exchange of equal land area is mutually beneficial to both the property owners and the City of Las Cruces.

SUPPORT INFORMATION:

[Exhibit "A" - Lilley - Katerina Commercial Tracts](#)

[Attachment "A" - Subdivision Recommendation](#)

[Attachment "B" - Zoning Map](#)

[Attachment "C" - Sonoma Ranch Options](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and the Lilley – Katerina Commercial Tracts will be approved.
2. Vote "No"; this will not approve the Resolution and the Lilley – Katerina Commercial Tracts will be denied.
3. Vote to "Amend"; this could allow City Council to modify the Resolution by adding conditions as deemed appropriate.
4. Vote to "Table"; this could allow the City Council to table/postpone the Resolution and direct staff and the applicant accordingly.

RESOLUTION 26-120

A RESOLUTION APPROVING A VACATION / DEDICATION PLAT KNOWN AS THE LILLEY - KATERINA COMMERCIAL TRACTS. THE PROPERTY ENCOMPASSES APPROXIMATELY 11.746 ACRES AND LOCATED ON THE SOUTHEAST CORNER OF SONOMA RANCH BOULEVARD AND THURMOND ROAD. SUBMITTED BY GEM SURVEYING, REPRESENTATIVE, ON BEHALF OF DANIEL P. LILLEY AND KATERINA INC., PROPERTY OWNERS.

The City Council is informed that:

WHEREAS, the applicants, Daniel P. Lilley and Katerina, Inc. is proposing a vacation / dedication plat known as the Lilley – Katerina Commercial Tracts to correct the legal descriptions and property boundaries as the Dona Ana County Parcel Map depicts the property inaccurately; and

WHEREAS, the applicants will dedicate the area that the City of Las Cruces currently encroaches upon for the South Fork Drain; and

WHEREAS, the City of Las Cruces will vacate a portion of the underutilized South Fork drainage area and allow for additional commercial development along Sonoma Ranch Boulevard; and

WHEREAS, pursuant to the Las Cruces Municipal Code Chapter 34, Section 34-2.D, Approval and Appeal Entities, vacation / dedication plats require a recommendation by the Community Development Director and final action by City Council; and

WHEREAS, the Community Development Director, along with City of Las Cruces departmental review completed on February 17, 2026, recommended that the Lilley – Katerina Commercial Tracts be approved.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the vacation / dedication plat known as the Lilley – Katerina Commercial Tracts, reflected in Exhibit “A”, attached hereto and made part of this Resolution, is hereby Approved.

(II)

THAT the Mayor is hereby authorized to sign the replat on the City’s behalf.

(III)

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

DONE AND APPROVED this day of

Agenda Item #6.1.

APPROVED

ATTEST:

Moved by:

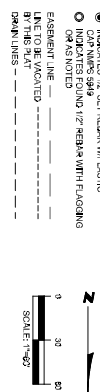
Seconded by:

AYES

NAYS

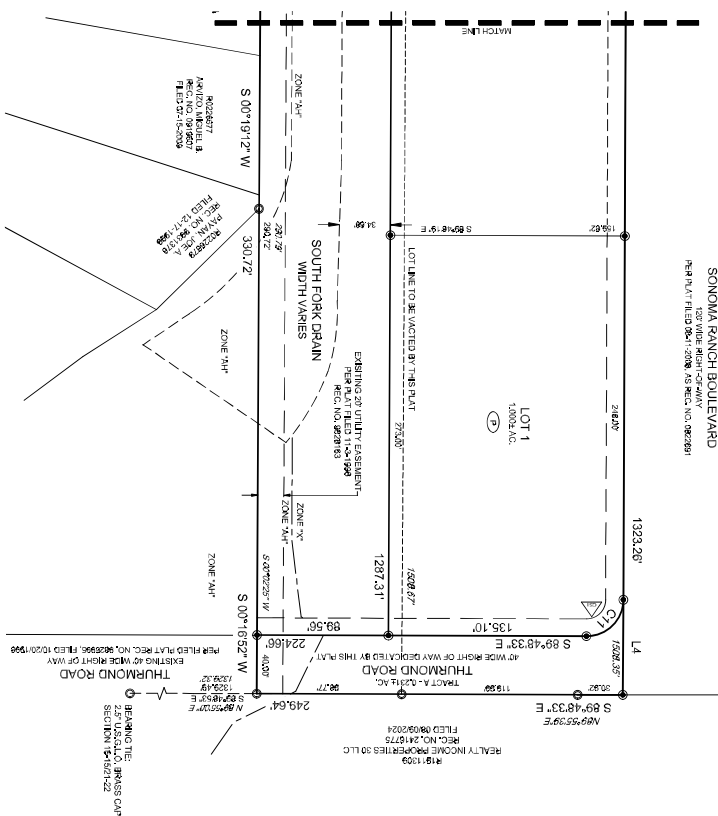
A 11.746 ACRE SUBDIVISION WITHIN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21, T.28S., R.2E., N.M.P.M. OF THE U.S.G.L.O. SURETYS, WITHIN THE CORPORATE LIMITS OF THE CITY OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO.

- INDICATES 1/2" SET REBAR W/PLASTIC CAP NUTS 5949
- INDICATES FOUND 1/2" REBAR WITH FLAGGING OR AS NOTED

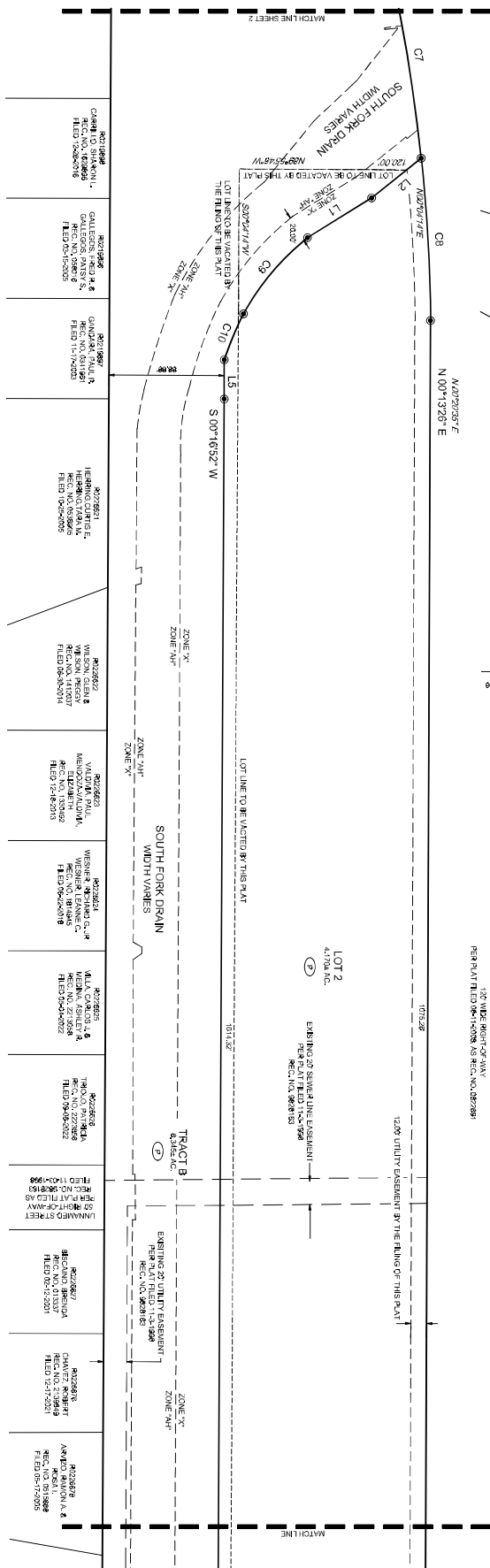


CLIMATE	WINDS	JACK LENGTH	CHORD LENGTH	CORNER BEAMS	BEAM LARGE
C1	10.0	10.0	10.0	N 10.0 E 10.0	6.0 x 10.0
C2	10.0	10.0	10.0	N 10.0 E 10.0	6.0 x 10.0
C3	10.0	10.0	10.0	N 10.0 E 10.0	6.0 x 10.0
C4	10.0	10.0	10.0	N 10.0 E 10.0	6.0 x 10.0
C5	10.0	10.0	10.0	N 10.0 E 10.0	6.0 x 10.0
C6	10.0	10.0	10.0	N 10.0 E 10.0	6.0 x 10.0
C7	10.0	10.0	10.0	N 10.0 E 10.0	6.0 x 10.0
C8	10.0	10.0	10.0	N 10.0 E 10.0	6.0 x 10.0
C9	10.0	10.0	10.0	N 10.0 E 10.0	6.0 x 10.0
C10	10.0	10.0	10.0	N 10.0 E 10.0	6.0 x 10.0
C11	10.0	10.0	10.0	N 10.0 E 10.0	6.0 x 10.0

LINE	BEARING	DISTANCE
L1	N 68°13'09" E	69.20'
L2	N 51°10'37" E	48.89'
L3	S 79°34'41" E	100.14'
L4	N 00°13'32" E	64.99'
L5	N 00°16'52" E	30.11'



SONOMA RANCH BOULEVARD
120' WIDE RIGHT-OF-WAY
PER PLAT FILED 06-11-2008, AS REC. NO. 082269



© 2026 GEOGRAPHIC LLC. ALL RIGHTS RESERVED

SHEET 2 OF 2

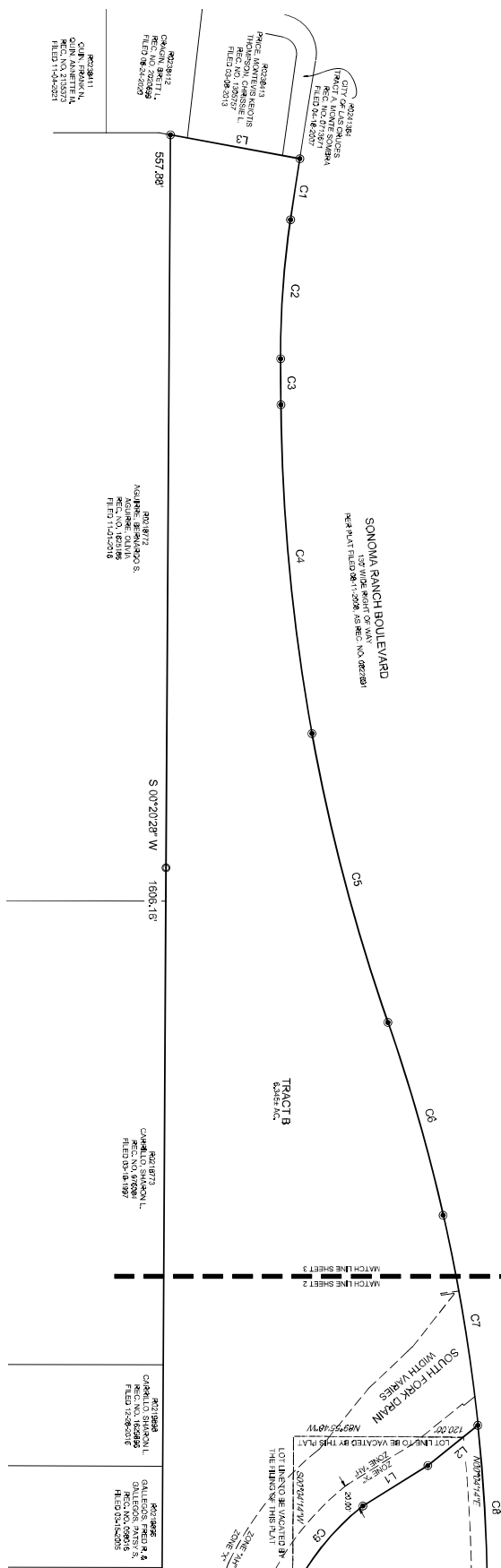
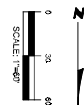
SURVEYING
GEM
P.O. BOX 183
ORGAN, NM 8802
TEL: 575-835-0177
FAX: 888-293-0566

A 11.746 ACRE SUBDIVISION WITHIN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21, T.2S, R.2E, N.M.P.M. OF THE U.S.G.L.O. SURVEYS WITHIN THE CORPORATE LIMITS OF THE CITY OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO.

DATE OF SURVEY: APRIL 19, 2023

LEGEND

- INDICATES 1/2" SET REBAR W/ PLASTIC CAP NAILS 3/4"
- INDICATES FOUND 1/2" REBAR WITH FLAGGING OR AS NOTED
- EASEMENT LINE -----
- LINE TO BE VACATED BY THIS PLAT -----
- DRAIN LINES -----





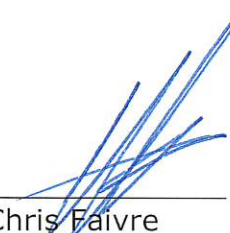
SUBDIVISION ACTION FORM

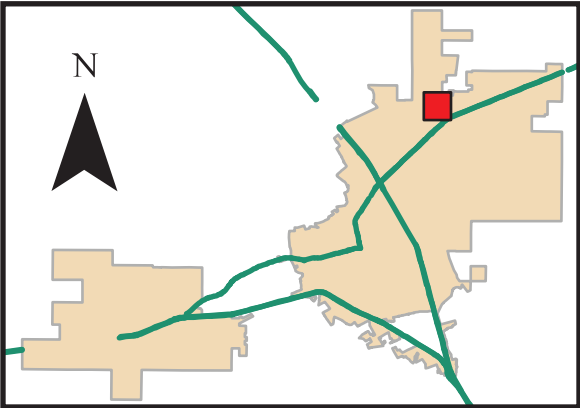
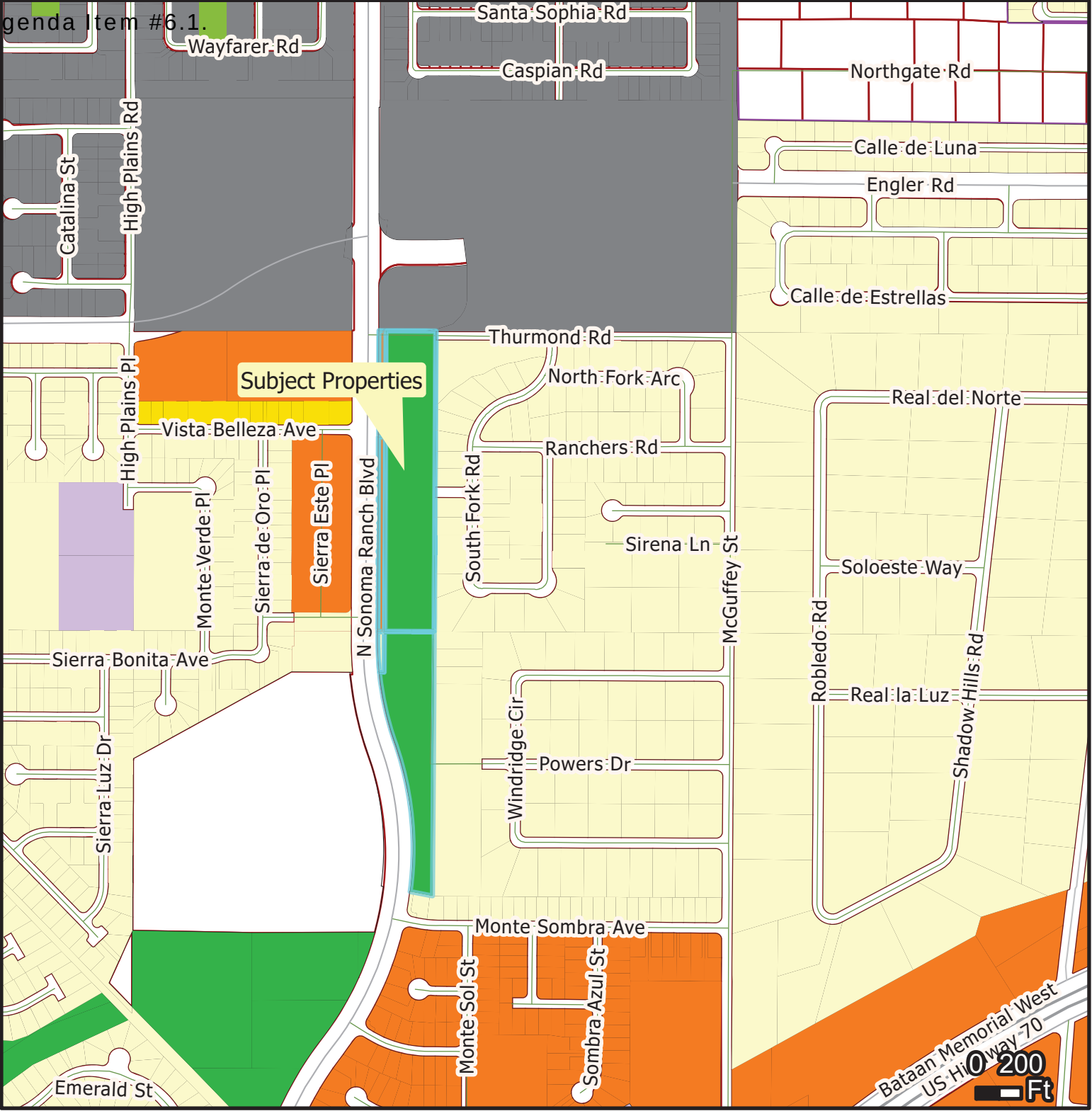
Recommendation
CASE NO. 25CS0500044

This certifies that the subdivision known as **Lilley – Katerina Commercial Tracts** located within the corporate limits of Las Cruces, New Mexico, was reviewed and approved by all relevant departments including Utilities, Public Works, City Surveying, GIS, Planning, Engineering, Fire, Transportation, Parks and Recreation, Real Estate Services, and Flood on February 17, 2026.

Accordingly, I do hereby recommend Approval of **Lilley – Katerina Commercial Tracts** without conditions.

2/19/2026
Date


Chris Faivre
Community Development Director

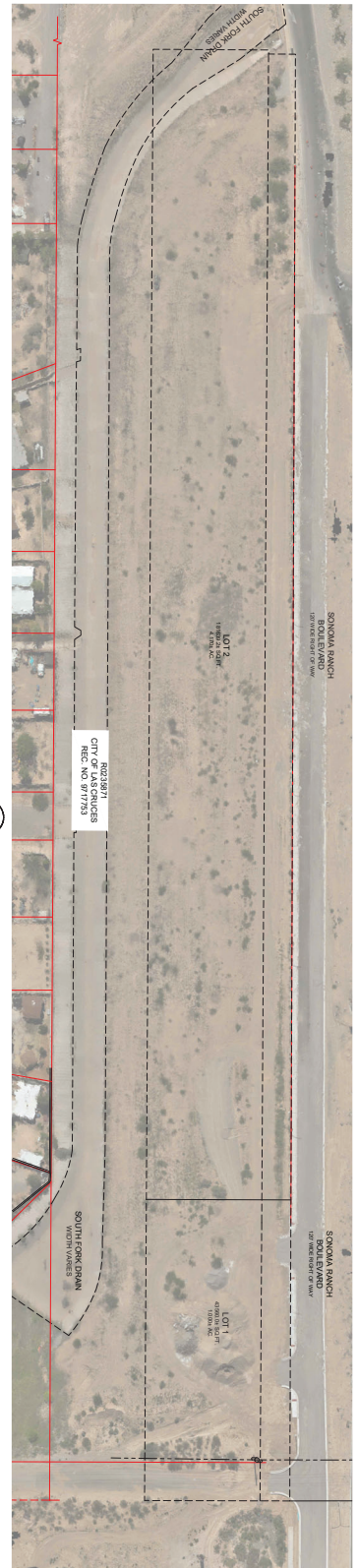
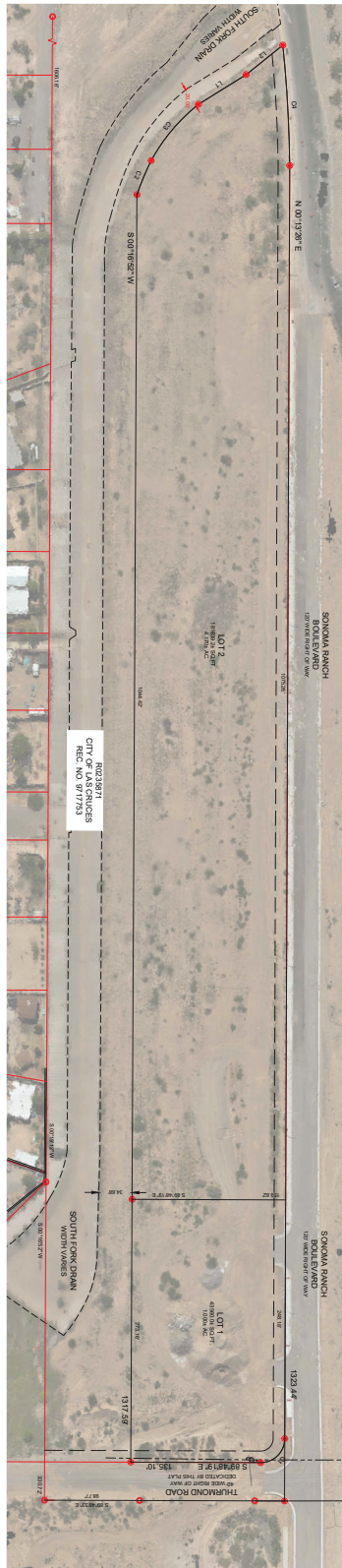
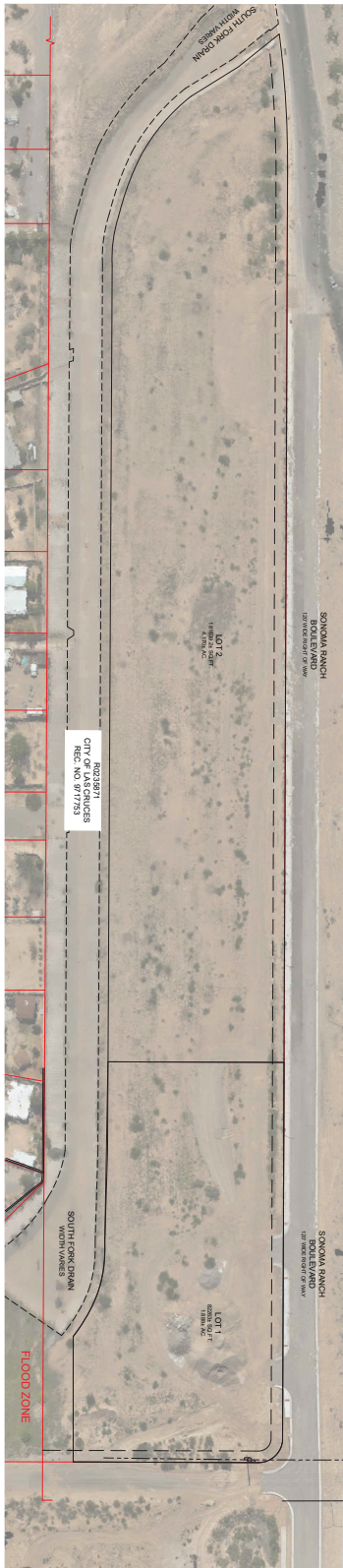


ATTACHMENT "B"

ZONING MAP

Agenda Item #6.1.

04/07/24	INITIAL RELEASE	DL	DL	AG	CL ENT.	LILLEY	LILLEY ENGINEERING INC.	LILLEY-KATERINA PROPERTY	04/07/24 SONOMA OPTIONS
DATE	REVISION AND RECORD OF ISSUE	REV	BY	CHK	PROJECT	SONOMA PROPERTY	5100 DULLE BLVD. LAS CRUCES, NM 88001 (505) 521-0008	SONOMA RANCH BLVD.	SHEET C100
0									



THIS IS AS DESCRIBED

THIS IS WHAT WE WILL SUBMIT
(CL EANS UP THE SOUTH FORK
DRAIN ENCROACHMENT)



26-121

City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A
1st Reading:	Adopted: April 6, 2026
Drafter:	Hayford Danso
	Department: City Manager's Office
Title:	A RESOLUTION AMENDING THE FY2026 - 2031 CAPITAL IMPROVEMENTS PROGRAM.

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:
To amend the Capital Improvements Program (CIP) for Fiscal Year (FY) 2026 through 2031.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City of Las Cruces adopted the FY 2026-2031 Capital Improvements Program (CIP) on May 19, 2025. During the fiscal year, project information, such as funding sources and amounts, may change as projects progress. As a result, amendments to the CIP document are necessary to reflect those changes. City Council approves amendments. The proposed amendments adjust project budgets. Attachment "A" lists the proposed amendments.

SUPPORT INFORMATION:
[Exhibit "A" - FY2026 - 2031 CIP](#)
[Attachment "A" - CIP Amendments Description](#)

PLAN(S):
Elevate Las Cruces

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?
☒ Yes
☐ No

OPTIONS / ALTERNATIVES:

Agenda Item #6.2.

1. Vote "Yes"; this will amend the City of Las Cruces FY2026 through FY2031 CIP.
2. Vote "No"; this will not amend the City of Las Cruces FY2026 through FY2031 CIP.
3. Vote to "Amend"; this will potentially amend the Cruces FY2026 through FY2031 CIP, requiring pages in the program document be added, deleted or modified.
4. Vote to "Table"; this will delay the use of funds for amended projects.

RESOLUTION 26-121

A RESOLUTION AMENDING THE FY2026 - 2031 CAPITAL IMPROVEMENTS PROGRAM.

The City Council is informed that:

WHEREAS, the Capital Improvements Program (CIP) is a six-year program that identifies capital projects which address capital needs to build, replace, expand, and improve infrastructure and systems; and

WHEREAS, in accordance with the provisions of Article VI. Section 6.03 of the City Charter, the financing and location of capital improvements is guided by the City's Comprehensive Plan, Elevate Las Cruces; and

WHEREAS, pursuant to Article V. Section 5.08 of the City Charter, Council may supplement, reduce or transfer appropriations.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the Capital Improvements Program for FY2026 through FY2031, attached hereto and made part of this Resolution as Exhibit "A", is hereby approved.

(II)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

CITY OF LAS CRUCES
CAPITAL IMPROVEMENTS PROGRAM
FY 2026 - 2031

Exhibit "A"

AMENDED - APRIL 6, 2026

Project Title	Department	Funded FY2026	Unfunded					Funding Source
			FY2027	FY2028	FY2029	FY2030	FY2031	
Active Transportation		\$	\$	\$	\$	\$	\$	
Active Transportation - Newly Funded		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Active Transportation - Carryover		\$ 7,686,922.46	\$ 775,000.00	\$ 110,000.00	\$ 110,000.00	\$ 110,000.00	\$ -	
Active Transportation Program		\$ 7,065,182.08	\$ 665,000.00	\$ -	\$ -	\$ -	\$ -	
Active Transportation Projects		\$ 3,030,370.00	\$ -	\$ -	\$ -	\$ -	\$ -	Grants
Madrid Ave Extension - Evelyn St to N Triviz Dr	Public Works	\$ 1,221,457.00	\$ -	\$ -	\$ -	\$ -	\$ -	Bonds
Melendres Ave/Pittsburg - Hadley to Picacho	Public Works	\$ 1,094,853.00	\$ -	\$ -	\$ -	\$ -	\$ -	Bonds
Trail Renovations	Parks & Recreation	\$ 95,000.00	\$ 1,540,000.00	\$ 500,000.00	\$ 500,000.00	\$ -	\$ -	Grants
Dona Ana Move Trail	Parks & Recreation	\$ 909,469.23	\$ -	\$ -	\$ -	\$ -	\$ -	Grants
Tortugas Trail	Parks & Recreation	\$ 125,543.68	\$ 350,000.00	\$ -	\$ -	\$ -	\$ -	Grants, Other
University Multi-Use Trail Loop	Parks & Recreation	\$ 588,489.17	\$ -	\$ -	\$ -	\$ -	\$ -	Grants, Taxes
Active Transportation - Annual		\$ 621,740.38	\$ 110,000.00	\$ 110,000.00	\$ 110,000.00	\$ 110,000.00	\$ -	
ADA Compliance		\$ 621,740.38	\$ 110,000.00	\$ 110,000.00	\$ 110,000.00	\$ 110,000.00	\$ -	
ADA Sidewalk Program	Public Works	\$ 621,740.38	\$ 110,000.00	\$ 110,000.00	\$ 110,000.00	\$ 110,000.00	\$ -	Taxes
Active Transportation - Future		\$ -	\$ 174,000.00	\$ -	\$ -	\$ -	\$ -	
Green Cool Corridors for Bicycles	Sustainability	\$ -	\$ 174,000.00	\$ -	\$ -	\$ -	\$ -	Grants, Taxes
SUBTOTAL		\$ 8,308,662.84	\$ 1,059,000.00	\$ 220,000.00	\$ 220,000.00	\$ 220,000.00	\$ -	
Airport		\$	\$	\$	\$	\$	\$	
Airport - Newly Funded		\$ 2,130,420.47	\$ 475,000.00	\$ -	\$ -	\$ -	\$ -	
Airport Improvements, Pavement Maintenance, and Equipment		\$ 810,749.47						
LRU Airport Automated Weather Observation System (AWOS)	Las Cruces Airport	\$ 1,319,671.00	\$ 475,000.00	\$ -	\$ -	\$ -	\$ -	Grants
Airport - Carryover		\$ 3,081,283.70	\$ 1,985,000.00	\$ 285,000.00	\$ 285,000.00	\$ 285,000.00	\$ -	
LRU Runway Improvements		\$ 2,906,283.70	\$ 1,500,000.00	\$ -	\$ -	\$ -	\$ -	
LRU Runway 4-22 Rehabilitation	Las Cruces Airport	\$ 1,501,931.66	\$ 1,500,000.00	\$ -	\$ -	\$ -	\$ -	Grants
LRU Runways 8-26 and 12-30 Blast Pads	Las Cruces Airport	\$ 572,364.04	\$ -	\$ -	\$ -	\$ -	\$ -	Grants, Taxes
LRU Infrastructure Extensions/Improvements	Las Cruces Airport	\$ 481,568.45	\$ 5,350,000.00	\$ -	\$ -	\$ -	\$ -	Grants, Taxes
LRU Airport Infrastructure Improvements	Las Cruces Airport	\$ 22,672.44						GRANTS
Airport - Annual		\$ 175,000.00	\$ 485,000.00	\$ 285,000.00	\$ 285,000.00	\$ 285,000.00	\$ -	
LRU Pavement Maintenance Program	Las Cruces Airport	\$ -	\$ 400,000.00	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00	\$ -	Other, Taxes
LRU Pavement Striping/Marking Maintenance Program	Las Cruces Airport	\$ 175,000.00	\$ 85,000.00	\$ 85,000.00	\$ 85,000.00	\$ 85,000.00	\$ -	Grants, Taxes
Airport - Future		\$ -	\$ 18,539,000.00	\$ 7,050,000.00	\$ 5,150,000.00	\$ 38,770,000.00	\$ 17,500,000.00	
LRU Runway Improvements	Las Cruces Airport	\$ -	\$ -	\$ -	\$ -	\$ 27,500,000.00	\$ 17,500,000.00	
LRU Runway 12/30 Extension	Las Cruces Airport	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	Grants, Other, Taxes
Runway 8/26 Extension	Las Cruces Airport	\$ -	\$ -	\$ -	\$ -	\$ 27,500,000.00	\$ -	Grants, Taxes
LRU Airline Ground Support Equipment Facility Design and Construction	Las Cruces Airport	\$ -	\$ -	\$ -	\$ 750,000.00	\$ -	\$ -	Other
LRU Airport Automated Weather Observation System (AWOS)	Las Cruces Airport	\$ -	\$ 475,000.00	\$ -	\$ -	\$ -	\$ -	Grants, Taxes
LRU Airport Maintenance Equipment	Las Cruces Airport	\$ -	\$ -	\$ 750,000.00	\$ -	\$ -	\$ -	Grants, Taxes
LRU Airport Rotating Beacon	Las Cruces Airport	\$ -	\$ 345,000.00	\$ -	\$ -	\$ -	\$ -	Grants, Taxes
LRU Apron West Rehabilitation	Las Cruces Airport	\$ -	\$ -	\$ -	\$ -	\$ 70,000.00	\$ -	Grants, Taxes
LRU ARFF (Airport Rescue and Fire Fighting) Index B Equipment Upgrades	Las Cruces Airport	\$ -	\$ 1,600,000.00	\$ -	\$ -	\$ -	\$ -	Grants, Taxes
LRU Commercial Hangar Design and Construction	Las Cruces Airport	\$ -	\$ -	\$ 2,850,000.00	\$ -	\$ -	\$ -	Grants, Taxes
LRU East Road Extensions/Improvements	Las Cruces Airport	\$ -	\$ -	\$ -	\$ -	\$ 11,200,000.00	\$ -	Other
LRU Fuel Farm Relocation and Expansion	Las Cruces Airport	\$ -	\$ -	\$ -	\$ 1,900,000.00	\$ -	\$ -	Other
LRU Maintenance Facility Design and Construction	Las Cruces Airport	\$ -	\$ 550,000.00	\$ -	\$ -	\$ -	\$ -	Grants
LRU Multi-Modal Public Passenger Transit Facility	Las Cruces Airport	\$ -	\$ -	\$ -	\$ 2,500,000.00	\$ -	\$ -	Other
LRU Passenger Terminal Design and Construction	Las Cruces Airport	\$ -	\$ 9,600,000.00	\$ -	\$ -	\$ -	\$ -	Grants, Taxes
LRU Passenger Terminal Parking Design and Construction	Las Cruces Airport	\$ -	\$ 1,600,000.00	\$ -	\$ -	\$ -	\$ -	Grants, Taxes
LRU Taxi Lane Extensions/Improvements	Las Cruces Airport	\$ -	\$ -	\$ 3,450,000.00	\$ -	\$ -	\$ -	Other
Taxiway C Rehabilitation	Las Cruces Airport	\$ -	\$ 4,369,000.00	\$ -	\$ -	\$ -	\$ -	Grants, Other, Taxes
SUBTOTAL		\$ 5,386,704.17	\$ 21,484,000.00	\$ 7,620,000.00	\$ 5,720,000.00	\$ 39,340,000.00	\$ 17,500,000.00	

**CITY OF LAS CRUCES
CAPITAL IMPROVEMENTS PROGRAM
FY 2026 - 2031**

Attainable/Affordable Housing		\$	\$	\$	\$	\$	\$	\$
Attainable/Affordable Housing - Newly Funded		\$ 9,261,834.00	\$ 6,000,000.00	\$ 2,000,000.00	\$ 2,000,000.00	\$ 2,000,000.00	\$ 2,000,000.00	\$ -
Arcadia 4 Subdivision	Housing and Neighborhood Svcs	\$ 3,250,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	Grants, Other
Affordable Housing Trust Fund and Land Bank Projects	Housing and Neighborhood Svcs	\$ 4,972,334.00	\$ -	\$ -	\$ -	\$ -	\$ -	Grants, Other
Paseos Verdes	Housing and Neighborhood Svcs	\$ 1,039,500.00	\$ 6,000,000.00	\$ 2,000,000.00	\$ 2,000,000.00	\$ 2,000,000.00	\$ 2,000,000.00	Bonds, Grants, Taxes
Attainable/Affordable Housing - Carryover		\$ 16,487,106.83	\$ 2,737,401.00	\$ -	\$ -	\$ -	\$ -	\$ -
MVCoH Campus Extension (Amador Crossing)	Housing and Neighborhood Svcs	\$ 16,487,106.83	\$ 2,737,401.00	\$ -	\$ -	\$ -	\$ -	Grants, Telshor
Attainable/Affordable Housing - Annual		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Attainable/Affordable Housing - Future		\$ -	\$ 12,550,000.00	\$ 7,050,000.00	\$ 12,050,000.00	\$ 7,050,000.00	\$ 5,050,000.00	\$ -
Affordable Housing Trust Fund and Land Bank Projects	Housing and Neighborhood Svcs	\$ -	\$ 5,500,000.00	\$ 5,050,000.00	\$ 10,050,000.00	\$ 5,050,000.00	\$ 5,050,000.00	Bonds, Grants, Other
Lift Up Las Cruces - Street Improvements		\$ -	\$ 7,050,000.00	\$ 2,000,000.00	\$ 2,000,000.00	\$ 2,000,000.00	\$ 2,000,000.00	-
SUBTOTAL		\$ 25,748,940.83	\$ 21,287,401.00	\$ 9,050,000.00	\$ 14,050,000.00	\$ 9,050,000.00	\$ 5,050,000.00	\$ -

City Operational Facilities		\$	\$	\$	\$	\$	\$	\$
City Operational Facilities - Newly Funded		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
East Mesa Center Emergency Generator (Sage Café)	Quality of Life	\$ -	\$ 422,500.00	\$ -	\$ -	\$ -	\$ -	Grants, Taxes
City Operational Facilities - Carryover		\$ 278,650.46	\$ 1,016,500.00	\$ 255,500.00	\$ 255,500.00	\$ 255,500.00	\$ 255,500.00	\$ -
Safety, Health, Environmental & Emergency		\$ 278,650.46	\$ -	\$ -	\$ -	\$ -	\$ -	-
City Hall Security Upgrades	Facilities Management	\$ 15,436.46	\$ -	\$ -	\$ -	\$ -	\$ -	Taxes
HR Remodel	Facilities Management	\$ 110,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	Taxes
Surveillance and Access Controls (Key Cards)	Facilities Management	\$ 153,214.00	\$ -	\$ -	\$ -	\$ -	\$ -	Taxes
General Facilities Improvements		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
Energy Efficiency Program - IGA	Facilities Management	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	Taxes
City Operational Facilities - Annual		\$ -	\$ 1,016,500.00	\$ 255,500.00	\$ 255,500.00	\$ 255,500.00	\$ 255,500.00	\$ -
Safety, Health, Environmental & Emergency		\$ -	\$ 1,016,500.00	\$ 255,500.00	\$ 255,500.00	\$ 255,500.00	\$ 255,500.00	-
Safety, Health, Environmental, & Emergency	Facilities Management	\$ -	\$ 1,016,500.00	\$ 255,500.00	\$ 255,500.00	\$ 255,500.00	\$ 255,500.00	Taxes
City Operational Facilities - Future		\$ -	\$ 10,146,500.00	\$ 300,000.00	\$ 210,000.00	\$ 200,000.00	\$ -	\$ -
General Facilities Improvements		\$ -	\$ 7,922,500.00	\$ -	\$ -	\$ -	\$ -	-
City Hall Expansion	Facilities Management	\$ -	\$ 7,500,000.00	\$ -	\$ -	\$ -	\$ -	Other
HVAC Upgrade Program		\$ -	\$ 400,000.00	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00	\$ -	-
HVAC Upgrade Program	Facilities Management	\$ -	\$ 400,000.00	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00	\$ 200,000.00	Taxes
Refuse & Recycling Buffer Program		\$ -	\$ 24,000.00	\$ 100,000.00	\$ 10,000.00	\$ -	\$ -	-
Refuse & Recycling Buffer Program	Facilities Management	\$ -	\$ 24,000.00	\$ 100,000.00	\$ 10,000.00	\$ -	\$ -	Taxes
East Mesa Outdoor Pool - Ground Stabilization	Parks & Recreation	\$ -	\$ 1,100,000.00	\$ -	\$ -	\$ -	\$ -	ARPA, Bonds, Grants, Taxes
Office Renovation - Castaneda Service Center	Parks & Recreation	\$ -	\$ 100,000.00	\$ -	\$ -	\$ -	\$ -	ARPA, Bonds, Grants, Other, Taxes
Satellite Park Maintenance Yard and Facility	Parks & Recreation	\$ -	\$ 600,000.00	\$ -	\$ -	\$ -	\$ -	ARPA, Bonds, Grants, Other, Taxes
SUBTOTAL		\$ 278,650.46	\$ 12,179,500.00	\$ 811,000.00	\$ 721,000.00	\$ 711,000.00	\$ -	\$ -

Equipment & IT		\$	\$	\$	\$	\$	\$	\$
Equipment & IT - Newly Funded		\$ -	\$ 181,500.00	\$ -	\$ -	\$ -	\$ -	\$ -
Access Channel Capital Improvement	Communications	\$ -	\$ 181,500.00	\$ -	\$ -	\$ -	\$ -	Other
Equipment & IT - Carryover		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Safety, Health, Environmental & Emergency		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
Senior Program Equipment and Rolling Stock	Quality of Life	\$ 310,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	Grants, Taxes
Equipment & IT - Annual		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Equipment & IT - Future		\$ -	\$ 483,000.00	\$ 92,000.00	\$ -	\$ -	\$ -	\$ -
Audio and Visual Equipment Upgrades for City Hall	Facilities Management	\$ -	\$ 383,000.00	\$ 92,000.00	\$ -	\$ -	\$ -	Taxes
Large Equipment - New and Replacement	Parks & Recreation	\$ -	\$ 100,000.00	\$ -	\$ -	\$ -	\$ -	ARPA, Bonds, Grants, Other, Taxes
SUBTOTAL		\$ -	\$ 664,500.00	\$ 92,000.00	\$ -	\$ -	\$ -	\$ -

**CITY OF LAS CRUCES
CAPITAL IMPROVEMENTS PROGRAM
FY 2026 - 2031**

Non-Profit		\$	\$	\$	\$	\$	\$
Non-Profit - Newly Funded		\$ 584,100.00	\$ 4,000,000.00	\$ 2,000,000.00	\$ 2,000,000.00	\$ -	\$ -
MVCoH Master Plan Implementation	Housing and Neighborhood Svcs	\$ 584,100.00	\$ 4,000,000.00	\$ 2,000,000.00	\$ 2,000,000.00	\$ -	Grants, Taxes
Non-Profit - Carryover		\$ 6,424,934.56	\$ 16,224,356.00	\$ -	\$ -	\$ -	\$ -
MVCoH Health Facility		\$ 31,314.63	\$ -	\$ -	\$ -	\$ -	\$ -
MVCH Health Facility Improvements	Non-Profit	\$ 31,314.63	\$ -	\$ -	\$ -	\$ -	Grants
Arts and Cultural District Improvements	Non-Profit	\$ 1,521,448.01	\$ -	\$ -	\$ -	\$ -	Grants
Jardin de los Niños Re-Roof	Non-Profit	\$ 7,745.30	\$ 150,000.00	\$ -	\$ -	\$ -	Grants
La Casa, Inc. Improvements (Flooring, Painting, Shade Structure)	Non-Profit	\$ 72,447.60	\$ -	\$ -	\$ -	\$ -	Grants
La Casa, Inc. Safety and Security Improvements	Non-Profit	\$ 574,200.00	\$ 500,000.00	\$ -	\$ -	\$ -	Grants
MV Community of Hope Expansion Remodel	Non-Profit	\$ 874,811.76	\$ 1,000,000.00	\$ -	\$ -	\$ -	Grants
MVCoH Restroom Showers & Mechanical Room	Facilities Management	\$ 387,125.00	\$ -	\$ -	\$ -	\$ -	Telshor
The Kitchens at MVCOH	Non-Profit	\$ 2,955,842.26	\$ 14,574,356.00	\$ -	\$ -	\$ -	Grants
Non-Profit - Annual		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Non-Profit - Future		\$ -	\$ 3,060,000.00	\$ -	\$ -	\$ -	\$ -
MVCoH Health Facility		\$ -	\$ 330,000.00	\$ -	\$ -	\$ -	\$ -
Health Facility Phase IV	Non-Profit	\$ -	\$ 330,000.00	\$ -	\$ -	\$ -	Grants
Jardin de los Niños Security Improvements	Non-Profit	\$ -	\$ 200,000.00	\$ -	\$ -	\$ -	Grants
MVCH Bldg 1 Solar Project	Non-Profit	\$ -	\$ 600,000.00	\$ -	\$ -	\$ -	Other
MVCH Patio to Office Remodel	Non-Profit	\$ -	\$ 1,000,000.00	\$ -	\$ -	\$ -	Grants
MVCH Solar Parking Structure	Non-Profit	\$ -	\$ 600,000.00	\$ -	\$ -	\$ -	Grants
SUBTOTAL		\$ 7,009,034.56	\$ 20,554,356.00	\$ 2,000,000.00	\$ 2,000,000.00	\$ -	\$ -

Other		\$	\$	\$	\$	\$	\$
Other - Newly Funded		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other - Carryover		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other - Annual		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other - Future		\$ -	\$ 653,000.00	\$ -	\$ -	\$ -	\$ -
Parks and Recreation Master Plan Update	Parks & Recreation	\$ -	\$ 433,000.00	\$ -	\$ -	\$ -	Grants, Other, Taxes
QOL Bookmobile	Quality of Life	\$ -	\$ 220,000.00	\$ -	\$ -	\$ -	Bonds, Grants, Other, Taxes, TIDD
Park Improvements		\$ -	\$ 653,000.00	\$ -	\$ -	\$ -	\$ -
Park Improvements - Newly Funded		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Park Improvements - Carryover		\$ 8,177,165.70	\$ 9,150,007.19	\$ 2,650,000.00	\$ 2,775,000.00	\$ 2,900,000.00	\$ 3,025,000.00
Apodaca Park Aquatic Playground and Multi-Use Path	Parks & Recreation	\$ 3,302,977.17	\$ -	\$ -	\$ -	\$ -	Grants, PIF, Taxes
Ballfield/Multi-Use Field Renovations & Upgrades	Parks & Recreation	\$ 14,716.22	\$ 3,344,000.00	\$ -	\$ -	\$ -	ARPA, Bonds, Grants, Taxes
Benavidez Community Center Park Improvements	Parks & Recreation	\$ 734,599.40	\$ 619,007.19	\$ -	\$ -	\$ -	Grants, PIF
Gallagher Park Improvements - Design/Construction	Parks & Recreation	\$ 6,482.35	\$ -	\$ -	\$ -	\$ -	Bonds
Klein Park Improvements	Parks & Recreation	\$ -	\$ 57,000.00	\$ -	\$ -	\$ -	Grants, PIF
Legacy Park Renovations	Parks & Recreation	\$ 1,541,095.16	\$ 5,075,000.00	\$ 2,650,000.00	\$ 2,775,000.00	\$ 2,900,000.00	ARPA, Bonds, Grants, Other, PIF, Taxes
Park Drinking Fountains	Parks & Recreation	\$ 963,792.44	\$ 55,000.00	\$ -	\$ -	\$ -	Grants, Telshor Fund
Pioneer Women's Park Improvements	Parks & Recreation	\$ 741,820.68	\$ -	\$ -	\$ -	\$ -	Grants
Skate Park Improvements	Parks & Recreation	\$ 403,420.22	\$ -	\$ -	\$ -	\$ -	Grants, PIF
Valley View Park - Heske Garden Lighting Replacement	Parks & Recreation	\$ 468,262.06	\$ -	\$ -	\$ -	\$ -	Grants, Taxes
Park Improvements - Annual		\$ 1,751,095.12	\$ 5,973,000.00	\$ 2,325,000.00	\$ 1,926,000.00	\$ 2,526,000.00	\$ 500,000.00
Park Improvements - Future		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Neighborhood Parks		\$ 1,147,290.12	\$ 4,900,000.00	\$ 1,800,000.00	\$ 1,900,000.00	\$ 2,000,000.00	\$ -
Playground Renovations	Parks & Recreation	\$ 1,147,290.12	\$ 4,900,000.00	\$ 1,800,000.00	\$ 1,900,000.00	\$ 2,000,000.00	Grants, Other, Telshor Fund
Parks Shade Structures		\$ 23,250.00	\$ 73,000.00	\$ 25,000.00	\$ 26,000.00	\$ 26,000.00	\$ -
Shade structure replacement	Parks & Recreation	\$ 23,250.00	\$ 73,000.00	\$ 25,000.00	\$ 26,000.00	\$ 26,000.00	Taxes
Park Restroom Improvements and New Restrooms	Parks & Recreation	\$ 580,555.00	\$ 1,000,000.00	\$ 500,000.00	\$ -	\$ 500,000.00	PIF
Park Improvements - Future		\$ -	\$ 5,894,000.00	\$ 13,500,000.00	\$ 30,150,000.00	\$ 29,750,000.00	\$ 150,000.00
Parks and Recreational Facilities Structural Renovations		\$ -	\$ 1,460,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00
Light Poles at Hadley Fields	Facilities Management	\$ -	\$ 1,010,000.00	\$ -	\$ -	\$ -	Bonds, Grants, Taxes
Parks and Recreational Facilities Enhancements	Parks & Recreation	\$ -	\$ 450,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	Taxes
Burn Lake Improvements	Parks & Recreation	\$ -	\$ 300,000.00	\$ 3,000,000.00	\$ -	\$ -	ARPA, Bonds, Grants, Other, PIF, Taxes
Four Field Baseball/Softball Complex	Parks & Recreation	\$ -	\$ 400,000.00	\$ 5,950,000.00	\$ -	\$ -	Other
Multi-Use Recreation Center	Parks & Recreation	\$ -	\$ 1,800,000.00	\$ 4,400,000.00	\$ 30,000,000.00	\$ 29,600,000.00	Bonds, Grants, Other, Taxes
Soldados Field Lighting	Parks & Recreation	\$ -	\$ 1,200,000.00	\$ -	\$ -	\$ -	Bonds, Grants, PIF, Taxes
Soldados Field Restroom	Parks & Recreation	\$ -	\$ 600,000.00	\$ -	\$ -	\$ -	Bonds, Grants, PIF, Taxes
Terans Memorial Park Restroom Plumbing Repairs and Upgrades	Parks & Recreation	\$ -	\$ 134,000.00	\$ -	\$ -	\$ -	Other
SUBTOTAL		\$ 9,928,260.82	\$ 21,017,007.19	\$ 18,475,000.00	\$ 34,851,000.00	\$ 35,176,000.00	\$ 3,675,000.00

**CITY OF LAS CRUCES
CAPITAL IMPROVEMENTS PROGRAM
FY 2026 - 2031**

Parks - New		\$	\$	\$	\$	\$	\$
Parks - New - Newly Funded		\$ 2,000,000.00	\$ 4,983,700.00	\$ -	\$ 1,407,498.00	\$ -	\$ -
Bike Park	Parks & Recreation	\$ 2,000,000.00	\$ 4,983,700.00	\$ -	\$ 1,407,498.00	\$ -	- ARPA, Bonds, Grants, Other, PIF, Taxes
Parks - New - Carryover		\$ 3,536,843.86	\$ 3,995,000.00	\$ 920,000.00	\$ 500,000.00	\$ 920,000.00	\$ 920,000.00
Neighborhood Parks		\$ 1,054,895.22	\$ 2,760,000.00	\$ 920,000.00	\$ 500,000.00	\$ 920,000.00	\$ 920,000.00
Developer Neighborhood Park Reimbursement	Parks & Recreation	\$ 1,054,895.22	\$ 2,760,000.00	\$ 920,000.00	\$ 500,000.00	\$ 920,000.00	\$ 920,000.00 PIF
Chandler Tank Park Phase 1	Parks & Recreation	\$ 1,079,202.05	\$ -	\$ -	\$ -	\$ -	- Bonds, PIF, Taxes
East Mesa Public Safety Area Park	Parks & Recreation	\$ 100,000.00	\$ -	\$ -	\$ -	\$ -	- PIF
Highland Park	Parks & Recreation	\$ 566,490.69	\$ -	\$ -	\$ -	\$ -	- Bonds, PIF, Taxes
LCIP Gateway Signage	Economic Development	\$ 480,000.00	\$ 85,000.00	\$ -	\$ -	\$ -	- Bonds, Grants, Taxes
New Skate Park	Parks & Recreation	\$ 21,255.90	\$ 1,150,000.00	\$ -	\$ -	\$ -	- Bonds, Grants, Other, PIF
Veteran's Memorial Park Enhancements	Parks & Recreation	\$ 235,000.00	\$ -	\$ -	\$ -	\$ -	- ARPA, Bonds, Grants, Taxes
Parks - New - Annual		\$ 793,250.00	\$ 1,550,000.00	\$ 800,000.00	\$ 800,000.00	\$ 800,000.00	\$ 950,000.00 Bonds
Neighborhood Parks		\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00 Bonds
Neighborhood Parks	Parks & Recreation	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00 PIF
Land Acquisition, Planning, and Design for Parks	Parks & Recreation	\$ 293,250.00	\$ 1,050,000.00	\$ 300,000.00	\$ 300,000.00	\$ 300,000.00	\$ 450,000.00 Bonds, PIF
Parks - New - Future		\$ -	\$ 5,333,700.00	\$ 3,500,000.00	\$ 1,407,498.00	\$ 2,000,000.00	\$ 240,000.00
Event Park	Parks & Recreation	\$ -	\$ -	\$ -	\$ -	\$ -	- ARPA, Bonds, Grants, Other, PIF
Waterfalls Park	Parks & Recreation	\$ -	\$ 350,000.00	\$ 3,500,000.00	\$ -	\$ 2,000,000.00	- Bonds, Grants, PIF, Taxes
SUBTOTAL		\$ 6,330,093.86	\$ 10,528,700.00	\$ 1,720,000.00	\$ 2,707,498.00	\$ 1,720,000.00	\$ 1,870,000.00

Public Facilities		\$	\$	\$	\$	\$	\$
Public Facilities - Newly Funded		\$ 1,264,920.08	\$ -	\$ -	\$ -	\$ -	\$ -
DC Fast Charger - Electric Vehicle Charger	Sustainability	\$ 522,420.08	\$ -	\$ -	\$ -	\$ -	- Grant
ADA Compliance		\$ 297,000.00					
ADA Compliance	Public Works	\$ 297,000.00					
MoNaS Nature Center Redesign	Quality of Life	\$ 445,500.00	\$ 250,000.00	\$ -	\$ -	\$ -	- Grants, Taxes, TIDD
East Mesa Multi-Generational Center Expansion (Sage Café)	Quality of Life	\$ 3,052,170.00	\$ 3,083,180.00	\$ -	\$ -	\$ -	- Taxes
Public Facilities - Carryover		\$ 22,750,357.63	\$ 36,266,431.64	\$ 43,479,721.32	\$ 7,672,226.32	\$ 7,672,226.32	\$ 59,000.00
General Facilities Improvements		\$ 9,730,411.59	\$ 20,479,442.00	\$ 35,607,495.00	\$ 1,000,000.00	\$ 1,000,000.00	-
Amador Hotel Renovation	Quality of Life	\$ 4,811,333.14	\$ 2,000,000.00	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,000.00	- Grants, Taxes, TIDD
Benavidez Center Kitchen Floor	Quality of Life	\$ 82,465.45	\$ -	\$ -	\$ -	\$ -	- Grants, Taxes
Branch Library	Quality of Life	\$ 29,754.68	\$ 1,750,000.00	\$ 17,500,000.00	\$ -	\$ -	- Bonds, Other, Taxes
Branigan Library Renovation and Expansion	Quality of Life	\$ 1,767,127.71	\$ 15,310,642.00	\$ 17,107,495.00	\$ -	\$ -	- Bonds, Grants, Taxes, TIDD
Frank O'Brien Papen Community Center Rehabilitation	Facilities Management	\$ 10,777.79	\$ 448,800.00	\$ -	\$ -	\$ -	- Taxes
Meerscheidt Recreation Center - Remodel/Expansion	Parks & Recreation	\$ 2,157,678.12	\$ -	\$ -	\$ -	\$ -	- Bonds, Taxes
Munson Senior Center Renovations	Quality of Life	\$ 661,274.70	\$ -	\$ -	\$ -	\$ -	- Grants
Museum of Nature & Science Atrium Redesign	Quality of Life	\$ -	\$ -	\$ -	\$ -	\$ -	- Grants, TIDD
Museum Technology Improvements	Quality of Life	\$ 210,000.00	\$ -	\$ -	\$ -	\$ -	- TIDD
Generator Buffer Program		\$ -	\$ 65,000.00	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00	-
Generator Buffer Program	Facilities Management	\$ -	\$ 65,000.00	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00	- Taxes
Generator Replacement Program		\$ -	\$ 292,537.00	\$ 59,000.00	\$ 59,000.00	\$ 59,000.00	\$ 59,000.00
Generator Replacement Program	Facilities Management	\$ -	\$ 292,537.00	\$ 59,000.00	\$ 59,000.00	\$ 59,000.00	\$ 59,000.00 Taxes
Roof Replacement Program		\$ 1,436,250.00	\$ 118,000.00	\$ -	\$ -	\$ -	-
Municipal Court Re-Roof	Facilities Management	\$ 350,000.00	\$ -	\$ -	\$ -	\$ -	- Bonds
Museum of Art/MoNaS Re-Roof	Facilities Management	\$ 815,000.00	\$ -	\$ -	\$ -	\$ -	- Bonds, TIDD
Rio Grande Theater Re-Roof	Facilities Management	\$ 271,250.00	\$ 118,000.00	\$ -	\$ -	\$ -	- TIDD
Branigan Cultural Center Improvements	Quality of Life	\$ 1,000,000.00	\$ 2,000,000.00	\$ 1,200,000.00	\$ -	\$ -	- Grants, Taxes, TIDD
East Mesa Public Recreational Complex	Public Works	\$ 3,906,557.00	\$ -	\$ -	\$ -	\$ -	- Bonds
Electrical Vehicle Fleet Chargers	Facilities Management	\$ 72,673.92	\$ 75,000.00	\$ -	\$ -	\$ -	- Taxes
GO Bond - ARPA	Public Works	\$ -	\$ -	\$ -	\$ -	\$ -	- Bonds
GO Bond 2022- E. Mesa Recreation Complex	Public Works	\$ 1,140,846.56	\$ -	\$ -	\$ -	\$ -	- Bonds
GO Bond 2022- Parks Improvements	Public Works	\$ 2,034,781.31	\$ -	\$ -	\$ -	\$ -	- Bonds
GO Bond 2022- Public Art	Quality of Life	\$ 240,000.00	\$ -	\$ -	\$ -	\$ -	- Bonds
Municipal Court Rehabilitation	Public Works	\$ 400,000.00	\$ 13,236,452.64	\$ 6,598,226.32	\$ 6,598,226.32	\$ 6,598,226.32	- Bonds, Grants, Taxes, TIDD
Plaza Shade Structures	Economic Development	\$ 2,400,000.00	\$ -	\$ -	\$ -	\$ -	- Bonds, Taxes
Public Art Rollover Funding	Quality of Life	\$ 88,837.25	\$ -	\$ -	\$ -	\$ -	- Taxes
Regional Community Pool	Public Works	\$ -	\$ -	\$ -	\$ -	\$ -	- Bonds
San Mora Dam Park	Parks & Recreation	\$ 300,000.00	\$ -	\$ -	\$ -	\$ -	- Grants, Taxes
Wardensburg Assessment District Phase II	Public Works	\$ -	\$ -	\$ -	\$ -	\$ -	- Bonds
SUBTOTAL		\$ 24,015,277.71	\$ 36,966,431.64	\$ 43,479,721.32	\$ 7,672,226.32	\$ 7,672,226.32	\$ 59,000.00

**CITY OF LAS CRUCES
CAPITAL IMPROVEMENTS PROGRAM
FY 2026 - 2031**

		\$	\$	\$	\$	\$	\$
Public Facilities - Annual		\$ 1,330,712.35	\$ 10,793,907.00	\$ 3,892,340.00	\$ 3,867,340.00	\$ 3,202,340.00	\$ -
ADA Compliance		\$ -	\$ 502,400.00	\$ 101,200.00	\$ 101,200.00	\$ 101,200.00	\$ -
ADA Compliance	Facilities Management	\$ -	\$ 202,400.00	\$ 101,200.00	\$ 101,200.00	\$ 101,200.00	\$ - Bonds, Grants, Taxes
Downtown Parking Lots Renovation		\$ -	\$ 561,000.00	\$ 280,500.00	\$ 280,500.00	\$ 280,500.00	\$ -
Downtown Parking Lot Program	Facilities Management	\$ -	\$ 561,000.00	\$ 280,500.00	\$ 280,500.00	\$ 280,500.00	\$ - TIDD
Facility Parking Lot Program		\$ 157,678.12	\$ 2,124,600.00	\$ 482,800.00	\$ 482,800.00	\$ 257,800.00	\$ -
Facility Parking Lot Program	Facilities Management	\$ 157,678.12	\$ 1,609,000.00	\$ 225,000.00	\$ 225,000.00	\$ -	\$ - Taxes
Parks Parking Lot Rehabilitation Program	Facilities Management	\$ -	\$ 515,600.00	\$ 257,800.00	\$ 257,800.00	\$ 257,800.00	\$ - Bonds, Grants, Taxes
General Facilities Improvements		\$ 118,411.23	\$ 1,387,940.00	\$ 656,470.00	\$ 651,470.00	\$ 656,470.00	\$ -
General Facilities Improvement Program	Facilities Management	\$ 118,411.23	\$ 1,000,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ - Taxes, Telshor
WIA Building (Women's Improvement Association) Rehabilitation	Facilities Management	\$ -	\$ 387,940.00	\$ 156,470.00	\$ 151,470.00	\$ 156,470.00	\$ - Taxes, Grants
Parks Parking Lots		\$ -	\$ 900,000.00	\$ 450,000.00	\$ 450,000.00	\$ -	\$ -
Parks Parking Lot Program	Parks & Recreation	\$ -	\$ 900,000.00	\$ 450,000.00	\$ 450,000.00	\$ -	\$ - Grants, Other, Taxes
Roof Replacement Program		\$ 739,623.00	\$ 1,388,927.00	\$ 336,600.00	\$ 336,600.00	\$ 336,600.00	\$ -
Facility Roof Replacement Program	Facilities Management	\$ 199,623.00	\$ 1,072,146.00	\$ 336,600.00	\$ 336,600.00	\$ 336,600.00	\$ - Bonds, Taxes, TIDD
Meerscheidt Center Re-Roof	Facilities Management	\$ 540,000.00	\$ -	\$ -	\$ -	\$ -	\$ - Bonds
Re-Roof of Castaneda Building	Facilities Management	\$ -	\$ 316,781.00	\$ -	\$ -	\$ -	\$ - Taxes
Safety, Health, Environmental & Emergency		\$ 315,000.00	\$ 3,025,500.00	\$ 1,170,500.00	\$ 1,155,500.00	\$ 1,155,500.00	\$ -
City Security Program	Facilities Management	\$ 175,000.00	\$ 555,500.00	\$ 270,500.00	\$ 255,500.00	\$ 255,500.00	\$ - Taxes
City Vacant /Abandoned Lots	Facilities Management	\$ -	\$ 1,650,000.00	\$ 825,000.00	\$ 825,000.00	\$ 825,000.00	\$ - Taxes
Park Sidewalk Repair Program	Facilities Management	\$ 65,000.00	\$ 150,000.00	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00	\$ - Grants, Taxes
Security & Fire Alarm Program	Facilities Management	\$ -	\$ 670,000.00	\$ -	\$ -	\$ -	\$ - Taxes, TIDD
Convention Center FF&E	Visit Las Cruces	\$ 75,000.00	\$ 150,000.00	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00	\$ - Taxes
Public Facilities - Future		\$ -	\$ 8,055,000.00	\$ 26,481,000.00	\$ 650,000.00	\$ -	\$ -
General Facilities Improvements		\$ -	\$ 10,993,180.00	\$ 2,200,000.00	\$ 15,200,000.00	\$ -	\$ -
Eastside Purchase and Renovation	Quality of Life	\$ -	\$ 2,575,000.00	\$ -	\$ -	\$ -	\$ - Bonds, Grants, Taxes
Munson Center Bathrooms	Quality of Life	\$ -	\$ 250,000.00	\$ -	\$ -	\$ -	\$ - Grants, Taxes
Munson Center Floor	Quality of Life	\$ -	\$ 750,000.00	\$ -	\$ -	\$ -	\$ - Grants, Taxes
Museum of Art Improvements	Quality of Life	\$ -	\$ 615,000.00	\$ 200,000.00	\$ -	\$ -	\$ - Grants, Taxes
Museum of Art/MoNaS Remodel	Quality of Life	\$ -	\$ 3,000,000.00	\$ -	\$ 15,000,000.00	\$ -	\$ - Bonds, Grants, Taxes
Railroad Museum Exterior Improvements	Quality of Life	\$ -	\$ 375,000.00	\$ -	\$ -	\$ -	\$ - Bonds, Grants, Taxes
Sage Café Library Expansion	Quality of Life	\$ -	\$ 200,000.00	\$ 2,000,000.00	\$ 200,000.00	\$ -	\$ - Grants, Taxes
Senior Programs Master Plan	Quality of Life	\$ -	\$ 145,000.00	\$ -	\$ -	\$ -	\$ - Grants, Taxes
Safety, Health, Environmental & Emergency		\$ -	\$ 1,300,000.00	\$ 650,000.00	\$ 650,000.00	\$ 650,000.00	\$ -
Rehabilitation and Demolition of Vacant Buildings	Facilities Management	\$ -	\$ 1,300,000.00	\$ 650,000.00	\$ 650,000.00	\$ 650,000.00	\$ - Taxes
Branigan Library Rehabilitation	Facilities Management	\$ -	\$ 249,500.00	\$ 2,750,000.00	\$ 1,111,000.00	\$ -	\$ - Bonds, Grants, Taxes
Legends West Facility Master Plan	Parks & Recreation	\$ -	\$ 150,000.00	\$ -	\$ -	\$ -	\$ - ARPA, Bonds, Grants, Other, PIF, Taxes
Museum System Collections Storage	Quality of Life	\$ -	\$ -	\$ -	\$ 9,500,000.00	\$ -	\$ - Bonds, Grants, Taxes
Plugged in for Good Community Resilience & Energy Hub	Sustainability	\$ -	\$ 1,932,500.00	\$ 2,000,000.00	\$ -	\$ -	\$ - Grants
Railroad Museum Reinterpretation	Quality of Life	\$ -	\$ 60,000.00	\$ 225,000.00	\$ -	\$ -	\$ - Grants, Taxes
Safe Haven Outdoor Classroom	Parks & Recreation	\$ -	\$ 20,000.00	\$ 230,000.00	\$ 20,000.00	\$ -	\$ - ARPA, Bonds, Grants, PIF, Taxes
SUBTOTAL		\$ 25,345,990.06	\$ 47,060,338.64	\$ 55,427,061.32	\$ 38,020,566.32	\$ 11,524,566.32	\$ 59,000.00

**CITY OF LAS CRUCES
CAPITAL IMPROVEMENTS PROGRAM
FY 2026 - 2031**

Public Safety		\$	\$	\$	\$	\$	\$
Public Safety - Newly Funded		\$ 620,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Statewide Critical Incident Response Vehicles	Police Department	\$ 620,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Public Safety - Carryover		\$ 24,196,729.79	\$ 13,538,068.00	\$ -	\$ -	\$ -	\$ -
Police Department Equipment		\$ 235,704.81	\$ 1,238,068.00	\$ -	\$ -	\$ -	\$ -
Police Shooting Range	Police Department	\$ 235,704.81	\$ 290,500.00	\$ -	\$ -	\$ -	Grants, Other
Public Safety Regional Communication System Improvements	Police Department	\$ -	\$ 500,500.00	\$ -	\$ -	\$ -	Grants
Public Safety Vehicle SWAT Command Vehicle	Police Department	\$ -	\$ 100,000.00	\$ -	\$ -	\$ -	Grants
Public Safety Vehicles - Bearcat	Police Department	\$ -	\$ 347,068.00	\$ -	\$ -	\$ -	Grants
Safety, Health, Environmental & Emergency		\$ 23,961,024.98	\$ 12,300,000.00	\$ -	\$ -	\$ -	-
MIH and CIT response station	Fire Department	\$ 11,076,137.98	\$ 3,000,000.00	\$ -	\$ -	\$ -	Grants
Real Time Crime Center (RTCC)	Police Department	\$ 2,621,786.00	\$ 2,000,000.00	\$ -	\$ -	\$ -	Grants, Taxes
Fire Station 4 Remodel	Public Works	\$ 950,000.00	\$ -	\$ -	\$ -	\$ -	-
Fire Station 9 Build	Public Works	\$ 9,313,101.00	\$ -	\$ -	\$ -	\$ -	Bonds, Grants, Telshor
Police Department Building Renovation	Police Department	\$ -	\$ 400,000.00	\$ -	\$ -	\$ -	Grants, Taxes
Public Safety - Annual		\$ 18,799.65	\$ 9,050,000.00	\$ 240,000.00	\$ -	\$ -	-
Fire Station Improvements		\$ 18,799.65	\$ 5,562,000.00	\$ -	\$ -	\$ -	-
Fire Stations Improvements	Fire Department	\$ 18,799.65	\$ 5,562,000.00	\$ -	\$ -	\$ -	Grants
Fire Department Vehicles and Equipment	Fire Department	\$ -	\$ 3,008,000.00	\$ -	\$ -	\$ -	Bonds
Fire Station Equipment	Fire Department	\$ -	\$ 480,000.00	\$ 240,000.00	\$ -	\$ -	Grants
Public Safety - Future		\$ -	\$ 6,211,919.00	\$ 24,675,000.00	\$ 57,000,000.00	\$ -	-
Facility Parking Lot Program		\$ -	\$ 45,000.00	\$ -	\$ -	\$ -	-
Police North Parking Lot Fencing	Police Department	\$ -	\$ 20,000.00	\$ -	\$ -	\$ -	Taxes
Police Parking Lot Resurfacing	Police Department	\$ -	\$ 25,000.00	\$ -	\$ -	\$ -	Taxes
Police Department Equipment		\$ -	\$ 3,020,000.00	\$ 9,000,000.00	\$ -	\$ -	-
Police Department Equipment - Axon Body Cameras	Police Department	\$ -	\$ 100,000.00	\$ -	\$ -	\$ -	Grants, Taxes
Police Department Equipment - Mobile Data Terminals	Police Department	\$ -	\$ 350,000.00	\$ -	\$ -	\$ -	Grants
Police Emergency Vehicles	Police Department	\$ -	\$ 1,230,000.00	\$ -	\$ -	\$ -	Grants, PSIF, Taxes
Police/Fire Training Facility - Design/Construct	Police Department	\$ -	\$ -	\$ 6,900,000.00	\$ -	\$ -	Bonds, Grants, PSIF, Taxes
Police/Fire Training Facility - Furniture, Fixtures, and Equipment	Police Department	\$ -	\$ -	\$ 2,100,000.00	\$ -	\$ -	Grants, PSIF, Taxes
Public Safety Smart Technology	Police Department	\$ -	\$ 200,000.00	\$ -	\$ -	\$ -	Grants
Solar Canopy protective screen	Police Department	\$ -	\$ 20,000.00	\$ -	\$ -	\$ -	Taxes
Statewide Critical Incident Response Vehicles	Police Department	\$ -	\$ 500,000.00	\$ -	\$ -	\$ -	Grants, Other
Downtown Public Safety Complex	Police Department	\$ -	\$ -	\$ -	\$ 57,000,000.00	\$ -	Bonds, Taxes
Police Department Mobile Operation Command Vehicle	Police Department	\$ -	\$ 701,919.00	\$ -	\$ -	\$ -	Grants
Southwest Station Build	Fire Department	\$ -	\$ -	\$ 6,675,000.00	\$ -	\$ -	Taxes
SUBTOTAL		\$ 24,835,529.44	\$ 28,799,987.00	\$ 24,915,000.00	\$ 57,000,000.00	\$ -	-
Public Transit		\$	\$	\$	\$	\$	\$
Public Transit - Newly Funded		\$ 100,000.00	\$ 5,346,800.00	\$ -	\$ -	\$ -	-
MVITT Inductive Charging	RoadRunner Transit	\$ 100,000.00	\$ 5,346,800.00	\$ -	\$ -	\$ -	Grants
Public Transit - Carryover		\$ 7,086,230.99	\$ 5,700,000.00	\$ -	\$ -	\$ -	-
Municipal Service Center - Transit	RoadRunner Transit	\$ 487,254.99	\$ -	\$ -	\$ -	\$ -	Grants, Taxes
Electric Buses (6)	RoadRunner Transit	\$ 6,598,976.00	\$ 5,700,000.00	\$ -	\$ -	\$ -	Grants, Taxes
Public Transit - Annual		\$ 75,000.00	\$ 275,000.00	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00	75,000.00
Transit Facilities Improvement Program	RoadRunner Transit	\$ 75,000.00	\$ 275,000.00	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00	Grants
Public Transit - Future		\$ -	\$ 14,836,800.00	\$ -	\$ -	\$ -	-
Resiliency Program		\$ -	\$ 8,146,800.00	\$ -	\$ -	\$ -	-
Solar Array	RoadRunner Transit	\$ -	\$ 2,700,000.00	\$ -	\$ -	\$ -	Grants
Battery Storage	RoadRunner Transit	\$ -	\$ 3,150,000.00	\$ -	\$ -	\$ -	Grants
Transit Vehicles 26'	RoadRunner Transit	\$ -	\$ 840,000.00	\$ -	\$ -	\$ -	Grants
SUBTOTAL		\$ 7,261,230.99	\$ 26,158,600.00	\$ 75,000.00	\$ 75,000.00	\$ 75,000.00	75,000.00

**CITY OF LAS CRUCES
CAPITAL IMPROVEMENTS PROGRAM
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Resiliency		\$	\$	\$	\$	\$	\$	\$
Resiliency - Newly Funded		\$ 522,420.08	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
DC Fast Chargers for Electric Vehicles	Sustainability	\$ 522,420.08	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Resiliency - Carryover		\$ 2,888,313.80	\$ 365,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Resiliency Program		\$ 2,888,313.80	\$ 365,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Melendres Ave/Pittsburg - Hadley to Picacho	Public Works	\$ 2,717,660.84	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Melendres Ave/Pittsburg - Hadley to Picacho		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Solar Photovoltaic/Storage Projects	Sustainability	\$ 170,652.96	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Resiliency - Annual		\$ 4,110,820.10	\$ 1,200,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ -
Drainage Infrastructure Improvements		\$ 3,143,375.00	\$ 1,000,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ -
Drainage Infrastructure Improvements	Public Works	\$ 3,143,375.00	\$ 1,000,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ -
Resiliency Program		\$ 483,722.55	\$ 100,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Casa Linda Acres Reconstruction	Public Works	\$ 273,612.10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
East Mesa Roads and Drainage	Public Works	\$ 110,110.45	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Storm Water System Mapping	Public Works	\$ 100,000.00	\$ 100,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Resiliency - Future		\$ -	\$ 4,105,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
DC Fast Chargers for Electric Vehicles	Sustainability	\$ -	\$ 200,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Fleet electric vehicle chargers (dual chargers)	Sustainability	\$ -	\$ 400,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Hadley Ave Complex Recreation Rehabilitation	Parks & Recreation	\$ -	\$ 3,305,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Public Electric Vehicle Chargers (8 dual)	Sustainability	\$ -	\$ 200,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
SUBTOTAL		\$ 7,521,553.98	\$ 5,670,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ -

Streets - New		\$	\$	\$	\$	\$	\$	\$
Streets - New - Newly Funded		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Streets - New - Carryover		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Streets - New - Annual		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Streets - New - Future		\$ -	\$ 48,848,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
High Mesa Road	Economic Development	\$ -	\$ 32,000,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Transit Loop Road	Economic Development	\$ -	\$ 16,848,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
SUBTOTAL		\$ -	\$ 48,848,000.00	\$ -	\$ -	\$ -	\$ -	\$ -

Streets Improvements		\$	\$	\$	\$	\$	\$	\$
Streets Improvements - Newly Funded		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Streets Improvements - Carryover		\$ 34,081,075.91	\$ 15,040,000.00	\$ 1,620,000.00	\$ 1,500,000.00	\$ 620,000.00	\$ 1,120,000.00	\$ -
Complete Streets Program		\$ 5,259,613.38	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
East Mesa Roads and Drainage	Public Works	\$ 2,353,051.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Melendres Ave/Pittsburg - Hadley to Picacho	Public Works	\$ 2,604,500.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
University Area Complete Streets	Public Works	\$ 302,062.38	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Downtown Street Improvements		\$ 7,420,567.38	\$ 10,000,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Alameda Blvd - S. Main St to W Las Cruces Ave	Public Works	\$ 750,000.00	\$ 10,000,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Campo Street Design and Reconstruction	Public Works	\$ 6,670,567.38	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Lift Up Las Cruces - Street Improvements		\$ 1,567,774.00	\$ 1,800,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Sacramento St - Poplar Ave to Oasis Ave	Public Works	\$ 1,567,774.00	\$ 1,800,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
Median Landscaping		\$ 317,917.00	\$ 2,240,000.00	\$ 1,120,000.00	\$ 1,000,000.00	\$ 120,000.00	\$ 1,120,000.00	\$ -
Lohman Ave & Roadrunner Parkway Medians	Parks & Recreation	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Medians	Parks & Recreation	\$ 317,917.00	\$ 2,240,000.00	\$ 1,120,000.00	\$ 1,000,000.00	\$ 120,000.00	\$ 1,120,000.00	\$ -
Street Lighting & Traffic Signal Maintenance Program		\$ 7,623,398.07	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Mesquite Historic District	Public Works	\$ 896,694.84	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Traffic Signal Program		\$ 6,726,703.23	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Bataan Memorial at Rinconada	Public Works	\$ 1,150,887.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Casa Linda Acres Reconstruction	Public Works	\$ 4,058,653.48	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
E Lohman Ave & S Walnut St Traffic Signal MAP	Public Works	\$ 1,517,162.75	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
East Mesa Roads and Drainage	Public Works	\$ 5,165,102.85	\$ 1,000,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ -	\$ -
Johnson St - Rouault Ave to Topley Ave	Public Works	\$ 108,928.44	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Madrid Ave Extension - Evelyn St to N Triviz Dr	Public Works	\$ 932,620.74	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
South Main St - Avenida de Mesilla to Boutz	Public Works	\$ 3,549,046.26	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Telshor Spruce Intersection Improvements	Public Works	\$ 574,507.41	\$ 2,850,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
SUBTOTAL		\$ 34,081,075.91	\$ 15,040,000.00	\$ 1,620,000.00	\$ 1,500,000.00	\$ 620,000.00	\$ 1,120,000.00	\$ -

**CITY OF LAS CRUCES
CAPITAL IMPROVEMENTS PROGRAM
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Streets Improvements		\$	\$	\$	\$	\$	\$
Streets Improvements - Annual		10,759,525.34	23,354,525.00	10,714,525.00	15,214,525.00	13,579,000.00	250,000.00
Drainage Infrastructure Improvements		15,450.00	160,000.00	80,000.00	80,000.00	80,000.00	-
CO-OP Match	Public Works	15,450.00	160,000.00	80,000.00	80,000.00	80,000.00	Taxes
Neighborhood Traffic Calming Program		240,000.00	120,000.00	60,000.00	60,000.00	60,000.00	-
Neighborhood Traffic Calming Program	Public Works	240,000.00	120,000.00	60,000.00	60,000.00	60,000.00	Taxes
Pavement Condition Index Improvements		5,213,019.34	12,600,000.00	6,300,000.00	6,300,000.00	6,300,000.00	-
Pavement Condition Index Improvements	Public Works	5,213,019.34	12,600,000.00	6,300,000.00	6,300,000.00	6,300,000.00	Taxes
Pavement Marking Program		222,500.00	169,000.00	169,000.00	169,000.00	169,000.00	-
Pavement Marking Program	Public Works	222,500.00	169,000.00	169,000.00	169,000.00	169,000.00	Taxes
Roadway Maintenance Program		1,980,000.00	1,950,000.00	1,950,000.00	1,950,000.00	470,000.00	250,000.00
Chip Seal Program	Public Works	200,000.00	200,000.00	200,000.00	200,000.00	220,000.00	Taxes
Roadway Maintenance Program	Public Works	1,530,000.00	1,500,000.00	1,500,000.00	1,500,000.00	-	Taxes
Unpaved Roads	Public Works	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	Taxes
Street Lighting & Traffic Signal Maintenance Program		1,299,291.00	6,200,000.00	1,000,000.00	5,500,000.00	5,500,000.00	-
Street Lighting and Traffic Signal Maintenance	Public Works	1,099,291.00	500,000.00	500,000.00	500,000.00	500,000.00	Taxes
Las Cruces Street Lighting Management System	Public Works	200,000.00	5,500,000.00	500,000.00	5,000,000.00	5,000,000.00	Taxes
Traffic Signal Program		1,150,000.00	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	-
Transportation System Modernization ITS	Public Works	1,150,000.00	2,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	Taxes
Weed Control & Maintenance Program		639,265.00	155,525.00	155,525.00	155,525.00	-	-
Weed Control & Maintenance Program	Public Works	155,525.00	155,525.00	155,525.00	155,525.00	-	Taxes
Land Acquisition - Public Works		243,740.00	500,000.00	250,000.00	250,000.00	250,000.00	Taxes
Materials Testing	Public Works	240,000.00	240,000.00	240,000.00	240,000.00	240,000.00	Taxes
Streets Improvements - Future		-	38,305,309.51	21,630,000.00	13,612,360.00	12,755,000.00	2,540,000.00
Downtown Street Improvements		-	750,000.00	-	-	-	-
Alameda Blvd - Las Cruces Ave to Picacho Ave	Public Works	-	750,000.00	-	-	-	TIDD
Street Lighting & Traffic Signal Maintenance Program		-	-	-	50,000.00	-	-
Targeted Road and Lighting Improvements - Design	Public Works	-	-	-	50,000.00	-	Taxes
Traffic Signal Program		-	1,500,000.00	-	-	-	-
Lohman at Walnut and Walton Signal Improvement	Public Works	-	1,500,000.00	-	-	-	Other
Advancement Ave Expansion	Economic Development	-	516,383.56	-	-	-	Bonds, Grants
Armijo St - W Organ Ave to W Mountain Ave	Public Works	-	-	1,800,000.00	-	-	Bonds, Taxes
Armijo St - W Picacho Ave to Parker Rd	Public Works	-	1,450,000.00	-	-	-	Bonds, Taxes
Aspen Ave-Sequoia Ave to S Valley Dr	Public Works	-	-	-	3,475,600.00	-	Bonds, Grants, Taxes
Elm St & Tamarack Dr from Aspen Ave to Sequoia Ave	Public Works	-	-	-	-	2,380,000.00	Bonds, Grants, Other, Taxes
Evelyn St - Madrid Ave to Ash Ave	Public Works	-	3,600,000.00	-	-	-	Bonds, Grants, Taxes
Hayner Ave - N. Valley Dr to N. Compress Rd and Sixth St- Hayner Ave to W. Hadley Ave	Public Works	-	3,293,850.00	-	-	-	Bonds, Taxes
Hickory Dr & Sycamore Dr from Aspen Ave to Sequoia Ave	Public Works	-	-	-	-	-	2,540,000.00 Bonds, Grants, Taxes
Kilmer St - Spruce Ave to Ash Ave	Public Works	-	2,000,000.00	-	-	-	Bonds, Taxes
La Fonda Dr - Idaho Ave to E.O.P.	Public Works	-	1,200,000.00	-	-	-	Bonds, Taxes
LCIIP Infrastructure Improvements	Economic Development	-	5,000,000.00	-	-	-	Grants, Taxes
McClure Rd & Carlyle Dr Pond, Road & Drainage Improvements	Public Works	-	2,500,000.00	3,000,000.00	2,000,000.00	-	Grants, Other, Taxes
Med Park - Idaho Ave. to Perkins St.	Public Works	-	2,545,300.00	-	-	-	Bonds, Taxes
Miranda Ave - Picacho Ave to Court Ave	Public Works	-	-	-	2,700,000.00	-	Bonds, Taxes
Mountain Ave - Melendres St to Armijo St	Public Works	-	2,542,986.00	-	-	-	Bonds, Taxes
Mountain Vista Parkway Expansion	Economic Development	-	1,200,473.54	-	-	-	Grants, Taxes
Parkview - Espina to W Park Dr	Public Works	-	-	-	1,200,000.00	-	Taxes
Poplar Ave - Mesquite St to Santa Fe St	Public Works	-	1,100,000.00	-	-	-	Bonds, Taxes
Rigsby Rd - Barker to Valley Dr	Public Works	-	-	850,000.00	-	-	Bonds, Taxes
Rocket Drive Expansion	Economic Development	-	5,956,316.41	-	-	-	Bonds, Grants, Taxes
Scoggins Ave-Sixth St to Sweet St	Public Works	-	-	1,180,000.00	-	-	Taxes
Sequoia Ave - Valley Dr to EOP	Public Works	-	-	3,000,000.00	-	-	Bonds, Grants, Taxes
Solano Dr- Missouri to Lohman	Public Works	-	-	-	-	10,375,000.00	Other
South Valley Dr Reconstruction - Avenida de Mesilla to Boutz	Public Works	-	-	11,800,000.00	-	-	Bonds, Grants, Taxes
Sweet St- Hayner Ave to W. Hadley Ave	Public Works	-	-	-	1,761,760.00	-	Taxes
Venture Blvd Expansion	Economic Development	-	900,000.00	-	-	-	Grants, Taxes
Westgate St - Amador Ave to Cul de Sac	Public Works	-	-	-	2,375,000.00	-	Bonds, Grants, Taxes
SUBTOTAL		44,840,601.25	80,906,501.51	34,619,525.00	30,981,885.00	27,594,000.00	3,910,000.00

**CITY OF LAS CRUCES
CAPITAL IMPROVEMENTS PROGRAM
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Utilities		\$	\$	\$	\$	\$	\$	\$
Utilities - Newly Funded		\$ 17,928,227.90	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2025 DWSRF Loan	Utilities	\$ 14,955,302.15	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2025 Water Trust Board Loan	Utilities	\$ 2,972,925.75	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Utilities - Carryover		\$ 59,703,958.82	\$ 84,843,060.00	\$ 21,887,221.00	\$ 8,562,969.00	\$ 3,615,000.00	\$ 4,892,239.00	
Gas Admin Building Improvements	Utilities	\$ 769,353.00	\$ 446,666.00	\$ 748,998.00	\$ 125,000.00	\$ 125,000.00	\$ -	Other
Gas Development	Utilities	\$ 2,548,618.00	\$ -	\$ -	\$ -	\$ -	\$ -	Other
Gas Miscellaneous	Utilities	\$ 358,923.00	\$ 175,000.00	\$ 175,000.00	\$ 175,000.00	\$ 175,000.00	\$ -	Other
Gas PHMSA Grant	Utilities	\$ 10,000,000.00	\$ 7,972,055.00	\$ -	\$ -	\$ -	\$ -	Grants
Gas Rehabilitation	Utilities	\$ 2,064,798.00	\$ 2,999,467.00	\$ 5,488,493.00	\$ 360,000.00	\$ 1,080,000.00	\$ 360,000.00	Other
Solid Waste Building Improvements	Utilities	\$ 1,505,534.00	\$ 2,319,166.00	\$ 1,750,000.00	\$ 125,000.00	\$ 125,000.00	\$ 125,000.00	Other
Wastewater Building Improvements	Utilities	\$ 574,150.12	\$ 420,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	Other
Wastewater Development	Utilities	\$ 1,021,522.00	\$ 156,000.00	\$ -	\$ -	\$ -	\$ -	Other
Wastewater Miscellaneous	Utilities	\$ -	\$ 341,569.00	\$ 260,000.00	\$ 260,000.00	\$ 260,000.00	\$ 260,000.00	Other
Wastewater Rehabilitation	Utilities	\$ 3,075,156.50	\$ 5,616,439.00	\$ 5,811,040.00	\$ 500,000.00	\$ 720,000.00	\$ 410,000.00	Other
Wastewater Septic Systems	Utilities	\$ 372,753.20	\$ 47,677,216.00	\$ -	\$ -	\$ -	\$ -	Grants
Water 2025 Projects	Utilities	\$ 15,211,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	Other
Water Building Improvements	Utilities	\$ 180,226.00	\$ 554,385.00	\$ 250,000.00	\$ 125,000.00	\$ 125,000.00	\$ 125,000.00	Other
Water Development	Utilities	\$ 151,724.00	\$ 5,298,864.00	\$ 261,272.00	\$ 2,745,624.00	\$ -	\$ -	WIF
Water Miscellaneous	Utilities	\$ 75,000.00	\$ 1,552,187.00	\$ 1,046,277.00	\$ 795,784.00	\$ 105,000.00	\$ 60,000.00	WIF
Water Rehab	Utilities	\$ 4,700,027.00	\$ 9,314,046.00	\$ 6,046,141.00	\$ 3,301,561.00	\$ 850,000.00	\$ 3,502,239.00	Other
WW23 Projects	Utilities	\$ 17,095,174.00	\$ -	\$ -	\$ -	\$ -	\$ -	Other
Utilities - Annual		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
Utilities - Future		\$ -	\$ 64,656,940.72	\$ 9,496,380.10	\$ 7,700,787.00	\$ 10,209,133.00	\$ 11,850,960.00	
Belt Filter Press Drainage Improvement	Utilities	\$ -	\$ 100,000.00	\$ -	\$ -	\$ -	\$ -	Other
Lead and Copper Service Line Replacement	Utilities	\$ -	\$ 6,539,951.00	\$ 4,750,656.00	\$ 5,700,787.00	\$ 8,209,133.00	\$ 9,850,960.00	Bonds, Grants
Lift Station Stationary Generator Installation	Utilities	\$ -	\$ 100,000.00	\$ -	\$ -	\$ -	\$ -	Other
Pressure Reducing Valve Rehabilitation	Utilities	\$ -	\$ 100,000.00	\$ -	\$ -	\$ -	\$ -	Other
Primary Digester Sludge Pump Upgrade	Utilities	\$ -	\$ 93,000.00	\$ -	\$ -	\$ -	\$ -	Other
SCADA Operating System Replacement	Utilities	\$ -	\$ 2,000,000.00	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,000.00	Grants
Sewer Connections	Utilities	\$ -	\$ 1,000,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	Grants
Transite Pipe Identification & Replacement	Utilities	\$ -	\$ 5,500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	\$ 500,000.00	Bonds, Grants, Other
Wastewater Treatment Plant	Utilities	\$ -	\$ 45,839,309.00	\$ -	\$ -	\$ -	\$ -	Bonds, Grants, Taxes
Water Storage Tank Rehab	Utilities	\$ -	\$ 3,000,000.00	\$ -	\$ -	\$ -	\$ -	Other
Water Valve Replacements	Utilities	\$ -	\$ 120,000.00	\$ -	\$ -	\$ -	\$ -	Other
Well 66	Utilities	\$ -	\$ 264,680.72	\$ 2,745,724.10	\$ -	\$ -	\$ -	Grants
SUBTOTAL		\$ 77,632,186.72	\$ 149,500,000.72	\$ 31,383,601.10	\$ 16,263,756.00	\$ 13,824,133.00	\$ 16,743,199.00	

	\$	\$	\$	\$	\$	\$	\$
Total Newly Funded	\$ 34,411,922.53	\$ 20,987,000.00	\$ 4,000,000.00	\$ 5,407,498.00	\$ 2,000,000.00	\$ -	
Total Carryover	\$ 196,379,574.51	\$ 191,635,823.83	\$ 71,207,442.32	\$ 21,660,695.32	\$ 16,377,726.32	\$ 10,016,239.00	
Total Annual	\$ 19,635,942.94	\$ 53,807,932.00	\$ 19,197,365.00	\$ 23,033,365.00	\$ 21,332,840.00	\$ 1,775,000.00	
Total Future	\$ -	\$ 233,797,169.23	\$ 95,348,380.10	\$ 153,761,645.00	\$ 101,384,133.00	\$ 37,330,960.00	
GRAND TOTAL	\$ 250,427,439.98	\$ 500,227,925.06	\$ 189,753,187.42	\$ 203,863,203.32	\$ 141,094,699.32	\$ 49,122,199.00	

Abbreviations:	<u>ARPA - American Rescue Plan Act</u>	<u>Other - Includes Fees, State Entitlements, Leases, Developer Contributions and Donations</u>	<u>TIDD - Tax Increment Development District</u>
	<u>Bonds - Includes Bonds and Loans</u>	<u>PIF - Park Impact Fees</u>	<u>WIF - Water Impact Fees</u>
	<u>Grants - Includes Local, State, Federal, or private entity</u>	<u>PSIF - Public Safety Impact Fees</u>	<u>WWIF - Wastewater Impact Fees</u>
Notes:	<i>Pending funding noted in italic</i>	<i>Pending 2025 Legislative Appropriations/Capital Outlay</i>	Current funding sources noted in bold

CAPITAL IMPROVEMENTS PROGRAM (CIP)
Amendments
City Council Meeting - April 6, 2026

Attachment "A"

Project: Airport Improvements, Pavement Maintenance, and Equipment						
Scope of Work: Funds are provided through an NMDOT grant that will revert in May 2026. To ensure timely use of these funds, they will be relocated from the LRU Runway 4-22 project to Airport Improvements, Pavement Maintenance, and Equipment. This project will support maintenance activities for runways, taxiways, aprons, and other areas of the airport.						
Amendment:						
Category	Department	Current Balance	Change	Ending Balance	Remarks	CIP Page
Airport	Airport	\$0	\$810,749	\$810,749	Adjustment to reflect new grant funding.	1

Project: LRU Runway 4-22 Rehabilitation						
Scope of Work: To facilitate the fixing of crack seal, surface seal, pavement pulverizing , overlay processes, and various maintenance works for Airport.						
Amendment:						
Category	Department	Current Balance	Change	Ending Balance	Remarks	CIP Page
Airport	Airport	\$2,333,920	(\$831,988)	\$1,501,932	Adjustment to reflect revised project funding.	1



City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A
1st Reading:	Adopted: April 6, 2026
Drafter:	Enedelia Vitolas
	Department: Financial Services
Title:	A RESOLUTION AUTHORIZING A CONTRACT AMENDMENT TO EXTEND THE TERM AND INCREASE THE TOTAL COMPENSATION OF ELECTRONIC FUEL CARD SERVICES FROM WEX BANK DBA WRIGHT EXPRESS FSC (WEX) OF CAROL STREAM, ILLINOIS, VIA NEW MEXICO STATE PURCHASING DIVISION (NMSPD) CONTRACT NO. 20-00000-22-00058, TO AN AMOUNT NOT-TO EXCEED \$1,500,000 SUBJECT TO APPROVED BUDGET APPROPRIATIONS, AND A TERM THROUGH DECEMBER 31, 2026.

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

To extend and increase the current contract for Electronic Fuel Card services.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On October 16, 2023, the City Council approved Resolution 24-040, authorizing an existing contract purchase for fuel card services with WEX Bank DBA Wright Express FSC (WEX) of Carol Stream, Illinois, via New Mexico State Purchasing Division (NMSPD) Price Agreement No. 20-00000-22-00058, in an amount not to exceed \$350,000 annually. On January 6, 2025, the City Council approved Resolution 25-075 authorizing an increase to an amount not to exceed \$1,000,000 annually, subject to approved budget appropriations. The City's Fleet Services Program fully utilizes the WEX Electronic Fuel Card Services for purchase of fuel.

The original contract with NMSPD was scheduled to expire on December 31, 2025. The State has since exercised its option to extend the agreement for an additional one-year term. In alignment with the State's extension, Fleet Services is requesting authorization to extend the existing contract through December 31, 2026, and increase the annual expenditure limit to a new amount not to exceed \$1,500,000, plus applicable taxes, subject to approved budget appropriations.

SUPPORT INFORMATION:

- [Attachment "A" NMSPD Agreement No. 20-00000-22-00058 - Wex](#)
- [Attachment "B" Resolution 25-075](#)
- [Attachment "C" Resolution 24-040](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

- ☐ Yes
- ☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: Various **AVAILABLE AMOUNT:** Various **EXPENDITURE AMOUNT:** Various

Funding Source(s):

Accounts will be assigned on an as-needed basis as Fuel is purchased. Orders will be limited to approved budgets.

Does this action amend the Capital Improvement Plan (CIP)?

- ☐ Yes
- ☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and authorize a contract amendment to extend the existing contract term through December 31, 2026 for the purchase of Electronic Fuel Card Services in a new annual not-to-exceed amount of \$1,500,000, subject to approved budget appropriations.
2. Vote "No"; this will deny the authorization of one additional year extension and the not-to-exceed amount of \$1,500,000 annually plus applicable taxes for Electronic Fuel Card Services.
3. Vote to "Amend"; this will modify the Resolution, and City Council will need to provide alternative direction to staff.
4. Vote to "Table"; this could delay the purchase of fuel required for vehicles and equipment, which could negatively impact City operations.

RESOLUTION 26-122

A RESOLUTION AUTHORIZING A CONTRACT AMENDMENT TO EXTEND THE TERM AND INCREASE THE TOTAL COMPENSATION OF ELECTRONIC FUEL CARD SERVICES FROM WEX BANK DBA WRIGHT EXPRESS FSC (WEX) OF CAROL STREAM, ILLINOIS, VIA NEW MEXICO STATE PURCHASING DIVISION (NMSPD) CONTRACT NO. 20-00000-22-00058, TO AN AMOUNT NOT TO EXCEED \$1,500,000 SUBJECT TO APPROVED BUDGET APPROPRIATIONS, AND A TERM THROUGH DECEMBER 31, 2026.

The City Council is informed that:

WHEREAS, on October 16, 2023, the City Council approved Resolution 24-040, authorizing an existing contract purchase for fuel card services with WEX Bank DBA Wright Express FSC (WEX) of Carol Stream, Illinois, via New Mexico State Purchasing Division (NMSPD) Price Agreement No. 20-00000-22-00058, in an amount not to exceed \$350,000 annually; and

WHEREAS, on January 6, 2025, the City Council approved Resolution 25-075 authorizing an increase to an amount not to exceed \$1,000,000 annually, subject to approved budget appropriations; and

WHEREAS, The City's Fleet Services Program fully utilizes the WEX Electronic Fuel Card Services for purchase of fuel; and

WHEREAS, the NMSPD has exercised their option to extend the agreement for an additional year through December 31, 2026; and

WHEREAS, Fleet Services is requesting authorization to extend the existing contract through December 31, 2026; and

WHEREAS, Fleet Services is also requesting to increase the annual expenditure limit to a new amount not to exceed \$1,500,000 plus applicable taxes, subject to approved budget appropriations.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the Resolution authorizing the use of the existing NMSPD contract through December 31, 2026, and increasing the annual expenditure limit to an amount not to exceed \$1,500,000 plus applicable taxes, subject to approved budget appropriations, is hereby approved.

(II)

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

DONE AND APPROVED this day of

Agenda Item #7.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



**State of New Mexico
General Services Department
Purchasing Division
Price Agreement Amendment**

Awarded Vendor:**0000045609****WEX Bank****111 E Sego Lily Dr.****Sandy, UT 84070****Contact: Cory Herzog****Email: cory.herzog@wexin.com****Telephone No. (801) 347-9379**Number: **20-00000-22-00058**NASPO Master Agreement No.: **00819**Amendment No.: **Two**Term: **July 8, 2022 – December 31, 2026****Ship To:**

**All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law.**

Procurement Specialist: **Jessica Chavez** *jc*Telephone No.: (505) **500-9824**Email: **jessica.chavez@gsd.nm.gov****Invoice:****As Requested**Title: **Fleet Card Services**

This amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from December 30, 2025 to December 31, 2026 at the same price, terms and conditions.

This Amendment is issued to update vendor's address and point of contact as follows:

FROM**97 Darling Ave.****So. Portland, ME 04106****Contact: Ryan Kelly****Email: ryan.kelly@wexinc.com****Phone: (952) 922.1104****TO****111 E Sego Lily Dr.****Sandy, UT 84070****Contact: Cory Herzog****Email: cory.herzog@wexinc.com****Phone: (801) 347-9379**

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

Dorothy Mendonca

Date: 12/9/2025

Dorothy Mendonca

New Mexico State Purchasing Agent

Purchasing Division: 1100 St. Francis Drive, Room 2016, Santa Fe, 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472

Certificate Of Completion		
Envelope Id: A305E740-323A-4B7A-8085-D6CE718C7207		Status: Completed
Subject: Please DocuSign: SPD SPA 20-00000-22-00058 Fleet Card Services A002		
Source Envelope:		
Document Pages: 1	Signatures: 1	Envelope Originator:
Certificate Pages: 5	Initials: 2	Jessica Chavez
AutoNav: Enabled		1100 S Saint Francis Dr
Envelopeld Stamping: Enabled		Santa Fe, NM 87502
Time Zone: (UTC-07:00) Mountain Time (US & Canada)		jessica.chavez@gsd.nm.gov
		IP Address: 164.64.62.10
Record Tracking		
Status: Original	Holder: Jessica Chavez	Location: DocuSign
12/9/2025 3:14:49 PM	jessica.chavez@gsd.nm.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: General Services Department	Location: Docusign
Signer Events	Signature	Timestamp
Vanessa LeBlanc		Sent: 12/9/2025 3:16:29 PM
vanessa.leblanc@gsd.nm.gov		Viewed: 12/9/2025 3:16:59 PM
Bureau Chief		Signed: 12/9/2025 3:17:03 PM
New Mexico General Services		
Security Level: Email, Account Authentication (None), Login with SSO	Signature Adoption: Pre-selected Style	
	Using IP Address: 164.64.62.10	
Electronic Record and Signature Disclosure:		
Accepted: 6/2/2020 7:02:26 AM		
ID: 174ce339-a45c-4eb9-8489-b3f5ced3d8e4		
Jessica Chavez		Sent: 12/9/2025 3:17:04 PM
jessica.chavez@gsd.nm.gov		Viewed: 12/9/2025 3:18:16 PM
Procurement Specialist II		Signed: 12/9/2025 3:18:30 PM
Security Level: Email, Account Authentication (None)	Signature Adoption: Pre-selected Style	
	Using IP Address: 164.64.62.10	
Electronic Record and Signature Disclosure:		
Not Offered via Docusign		
Dorothy Mendonca		Sent: 12/9/2025 3:18:31 PM
dorothy.mendonca@gsd.nm.gov		Viewed: 12/9/2025 3:36:41 PM
SPD Division Director / State Purchasing Agent		Signed: 12/9/2025 3:36:50 PM
General Services Department		
Signing Group: 35000 - State Purchasing Agent	Signature Adoption: Pre-selected Style	
Security Level: Email, Account Authentication (None)	Using IP Address:	
	2600:1011:b15f:317c:31a8:f1e9:a83f:7b1d	
	Signed using mobile	
Electronic Record and Signature Disclosure:		
Accepted: 4/14/2023 7:24:59 AM		
ID: 51f6380f-50f7-4227-afb5-572b373dfb7c		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp

Agenda Item #7.1.

Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/9/2025 3:16:29 PM
Certified Delivered	Security Checked	12/9/2025 3:36:41 PM
Signing Complete	Security Checked	12/9/2025 3:36:50 PM
Completed	Security Checked	12/9/2025 3:36:50 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPDinfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPDinfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPDinfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPDinfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.



**State of New Mexico
General Services Department
Purchasing Division**

Statewide Price Agreement Amendment

Awarded Vendor:

0000045609

WEX Bank

97 Darling Avenue

So. Portland, ME 04106

Contact: Ryan Kelly

Email: ryan.kelly@wexinc.com

Telephone No.: (952) 922-1104

Number: **20-00000-22-00058**

NASPO Master Agreement No.: **00819**

Amendment No.: **One**

Term: **July 8, 2022 – December 31, 2025**

Ship To:

All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Procurement Specialist: **Jessica Chavez**

Telephone No.: **(505) 500-9824**

Email: **jessica.chavez@gsd.nm.gov**

Invoice:

As Requested

Title: Fleet Card Services

This amendment is to be attached to the respective Price Agreement and become a part thereof.

This Amendment is issued to add the attached Enrollment Form to the Statewide Price Agreement.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

Dorothy Mendonca

Date: 4/17/2025

Dorothy Mendonca

New Mexico State Purchasing Agent

X This has been signed on behalf of the State Purchasing Agent

GOVERNMENT -- EV CHARGING EN ROUTE SOLUTION
ENROLLMENT FORM

This En Route EV Charging Solution Enrollment Form (“**Enrollment**”) is submitted by the entity listed below (“**Company**”). Upon WEX Bank’s (“**Issuer**”) approval of Company’s enrollment, this Enrollment will govern the provision of the Solution (as defined hereunder) by Issuer to Company, and will incorporate the terms of the Business Charge Account Agreement between Company and Issuer (“**Agreement**”). The Company and Issuer are referred to individually as a “**Party**” and jointly as the “**Parties**”. Capitalized terms used in this Enrollment that are not otherwise defined shall have the meanings set forth in the Agreement.

Company Name: State of New Mexico	
Company Address: 1100 St. Francis Drive	City/State/Zip: Santa Fe, NM 87505
☐ New Customer	☒ Existing Customer Account Number: 0496001871896
☐ Tax Exempt Organization	

EV CHARGING EN ROUTE SOLUTION (“**SOLUTION**”)

Company wishes to enable Card acceptance or payment via an Authorized Payment Device (defined below) at certain electric vehicle (“**EV**”) charging stations operated by charge point operators participating in the WEX Inc. card network (each, a “**CPO Merchant**”) pursuant to the terms set forth in this Enrollment and the terms of the Agreement.

FEES, BILLING, AND PAYMENT

EV Enabled Card Fee. The Company will pay a **monthly fee of \$5.00** (the “**EV Fee**”) for **each** Card that is enabled for Transactions at EV charging stations. The EV Fee applies for each Card enabled on any day of a given calendar month.

Authorized Payment Device Replacement Fee. Company will be provided one radio frequency identification (RFID) device to use as an Authorized Payment Device (as defined below) for each enabled Card at no additional cost. If an RFID device needs to be replaced, an additional RFID device will be provided and Company will be charged \$10.00 per additional RFID device, with the original RFID to be disabled.

Payment Terms. Billing for purchases made with an Authorized Payment Device shall be pursuant to the terms of the Agreement.

No Rebates. Any purchases made through use of an Authorized Payment Device shall not be eligible for any Rebate provided under the Agreement.

TERMS AND CONDITIONS

- Solution Description.** Pursuant to the terms of this Enrollment and the Agreement, Company will use an Authorized Payment Device to purchase EV charging from CPO Merchants. An “**Authorized Payment Device**” means any RFID device, a physical form of payment or a mobile application, in any case specified and provided by Issuer. Subject to completing the request in section 2.1, Company authorizes Issuer to connect an EV-enabled Card to an Authorized Payment Device to initiate and complete purchases from CPO Merchants. All terms and conditions of the Agreement applicable to “Cards” or to Transactions using a Card shall also apply to the Authorized Payment Devices and Transactions using an Authorized Payment Device, except to the extent expressly set forth otherwise in this Enrollment.
- Company Responsibilities**
 - Upon acceptance and approval of this completed Enrollment by Company, Issuer will enable one or more Cards designated by Company for use for purchases from CPO Merchants. Upon such enablement by Issuer, any individual that uses the Authorized Payment Device linked to that Card shall be considered an “**Authorized EV Charging User**.” Company may add or change Cards or Authorized EV Charging Users, or request additional RFID devices in the online portal.
 - Company will comply with, and shall ensure all Authorized EV Charging Users to comply with, any reasonable instructions provided by Issuer or the applicable CPO Merchant pertaining to use of EV charging, the EV charging station equipment and related applications, any mobile applications intended for use with the Solution, and any Authorized Payment Devices.
 - ChargePoint Charging. This section applies if Company or Authorized EV Charging Users purchase EV charging or related products and services from ChargePoint and its network operators. The Authorized Payment Device provided to Company or any Authorized EV Charging User may include or utilize services, software and/or other proprietary materials of ChargePoint, Inc. (“**ChargePoint**”) in connection with Company’s or any Authorized EV Charging User’s accessibility to electric vehicle charging services provided via ChargePoint and its network (collectively, “**ChargePoint Technology**”). Company hereby represents and warrants that its use and/or any Authorized EV Charging User’s use of any of the Charge Technology shall be governed by and subject to the following: (i) ChargePoint Terms of Service (found at: https://na.chargepoint.com/terms_mobile?instance=NA-US&country_id=233&locale=en) (collectively, “**ChargePoint Terms**”); and (ii) ChargePoint, as a third-party beneficiary with respect to the ChargePoint Terms, shall be entitled to enforce any of the ChargePoint Terms against Company with regards to Company’s use or any Authorized EV Charging User’s use of the ChargePoint Technology.

With sole respect to the Enrollment, the following Special Terms apply if a Company is a state or local government entity (“**Special Entity**”) and only to the extent that any offerings provided under the Enrollment are being used in a Company’s official capacity as a state or local government entity (“**Special Purpose**”). In the event of any conflict or inconsistency between the Enrollment terms, including the ChargePoint Terms of Service for ChargePoint® Accounts and the Special Terms, the following Special Terms shall prevail for the Special Purpose.

Agenda Item #7.1.

Special Terms:

- I. Governing law and venue shall be those of the respective state of the Special Entity;
- II. Limitation of liability terms in the Enrollment terms shall not apply to the Special Entity;
- III. Indemnification terms in the Enrollment terms shall not apply to the Special Entity; and
- IV. Arbitration terms in the Enrollment terms shall not apply to the Special Entity.

- 2.4 Company will immediately notify Issuer when an Authorized EV Charging User leaves the Company, retires or is absent for an extended period of time.
3. **Issuer Responsibilities.** Upon receipt of a request in the online portal to enable a Card for EV charging, Issuer will enable the applicable Account for EV charging and provide an Authorized Payment Device if requested by Company. Upon enablement of the Account, Company may use a mobile application designated by Issuer for EV charging upon downloading and/or updating the mobile application, as applicable. If an Authorized EV Charging User already has access rights to use EV charging with an CPO Merchant, Issuer may “link” preexisting account information. Use of a mobile application may be subject to additional terms and conditions as set forth in the relevant application. Company must comply and must ensure that its Authorized EV Charging Users comply with the policies and terms of use posted on such mobile applications or otherwise provided to Company by Issuer.
4. **Data Collection and Usage**
- 4.1 Issuer owns all data collected by or on behalf of Issuer in connection with Company’s use of the Solution, including but not limited to transactional data collected at EV charging stations. Any feedback provided by Company in connection with its use of the Solution shall be owned by Issuer, including any suggested improvements to the Solution.
- 4.2 Activation of an Authorized Payment Device may require Issuer to share certain Company and Authorized EV Charging User information with the applicable CPO Merchant, including contact information, VIN information and usage associated with Company’s Account. Additionally, for Cards issued with the name of an Authorized EV Charging User, Issuer may ask for personally identifiable information from the Authorized EV Charging Users and may share this information with the applicable CPO Merchant in order for it to provide and support services related to the access to and provision of the Solution.
5. **Controls.** The application of any Controls may not be available for purchases on an Authorized Payment Device when an RFID is used and Company agrees to be liable for purchases made with a CPO Merchant even if a Control has been exceeded for any Transaction. Subject to the terms of the Agreement, Company remains liable for all EV charging session fees billed to its Account.
6. **Term; Termination.** The term of this Enrollment will commence on the date this signed Enrollment is submitted to Issuer (“**Enrollment Effective Date**”) and will continue on an ongoing basis until either Party terminates as set forth in this section. Either Party may terminate this Enrollment at any time for any reason upon thirty (30) days’ prior written notice to the other Party, provided that Company will not be entitled to a refund of any EV Fees paid and must pay all amounts due through the effective date of termination. Issuer may also suspend usage of any Authorized Payment Device in its sole discretion, including if it reasonably believes it is being used for any unauthorized or fraudulent purpose. Upon termination of this Enrollment, Company shall return all Authorized Payment Devices to Issuer within 30 days of the effective date of termination.
7. **Miscellaneous.** This Enrollment will also be subject to and governed by the Agreement and any subsequent amendments, modifications, or replacements thereto. If there is any conflict between the provisions in this Enrollment and the provisions in the Agreement, the provisions in this Enrollment shall prevail but only with respect to the Solution. Issuer may modify the terms and conditions of this Enrollment, including any applicable fees, pursuant to the terms of the Agreement. No course of dealing between the Parties will be construed as a waiver of any breach or right, and no waiver of any breach or right arising under this Enrollment will be effective unless consented to in writing in the form of an amendment signed by both Parties, nor shall it be construed as a waiver of any breach or right subsequently. This Enrollment may be executed electronically.

The undersigned hereby executes this Enrollment on behalf of Company as an authorized representative of Company. Company understands that Company’s participation in the Solution is subject to acceptance by the approval of Issuer. Upon such approval, which may be evidenced by Issuer’s commencement of services, the terms and conditions above, in addition to the relevant terms of the Agreement, shall govern the provision of services and products hereunder.

IN WITNESS WHEREOF, Company agrees to comply with the terms and conditions of this Enrollment.

Company: State of New Mexico

Authorized Signature: Dorothy Mendonca

Print Name: Dorothy Mendonca

Title: State Purchasing Agent

Date: 4/17/2025

Certificate Of Completion		
Envelope Id: EED473F9-2E47-4CAE-939B-0322367C1096	Status: Completed	
Subject: Complete with Docusign: 20-00000-22-00058 A001		
Source Envelope:		
Document Pages: 3	Signatures: 2	Envelope Originator:
Certificate Pages: 5	Initials: 1	Vanessa LeBlanc
AutoNav: Enabled		1100 S Saint Francis Dr
Envelopeld Stamping: Enabled		Santa Fe, NM 87502
Time Zone: (UTC-07:00) Mountain Time (US & Canada)		Vanessa.LeBlanc@gsd.nm.gov
		IP Address: 164.64.62.10
Record Tracking		
Status: Original	Holder: Vanessa LeBlanc	Location: DocuSign
4/17/2025 7:40:18 AM	Vanessa.LeBlanc@gsd.nm.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: General Services Department	Location: Docusign
Signer Events	Signature	Timestamp
Dorothy Mendonca		Sent: 4/17/2025 7:46:55 AM
dorothy.mendonca@gsd.nm.gov		Viewed: 4/17/2025 8:55:51 AM
SPD Division Director / State Purchasing Agent		Signed: 4/17/2025 10:02:16 AM
General Services Department		
Signing Group: 35000 - State Purchasing Agent		
Security Level: Email, Account Authentication (None)	Signature Adoption: Pre-selected Style	
	Using IP Address: 174.205.227.4	
	Signed using mobile	
Electronic Record and Signature Disclosure:		
Accepted: 4/14/2023 7:24:59 AM		
ID: 51f6380f-50f7-4227-afb5-572b373dfb7c		
Vanessa LeBlanc		Sent: 4/17/2025 7:46:54 AM
vanessa.leblanc@gsd.nm.gov		Viewed: 4/17/2025 7:47:01 AM
Bureau Chief		Signed: 4/17/2025 7:47:19 AM
New Mexico General Services		
Security Level: Email, Account Authentication (None)		
	Signature Adoption: Pre-selected Style	
	Using IP Address: 164.64.62.10	
Electronic Record and Signature Disclosure:		
Accepted: 6/2/2020 7:02:26 AM		
ID: 174ce339-a45c-4eb9-8489-b3f5ced3d8e4		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps

Agenda Item #7.1.

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/17/2025 7:46:55 AM
Certified Delivered	Security Checked	4/17/2025 7:47:01 AM
Signing Complete	Security Checked	4/17/2025 7:47:19 AM
Completed	Security Checked	4/17/2025 10:02:16 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPDinfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPDinfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPDinfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPInfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.



**State of New Mexico
General Services Department
State Purchasing Division**

Statewide Price Agreement Cover Page

Awarded Vendor:
0000045609
WEX Bank
97 Darling Avenue
So. Portland, ME 04106

Contact: **Ryan Kelly**
Email: **ryan.kelly@wexinc.com**
Telephone No.: **(952) 922-1104**

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law

Invoice:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law

Agreement Number: **20-00000-22-00058**

NASPO Master Agreement No.: **00819**

Payment Terms: **Net 30**

F.O.B.: **Destination**

Delivery: **As Requested**

Procurement Specialist: **Tami Concha** *JC*

Telephone No.: **505-660-3671**

Email: **Tami.Concha@state.nm.us**

Title: Fleet Card Services

Term: July 8, 2022 thru December 31, 2025

NASPO ValuePoint Master Agreement Link: <https://www.naspovaluepoint.org/portfolio/fleet-card-services-2021-2025/wex-bank/>

The attached Agreement is made subject to the “terms and conditions” as indicated.

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of **Washington**

Master Agreement #: 00819

Contractor: **WEX BANK**

Participating Entity: **STATE OF NEW MEXICO**

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

MASTER AGREEMENT TERMS AND CONDITIONS:

1. Scope: This addendum covers the *Fleet Card Services* led by the State of *Washington* for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. By this reference, this Participating Addendum incorporates the Master Agreement between the State of Washington and Fleet Card Services with the exceptions, clarifications, and modifications as set forth in this addendum and in accordance with Section 33 of this addendum.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of *New Mexico*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Ryan Kelly
Address:	97 Darling Avenue So. Portland, ME 04106
Telephone:	Office (952) 922-1104 Cell (612) 213-7699
Email:	ryan.kelly@wexinc.com

Participating Entity

Name:	Tami Concha – State of New Mexico
Address:	1100 Saint Francis Dr., Santa Fe, New Mexico 87505
Telephone:	(505) 660-3671
Email:	Tami.Concha@state.nm.us

PARTICIPATING ADDENDUM**FLEET CARD SERVICE**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

1. Taxes:

As applicable, the Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage.

Reserved

E. Performance Bond.

Reserved

2. Term:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE STATE PURCHASING AGENT. This Agreement shall begin on date approved by the State Purchasing Agent and end on December 31, 2025. The Participating State reserves the right to extend this agreement, pursuant to the term in the Master Agreement. In the event that a local or regional agency submits a PO or enters into an Addendum pursuant to the terms of this Participating Addendum, termination of this Addendum shall not impact the term of the subordinate ordering document, unless the Parties to that ordering document agree otherwise

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

in writing (including through specifying a specific term of services that extends beyond the term of this document).

3. Termination:

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause.

B. Notice; Procuring Agency Opportunity to Cure.

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for all purchases made on WEX cards and any fees accrued prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

4. Appropriations:

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, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor, provided that the Procuring Agency remains responsible for all outstanding balances

PARTICIPATING ADDENDUM**FLEET CARD SERVICES****(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)**

Led by the State of Washington

and fees as set forth in this Agreement. Except as set forth in the preceding sentence, the Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. Status of Contractor:

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

6. Conflict of Interest; Governmental Conduct Act:

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

- 1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;
- 2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
- 3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of **Washington**

is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

7. Amendment:

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. Reserved.

8. Merger:

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

9. Penalties for violation of law:

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

10. Equal Opportunity Compliance:

The Contractor agrees to abide by federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, which are applicable Contractor, pertaining to equal employment opportunity. In accordance with applicable laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

11. Workers Compensation:

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

12. Applicable Law:

Reserved.

13. Records and Financial Audit:

Reserved

14. Invalid Term or Condition:

Reserved.

15. Enforcement of Agreement:

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective

PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of **Washington**

unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

16. Non-Collusion:

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

17. Notices:

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Procuring Agency:

Mark Hayden, State Purchasing Agent
State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM 87505

To the Contractor:

Ryan Kelly
97 Darling Avenue So. Portland, ME 04106
Office (952) 922-1104 Cell (612) 213-7699
ryan.kelly@wexinc.com

18. Succession:

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

19. Headings:

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

20. Default/Breach:

The Procuring Agency shall have the same rights set forth in Section 16 of the Master Agreement as Enterprise Services with respect to this Participating Addendum. For the avoidance of doubt, the Procuring Agency shall have no rights to terminate the Master Agreement or any other Addendum executed by a customer of Contractor.

PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

21. Equitable Remedies:

Reserved.

22. New Mexico Employees Health Coverage: The following requirements shall apply to Contractor's business operations within the state of New Mexico, if any:

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://bewellnm.com>.

23. Indemnification:

Reserved.

24. Default and Force Majeure:

The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

25. Assignment:

Reserved.

26. Subcontracting:

Reserved.

PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

27. Inspection of Plant:

Reserved

28. Commercial Warranty:

Reserved

29. Condition of Proposed Items:

Reserved

30. Release:

Reserved.

31. Confidentiality:

Reserved

32. Contractor Personnel:

Reserved

33. Incorporation by Reference and Precedence:

In the event of a dispute under this Agreement between the Procuring Agency and Contractor, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Participating Addendum in reverse chronological order; (2) the Participating Addendum; (3) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

34. Inspection:

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

35. Inspection of Services:

Upon request by the Procuring Agency, not more than once per year, Contractor will provide a copy of its SOC 1 or 2 report, as applicable.

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

36. Insurance:

Reserved

37. Dispute Resolution:

The parties shall cooperate to resolve any dispute pertaining to this Participating Addendum efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior manager of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute. For the avoidance of doubt, this Section 15 shall not apply to disputed transactions, which shall be governed by Exhibit G Section 16 of the Master Agreement.

38. New Mexico Administration Reporting and Fees:

All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of **percent (1.00 %)**. The 1% Administrative Fee is not an additional percentage added to the rebate being offered by Contractor pursuant to the NASPO ValuePoint Master Agreement, but rather, it is based on the qualified rebate amount for all accounts and a direct share of the rebate (e.g. 1.7% rebate (170 basis points), 100 bps (1%) would be paid as the administration fee and the remaining 70 bps (.7%) would go to the account holder)..This assessment shall apply to all New Mexico state agencies and local public bodies.

The Contractor agrees to provide a utilization report to SPD for all sales and/or services, other revenues including commissions, and fees charged under this Agreement, subtotaled by procuring agency name, in accordance with the following schedule:

Quarter:	Period Ending:	Report Due Date:
First	September 30	November 30
Second	December 31	February 28 (29)
Third	March 31	May 31
Fourth	June 30	August 31

Sample Reports can be found at:

<http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors>

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of **Washington**

The quarterly report shall include the gross total sales for the quarter; zero sales during the quarter shall be reported, and partial quarters at the beginning or end of the contract term shall also be reported. The report shall be accompanied with a check payable to the State Purchasing Division for an amount equal to the 1% of the qualified rebate amount for New Mexico state agencies and local public bodies for the period. The Vendor shall indicate the contract number **SWPA #20-00000-22-00058 on the remittance.**

Send payment of fees through U.S. Mail or Courier Delivery:

New Mexico State Purchasing Division
Joseph Montoya Building Room 2016,
1100 St. Francis Drive, Santa Fe, New Mexico 87505
or P.O. Box 6850, Santa Fe, New Mexico 87502

For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 469-2679 or (505) 795-4512

39. Lease Agreements: *Reserved*

40. Subcontractors: All contactors, dealers, and resellers authorized in the State of *State of New Mexico*, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

41. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of New Mexico	Contractor: WEX Bank
Signature: <i>Valerie Paule</i>	Signature: <i>Jason Price</i>
☒ This Agreement was signed on behalf of the State Purchasing Agent.	
Name: Mark Hayden	Name: Jason Price
Title: State Purchasing Agent	Title: President & CEO
Date: 7/11/2022	Date: 7/11/2022

CF

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at info@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.

Certificate Of Completion

Envelope Id: 9C28E4D070E848659600074B759B78E8

Status: Completed

Subject: Please Electronically Sign: 20-00000-22-00058 Fleet Card Services PA

Source Envelope:

Document Pages: 13

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 3

Tami Concha

AutoNav: Enabled

13 Bataan Blvd

Envelopeld Stamping: Enabled

Santa Fe, NM 87508

Time Zone: (UTC-07:00) Mountain Time (US & Canada)

tami.concha@state.nm.us

IP Address: 174.56.109.88

Record Tracking

Status: Original

Holder: Tami Concha

Location: DocuSign

7/8/2022 3:28:00 PM

tami.concha@state.nm.us

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: GSD

Location: DocuSign

Signer Events**Signature****Timestamp**

Natalie Martinez

natalie.martinez1@state.nm.us

New Mexico General Services

Security Level: Email, Account Authentication
(None)

Sent: 7/8/2022 3:47:23 PM

Viewed: 7/8/2022 3:48:12 PM

Signed: 7/8/2022 3:49:01 PM

Signature Adoption: Pre-selected Style

Using IP Address: 207.155.55.132

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Tami Concha

tami.concha@state.nm.us

Procurement Officer-A

New Mexico General Services, State Purchasing
DivisionSecurity Level: Email, Account Authentication
(None)

Sent: 7/8/2022 3:49:03 PM

Viewed: 7/8/2022 3:50:00 PM

Signed: 7/8/2022 3:50:06 PM

Signature Adoption: Pre-selected Style

Using IP Address: 174.56.109.88

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Casi Finstad

casi.finstad@wexinc.com

Security Level: Email, Account Authentication
(None)

Sent: 7/8/2022 3:50:07 PM

Resent: 7/11/2022 11:36:10 AM

Viewed: 7/11/2022 12:18:01 PM

Signed: 7/11/2022 12:19:44 PM

Signature Adoption: Pre-selected Style

Using IP Address: 163.116.133.118

Electronic Record and Signature Disclosure:

Accepted: 7/8/2022 4:00:54 PM

ID: 576411f7-3566-4a5f-ac88-68427f359c2e

Jason Price

jason.price@wexinc.com

Security Level: Email, Account Authentication
(None)

Sent: 7/11/2022 12:19:46 PM

Viewed: 7/11/2022 1:00:59 PM

Signed: 7/11/2022 1:01:34 PM

Signature Adoption: Pre-selected Style

Using IP Address: 4.1.4.226

Electronic Record and Signature Disclosure:

Accepted: 7/11/2022 1:00:59 PM

ID: ed994523-e666-40c3-95b1-99f080936494

Agenda Item #7.1.

Signer Events	Signature	Timestamp
Valerie Paulk Valerie.Paulk@state.nm.us Signed of Behalf of State Purchasing Agent New Mexico General Services Security Level: Email, Account Authentication (None)	<i>Valerie Paulk</i> Signature Adoption: Pre-selected Style Using IP Address: 75.161.227.238 Signed using mobile	Sent: 7/11/2022 1:01:35 PM Viewed: 7/11/2022 1:06:22 PM Signed: 7/11/2022 1:08:15 PM
Electronic Record and Signature Disclosure: Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/8/2022 3:47:23 PM
Certified Delivered	Security Checked	7/11/2022 1:06:22 PM
Signing Complete	Security Checked	7/11/2022 1:08:15 PM
Completed	Security Checked	7/11/2022 1:08:15 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPInfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPDinfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.



**State of New Mexico
General Services Department
Purchasing Division**

Statewide Price Agreement Amendment

Awarded Vendor:

0000045609

WEX Bank

97 Darling Avenue

So. Portland, ME 04106

Contact: Ryan Kelly

Email: ryan.kelly@wexinc.com

Telephone No.: (952) 922-1104

Number: **20-00000-22-00058**

NASPO Master Agreement No.: **00819**

Amendment No.: **One**

Term: **July 8, 2022 – December 31, 2025**

Ship To:

All State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

Procurement Specialist: **Jessica Chavez**

Telephone No.: **(505) 500-9824**

Email: **jessica.chavez@gsd.nm.gov**

Invoice:

As Requested

Title: Fleet Card Services

This amendment is to be attached to the respective Price Agreement and become a part thereof.

This Amendment is issued to add the attached Enrollment Form to the Statewide Price Agreement.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

Dorothy Mendonca

Date: 4/17/2025

Dorothy Mendonca

New Mexico State Purchasing Agent

X This has been signed on behalf of the State Purchasing Agent

GOVERNMENT -- EV CHARGING EN ROUTE SOLUTION
ENROLLMENT FORM

This En Route EV Charging Solution Enrollment Form (“**Enrollment**”) is submitted by the entity listed below (“**Company**”). Upon WEX Bank’s (“**Issuer**”) approval of Company’s enrollment, this Enrollment will govern the provision of the Solution (as defined hereunder) by Issuer to Company, and will incorporate the terms of the Business Charge Account Agreement between Company and Issuer (“**Agreement**”). The Company and Issuer are referred to individually as a “**Party**” and jointly as the “**Parties**”. Capitalized terms used in this Enrollment that are not otherwise defined shall have the meanings set forth in the Agreement.

Company Name: State of New Mexico	
Company Address: 1100 St. Francis Drive	City/State/Zip: Santa Fe, NM 87505
☐ New Customer	☒ Existing Customer Account Number: 0496001871896
☐ Tax Exempt Organization	

EV CHARGING EN ROUTE SOLUTION (“**SOLUTION**”)

Company wishes to enable Card acceptance or payment via an Authorized Payment Device (defined below) at certain electric vehicle (“**EV**”) charging stations operated by charge point operators participating in the WEX Inc. card network (each, a “**CPO Merchant**”) pursuant to the terms set forth in this Enrollment and the terms of the Agreement.

FEES, BILLING, AND PAYMENT

EV Enabled Card Fee. The Company will pay a **monthly fee of \$5.00** (the “**EV Fee**”) for **each** Card that is enabled for Transactions at EV charging stations. The EV Fee applies for each Card enabled on any day of a given calendar month.

Authorized Payment Device Replacement Fee. Company will be provided one radio frequency identification (RFID) device to use as an Authorized Payment Device (as defined below) for each enabled Card at no additional cost. If an RFID device needs to be replaced, an additional RFID device will be provided and Company will be charged \$10.00 per additional RFID device, with the original RFID to be disabled.

Payment Terms. Billing for purchases made with an Authorized Payment Device shall be pursuant to the terms of the Agreement.

No Rebates. Any purchases made through use of an Authorized Payment Device shall not be eligible for any Rebate provided under the Agreement.

TERMS AND CONDITIONS

- Solution Description.** Pursuant to the terms of this Enrollment and the Agreement, Company will use an Authorized Payment Device to purchase EV charging from CPO Merchants. An “**Authorized Payment Device**” means any RFID device, a physical form of payment or a mobile application, in any case specified and provided by Issuer. Subject to completing the request in section 2.1, Company authorizes Issuer to connect an EV-enabled Card to an Authorized Payment Device to initiate and complete purchases from CPO Merchants. All terms and conditions of the Agreement applicable to “Cards” or to Transactions using a Card shall also apply to the Authorized Payment Devices and Transactions using an Authorized Payment Device, except to the extent expressly set forth otherwise in this Enrollment.
- Company Responsibilities**
 - Upon acceptance and approval of this completed Enrollment by Company, Issuer will enable one or more Cards designated by Company for use for purchases from CPO Merchants. Upon such enablement by Issuer, any individual that uses the Authorized Payment Device linked to that Card shall be considered an “**Authorized EV Charging User**.” Company may add or change Cards or Authorized EV Charging Users, or request additional RFID devices in the online portal.
 - Company will comply with, and shall ensure all Authorized EV Charging Users to comply with, any reasonable instructions provided by Issuer or the applicable CPO Merchant pertaining to use of EV charging, the EV charging station equipment and related applications, any mobile applications intended for use with the Solution, and any Authorized Payment Devices.
 - ChargePoint Charging. This section applies if Company or Authorized EV Charging Users purchase EV charging or related products and services from ChargePoint and its network operators. The Authorized Payment Device provided to Company or any Authorized EV Charging User may include or utilize services, software and/or other proprietary materials of ChargePoint, Inc. (“**ChargePoint**”) in connection with Company’s or any Authorized EV Charging User’s accessibility to electric vehicle charging services provided via ChargePoint and its network (collectively, “**ChargePoint Technology**”). Company hereby represents and warrants that its use and/or any Authorized EV Charging User’s use of any of the Charge Technology shall be governed by and subject to the following: (i) ChargePoint Terms of Service (found at: https://na.chargepoint.com/terms_mobile?instance=NA-US&country_id=233&locale=en) (collectively, “**ChargePoint Terms**”); and (ii) ChargePoint, as a third-party beneficiary with respect to the ChargePoint Terms, shall be entitled to enforce any of the ChargePoint Terms against Company with regards to Company’s use or any Authorized EV Charging User’s use of the ChargePoint Technology.

With sole respect to the Enrollment, the following Special Terms apply if a Company is a state or local government entity (“**Special Entity**”) and only to the extent that any offerings provided under the Enrollment are being used in a Company’s official capacity as a state or local government entity (“**Special Purpose**”). In the event of any conflict or inconsistency between the Enrollment terms, including the ChargePoint Terms of Service for ChargePoint® Accounts and the Special Terms, the following Special Terms shall prevail for the Special Purpose.

Agenda Item #7.1.

Special Terms:

- I. Governing law and venue shall be those of the respective state of the Special Entity;
- II. Limitation of liability terms in the Enrollment terms shall not apply to the Special Entity;
- III. Indemnification terms in the Enrollment terms shall not apply to the Special Entity; and
- IV. Arbitration terms in the Enrollment terms shall not apply to the Special Entity.

- 2.4 Company will immediately notify Issuer when an Authorized EV Charging User leaves the Company, retires or is absent for an extended period of time.
3. **Issuer Responsibilities.** Upon receipt of a request in the online portal to enable a Card for EV charging, Issuer will enable the applicable Account for EV charging and provide an Authorized Payment Device if requested by Company. Upon enablement of the Account, Company may use a mobile application designated by Issuer for EV charging upon downloading and/or updating the mobile application, as applicable. If an Authorized EV Charging User already has access rights to use EV charging with an CPO Merchant, Issuer may “link” preexisting account information. Use of a mobile application may be subject to additional terms and conditions as set forth in the relevant application. Company must comply and must ensure that its Authorized EV Charging Users comply with the policies and terms of use posted on such mobile applications or otherwise provided to Company by Issuer.
4. **Data Collection and Usage**
- 4.1 Issuer owns all data collected by or on behalf of Issuer in connection with Company’s use of the Solution, including but not limited to transactional data collected at EV charging stations. Any feedback provided by Company in connection with its use of the Solution shall be owned by Issuer, including any suggested improvements to the Solution.
- 4.2 Activation of an Authorized Payment Device may require Issuer to share certain Company and Authorized EV Charging User information with the applicable CPO Merchant, including contact information, VIN information and usage associated with Company’s Account. Additionally, for Cards issued with the name of an Authorized EV Charging User, Issuer may ask for personally identifiable information from the Authorized EV Charging Users and may share this information with the applicable CPO Merchant in order for it to provide and support services related to the access to and provision of the Solution.
5. **Controls.** The application of any Controls may not be available for purchases on an Authorized Payment Device when an RFID is used and Company agrees to be liable for purchases made with a CPO Merchant even if a Control has been exceeded for any Transaction. Subject to the terms of the Agreement, Company remains liable for all EV charging session fees billed to its Account.
6. **Term; Termination.** The term of this Enrollment will commence on the date this signed Enrollment is submitted to Issuer (“**Enrollment Effective Date**”) and will continue on an ongoing basis until either Party terminates as set forth in this section. Either Party may terminate this Enrollment at any time for any reason upon thirty (30) days’ prior written notice to the other Party, provided that Company will not be entitled to a refund of any EV Fees paid and must pay all amounts due through the effective date of termination. Issuer may also suspend usage of any Authorized Payment Device in its sole discretion, including if it reasonably believes it is being used for any unauthorized or fraudulent purpose. Upon termination of this Enrollment, Company shall return all Authorized Payment Devices to Issuer within 30 days of the effective date of termination.
7. **Miscellaneous.** This Enrollment will also be subject to and governed by the Agreement and any subsequent amendments, modifications, or replacements thereto. If there is any conflict between the provisions in this Enrollment and the provisions in the Agreement, the provisions in this Enrollment shall prevail but only with respect to the Solution. Issuer may modify the terms and conditions of this Enrollment, including any applicable fees, pursuant to the terms of the Agreement. No course of dealing between the Parties will be construed as a waiver of any breach or right, and no waiver of any breach or right arising under this Enrollment will be effective unless consented to in writing in the form of an amendment signed by both Parties, nor shall it be construed as a waiver of any breach or right subsequently. This Enrollment may be executed electronically.

The undersigned hereby executes this Enrollment on behalf of Company as an authorized representative of Company. Company understands that Company’s participation in the Solution is subject to acceptance by the approval of Issuer. Upon such approval, which may be evidenced by Issuer’s commencement of services, the terms and conditions above, in addition to the relevant terms of the Agreement, shall govern the provision of services and products hereunder.

IN WITNESS WHEREOF, Company agrees to comply with the terms and conditions of this Enrollment.

Company: State of New Mexico

Authorized Signature: Dorothy Mendonca

Print Name: Dorothy Mendonca

Title: State Purchasing Agent

Date: 4/17/2025

Certificate Of Completion		
Envelope Id: EED473F9-2E47-4CAE-939B-0322367C1096	Status: Completed	
Subject: Complete with Docusign: 20-00000-22-00058 A001		
Source Envelope:		
Document Pages: 3	Signatures: 2	Envelope Originator:
Certificate Pages: 5	Initials: 1	Vanessa LeBlanc
AutoNav: Enabled		1100 S Saint Francis Dr
Envelopeld Stamping: Enabled		Santa Fe, NM 87502
Time Zone: (UTC-07:00) Mountain Time (US & Canada)		Vanessa.LeBlanc@gsd.nm.gov
		IP Address: 164.64.62.10
Record Tracking		
Status: Original	Holder: Vanessa LeBlanc	Location: DocuSign
4/17/2025 7:40:18 AM	Vanessa.LeBlanc@gsd.nm.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: General Services Department	Location: Docusign
Signer Events	Signature	Timestamp
Dorothy Mendonca		Sent: 4/17/2025 7:46:55 AM
dorothy.mendonca@gsd.nm.gov		Viewed: 4/17/2025 8:55:51 AM
SPD Division Director / State Purchasing Agent		Signed: 4/17/2025 10:02:16 AM
General Services Department		
Signing Group: 35000 - State Purchasing Agent		
Security Level: Email, Account Authentication (None)	Signature Adoption: Pre-selected Style	
	Using IP Address: 174.205.227.4	
	Signed using mobile	
Electronic Record and Signature Disclosure:		
Accepted: 4/14/2023 7:24:59 AM		
ID: 51f6380f-50f7-4227-afb5-572b373dfb7c		
Vanessa LeBlanc		Sent: 4/17/2025 7:46:54 AM
vanessa.leblanc@gsd.nm.gov		Viewed: 4/17/2025 7:47:01 AM
Bureau Chief		Signed: 4/17/2025 7:47:19 AM
New Mexico General Services		
Security Level: Email, Account Authentication (None)		
	Signature Adoption: Pre-selected Style	
	Using IP Address: 164.64.62.10	
Electronic Record and Signature Disclosure:		
Accepted: 6/2/2020 7:02:26 AM		
ID: 174ce339-a45c-4eb9-8489-b3f5ced3d8e4		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps

Agenda Item #7.1.

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/17/2025 7:46:55 AM
Certified Delivered	Security Checked	4/17/2025 7:47:01 AM
Signing Complete	Security Checked	4/17/2025 7:47:19 AM
Completed	Security Checked	4/17/2025 10:02:16 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

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If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPDinfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPDinfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPDinfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPInfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.



**State of New Mexico
General Services Department
State Purchasing Division**

Statewide Price Agreement Cover Page

Awarded Vendor:
0000045609
WEX Bank
97 Darling Avenue
So. Portland, ME 04106

Contact: **Ryan Kelly**
Email: **ryan.kelly@wexinc.com**
Telephone No.: **(952) 922-1104**

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law

Invoice:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law

Agreement Number: **20-00000-22-00058**

NASPO Master Agreement No.: **00819**

Payment Terms: **Net 30**

F.O.B.: **Destination**

Delivery: **As Requested**

Procurement Specialist: **Tami Concha** *JC*

Telephone No.: **505-660-3671**

Email: **Tami.Concha@state.nm.us**

Title: Fleet Card Services

Term: July 8, 2022 thru December 31, 2025

NASPO ValuePoint Master Agreement Link: <https://www.naspovaluepoint.org/portfolio/fleet-card-services-2021-2025/wex-bank/>

The attached Agreement is made subject to the “terms and conditions” as indicated.

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of **Washington**

Master Agreement #: 00819

Contractor: **WEX BANK**

Participating Entity: **STATE OF NEW MEXICO**

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

MASTER AGREEMENT TERMS AND CONDITIONS:

1. Scope: This addendum covers the *Fleet Card Services* led by the State of *Washington* for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. By this reference, this Participating Addendum incorporates the Master Agreement between the State of Washington and Fleet Card Services with the exceptions, clarifications, and modifications as set forth in this addendum and in accordance with Section 33 of this addendum.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of *New Mexico*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Ryan Kelly
Address:	97 Darling Avenue So. Portland, ME 04106
Telephone:	Office (952) 922-1104 Cell (612) 213-7699
Email:	ryan.kelly@wexinc.com

Participating Entity

Name:	Tami Concha – State of New Mexico
Address:	1100 Saint Francis Dr., Santa Fe, New Mexico 87505
Telephone:	(505) 660-3671
Email:	Tami.Concha@state.nm.us

PARTICIPATING ADDENDUM**FLEET CARD SERVICE**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

1. Taxes:

As applicable, the Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage.

Reserved

E. Performance Bond.

Reserved

2. Term:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE STATE PURCHASING AGENT. This Agreement shall begin on date approved by the State Purchasing Agent and end on December 31, 2025. The Participating State reserves the right to extend this agreement, pursuant to the term in the Master Agreement. In the event that a local or regional agency submits a PO or enters into an Addendum pursuant to the terms of this Participating Addendum, termination of this Addendum shall not impact the term of the subordinate ordering document, unless the Parties to that ordering document agree otherwise

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

in writing (including through specifying a specific term of services that extends beyond the term of this document).

3. Termination:

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause.

B. Notice; Procuring Agency Opportunity to Cure.

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for all purchases made on WEX cards and any fees accrued prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

4. Appropriations:

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, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor, provided that the Procuring Agency remains responsible for all outstanding balances

PARTICIPATING ADDENDUM**FLEET CARD SERVICES****(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)**

Led by the State of Washington

and fees as set forth in this Agreement. Except as set forth in the preceding sentence, the Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. Status of Contractor:

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

6. Conflict of Interest; Governmental Conduct Act:

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

- 1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;
- 2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
- 3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of **Washington**

is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

7. Amendment:

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. Reserved.

8. Merger:

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

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understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

9. Penalties for violation of law:

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

10. Equal Opportunity Compliance:

The Contractor agrees to abide by federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, which are applicable Contractor, pertaining to equal employment opportunity. In accordance with applicable laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

11. Workers Compensation:

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

12. Applicable Law:

Reserved.

13. Records and Financial Audit:

Reserved

14. Invalid Term or Condition:

Reserved.

15. Enforcement of Agreement:

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective

PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

16. Non-Collusion:

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

17. Notices:

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Procuring Agency:

Mark Hayden, State Purchasing Agent
State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM 87505

To the Contractor:

Ryan Kelly
97 Darling Avenue So. Portland, ME 04106
Office (952) 922-1104 Cell (612) 213-7699
ryan.kelly@wexinc.com

18. Succession:

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

19. Headings:

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

20. Default/Breach:

The Procuring Agency shall have the same rights set forth in Section 16 of the Master Agreement as Enterprise Services with respect to this Participating Addendum. For the avoidance of doubt, the Procuring Agency shall have no rights to terminate the Master Agreement or any other Addendum executed by a customer of Contractor.

PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

21. Equitable Remedies:

Reserved.

22. New Mexico Employees Health Coverage: The following requirements shall apply to Contractor's business operations within the state of New Mexico, if any:

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://bewellnm.com>.

23. Indemnification:

Reserved.

24. Default and Force Majeure:

The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

25. Assignment:

Reserved.

26. Subcontracting:

Reserved.

PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

27. Inspection of Plant:

Reserved

28. Commercial Warranty:

Reserved

29. Condition of Proposed Items:

Reserved

30. Release:

Reserved.

31. Confidentiality:

Reserved

32. Contractor Personnel:

Reserved

33. Incorporation by Reference and Precedence:

In the event of a dispute under this Agreement between the Procuring Agency and Contractor, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Participating Addendum in reverse chronological order; (2) the Participating Addendum; (3) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

34. Inspection:

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

35. Inspection of Services:

Upon request by the Procuring Agency, not more than once per year, Contractor will provide a copy of its SOC 1 or 2 report, as applicable.

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

36. Insurance:

Reserved

37. Dispute Resolution:

The parties shall cooperate to resolve any dispute pertaining to this Participating Addendum efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior manager of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute. For the avoidance of doubt, this Section 15 shall not apply to disputed transactions, which shall be governed by Exhibit G Section 16 of the Master Agreement.

38. New Mexico Administration Reporting and Fees:

All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of **percent (1.00 %)**. The 1% Administrative Fee is not an additional percentage added to the rebate being offered by Contractor pursuant to the NASPO ValuePoint Master Agreement, but rather, it is based on the qualified rebate amount for all accounts and a direct share of the rebate (e.g. 1.7% rebate (170 basis points), 100 bps (1%) would be paid as the administration fee and the remaining 70 bps (.7%) would go to the account holder)..This assessment shall apply to all New Mexico state agencies and local public bodies.

The Contractor agrees to provide a utilization report to SPD for all sales and/or services, other revenues including commissions, and fees charged under this Agreement, subtotaled by procuring agency name, in accordance with the following schedule:

Quarter:	Period Ending:	Report Due Date:
First	September 30	November 30
Second	December 31	February 28 (29)
Third	March 31	May 31
Fourth	June 30	August 31

Sample Reports can be found at:

<http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors>

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

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The quarterly report shall include the gross total sales for the quarter; zero sales during the quarter shall be reported, and partial quarters at the beginning or end of the contract term shall also be reported. The report shall be accompanied with a check payable to the State Purchasing Division for an amount equal to the 1% of the qualified rebate amount for New Mexico state agencies and local public bodies for the period. The Vendor shall indicate the contract number **SWPA #20-00000-22-00058 on the remittance.**

Send payment of fees through U.S. Mail or Courier Delivery:

New Mexico State Purchasing Division
Joseph Montoya Building Room 2016,
1100 St. Francis Drive, Santa Fe, New Mexico 87505
or P.O. Box 6850, Santa Fe, New Mexico 87502

For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 469-2679 or (505) 795-4512

39. Lease Agreements: *Reserved*

40. Subcontractors: All contactors, dealers, and resellers authorized in the State of *State of New Mexico*, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

41. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

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IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of New Mexico	Contractor: WEX Bank
Signature: <i>Valerie Paulk</i>	Signature: <i>Jason Price</i>
☒ This Agreement was signed on behalf of the State Purchasing Agent.	
Name: Mark Hayden	Name: Jason Price
Title: State Purchasing Agent	Title: President & CEO
Date: 7/11/2022	Date: 7/11/2022

CF

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at info@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.

Certificate Of Completion

Envelope Id: 9C28E4D070E848659600074B759B78E8

Status: Completed

Subject: Please Electronically Sign: 20-00000-22-00058 Fleet Card Services PA

Source Envelope:

Document Pages: 13

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 3

Tami Concha

AutoNav: Enabled

13 Bataan Blvd

Envelopeld Stamping: Enabled

Santa Fe, NM 87508

Time Zone: (UTC-07:00) Mountain Time (US & Canada)

tami.concha@state.nm.us

IP Address: 174.56.109.88

Record Tracking

Status: Original

Holder: Tami Concha

Location: DocuSign

7/8/2022 3:28:00 PM

tami.concha@state.nm.us

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: GSD

Location: DocuSign

Signer Events

Signature

Timestamp

Natalie Martinez

natalie.martinez1@state.nm.us

New Mexico General Services

Security Level: Email, Account Authentication
(None)

MM

Signature Adoption: Pre-selected Style

Using IP Address: 207.155.55.132

Sent: 7/8/2022 3:47:23 PM

Viewed: 7/8/2022 3:48:12 PM

Signed: 7/8/2022 3:49:01 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Tami Concha

tami.concha@state.nm.us

Procurement Officer-A

New Mexico General Services, State Purchasing
Division

Security Level: Email, Account Authentication
(None)

JC

Signature Adoption: Pre-selected Style

Using IP Address: 174.56.109.88

Sent: 7/8/2022 3:49:03 PM

Viewed: 7/8/2022 3:50:00 PM

Signed: 7/8/2022 3:50:06 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Casi Finstad

casi.finstad@wexinc.com

Security Level: Email, Account Authentication
(None)

CF

Signature Adoption: Pre-selected Style

Using IP Address: 163.116.133.118

Sent: 7/8/2022 3:50:07 PM

Resent: 7/11/2022 11:36:10 AM

Viewed: 7/11/2022 12:18:01 PM

Signed: 7/11/2022 12:19:44 PM

Electronic Record and Signature Disclosure:

Accepted: 7/8/2022 4:00:54 PM

ID: 576411f7-3566-4a5f-ac88-68427f359c2e

Jason Price

jason.price@wexinc.com

Security Level: Email, Account Authentication
(None)

Jason Price

Signature Adoption: Pre-selected Style

Using IP Address: 4.1.4.226

Sent: 7/11/2022 12:19:46 PM

Viewed: 7/11/2022 1:00:59 PM

Signed: 7/11/2022 1:01:34 PM

Electronic Record and Signature Disclosure:

Accepted: 7/11/2022 1:00:59 PM

ID: ed994523-e666-40c3-95b1-99f080936494

Agenda Item #7.1.

Signer Events	Signature	Timestamp
Valerie Paulk Valerie.Paulk@state.nm.us Signed of Behalf of State Purchasing Agent New Mexico General Services Security Level: Email, Account Authentication (None)	<i>Valerie Paulk</i> Signature Adoption: Pre-selected Style Using IP Address: 75.161.227.238 Signed using mobile	Sent: 7/11/2022 1:01:35 PM Viewed: 7/11/2022 1:06:22 PM Signed: 7/11/2022 1:08:15 PM
Electronic Record and Signature Disclosure: Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/8/2022 3:47:23 PM
Certified Delivered	Security Checked	7/11/2022 1:06:22 PM
Signing Complete	Security Checked	7/11/2022 1:08:15 PM
Completed	Security Checked	7/11/2022 1:08:15 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPInfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPDinfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.

RESOLUTION 25-075

A RESOLUTION AUTHORIZING AN INCREASE IN THE NOT-TO-EXCEED AMOUNT OF ELECTRONIC FUEL CARD SERVICES PURCHASES FROM WEX BANK DBA WRIGHT EXPRESS FSC (WEX) OF CAROL STREAM, ILLINOIS, VIA NEW MEXICO STATE PURCHASING DIVISION (NMSPD) AGREEMENT NO. 20-00000-22-00058, TO AN AMOUNT NOT-TO-EXCEED \$1,000,000, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.

The City Council is informed that:

WHEREAS, on October 16, 2023, the City Council approved Resolution 24-040, authorizing a not-to-exceed amount of \$350,000 annually for Electronic Fuel Card Services with Wex Bank DBA Wright Express FSC (WEX) of Carol Stream, Illinois; and

WHEREAS, Fleet Services is in the process of transitioning all Police and Fire Department vehicles and equipment to fully utilize the Wex Electronic Fuel Card Services due to the decommissioning of the fueling site at the Hadley Complex in May 2024; and

WHEREAS, Fleet staff is requesting authorization to increase the not-to-exceed amount to \$1,000,000 with Wex Bank DBA Wright Express FSC (WEX) of Carol Stream, Illinois, via New Mexico State Purchasing Division (NMSPD) Agreement No. 20-00000-22-00058, subject to approved budget appropriations, for a term through December 31, 2025.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

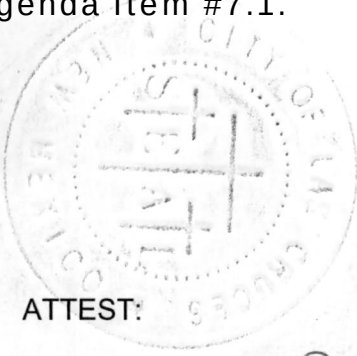
THAT the Resolution authorizing an increase in the not-to-exceed amount for Electronic Fuel Card Services, utilizing NMSPD Agreement No. 20-00000-22-00058 to \$1,000,000 is hereby approved.

(II)

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

DONE AND APPROVED this 06 day of January 2025

Agenda Item #7.1.

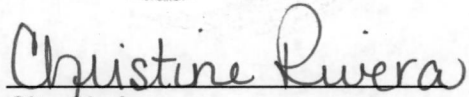


APPROVED



Mayor

ATTEST:



City Clerk

Moved by: Johana Bencomo

Seconded by: Becki Graham

AYES Johana Bencomo, Becki Graham, Becky Corran, Cassie McClure, William Mattiace, Eric Enriquez

NAYS



City Council Action and Executive Summary

25-075

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:	Adopted: January 6, 2025		
Drafter:	Lisa Padron	Department:	Financial Services
Program:	Purchasing	Line of Business:	Procure-to-Pay
Title:	A RESOLUTION AUTHORIZING AN INCREASE IN THE NOT-TO-EXCEED AMOUNT OF ELECTRONIC FUEL CARD SERVICES PURCHASES FROM WEX BANK DBA WRIGHT EXPRESS FSC (WEX) OF CAROL STREAM, ILLINOIS, VIA NEW MEXICO STATE PURCHASING DIVISION (NMSPD) AGREEMENT NO. 20-00000-22-00058, TO AN AMOUNT NOT-TO-EXCEED \$1,000,000, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.		

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

To increase the not-to-exceed amount for Electronic Fuel Card Services purchases.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On October 16, 2023, the City of Las Cruces (City) Council approved Resolution 24-040, authorizing a not-to-exceed amount of \$350,000 annually for Electronic Fuel Card Services with Wex Bank DBA Wright Express FSC (WEX) of Carol Stream, Illinois, with a term to coincide with New Mexico State Purchasing Division (NMSPD) Price Agreement No. 20-00000-22-0058.

Fleet Services is in the process of transitioning all Police and Fire Department vehicles and equipment to fully utilize the Wex Electronic Fuel Card Services due to the decommissioning of the fueling site at the Hadley Complex in May 2024.

Fleet staff are requesting authorization to increase the not-to-exceed amount to \$1,000,000 with Wex Bank DBA Wright Express FSC (WEX) of Carol Stream, Illinois, via New Mexico State Purchasing Division (NMSPD) Agreement No. 20-00000-22-00058, subject to approved budget appropriations, for a term through December 31, 2025.

SUPPORT INFORMATION:

Attachment "A" NMSPD Agreement No. 20-00000-22-00058 - Wex
Attachment "B" Resolution 24-040

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

Agenda Item #7.1.

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes", this action will authorize the increase of the not-to-exceed amount to \$1,000,000 for the Electronic Fuel Card Services.
2. Vote "No", this action will deny the increase of the not-to-exceed amount to \$1,000,000 for the Electronic Fuel Card Services which could negatively impact City operations and continuity of services.
3. Vote to "Amend", this action could modify the Resolution based on direction by City Council to staff.
4. Vote to "Table", this action could delay the City in purchasing fuel required for police and fire department vehicles and equipment.



State of New Mexico
General Services Department
State Purchasing Division

Statewide Price Agreement Cover Page

Awarded Vendor:
0000045609
WEX Bank
97 Darling Avenue
So. Portland, ME 04106

Contact: Ryan Kelly
Email: ryan.kelly@wexinc.com
Telephone No.: (952) 922-1104

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law

Invoice:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law

Agreement Number: 20-00000-22-00058

NASPO Master Agreement No.: 00819

Payment Terms: Net 30

F.O.B.: Destination

Delivery: As Requested

Procurement Specialist: Tami Concha

Telephone No.: 505-660-3671

Email: Tami.Concha@state.nm.us

JC

Title: Fleet Card Services

Term: July 8, 2022 thru December 31, 2025

NASPO ValuePoint Master Agreement Link: <https://www.naspovaluepoint.org/portfolio/fleet-card-services-2021-2025/wex-bank/>

The attached Agreement is made subject to the "terms and conditions" as indicated.

NASPO ValuePoint
PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

Master Agreement #: 00819

Contractor: **WEX BANK**

Participating Entity: **STATE OF NEW MEXICO**

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

MASTER AGREEMENT TERMS AND CONDITIONS:

1. **Scope:** This addendum covers the *Fleet Card Services* led by the State of *Washington* for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. By this reference, this Participating Addendum incorporates the Master Agreement between the State of Washington and Fleet Card Services with the exceptions, clarifications, and modifications as set forth in this addendum and in accordance with Section 33 of this addendum.
2. **Participation:** This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of *New Mexico*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Ryan Kelly
Address:	97 Darling Avenue So. Portland, ME 04106
Telephone:	Office (952) 922-1104 Cell (612) 213-7699
Email:	ryan.kelly@wexinc.com

Participating Entity

Name:	Tami Concha – State of New Mexico
Address:	1100 Saint Francis Dr., Santa Fe, New Mexico 87505
Telephone:	(505) 660-3671
Email:	Tami.Concha@state.nm.us

NASPO ValuePoint
PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

1. Taxes:

As applicable, the Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage.

Reserved

E. Performance Bond.

Reserved

2. Term:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE STATE PURCHASING AGENT. This Agreement shall begin on date approved by the State Purchasing Agent and end on December 31, 2025. The Participating State reserves the right to extend this agreement, pursuant to the term in the Master Agreement. In the event that a local or regional agency submits a PO or enters into an Addendum pursuant to the terms of this Participating Addendum, termination of this Addendum shall not impact the term of the subordinate ordering document, unless the Parties to that ordering document agree otherwise

NASPO ValuePoint
PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

in writing (including through specifying a specific term of services that extends beyond the term of this document).

3. Termination:

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause.

B. Notice; Procuring Agency Opportunity to Cure.

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for all purchases made on WEX cards and any fees accrued prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

4. Appropriations:

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, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor, provided that the Procuring Agency remains responsible for all outstanding balances

NASPO ValuePoint
PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

and fees as set forth in this Agreement. Except as set forth in the preceding sentence, the Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. Status of Contractor:

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

6. Conflict of Interest; Governmental Conduct Act:

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

- 1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;
- 2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
- 3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor

NASPO ValuePoint
PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

7. Amendment:

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. Reserved.

8. Merger:

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or

NASPO ValuePoint
PARTICIPATING ADDENDUM



FLEET CARD SERVICES
(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT
THE SOLE DISCRETION OF THE LEAD STATE)
Led by the State of Washington

understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

9. Penalties for violation of law:

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

10. Equal Opportunity Compliance:

The Contractor agrees to abide by federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, which are applicable Contractor, pertaining to equal employment opportunity. In accordance with applicable laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

11. Workers Compensation:

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

12. Applicable Law:

Reserved.

13. Records and Financial Audit:

Reserved

14. Invalid Term or Condition:

Reserved.

15. Enforcement of Agreement:

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective

NASPO ValuePoint
PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

16. Non-Collusion:

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

17. Notices:

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Procuring Agency:

Mark Hayden, State Purchasing Agent
State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM 87505

To the Contractor:

Ryan Kelly
97 Darling Avenue So. Portland, ME 04106
Office (952) 922-1104 Cell (612) 213-7699
ryan.kelly@wexinc.com

18. Succession:

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

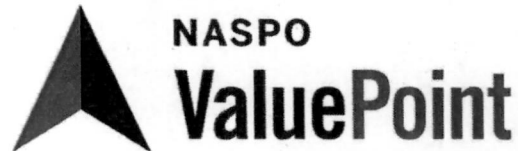
19. Headings:

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

20. Default/Breach:

The Procuring Agency shall have the same rights set forth in Section 16 of the Master Agreement as Enterprise Services with respect to this Participating Addendum. For the avoidance of doubt, the Procuring Agency shall have no rights to terminate the Master Agreement or any other Addendum executed by a customer of Contractor.

NASPO ValuePoint
PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

21. Equitable Remedies:

Reserved.

22. New Mexico Employees Health Coverage: The following requirements shall apply to Contractor's business operations within the state of New Mexico, if any:

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://bewellnm.com>.

23. Indemnification:

Reserved.

24. Default and Force Majeure:

The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

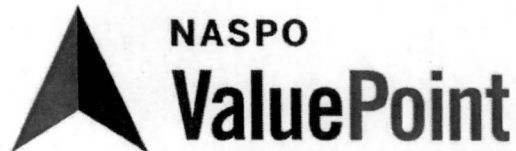
25. Assignment:

Reserved.

26. Subcontracting:

Reserved.

NASPO ValuePoint
PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

27. Inspection of Plant:

Reserved

28. Commercial Warranty:

Reserved

29. Condition of Proposed Items:

Reserved

30. Release:

Reserved.

31. Confidentiality:

Reserved

32. Contractor Personnel:

Reserved

33. Incorporation by Reference and Precedence:

In the event of a dispute under this Agreement between the Procuring Agency and Contractor, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Participating Addendum in reverse chronological order; (2) the Participating Addendum; (3) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

34. Inspection:

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

35. Inspection of Services:

Upon request by the Procuring Agency, not more than once per year, Contractor will provide a copy of its SOC 1 or 2 report, as applicable.

NASPO ValuePoint
PARTICIPATING ADDENDUM



FLEET CARD SERVICES
(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT
THE SOLE DISCRETION OF THE LEAD STATE)
 Led by the State of Washington

36. Insurance:

Reserved

37. Dispute Resolution:

The parties shall cooperate to resolve any dispute pertaining to this Participating Addendum efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior manager of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute. For the avoidance of doubt, this Section 15 shall not apply to disputed transactions, which shall be governed by Exhibit G Section 16 of the Master Agreement.

38. New Mexico Administration Reporting and Fees:

All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of **percent (1.00 %)** The 1% Administrative Fee is not an additional percentage added to the rebate being offered by Contractor pursuant to the NASPO ValuePoint Master Agreement, but rather, it is based on the qualified rebate amount for all accounts and a direct share of the rebate (e.g. 1.7% rebate (170 basis points), 100 bps (1%) would be paid as the administration fee and the remaining 70 bps (.7%) would go to the account holder)..This assessment shall apply to all New Mexico state agencies and local public bodies.

The Contractor agrees to provide a utilization report to SPD for all sales and/or services, other revenues including commissions, and fees charged under this Agreement, subtotaled by procuring agency name, in accordance with the following schedule:

Quarter:	Period Ending:	Report Due Date:
First	September 30	November 30
Second	December 31	February 28 (29)
Third	March 31	May 31
Fourth	June 30	August 31

Sample Reports can be found at:

<http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors>

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

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FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

The quarterly report shall include the gross total sales for the quarter; zero sales during the quarter shall be reported, and partial quarters at the beginning or end of the contract term shall also be reported. The report shall be accompanied with a check payable to the State Purchasing Division for an amount equal to the 1% of the qualified rebate amount for New Mexico state agencies and local public bodies for the period. The Vendor shall indicate the contract number **SWPA #20-00000-22-00058 on the remittance.**

Send payment of fees through U.S. Mail or Courier Delivery:

New Mexico State Purchasing Division
Joseph Montoya Building Room 2016,
1100 St. Francis Drive, Santa Fe, New Mexico 87505
or P.O. Box 6850, Santa Fe, New Mexico 87502

For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 469-2679 or (505) 795-4512

39. Lease Agreements: *Reserved*

40. Subcontractors: All contactors, dealers, and resellers authorized in the State of *State of New Mexico*, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

41. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

NASPO ValuePoint
PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of New Mexico	Contractor: WEX Bank
Signature: <i>Valerie Paulk</i>	Signature: <i>Jason Price</i>
☒ This Agreement was signed on behalf of the State Purchasing Agent.	
Name: Mark Hayden	Name: Jason Price
Title: State Purchasing Agent	Title: President & CEO
Date: 7/11/2022	Date: 7/11/2022

CF

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at info@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.

Certificate Of Completion

Envelope Id: 9C28E4D070E848659600074B759B78E8

Status: Completed

Subject: Please Electronically Sign: 20-00000-22-00058 Fleet Card Services PA

Source Envelope:

Document Pages: 13

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 3

Tami Concha

AutoNav: Enabled

13 Bataan Blvd

Envelopeld Stamping: Enabled

Santa Fe, NM 87508

Time Zone: (UTC-07:00) Mountain Time (US & Canada)

tami.concha@state.nm.us

IP Address: 174.56.109.88

Record Tracking

Status: Original

Holder: Tami Concha

Location: DocuSign

7/8/2022 3:28:00 PM

tami.concha@state.nm.us

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: GSD

Location: DocuSign

Signer Events

Signature

Timestamp

Natalie Martinez

natalie.martinez1@state.nm.us

New Mexico General Services

Security Level: Email, Account Authentication
(None)

MM

Signature Adoption: Pre-selected Style
Using IP Address: 207.155.55.132

Sent: 7/8/2022 3:47:23 PM

Viewed: 7/8/2022 3:48:12 PM

Signed: 7/8/2022 3:49:01 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Tami Concha

tami.concha@state.nm.us

Procurement Officer-A

New Mexico General Services, State Purchasing
Division

Security Level: Email, Account Authentication
(None)

TC

Signature Adoption: Pre-selected Style
Using IP Address: 174.56.109.88

Sent: 7/8/2022 3:49:03 PM

Viewed: 7/8/2022 3:50:00 PM

Signed: 7/8/2022 3:50:06 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Casi Finstad

casi.finstad@wexinc.com

Security Level: Email, Account Authentication
(None)

CF

Signature Adoption: Pre-selected Style
Using IP Address: 163.116.133.118

Sent: 7/8/2022 3:50:07 PM

Resent: 7/11/2022 11:36:10 AM

Viewed: 7/11/2022 12:18:01 PM

Signed: 7/11/2022 12:19:44 PM

Electronic Record and Signature Disclosure:

Accepted: 7/8/2022 4:00:54 PM

ID: 576411f7-3566-4a5f-ac88-68427f359c2e

Jason Price

jason.price@wexinc.com

Security Level: Email, Account Authentication
(None)

Jason Price

Signature Adoption: Pre-selected Style
Using IP Address: 4.1.4.226

Sent: 7/11/2022 12:19:46 PM

Viewed: 7/11/2022 1:00:59 PM

Signed: 7/11/2022 1:01:34 PM

Electronic Record and Signature Disclosure:

Accepted: 7/11/2022 1:00:59 PM

ID: ed994523-e666-40c3-95b1-99f080936494

Agenda Item #7.1.

Signer Events

Valerie Paulk
 Valerie.Paulk@state.nm.us
 Signed of Behalf of State Purchasing Agent
 New Mexico General Services
 Security Level: Email, Account Authentication
 (None)

Signature

Valerie Paulk

Signature Adoption: Pre-selected Style
 Using IP Address: 75.161.227.238
 Signed using mobile

Timestamp

Sent: 7/11/2022 1:01:35 PM
 Viewed: 7/11/2022 1:06:22 PM
 Signed: 7/11/2022 1:08:15 PM

Electronic Record and Signature Disclosure:

Accepted: 5/29/2020 9:40:59 AM
 ID: f12ca6d0-7cba-4de4-b58f-8180244887ff

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/8/2022 3:47:23 PM
Certified Delivered	Security Checked	7/11/2022 1:06:22 PM
Signing Complete	Security Checked	7/11/2022 1:08:15 PM
Completed	Security Checked	7/11/2022 1:08:15 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPInfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPDinfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to "I agree to use electronic records and signatures," before you click "CONTINUE" within the DocuSign system.

By selecting the check-box next to "I agree to use electronic records and signatures," you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.

RESOLUTION 24-040

A RESOLUTION TO AWARD A PRICE AGREEMENT FOR ELECTRONIC FUEL CARD SERVICES TO WEX BANK DBA WRIGHT EXPRESS FSC (WEX) OF CAROL STREAM, ILLINOIS, IN AN AMOUNT NOT TO EXCEED \$350,000.00 ANNUALLY, FOR A TERM TO COINCIDE WITH NEW MEXICO STATE PURCHASING DIVISION (NMSPD) PRICE AGREEMENT NO. 20-00000-22-00058, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.

The City Council is informed that:

WHEREAS, The Fleet Services program manages two fuel sites located at 1501 E. Hadley Ave and 680 N. Motel Blvd, which provide unleaded, diesel, and biodiesel fuel for City vehicles and equipment; and

WHEREAS, the fuel sites are out of response district for all but two of the City's fire stations and public safety complexes; and

WHEREAS, Las Cruces Municipal Code, Chapter 24, Section 24-4 (25) – Authorized exemptions, allow the City to utilize contracts from other entities; and

WHEREAS, WEX Bank of Carol Stream, Illinois is currently under contract with New Mexico State Purchasing Division (NMSPD) Price Agreement No 20-00000-22-00058; and

WHEREAS, staff is requesting approval from the City Council to enter into a prices agreement on an as-need basis, in an amount not to exceed \$350,000.00 annually, for a term that coincides with NMSPD No. 20-00000-22-00058, subject to approved budget appropriations.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the Resolution authorizing the City to enter into a price agreement, utilizing NMSPD No. 20-00000-22-00058, as shown in Exhibit "A" attached hereto, and part of this resolution is hereby approved.

(II)

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

DONE AND APPROVED this 16 day of October 2023



APPROVED


Mayor

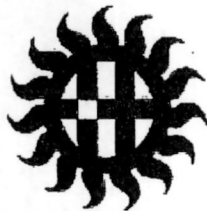

City Clerk

Moved by: Tessa Abeyta

Seconded by: Becki Graham

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS



24-040

City Council Action and Executive Summary

Type of Action:
☒ Resolution

☐ Ordinance

☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A
1st Reading:	Adopted: October 16, 2023
Drafter: Virginia Barela	Department: Financial Services
Program: Purchasing	Line of Business: Procure-to-Pay
Title:	A RESOLUTION TO AWARD A PRICE AGREEMENT FOR ELECTRONIC FUEL CARD SERVICES TO WEX BANK DBA WRIGHT EXPRESS FSC (WEX) OF CAROL STREAM, ILLINOIS, IN AN AMOUNT NOT TO EXCEED \$350,000.00 ANNUALLY, FOR A TERM TO COINCIDE WITH NEW MEXICO STATE PURCHASING DIVISION (NMSPD) PRICE AGREEMENT NO. 20-00000-22-00058, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

Award price agreement.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Fleet Services Section (Fleet) of the City of Las Cruces (City) is responsible for the acquisition and management of fuel provided to City Fleet customers. Fleet currently manages three fuel sites that provide unleaded gasoline with an octane level of 87, diesel, and/or biodiesel fuel.

At this time, the two fuel sites located at 1501 E. Hadley and one fuel site located at 680 N. Motel are out of district for five of the eight fire stations. It is not in the best interest of public safety for emergency response crews to leave their designated districts. If crews left their districts, this would negatively affect response times in the event of an emergency. Therefore, it is not advisable to use the Fleet fueling stations. Additionally, the City has active Police Department units that require a higher octane than that which is provided at our City's fuel sites. The electronic fuel card service allows the units to be fueled within their district and with the higher octane levels by choosing private fueling stations that meet their needs.

Las Cruces Municipal Code, Chapter 24, Section 24-4 (25) – Authorized exemptions, allow the City to utilize contracts from other entities. Utilization of these contracts is currently the most effective and cost-efficient manner for staff to procure supplies and services for the operational needs of the City.

Due to the continuous fluctuation of fuel prices and public safety demands, Fleet anticipates purchasing beyond the \$100,000.00 threshold which requires City Council approval.

The Electronic Fuel Card Services Agreement will coincide with the terms of NMSPD No. 20-00000-22-00058, contingent on sufficient budget appropriations.

SUPPORT INFORMATION:

Exhibit "A" NMSPD 20-00000-22-00058 WEX

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:

AVAILABLE AMOUNT:

EXPENDITURE AMOUNT:

Funding Source(s):

VARIOUS

Overall Budget Impact:

Individual department purchase order requests will be dependent upon available budgeted amounts and funds approved through the Financial Services Department Budget program.

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the resolution to award a price agreement for electronic fuel card services to WEX Bank dba Wright Express FSC of Carol Stream, Illinois, in an amount not to exceed \$350,000.00 annually, for a term to coincide with NMSPD No. 20-00000-22-00058, subject to approved budget appropriations.
2. Vote "No"; this will deny the resolution and prohibit the price agreement for electronic fuel card services. This would require Fleet Services to pursue other options as directed by the City Council which may result in a higher cost to the City and negatively impact safety services.
3. Vote to "Amend"; this could modify the resolution and advise staff of necessary adjustments as deemed appropriate.
4. Vote to "Table"; this could delay the indefinite cost, indefinite quantity price agreement for electronic fuel card services and may negatively impact safety services.



CITY OF LAS CRUCES

EXISTING CONTRACT PURCHASE AGREEMENT

NEW MEXICO STATE PURCHASING DIVISION CONTRACT NO. 20-00000-22-00058

ELECTRONIC FUEL CARD SERVICES

Pursuant to terms and conditions of New Mexico State Purchasing Division (NMSPD) Contract No. 20-00000-22-00058, , between the WEX Bank dba Wright Express FSC (WEX) and CONTRACTOR NAME (CONTRACTOR), as amended and incorporated herein by reference, the City of Las Cruces (CITY) and CONTRACTOR hereby agree on this ____ day of October, 2023, as follows:

1. This Purchase Agreement is intended to be an Existing Contract Purchase Agreement in accordance with LCMC Chapter 24, Article I, Sec. 24-4 (25).
2. In a satisfactory and proper manner, the CONTRACTOR shall provide services pursuant to NMSPD Contract No. 20-00000-22-00058, as set forth in Attachment A, attached hereto and made a part of this Agreement.
3. The effective period of this Agreement shall coexist with NMSPD Contract No. 20-00000-22-00058.
4. In consideration for the satisfactory delivery of services, the CONTRACTOR shall be compensated pursuant to the cost terms of NMSPD Contract No. 20-00000-22-00058. Cost of services shall be paid by CITY within 30 days upon receipt of undisputed invoice.
5. This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico. Contractor shall abide and be governed by all applicable state law, City of Las Cruces ordinances, and laws regarding the Contractor's services or any work done pursuant to this Agreement.
6. The Contractor shall defend, indemnify, and hold harmless the City, its officers, and employees from and against any and all losses suffered by the City, its officers, and employees, and any special claims, liabilities or penalties asserted against the City, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor, subcontractor, subgrantee, or other agent of the Contractor. This covenant shall survive the termination of this Agreement.
7. That in the event any of the provisions of this Contract are violated by the Contractor or by any of his Subcontractors, the City may serve written notice upon the Contractor and, if a surety exists, upon the surety of its intention to terminate such Contract, such notices to contain the reasons for such intention to terminate the Contract; and, unless within ten (10) days after and satisfactory arrangement for correction be made, the Contract shall, upon the expiration of said ten (10) days,

cease and terminate. On the event of any such termination, if a surety exists, the City shall immediately serve notice thereof upon the surety who shall have the right to take over and perform the Contract, provided, however, that if the surety does not commence performance thereof within thirty (30) days from the date of the mailing of such surety of notice of termination, the City may take over the work and prosecute the same to completion by the Contract for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the City for any excess cost occasioned the City thereby; and in such event, the City may take possession of and utilize in completing the work, such materials, appliances, and plans as may be on the site of the work and necessary therefore. This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the City, for its convenience or because the project has been permanently abandoned, but only upon fifteen (15) calendar days written notice to Contractor.

8. The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the City to Contractor. The City's decisions as to whether sufficient appropriations and authorizations exist shall be accepted by Contractor and shall be final.
9. Contractor will maintain records for five (5) years after the completion of the project, indicating dates, length of time, and services rendered. The City has the right to audit billings both before and after payment and contest any billing or portion thereof. Payment under this Agreement does not foreclose the City's right to recover excessive or illegal payments.
10. Contractor represents and warrants the following:
 - a. No Current or Prior Conflict of Interest. That Contractor has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement.
 - b. Notice of Potential Conflict. If any such actual or potential conflict of interest arises under this Agreement, Contractor shall immediately inform the City in writing of such conflict.
 - c. Termination for Material Conflict. If, in the reasonable judgement of the City, such conflict poses a conflict to and with the performance of Contractor's obligations under this Agreement, or is otherwise a violation of the City's current policy or ordinances, then the City may terminate the Agreement immediately upon written notice to Contractor; such termination of the agreement shall be effective upon the receipt of such notice by Contractor.
11. The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

12. In the event that a dispute arises between City and Contractor under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

WEX BANK DBA WRIGHT EXPRESS
FSC

CITY OF LAS CRUCES

BY: _____
Name
Title

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

 10/2/23
City Attorney

Attachment A



**State of New Mexico
General Services Department
State Purchasing Division**

Statewide Price Agreement Cover Page

Awarded Vendor:

0000045609

WEX Bank

97 Darling Avenue

So. Portland, ME 04106

Contact: Ryan Kelly

Email: ryan.kelly@wexinc.com

Telephone No.: (952) 922-1104

Agreement Number: **20-00000-22-00058**

NASPO Master Agreement No.: **00819**

Payment Terms: **Net 30**

F.O.B.: **Destination**

Delivery: **As Requested**

Ship To:

**All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law**

Procurement Specialist: **Tami Concha** JC

Telephone No.: **505-660-3671**

Email: **Tami.Concha@state.nm.us**

Invoice:

**All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law**

Title: Fleet Card Services

Term: July 8, 2022 thru December 31, 2025

NASPO ValuePoint Master Agreement Link: <https://www.naspovaluepoint.org/portfolio/fleet-card-services-2021-2025/wex-bank/>

The attached Agreement is made subject to the "terms and conditions" as indicated.

PARTICIPATING ADDENDUM



NASPO

ValuePoint

FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

Master Agreement #: 00819

Contractor: **WEX BANK**

Participating Entity: **STATE OF NEW MEXICO**

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

MASTER AGREEMENT TERMS AND CONDITIONS:

1. **Scope:** This addendum covers the *Fleet Card Services* led by the State of *Washington* for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. By this reference, this Participating Addendum incorporates the Master Agreement between the State of Washington and Fleet Card Services with the exceptions, clarifications, and modifications as set forth in this addendum and in accordance with Section 33 of this addendum.
2. **Participation:** This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of *New Mexico*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Ryan Kelly
Address:	97 Darling Avenue So. Portland, ME 04106
Telephone:	Office (952) 922-1104 Cell (612) 213-7699
Email:	ryan.kelly@wexinc.com

Participating Entity

Name:	Tami Concha – State of New Mexico
Address:	1100 Saint Francis Dr., Santa Fe, New Mexico 87505
Telephone:	(505) 660-3671
Email:	Tami.Concha@state.nm.us

PARTICIPATING ADDENDUM



FLEET CARD SERVICE

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

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4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

1. Taxes:

As applicable, the Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage.

Reserved

E. Performance Bond.

Reserved

2. Term:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE STATE PURCHASING AGENT. This Agreement shall begin on date approved by the State Purchasing Agent and end on December 31, 2025. The Participating State reserves the right to extend this agreement, pursuant to the term in the Master Agreement. In the event that a local or regional agency submits a PO or enters into an Addendum pursuant to the terms of this Participating Addendum, termination of this Addendum shall not impact the term of the subordinate ordering document, unless the Parties to that ordering document agree otherwise

PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

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in writing (including through specifying a specific term of services that extends beyond the term of this document).

3. Termination:

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause.

B. Notice; Procuring Agency Opportunity to Cure.

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for all purchases made on WEX cards and any fees accrued prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

4. Appropriations:

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, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor, provided that the Procuring Agency remains responsible for all outstanding balances

PARTICIPATING ADDENDUM



NASPO

ValuePoint

FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

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and fees as set forth in this Agreement. Except as set forth in the preceding sentence, the Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. Status of Contractor:

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

6. Conflict of Interest; Governmental Conduct Act:

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

- 1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;
- 2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
- 3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor

PARTICIPATING ADDENDUM



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is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

7. Amendment:

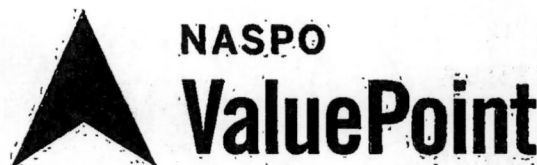
A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. Reserved.

8. Merger:

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or

PARTICIPATING ADDENDUM



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understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

9. Penalties for violation of law:

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

10. Equal Opportunity Compliance:

The Contractor agrees to abide by federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, which are applicable Contractor, pertaining to equal employment opportunity. In accordance with applicable laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

11. Workers Compensation:

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

12. Applicable Law:

Reserved.

13. Records and Financial Audit:

Reserved

14. Invalid Term or Condition:

Reserved.

15. Enforcement of Agreement:

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective

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ValuePoint

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unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

16. Non-Collusion:

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

17. Notices:

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Procuring Agency:

Mark Hayden, State Purchasing Agent
State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM 87505

To the Contractor:

Ryan Kelly
97 Darling Avenue So. Portland, ME 04106
Office (952) 922-1104 Cell (612) 213-7699
ryan.kelly@wexinc.com

18. Succession:

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

19. Headings:

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

20. Default/Breach:

The Procuring Agency shall have the same rights set forth in Section 16 of the Master Agreement as Enterprise Services with respect to this Participating Addendum. For the avoidance of doubt, the Procuring Agency shall have no rights to terminate the Master Agreement or any other Addendum executed by a customer of Contractor.

PARTICIPATING ADDENDUM



FLEET CARD SERVICES

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21. Equitable Remedies:

Reserved.

22. New Mexico Employees Health Coverage: The following requirements shall apply to Contractor's business operations within the state of New Mexico, if any:

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://bewellnm.com>.

23. Indemnification:

Reserved.

24. Default and Force Majeure:

The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

25. Assignment:

Reserved.

26. Subcontracting:

Reserved.

PARTICIPATING ADDENDUM



FLEET CARD SERVICESS

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

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27. Inspection of Plant:

Reserved

28. Commercial Warranty:

Reserved

29. Condition of Proposed Items:

Reserved

30. Release:

Reserved.

31. Confidentiality:

Reserved

32. Contractor Personnel:

Reserved

33. Incorporation by Reference and Precedence:

In the event of a dispute under this Agreement between the Procuring Agency and Contractor, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Participating Addendum in reverse chronological order; (2) the Participating Addendum; (3) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

34. Inspection:

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

35. Inspection of Services:

Upon request by the Procuring Agency, not more than once per year, Contractor will provide a copy of its SOC 1 or 2 report, as applicable.

PARTICIPATING ADDENDUM



FLEET CARD SERVICES

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

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36. Insurance:

Reserved

37. Dispute Resolution:

The parties shall cooperate to resolve any dispute pertaining to this Participating Addendum efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior manager of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute. For the avoidance of doubt, this Section 15 shall not apply to disputed transactions, which shall be governed by Exhibit G Section 16 of the Master Agreement.

38. New Mexico Administration Reporting and Fees:

All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of **percent (1.00 %)**. The 1% Administrative Fee is not an additional percentage added to the rebate being offered by Contractor pursuant to the NASPO ValuePoint Master Agreement, but rather, it is based on the qualified rebate amount for all accounts and a direct share of the rebate (e.g. 1.7% rebate (170 basis points), 100 bps (1%) would be paid as the administration fee and the remaining 70 bps (.7%) would go to the account holder)..This assessment shall apply to all New Mexico state agencies and local public bodies.

The Contractor agrees to provide a utilization report to SPD for all sales and/or services, other revenues including commissions, and fees charged under this Agreement, subtotaled by procuring agency name, in accordance with the following schedule:

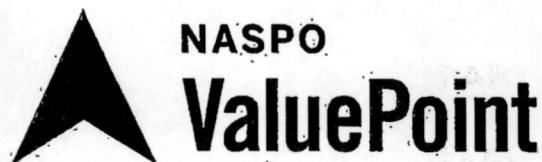
Quarter:	Period Ending:	Report Due Date:
First	September 30	November 30
Second	December 31	February 28 (29)
Third	March 31	May 31
Fourth	June 30	August 31

Sample Reports can be found at:

<http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors>

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

PARTICIPATING ADDENDUM



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The quarterly report shall include the gross total sales for the quarter; zero sales during the quarter shall be reported, and partial quarters at the beginning or end of the contract term shall also be reported. The report shall be accompanied with a check payable to the State Purchasing Division for an amount equal to the 1% of the qualified rebate amount for New Mexico state agencies and local public bodies for the period. The Vendor shall indicate the contract number **SWPA #20-00000-22-00058 on the remittance.**

Send payment of fees through U.S. Mail or Courier Delivery:

New Mexico State Purchasing Division
Joseph Montoya Building Room 2016,
1100 St. Francis Drive, Santa Fe, New Mexico 87505
or P.O. Box 6850, Santa Fe, New Mexico 87502

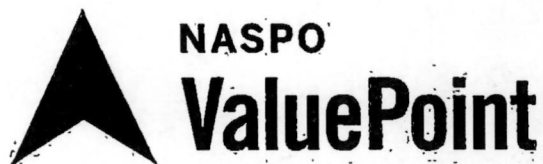
For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 469-2679 or (505) 795-4512

39. Lease Agreements: *Reserved*

40. Subcontractors: All contactors, dealers, and resellers authorized in the State of *State of New Mexico*, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

41. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

PARTICIPATING ADDENDUM



FLEET CARD SERVICE

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of New Mexico	Contractor: WEX Bank
Signature: <i>Valerie Paulk</i>	Signature: <i>Jason Price</i>
☒ This Agreement was signed on behalf of the State Purchasing Agent.	
Name: Mark Hayden	Name: Jason Price
Title: State Purchasing Agent	Title: President & CEO
Date: 7/11/2022	Date: 7/11/2022

CF

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at info@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.

Certificate Of Completion

Envelope Id: 9C28E4D070E848659600074B759B78E8

Status: Completed

Subject: Please Electronically Sign: 20-00000-22-00058 Fleet Card Services PA

Source Envelope:

Document Pages: 13

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 3

Tami Concha

AutoNav: Enabled

13 Bataan Blvd

Envelopeld Stamping: Enabled

Santa Fe, NM 87508

Time Zone: (UTC-07:00) Mountain Time (US & Canada)

tami.concha@state.nm.us

IP Address: 174.56.109.88

Record Tracking

Status: Original

Holder: Tami Concha

Location: DocuSign

7/8/2022 3:28:00 PM

tami.concha@state.nm.us

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: GSD

Location: DocuSign

Signer Events**Signature****Timestamp**

Natalie Martinez

natalie.martinez1@state.nm.us

New Mexico General Services

Security Level: Email, Account Authentication
(None)

Sent: 7/8/2022 3:47:23 PM

Viewed: 7/8/2022 3:48:12 PM

Signed: 7/8/2022 3:49:01 PM

Signature Adoption: Pre-selected Style

Using IP Address: 207.155.55.132

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Tami Concha

tami.concha@state.nm.us

Procurement Officer-A

New Mexico General Services, State Purchasing
DivisionSecurity Level: Email, Account Authentication
(None)

Sent: 7/8/2022 3:49:03 PM

Viewed: 7/8/2022 3:50:00 PM

Signed: 7/8/2022 3:50:06 PM

Signature Adoption: Pre-selected Style

Using IP Address: 174.56.109.88

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Casi Finstad

casi.finstad@wexinc.com

Security Level: Email, Account Authentication
(None)

Sent: 7/8/2022 3:50:07 PM

Resent: 7/11/2022 11:36:10 AM

Viewed: 7/11/2022 12:18:01 PM

Signed: 7/11/2022 12:19:44 PM

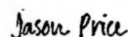
Signature Adoption: Pre-selected Style

Using IP Address: 163.116.133.118

Electronic Record and Signature Disclosure:
Accepted: 7/8/2022 4:00:54 PM
ID: 576411f7-3566-4a5f-ac88-68427f359c2e

Jason Price

jason.price@wexinc.com

Security Level: Email, Account Authentication
(None)

Sent: 7/11/2022 12:19:46 PM

Viewed: 7/11/2022 1:00:59 PM

Signed: 7/11/2022 1:01:34 PM

Signature Adoption: Pre-selected Style

Using IP Address: 4.1.4.226

Electronic Record and Signature Disclosure:
Accepted: 7/11/2022 1:00:59 PM
ID: ed994523-e666-40c3-95b1-99f080936494

Agenda Item #7.1.

Signer Events	Signature	Timestamp
Valerie Paulk Valerie.Paulk@state.nm.us Signed of Behalf of State Purchasing Agent New Mexico General Services Security Level: Email, Account Authentication (None)	<i>Valerie Paulk</i> Signature Adoption: Pre-selected Style Using IP Address: 75.161.227.238 Signed using mobile	Sent: 7/11/2022 1:01:35 PM Viewed: 7/11/2022 1:06:22 PM Signed: 7/11/2022 1:08:15 PM
Electronic Record and Signature Disclosure: Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/8/2022 3:47:23 PM
Certified Delivered	Security Checked	7/11/2022 1:06:22 PM
Signing Complete	Security Checked	7/11/2022 1:08:15 PM
Completed	Security Checked	7/11/2022 1:08:15 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPDinfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPDinfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPDinfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPDinfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to "I agree to use electronic records and signatures," before you click "CONTINUE" within the DocuSign system.

By selecting the check-box next to "I agree to use electronic records and signatures," you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.

RESOLUTION 24-040

A RESOLUTION TO AWARD A PRICE AGREEMENT FOR ELECTRONIC FUEL CARD SERVICES TO WEX BANK DBA WRIGHT EXPRESS FSC (WEX) OF CAROL STREAM, ILLINOIS, IN AN AMOUNT NOT TO EXCEED \$350,000.00 ANNUALLY, FOR A TERM TO COINCIDE WITH NEW MEXICO STATE PURCHASING DIVISION (NMSPD) PRICE AGREEMENT NO. 20-00000-22-00058, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.

The City Council is informed that:

WHEREAS, The Fleet Services program manages two fuel sites located at 1501 E. Hadley Ave and 680 N. Motel Blvd, which provide unleaded, diesel, and biodiesel fuel for City vehicles and equipment; and

WHEREAS, the fuel sites are out of response district for all but two of the City's fire stations and public safety complexes; and

WHEREAS, Las Cruces Municipal Code, Chapter 24, Section 24-4 (25) – Authorized exemptions, allow the City to utilize contracts from other entities; and

WHEREAS, WEX Bank of Carol Stream, Illinois is currently under contract with New Mexico State Purchasing Division (NMSPD) Price Agreement No 20-00000-22-00058; and

WHEREAS, staff is requesting approval from the City Council to enter into a prices agreement on an as-need basis, in an amount not to exceed \$350,000.00 annually, for a term that coincides with NMSPD No. 20-00000-22-00058, subject to approved budget appropriations.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the Resolution authorizing the City to enter into a price agreement, utilizing NMSPD No. 20-00000-22-00058, as shown in Exhibit "A" attached hereto, and part of this resolution is hereby approved.

(II)

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

DONE AND APPROVED this 16 day of October 2023

APPROVED


Mayor

ATTEST

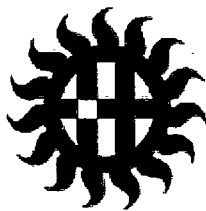

City Clerk

Moved by: Tessa Abeyta

Seconded by: Becki Graham

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS



City Council Action and Executive Summary

24-040
Type of Action:
☒ Resolution

☐ Ordinance

☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A
1st Reading:	Adopted: October 16, 2023
Drafter: Virginia Barela	Department: Financial Services
Program: Purchasing	Line of Business: Procure-to-Pay

Title:	A RESOLUTION TO AWARD A PRICE AGREEMENT FOR ELECTRONIC FUEL CARD SERVICES TO WEX BANK DBA WRIGHT EXPRESS FSC (WEX) OF CAROL STREAM, ILLINOIS, IN AN AMOUNT NOT TO EXCEED \$350,000.00 ANNUALLY, FOR A TERM TO COINCIDE WITH NEW MEXICO STATE PURCHASING DIVISION (NMSPD) PRICE AGREEMENT NO. 20-00000-22-00058, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.
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TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

Award price agreement.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Fleet Services Section (Fleet) of the City of Las Cruces (City) is responsible for the acquisition and management of fuel provided to City Fleet customers. Fleet currently manages three fuel sites that provide unleaded gasoline with an octane level of 87, diesel, and/or biodiesel fuel.

At this time, the two fuel sites located at 1501 E. Hadley and one fuel site located at 680 N. Motel are out of district for five of the eight fire stations. It is not in the best interest of public safety for emergency response crews to leave their designated districts. If crews left their districts, this would negatively affect response times in the event of an emergency. Therefore, it is not advisable to use the Fleet fueling stations. Additionally, the City has active Police Department units that require a higher octane than that which is provided at our City's fuel sites. The electronic fuel card service allows the units to be fueled within their district and with the higher octane levels by choosing private fueling stations that meet their needs.

Las Cruces Municipal Code, Chapter 24, Section 24-4 (25) – Authorized exemptions, allow the City to utilize contracts from other entities. Utilization of these contracts is currently the most effective and cost-efficient manner for staff to procure supplies and services for the operational needs of the City.

Due to the continuous fluctuation of fuel prices and public safety demands, Fleet anticipates purchasing beyond the \$100,000.00 threshold which requires City Council approval.

The Electronic Fuel Card Services Agreement will coincide with the terms of NMSPD No. 20-00000-22-00058, contingent on sufficient budget appropriations.

SUPPORT INFORMATION:

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:

AVAILABLE AMOUNT:

EXPENDITURE AMOUNT:

Funding Source(s):

VARIOUS

Overall Budget Impact:

Individual department purchase order requests will be dependent upon available budgeted amounts and funds approved through the Financial Services Department Budget program.

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the resolution to award a price agreement for electronic fuel card services to WEX Bank dba Wright Express FSC of Carol Stream, Illinois, in an amount not to exceed \$350,000.00 annually, for a term to coincide with NMSPD No. 20-00000-22-00058, subject to approved budget appropriations.

2. Vote "No"; this will deny the resolution and prohibit the price agreement for electronic fuel card services. This would require Fleet Services to pursue other options as directed by the City Council which may result in a higher cost to the City and negatively impact safety services.

3. Vote to "Amend"; this could modify the resolution and advise staff of necessary adjustments as deemed appropriate.

4. Vote to "Table"; this could delay the indefinite cost, indefinite quantity price agreement for electronic fuel card services and may negatively impact safety services.



CITY OF LAS CRUCES

EXISTING CONTRACT PURCHASE AGREEMENT

NEW MEXICO STATE PURCHASING DIVISION CONTRACT NO. 20-00000-22-00058

ELECTRONIC FUEL CARD SERVICES

Pursuant to terms and conditions of New Mexico State Purchasing Division (NMSPD) Contract No. 20-00000-22-00058, , between the WEX Bank dba Wright Express FSC (WEX) and CONTRACTOR NAME (CONTRACTOR), as amended and incorporated herein by reference, the City of Las Cruces (CITY) and CONTRACTOR hereby agree on this ____ day of October, 2023, as follows:

1. This Purchase Agreement is intended to be an Existing Contract Purchase Agreement in accordance with LCMC Chapter 24, Article I, Sec. 24-4 (25).
2. In a satisfactory and proper manner, the CONTRACTOR shall provide services pursuant to NMSPD Contract No. 20-00000-22-00058, as set forth in Attachment A, attached hereto and made a part of this Agreement.
3. The effective period of this Agreement shall coexist with NMSPD Contract No. 20-00000-22-00058.
4. In consideration for the satisfactory delivery of services, the CONTRACTOR shall be compensated pursuant to the cost terms of NMSPD Contract No. 20-00000-22-00058. Cost of services shall be paid by CITY within 30 days upon receipt of undisputed invoice.
5. This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico. Contractor shall abide and be governed by all applicable state law, City of Las Cruces ordinances, and laws regarding the Contractor's services or any work done pursuant to this Agreement.
6. The Contractor shall defend, indemnify, and hold harmless the City, its officers, and employees from and against any and all losses suffered by the City, its officers, and employees, and any special claims, liabilities or penalties asserted against the City, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor, subcontractor, subgrantee, or other agent of the Contractor. This covenant shall survive the termination of this Agreement.
7. That in the event any of the provisions of this Contract are violated by the Contractor or by any of his Subcontractors, the City may serve written notice upon the Contractor and, if a surety exists, upon the surety of its intention to terminate such Contract, such notices to contain the reasons for such intention to terminate the Contract; and, unless within ten (10) days after and satisfactory arrangement for correction be made, the Contract shall, upon the expiration of said ten (10) days,

cease and terminate. On the event of any such termination, if a surety exists, the City shall immediately serve notice thereof upon the surety who shall have the right to take over and perform the Contract, provided, however, that if the surety does not commence performance thereof within thirty (30) days from the date of the mailing of such surety of notice of termination, the City may take over the work and prosecute the same to completion by the Contract for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the City for any excess cost occasioned the City thereby; and in such event, the City may take possession of and utilize in completing the work, such materials, appliances, and plans as may be on the site of the work and necessary therefore. This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the City, for its convenience or because the project has been permanently abandoned, but only upon fifteen (15) calendar days written notice to Contractor.

8. The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the City to Contractor. The City's decisions as to whether sufficient appropriations and authorizations exist shall be accepted by Contractor and shall be final.
9. Contractor will maintain records for five (5) years after the completion of the project, indicating dates, length of time, and services rendered. The City has the right to audit billings both before and after payment and contest any billing or portion thereof. Payment under this Agreement does not foreclose the City's right to recover excessive or illegal payments.
10. Contractor represents and warrants the following:
 - a. No Current or Prior Conflict of Interest. That Contractor has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement.
 - b. Notice of Potential Conflict. If any such actual or potential conflict of interest arises under this Agreement, Contractor shall immediately inform the City in writing of such conflict.
 - c. Termination for Material Conflict. If, in the reasonable judgement of the City, such conflict poses a conflict to and with the performance of Contractor's obligations under this Agreement, or is otherwise a violation of the City's current policy or ordinances, then the City may terminate the Agreement immediately upon written notice to Contractor; such termination of the agreement shall be effective upon the receipt of such notice by Contractor.
11. The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

12. In the event that a dispute arises between City and Contractor under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

WEX BANK DBA WRIGHT EXPRESS
FSC

CITY OF LAS CRUCES

BY: _____
Name
Title

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

 10/2/23

City Attorney

Attachment A



**State of New Mexico
General Services Department
State Purchasing Division**

Statewide Price Agreement Cover Page

Awarded Vendor:
0000045609
WEX Bank
97 Darling Avenue
So. Portland, ME 04106

Contact: Ryan Kelly
Email: ryan.kelly@wexinc.com
Telephone No.: (952) 922-1104

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law

Invoice:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law

Agreement Number: **20-00000-22-00058**

NASPO Master Agreement No.: **00819**

Payment Terms: **Net 30**

F.O.B.: **Destination**

Delivery: **As Requested**

Procurement Specialist: **Tami Concha** JC

Telephone No.: **505-660-3671**

Email: **Tami.Concha@state.nm.us**

Title: Fleet Card Services

Term: July 8, 2022 thru December 31, 2025

NASPO ValuePoint Master Agreement Link: <https://www.naspovaluepoint.org/portfolio/fleet-card-services-2021-2025/wex-bank/>

The attached Agreement is made subject to the "terms and conditions" as indicated.

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of **Washington**

Master Agreement #: 00819

Contractor: **WEX BANK**

Participating Entity: **STATE OF NEW MEXICO**

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

MASTER AGREEMENT TERMS AND CONDITIONS:

1. Scope: This addendum covers the *Fleet Card Services* led by the State of *Washington* for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. By this reference, this Participating Addendum incorporates the Master Agreement between the State of Washington and Fleet Card Services with the exceptions, clarifications, and modifications as set forth in this addendum and in accordance with Section 33 of this addendum.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of *New Mexico*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Ryan Kelly
Address:	97 Darling Avenue So. Portland, ME 04106
Telephone:	Office (952) 922-1104 Cell (612) 213-7699
Email:	ryan.kelly@wexinc.com

Participating Entity

Name:	Tami Concha – State of New Mexico
Address:	1100 Saint Francis Dr., Santa Fe, New Mexico 87505
Telephone:	(505) 660-3671
Email:	Tami.Concha@state.nm.us

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

1. Taxes:

As applicable, the Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage.

Reserved

E. Performance Bond.

Reserved

2. Term:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE STATE PURCHASING AGENT. This Agreement shall begin on date approved by the State Purchasing Agent and end on December 31, 2025. The Participating State reserves the right to extend this agreement, pursuant to the term in the Master Agreement. In the event that a local or regional agency submits a PO or enters into an Addendum pursuant to the terms of this Participating Addendum, termination of this Addendum shall not impact the term of the subordinate ordering document, unless the Parties to that ordering document agree otherwise

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

Led by the State of Washington

in writing (including through specifying a specific term of services that extends beyond the term of this document).

3. Termination:

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause.

B. Notice; Procuring Agency Opportunity to Cure.

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for all purchases made on WEX cards and any fees accrued prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

4. Appropriations:

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, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor, provided that the Procuring Agency remains responsible for all outstanding balances

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(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

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and fees as set forth in this Agreement. Except as set forth in the preceding sentence, the Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. Status of Contractor:

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

6. Conflict of Interest; Governmental Conduct Act:

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

- 1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;
- 2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
- 3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor

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is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

7. Amendment:

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. Reserved.

8. Merger:

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or

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understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

9. Penalties for violation of law:

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

10. Equal Opportunity Compliance:

The Contractor agrees to abide by federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, which are applicable Contractor, pertaining to equal employment opportunity. In accordance with applicable laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

11. Workers Compensation:

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

12. Applicable Law:

Reserved.

13. Records and Financial Audit:

Reserved

14. Invalid Term or Condition:

Reserved.

15. Enforcement of Agreement:

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective

PARTICIPATING ADDENDUM



FLEET CARD SERVICES

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unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

16. Non-Collusion:

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

17. Notices:

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Procuring Agency:

Mark Hayden, State Purchasing Agent
State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM 87505

To the Contractor:

Ryan Kelly
97 Darling Avenue So. Portland, ME 04106
Office (952) 922-1104 Cell (612) 213-7699
ryan.kelly@wexinc.com

18. Succession:

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

19. Headings:

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

20. Default/Breach:

The Procuring Agency shall have the same rights set forth in Section 16 of the Master Agreement as Enterprise Services with respect to this Participating Addendum. For the avoidance of doubt, the Procuring Agency shall have no rights to terminate the Master Agreement or any other Addendum executed by a customer of Contractor.

PARTICIPATING ADDENDUM**FLEET CARD SERVICES**

(2021-2026 WITH THE OPTION TO EXTEND AN ADDITIONAL 24 MONTHS AT THE SOLE DISCRETION OF THE LEAD STATE)

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21. Equitable Remedies:

Reserved.

22. New Mexico Employees Health Coverage: The following requirements shall apply to Contractor's business operations within the state of New Mexico, if any:

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://bewellnm.com>.

23. Indemnification:

Reserved.

24. Default and Force Majeure:

The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

25. Assignment:

Reserved.

26. Subcontracting:

Reserved.

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27. Inspection of Plant:

Reserved

28. Commercial Warranty:

Reserved

29. Condition of Proposed Items:

Reserved

30. Release:

Reserved.

31. Confidentiality:

Reserved

32. Contractor Personnel:

Reserved

33. Incorporation by Reference and Precedence:

In the event of a dispute under this Agreement between the Procuring Agency and Contractor, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Participating Addendum in reverse chronological order; (2) the Participating Addendum; (3) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

34. Inspection:

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

35. Inspection of Services:

Upon request by the Procuring Agency, not more than once per year, Contractor will provide a copy of its SOC 1 or 2 report, as applicable.

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36. Insurance:

Reserved

37. Dispute Resolution:

The parties shall cooperate to resolve any dispute pertaining to this Participating Addendum efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior manager of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute. For the avoidance of doubt, this Section 15 shall not apply to disputed transactions, which shall be governed by Exhibit G Section 16 of the Master Agreement.

38. New Mexico Administration Reporting and Fees:

All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of **percent (1.00 %)** The 1% Administrative Fee is not an additional percentage added to the rebate being offered by Contractor pursuant to the NASPO ValuePoint Master Agreement, but rather, it is based on the qualified rebate amount for all accounts and a direct share of the rebate (e.g. 1.7% rebate (170 basis points), 100 bps (1%) would be paid as the administration fee and the remaining 70 bps (.7%) would go to the account holder)..This assessment shall apply to all New Mexico state agencies and local public bodies.

The Contractor agrees to provide a utilization report to SPD for all sales and/or services, other revenues including commissions, and fees charged under this Agreement, subtotaled by procuring agency name, in accordance with the following schedule:

Quarter:	Period Ending:	Report Due Date:
First	September 30	November 30
Second	December 31	February 28 (29)
Third	March 31	May 31
Fourth	June 30	August 31

Sample Reports can be found at:

<http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors>

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

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The quarterly report shall include the gross total sales for the quarter; zero sales during the quarter shall be reported, and partial quarters at the beginning or end of the contract term shall also be reported. The report shall be accompanied with a check payable to the State Purchasing Division for an amount equal to the 1% of the qualified rebate amount for New Mexico state agencies and local public bodies for the period. The Vendor shall indicate the contract number **SWPA #20-00000-22-00058 on the remittance.**

Send payment of fees through U.S. Mail or Courier Delivery:

New Mexico State Purchasing Division
Joseph Montoya Building Room 2016,
1100 St. Francis Drive, Santa Fe, New Mexico 87505
or P.O. Box 6850, Santa Fe, New Mexico 87502

For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 469-2679 or (505) 795-4512

39. Lease Agreements: *Reserved*

40. Subcontractors: All contactors, dealers, and resellers authorized in the State of *State of New Mexico*, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

41. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

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IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of New Mexico	Contractor: WEX Bank
Signature: <i>Valerie Paulk</i>	Signature: <i>Jason Price</i>
☒ This Agreement was signed on behalf of the State Purchasing Agent.	
Name: Mark Hayden	Name: Jason Price
Title: State Purchasing Agent	Title: President & CEO
Date: 7/11/2022	Date: 7/11/2022

CF

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at info@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.

Certificate Of Completion

Envelope Id: 9C28E4D070E848659600074B759B78E8

Status: Completed

Subject: Please Electronically Sign: 20-00000-22-00058 Fleet Card Services PA

Source Envelope:

Document Pages: 13

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 3

Tami Concha

AutoNav: Enabled

13 Bataan Blvd

Enveloped Stamping: Enabled

Santa Fe, NM 87508

Time Zone: (UTC-07:00) Mountain Time (US & Canada)

tami.concha@state.nm.us

IP Address: 174.56.109.88

Record Tracking

Status: Original

Holder: Tami Concha

Location: DocuSign

7/8/2022 3:28:00 PM

tami.concha@state.nm.us

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: GSD

Location: DocuSign

Signer Events**Signature****Timestamp**

Natalie Martinez

natalie.martinez1@state.nm.us

New Mexico General Services

Security Level: Email, Account Authentication
(None)*MM*Signature Adoption: Pre-selected Style
Using IP Address: 207.155.55.132

Sent: 7/8/2022 3:47:23 PM

Viewed: 7/8/2022 3:48:12 PM

Signed: 7/8/2022 3:49:01 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Tami Concha

tami.concha@state.nm.us

Procurement Officer-A

New Mexico General Services, State Purchasing
DivisionSecurity Level: Email, Account Authentication
(None)*TC*Signature Adoption: Pre-selected Style
Using IP Address: 174.56.109.88

Sent: 7/8/2022 3:49:03 PM

Viewed: 7/8/2022 3:50:00 PM

Signed: 7/8/2022 3:50:06 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Casi Finstad

casi.finstad@wexinc.com

Security Level: Email, Account Authentication
(None)*CF*Signature Adoption: Pre-selected Style
Using IP Address: 163.116.133.118

Sent: 7/8/2022 3:50:07 PM

Resent: 7/11/2022 11:36:10 AM

Viewed: 7/11/2022 12:18:01 PM

Signed: 7/11/2022 12:19:44 PM

Electronic Record and Signature Disclosure:
Accepted: 7/8/2022 4:00:54 PM
ID: 576411f7-3566-4a5f-ac88-68427f359c2e

Jason Price

jason.price@wexinc.com

Security Level: Email, Account Authentication
(None)*Jason Price*Signature Adoption: Pre-selected Style
Using IP Address: 4.1.4.226

Sent: 7/11/2022 12:19:46 PM

Viewed: 7/11/2022 1:00:59 PM

Signed: 7/11/2022 1:01:34 PM

Electronic Record and Signature Disclosure:
Accepted: 7/11/2022 1:00:59 PM
ID: ed994523-e666-40c3-95b1-99f080936494

Agenda Item #7.1.

Signer Events	Signature	Timestamp
Valerie Paulk Valerie.Paulk@state.nm.us Signed of Behalf of State Purchasing Agent New Mexico General Services Security Level: Email, Account Authentication (None)	<i>Valerie Paulk</i> Signature Adoption: Pre-selected Style Using IP Address: 75.161.227.238 Signed using mobile	Sent: 7/11/2022 1:01:35 PM Viewed: 7/11/2022 1:06:22 PM Signed: 7/11/2022 1:08:15 PM
Electronic Record and Signature Disclosure: Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff		

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	7/8/2022 3:47:23 PM
Certified Delivered	Security Checked	7/11/2022 1:06:22 PM
Signing Complete	Security Checked	7/11/2022 1:08:15 PM
Completed	Security Checked	7/11/2022 1:08:15 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPDinfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPDinfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPDinfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPDinfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.



26-123

City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A
1st Reading:	Adopted: April 6, 2026
Drafter:	Lesley Doyle
	Department: Financial Services
Title:	A RESOLUTION REQUESTING BUDGET AUTHORITY FOR THE REVENUE RECEIVED FROM THE GROSS RECEIPTS TAX (GRT) INCREMENT APPROVED BY VOTERS DURING THE NOVEMBER 5, 2024 GENERAL ELECTION.

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

To request budget authority for the revenue received from the Gross Receipts Tax increment of 0.325% approved by Las Cruces voters during the general election held on November 5, 2024.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On November 5, 2024, Las Cruces voters approved a Gross Receipts Tax (GRT) increment of three hundred twenty-five thousands of one percent (0.325%) to exclusively fund capital projects that strengthen the community, including public safety, parks, streets, and other critical infrastructure needs. The measure passed with 55% of the vote, a 10-point margin. The increase amounts to approximately 32 cents for every \$100 spent in Las Cruces, excluding essential item purchases such as groceries and medicine. It took effect on July 1, 2025, and is expected to generate about \$11 million in additional funding for projects citywide.

As part of a collaborative effort to guide how these funds would be allocated, residents were invited to attend meetings at various City locations to share their priorities and concerns for City Council's consideration. The Finance department also hosted a public Budget Retreat on January 28, 2026, to discuss City Council's current priorities. Feedback gathered from these meetings informed the Work Session on February 9, 2026.

At the February 9, 2026 Work Session, City Council expressed support for the projects presented. Based on input collected through the Work Sessions and Budget Retreat, this resolution recommends authorizing expenditures not to exceed \$15,800,000 over an unspecified timeframe to address critical infrastructure needs as well as increasing expected revenues to better align with current trends. A portion of the total funding was previously allocated for required administrative costs.

SUPPORT INFORMATION:

[Exhibit "A" - Budget Adjustment Summary](#)
[Exhibit "B" - Fund 4700 Summary](#)

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

Agenda Item #7.2.

None

DOES THIS AMEND THE BUDGET?:

☒ Yes

☐ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:

\$16,196,000

AVAILABLE AMOUNT:

\$16,196,000

EXPENDITURE AMOUNT:

\$16,196,000

Funding Source(s):

Fund 4700, GRT Increase

Overall Budget Impact:

Exhibit "A" - Fund 4700 Projects Summary

Does this action amend the Capital Improvement Plan (CIP)?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will allocate funding to the requested capital projects to address infrastructure needs and record an additional anticipated revenue of \$3,196,000.
2. Vote "No"; this will not allocate budget to expenditures or record any additional revenues to address infrastructure needs.
3. Vote to "Amend"; this will require direction to staff.
4. Vote to "Table"; this will delay the start date for all initiatives presented.

REFERENCE INFORMATION:

Exhibit "A" - Fund 4700 Projects Summary

Attachment "A" - Res. 25-011 GRT Increment

RESOLUTION 26-123

A RESOLUTION REQUESTING BUDGET AUTHORITY FOR THE REVENUE RECEIVED FROM THE GROSS RECEIPTS TAX (GRT) INCREMENT APPROVED BY VOTERS DURING THE NOVEMBER 5, 2024 GENERAL ELECTION.

The City Council is informed that:

WHEREAS, City of Las Cruces voters approved a Gross Receipts Tax (GRT) increase of three hundred twenty-five thousands of one percent (0.325%) during the general election held on November 5, 2024; and

WHEREAS, the use of funds collected through the GRT increment is limited to capital improvements and maintenance for public safety, streets, parks, other facilities and critical infrastructure as shown in Attachment "A"; and

WHEREAS, in order to make recommendations for expenditures, the City of Las Cruces held several public meetings and a Budget Retreat to collect input; and

WHEREAS, at the February 9, 2025 Work Session, the City Council (the "Governing Body") expressed support for the recommended capital projects presented for consideration.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the proposed capital projects to be funded from the GRT increment, as shown in Exhibit "A", attached hereto and made a part of this Resolution, are hereby adopted.

(II)

THAT the revenue increase recommendation, in the amount of \$3,196,000, as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby adopted.

(III)

THAT the FY2026 budget adjustments as indicated in Exhibit "B", attached hereto and made part of this Resolution, are hereby adopted.

(IV)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

Fund 4700 - Capital Expenditure Recommendations:

Department	Purpose	Amount
Fire	Apparatus	5,000,000.00
Fire / Police*	Public Safety Training Track	3,500,000.00
Police	Vehicles	1,500,000.00
Public Works	Facility Maintenance	4,300,000.00
	Hoagland / Alameda Intersection	
Public Works*	Improvement	1,500,000.00
GRAND TOTAL		15,800,000.00

* Currently budgeted in Capital Improvements Program

Fund 4700 - Revenue Recommendations:

Gross Receipts Tax	3,196,000.00
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CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2025-26

Exhibit "B"

	4700 CAPITALGRT 2025-26			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 0	0	0	0
Revenues				
Municipal Gross Receipts Tax	10,187,044	13,000,000	3,196,000	16,196,000
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	10,187,044	13,000,000	3,196,000	16,196,000
TOTAL RESOURCES	\$ 10,187,044	13,000,000	3,196,000	16,196,000
Expenditures				
General Government	0	396,000	0	396,000
Legislative	0	0	0	0
Municipal Court	0	0	0	0
City Manager-300	0	0	5,000,000	5,000,000
Legal	0	0	0	0
Las Cruces Police Department	0	0	1,500,000	1,500,000
Las Cruces Fire Department	0	0	5,000,000	5,000,000
Utilities	0	0	0	0
Economic Development	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Assistant City Manager-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	4,300,000	4,300,000
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 0	396,000	15,800,000	16,196,000
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 10,187,044	12,604,000	(12,604,000)	0



26-124

City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A
1st Reading:	Adopted: April 6, 2026
Drafter:	Laura Holguin
	Department: Financial Services
Title:	A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY.

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

Approve financial assistance application.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City Charter authorizes City Council to borrow funds. The New Mexico Finance Authority (NMFA) has instituted a program for financing public projects which can lead to lower interest costs. As part of the program, City Council is required by NMFA to authorize the submission of the application.

The proposed action will allow the City to submit the application for financing (1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to public facilities; (2) constructing, reconstructing, resurfacing, maintaining, repairing or otherwise improving streets or roadways and constructing drainage improvements; (3) acquiring and equipping police and fire vehicles; (4) acquiring, extending, enlarging, bettering, repairing or otherwise improving the City’s joint water, sanitary sewer, and natural gas utility system; (5) funding the Reserve Fund for the Series 2026 Bonds; and (6) paying the Expenses related to the issuance of the Series 2026 Bonds. The revenue pledged to finance the project would come from a first lien on the City’s 0.325% municipal gross receipts tax distribution and the subordinate lien on the City’s 0.50% municipal gross receipts tax distribution.

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?

Agenda Item #7.3.

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will allow City staff to submit the funding application to NMFA.
2. Vote "No"; this will deny City staff the opportunity to submit the funding application to NMFA.
3. Vote to "Amend"; this will require City staff to explore other financing options.
4. Vote to "Table"; this will delay the financing opportunity.

RESOLUTION 26-124

A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY.

The City Council is informed that:

WHEREAS, the City of Las Cruces, New Mexico ("Governmental Unit") is a qualified entity under the New Mexico Finance Authority Act, Sections 6-21-1 through 6-21-31, NMSA 1978 ("Act"), and the City Council ("Governing Body") is authorized to borrow funds and/or issue bonds for financing public projects or for refinancing of outstanding bonds for the benefit of the Governmental Unit; and

WHEREAS, the New Mexico Finance Authority ("Finance Authority") has instituted a program for financing of projects from the public project revolving fund created under the Act and has developed an application procedure whereby the Governing Body may submit an application ("Application") for financial assistance from the Finance Authority for public projects; and

WHEREAS, the Governing Body has undertaken a plan to issue bonds and enter into a bond purchase agreement with the Finance Authority for (1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to public facilities; (2) constructing, reconstructing, resurfacing, maintaining, repairing or otherwise improving streets or roadways and constructing drainage improvements; (3) acquiring and equipping police and fire vehicles; (4) acquiring, extending, enlarging, bettering, repairing or otherwise improving the City's joint water, sanitary sewer, and natural gas utility system; (5) funding the Reserve Fund for the Series 2026 Bonds; and (6) paying the Expenses related to the issuance of the Series 2026 Bonds (the "Project"); and

WHEREAS, the application prescribed by the Finance Authority has been completed and this resolution ratifying and approving submission of the completed Application to the Authority for its consideration and review is required as part of the Application; and

WHEREAS, the Governing Body desires to consider for adoption of an ordinance authorizing the execution and delivery of a loan agreement to provide funds for the Project.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT all action (not consistent with the provision hereof) heretofore taken by the Governing Body and the officers and employees thereof directed toward the Application and the Project, be and the same is hereby ratified, approved, and confirmed.

(II)

THAT the completed Application submitted to the Finance Authority, be and the same is hereby ratified, approved, and confirmed.

(III)

THAT the submittal of the completed Application to the Finance Authority for its review is hereby ratified and approved. Officers and employees of the Governmental Unit are further authorized to take such other action as may be requested by the Finance Authority in its consideration and review of the Application and further proceed with arrangements for financing and undertaking the Project.

(IV)

THAT all acts and resolutions in conflict with this resolution are hereby rescinded, annulled, and repealed.

(V)

THAT this resolution shall take effect immediately upon its adoption.

(VI)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



**3109; Council
Bill 26-017**

City Council Action and Executive Summary

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	March 16, 2026	Adopted:	April 6, 2026
Drafter:	Alicia Hernandez	Department:	Financial Services
Title:	AN ORDINANCE AMENDING CHAPTER 24, PROCUREMENT CODE, OF THE LAS CRUCES MUNICIPAL CODE.		

TYPE OF ACTION: ☐ Administrative ☒ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

To amend the City's Procurement Code.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City's Purchasing Program is recommending a modification to Chapter 24, Procurement Code, of the Las Cruces Municipal Code. The only change is reflected in Article II. Section 24-31 of the Las Cruces Municipal Code, providing clarification of what constitutes direct contact.

SUPPORT INFORMATION:

[Exhibit "A" - P Code Updates - 2026-03](#)
[Attachment "A" - P Code Updates - 2026-03 REDLINE](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes
☒ No

OPTIONS / ALTERNATIVES:

- 1. Vote "Yes"; this will approve the ordinance and amend the Procurement Code to make the necessary modifications.
- 2. Vote "No"; this action will not approve the ordinance, and the Procurement Code will remain as status quo.

Agenda Item #7.4.

3. Vote to "Amend"; this could modify the ordinance based on direction from City Council to staff.
4. Vote to "Table"; City Council will need to provide direction to staff.

ORDINANCE 3109; COUNCIL BILL 26-017

AN ORDINANCE AMENDING CHAPTER 24, PROCUREMENT CODE, OF THE LAS CRUCES MUNICIPAL CODE.

The City Council is informed that:

WHEREAS, the City's Purchasing Program is recommending changes to Chapter 24, Procurement Code, of the Las Cruces Municipal Code; and

WHEREAS, the change will clarify what constitutes direct contact; and

WHEREAS, the change consists of defining direct contact in Article II, Sec. 24-31.

NOW, THEREFORE, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

THAT the changes to Chapter 24, Procurement Code, of the Las Cruces Municipal Code are hereby amended and adopted, as shown in Exhibit "A".

(II)

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

DONE AND APPROVED this day of

Agenda Item #7.4.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

PART II – MUNICIPAL CODE
Chapter 24 – PROCUREMENT CODE

ARTICLE I. - IN GENERAL

Sec. 24-1. - Purpose.

The purpose of this chapter is to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity.

(Code 1988, § 25.5-1)

Sec. 24-2. - Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

All definitions listed within New Mexico Statutes sections 13-1-21 through 13-1-199, NMSA, 1978, plus, sections 13-4-1 through 13-4-43, NMSA, 1978, are incorporated herein by reference. Wherever difference exists between such statutory definitions and any definitions within this chapter, the definition of this chapter shall prevail.

Advertising means a public medium promoting a product, service, or event, including radio, television, print and electronic.

Agreement means two or more persons having common understanding about responsibilities, obligations, duties, and rights.

Approved equal means approved specifications as established by the industry or the using agency.

Award means the issuance of a validly executed contract which may include a purchase order.

Bid means a response to a competitive sealed procurement solicitation.

Bidder means a person who submits a quote/bid in response to a solicitation for respective, competitive quotes/bids.

Blind trust means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in or other disposition of the property subject to the trust.

Brand name or equal specifications means a specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet city requirements, and which provides for the submission of equivalent products.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Calendar days means all days in a month including weekend, holidays, etc.

Construction Manager At Risk (CMAR) means the construction manager commits to deliver the project within a Guaranteed Maximum Price (GMP) based on the construction documents and specifications.

Contingency means an amount set aside to address unforeseen issues.

Agenda Item #7.4.

Contract means agreement between two or more persons authorized to legally bind their interests by setting forth what each person will or will not do in the procurement of tangible personal property, professional or nonprofessional services, or construction.

Contract administration means a contract administration system designed to ensure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

Contract limitations and change orders means a construction related written order directing the contractor to make a change, which the contract authorizes with or without the contractor's consent.

Defective pricing means when a contractor has more current, complete, and accurate cost and pricing data and does not disclose it resulting in a significant increase in price.

Employee means an individual drawing salary or wages from the city, whether elected or not; any uncompensated individual performing personal services for the city or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the city; and any uncompensated individual serving as an elected official of the city.

Financial interest means:

- (1) Ownership of one percent or more of any property or business; or
- (2) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

Gratuity means anything of value that is presented or promised in anticipation of receiving a consideration, whether or not the consideration is less than, equal to or greater than the value presented or promised.

Immediate family means an employee's spouse, son, daughter, or parent as defined in FMLA regulations. FMLA defines the term "parent" as "a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when he or she was a minor."

Invitation for bid/invitation to bid (IFB or ITB) means all documents, whether attached or incorporated by reference, used for soliciting sealed bids whereby award is based upon the lowest price that meets specifications.

Local business means a business that has a valid city business certificate or license issued through the City of Las Cruces.

Non-procurement contracts means any agreement that was not the result of a procurement, for example memoranda of understanding, grant pass-through or fiscal agent agreements, or contracts that don't involve expenditures for goods or services.

Offeror means a person submitting a proposal in response to a competitive request for proposals.

Person means any business, individual, union, committee, club, or other organization, or group of individuals.

Pricing data means factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

Professional services means the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified

Agenda Item #7.4.

public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services.

Procurement means the buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, service, or construction, including needs analysis, specification development, competitive or noncompetitive solicitation of sources, contract development, negotiation and execution, and all phases of contract administration.

Proposal means a response to a competitive sealed procurement solicitation.

Public agency means an administrative division of city, state, or federal government.

Qualified products list means an approved list of tangible goods, services, or construction items described by model or catalog numbers, which, prior to competitive solicitation, a determination was made that the list met applicable specification requirements.

Quote means a response to a procurement solicitation less than \$100,000 conducted for the purchase of goods/services/construction, whereby award is based upon the lowest price that meets specifications as deemed practical.

Request for proposals (RFP) means a competitive solicitation of proposals conducted for the purchase of goods/services/construction whereby the responses are evaluated considering multiple, weighted criteria and the resulting contract is awarded based upon the response ranked highest considering such criteria.

Supplies includes tangible goods including, but is not limited to, equipment, materials, rolling stock, books, fuel, tools, printed media.

Tangible goods means physical objects or items (like equipment and inventory) that can be touched and has a real, physical presence.

Technical services means research and development (R&D) work, the development and installation of management information systems (MIS), materials requirement planning (MRP) systems, and the development of technical manuals, printing services, and repair services.

Using agency means any department, commission, board, or public agency requiring supplies, services, or construction procured pursuant to this chapter.

Working days means only those days per City calendar in which City staff are available to address, observe, or otherwise handle contractual issues as they arise. The following days are normally not considered working days: City Holidays, Saturdays, Sundays, and days in which the City Manager has closed City Offices due to inclement weather or some other specified emergencies.

(Code 1988, § 25.5-3; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. A), 8-6-12)

Sec. 24-3. - Applicability.

- (a) This chapter applies to contracts for the procurement of supplies, services, and construction entered into by the city after the effective date of the ordinance from which this chapter derives. It shall apply to every expenditure of public funds by the city or a public agency for public purchasing irrespective of the source of the funds, except for procurement that is exempt as set forth herein.
- (b) When the procurement involves the expenditure of federal or state assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal and state law and regulations. Nothing in this chapter shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

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All the dollar thresholds mentioned in this code exclude taxes, freight, and shipping charges.

(Code 1988, § 25.5-2; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-4. - Authorized exemptions from competitive procurement, subject to review and written determination by the purchasing manager. All other applicable contract requirements of this article are required.

- (1) Procurement of goods, services or construction from state agencies, public bodies, or external procurement units.
- (2) Procurement of publicly provided or publicly regulated gas, electricity, water, sewer or refuse collection services.
- (3) Purchases of books and periodicals from publishers or copyright holders thereof to include publications offered on CDs, videos, or the Internet.
- (4) Travel or shipping by common carrier or by private conveyance, or to meals and lodging.
- (5) Purchase of live animal(s).
- (6) Art objects or artifacts or for their creation including exhibits.
- (7) Procurement from self-determination corporations or other such enterprises designed and operated to assist in the care or maintenance of the sick and indigent and the prevention thereof and aided by state or federal antipoverty programs or through private philanthropy.
- (8) Leases, exchanges or purchases of real property or a permanent interest in land.
- (9) Services of bond underwriters and debt rating agencies.
- (10) Agreement for the services of attorneys, legal assistants, and expert witnesses. Services of expert witnesses needed in conjunction with litigation, court reporting services and legislative activities. Contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees.
- (11) Purchases, rentals, leases (personal and real property), and professional/technical services contracts necessary for the investigation of criminal activities. The police department may purchase such materials and services without quotations, requests for proposals, or bids if such would compromise a criminal investigation as determined by the chief of police in writing. All funds expended for this type of activity will be properly receipted and accounted for with supporting documentation. All documentation will be maintained by the police department and shall be subject to internal audit. Rentals, leases, and professional/technical services will be limited to the term of an investigation.
- (12) Contracts with professional entertainers.
- (13) Advertising in all media.
- (14) Promotional goods intended for resale or for the procurement of printing services for materials produced and intended for resale.
- (15) Subscription services.
- (16) Contracts for retirement and other benefits.
- (17) Services provided by lobbyists or legislative experts.

Agenda Item #7.4.

- (18) Contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration.
- (19) Procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act.
- (20) Procurement of surety bonds.
- (21) Procurement of parts and labor or maintenance agreement to repair disabled equipment or machinery if the equipment or machinery is repaired by a franchised dealer or by a factory authorized repair shop.
- (22) Payments for conference registrations, offsite training courses, or similar minor purchases where prepayments are required, or which are administrative in nature and non-competitive as determined by the purchasing manager.
- (23) Payments for membership dues.
- (24) Existing contracts. The purchasing manager may contract for services, construction, or goods without the use of competitive bids or competitive proposals at a price equal to or less than:
 - a. The current federal or state supply contract or catalogue price, whichever is lower, and the purchase order adequately identifies the contract relied upon. A copy of the federal supply contract or catalogue shall be made part of the procurement record.
 - b. The current contract price held by other intrastate or interstate governmental bodies and their agencies. A copy of the contract relied upon shall be made part of the procurement record.
 - c. A bid awarded by the city to the same contractor, for the same materials or services, within the past 24 months. A copy of the original documentation is to become a permanent part of the procurement record providing the vendor wishes to extend. Resulting contract(s) shall not exceed 48 months after the initial contract execution date.
- (25) Cooperative procurements through other government entities and cooperatives.

(Code 1988, § 25.5-181; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-5. - Small purchases.

- (a) Purchase splitting is prohibited. Separate purchases of the same or similar goods, services, or construction, whether from the same or different businesses, within a time frame established by the purchasing manager, shall be considered a single purchase for purposes of this article.
- (b) Authority. Any contract less than \$100,000.00 for supplies, services, and construction, may be made in accordance with the procedures set forth in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.
 - (1) Purchases \$50,000.00 or more but less than \$100,000.00. Unless determined impractical by the purchasing manager, no less than three sources shall be solicited to submit written quotations. Award shall be based on the lowest price meeting specifications. A record of the solicitation and written responses shall be maintained as public record.
 - (2) Purchases \$25,000.00 or more but less than \$50,000.00. Unless determined impractical by the purchasing manager, written quotes from no less than two sources shall be obtained. Award

Agenda Item #7.4.

shall be based upon the lowest price meeting specifications. Solicitations, responses and/or other pricing documentation shall be recorded and maintained as public record.

- (3) Purchases less than \$25,000.00. Unless otherwise determined impractical by the purchasing manager, for a purchase of supplies, services, or construction estimated to be less than \$25,000.00, written quotes from no less than one source shall be obtained. Purchase is to be made only by authorized city employees at the best obtainable price considering time and process efficiencies.
- (c) Professional/technical services less than \$100,000.00. Unless otherwise determined impractical by the purchasing manager, professional/technical services estimated to be less than \$100,000.00 may be purchased in accordance with the following:
 - (1) All professional/technical services estimated to be less than \$100,000.00 shall be procured by either the purchasing manager or authorized department employee calling a reasonable number of firms to obtain written offers when practical. Procurement over this amount shall be by competitive sealed proposal.
 - (2) The purchasing manager or designee shall provide such information as is necessary to provide the potential offeror the opportunity to provide a proper and timely response. Included in the information shall be the factors to be evaluated and the relative weights assigned each factor.
 - (3) The types of questions to be asked of the potential offeror may include, but not be limited to:
 - a. The specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required.
 - b. Capacity and capability of the business to perform the work, including any specialized services, within the time limitation, if any.
 - c. Past record of performance or contracts with government agencies or private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules.
 - d. Proximity to or familiarity with the area in which the project is located.
 - e. The anticipated price, if price is a factor, for services based upon the information provided by the purchasing manager as to the scope of work.
 - f. Other criteria determined to be essential to the particular contract or project.
 - (4) The award shall be based on the highest-ranking respondent considering the evaluation factors provided in the solicitation. The city may negotiate with any responding offeror with the intent to obtain best and final offer of the offeror.

(Code 1988, § 25.5-34; Ord. No. 1703, § IX, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, § V, 8-17-09; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-6. - Fiscal responsibility.

- (a) When the aggregate sum of contract modifications, change orders, or contract price adjustments exceeds \$100,000.00, all subsequent contract modifications, change orders, or contract price adjustments shall be subject to city council approval, except for those contracts that will be or are approved under the contract limitations and change order policy.
- (b) Aggregate contract modifications, change orders, or price adjustments up to \$100,000.00 shall be authorized by the city manager conditioned upon the award limitations.

(Code 1988, § 25.5-93; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-7. - Sole source procurement.

A contract may be awarded without competition when the purchasing manager determines in writing, after conducting a good-faith review of available sources, that there is only one source for the required supply, service, or construction item; or when it is likely that award to any other source would result in:

- (a) Substantial duplication of cost to the city that is not expected to be recovered through competition; or
- (b) Unacceptable delays in fulfilling the city's requirement.

The purchasing manager may conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurement shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the items procured under each contract, and the identification number of each contract file.

(Code 1988, § 25.5-35; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-8. - Rapid procurement; Emergency procurement.

- (a) Purchases of goods, services, and construction for any amount where Advertising and the solicitation of offers would entail unnecessary and detrimental delay and loss to the city, may be made by the purchasing office, at the best obtainable price in accordance with procedures approved by the purchasing manager. Complete documentation of all proposed prices submitted by offerors must be maintained in the purchasing office for public inspection.
- (b) Notwithstanding any other section of this chapter, the city manager may authorize the purchasing manager or designee to make emergency procurement of supplies, services, or construction items when there exists a threat to public health, welfare, or safety, provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the items procured under the contract, and the identification number of the contract file. If the city manager determines that urgent and compelling reasons require emergency contractual, professional, and technical services, the city manager, notwithstanding any section of this division, may approve such services, provided that the city manager shall notify the city council of the action citing the compelling and urgent reasons for the action. A complete report shall be submitted to the city council by the using department within a week of the procurement.

(Code 1988, § 25.5-36; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-9 – Contingency

Construction contracts shall be budgeted with no more than a 20% contingency fund for new construction and no more than a 20% contingency fund for rehabilitation projects. Professional and/or Technical service contracts shall be budgeted with no more than a 10% contingency fund.

Sec. 24-10—Purchase Card Program.

The Purchase Card (P-Card) program is intended for use whenever purchase orders are not applicable as determined by the purchasing manager or designee. The P-Card Procedure Manual shall govern P-Card and Department Card (D-Card) issuance, application, usage, monthly statement processing, card maintenance, card violations, disputed or fraudulent charges, and receipt retention.

Secs. 24-11 – 24-30. - Reserved.

ARTICLE II. - ETHICS AND PROHIBITIONS IN PROCUREMENT

Sec. 24-31. - Direct contact.

Direct contact with city elected officials or city staff during the bid/proposal process from development of specifications through contract award, will render the bid/proposal as noncompliant and no further consideration will be given the bid/proposal. For the purposes of this section, "direct contact" is defined as any potential respondent contacting city elected officials and/or city staff, including city contractors, for the purpose of obtaining a competitive advantage over other prospective vendors. Direct contact includes, but is not limited to, inquiring about project specifications that are not subject to public record, responses submitted by other competitors, compensations details, or any other information not available to the public. The purchasing manager shall have the sole authority to determine whether direct contact has occurred.

(Ord. No. 1923, § 1, 6-17-02)

Sec. 24-32. - Criminal penalties.

To the extent that violations of the ethical standards of conduct set forth in this Procurement Code constitute violations of the state Criminal Code, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this article. Criminal, civil, and administrative sanctions against employees or nonemployees which are in existence on the effective date of the ordinance from which this chapter derives shall not be impaired.

(Code 1988, § 25.5-141)

Sec. 24-33. - Employee conflict of interest.

- (a) It shall be unethical for any city employee to participate directly or indirectly in a procurement contract when the city employee knows that:
 - (1) The city employee or any member of the city employee's immediate family has a financial interest pertaining to the procurement contract; or
 - (2) Any other person, business, or organization with whom the city employee or any member of a city employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
- (b) A city employee or any member of a city employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.
- (c) If an employee becomes aware of a potential conflict of interest related to a procurement, they shall disclose such potential conflict to the purchasing manager immediately.

(Code 1988, § 25.5-142)

Sec. 24-34. - Gratuities and kickbacks.

- (a) Gratuities. It shall be unlawful for any person to offer, give, or agree to give to any current or former city employee or for any current or former city employee to solicit, accept or agree to accept a gratuity in exchange for consideration pertaining to a city procurement. Consideration shall include but is not limited to a decision, approval, disapproval, recommendation, or action that influences a procurement solicitation, contract award or the administration of a contract. No sample or sampling of a product or service shall be accepted by a city employee unless the purchasing manager determines that the sample or sampling is to be used in city activities for evaluation or product qualification purposes.
- (b) Kickbacks. It shall be unlawful for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontract under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (c) Contract clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor. Any person convicted of violating this section shall be guilty of a petty misdemeanor.

(Code 1988, § 25.5-143; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-35. - Contingent fees.

It shall be unlawful for a person to be retained or to retain a person to solicit or secure a city contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Any person convicted of violating this section shall be guilty of a petty misdemeanor.

(Code 1988, § 25.5-144; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-36. - Contemporaneous employment.

It shall be unethical for any city employee who is participating directly or indirectly in the procurement process to become or to be, while such a city employee, the employee of any person contracting with the governmental body by whom the employee is employed.

(Code 1988, § 25.5-145)

Sec. 24-37. - Waivers from employee conflict of interest and contemporaneous employment.

The city council may grant a waiver from the employee conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

- (1) The contemporaneous employment or financial interest of the city employee has been publicly disclosed;
- (2) The city employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
- (3) The award will be in the best interests of the city.

(Code 1988, § 25.5-146)

Sec. 24-38. - Use of confidential information.

It shall be unlawful for any city employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person. Any person convicted of violating this section shall be guilty of a petty misdemeanor.

(Code 1988, § 25.5-147; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-39. - Recovery of value transferred or received in breach of ethical standards.

- (a) Authority. The value of anything transferred or received in breach of the ethical standards of this chapter by a city employee may be recovered from the city employee.
- (b) Recovery of kickbacks by city. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the city and will be recoverable from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

(Code 1988, § 25.5-148)

Secs. 24-40—24-60. - Reserved.

ARTICLE III. - PURCHASING MANAGER

Sec. 24-61. - Position created.

There is created the position of purchasing manager, who shall be the city's principal public purchasing official.

(Code 1988, § 25.5-21; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-62. - Authority, duties.

- (a) Principal public purchasing official. Except as otherwise provided in this chapter, the purchasing manager shall serve as the principal public purchasing official for the city and shall be responsible for the procurement of supplies, services, and construction in accordance with this chapter.
- (b) Duties. In accordance with this chapter and subject to the supervision of the city manager, the purchasing manager shall:
 - (1) Procure or supervise the procurement of all supplies, services, and construction needed by the city.
 - (2) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies, services and construction.
 - (3) Provide a quarterly report of all procurements equaling \$100,000.00 and above to the city council as a non-action item.

- (c) Operational procedures. Consistent with this chapter the purchasing manager may adopt operational procedures relating to the execution of his/her duties.

(Code 1988, § 25.5-22; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-63. - Authority to award.

- (a) In the discretion of the purchasing manager, if no acceptable bid or offer is received on the solicitation the purchasing office may purchase the required goods or services in the open market at the best obtainable price or re-advertise the request for bid or proposal.
- (b) The purchasing manager shall be authorized to enter into all budgeted purchase contracts subject to the following conditions:
 - (1) For purchases of non-construction, non-capital improvement related goods or services of \$50,000.00 but less than \$100,000.00, the purchasing manager shall obtain approval from the city manager prior to issuing a purchase order. Purchases below \$50,000.00 will be processed by the purchasing manager.
 - (2) For purchases of non-construction, non-capital improvement related goods or services equaling \$100,000 or more, the purchasing manager shall obtain approval from the city council prior to contracting.
 - (3) For purchases of current year capital improvement projects, capital equipment and vehicles already approved in budget, no council or city manager action is required. These procurements will be processed by the purchasing manager.
 - (4) For purchases of capital improvement projects, capital equipment and vehicles of \$100,000.00 and above which are not included in current year approved budget, city council approval is required.
 - (5) For purchases of goods and services funded through grants or state appropriations previously accepted by council and amended into the budget, no council approval will be required. Procurements will be processed by the purchasing manager.
 - (6) For the purpose of this section, aggregate cost shall not be the determinative on multi-year contracts.
 - (7) Signing of contracts. Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the mayor or city manager or their designees.

(Code 1988, § 25.5-39; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-64. - Delegation to others.

The purchasing manager may delegate authority to purchase supplies, services, or construction items to other city officials, if such delegation is deemed necessary for the effective procurement of those items. Notwithstanding debarment or suspension, procurement authority with respect to certain supplies, services or construction may be delegated to other city officials by the city manager with the approval of the city council, when such delegation is deemed necessary for the effective procurement of these supplies, services, or construction.

(Code 1988, § 25.5-23; Ord. No. 1923, § 1, 6-17-02)

Secs. 24-65—24-90. - Reserved.

ARTICLE IV. - CONTRACT INFORMATION

Sec. 24-91. - Types of contracts.

- (a) General authority. Subject to the limitations of this section, any type of contract which is appropriate to the procurement, and which will promote the best interests of the city may be used, provided that the use of a cost-plus-a-percentage-of-cost contract be approved by the city council. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the city than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.
- (b) Multiterm contracts.
 - (1) Specified period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the city, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds thereof.
 - (2) Determination prior to use. Prior to the utilization of a multiterm contract, it shall be determined in writing that:
 - a. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - b. Such a contract will serve the best interests of the city by encouraging effective competition or otherwise promoting economies in city procurement.
- (c) Multiple source contracting.
 - (1) Generally. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the city's actual requirements is limited by the provision of Uniform Commercial Code subsection 2-306(1).
 - (2) Limitations on use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Multiple source awards shall not be made when a single award will meet the city's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.
 - (3) Eligible users. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that the city shall reserve the right to take bids separately if:
 - a. A particular quantity requirement arises which exceeds its normal requirement, or an amount specified in the contract; and

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- b. The purchasing manager approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the city.
- (4) Intent to use. If a multiple source award is anticipated prior to issuing a solicitation, the city shall reserve the right to make such an award, and the criteria for award shall be stated in the solicitation.
- (5) Determination required. The purchasing manager shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

(Code 1988, § 25.5-61; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-92. - Contract clauses.

- (a) Required generally. All city contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The purchasing manager, after consultation with the city attorney, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:
 - (1) Statement of work, delivery schedules, and period of performance;
 - (2) The unilateral right of the city to order in writing changes in the work within the scope of the contract;
 - (3) The unilateral right of the city to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 - (4) Variations occurring between estimated quantities of work in the contract and actual quantities;
 - (5) Defective pricing;
 - (6) Liquidated damages to include administrative contractual or legal remedies for violation of contract terms;
 - (7) Specified excuses for delay or nonperformance;
 - (8) Termination of the contract for default or cause;
 - (9) Termination of the contract in whole or in part for the convenience of the city;
 - (10) Suspension of work on a construction project ordered by the city; and
 - (11) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract when:
 - a. The contract is negotiated;
 - b. The contractor provides the site or design; or
 - c. The parties have otherwise agreed with respect to the risk of differing site conditions.
- (b) Price adjustments.
 - (1) Adjustments in price resulting from the use of contract clauses required by subsection (a) of this section shall be computed in one or more of the following ways:
 - a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - b. By unit prices specified in the contract or subsequently agreed upon;

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- c. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- d. In such other manner as the contracting parties may mutually agree;
- e. In the absence of agreement by the parties, by a unilateral determination by the city of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the city, as accounted for in accordance with industry price list, catalogue or market prices and subject to the appeals and remedies in article VII of this chapter; or
- f. For all federally funded purchases, cost or price analysis shall be the only means from which pricing shall be determined.

(2) A contractor shall be required to submit cost or pricing data for any adjustment in contract price.

- (c) Standard clauses and modification. The purchasing manager, after consultation with the city attorney, may establish standard contract clauses for use in city contracts. If the purchasing manager establishes any standard clauses addressing the subjects set forth in subsection (a) of this section, such clauses may be varied, provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

(Code 1988, § 25.5-62; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § III, 9-7-10)

Sec. 24-93. - Approval of accounting system.

Except with respect to firm fixed-price city contracts, no contract type shall be used unless it has been determined in writing by the purchasing manager that the proposed contractor's accounting system:

- (1) Will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- (2) Is adequate to allocate costs in accordance with generally accepted cost accounting principles.

(Code 1988, § 25.5-65; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-94. - Right of inspection.

The city may, at reasonable times, inspect the plant, place of business, storage site, or work site of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the city.

(Code 1988, § 25.5-66)

Sec. 24-95. - Right to audit records.

- (a) Audit of cost or pricing data. The city may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three years from the date of final payment under the contract.
- (b) Contract audit. The city shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price

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contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

(Code 1988, § 25.5-67)

Sec. 24-96. - Reporting of anticompetitive practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors for a city contract, a notice of the relevant facts shall be transmitted to the state attorney general by the city attorney.

(Code 1988, § 25.5-68)

Sec. 24-97. - City records.

- (a) Contract file. All determinations and other written records pertaining to the solicitation, award, or performance of a city contract shall be maintained for the city in a contract file by the purchasing manager.
- (b) Retention of procurement records. All procurement records shall be retained and disposed of by the city in accordance with records retention and guidelines and schedules set by the city clerk.

(Code 1988, § 25.5-69; Ord. No. 1923, § 1, 6-17-02)

Secs. 24-98 – 24-120. Reserved.

ARTICLE V. - SOURCE SELECTION

DIVISION 1. - PROFESSIONAL AND TECHNICAL SERVICES PROCUREMENT

Sec. 24-121. - Contracting for designated professional services; selection procedure.

- (a) Criteria. Professional and technical services shall be procured in accordance with this division.
- (b) Determination of award for professional and technical services shall be based on qualifications. Cost will not be a criteria factor in the evaluation process, and it shall be negotiated during the award phase of the contract.
- (c) Where the primary contract may be awarded through the procurement code without review by the selection advisory committee, nothing in this division shall require that the selection advisory committee separately review subcontractors who are an integral part of the primary contract.

Sec. 24-122. - Request for proposals.

- (a) Conditions for use. When the use of competitive sealed bidding is either not practicable or not advantageous to the city, a contract may be entered into by use of the request for proposal method set forth herein.
- (b) Request for proposal. A proposal shall be solicited through a request for proposal.
- (c) Public notice. For proposals estimated to be \$100,000.00 or more, adequate public notice of the request for proposals shall be given at a reasonable time not less than seven calendar days prior to

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the date set forth for the closing of the request for proposals. The public notice shall state the due date and time for proposal submission, and where proposal documents may be inspected or obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.

- (d) Receipt of proposal. No proposal shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors prior to the deadline for receipt of the proposal by the purchasing manager. A register of proposals shall be prepared containing the name of each offeror. The register of proposals shall be open for public inspection not later than three days after the deadline for receipt of proposals. During the evaluation of proposals, and until approval of the recommendation of award by the city council, the contents of proposals may not be disclosed to the public. If a request for proposals is canceled and a similar RFP will be issued within six months, the contents of proposals received in response to the first request for proposals may not be disclosed until after approval by the city council of the recommendation of award for the second RFP or cancellation of the RFP.
- (e) Evaluation factors. The request for proposal shall state the relative importance of price and other evaluation factors.
- (f) Discussion with responsible offeror and revision to proposal. As provided in the request for proposal, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to ensure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors. Any modification received during the revision and negotiation stages will become a part of the permanent record.
- (g) Award. Awards shall be made to the highest-ranking responsible offeror taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation except that, unless otherwise determined impractical by the purchasing manager, award(s) resulting in contract(s) totaling less than \$100,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsible local manufacturers or local businesses, award shall be made to a responsible qualified non-local manufacturer or business. The contract file shall contain the basis on which the award is made.
- (h) The procurement of lease financing shall be conducted utilizing request for proposal.
- (i) Award recommendation shall be made to the city council by the purchasing manager.

(Code 1988, § 25.5-32; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, § IV, 8-17-09)

Sec. 24-123. - Selection advisory committee.

- (a) There is a selection advisory committee comprised of three department heads: one designated by the committee chair, one from the end user department and one serving on a rotating basis from the total pool of directors. For each request for proposal, there are at least five subject matter experts designated by the director of the department that developed the RFP. There shall be no more than

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seven subject matter experts total. All external subject matter experts are non-voting technical advisors and are not included in the total number of subject matter experts. A pool of internal subject matter experts shall be maintained by departments and can be used for the appropriate procurement.

- (b) A member of the selection advisory committee shall serve until a successor is appointed. An alternate may be suggested by any member and submitted to the selection advisory committee chair for approval. Upon approval, the alternate will attend in that member's place.
- (c) The assistant city managers shall serve as a nonvoting member and chair for the selection advisory committee.
- (d) The city's purchasing manager or designee shall serve as staff coordinator for the selection advisory committee.

(Code 1988, § 2-137; Ord. No. 1701, § I, 9-14-98; Ord. No. 1703, §§ III, X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 1947, § 1, 3-3-03; Ord. No. 2643, § I, 1-17-12; Ord. No. 2852, § 5-21-18)

Sec. 24-124. - Notice of projects; recommendations.

- (a) When the fee for professional and/or technical services is estimated to be \$100,000.00 or more, the city shall cause to be published, at least two weeks before initial screening of professional firms or persons by the selection advisory committee, a legal advertisement containing a brief description of the work to be performed by the professional firms or persons and inviting interested firms to submit their qualifications for consideration by the selection advisory committee.
- (b) If the estimated cost of the services is less than \$100,000.00, review by the selection advisory committee is not required. The purchasing manager may select a qualified firm or firms to provide these services based on adopted purchasing procedures.
- (c) When the fee for the professional/technical services is \$100,000.00 or more, the selection advisory committee shall submit the name of the most qualified professional firm or firms or person to the city council, for purposes of review and approval by the council. Nothing in this subsection shall prohibit the submission of more than one firm.

Sec. 24-125. - Files of qualifications of firms and persons.

The purchasing manager may maintain a file of qualifications of all firms or persons qualified to perform professional and technical services for city projects. These files shall be updated at the request of the selections advisory committee to provide current qualification information. Interviews and presentation of qualifications shall be conducted at the direction of the selection advisory committee. Mailed inquiries may be solicited to provide specific information as may be considered necessary by the selection advisory committee.

(Code 1988, § 2-139; Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-126. - Approval of contracts.

- (a) All city projects that require the contracting for professional and technical services in an amount of \$100,000.00 or more shall be performed under separate contract, and each contract shall require final approval by the city council.

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- (b) Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the Mayor or city manager or their designees.
- (c) This section shall apply only to the primary professional firm. Any subcontractor shall be evaluated as a part of the primary contract.

(Code 1988, § 2-140, Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-127. - Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the purchasing manager or head of a using agency deems advisable to protect the city's interest. Any such bonding or security requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

(Code 1988, § 25.5-54; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-128. - Contractor records.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:

- (1) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (2) Provide to the city, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

(Code 1988, § 25.5-161)

Sec. 24-129. - Patents.

If a city contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

- (1) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and
- (2) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

(Code 1988, § 25.5-162)

Sec. 24-130. - Copyrights and rights in data.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

(Code 1988, § 25.5-163)

Sec. 24-131. - Notice of federal public policy requirements.

If the city contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as: (i) equal employment opportunity; (ii) fair labor standards; (iii) energy conservation; (iv) environmental protection; or (v) other similar socioeconomic programs, the purchasing manager shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

(Code 1988, § 25.5-164; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-132 - Buy American/Buy America requirements.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall adhere to the appropriate Buy American/Buy America requirements of the federal agency providing the assistance.

(Code 1988, § 25.5-165)

Sec. 24-133. - Energy conservation.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

(Code 1988, § 25.5-166)

Sec. 24-134. - Small, women-owned and minority business enterprises.

- (a) Expand participation. If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.
- (b) Examples of affirmative steps. Affirmative steps to be taken shall include the following:
 - Including qualified small, women-owned, and minority businesses on solicitation lists;
 - (1) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
 - (2) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;
 - (3) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and
 - (4) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.
- (c) Pass-through to subcontracts. A contractor awarded a federally funded contract shall take the affirmative steps, as linked in subsection (b) of this section, in awarding its subcontracts.

(Code 1988, § 25.5-167; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-135. - Labor surplus area businesses.

If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

(Code 1988, § 25.5-168; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-136. - Architectural and engineering services

- (a) If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall use qualifications-based competitive proposal procedures when contracting for architectural and engineering services as defined in 40 U.S.C. §541 et seq. and 49 U.S.C. §5325(d). Services subject to this requirement include but are not necessarily limited to program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.
- (b) Qualifications-based competitive proposal procedures require that:
 - (1) An offeror's qualifications be evaluated;
 - (2) Price be excluded as an evaluation factor;
 - (3) Negotiations be conducted with only the most qualified offeror; and
 - (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the city.
- (c) These qualifications-based competitive proposal procedures will be used for the procurement of the services listed above. This method of procurement will not be used to obtain other types of services even though a firm that provides architectural and engineering services is also a potential source to perform other types of services.

(Ord. No. 2132, § I, 9-7-04)

Sec. 24-137. - Cost or pricing data.

- (a) Required submissions relating to award of contracts. A prospective contractor shall submit cost or pricing data when the city contract is federally funded or is to be awarded on a noncompetitive basis.
- (b) Exceptions. Except for federally funded purchases, the submission of cost or pricing data relating to the award of a contract is not required when:
 - (1) The contract price is based on established catalogue prices or market prices;
 - (2) The contract price is set by law or regulation; or
 - (3) It is determined in writing by the purchasing manager that the requirements of subsection (a) of this section may be waived, and the determination states the reasons for such waiver.
- (c) Required submissions relating to change orders or contract modifications. For federally funded purchases and as otherwise required by the purchasing manager, the contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to

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contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.

- (d) Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (e) Price adjustment provision required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the city, including profit or fee, shall be adjusted to exclude any significant sums by which the city finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the city and the contractor.

(Code 1988, § 25.5-52; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § I, 9-7-10)

Sec. 24-138. - Cost or price analysis.

- (a) Under this chapter, a cost analysis, or a price analysis, as appropriate, shall be conducted for contracts established through the application of sole source procurement. A written record of such cost analysis or price analysis shall be made a part of the contract file.
- (b) For all federally funded purchases, a cost or price analysis must be conducted as required by applicable federal regulations for all related contracts including contract cost modifications. The cost or price analysis shall be public record.

(Code 1988, § 25.5-53; Ord. No. 2589, § II, 9-7-10)

Sec. 24-139. - Cancellation/rejection of invitation for bid or request for proposal; No Responsive Offers Received

- (a) Under this chapter, an invitation for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city. The reasons therefor shall be made part of the contract file. Each solicitation issued by the city shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the city. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request of unsuccessful bidders or offerors.
- (b) If no responsive offers are received, then the purchasing manager may purchase the required goods or services, with no change in the published specifications, in the open market at the best obtainable price. If the specifications are changed, or if so required by the purchasing manager, a purchase in the open market shall not be permitted and the competitive solicitation must be reissued.

(Code 1988, § 25.5-38; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-140. - Preferences.

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- (a) Preference factor. A preference factor may be applicable to quotes, bids or proposals received in response to procurement solicitations conducted.
 - (1) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to local businesses based upon a five percent deduction from the local business quote or bid, or five percent of total evaluation points being added to the score of a proposal from a local business.
 - (2) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to resident businesses which has a valid resident business certificate issued by the New Mexico Taxation and Revenue department based upon a five percent of total evaluation points being added to the score of a proposal from a resident business and a preference factor shall be applicable to resident veteran business which has a valid resident veteran business certificate issued by New Mexico Taxation and Revenue department based upon a ten percent of the total evaluation points being added to the score of a proposal from a resident veteran business.
 - (3) A preference factor for Section 3 firms as defined in the Housing and Urban Development Act of 1968, 12 U.S.C. 17801u (Section 3), as amended, shall be applicable pursuant to that Act whenever a contract resulting from a competitive procurement solicitation is funded through a grant from the U.S. Housing and Urban Development Department.
- (b) New Mexico materials. Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference for the use of materials produced, grown, processed, or manufactured in New Mexico by citizens or residents of New Mexico shall apply pursuant to § 13-4-2, NMSA, 1978, as amended.
- (c) Limitations. No bidder/offeree entitled to preference pursuant to this section shall receive more than a ten percent preference on any one bid/proposal submitted. Only the principal bidder/offeree or one of the principal bidders/offerees, not a subcontractor, may qualify for a preference.

(Code 1988, § 25.5-40; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. B), 8-6-12)

Sec. 24-141. Change Orders

- (a) Changes in time. Extensions of time on construction contracts or professional/technical service contracts, may be granted by the Project Manager, subject to appropriate approvals, on a case-by-case basis for the following reasons:
 - (1) One additional day for each delay in which the contractor could not perform contractual work and subsequent days as may be required to repair work damage by weather, as defined in General Conditions for Construction Contracts, 2004, during the term of the contract;
 - (2) City-requested changes to project specifications that incur time as a result;
 - (3) Other circumstances in which the City believes such an extension of time is in the best interest of the project and must be approved by the Department Director;
 - (4) Limitations on extensions of time addressed by this policy are as follows:
 - a. An increase of 30 contractual days to the original contract time, shall be approved by the Program Manager;
 - b. An increase of 31 to 60 contractual days to the original contract time shall be approved by the appropriate Department Director;

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- c. An increase of more than 60 contractual days to the original contract time, shall be approved by the City Manager.

(b) Changes in cost.

- (1) Any changes in contract cost which includes base contract amount, contingency, and NMGR, require the following approvals:

Change	Approver
Less than 5%	Program Manager
More than 5% less than 10%	Department Director
More than 10% less than 15%	Assistant City Manager
More than 15%	City Manager
Contract approved by City Council	City Council
Exceeds approved budget amount	City Council

- (2) Budgetary Authority: In no case does City staff or Management have the ability to increase the budget at the fund level, including usage of unbudgeted fund balance, without City Council approval.
- (3) Proposed construction work that deviates from the contract drawings and/or specifications shall be initiated with a field notice followed by a duly authorized change order when there is a change in cost and approved by the appropriate Approver.

(Code 1988, § 25.5-40; Ord. No. 2852, § 5-21-18)

Sec. 24-142. Suspension of Project

Due to reasons beyond the contractor's control or conditions exist which will impair the quality of the work, and upon recommendation by the Department Director, the purchasing manager, or the Office of the City Manager shall have the authority to suspend a construction or consultant project indefinitely.

Sec. 24-143. - Maximum practicable competition.

Under this chapter, all specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the city's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to those prepared for the city by architects, engineers, designers, and drafters.

(Code 1988, § 25.5-81)

Sec. 24-144. - Qualified products list.

The city may adopt qualified product lists that shall allow for maximum competition as is practical and that will satisfy the requirements of the city.

(Code 1988, § 25.5-82)

Sec. 24-145. - Brand name specification or equal specification.

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- (a) Use. Under this chapter, brand name or equal specifications may be used when the purchasing manager determines in writing that:
 - (1) No other design or performance specification or qualified products list is available;
 - (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - (4) Use of a brand name or equal specification is in the city's best interest.

Samples of "or equal" materials should be submitted with the bid; however, they may be submitted after the bid opening if adequate time is allowed to evaluate the samples before the bid is awarded.

- (b) Designation of several brand names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references, and shall further state that substantially equivalent products to those designated will be considered for award.
- (c) Required characteristics. Unless the purchasing manager determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (d) Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
- (e) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing manager makes a written determination that only the identified brand name item will satisfy the city's needs.
- (f) Competition. The purchasing manager shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under sole source procurement.

(Code 1988, § 25.5-83; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-146. - Authority for cooperative procurement.

The purchasing manager may either participate in, sponsor, or administer a cooperative procurement agreement for the procurement of any city services, construction, or items of tangible personal property with any other state agency, local public body, or external procurement unit.

(Code 1988, § 25.5-131)

Secs. 24-147—24-160. - Reserved.

DIVISION 2. - PROCUREMENT OF CONSTRUCTION, ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

Sec. 24-161. - Contracting for construction, architect-engineer, and land surveying selection procedure.

- (a) Architect-engineer, and land surveying services shall be procured in accordance with this division.
- (b) Construction projects may be awarded based on cost, qualifications, or both.
- (c) Determination of award for architects, engineers, landscape architects and surveyors shall be based on qualifications. Cost will not be a criteria factor in the evaluation process, and it shall be negotiated during the award phase of the contract.
- (d) Where the primary contract may be awarded through the procurement code without review by the selection advisory committee, nothing in this division shall require that the selection advisory committee separately review subcontractors who are an integral part of the primary contract.

(Code 1988, § 25.5-33, § 2-136; Ord. No. 1701, § I, 9-14-98; Ord. No. 1703, §§ I, II, X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2748, §§ I, II, 2-3-15)

Sec. 24-162. - Management of construction contracting.

The head of the city department responsible for a construction project shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the department head shall consider the city's requirements, its resources, and the potential contractor's capabilities.

(Code 1988, § 25.5-91; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-163. - Competitive sealed bidding.

Conditions for use. Where no factors other than cost will be considered, competitive sealed bidding shall be used.

- (a) Invitation for bids. An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
- (b) Public notice. For bids estimated to be \$100,000.00 or more, adequate public notice of the invitation for bid shall be given at a reasonable time not less than seven calendar days prior to the date set forth for the opening of the bid. The public notice shall state the place, date, and time of bid opening, and where bid documents may be inspected or obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.
- (c) Bid opening. A bid shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. A late bid will not be accepted. Lateness will be determined by the purchasing manager's time clock, and the purchasing manager's determination of promptness or lateness will be final. The amount of each bid and such other relevant information as the purchasing manager deems appropriate, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection. A copy of the information may be obtained by sending a self-addressed stamped envelope with reference to the bid number and title to the purchasing department. This information will not be given over the telephone.
- (d) Bid acceptance and bid evaluation. A bid shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bid, which may include criteria to determine acceptability, such as

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inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bid. Original cover sheet and all documents must be provided fully executed, if not so provided bid will be rejected.

- (e) Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of an inadvertently erroneous bid before or after bid opening or cancellation of awards or contracts based on such bid mistakes may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - (1) The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
 - (2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the purchasing manager.
- (f) Award. Unless otherwise determined impractical by the purchasing manager, bids resulting in contract(s) totaling less than \$100,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsive/responsible local bidders, then award should go to qualified non-local manufacturers or businesses. Contracts shall be awarded to the most responsible and responsive bidder who provides the best value as set forth in the requirements and criteria specified in the invitation for bid.
- (g) Multistep sealed bidding. When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (h) Federal funding. Any competitive, sealed bid procurement utilizing federal assistance requires at least two bids, firm fixed-price contracts, and selection based principally on price.

(Code 1988, § 25.5-31; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, §§ II, III, 8-17-09; Ord. No. 2746, §§ I, II, 2-3-15; Ord. No. 2852, § 5-21-18)

Sec. 24-164. - Request for proposals.

- (a) Conditions for use. When the use of competitive sealed bidding is either not practicable or not advantageous to the city, a contract may be entered into by use of the request for proposal method set forth herein.
- (b) Request for proposal. A proposal shall be solicited through a request for proposal.
- (c) Public notice. For proposals estimated to be \$100,000.00 or more, adequate public notice of the request for proposals shall be given at a reasonable time not less than seven calendar days prior to the date set forth for the closing of the request for proposals. The public notice shall state the due date and time for proposal submission, and where proposal documents may be inspected or

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obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.

- (d) Receipt of proposal. No proposal shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors prior to the deadline for receipt of the proposal by the purchasing manager. A register of proposals shall be prepared containing the name of each offeror. The register of proposals shall be open for public inspection not later than three days after the deadline for receipt of proposals. During the evaluation of proposals, and until approval of the recommendation of award by the city council, the contents of proposals may not be disclosed to the public. If a request for proposals is canceled and a similar RFP will be issued within six months, the contents of proposals received in response to the first request for proposals may not be disclosed until after approval by the city council of the recommendation of award for the second RFP or cancellation of the RFP.
- (e) Evaluation factors. The request for proposal shall state the relative importance of price and other evaluation factors.
- (f) Discussion with responsible offeror and revision to proposal. As provided in the request for proposal, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to ensure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors. Any modification received during the revision and negotiation stages will become a part of the permanent record.
- (g) Award. Awards shall be made to the highest-ranking responsible offeror taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation except that, unless otherwise determined impractical by the purchasing manager, award(s) resulting in contract(s) totaling less than \$100,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsible local manufacturers or local businesses, award shall be made to a responsible qualified non-local manufacturers or business. The contract file shall contain the basis on which the award is made.
- (h) The procurement of lease financing shall be conducted utilizing request for proposal.
- (i) Award recommendation shall be made to the city council by the purchasing manager.

(Code 1988, § 25.5-32; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, § IV, 8-17-09)

Sec. 24-165. - Selection advisory committee.

- (a) There is a selection advisory committee comprised of three department heads: One designated by the committee chair, one from the end user department and one serving on a rotating basis from the total pool of directors. For each request for proposal, there are at least five subject matter experts designated by the director of the department that developed the RFP. There shall be no more than seven subject matter experts total. All external subject matter experts are non-voting technical advisors and are not included in the total number of subject matter experts. A pool of internal subject matter experts shall be maintained by department and can be used for the appropriate procurement.

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- (b) A member of the selection advisory committee shall serve until a successor is appointed. An alternate may be suggested by any member and submitted to the selection advisory committee chair for approval. Upon approval, the alternate will attend in that member's place.
- (c) The assistant city managers shall serve as a nonvoting member and chair for the selection advisory committee.
- (d) The city's purchasing manager or designee shall serve as staff coordinator for the selection advisory committee.

(Code 1988, § 2-137; Ord. No. 1701, § I, 9-14-98; Ord. No. 1703, §§ III, X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 1947, § 1, 3-3-03; Ord. No. 2643, § I, 1-17-12)

Sec. 24-166. - Notice of projects; recommendations.

- (a) When the fee for professional or technical services is estimated to be \$100,000 or more, the city shall cause to be published, at least two weeks before initial screening of professional firms or persons by the selection advisory committee, a legal advertisement containing a brief description of the work to be performed by the professional firms or persons and inviting interested firms to submit their qualifications for consideration by the selection advisory committee.
- (b) If the estimated cost of the services is less than \$100,000.00, review by the selection advisory committee is not required. The purchasing manager may select a qualified firm or firms to provide these services.
- (c) When the fee for the professional/technical services is \$100,000.00 or more, the selection advisory committee shall submit the name of the most qualified professional firm or firms or person to the city council, for purposes of review and approval by the council. Nothing in this subsection shall prohibit the submission of more than one firm.

Sec. 24-167. - Files of qualifications of firms and persons.

The purchasing manager may maintain a file of qualifications of all firms or persons qualified to perform professional and technical services for city projects. These files shall be updated at the request of the selections advisory committee to provide current qualification information. Interviews and presentation of qualifications shall be conducted at the direction of the selection advisory committee. Mailed inquiries may be solicited to provide specific information as may be considered necessary by the selection advisory committee.

(Code 1988, § 2-139; Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-168. - Approval of contracts.

- (a) All city projects that require the contracting for construction in an amount of \$75,000.00 or more shall be performed under separate contract, and each contract shall require final approval by the city council.
- (b) Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the Mayor or city manager or their designees.
- (c) This section shall apply only to the primary professional firm. Any subcontractor shall be evaluated as a part of the primary contract.

(Code 1988, § 2-140, Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-169. - Bid security.

(a) Bid security. For the purpose of this article, bid security is subject to the following:

- (1) Required. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the purchasing manager to exceed \$50,000.00. Bid security shall be a bond provided by a surety company authorized to do business in the state or the equivalent in cash or otherwise supplied in a form satisfactory to the city. Nothing in this subsection shall prevent the requirement of such bonds on construction contracts under \$50,000.00 when the circumstances warrant.
- (2) Amount. Bid security shall be in an amount equal to at least five percent of the amount of the bid.
- (3) Rejection of bids for noncompliance. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a non-substantial manner with the security requirements.
- (4) Withdrawal of bids. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or the bid security.
- (5) Authority to require additional bonds. Nothing in this section shall be construed to limit the authority of the city to require a bid bond or other security in addition to those bonds, or in circumstances other than specified in subsection (a)(1) of this section.

Sec. 24-170 Contract performance and payment bonds.

- (1) Required amounts. When a construction contract is awarded in excess of \$50,000.00, the following bonds or security shall be delivered to the city and shall become binding on the parties upon the execution of the contract:
 - a. A performance bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, in an amount equal to 100 percent of the price specified in the contract; and
 - b. A payment bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100 percent of the price specified in the contract.
- (2) Reduction of bond amounts. After notice to the city council, the purchasing manager is authorized to reduce the amount of performance and payment bonds to 50 percent of the contract price for each bond when a written determination is made that it is in the best interests of the city to do so.
- (3) Authority to require additional bonds. Nothing in this subsection shall be construed to limit the authority of the city to require a performance bond or other security in addition to those bonds or in circumstances other than specified in subsection (b)(1) of this section.
- (4) Right to file suit on payment bonds. Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors for the work provided in the

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contract, for which a payment bond is furnished under this subsection, and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due that person. However, any person having a contract with a subcontractor of the contractor but having no express or implied contract with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

- (5) Location for filing suit on payment bonds. Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or district in which the construction contract was to be performed.
- (6) Copies of bond forms. Any person may request and obtain from the city a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

(Code 1988, § 25.5-92; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-171. - Contractor records.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:

- (1) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (2) Provide to the city, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

(Code 1988, § 25.5-161)

Sec. 24-172. - Patents.

If a city contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

- (1) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and
- (2) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

(Code 1988, § 25.5-162)

Sec. 24-173. - Copyrights and rights in data.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of

the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

(Code 1988, § 25.5-163)

Sec. 24-174. - Notice of federal public policy requirements.

If the city contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as: (i) equal employment opportunity; (ii) fair labor standards; (iii) energy conservation; (iv) environmental protection; or (v) other similar socioeconomic programs, the purchasing manager shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

(Code 1988, § 25.5-164; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-175. - Buy American/Buy America requirements.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall adhere to the appropriate Buy American/Buy America requirements of the federal agency providing the assistance.

(Code 1988, § 25.5-165)

Sec. 24-176. - Energy conservation.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

(Code 1988, § 25.5-166)

Sec. 24-177. - Small, women-owned and minority business enterprises.

- (a) Expand participation. If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.
- (b) Examples of affirmative steps. Affirmative steps to be taken shall include the following:
 - (1) Including qualified small, women-owned, and minority businesses on solicitation lists;
 - (2) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
 - (3) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;
 - (4) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and

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- (5) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.
- (c) Pass-through to subcontracts. A contractor awarded a federally funded contract shall take the affirmative steps, as linked in subsection (b) of this section, in awarding its subcontracts.

(Code 1988, § 25.5-167; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-178. - Labor surplus area businesses.

If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

(Code 1988, § 25.5-168; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-179. - Architectural and engineering services

- (a) If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall use qualifications-based competitive proposal procedures when contracting for architectural and engineering services as defined in 40 U.S.C. §541 et seq. and 49 U.S.C. §5325(d). Services subject to this requirement include but are not necessarily limited to program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.
- (b) Qualifications-based competitive proposal procedures require that:
 - (1) An offeror's qualifications be evaluated;
 - (2) Price be excluded as an evaluation factor;
 - (3) Negotiations be conducted with only the most qualified offeror; and
 - (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the city.
- (c) These qualifications-based competitive proposal procedures will be used for the procurement of the services listed above. This method of procurement will not be used to obtain other types of services even though a firm that provides architectural and engineering services is also a potential source to perform other types of services.
- (d) The city will use article III, source selection and contract information, division 1, professional and technical services procurement to procure architectural and engineering services in accordance with the city's procurement code as amended.

(Ord. No. 2132, § I, 9-7-04)

Sec. 24-180. - Cost or pricing data.

- (a) Required submissions relating to award of contracts. A prospective contractor shall submit cost or pricing data when the city contract is federally funded or is to be awarded on a noncompetitive basis.
- (b) Exceptions. Except for federally funded purchases, the submission of cost or pricing data relating to the award of a contract is not required when:

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- (1) The contract price is based on established catalogue prices or market prices;
 - (2) The contract price is set by law or regulation; or
 - (3) It is determined in writing by the purchasing manager that the requirements of subsection (a) of this section may be waived, and the determination states the reasons for such waiver.
- (c) Required submissions relating to change orders or contract modifications. For federally funded purchases and as otherwise required by the purchasing manager, the contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.
- (d) Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (e) Price adjustment provision required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the city, including profit or fee, shall be adjusted to exclude any significant sums by which the city finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the city and the contractor.

(Code 1988, § 25.5-52; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § I, 9-7-10)

Sec. 24-181. - Cost or price analysis.

- (a) Under this chapter, a cost analysis, or a price analysis, as appropriate, shall be conducted for contracts established through the application of section 24-95 (Sole source procurement). A written record of such cost analysis or price analysis shall be made a part of the contract file.
- (b) For all federally funded purchases, a cost or price analysis must be conducted as required by applicable federal regulations for all related contracts including contract cost modifications. The cost or price analysis shall be public record.

(Code 1988, § 25.5-53; Ord. No. 2589, § II, 9-7-10)

Sec. 24-182. - Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the purchasing manager or head of a using agency deems advisable to protect the city's interest. Any such bonding or security requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

(Code 1988, § 25.5-54; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-183. - Cancellation/rejection of invitation for bid or request for proposal; No Responsive Offers Received

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- (a) Under this chapter, an invitation for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city. The reasons therefor shall be made part of the contract file. Each solicitation issued by the city shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the city. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request of unsuccessful bidders or offerors.
- (b) If no responsive offers are received, then the purchasing manager may purchase the required goods or services, with no change in the published specifications, in the open market at the best obtainable price. If the specifications are changed, or if so required by the purchasing manager, a purchase in the open market shall not be permitted and the competitive solicitation must be reissued.

(Code 1988, § 25.5-38; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-184. - Preferences.

- (a) Preference factor. A preference factor may be applicable to quotes, bids or proposals received in response to procurement solicitations conducted.
 - (1) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to local businesses based upon a five percent deduction from the local business quote or bid, or five percent of total evaluation points being added to the score of a proposal from a local business.
 - (2) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to resident businesses which has a valid resident business certificate issued by the New Mexico Taxation and Revenue department based upon a five percent of total evaluation points being added to the score of a proposal from a resident business and a preference factor shall be applicable to resident veteran business which has a valid resident veteran business certificate issued by New Mexico Taxation and Revenue department based upon a ten percent of the total evaluation points being added to the score of a proposal from a resident veteran business.
 - (3) A preference factor for Section 3 firms as defined in the Housing and Urban Development Act of 1968, 12 U.S.C. 17801u (Section 3), as amended, shall be applicable pursuant to that Act whenever a contract resulting from a competitive procurement solicitation is funded through a grant from the U.S. Housing and Urban Development Department.
- (b) New Mexico materials. Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference for the use of materials produced, grown, processed, or manufactured in New Mexico by citizens or residents of New Mexico shall apply pursuant to § 13-4-2, NMSA, 1978, as amended.
- (c) Limitations. No bidder/offeror entitled to preference pursuant to this section shall receive more than a ten percent preference on any one bid/proposal submitted. Only the principal bidder/offeror or one of the principal bidders/offerors, not a subcontractor, may qualify for a preference.

(Code 1988, § 25.5-40; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. B), 8-6-12)

Sec. 24-185 Change orders

(a) Changes in time. Extensions of time on construction contracts or professional/technical service contracts, may be granted by the Project Manager, subject to appropriate approvals, on a case-by-case basis for the following reasons:

- (1) One additional day for each delay in which the contractor could not perform contractual work and subsequent days as may be required to repair work damage by weather, as defined in General Conditions for Construction Contracts, 2004, during the term of the contract;
- (2) City-requested changes to project specifications that incur time as a result;
- (3) Other circumstances in which the City believes such an extension of time is in the best interest of the project and must be approved by the Department Director;
- (4) Limitations on extensions of time addressed by this policy are as follows:
 - a. An increase of 30 contractual days to the original contract time, shall be approved by the Program Manager;
 - b. An increase of 31 to 60 contractual days to the original contract time shall be approved by the appropriate Department Director;
 - c. An increase of more than 60 contractual days to the original contract time, shall be approved by the City Manager.

(b) Changes in cost

- (1) Any changes in contract cost which includes base contract amount, contingency, and NMGR, require the following approvals:

Change	Approver
Less than 5%	Program Manager
More than 5% less than 10%	Department Director
More than 10% less than 15%	Assistant City Manager
More than 15%	City Manager
Contract approved by City Council	City Council
Exceeds approved budget amount	City Council

- (2) Budgetary Authority: In no case does City staff or Management have the ability to increase the budget at the fund level, including usage of unbudgeted fund balance, without City Council approval.
- (3) Proposed construction work that deviates from the contract drawings and/or specifications shall be initiated with a field notice followed by a duly authorized change order when there is a change in cost and approved by the appropriate Approver and based on current thresholds.

(Code 1988, § 25.5-40; Ord. No. 2852, § 5-21-18)

Sec. 24-186. Suspension of Project

Due to reasons beyond the contractor's control or conditions exist which will impair the quality of the work, and upon recommendation by the Department Director, the purchasing manager, or the Office of the City Manager shall have the authority to suspend a construction or consultant project indefinitely.

Sec. 24-187. - Maximum practicable competition.

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Under this chapter, all specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the city's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to those prepared for the city by architects, engineers, designers, and drafters.

(Code 1988, § 25.5-81)

Sec. 24-188. - Qualified products list.

The city may adopt qualified product lists that shall allow for maximum competition as is practical and that will satisfy the requirements of the city.

(Code 1988, § 25.5-82)

Sec. 24-189. - Brand name specification or equal specification.

- (a) Use. Under this chapter, brand name or equal specifications may be used when the purchasing manager determines in writing that:
 - (1) No other design or performance specification or qualified products list is available;
 - (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - (4) Use of a brand name or equal specification is in the city's best interest.
- (b) Samples of "or equal" materials should be submitted with the bid; however, they may be submitted after the bid opening if adequate time is allowed to evaluate the samples before the bid is awarded.
- (c) Designation of several brand names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references, and shall further state that substantially equivalent products to those designated will be considered for award.
- (d) Required characteristics. Unless the purchasing manager determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (e) Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(Code 1988, § 25.5-83; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-190. - Brand name specification.

- (a) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing manager makes a written determination that only the identified brand name item will satisfy the city's needs.
- (b) Competition. The purchasing manager shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price

competition is practicable. If only one source can supply the requirement, the procurement shall be made under sole source procurement.

(Code 1988, § 25.5-84; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-191. - Authority for cooperative procurement.

The purchasing manager may either participate in, sponsor, or administer a cooperative procurement agreement for the procurement of any city services, construction, or items of tangible personal property with any other state agency, local public body, or external procurement unit in accordance with an agreement.

(Code 1988, § 25.5-131)

Secs. 24-192 – 24-195. Reserved.

DIVISION 3. - PROCUREMENT OF TANGIBLE GOODS

Sec. 24-196. - Contracting for tangible goods selection procedure.

(a) Tangible goods shall be procured in accordance with this division.

Sec. 24-197. - Competitive sealed bidding.

Conditions for use. Where no factors other than cost will be considered, competitive sealed bidding shall be used.

- (a) Invitation for bids. An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
- (b) Public notice. For bids estimated to be \$100,000.00 or more, adequate public notice of the invitation for bid shall be given at a reasonable time not less than seven calendar days prior to the date set forth for the opening of the bid. The public notice shall state the place, date, and time of bid opening, and where bid documents may be inspected or obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.
- (c) Bid opening. A bid shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. A late bid will not be accepted. Lateness will be determined by the purchasing manager's time clock, and the purchasing manager's determination of promptness or lateness will be final. The amount of each bid and such other relevant information as the purchasing manager deems appropriate, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection. A copy of the information may be obtained by sending a self-addressed stamped envelope with reference to the bid number and title to the purchasing department. This information will not be given over the telephone.
- (d) Bid acceptance and bid evaluation. A bid shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bid, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are

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not set forth in the invitation for bid. Original cover sheet and all documents must be provided fully executed, if not so provided bid will be rejected.

- (e) Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of an inadvertently erroneous bid before or after bid opening or cancellation of awards or contracts based on such bid mistakes may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - (1) The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
 - (2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the purchasing manager.
- (f) Award. Unless otherwise determined impractical by the purchasing manager, bids resulting in contract(s) totaling less than \$100,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsive/responsible local bidders, then award should go to qualified non-local manufacturers or businesses. Contracts shall be awarded to the most responsible and responsive bidder who provides the best value as set forth in the requirements and criteria specified in the invitation for bid.
- (g) Multistep sealed bidding. When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (h) Federal funding. Any competitive, sealed bid procurement utilizing federal assistance requires at least two bids, firmed fixed-price contracts, and selection based principally on price.

(Code 1988, § 25.5-31; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, §§ II, III, 8-17-09; Ord. No. 2746, §§ I, II, 2-3-15; Ord. No. 2852, § 5-21-18)

Sec. 24-198. - Notice of projects; recommendations.

- (a) When the cost of tangible goods is estimated to be \$100,000 or more, the city shall cause to be published, at least two weeks before initial screening of professional firms or persons by the selection advisory committee, a legal advertisement containing a brief description of the work to be performed by the professional firms or persons and inviting interested firms to submit their qualifications for consideration by the selection advisory committee.

Sec. 24-199. - Approval of contracts.

- (a) Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the Mayor or city manager or their designees.

(Code 1988, § 2-140, Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-200. - Contractor records.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:

- (1) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (2) Provide to the city, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

(Code 1988, § 25.5-161)

Sec. 24-201. - Patents.

If a city contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

- (1) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and
- (2) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

(Code 1988, § 25.5-162)

Sec. 24-202. - Copyrights and rights in data.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

(Code 1988, § 25.5-163)

Sec. 24-203. - Notice of federal public policy requirements.

If the city contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as: (i) equal employment opportunity; (ii) fair labor standards; (iii) energy conservation; (iv) environmental protection; or (v) other similar socioeconomic programs, the purchasing manager shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

(Code 1988, § 25.5-164; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-204. - Buy American/Buy America requirements.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall adhere to the appropriate Buy American/Buy America requirements of the federal agency providing the assistance.

(Code 1988, § 25.5-165)

Sec. 24-205. - Energy conservation.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

(Code 1988, § 25.5-166)

Sec. 24-206. - Small, women-owned and minority business enterprises.

- (a) Expand participation. If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.
- (b) Examples of affirmative steps. Affirmative steps to be taken shall include the following:
 - (1) Including qualified small, women-owned, and minority businesses on solicitation lists;
 - (2) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
 - (3) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;
 - (4) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and
 - (5) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.
- (c) Pass-through to subcontracts. A contractor awarded a federally funded contract shall take the affirmative steps, as linked in subsection (b) of this section, in awarding its subcontracts.

(Code 1988, § 25.5-167; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-207. - Labor surplus area businesses.

If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

(Code 1988, § 25.5-168; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-208. - Cost or pricing data.

- (a) Required submissions relating to award of contracts. A prospective contractor shall submit cost or pricing data when the city contract is federally funded or is to be awarded on a noncompetitive basis.
- (b) Exceptions. Except for federally funded purchases, the submission of cost or pricing data relating to the award of a contract is not required when:
 - (1) The contract price is based on established catalogue prices or market prices;
 - (2) The contract price is set by law or regulation; or

- (3) It is determined in writing by the purchasing manager that the requirements of subsection (a) of this section may be waived, and the determination states the reasons for such waiver.
- (c) Required submissions relating to change orders or contract modifications. For federally funded purchases and as otherwise required by the purchasing manager, the contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.
- (d) Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (e) Price adjustment provision required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the city, including profit or fee, shall be adjusted to exclude any significant sums by which the city finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the city and the contractor.

(Code 1988, § 25.5-52; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § I, 9-7-10)

Sec. 24-209. - Cost or price analysis.

- (a) Under this chapter, a cost analysis, or a price analysis, as appropriate, shall be conducted for contracts established through the application of section 24-95 (Sole source procurement). A written record of such cost analysis or price analysis shall be made a part of the contract file.
- (b) For all federally funded purchases, a cost or price analysis must be conducted as required by applicable federal regulations for all related contracts including contract cost modifications. The cost or price analysis shall be public record.

(Code 1988, § 25.5-53; Ord. No. 2589, § II, 9-7-10)

Sec. 24-210. - Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the purchasing manager or head of a using agency deems advisable to protect the city's interest. Any such bonding or security requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

(Code 1988, § 25.5-54; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-211. - Cancellation/rejection of invitation for bid or request for proposal; No Responsive Offers Received

- (a) Under this chapter, an invitation for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city. The reasons therefor shall be made part of the contract file. Each solicitation issued by the city shall state that the solicitation may be canceled and

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that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the city. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request of unsuccessful bidders or offerors.

- (b) If no responsive offers are received, then the purchasing manager may purchase the required goods or services, with no change in the published specifications, in the open market at the best obtainable price. If the specifications are changed, or if so required by the purchasing manager, a purchase in the open market shall not be permitted and the competitive solicitation must be reissued.

(Code 1988, § 25.5-38; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-212. - Preferences.

- (a) Preference factor. A preference factor may be applicable to quotes, bids or proposals received in response to procurement solicitations conducted.
 - (1) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to local businesses based upon a five percent deduction from the local business quote or bid, or five percent of total evaluation points being added to the score of a proposal from a local business.
 - (2) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to resident businesses which has a valid resident business certificate issued by the New Mexico Taxation and Revenue department based upon a five percent of total evaluation points being added to the score of a proposal from a resident business and a preference factor shall be applicable to resident veteran business which has a valid resident veteran business certificate issued by New Mexico Taxation and Revenue department based upon a ten percent of the total evaluation points being added to the score of a proposal from a resident veteran business.
 - (3) A preference factor for Section 3 firms as defined in the Housing and Urban Development Act of 1968, 12 U.S.C. 17801u (Section 3), as amended, shall be applicable pursuant to that Act whenever a contract resulting from a competitive procurement solicitation is funded through a grant from the U.S. Housing and Urban Development Department.
- (b) New Mexico materials. Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference for the use of materials produced, grown, processed, or manufactured in New Mexico by citizens or residents of New Mexico shall apply pursuant to § 13-4-2, NMSA, 1978, as amended.
- (c) Limitations. No bidder/offeror entitled to preference pursuant to this section shall receive more than a ten percent preference on any one bid/proposal submitted. Only the principal bidder/offeror or one of the principal bidders/offerors, not a subcontractor, may qualify for a preference.

(Code 1988, § 25.5-40; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. B), 8-6-12)

Sec. 24-213 Change orders

- (a) **Changes in cost**

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(1) Any changes in base contract amount require the following approvals:

Change	Approver
Less than 5%	Program Manager
More than 5% less than 10%	Department Director
More than 10% less than 15%	Assistant City Manager
More than 15%	City Manager
Contract approved by City Council	City Council
Exceeds approved budget amount	City Council

(2) Budgetary Authority: In no case does City staff or Management have the ability to increase the budget at the fund level, including usage of unbudgeted fund balance, without City Council approval.

(Code 1988, § 25.5-40; Ord. No. 2852, § 5-21-18)

Sec. 24-214. Suspension of Project

Due to reasons beyond the contractor's control or conditions exist which will impair the quality of the work, and upon recommendation by the Department Director, the purchasing manager, or the Office of the City Manager shall have the authority to suspend a construction or consultant project indefinitely.

Sec. 24-215. - Maximum practicable competition.

Under this chapter, all specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the city's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to those prepared for the city by architects, engineers, designers, and drafters.

(Code 1988, § 25.5-81)

Sec. 24-216. - Qualified products list.

The city may adopt qualified product lists that shall allow for maximum competition as is practical and that will satisfy the requirements of the city.

(Code 1988, § 25.5-82)

Sec. 24-217. - Brand name specification or equal specification.

(a) Use. Under this chapter, brand name or equal specifications may be used when the purchasing manager determines in writing that:

- (1) No other design or performance specification or qualified products list is available;
- (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
- (3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (4) Use of a brand name or equal specification is in the city's best interest.

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- (b) Samples of "or equal" materials should be submitted with the bid; however, they may be submitted after the bid opening if adequate time is allowed to evaluate the samples before the bid is awarded.
- (c) Designation of several brand names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references, and shall further state that substantially equivalent products to those designated will be considered for award.
- (d) Required characteristics. Unless the purchasing manager determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (e) Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(Code 1988, § 25.5-83; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-218. - Brand name specification.

- (a) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing manager makes a written determination that only the identified brand name item will satisfy the city's needs.
- (b) Competition. The purchasing manager shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under sole source procurement.

(Code 1988, § 25.5-84; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-219. - Authority for cooperative procurement.

The purchasing manager may either participate in, sponsor, or administer a cooperative procurement agreement for the procurement of any city services, construction, or items of tangible personal property with any other state agency, local public body, or external procurement unit in accordance with an agreement.

(Code 1988, § 25.5-131)

Sec. 24-220. Reserved.

ARTICLE VI. – DEBARMENT OR SUSPENSION

Sec. 24-221. – Authority to suspend.

- (a) The purchasing manager, after consulting with the city attorney and the contract administrator, as defined by the using department, is authorized to suspend a person for cause from consideration for the award of future city contracts for a specified period of time. The suspension may apply to a person in his/her individual as well as corporate capacity. The suspension shall be for a period of not more than three months.
- (b) The causes for suspension shall include one or more of the following:

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- (1) Violation of any city or noncity contract provision, as follows, of a character which is regarded by the purchasing manager to be so serious as to justify suspension:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, including failure to pay subcontractors. Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension.
- (2) Any other cause the purchasing manager determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this chapter.
- (3) Violation of the ethical standards set forth in Article II of this chapter.

(Code 1988, § 25.5-101; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-222. – Authority to debar.

- (a) The purchasing manager, after consulting with the city attorney and the contract administrator, as defined by the using department, is authorized to debar a person for cause from consideration for the award of future city contracts for a specified period of time. The debarment may apply to a person in his/her individual as well as corporate capacity. The debarment shall be for a period of not more than three years.
- (b) The causes for debarment shall include one or more of the following:
 - (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
 - (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a city contractor.
 - (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
 - (4) Violation of any city or noncity contract provision, as follows, of a character which is regarded by the purchasing manager to be so serious as to justify debarment action:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, including failure to pay subcontractors. Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
 - (5) Any other cause the purchasing manager determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this chapter.
 - (6) Violation of the ethical standards set forth in Article II of this chapter.

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- (7) Any violation of the drug-free workplace regulations.

(Code 1988, § 25.5-101; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-223. – Notice of decision.

- (a) Mailing notice. Any written decision by the purchasing manager to debar a person under this article shall be sent by certified mail, return receipt requested, to the person affected by the decision, or by hand delivery and delivery receipt requested.
- (b) Contents of notice. The written notice of the purchasing manager's decision shall set forth in detail all reasons for the debarment and shall inform the person of their rights concerning administrative appeal.

(Code 1988, § 25.5-102; Ord. No. 1923, § 1, 6-17-02)

Secs. 24-224 - Determination of responsibility in construction and consultant contracts.

- (a) In all contracts related to capital projects, the purchasing manager may evaluate the past performance of an entity doing business with the city and determine if the contractor is not a responsible offeror. In the evaluation of the performance of the contractor, the following factors shall be considered:
 - (1) Timeliness of performance;
 - (2) Quality of performance;
 - (3) Compliance with all applicable City ordinances;
 - (4) Compliance with the labor laws regarding payment of wage rates;
 - (5) Compliance with all applicable municipal, state, and federal laws;
 - (6) Poor performance causing delays in performance by other contractors;
 - (7) Failure to comply with safety laws, rules and regulations;
 - (8) Failure to accept responsibility for managing claims arising out of the performance of their contracts;
 - (9) Or any other factor which, singly or in combination with the above, results in a determination by the department director that the proposed contracting entity is not a responsible offeror.
- (b) Any such determination of non-responsibility made by the purchasing manager shall be sent to the contractor by certified mail, return receipt requested. A determination of non-responsibility shall continue until such time as the purchasing manager, based on contract performance occurring after the determination, then determines that offeror has improved its performance sufficient to be deemed responsible. Any determination of non-responsibility may be protested.

Secs. 24-225-24-230. - Reserved.

ARTICLE VII. - APPEALS AND REMEDIES

Sec. 24-231. - Bid protests.

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- (a) Right to protest. Any offeror who is aggrieved in connection with the procurement process of this chapter, including but not limited to the solicitation or award of a contract, may file a written protest with the purchasing manager. Such protest must be filed within five working days after the aggrieved bidder or offeror knows or should have known of the facts giving rise to the protest unless, otherwise specified in this chapter. If the protest concerns the awarding of a bid, the protest must be filed within five working days of receipt of the purchasing's manager's determination. The protestor shall set forth in detail all reasons for the protest. The protest shall:
 - (1) Include the name and address of the protestor;
 - (2) Identify the contracting activity and the number of the solicitation, if any, and if a contract has been awarded the contract number, if any;
 - (3) Contain a statement of the grounds for protest;
 - (4) Include supporting exhibits, evidence affidavits or documents to substantiate any claim unless not available within the filing time, in which case the expected availability date shall be indicated; and
 - (5) Specify the ruling requested from the purchasing manager.
- (b) Bid protest appeal bond or security. The options for an appeal bond or security are an appellate bond through a bonding company authorized to do business in New Mexico; letter of credit or its equivalent from a federally insured financial institution; or cashier's check or its equivalent payable to the City of Las Cruces. Amount of appeal bond or security shall be determined as follows:
 - (1) One Thousand and No/100 Dollars (\$1,000.00) for a bid protest to a contract expected to be awarded in an amount under One Hundred Thousand and No/100 Dollars (\$100,000.00).
 - (2) Five Thousand and No/100 Dollars (\$5,000.00) for a bid protest to a contract expected to be awarded in an amount between One Hundred Thousand and No/100 Dollars (\$100,000.00) and Five Hundred Thousand and No/100 Dollars (\$500,000.00).
 - (3) Ten Thousand and No/100 Dollars (\$10,000.00) for a bid protest to a contract expected to be awarded in an amount in excess of Five Hundred Thousand and No/100 Dollars (\$500,000.00).
 - (4) The purchasing manager will determine the amount of the appeal bond or security based on bids received, the engineer's estimate, and/or budgeted project funds, and that decision will be final.
- (c) Duties of purchasing manager upon receipt of protest. Upon receipt of any protest filed in accordance with section (a) of this section, the purchasing manager shall review the facts giving rise to the protest and within 15 working days mail to the protestor and all other bidders, return receipt requested, a written determination concerning the validity of the protest. The determination shall set forth the rationale, the proposed action to be taken by the purchasing manager or the city and shall inform the protestor and other bidders of their right to appeal the purchasing manager's determination in accordance with the appeal procedures set forth in subsection (c) of this section. Failure to timely appeal the purchasing manager's determination shall bar further recourse by the protestor or any other bidder, and the purchasing manager's determination and proposed action shall be final.
- (d) State of procurement during protest. If timely protest is made under subsection (a) of this section, the purchasing manager shall not proceed further with the solicitation or award of the contract until the appeal process has been concluded in accordance with this section or until the purchasing manager makes a determination based on the records that the award of the contract without delay is

necessary to protect substantial interests of the city. If the purchasing manager determines an award without delay is necessary and the protestor later prevails in the appeal, the protestor shall be entitled only to reasonable costs, not to include attorney fees, associated with the preparation and submission of the bid.

- (e) Appeal of purchasing manager's decision. Any protestor or other bidder aggrieved by the purchasing manager's determination made pursuant to subsection (b) of this section may appeal such determination by filing, within five working days of receipt of such decision, a written notice of appeal with the city clerk, which shall set forth in detail all reasons for the appeal and whether or not the protestor will be represented by an attorney.
- (f) Appeals board. All timely appeals of the purchasing manager's determination shall be heard by the appeals board within 15 working days after the filing of the notice of appeal with the city clerk. The appeals board shall consist of three members who are neither city employees nor city councilors and who shall be appointed by the city manager. The members may be paid or may serve voluntarily. The city clerk shall be responsible for notifying all protestors and other bidders of the time and place of the hearing.
- (g) Hearing procedures. The hearing shall be informal but shall provide at a minimum for the swearing in and cross examination of witnesses by the city or any party having filed an appeal. The board may develop rules for the conduct of protest meetings. After concluding the hearing, the appeals board shall issue a written determination, within 15 working days of holding a hearing, of either upholding or reversing the purchasing manager's determination. The determination shall be final.
- (h) Costs. The losing party to the appeal shall be responsible for the reasonable costs of the appeal as determined by the appeals board. The board's determination of costs shall be based on the costs and expenses incurred by the board, including but not limited to the board's salary, attorneys' fees, reproduction, and transcription costs.

(Code 1988, § 25.5-111; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-232. – Debarment appeal.

- (a) Timely appeal. The person debarred may appeal the determination of the purchasing manager by filing, within five working days of the receipt of the determination, a written notice of appeal and filing an appeals bond with the city clerk in an amount to be set by resolution of the city council. Any notice of appeal not filed within the five-working-day period shall not be timely. The notice of appeal shall be filed with the city clerk and shall set forth in detail all reasons for the appeal. No debarred person shall contact orally or in writing any member of the appeals board outside of the adjudicatory process.
- (b) Appeals board. All timely appeals of the purchasing manager's determination shall be heard by the appeals board within 15 working days after filing the notice of appeal with the city clerk. The appeals board shall consist of three members who are neither city employees nor city councilors and who shall be appointed by the city manager. The members may receive travel expenses or per diem or may serve voluntarily.
- (c) Notification of hearing. The city clerk shall be responsible for notifying the debarred person of the time and place of the hearing, which shall be opened to the public and conducted in compliance with the Open Meetings Act.
- (d) Record of hearing. The city shall provide a clerk who shall record the hearing and prepare a nonverbatim account of the hearing. Copies of the recordings and nonverbatim account shall be provided to the debarred person for a reasonable reproduction cost.

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- (e) Conduct of hearing. The hearing shall be informal but shall provide at a minimum for the swearing in and cross examination of witnesses by the parties involved. The appeals board shall have the authority to call for the attendance of witnesses and the production of documents, to swear witnesses, to call witnesses itself, to examine witnesses including the debarred person, and to hear all evidence properly brought before it. The formal rules of evidence shall not apply to this proceeding. The appeals board may adopt additional rules for hearings not inconsistent with this chapter.
- (f) Legal representation. The debarred person may be represented before the appeals board by a representative of his choice. The representative shall be identified, and their name made known to the board three days prior to the hearing. If the representative of the person who has appealed is an attorney, the purchasing manager may be represented by the city attorney.
- (g) Written decision of board. After concluding the hearing, the appeals board shall issue a written decision either upholding or reversing the purchasing manager's determination within 15 working days of the completion of the hearing. The decision of the board shall be based upon the evidence received at the hearing and shall be final.
- (h) Costs. The losing party to the appeal shall be responsible for the reasonable costs of the appeal as determined by the appeals board. The board's determination of costs shall be based on the costs and expenses incurred by the board, including but not limited to the board's salary, attorneys' fees, reproduction, and transcription costs.

(Code 1988, § 25.5-103; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-233. - Remedies for solicitations or awards in violation of law.

- (a) Prior to bid opening or closing date for receipt of proposals. If, prior to the bid opening or the closing date for receipt of proposals, the purchasing manager, after consultation with the city attorney, determines that a solicitation made under this chapter is in violation of federal, state, or municipal law, the solicitation shall be canceled or revised to comply with applicable law.
- (b) Prior to award. If, after bid opening or the closing date for receipt of proposals, the purchasing manager, after consultation with the city attorney, determines that a solicitation or a proposed award of a contract made under this chapter is in violation of federal, state, or municipal law, the solicitation or proposed award shall be canceled.
- (c) After award. If, after an award, the purchasing manager, after consultation with the city attorney, determines that a solicitation or award of a contract made under this chapter was in violation of applicable law, then:
 - (1) If the person awarded the contract has not acted fraudulently or in bad faith, the contract may be:
 - a. Ratified and affirmed, provided it is determined that doing so is in the best interests of the city; or
 - b. Terminated, and the person awarded the contract shall be compensated for actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or
 - (2) If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the city.

(Code 1988, § 25.5-113; Ord. No. 1923, § 1, 6-17-02)

PART II – MUNICIPAL CODE
Chapter 24 – PROCUREMENT CODE

ARTICLE I. - IN GENERAL

Sec. 24-1. - Purpose.

The purpose of this chapter is to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity.

(Code 1988, § 25.5-1)

Sec. 24-2. - Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

All definitions listed within New Mexico Statutes sections 13-1-21 through 13-1-199, NMSA, 1978, plus, sections 13-4-1 through 13-4-43, NMSA, 1978, are incorporated herein by reference. Wherever difference exists between such statutory definitions and any definitions within this chapter, the definition of this chapter shall prevail.

Advertising means a public medium promoting a product, service, or event, including radio, television, print and electronic.

Agreement means two or more persons having common understanding about responsibilities, obligations, duties, and rights.

Approved equal means approved specifications as established by the industry or the using agency.

Award means the issuance of a validly executed contract which may include a purchase order.

Bid means a response to a competitive sealed procurement solicitation.

Bidder means a person who submits a quote/bid in response to a solicitation for respective, competitive quotes/bids.

Blind trust means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in or other disposition of the property subject to the trust.

Brand name or equal specifications means a specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet city requirements, and which provides for the submission of equivalent products.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Calendar days means all days in a month including weekend, holidays, etc.

Construction Manager At Risk (CMAR) means the construction manager commits to deliver the project within a Guaranteed Maximum Price (GMP) based on the construction documents and specifications.

Contingency means an amount set aside to address unforeseen issues.

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Contract means agreement between two or more persons authorized to legally bind their interests by setting forth what each person will or will not do in the procurement of tangible personal property, professional or nonprofessional services, or construction.

Contract administration means a contract administration system designed to ensure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

Contract limitations and change orders means a construction related written order directing the contractor to make a change, which the contract authorizes with or without the contractor's consent.

Defective pricing means when a contractor has more current, complete, and accurate cost and pricing data and does not disclose it resulting in a significant increase in price.

Employee means an individual drawing salary or wages from the city, whether elected or not; any uncompensated individual performing personal services for the city or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the city; and any uncompensated individual serving as an elected official of the city.

Financial interest means:

- (1) Ownership of one percent or more of any property or business; or
- (2) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

Gratuity means anything of value that is presented or promised in anticipation of receiving a consideration, whether or not the consideration is less than, equal to or greater than the value presented or promised.

Immediate family means an employee's spouse, son, daughter, or parent as defined in FMLA regulations. FMLA defines the term "parent" as "a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when he or she was a minor."

Invitation for bid/invitation to bid (IFB or ITB) means all documents, whether attached or incorporated by reference, used for soliciting sealed bids whereby award is based upon the lowest price that meets specifications.

Local business means a business that has a valid city business certificate or license issued through the City of Las Cruces.

Non-procurement contracts means any agreement that was not the result of a procurement, for example memoranda of understanding, grant pass-through or fiscal agent agreements, or contracts that don't involve expenditures for goods or services.

Offeror means a person submitting a proposal in response to a competitive request for proposals.

Person means any business, individual, union, committee, club, or other organization, or group of individuals.

Pricing data means factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

Professional services means the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified

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public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services.

Procurement means the buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, service, or construction, including needs analysis, specification development, competitive or noncompetitive solicitation of sources, contract development, negotiation and execution, and all phases of contract administration.

Proposal means a response to a competitive sealed procurement solicitation.

Public agency means an administrative division of city, state, or federal government.

Qualified products list means an approved list of tangible goods, services, or construction items described by model or catalog numbers, which, prior to competitive solicitation, a determination was made that the list met applicable specification requirements.

Quote means a response to a procurement solicitation less than \$100,000 conducted for the purchase of goods/services/construction, whereby award is based upon the lowest price that meets specifications as deemed practical.

Request for proposals (RFP) means a competitive solicitation of proposals conducted for the purchase of goods/services/construction whereby the responses are evaluated considering multiple, weighted criteria and the resulting contract is awarded based upon the response ranked highest considering such criteria.

Supplies includes tangible goods including, but is not limited to, equipment, materials, rolling stock, books, fuel, tools, printed media.

Tangible goods means physical objects or items (like equipment and inventory) that can be touched and has a real, physical presence.

Technical services means research and development (R&D) work, the development and installation of management information systems (MIS), materials requirement planning (MRP) systems, and the development of technical manuals, printing services, and repair services.

Using agency means any department, commission, board, or public agency requiring supplies, services, or construction procured pursuant to this chapter.

Working days means only those days per City calendar in which City staff are available to address, observe, or otherwise handle contractual issues as they arise. The following days are normally not considered working days: City Holidays, Saturdays, Sundays, and days in which the City Manager has closed City Offices due to inclement weather or some other specified emergencies.

(Code 1988, § 25.5-3; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. A), 8-6-12)

Sec. 24-3. - Applicability.

- (a) This chapter applies to contracts for the procurement of supplies, services, and construction entered into by the city after the effective date of the ordinance from which this chapter derives. It shall apply to every expenditure of public funds by the city or a public agency for public purchasing irrespective of the source of the funds, except for procurement that is exempt as set forth herein.
- (b) When the procurement involves the expenditure of federal or state assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal and state law and regulations. Nothing in this chapter shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

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All the dollar thresholds mentioned in this code exclude taxes, freight, and shipping charges.

(Code 1988, § 25.5-2; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-4. - Authorized exemptions from competitive procurement, subject to review and written determination by the purchasing manager. All other applicable contract requirements of this article are required.

- (1) Procurement of goods, services or construction from state agencies, public bodies, or external procurement units.
- (2) Procurement of publicly provided or publicly regulated gas, electricity, water, sewer or refuse collection services.
- (3) Purchases of books and periodicals from publishers or copyright holders thereof to include publications offered on CDs, videos, or the Internet.
- (4) Travel or shipping by common carrier or by private conveyance, or to meals and lodging.
- (5) Purchase of live animal(s).
- (6) Art objects or artifacts or for their creation including exhibits.
- (7) Procurement from self-determination corporations or other such enterprises designed and operated to assist in the care or maintenance of the sick and indigent and the prevention thereof and aided by state or federal antipoverty programs or through private philanthropy.
- (8) Leases, exchanges or purchases of real property or a permanent interest in land.
- (9) Services of bond underwriters and debt rating agencies.
- (10) Agreement for the services of attorneys, legal assistants, and expert witnesses. Services of expert witnesses needed in conjunction with litigation, court reporting services and legislative activities. Contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees.
- (11) Purchases, rentals, leases (personal and real property), and professional/technical services contracts necessary for the investigation of criminal activities. The police department may purchase such materials and services without quotations, requests for proposals, or bids if such would compromise a criminal investigation as determined by the chief of police in writing. All funds expended for this type of activity will be properly receipted and accounted for with supporting documentation. All documentation will be maintained by the police department and shall be subject to internal audit. Rentals, leases, and professional/technical services will be limited to the term of an investigation.
- (12) Contracts with professional entertainers.
- (13) Advertising in all media.
- (14) Promotional goods intended for resale or for the procurement of printing services for materials produced and intended for resale.
- (15) Subscription services.
- (16) Contracts for retirement and other benefits.
- (17) Services provided by lobbyists or legislative experts.

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- (18) Contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration.
- (19) Procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act.
- (20) Procurement of surety bonds.
- (21) Procurement of parts and labor or maintenance agreement to repair disabled equipment or machinery if the equipment or machinery is repaired by a franchised dealer or by a factory authorized repair shop.
- (22) Payments for conference registrations, offsite training courses, or similar minor purchases where prepayments are required, or which are administrative in nature and non-competitive as determined by the purchasing manager.
- (23) Payments for membership dues.
- (24) Existing contracts. The purchasing manager may contract for services, construction, or goods without the use of competitive bids or competitive proposals at a price equal to or less than:
 - a. The current federal or state supply contract or catalogue price, whichever is lower, and the purchase order adequately identifies the contract relied upon. A copy of the federal supply contract or catalogue shall be made part of the procurement record.
 - b. The current contract price held by other intrastate or interstate governmental bodies and their agencies. A copy of the contract relied upon shall be made part of the procurement record.
 - c. A bid awarded by the city to the same contractor, for the same materials or services, within the past 24 months. A copy of the original documentation is to become a permanent part of the procurement record providing the vendor wishes to extend. Resulting contract(s) shall not exceed 48 months after the initial contract execution date.
- (25) Cooperative procurements through other government entities and cooperatives.

(Code 1988, § 25.5-181; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-5. - Small purchases.

- (a) Purchase splitting is prohibited. Separate purchases of the same or similar goods, services, or construction, whether from the same or different businesses, within a time frame established by the purchasing manager, shall be considered a single purchase for purposes of this article.
- (b) Authority. Any contract less than \$100,000.00 for supplies, services, and construction, may be made in accordance with the procedures set forth in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.
 - (1) Purchases \$50,000.00 or more but less than \$100,000.00. Unless determined impractical by the purchasing manager, no less than three sources shall be solicited to submit written quotations. Award shall be based on the lowest price meeting specifications. A record of the solicitation and written responses shall be maintained as public record.
 - (2) Purchases \$25,000.00 or more but less than \$50,000.00. Unless determined impractical by the purchasing manager, written quotes from no less than two sources shall be obtained. Award

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shall be based upon the lowest price meeting specifications. Solicitations, responses and/or other pricing documentation shall be recorded and maintained as public record.

- (3) Purchases less than \$25,000.00. Unless otherwise determined impractical by the purchasing manager, for a purchase of supplies, services, or construction estimated to be less than \$25,000.00, written quotes from no less than one source shall be obtained. Purchase is to be made only by authorized city employees at the best obtainable price considering time and process efficiencies.
- (c) Professional/technical services less than \$100,000.00. Unless otherwise determined impractical by the purchasing manager, professional/technical services estimated to be less than \$100,000.00 may be purchased in accordance with the following:
 - (1) All professional/technical services estimated to be less than \$100,000.00 shall be procured by either the purchasing manager or authorized department employee calling a reasonable number of firms to obtain written offers when practical. Procurement over this amount shall be by competitive sealed proposal.
 - (2) The purchasing manager or designee shall provide such information as is necessary to provide the potential offeror the opportunity to provide a proper and timely response. Included in the information shall be the factors to be evaluated and the relative weights assigned each factor.
 - (3) The types of questions to be asked of the potential offeror may include, but not be limited to:
 - a. The specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required.
 - b. Capacity and capability of the business to perform the work, including any specialized services, within the time limitation, if any.
 - c. Past record of performance or contracts with government agencies or private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules.
 - d. Proximity to or familiarity with the area in which the project is located.
 - e. The anticipated price, if price is a factor, for services based upon the information provided by the purchasing manager as to the scope of work.
 - f. Other criteria determined to be essential to the particular contract or project.
 - (4) The award shall be based on the highest-ranking respondent considering the evaluation factors provided in the solicitation. The city may negotiate with any responding offeror with the intent to obtain best and final offer of the offeror.

(Code 1988, § 25.5-34; Ord. No. 1703, § IX, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, § V, 8-17-09; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-6. - Fiscal responsibility.

- (a) When the aggregate sum of contract modifications, change orders, or contract price adjustments exceeds \$100,000.00, all subsequent contract modifications, change orders, or contract price adjustments shall be subject to city council approval, except for those contracts that will be or are approved under the contract limitations and change order policy.
- (b) Aggregate contract modifications, change orders, or price adjustments up to \$100,000.00 shall be authorized by the city manager conditioned upon the award limitations.

(Code 1988, § 25.5-93; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-7. - Sole source procurement.

A contract may be awarded without competition when the purchasing manager determines in writing, after conducting a good-faith review of available sources, that there is only one source for the required supply, service, or construction item; or when it is likely that award to any other source would result in:

- (a) Substantial duplication of cost to the city that is not expected to be recovered through competition; or
- (b) Unacceptable delays in fulfilling the city's requirement.

The purchasing manager may conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurement shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the items procured under each contract, and the identification number of each contract file.

(Code 1988, § 25.5-35; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-8. - Rapid procurement; Emergency procurement.

- (a) Purchases of goods, services, and construction for any amount where Advertising and the solicitation of offers would entail unnecessary and detrimental delay and loss to the city, may be made by the purchasing office, at the best obtainable price in accordance with procedures approved by the purchasing manager. Complete documentation of all proposed prices submitted by offerors must be maintained in the purchasing office for public inspection.
- (b) Notwithstanding any other section of this chapter, the city manager may authorize the purchasing manager or designee to make emergency procurement of supplies, services, or construction items when there exists a threat to public health, welfare, or safety, provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the items procured under the contract, and the identification number of the contract file. If the city manager determines that urgent and compelling reasons require emergency contractual, professional, and technical services, the city manager, notwithstanding any section of this division, may approve such services, provided that the city manager shall notify the city council of the action citing the compelling and urgent reasons for the action. A complete report shall be submitted to the city council by the using department within a week of the procurement.

(Code 1988, § 25.5-36; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-9 – Contingency

Construction contracts shall be budgeted with no more than a 20% contingency fund for new construction and no more than a 20% contingency fund for rehabilitation projects. Professional and/or Technical service contracts shall be budgeted with no more than a 10% contingency fund.

Sec. 24-10—Purchase Card Program.

The Purchase Card (P-Card) program is intended for use whenever purchase orders are not applicable as determined by the purchasing manager or designee. The P-Card Procedure Manual shall govern P-Card and Department Card (D-Card) issuance, application, usage, monthly statement processing, card maintenance, card violations, disputed or fraudulent charges, and receipt retention.

Secs. 24-11 – 24-30. - Reserved.

ARTICLE II. - ETHICS AND PROHIBITIONS IN PROCUREMENT

Sec. 24-31. - Direct contact.

Direct contact with city elected officials or city staff, ~~other than the purchasing manager,~~ during the bid/proposal process from development of specifications through contract award, will render the bid/proposal as noncompliant and no further consideration will be given the bid/proposal. **For the purposes of this section, "direct contact" is defined as any potential respondent contacting city elected officials and/or city staff, including city contractors, for the purpose of obtaining a competitive advantage over other prospective vendors. Direct contact includes, but is not limited to, inquiring about project specifications that are not subject to public record, responses submitted by other competitors, compensation details, or any other information not available to the public. The purchasing manager shall have the sole authority to determine whether direct contact has occurred.**

(Ord. No. 1923, § 1, 6-17-02)

Sec. 24-32. - Criminal penalties.

To the extent that violations of the ethical standards of conduct set forth in this Procurement Code constitute violations of the state Criminal Code, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this article. Criminal, civil, and administrative sanctions against employees or nonemployees which are in existence on the effective date of the ordinance from which this chapter derives shall not be impaired.

(Code 1988, § 25.5-141)

Sec. 24-33. - Employee conflict of interest.

- (a) It shall be unethical for any city employee to participate directly or indirectly in a procurement contract when the city employee knows that:
 - (1) The city employee or any member of the city employee's immediate family has a financial interest pertaining to the procurement contract; or
 - (2) Any other person, business, or organization with whom the city employee or any member of a city employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
- (b) A city employee or any member of a city employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.
- (c) If an employee becomes aware of a potential conflict of interest related to a procurement, they shall disclose such potential conflict to the purchasing manager immediately.

(Code 1988, § 25.5-142)

Sec. 24-34. - Gratuities and kickbacks.

- (a) Gratuities. It shall be unlawful for any person to offer, give, or agree to give to any current or former city employee or for any current or former city employee to solicit, accept or agree to accept a gratuity in exchange for consideration pertaining to a city procurement. Consideration shall include but is not limited to a decision, approval, disapproval, recommendation, or action that influences a procurement solicitation, contract award or the administration of a contract. No sample or sampling of a product or service shall be accepted by a city employee unless the purchasing manager determines that the sample or sampling is to be used in city activities for evaluation or product qualification purposes.
- (b) Kickbacks. It shall be unlawful for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontract under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (c) Contract clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor. Any person convicted of violating this section shall be guilty of a petty misdemeanor.

(Code 1988, § 25.5-143; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-35. - Contingent fees.

It shall be unlawful for a person to be retained or to retain a person to solicit or secure a city contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Any person convicted of violating this section shall be guilty of a petty misdemeanor.

(Code 1988, § 25.5-144; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-36. - Contemporaneous employment.

It shall be unethical for any city employee who is participating directly or indirectly in the procurement process to become or to be, while such a city employee, the employee of any person contracting with the governmental body by whom the employee is employed.

(Code 1988, § 25.5-145)

Sec. 24-37. - Waivers from employee conflict of interest and contemporaneous employment.

The city council may grant a waiver from the employee conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

- (1) The contemporaneous employment or financial interest of the city employee has been publicly disclosed;
- (2) The city employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
- (3) The award will be in the best interests of the city.

(Code 1988, § 25.5-146)

Sec. 24-38. - Use of confidential information.

It shall be unlawful for any city employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person. Any person convicted of violating this section shall be guilty of a petty misdemeanor.

(Code 1988, § 25.5-147; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-39. - Recovery of value transferred or received in breach of ethical standards.

- (a) Authority. The value of anything transferred or received in breach of the ethical standards of this chapter by a city employee may be recovered from the city employee.
- (b) Recovery of kickbacks by city. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the city and will be recoverable from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

(Code 1988, § 25.5-148)

Secs. 24-40—24-60. - Reserved.

ARTICLE III. - PURCHASING MANAGER

Sec. 24-61. - Position created.

There is created the position of purchasing manager, who shall be the city's principal public purchasing official.

(Code 1988, § 25.5-21; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-62. - Authority, duties.

- (a) Principal public purchasing official. Except as otherwise provided in this chapter, the purchasing manager shall serve as the principal public purchasing official for the city and shall be responsible for the procurement of supplies, services, and construction in accordance with this chapter.
- (b) Duties. In accordance with this chapter and subject to the supervision of the city manager, the purchasing manager shall:
 - (1) Procure or supervise the procurement of all supplies, services, and construction needed by the city.
 - (2) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies, services and construction.
 - (3) Provide a quarterly report of all procurements equaling \$100,000.00 and above to the city council as a non-action item.

- (c) Operational procedures. Consistent with this chapter the purchasing manager may adopt operational procedures relating to the execution of his/her duties.

(Code 1988, § 25.5-22; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-63. - Authority to award.

- (a) In the discretion of the purchasing manager, if no acceptable bid or offer is received on the solicitation the purchasing office may purchase the required goods or services in the open market at the best obtainable price or re-advertise the request for bid or proposal.
- (b) The purchasing manager shall be authorized to enter into all budgeted purchase contracts subject to the following conditions:
 - (1) For purchases of non-construction, non-capital improvement related goods or services of \$50,000.00 but less than \$100,000.00, the purchasing manager shall obtain approval from the city manager prior to issuing a purchase order. Purchases below \$50,000.00 will be processed by the purchasing manager.
 - (2) For purchases of non-construction, non-capital improvement related goods or services equaling \$100,000 or more, the purchasing manager shall obtain approval from the city council prior to contracting.
 - (3) For purchases of current year capital improvement projects, capital equipment and vehicles already approved in budget, no council or city manager action is required. These procurements will be processed by the purchasing manager.
 - (4) For purchases of capital improvement projects, capital equipment and vehicles of \$100,000.00 and above which are not included in current year approved budget, city council approval is required.
 - (5) For purchases of goods and services funded through grants or state appropriations previously accepted by council and amended into the budget, no council approval will be required. Procurements will be processed by the purchasing manager.
 - (6) For the purpose of this section, aggregate cost shall not be the determinative on multi-year contracts.
 - (7) Signing of contracts. Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the mayor or city manager or their designees.

(Code 1988, § 25.5-39; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-64. - Delegation to others.

The purchasing manager may delegate authority to purchase supplies, services, or construction items to other city officials, if such delegation is deemed necessary for the effective procurement of those items. Notwithstanding debarment or suspension, procurement authority with respect to certain supplies, services or construction may be delegated to other city officials by the city manager with the approval of the city council, when such delegation is deemed necessary for the effective procurement of these supplies, services, or construction.

(Code 1988, § 25.5-23; Ord. No. 1923, § 1, 6-17-02)

Secs. 24-65—24-90. - Reserved.

ARTICLE IV. - CONTRACT INFORMATION

Sec. 24-91. - Types of contracts.

- (a) General authority. Subject to the limitations of this section, any type of contract which is appropriate to the procurement, and which will promote the best interests of the city may be used, provided that the use of a cost-plus-a-percentage-of-cost contract be approved by the city council. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the city than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.
- (b) Multiterm contracts.
 - (1) Specified period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the city, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds thereof.
 - (2) Determination prior to use. Prior to the utilization of a multiterm contract, it shall be determined in writing that:
 - a. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - b. Such a contract will serve the best interests of the city by encouraging effective competition or otherwise promoting economies in city procurement.
- (c) Multiple source contracting.
 - (1) Generally. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the city's actual requirements is limited by the provision of Uniform Commercial Code subsection 2-306(1).
 - (2) Limitations on use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Multiple source awards shall not be made when a single award will meet the city's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.
 - (3) Eligible users. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that the city shall reserve the right to take bids separately if:
 - a. A particular quantity requirement arises which exceeds its normal requirement, or an amount specified in the contract; and

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- b. The purchasing manager approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the city.
- (4) Intent to use. If a multiple source award is anticipated prior to issuing a solicitation, the city shall reserve the right to make such an award, and the criteria for award shall be stated in the solicitation.
- (5) Determination required. The purchasing manager shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

(Code 1988, § 25.5-61; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-92. - Contract clauses.

- (a) Required generally. All city contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The purchasing manager, after consultation with the city attorney, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:
 - (1) Statement of work, delivery schedules, and period of performance;
 - (2) The unilateral right of the city to order in writing changes in the work within the scope of the contract;
 - (3) The unilateral right of the city to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 - (4) Variations occurring between estimated quantities of work in the contract and actual quantities;
 - (5) Defective pricing;
 - (6) Liquidated damages to include administrative contractual or legal remedies for violation of contract terms;
 - (7) Specified excuses for delay or nonperformance;
 - (8) Termination of the contract for default or cause;
 - (9) Termination of the contract in whole or in part for the convenience of the city;
 - (10) Suspension of work on a construction project ordered by the city; and
 - (11) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract when:
 - a. The contract is negotiated;
 - b. The contractor provides the site or design; or
 - c. The parties have otherwise agreed with respect to the risk of differing site conditions.
- (b) Price adjustments.
 - (1) Adjustments in price resulting from the use of contract clauses required by subsection (a) of this section shall be computed in one or more of the following ways:
 - a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - b. By unit prices specified in the contract or subsequently agreed upon;

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- c. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- d. In such other manner as the contracting parties may mutually agree;
- e. In the absence of agreement by the parties, by a unilateral determination by the city of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the city, as accounted for in accordance with industry price list, catalogue or market prices and subject to the appeals and remedies in article VII of this chapter; or
- f. For all federally funded purchases, cost or price analysis shall be the only means from which pricing shall be determined.

(2) A contractor shall be required to submit cost or pricing data for any adjustment in contract price.

- (c) Standard clauses and modification. The purchasing manager, after consultation with the city attorney, may establish standard contract clauses for use in city contracts. If the purchasing manager establishes any standard clauses addressing the subjects set forth in subsection (a) of this section, such clauses may be varied, provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

(Code 1988, § 25.5-62; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § III, 9-7-10)

Sec. 24-93. - Approval of accounting system.

Except with respect to firm fixed-price city contracts, no contract type shall be used unless it has been determined in writing by the purchasing manager that the proposed contractor's accounting system:

- (1) Will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- (2) Is adequate to allocate costs in accordance with generally accepted cost accounting principles.

(Code 1988, § 25.5-65; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-94. - Right of inspection.

The city may, at reasonable times, inspect the plant, place of business, storage site, or work site of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the city.

(Code 1988, § 25.5-66)

Sec. 24-95. - Right to audit records.

- (a) Audit of cost or pricing data. The city may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three years from the date of final payment under the contract.
- (b) Contract audit. The city shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price

contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

(Code 1988, § 25.5-67)

Sec. 24-96. - Reporting of anticompetitive practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors for a city contract, a notice of the relevant facts shall be transmitted to the state attorney general by the city attorney.

(Code 1988, § 25.5-68)

Sec. 24-97. - City records.

- (a) Contract file. All determinations and other written records pertaining to the solicitation, award, or performance of a city contract shall be maintained for the city in a contract file by the purchasing manager.
- (b) Retention of procurement records. All procurement records shall be retained and disposed of by the city in accordance with records retention and guidelines and schedules set by the city clerk.

(Code 1988, § 25.5-69; Ord. No. 1923, § 1, 6-17-02)

Secs. 24-98 – 24-120. Reserved.

ARTICLE V. - SOURCE SELECTION

DIVISION 1. - PROFESSIONAL AND TECHNICAL SERVICES PROCUREMENT

Sec. 24-121. - Contracting for designated professional services; selection procedure.

- (a) Criteria. Professional and technical services shall be procured in accordance with this division.
- (b) Determination of award for professional and technical services shall be based on qualifications. Cost will not be a criteria factor in the evaluation process, and it shall be negotiated during the award phase of the contract.
- (c) Where the primary contract may be awarded through the procurement code without review by the selection advisory committee, nothing in this division shall require that the selection advisory committee separately review subcontractors who are an integral part of the primary contract.

Sec. 24-122. - Request for proposals.

- (a) Conditions for use. When the use of competitive sealed bidding is either not practicable or not advantageous to the city, a contract may be entered into by use of the request for proposal method set forth herein.
- (b) Request for proposal. A proposal shall be solicited through a request for proposal.
- (c) Public notice. For proposals estimated to be \$100,000.00 or more, adequate public notice of the request for proposals shall be given at a reasonable time not less than seven calendar days prior to

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the date set forth for the closing of the request for proposals. The public notice shall state the due date and time for proposal submission, and where proposal documents may be inspected or obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.

- (d) Receipt of proposal. No proposal shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors prior to the deadline for receipt of the proposal by the purchasing manager. A register of proposals shall be prepared containing the name of each offeror. The register of proposals shall be open for public inspection not later than three days after the deadline for receipt of proposals. During the evaluation of proposals, and until approval of the recommendation of award by the city council, the contents of proposals may not be disclosed to the public. If a request for proposals is canceled and a similar RFP will be issued within six months, the contents of proposals received in response to the first request for proposals may not be disclosed until after approval by the city council of the recommendation of award for the second RFP or cancellation of the RFP.
- (e) Evaluation factors. The request for proposal shall state the relative importance of price and other evaluation factors.
- (f) Discussion with responsible offeror and revision to proposal. As provided in the request for proposal, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to ensure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors. Any modification received during the revision and negotiation stages will become a part of the permanent record.
- (g) Award. Awards shall be made to the highest-ranking responsible offeror taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation except that, unless otherwise determined impractical by the purchasing manager, award(s) resulting in contract(s) totaling less than \$100,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsible local manufacturers or local businesses, award shall be made to a responsible qualified non-local manufacturer or business. The contract file shall contain the basis on which the award is made.
- (h) The procurement of lease financing shall be conducted utilizing request for proposal.
- (i) Award recommendation shall be made to the city council by the purchasing manager.

(Code 1988, § 25.5-32; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, § IV, 8-17-09)

Sec. 24-123. - Selection advisory committee.

- (a) There is a selection advisory committee comprised of three department heads: one designated by the committee chair, one from the end user department and one serving on a rotating basis from the total pool of directors. For each request for proposal, there are at least five subject matter experts designated by the director of the department that developed the RFP. There shall be no more than

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seven subject matter experts total. All external subject matter experts are non-voting technical advisors and are not included in the total number of subject matter experts. A pool of internal subject matter experts shall be maintained by departments and can be used for the appropriate procurement.

- (b) A member of the selection advisory committee shall serve until a successor is appointed. An alternate may be suggested by any member and submitted to the selection advisory committee chair for approval. Upon approval, the alternate will attend in that member's place.
- (c) The assistant city managers shall serve as a nonvoting member and chair for the selection advisory committee.
- (d) The city's purchasing manager or designee shall serve as staff coordinator for the selection advisory committee.

(Code 1988, § 2-137; Ord. No. 1701, § I, 9-14-98; Ord. No. 1703, §§ III, X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 1947, § 1, 3-3-03; Ord. No. 2643, § I, 1-17-12; Ord. No. 2852, § 5-21-18)

Sec. 24-124. - Notice of projects; recommendations.

- (a) When the fee for professional and/or technical services is estimated to be \$100,000.00 or more, the city shall cause to be published, at least two weeks before initial screening of professional firms or persons by the selection advisory committee, a legal advertisement containing a brief description of the work to be performed by the professional firms or persons and inviting interested firms to submit their qualifications for consideration by the selection advisory committee.
- (b) If the estimated cost of the services is less than \$100,000.00, review by the selection advisory committee is not required. The purchasing manager may select a qualified firm or firms to provide these services based on adopted purchasing procedures.
- (c) When the fee for the professional/technical services is \$100,000.00 or more, the selection advisory committee shall submit the name of the most qualified professional firm or firms or person to the city council, for purposes of review and approval by the council. Nothing in this subsection shall prohibit the submission of more than one firm.

Sec. 24-125. - Files of qualifications of firms and persons.

The purchasing manager may maintain a file of qualifications of all firms or persons qualified to perform professional and technical services for city projects. These files shall be updated at the request of the selections advisory committee to provide current qualification information. Interviews and presentation of qualifications shall be conducted at the direction of the selection advisory committee. Mailed inquiries may be solicited to provide specific information as may be considered necessary by the selection advisory committee.

(Code 1988, § 2-139; Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-126. - Approval of contracts.

- (a) All city projects that require the contracting for professional and technical services in an amount of \$100,000.00 or more shall be performed under separate contract, and each contract shall require final approval by the city council.

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- (b) Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the Mayor or city manager or their designees.
- (c) This section shall apply only to the primary professional firm. Any subcontractor shall be evaluated as a part of the primary contract.

(Code 1988, § 2-140, Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-127. - Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the purchasing manager or head of a using agency deems advisable to protect the city's interest. Any such bonding or security requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

(Code 1988, § 25.5-54; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-128. - Contractor records.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:

- (1) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (2) Provide to the city, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

(Code 1988, § 25.5-161)

Sec. 24-129. - Patents.

If a city contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

- (1) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and
- (2) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

(Code 1988, § 25.5-162)

Sec. 24-130. - Copyrights and rights in data.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

(Code 1988, § 25.5-163)

Sec. 24-131. - Notice of federal public policy requirements.

If the city contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as: (i) equal employment opportunity; (ii) fair labor standards; (iii) energy conservation; (iv) environmental protection; or (v) other similar socioeconomic programs, the purchasing manager shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

(Code 1988, § 25.5-164; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-132 - Buy American/Buy America requirements.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall adhere to the appropriate Buy American/Buy America requirements of the federal agency providing the assistance.

(Code 1988, § 25.5-165)

Sec. 24-133. - Energy conservation.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

(Code 1988, § 25.5-166)

Sec. 24-134. - Small, women-owned and minority business enterprises.

- (a) Expand participation. If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.
- (b) Examples of affirmative steps. Affirmative steps to be taken shall include the following:
 - Including qualified small, women-owned, and minority businesses on solicitation lists;
 - (1) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
 - (2) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;
 - (3) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and
 - (4) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.
- (c) Pass-through to subcontracts. A contractor awarded a federally funded contract shall take the affirmative steps, as linked in subsection (b) of this section, in awarding its subcontracts.

(Code 1988, § 25.5-167; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-135. - Labor surplus area businesses.

If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

(Code 1988, § 25.5-168; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-136. - Architectural and engineering services

- (a) If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall use qualifications-based competitive proposal procedures when contracting for architectural and engineering services as defined in 40 U.S.C. §541 et seq. and 49 U.S.C. §5325(d). Services subject to this requirement include but are not necessarily limited to program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.
- (b) Qualifications-based competitive proposal procedures require that:
 - (1) An offeror's qualifications be evaluated;
 - (2) Price be excluded as an evaluation factor;
 - (3) Negotiations be conducted with only the most qualified offeror; and
 - (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the city.
- (c) These qualifications-based competitive proposal procedures will be used for the procurement of the services listed above. This method of procurement will not be used to obtain other types of services even though a firm that provides architectural and engineering services is also a potential source to perform other types of services.

(Ord. No. 2132, § I, 9-7-04)

Sec. 24-137. - Cost or pricing data.

- (a) Required submissions relating to award of contracts. A prospective contractor shall submit cost or pricing data when the city contract is federally funded or is to be awarded on a noncompetitive basis.
- (b) Exceptions. Except for federally funded purchases, the submission of cost or pricing data relating to the award of a contract is not required when:
 - (1) The contract price is based on established catalogue prices or market prices;
 - (2) The contract price is set by law or regulation; or
 - (3) It is determined in writing by the purchasing manager that the requirements of subsection (a) of this section may be waived, and the determination states the reasons for such waiver.
- (c) Required submissions relating to change orders or contract modifications. For federally funded purchases and as otherwise required by the purchasing manager, the contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to

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contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.

- (d) Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (e) Price adjustment provision required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the city, including profit or fee, shall be adjusted to exclude any significant sums by which the city finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the city and the contractor.

(Code 1988, § 25.5-52; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § I, 9-7-10)

Sec. 24-138. - Cost or price analysis.

- (a) Under this chapter, a cost analysis, or a price analysis, as appropriate, shall be conducted for contracts established through the application of sole source procurement. A written record of such cost analysis or price analysis shall be made a part of the contract file.
- (b) For all federally funded purchases, a cost or price analysis must be conducted as required by applicable federal regulations for all related contracts including contract cost modifications. The cost or price analysis shall be public record.

(Code 1988, § 25.5-53; Ord. No. 2589, § II, 9-7-10)

Sec. 24-139. - Cancellation/rejection of invitation for bid or request for proposal; No Responsive Offers Received

- (a) Under this chapter, an invitation for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city. The reasons therefor shall be made part of the contract file. Each solicitation issued by the city shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the city. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request of unsuccessful bidders or offerors.
- (b) If no responsive offers are received, then the purchasing manager may purchase the required goods or services, with no change in the published specifications, in the open market at the best obtainable price. If the specifications are changed, or if so required by the purchasing manager, a purchase in the open market shall not be permitted and the competitive solicitation must be reissued.

(Code 1988, § 25.5-38; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-140. - Preferences.

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- (a) Preference factor. A preference factor may be applicable to quotes, bids or proposals received in response to procurement solicitations conducted.
 - (1) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to local businesses based upon a five percent deduction from the local business quote or bid, or five percent of total evaluation points being added to the score of a proposal from a local business.
 - (2) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to resident businesses which has a valid resident business certificate issued by the New Mexico Taxation and Revenue department based upon a five percent of total evaluation points being added to the score of a proposal from a resident business and a preference factor shall be applicable to resident veteran business which has a valid resident veteran business certificate issued by New Mexico Taxation and Revenue department based upon a ten percent of the total evaluation points being added to the score of a proposal from a resident veteran business.
 - (3) A preference factor for Section 3 firms as defined in the Housing and Urban Development Act of 1968, 12 U.S.C. 17801u (Section 3), as amended, shall be applicable pursuant to that Act whenever a contract resulting from a competitive procurement solicitation is funded through a grant from the U.S. Housing and Urban Development Department.
- (b) New Mexico materials. Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference for the use of materials produced, grown, processed, or manufactured in New Mexico by citizens or residents of New Mexico shall apply pursuant to § 13-4-2, NMSA, 1978, as amended.
- (c) Limitations. No bidder/offeree entitled to preference pursuant to this section shall receive more than a ten percent preference on any one bid/proposal submitted. Only the principal bidder/offeree or one of the principal bidders/offerees, not a subcontractor, may qualify for a preference.

(Code 1988, § 25.5-40; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. B), 8-6-12)

Sec. 24-141. Change Orders

- (a) Changes in time. Extensions of time on construction contracts or professional/technical service contracts, may be granted by the Project Manager, subject to appropriate approvals, on a case-by-case basis for the following reasons:
 - (1) One additional day for each delay in which the contractor could not perform contractual work and subsequent days as may be required to repair work damage by weather, as defined in General Conditions for Construction Contracts, 2004, during the term of the contract;
 - (2) City-requested changes to project specifications that incur time as a result;
 - (3) Other circumstances in which the City believes such an extension of time is in the best interest of the project and must be approved by the Department Director;
 - (4) Limitations on extensions of time addressed by this policy are as follows:
 - a. An increase of 30 contractual days to the original contract time, shall be approved by the Program Manager;
 - b. An increase of 31 to 60 contractual days to the original contract time shall be approved by the appropriate Department Director;

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- c. An increase of more than 60 contractual days to the original contract time, shall be approved by the City Manager.

(b) Changes in cost.

- (1) Any changes in contract cost which includes base contract amount, contingency, and NMGR, require the following approvals:

Change	Approver
Less than 5%	Program Manager
More than 5% less than 10%	Department Director
More than 10% less than 15%	Assistant City Manager
More than 15%	City Manager
Contract approved by City Council	City Council
Exceeds approved budget amount	City Council

- (2) Budgetary Authority: In no case does City staff or Management have the ability to increase the budget at the fund level, including usage of unbudgeted fund balance, without City Council approval.
- (3) Proposed construction work that deviates from the contract drawings and/or specifications shall be initiated with a field notice followed by a duly authorized change order when there is a change in cost and approved by the appropriate Approver.

(Code 1988, § 25.5-40; Ord. No. 2852, § 5-21-18)

Sec. 24-142. Suspension of Project

Due to reasons beyond the contractor's control or conditions exist which will impair the quality of the work, and upon recommendation by the Department Director, the purchasing manager, or the Office of the City Manager shall have the authority to suspend a construction or consultant project indefinitely.

Sec. 24-143. - Maximum practicable competition.

Under this chapter, all specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the city's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to those prepared for the city by architects, engineers, designers, and drafters.

(Code 1988, § 25.5-81)

Sec. 24-144. - Qualified products list.

The city may adopt qualified product lists that shall allow for maximum competition as is practical and that will satisfy the requirements of the city.

(Code 1988, § 25.5-82)

Sec. 24-145. - Brand name specification or equal specification.

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- (a) Use. Under this chapter, brand name or equal specifications may be used when the purchasing manager determines in writing that:
 - (1) No other design or performance specification or qualified products list is available;
 - (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - (4) Use of a brand name or equal specification is in the city's best interest.Samples of "or equal" materials should be submitted with the bid; however, they may be submitted after the bid opening if adequate time is allowed to evaluate the samples before the bid is awarded.
- (b) Designation of several brand names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references, and shall further state that substantially equivalent products to those designated will be considered for award.
- (c) Required characteristics. Unless the purchasing manager determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (d) Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
- (e) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing manager makes a written determination that only the identified brand name item will satisfy the city's needs.
- (f) Competition. The purchasing manager shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under sole source procurement.

(Code 1988, § 25.5-83; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-146. - Authority for cooperative procurement.

The purchasing manager may either participate in, sponsor, or administer a cooperative procurement agreement for the procurement of any city services, construction, or items of tangible personal property with any other state agency, local public body, or external procurement unit.

(Code 1988, § 25.5-131)

Secs. 24-147—24-160. - Reserved.

DIVISION 2. - PROCUREMENT OF CONSTRUCTION, ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

Sec. 24-161. - Contracting for construction, architect-engineer, and land surveying selection procedure.

- (a) Architect-engineer, and land surveying services shall be procured in accordance with this division.
- (b) Construction projects may be awarded based on cost, qualifications, or both.
- (c) Determination of award for architects, engineers, landscape architects and surveyors shall be based on qualifications. Cost will not be a criteria factor in the evaluation process, and it shall be negotiated during the award phase of the contract.
- (d) Where the primary contract may be awarded through the procurement code without review by the selection advisory committee, nothing in this division shall require that the selection advisory committee separately review subcontractors who are an integral part of the primary contract.

(Code 1988, § 25.5-33, § 2-136; Ord. No. 1701, § I, 9-14-98; Ord. No. 1703, §§ I, II, X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2748, §§ I, II, 2-3-15)

Sec. 24-162. - Management of construction contracting.

The head of the city department responsible for a construction project shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the department head shall consider the city's requirements, its resources, and the potential contractor's capabilities.

(Code 1988, § 25.5-91; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-163. - Competitive sealed bidding.

Conditions for use. Where no factors other than cost will be considered, competitive sealed bidding shall be used.

- (a) Invitation for bids. An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
- (b) Public notice. For bids estimated to be \$100,000.00 or more, adequate public notice of the invitation for bid shall be given at a reasonable time not less than seven calendar days prior to the date set forth for the opening of the bid. The public notice shall state the place, date, and time of bid opening, and where bid documents may be inspected or obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.
- (c) Bid opening. A bid shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. A late bid will not be accepted. Lateness will be determined by the purchasing manager's time clock, and the purchasing manager's determination of promptness or lateness will be final. The amount of each bid and such other relevant information as the purchasing manager deems appropriate, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection. A copy of the information may be obtained by sending a self-addressed stamped envelope with reference to the bid number and title to the purchasing department. This information will not be given over the telephone.
- (d) Bid acceptance and bid evaluation. A bid shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bid, which may include criteria to determine acceptability, such as

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inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bid. Original cover sheet and all documents must be provided fully executed, if not so provided bid will be rejected.

- (e) Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of an inadvertently erroneous bid before or after bid opening or cancellation of awards or contracts based on such bid mistakes may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - (1) The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
 - (2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the purchasing manager.
- (f) Award. Unless otherwise determined impractical by the purchasing manager, bids resulting in contract(s) totaling less than \$100,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsive/responsible local bidders, then award should go to qualified non-local manufacturers or businesses. Contracts shall be awarded to the most responsible and responsive bidder who provides the best value as set forth in the requirements and criteria specified in the invitation for bid.
- (g) Multistep sealed bidding. When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (h) Federal funding. Any competitive, sealed bid procurement utilizing federal assistance requires at least two bids, firm fixed-price contracts, and selection based principally on price.

(Code 1988, § 25.5-31; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, §§ II, III, 8-17-09; Ord. No. 2746, §§ I, II, 2-3-15; Ord. No. 2852, § 5-21-18)

Sec. 24-164. - Request for proposals.

- (a) Conditions for use. When the use of competitive sealed bidding is either not practicable or not advantageous to the city, a contract may be entered into by use of the request for proposal method set forth herein.
- (b) Request for proposal. A proposal shall be solicited through a request for proposal.
- (c) Public notice. For proposals estimated to be \$100,000.00 or more, adequate public notice of the request for proposals shall be given at a reasonable time not less than seven calendar days prior to the date set forth for the closing of the request for proposals. The public notice shall state the due date and time for proposal submission, and where proposal documents may be inspected or

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obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.

- (d) Receipt of proposal. No proposal shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors prior to the deadline for receipt of the proposal by the purchasing manager. A register of proposals shall be prepared containing the name of each offeror. The register of proposals shall be open for public inspection not later than three days after the deadline for receipt of proposals. During the evaluation of proposals, and until approval of the recommendation of award by the city council, the contents of proposals may not be disclosed to the public. If a request for proposals is canceled and a similar RFP will be issued within six months, the contents of proposals received in response to the first request for proposals may not be disclosed until after approval by the city council of the recommendation of award for the second RFP or cancellation of the RFP.
- (e) Evaluation factors. The request for proposal shall state the relative importance of price and other evaluation factors.
- (f) Discussion with responsible offeror and revision to proposal. As provided in the request for proposal, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to ensure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors. Any modification received during the revision and negotiation stages will become a part of the permanent record.
- (g) Award. Awards shall be made to the highest-ranking responsible offeror taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation except that, unless otherwise determined impractical by the purchasing manager, award(s) resulting in contract(s) totaling less than \$100,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsible local manufacturers or local businesses, award shall be made to a responsible qualified non-local manufacturers or business. The contract file shall contain the basis on which the award is made.
- (h) The procurement of lease financing shall be conducted utilizing request for proposal.
- (i) Award recommendation shall be made to the city council by the purchasing manager.

(Code 1988, § 25.5-32; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, § IV, 8-17-09)

Sec. 24-165. - Selection advisory committee.

- (a) There is a selection advisory committee comprised of three department heads: One designated by the committee chair, one from the end user department and one serving on a rotating basis from the total pool of directors. For each request for proposal, there are at least five subject matter experts designated by the director of the department that developed the RFP. There shall be no more than seven subject matter experts total. All external subject matter experts are non-voting technical advisors and are not included in the total number of subject matter experts. A pool of internal subject matter experts shall be maintained by department and can be used for the appropriate procurement.

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- (b) A member of the selection advisory committee shall serve until a successor is appointed. An alternate may be suggested by any member and submitted to the selection advisory committee chair for approval. Upon approval, the alternate will attend in that member's place.
- (c) The assistant city managers shall serve as a nonvoting member and chair for the selection advisory committee.
- (d) The city's purchasing manager or designee shall serve as staff coordinator for the selection advisory committee.

(Code 1988, § 2-137; Ord. No. 1701, § I, 9-14-98; Ord. No. 1703, §§ III, X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 1947, § 1, 3-3-03; Ord. No. 2643, § I, 1-17-12)

Sec. 24-166. - Notice of projects; recommendations.

- (a) When the fee for professional or technical services is estimated to be \$100,000 or more, the city shall cause to be published, at least two weeks before initial screening of professional firms or persons by the selection advisory committee, a legal advertisement containing a brief description of the work to be performed by the professional firms or persons and inviting interested firms to submit their qualifications for consideration by the selection advisory committee.
- (b) If the estimated cost of the services is less than \$100,000.00, review by the selection advisory committee is not required. The purchasing manager may select a qualified firm or firms to provide these services.
- (c) When the fee for the professional/technical services is \$100,000.00 or more, the selection advisory committee shall submit the name of the most qualified professional firm or firms or person to the city council, for purposes of review and approval by the council. Nothing in this subsection shall prohibit the submission of more than one firm.

Sec. 24-167. - Files of qualifications of firms and persons.

The purchasing manager may maintain a file of qualifications of all firms or persons qualified to perform professional and technical services for city projects. These files shall be updated at the request of the selections advisory committee to provide current qualification information. Interviews and presentation of qualifications shall be conducted at the direction of the selection advisory committee. Mailed inquiries may be solicited to provide specific information as may be considered necessary by the selection advisory committee.

(Code 1988, § 2-139; Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-168. - Approval of contracts.

- (a) All city projects that require the contracting for construction in an amount of \$75,000.00 or more shall be performed under separate contract, and each contract shall require final approval by the city council.
- (b) Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the Mayor or city manager or their designees.
- (c) This section shall apply only to the primary professional firm. Any subcontractor shall be evaluated as a part of the primary contract.

(Code 1988, § 2-140, Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-169. - Bid security.

(a) Bid security. For the purpose of this article, bid security is subject to the following:

- (1) Required. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the purchasing manager to exceed \$50,000.00. Bid security shall be a bond provided by a surety company authorized to do business in the state or the equivalent in cash or otherwise supplied in a form satisfactory to the city. Nothing in this subsection shall prevent the requirement of such bonds on construction contracts under \$50,000.00 when the circumstances warrant.
- (2) Amount. Bid security shall be in an amount equal to at least five percent of the amount of the bid.
- (3) Rejection of bids for noncompliance. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a non-substantial manner with the security requirements.
- (4) Withdrawal of bids. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or the bid security.
- (5) Authority to require additional bonds. Nothing in this section shall be construed to limit the authority of the city to require a bid bond or other security in addition to those bonds, or in circumstances other than specified in subsection (a)(1) of this section.

Sec. 24-170 Contract performance and payment bonds.

- (1) Required amounts. When a construction contract is awarded in excess of \$50,000.00, the following bonds or security shall be delivered to the city and shall become binding on the parties upon the execution of the contract:
 - a. A performance bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, in an amount equal to 100 percent of the price specified in the contract; and
 - b. A payment bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100 percent of the price specified in the contract.
- (2) Reduction of bond amounts. After notice to the city council, the purchasing manager is authorized to reduce the amount of performance and payment bonds to 50 percent of the contract price for each bond when a written determination is made that it is in the best interests of the city to do so.
- (3) Authority to require additional bonds. Nothing in this subsection shall be construed to limit the authority of the city to require a performance bond or other security in addition to those bonds or in circumstances other than specified in subsection (b)(1) of this section.
- (4) Right to file suit on payment bonds. Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors for the work provided in the

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contract, for which a payment bond is furnished under this subsection, and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due that person. However, any person having a contract with a subcontractor of the contractor but having no express or implied contract with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

- (5) Location for filing suit on payment bonds. Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or district in which the construction contract was to be performed.
- (6) Copies of bond forms. Any person may request and obtain from the city a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

(Code 1988, § 25.5-92; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-171. - Contractor records.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:

- (1) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (2) Provide to the city, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

(Code 1988, § 25.5-161)

Sec. 24-172. - Patents.

If a city contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

- (1) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and
- (2) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

(Code 1988, § 25.5-162)

Sec. 24-173. - Copyrights and rights in data.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of

the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

(Code 1988, § 25.5-163)

Sec. 24-174. - Notice of federal public policy requirements.

If the city contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as: (i) equal employment opportunity; (ii) fair labor standards; (iii) energy conservation; (iv) environmental protection; or (v) other similar socioeconomic programs, the purchasing manager shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

(Code 1988, § 25.5-164; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-175. - Buy American/Buy America requirements.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall adhere to the appropriate Buy American/Buy America requirements of the federal agency providing the assistance.

(Code 1988, § 25.5-165)

Sec. 24-176. - Energy conservation.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

(Code 1988, § 25.5-166)

Sec. 24-177. - Small, women-owned and minority business enterprises.

- (a) Expand participation. If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.
- (b) Examples of affirmative steps. Affirmative steps to be taken shall include the following:
 - (1) Including qualified small, women-owned, and minority businesses on solicitation lists;
 - (2) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
 - (3) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;
 - (4) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and

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- (5) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.
- (c) Pass-through to subcontracts. A contractor awarded a federally funded contract shall take the affirmative steps, as linked in subsection (b) of this section, in awarding its subcontracts.

(Code 1988, § 25.5-167; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-178. - Labor surplus area businesses.

If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

(Code 1988, § 25.5-168; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-179. - Architectural and engineering services

- (a) If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall use qualifications-based competitive proposal procedures when contracting for architectural and engineering services as defined in 40 U.S.C. §541 et seq. and 49 U.S.C. §5325(d). Services subject to this requirement include but are not necessarily limited to program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.
- (b) Qualifications-based competitive proposal procedures require that:
 - (1) An offeror's qualifications be evaluated;
 - (2) Price be excluded as an evaluation factor;
 - (3) Negotiations be conducted with only the most qualified offeror; and
 - (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the city.
- (c) These qualifications-based competitive proposal procedures will be used for the procurement of the services listed above. This method of procurement will not be used to obtain other types of services even though a firm that provides architectural and engineering services is also a potential source to perform other types of services.
- (d) The city will use article III, source selection and contract information, division 1, professional and technical services procurement to procure architectural and engineering services in accordance with the city's procurement code as amended.

(Ord. No. 2132, § I, 9-7-04)

Sec. 24-180. - Cost or pricing data.

- (a) Required submissions relating to award of contracts. A prospective contractor shall submit cost or pricing data when the city contract is federally funded or is to be awarded on a noncompetitive basis.
- (b) Exceptions. Except for federally funded purchases, the submission of cost or pricing data relating to the award of a contract is not required when:

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- (1) The contract price is based on established catalogue prices or market prices;
 - (2) The contract price is set by law or regulation; or
 - (3) It is determined in writing by the purchasing manager that the requirements of subsection (a) of this section may be waived, and the determination states the reasons for such waiver.
- (c) Required submissions relating to change orders or contract modifications. For federally funded purchases and as otherwise required by the purchasing manager, the contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.
- (d) Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (e) Price adjustment provision required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the city, including profit or fee, shall be adjusted to exclude any significant sums by which the city finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the city and the contractor.

(Code 1988, § 25.5-52; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § I, 9-7-10)

Sec. 24-181. - Cost or price analysis.

- (a) Under this chapter, a cost analysis, or a price analysis, as appropriate, shall be conducted for contracts established through the application of section 24-95 (Sole source procurement). A written record of such cost analysis or price analysis shall be made a part of the contract file.
- (b) For all federally funded purchases, a cost or price analysis must be conducted as required by applicable federal regulations for all related contracts including contract cost modifications. The cost or price analysis shall be public record.

(Code 1988, § 25.5-53; Ord. No. 2589, § II, 9-7-10)

Sec. 24-182. - Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the purchasing manager or head of a using agency deems advisable to protect the city's interest. Any such bonding or security requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

(Code 1988, § 25.5-54; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-183. - Cancellation/rejection of invitation for bid or request for proposal; No Responsive Offers Received

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- (a) Under this chapter, an invitation for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city. The reasons therefor shall be made part of the contract file. Each solicitation issued by the city shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the city. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request of unsuccessful bidders or offerors.
- (b) If no responsive offers are received, then the purchasing manager may purchase the required goods or services, with no change in the published specifications, in the open market at the best obtainable price. If the specifications are changed, or if so required by the purchasing manager, a purchase in the open market shall not be permitted and the competitive solicitation must be reissued.

(Code 1988, § 25.5-38; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-184. - Preferences.

- (a) Preference factor. A preference factor may be applicable to quotes, bids or proposals received in response to procurement solicitations conducted.
 - (1) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to local businesses based upon a five percent deduction from the local business quote or bid, or five percent of total evaluation points being added to the score of a proposal from a local business.
 - (2) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to resident businesses which has a valid resident business certificate issued by the New Mexico Taxation and Revenue department based upon a five percent of total evaluation points being added to the score of a proposal from a resident business and a preference factor shall be applicable to resident veteran business which has a valid resident veteran business certificate issued by New Mexico Taxation and Revenue department based upon a ten percent of the total evaluation points being added to the score of a proposal from a resident veteran business.
 - (3) A preference factor for Section 3 firms as defined in the Housing and Urban Development Act of 1968, 12 U.S.C. 17801u (Section 3), as amended, shall be applicable pursuant to that Act whenever a contract resulting from a competitive procurement solicitation is funded through a grant from the U.S. Housing and Urban Development Department.
- (b) New Mexico materials. Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference for the use of materials produced, grown, processed, or manufactured in New Mexico by citizens or residents of New Mexico shall apply pursuant to § 13-4-2, NMSA, 1978, as amended.
- (c) Limitations. No bidder/offeror entitled to preference pursuant to this section shall receive more than a ten percent preference on any one bid/proposal submitted. Only the principal bidder/offeror or one of the principal bidders/offerors, not a subcontractor, may qualify for a preference.

(Code 1988, § 25.5-40; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. B), 8-6-12)

Sec. 24-185 Change orders

(a) Changes in time. Extensions of time on construction contracts or professional/technical service contracts, may be granted by the Project Manager, subject to appropriate approvals, on a case-by-case basis for the following reasons:

- (1) One additional day for each delay in which the contractor could not perform contractual work and subsequent days as may be required to repair work damage by weather, as defined in General Conditions for Construction Contracts, 2004, during the term of the contract;
- (2) City-requested changes to project specifications that incur time as a result;
- (3) Other circumstances in which the City believes such an extension of time is in the best interest of the project and must be approved by the Department Director;
- (4) Limitations on extensions of time addressed by this policy are as follows:
 - a. An increase of 30 contractual days to the original contract time, shall be approved by the Program Manager;
 - b. An increase of 31 to 60 contractual days to the original contract time shall be approved by the appropriate Department Director;
 - c. An increase of more than 60 contractual days to the original contract time, shall be approved by the City Manager.

(b) Changes in cost

- (1) Any changes in contract cost which includes base contract amount, contingency, and NMGR, require the following approvals:

Change	Approver
Less than 5%	Program Manager
More than 5% less than 10%	Department Director
More than 10% less than 15%	Assistant City Manager
More than 15%	City Manager
Contract approved by City Council	City Council
Exceeds approved budget amount	City Council

- (2) Budgetary Authority: In no case does City staff or Management have the ability to increase the budget at the fund level, including usage of unbudgeted fund balance, without City Council approval.
- (3) Proposed construction work that deviates from the contract drawings and/or specifications shall be initiated with a field notice followed by a duly authorized change order when there is a change in cost and approved by the appropriate Approver and based on current thresholds.

(Code 1988, § 25.5-40; Ord. No. 2852, § 5-21-18)

Sec. 24-186. Suspension of Project

Due to reasons beyond the contractor's control or conditions exist which will impair the quality of the work, and upon recommendation by the Department Director, the purchasing manager, or the Office of the City Manager shall have the authority to suspend a construction or consultant project indefinitely.

Sec. 24-187. - Maximum practicable competition.

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Under this chapter, all specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the city's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to those prepared for the city by architects, engineers, designers, and drafters.

(Code 1988, § 25.5-81)

Sec. 24-188. - Qualified products list.

The city may adopt qualified product lists that shall allow for maximum competition as is practical and that will satisfy the requirements of the city.

(Code 1988, § 25.5-82)

Sec. 24-189. - Brand name specification or equal specification.

- (a) Use. Under this chapter, brand name or equal specifications may be used when the purchasing manager determines in writing that:
 - (1) No other design or performance specification or qualified products list is available;
 - (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - (4) Use of a brand name or equal specification is in the city's best interest.
- (b) Samples of "or equal" materials should be submitted with the bid; however, they may be submitted after the bid opening if adequate time is allowed to evaluate the samples before the bid is awarded.
- (c) Designation of several brand names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references, and shall further state that substantially equivalent products to those designated will be considered for award.
- (d) Required characteristics. Unless the purchasing manager determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (e) Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(Code 1988, § 25.5-83; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-190. - Brand name specification.

- (a) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing manager makes a written determination that only the identified brand name item will satisfy the city's needs.
- (b) Competition. The purchasing manager shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price

competition is practicable. If only one source can supply the requirement, the procurement shall be made under sole source procurement.

(Code 1988, § 25.5-84; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-191. - Authority for cooperative procurement.

The purchasing manager may either participate in, sponsor, or administer a cooperative procurement agreement for the procurement of any city services, construction, or items of tangible personal property with any other state agency, local public body, or external procurement unit in accordance with an agreement.

(Code 1988, § 25.5-131)

Secs. 24-192 – 24-195. Reserved.

DIVISION 3. - PROCUREMENT OF TANGIBLE GOODS

Sec. 24-196. - Contracting for tangible goods selection procedure.

(a) Tangible goods shall be procured in accordance with this division.

Sec. 24-197. - Competitive sealed bidding.

Conditions for use. Where no factors other than cost will be considered, competitive sealed bidding shall be used.

- (a) Invitation for bids. An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
- (b) Public notice. For bids estimated to be \$100,000.00 or more, adequate public notice of the invitation for bid shall be given at a reasonable time not less than seven calendar days prior to the date set forth for the opening of the bid. The public notice shall state the place, date, and time of bid opening, and where bid documents may be inspected or obtained. Public notice shall be published in a local newspaper of general circulation. All other public notice may include publication in regional newspapers of general circulation or posting through an electronic medium which is accessible to the general public.
- (c) Bid opening. A bid shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. A late bid will not be accepted. Lateness will be determined by the purchasing manager's time clock, and the purchasing manager's determination of promptness or lateness will be final. The amount of each bid and such other relevant information as the purchasing manager deems appropriate, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection. A copy of the information may be obtained by sending a self-addressed stamped envelope with reference to the bid number and title to the purchasing department. This information will not be given over the telephone.
- (d) Bid acceptance and bid evaluation. A bid shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bid, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are

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not set forth in the invitation for bid. Original cover sheet and all documents must be provided fully executed, if not so provided bid will be rejected.

- (e) Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of an inadvertently erroneous bid before or after bid opening or cancellation of awards or contracts based on such bid mistakes may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - (1) The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
 - (2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the purchasing manager.
- (f) Award. Unless otherwise determined impractical by the purchasing manager, bids resulting in contract(s) totaling less than \$100,000.00 in the aggregate shall be awarded only to qualified local manufacturers or local businesses. If there are not any responsive/responsible local bidders, then award should go to qualified non-local manufacturers or businesses. Contracts shall be awarded to the most responsible and responsive bidder who provides the best value as set forth in the requirements and criteria specified in the invitation for bid.
- (g) Multistep sealed bidding. When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (h) Federal funding. Any competitive, sealed bid procurement utilizing federal assistance requires at least two bids, firm fixed-price contracts, and selection based principally on price.

(Code 1988, § 25.5-31; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2532, §§ II, III, 8-17-09; Ord. No. 2746, §§ I, II, 2-3-15; Ord. No. 2852, § 5-21-18)

Sec. 24-198. - Notice of projects; recommendations.

- (a) When the cost of tangible goods is estimated to be \$100,000 or more, the city shall cause to be published, at least two weeks before initial screening of professional firms or persons by the selection advisory committee, a legal advertisement containing a brief description of the work to be performed by the professional firms or persons and inviting interested firms to submit their qualifications for consideration by the selection advisory committee.

Sec. 24-199. - Approval of contracts.

- (a) Contracts, except state and federal agency and other non-procurement contracts, will be signed by the purchasing manager or his designee. State, federal agency and other non-procurement contracts will be signed by the Mayor or city manager or their designees.

(Code 1988, § 2-140, Ord. No. 1703, § X, 10-19-98; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2746, §§ I, II, 2-3-15)

Sec. 24-200. - Contractor records.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:

- (1) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (2) Provide to the city, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

(Code 1988, § 25.5-161)

Sec. 24-201. - Patents.

If a city contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

- (1) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and
- (2) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

(Code 1988, § 25.5-162)

Sec. 24-202. - Copyrights and rights in data.

If a city contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

(Code 1988, § 25.5-163)

Sec. 24-203. - Notice of federal public policy requirements.

If the city contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as: (i) equal employment opportunity; (ii) fair labor standards; (iii) energy conservation; (iv) environmental protection; or (v) other similar socioeconomic programs, the purchasing manager shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

(Code 1988, § 25.5-164; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-204. - Buy American/Buy America requirements.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city shall adhere to the appropriate Buy American/Buy America requirements of the federal agency providing the assistance.

(Code 1988, § 25.5-165)

Sec. 24-205. - Energy conservation.

If a city contract is being funded in whole or in part by assistance from a federal agency, the city's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

(Code 1988, § 25.5-166)

Sec. 24-206. - Small, women-owned and minority business enterprises.

- (a) Expand participation. If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.
- (b) Examples of affirmative steps. Affirmative steps to be taken shall include the following:
 - (1) Including qualified small, women-owned, and minority businesses on solicitation lists;
 - (2) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
 - (3) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;
 - (4) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and
 - (5) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.
- (c) Pass-through to subcontracts. A contractor awarded a federally funded contract shall take the affirmative steps, as linked in subsection (b) of this section, in awarding its subcontracts.

(Code 1988, § 25.5-167; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-207. - Labor surplus area businesses.

If a city contract is being funded in whole or in part by assistance from a federal agency, the purchasing manager is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

(Code 1988, § 25.5-168; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-208. - Cost or pricing data.

- (a) Required submissions relating to award of contracts. A prospective contractor shall submit cost or pricing data when the city contract is federally funded or is to be awarded on a noncompetitive basis.
- (b) Exceptions. Except for federally funded purchases, the submission of cost or pricing data relating to the award of a contract is not required when:
 - (1) The contract price is based on established catalogue prices or market prices;
 - (2) The contract price is set by law or regulation; or

- (3) It is determined in writing by the purchasing manager that the requirements of subsection (a) of this section may be waived, and the determination states the reasons for such waiver.
- (c) Required submissions relating to change orders or contract modifications. For federally funded purchases and as otherwise required by the purchasing manager, the contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract.
- (d) Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (e) Price adjustment provision required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the city, including profit or fee, shall be adjusted to exclude any significant sums by which the city finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the city and the contractor.

(Code 1988, § 25.5-52; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2589, § I, 9-7-10)

Sec. 24-209. - Cost or price analysis.

- (a) Under this chapter, a cost analysis, or a price analysis, as appropriate, shall be conducted for contracts established through the application of section 24-95 (Sole source procurement). A written record of such cost analysis or price analysis shall be made a part of the contract file.
- (b) For all federally funded purchases, a cost or price analysis must be conducted as required by applicable federal regulations for all related contracts including contract cost modifications. The cost or price analysis shall be public record.

(Code 1988, § 25.5-53; Ord. No. 2589, § II, 9-7-10)

Sec. 24-210. - Bid and performance bonds on supply or service contracts.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the purchasing manager or head of a using agency deems advisable to protect the city's interest. Any such bonding or security requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

(Code 1988, § 25.5-54; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-211. - Cancellation/rejection of invitation for bid or request for proposal; No Responsive Offers Received

- (a) Under this chapter, an invitation for bid, a request for proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city. The reasons therefor shall be made part of the contract file. Each solicitation issued by the city shall state that the solicitation may be canceled and

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that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the city. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request of unsuccessful bidders or offerors.

- (b) If no responsive offers are received, then the purchasing manager may purchase the required goods or services, with no change in the published specifications, in the open market at the best obtainable price. If the specifications are changed, or if so required by the purchasing manager, a purchase in the open market shall not be permitted and the competitive solicitation must be reissued.

(Code 1988, § 25.5-38; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-212. - Preferences.

- (a) Preference factor. A preference factor may be applicable to quotes, bids or proposals received in response to procurement solicitations conducted.
 - (1) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to local businesses based upon a five percent deduction from the local business quote or bid, or five percent of total evaluation points being added to the score of a proposal from a local business.
 - (2) Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference factor shall be applicable to resident businesses which has a valid resident business certificate issued by the New Mexico Taxation and Revenue department based upon a five percent of total evaluation points being added to the score of a proposal from a resident business and a preference factor shall be applicable to resident veteran business which has a valid resident veteran business certificate issued by New Mexico Taxation and Revenue department based upon a ten percent of the total evaluation points being added to the score of a proposal from a resident veteran business.
 - (3) A preference factor for Section 3 firms as defined in the Housing and Urban Development Act of 1968, 12 U.S.C. 17801u (Section 3), as amended, shall be applicable pursuant to that Act whenever a contract resulting from a competitive procurement solicitation is funded through a grant from the U.S. Housing and Urban Development Department.
- (b) New Mexico materials. Except for competitive procurement solicitations that are subject to 53 FR 8033 (Common Rule) as promulgated through the U.S. Office of Management and Budget, a preference for the use of materials produced, grown, processed, or manufactured in New Mexico by citizens or residents of New Mexico shall apply pursuant to § 13-4-2, NMSA, 1978, as amended.
- (c) Limitations. No bidder/offeror entitled to preference pursuant to this section shall receive more than a ten percent preference on any one bid/proposal submitted. Only the principal bidder/offeror or one of the principal bidders/offerors, not a subcontractor, may qualify for a preference.

(Code 1988, § 25.5-40; Ord. No. 1923, § 1, 6-17-02; Ord. No. 2658, § I (exh. B), 8-6-12)

Sec. 24-213 Change orders

- (a) **Changes in cost**

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(1) Any changes in base contract amount require the following approvals:

Change	Approver
Less than 5%	Program Manager
More than 5% less than 10%	Department Director
More than 10% less than 15%	Assistant City Manager
More than 15%	City Manager
Contract approved by City Council	City Council
Exceeds approved budget amount	City Council

(2) Budgetary Authority: In no case does City staff or Management have the ability to increase the budget at the fund level, including usage of unbudgeted fund balance, without City Council approval.

(Code 1988, § 25.5-40; Ord. No. 2852, § 5-21-18)

Sec. 24-214. Suspension of Project

Due to reasons beyond the contractor's control or conditions exist which will impair the quality of the work, and upon recommendation by the Department Director, the purchasing manager, or the Office of the City Manager shall have the authority to suspend a construction or consultant project indefinitely.

Sec. 24-215. - Maximum practicable competition.

Under this chapter, all specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the city's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to those prepared for the city by architects, engineers, designers, and drafters.

(Code 1988, § 25.5-81)

Sec. 24-216. - Qualified products list.

The city may adopt qualified product lists that shall allow for maximum competition as is practical and that will satisfy the requirements of the city.

(Code 1988, § 25.5-82)

Sec. 24-217. - Brand name specification or equal specification.

(a) Use. Under this chapter, brand name or equal specifications may be used when the purchasing manager determines in writing that:

- (1) No other design or performance specification or qualified products list is available;
- (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
- (3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (4) Use of a brand name or equal specification is in the city's best interest.

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- (b) Samples of "or equal" materials should be submitted with the bid; however, they may be submitted after the bid opening if adequate time is allowed to evaluate the samples before the bid is awarded.
- (c) Designation of several brand names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references, and shall further state that substantially equivalent products to those designated will be considered for award.
- (d) Required characteristics. Unless the purchasing manager determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (e) Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(Code 1988, § 25.5-83; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-218. - Brand name specification.

- (a) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing manager makes a written determination that only the identified brand name item will satisfy the city's needs.
- (b) Competition. The purchasing manager shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under sole source procurement.

(Code 1988, § 25.5-84; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-219. - Authority for cooperative procurement.

The purchasing manager may either participate in, sponsor, or administer a cooperative procurement agreement for the procurement of any city services, construction, or items of tangible personal property with any other state agency, local public body, or external procurement unit in accordance with an agreement.

(Code 1988, § 25.5-131)

Sec. 24-220. Reserved.

ARTICLE VI. – DEBARMENT OR SUSPENSION

Sec. 24-221. – Authority to suspend.

- (a) The purchasing manager, after consulting with the city attorney and the contract administrator, as defined by the using department, is authorized to suspend a person for cause from consideration for the award of future city contracts for a specified period of time. The suspension may apply to a person in his/her individual as well as corporate capacity. The suspension shall be for a period of not more than three months.
- (b) The causes for suspension shall include one or more of the following:

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- (1) Violation of any city or noncity contract provision, as follows, of a character which is regarded by the purchasing manager to be so serious as to justify suspension:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, including failure to pay subcontractors. Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension.
- (2) Any other cause the purchasing manager determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this chapter.
- (3) Violation of the ethical standards set forth in Article II of this chapter.

(Code 1988, § 25.5-101; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-222. – Authority to debar.

- (a) The purchasing manager, after consulting with the city attorney and the contract administrator, as defined by the using department, is authorized to debar a person for cause from consideration for the award of future city contracts for a specified period of time. The debarment may apply to a person in his/her individual as well as corporate capacity. The debarment shall be for a period of not more than three years.
- (b) The causes for debarment shall include one or more of the following:
 - (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
 - (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a city contractor.
 - (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
 - (4) Violation of any city or noncity contract provision, as follows, of a character which is regarded by the purchasing manager to be so serious as to justify debarment action:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, including failure to pay subcontractors. Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
 - (5) Any other cause the purchasing manager determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this chapter.
 - (6) Violation of the ethical standards set forth in Article II of this chapter.

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- (7) Any violation of the drug-free workplace regulations.

(Code 1988, § 25.5-101; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-223. – Notice of decision.

- (a) Mailing notice. Any written decision by the purchasing manager to debar a person under this article shall be sent by certified mail, return receipt requested, to the person affected by the decision, or by hand delivery and delivery receipt requested.
- (b) Contents of notice. The written notice of the purchasing manager's decision shall set forth in detail all reasons for the debarment and shall inform the person of their rights concerning administrative appeal.

(Code 1988, § 25.5-102; Ord. No. 1923, § 1, 6-17-02)

Secs. 24-224 - Determination of responsibility in construction and consultant contracts.

- (a) In all contracts related to capital projects, the purchasing manager may evaluate the past performance of an entity doing business with the city and determine if the contractor is not a responsible offeror. In the evaluation of the performance of the contractor, the following factors shall be considered:
- (1) Timeliness of performance;
 - (2) Quality of performance;
 - (3) Compliance with all applicable City ordinances;
 - (4) Compliance with the labor laws regarding payment of wage rates;
 - (5) Compliance with all applicable municipal, state, and federal laws;
 - (6) Poor performance causing delays in performance by other contractors;
 - (7) Failure to comply with safety laws, rules and regulations;
 - (8) Failure to accept responsibility for managing claims arising out of the performance of their contracts;
 - (9) Or any other factor which, singly or in combination with the above, results in a determination by the department director that the proposed contracting entity is not a responsible offeror.
- (b) Any such determination of non-responsibility made by the purchasing manager shall be sent to the contractor by certified mail, return receipt requested. A determination of non-responsibility shall continue until such time as the purchasing manager, based on contract performance occurring after the determination, then determines that offeror has improved its performance sufficient to be deemed responsible. Any determination of non-responsibility may be protested.

Secs. 24-225-24-230. - Reserved.

ARTICLE VII. - APPEALS AND REMEDIES

Sec. 24-231. - Bid protests.

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- (a) Right to protest. Any offeror who is aggrieved in connection with the procurement process of this chapter, including but not limited to the solicitation or award of a contract, may file a written protest with the purchasing manager. Such protest must be filed within five working days after the aggrieved bidder or offeror knows or should have known of the facts giving rise to the protest unless, otherwise specified in this chapter. If the protest concerns the awarding of a bid, the protest must be filed within five working days of receipt of the purchasing's manager's determination. The protestor shall set forth in detail all reasons for the protest. The protest shall:
 - (1) Include the name and address of the protestor;
 - (2) Identify the contracting activity and the number of the solicitation, if any, and if a contract has been awarded the contract number, if any;
 - (3) Contain a statement of the grounds for protest;
 - (4) Include supporting exhibits, evidence affidavits or documents to substantiate any claim unless not available within the filing time, in which case the expected availability date shall be indicated; and
 - (5) Specify the ruling requested from the purchasing manager.
- (b) Bid protest appeal bond or security. The options for an appeal bond or security are an appellate bond through a bonding company authorized to do business in New Mexico; letter of credit or its equivalent from a federally insured financial institution; or cashier's check or its equivalent payable to the City of Las Cruces. Amount of appeal bond or security shall be determined as follows:
 - (1) One Thousand and No/100 Dollars (\$1,000.00) for a bid protest to a contract expected to be awarded in an amount under One Hundred Thousand and No/100 Dollars (\$100,000.00).
 - (2) Five Thousand and No/100 Dollars (\$5,000.00) for a bid protest to a contract expected to be awarded in an amount between One Hundred Thousand and No/100 Dollars (\$100,000.00) and Five Hundred Thousand and No/100 Dollars (\$500,000.00).
 - (3) Ten Thousand and No/100 Dollars (\$10,000.00) for a bid protest to a contract expected to be awarded in an amount in excess of Five Hundred Thousand and No/100 Dollars (\$500,000.00).
 - (4) The purchasing manager will determine the amount of the appeal bond or security based on bids received, the engineer's estimate, and/or budgeted project funds, and that decision will be final.
- (c) Duties of purchasing manager upon receipt of protest. Upon receipt of any protest filed in accordance with section (a) of this section, the purchasing manager shall review the facts giving rise to the protest and within 15 working days mail to the protestor and all other bidders, return receipt requested, a written determination concerning the validity of the protest. The determination shall set forth the rationale, the proposed action to be taken by the purchasing manager or the city and shall inform the protestor and other bidders of their right to appeal the purchasing manager's determination in accordance with the appeal procedures set forth in subsection (c) of this section. Failure to timely appeal the purchasing manager's determination shall bar further recourse by the protestor or any other bidder, and the purchasing manager's determination and proposed action shall be final.
- (d) State of procurement during protest. If timely protest is made under subsection (a) of this section, the purchasing manager shall not proceed further with the solicitation or award of the contract until the appeal process has been concluded in accordance with this section or until the purchasing manager makes a determination based on the records that the award of the contract without delay is

necessary to protect substantial interests of the city. If the purchasing manager determines an award without delay is necessary and the protestor later prevails in the appeal, the protestor shall be entitled only to reasonable costs, not to include attorney fees, associated with the preparation and submission of the bid.

- (e) Appeal of purchasing manager's decision. Any protestor or other bidder aggrieved by the purchasing manager's determination made pursuant to subsection (b) of this section may appeal such determination by filing, within five working days of receipt of such decision, a written notice of appeal with the city clerk, which shall set forth in detail all reasons for the appeal and whether or not the protestor will be represented by an attorney.
- (f) Appeals board. All timely appeals of the purchasing manager's determination shall be heard by the appeals board within 15 working days after the filing of the notice of appeal with the city clerk. The appeals board shall consist of three members who are neither city employees nor city councilors and who shall be appointed by the city manager. The members may be paid or may serve voluntarily. The city clerk shall be responsible for notifying all protestors and other bidders of the time and place of the hearing.
- (g) Hearing procedures. The hearing shall be informal but shall provide at a minimum for the swearing in and cross examination of witnesses by the city or any party having filed an appeal. The board may develop rules for the conduct of protest meetings. After concluding the hearing, the appeals board shall issue a written determination, within 15 working days of holding a hearing, of either upholding or reversing the purchasing manager's determination. The determination shall be final.
- (h) Costs. The losing party to the appeal shall be responsible for the reasonable costs of the appeal as determined by the appeals board. The board's determination of costs shall be based on the costs and expenses incurred by the board, including but not limited to the board's salary, attorneys' fees, reproduction, and transcription costs.

(Code 1988, § 25.5-111; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-232. – Debarment appeal.

- (a) Timely appeal. The person debarred may appeal the determination of the purchasing manager by filing, within five working days of the receipt of the determination, a written notice of appeal and filing an appeals bond with the city clerk in an amount to be set by resolution of the city council. Any notice of appeal not filed within the five-working-day period shall not be timely. The notice of appeal shall be filed with the city clerk and shall set forth in detail all reasons for the appeal. No debarred person shall contact orally or in writing any member of the appeals board outside of the adjudicatory process.
- (b) Appeals board. All timely appeals of the purchasing manager's determination shall be heard by the appeals board within 15 working days after filing the notice of appeal with the city clerk. The appeals board shall consist of three members who are neither city employees nor city councilors and who shall be appointed by the city manager. The members may receive travel expenses or per diem or may serve voluntarily.
- (c) Notification of hearing. The city clerk shall be responsible for notifying the debarred person of the time and place of the hearing, which shall be opened to the public and conducted in compliance with the Open Meetings Act.
- (d) Record of hearing. The city shall provide a clerk who shall record the hearing and prepare a nonverbatim account of the hearing. Copies of the recordings and nonverbatim account shall be provided to the debarred person for a reasonable reproduction cost.

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- (e) Conduct of hearing. The hearing shall be informal but shall provide at a minimum for the swearing in and cross examination of witnesses by the parties involved. The appeals board shall have the authority to call for the attendance of witnesses and the production of documents, to swear witnesses, to call witnesses itself, to examine witnesses including the debarred person, and to hear all evidence properly brought before it. The formal rules of evidence shall not apply to this proceeding. The appeals board may adopt additional rules for hearings not inconsistent with this chapter.
- (f) Legal representation. The debarred person may be represented before the appeals board by a representative of his choice. The representative shall be identified, and their name made known to the board three days prior to the hearing. If the representative of the person who has appealed is an attorney, the purchasing manager may be represented by the city attorney.
- (g) Written decision of board. After concluding the hearing, the appeals board shall issue a written decision either upholding or reversing the purchasing manager's determination within 15 working days of the completion of the hearing. The decision of the board shall be based upon the evidence received at the hearing and shall be final.
- (h) Costs. The losing party to the appeal shall be responsible for the reasonable costs of the appeal as determined by the appeals board. The board's determination of costs shall be based on the costs and expenses incurred by the board, including but not limited to the board's salary, attorneys' fees, reproduction, and transcription costs.

(Code 1988, § 25.5-103; Ord. No. 1923, § 1, 6-17-02)

Sec. 24-233. - Remedies for solicitations or awards in violation of law.

- (a) Prior to bid opening or closing date for receipt of proposals. If, prior to the bid opening or the closing date for receipt of proposals, the purchasing manager, after consultation with the city attorney, determines that a solicitation made under this chapter is in violation of federal, state, or municipal law, the solicitation shall be canceled or revised to comply with applicable law.
- (b) Prior to award. If, after bid opening or the closing date for receipt of proposals, the purchasing manager, after consultation with the city attorney, determines that a solicitation or a proposed award of a contract made under this chapter is in violation of federal, state, or municipal law, the solicitation or proposed award shall be canceled.
- (c) After award. If, after an award, the purchasing manager, after consultation with the city attorney, determines that a solicitation or award of a contract made under this chapter was in violation of applicable law, then:
 - (1) If the person awarded the contract has not acted fraudulently or in bad faith, the contract may be:
 - a. Ratified and affirmed, provided it is determined that doing so is in the best interests of the city; or
 - b. Terminated, and the person awarded the contract shall be compensated for actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or
 - (2) If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the city.

(Code 1988, § 25.5-113; Ord. No. 1923, § 1, 6-17-02)