



VILLAGE OF LOS LUNAS  
REGULAR COUNCIL MEETING AGENDA  
Thursday, March 12, 2026 | 6:00PM  
Council Chambers | 660 Main Street  
Los Lunas, NM, 87031

**ATTENTION:**

Village Council meetings are also streamed live via Microsoft TEAMS. You may connect with codes that are available on our website ([www.loslunasnm.gov](http://www.loslunasnm.gov)) and/or <https://www.loslunasnm.gov/meeting>.

The Village of Los Lunas Council is pleased to have residents of the community take time to attend Village Council Meetings. Attendance and participation is encouraged. Individuals wishing to be heard during Public Input and Public Hearing proceedings are encouraged to be prepared and will be ***limited to three (3) minutes*** to allow everyone the opportunity to be heard. *Public comments are expected to be constructive and devoid of character assassination.* Questions raised on non-agenda items may be answered at a later date to facilitate proper research. Written comments are welcome and should be given to the Village Administrator prior to the start of the meeting. Written materials will not be accepted during regular agenda items in the interest of time.

**Please turn off or mute all electronic devices during the meeting. Your cooperation is appreciated.**

- Call Meeting to Order
- Pledge of Allegiance
- Public Input Forum

*Jill Sweeney*

***1. Consideration of Ordinance 486 approving a LEDA Project for the benefit of Greater Kudu, LLC pursuant to the Local Economic Development Act and the Village of Los Lunas LEDA Plan, providing public support for expansion of the Company's existing data center within the Village of Los Lunas and Valencia County from certain local gross receipts tax revenues generated by construction of the Project.***

**TAB**

**1.**

**ACTION REQUESTED OF COUNCIL:** Approve or disapprove.

*Alex Ochoa*

***2. Vistas at Los Senderos Unit 1 Infrastructure Acceptance***

**TAB**

**2.**

**ACTION REQUESTED OF COUNCIL:** Approve or disapprove.

*Michael Jaramillo*

***3. Easement Agreement between Village and Westway Six BESS LLC***

**TAB**

**3.**

**ACTION REQUESTED OF COUNCIL:** Approve or disapprove.

(Tabled at the 2/26/26 council meeting).

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Deputy Clerk five (5) days prior to the meeting or hearing at (505) 839-3840.

**4. Executive Session – pursuant to NMSA 1978 Section §10-15-1(H), the following matters may be discussed in closed session:**

**TAB 4.**

- a. Hire Library Technician – Library Department.
- b. Hire (2) Parks Technician I – Parks & Recreation Department.
- c. Promotion to Detective – Police Department
- d. Collective Bargaining Agreement Negotiations – Fire Department

**5. Approval of Minutes.**

**TAB 5.**

- a. Minutes from February 26, 2026, Council Meeting.

**6. Adjournment.**



## VILLAGE COUNCIL AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item Title:

Presenter:

Department:

Meeting Date:

March 12, 2026

Action Requested: ☒ Approval/Disapproval ☐ Informational  
☐ Public Hearing ☐ Other

Consideration of Ordinance 486 approving a LEDA Project for the benefit of Greater Kudu, LLC pursuant to the Local Economic Development Act and the Village of Los Lunas LEDA Plan, providing public support for expansion of the Company's existing data center

Jill Sweeney, Taft Law Firm

gross receipts tax revenues generated by construction of the Project.

### OVERVIEW/ ANALYSIS

Greater Kudu LLC (the "Company") applied for and requested the Village to provide it with certain public support in connection with the expansion of its data center campus, related facilities and other potential similar projects (the "Project") by providing additional public infrastructure to support the Project and the community (the "Public Improvements") payable from gross receipt taxes dedicated by the State, the County, and the Village. The Village, the County, and the Company have concluded that it is desirable for the Village and the County, rather than the Company, to enter into the construction and other related contracts for the acquisition, construction and installation of the Public Improvements. The Village and the Company desire to enter into a PPA with the County and the State confirming the dedication of the gross receipt tax collected from the Project to the construction of the Public Improvements and describing the Public Improvements. Additionally, the County, the Village, and the State will enter into one or more intergovernmental agreements regulating the distribution and management of the gross receipt taxes dedicated to the Public Improvements and their construction.

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## POSSIBLE ACTIONS

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- Approve item
- Approve item, with changes
- Deny item
- Postpone item to a future meeting (direct staff to conduct further research)
- Table item for future discussion (direct staff to conduct further research)
- No action at this time

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## STRATEGIC PRIORITIES ALIGNMENT

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- ☐ I-25 Interchange/Los Lunas Boulevard Corridor Project
- ☐ Quality of Life Improvements
- ☒ Infrastructure Improvements
- ☒ Economic Development
- ☐ Personnel
- ☐ N/A

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## BUDGET IMPACT

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Between \$14 million - \$33 million shared GRT to return to municipalities, depending on final project construction costs.

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## LEGAL REVIEW

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- ☒ Yes, by: Taft Law Firm
- ☐ Not applicable

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## ATTACHMENTS

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- Ordinance 486
- Form of Project Participation Agreement
- Form of Intergovernmental Agreement

VILLAGE OF LOS LUNAS, NEW MEXICO

ORDINANCE NO. 486

1 AN ORDINANCE APPROVING A LEDA PROJECT FOR THE BENEFIT OF  
2 GREATER KUDU, LLC (TOGETHER WITH ITS ASSIGNS, SUBSIDIARIES,  
3 AND AFFILIATES, THE “COMPANY”), PURSUANT TO THE LOCAL  
4 ECONOMIC DEVELOPMENT ACT AND THE VILLAGE OF LOS LUNAS  
5 LOCAL ECONOMIC DEVELOPMENT ACT PLAN TO PROVIDE PUBLIC  
6 SUPPORT FOR THE EXPANSION OF THE COMPANY’S EXISTING DATA  
7 CENTER CAMPUS, RELATED FACILITIES AND OTHER PERMITTED  
8 SIMILAR PROJECTS (THE “PROJECT”) LOCATED WITHIN THE  
9 VILLAGE OF LOS LUNAS, NEW MEXICO (THE “VILLAGE”) AND  
10 VALENCIA COUNTY (THE “COUNTY”) FROM CERTAIN LOCAL GROSS  
11 RECEIPTS TAX REVENUE GENERATED BY THE CONSTRUCTION OF  
12 THE PROJECT; AUTHORIZING THE EXECUTION OF AN  
13 INTERGOVERNMENTAL AGREEMENT, A PROJECT PARTICIPATION  
14 AGREEMENT, AND OTHER COOPERATIVE AGREEMENTS OR  
15 MEMORANDA AMONG OR BETWEEN THE STATE OF NEW MEXICO  
16 (THE “STATE”), THE COUNTY, AND THE VILLAGE; AUTHORIZING THE  
17 EXECUTION OF ALL OTHER NECESSARY DOCUMENTS; MAKING  
18 CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE  
19 PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND  
20 REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

21  
22 **WHEREAS**, the Local Economic Development Act, Sections 5-10-1 through 5-10-17  
23 NMSA 1978, as amended (the “Act”), authorizes municipalities and counties to provide certain  
24 public support to qualifying entities as defined under the Act; and

25 **WHEREAS**, pursuant to Section 5-10-6 of the Act, the Village Council of the Village of  
26 Los Lunas (the “Village Council”) has adopted Ordinance Nos. 400 and 431, now codified at  
27 Title 2, Chapter 2.46 of the Village Code of Ordinances, which approved the Village’s Local  
28 Economic Development Act Plan, as amended from time to time (the “LEDA Plan”); and

29 **WHEREAS**, the purpose of the Act and the LEDA Plan is to allow public support of  
30 economic development projects to foster, promote and enhance local economic development  
31 efforts while continuing to protect against the unauthorized use of public money and other public  
32 resources; and

33 **WHEREAS**, pursuant to the Act and the LEDA Plan, Greater Kudu, LLC, a Delaware  
34 limited liability company (together with its assigns, subsidiaries, and affiliates, the “Company”),  
35 has applied for and requested that the Village provide certain public support to the Project (as

1 defined below) in connection with the acquisition, construction, redevelopment, renovation,  
2 rehabilitation, equipping and improvement of public infrastructure (the “Infrastructure  
3 Improvements”) through the use of eligible funds generated from the Company’s expansion of  
4 its data center facility and related infrastructure (the “Facility”) located in the Village of Los  
5 Lunas, New Mexico (the “Village”), all within the Village (the “Project”); and

6       **WHEREAS**, the public support provided to the Project pursuant to this Ordinance would  
7 be in exchange for a substantial contribution to the local economy made by the Company; and

8       **WHEREAS**, the Act and the LEDA Plan require each of the State, the County, and the  
9 Village to enter into a project participation agreement with the Company meeting the  
10 requirements of Section 5-10-10 of the Act and the LEDA Plan (the “Project Participation  
11 Agreement”), including as to LEDA contributions supporting the Project and funded to the  
12 Village and the County for the completion of the Infrastructure Improvements from the  
13 dedication by: (i) the State of fifty percent of the state gross receipts and compensating tax  
14 increments generated by the taxable expenses related to the construction of the Facility for ten  
15 years and available for dedication to the Project; and (ii) the Village and the County of fifty  
16 percent of the local and county gross receipts and compensating tax increments generated by the  
17 taxable expenses related to the construction of the Facility for ten years and available for  
18 dedication to the Project; and

19       **WHEREAS**, on March 4, 2026, the County adopted its own, separate ordinance dedicating  
20 fifty percent of the County’s gross receipts and compensating tax increments generated by the  
21 taxable expenses related to the construction of the Facility for ten years to the Infrastructure  
22 Improvements for the Project; and

23       **WHEREAS**, the Village staff, with assistance from the State Economic Development  
24 Department, has worked with the Company to prepare, and has negotiated the terms of, the  
25 Project Participation Agreement with the Company; and

26       **WHEREAS**, the total amount of public money expended and the value of credit pledged in  
27 each fiscal year in which money is expended by the Village for the Project (and any other  
28 approved projects) pursuant to the Act does not and will not exceed ten percent (10%) of the  
29 general fund expenditures of the Village in such fiscal year, unless an exception in Section 5-10-  
30 4(B)(1) through (6) applies; and

1       WHEREAS, the forms of the proposed Project Participation Agreement and an  
2 intergovernmental agreement among the County, the Village and the State (the  
3 “Intergovernmental Agreement”) have been filed with the Village Clerk and presented to the  
4 Village Council; and

5       WHEREAS, after having considered the Project, the Project Participation Agreement, and  
6 the Intergovernmental Agreement, the Village Council has concluded that the benefits of the  
7 Project to the Village will be substantial, that it is desirable and necessary at this time to  
8 authorize the Village to enter into the Project Participation Agreement and the Intergovernmental  
9 Agreement, and that the Village’s provision of the support contemplated by the Project  
10 Participation Agreement will constitute a valid purpose under the Act;

11       **NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF**  
12 **LOS LUNAS, NEW MEXICO:**

13 **SECTION 1.** *Findings.* The Village Council finds that: (a) the Company is a “qualifying  
14 entity” as defined in Subsection 5-10-3(L) NMSA 1978; (b) under the Project Participation  
15 Agreement the Company will provide a substantive contribution for the Project as described in  
16 Section 5-10-10(B) NMSA 1978; (c) the Project Participation Agreement complies with the  
17 requirements of the Act; (d) the benefits of the Project to the Village , in terms of increased tax  
18 revenues and other benefits arising from retained and sustained employment, exceed the cost to  
19 the Village of providing the support specified in the Project Participation Agreement; and (e) the  
20 Project Participation Agreement sets out (i) the contributions to be made by the Village and the  
21 Company to the Project, (ii) the security provided to the Village by the Company for any funds  
22 from the Project received by the Company from the Village and the Company’s pledge of  
23 financial or material participation and cooperation to guarantee the Company’s performance in  
24 exchange for any funds from the Project received by the Company from the Village, (iii) a  
25 schedule for project development and completion, including measurable goals and time limits for  
26 those goals, and (iv) provisions for performance review and actions to be taken upon a  
27 determination that performance is unsatisfactory.

28 **SECTION 2.** *Approval of the Project and the Project Participation Agreement.* The Village  
29 hereby approves the Project and the Project Participation Agreement in the form presented to the  
30 Village Council with this Ordinance, which provides, among other things, that the Village will  
31 dedicate to the Project fifty percent of the tax revenue attributable to the gross receipts and

1 compensating taxes imposed by the Village on the Company's receipts for expenses related to the  
2 construction of the Facility for ten years (the "LEDA Project Funds"), such amount to be applied  
3 to a portion of the costs of the Infrastructure Improvements, in exchange for which the Company  
4 will comply with the terms of the Project Participation Agreement. There are hereby  
5 appropriated for and dedicated to the Project the LEDA Project Funds generated by the tax  
6 revenue attributable to the gross receipts and compensating taxes imposed by the Village on the  
7 Company's receipts for expenses related to the construction of the Facility for ten years.

8 **SECTION 3. *Authorization.*** The forms, terms, and provisions of the Project Participation  
9 Agreement and the Intergovernmental Agreement, each in the form presented to the Village  
10 Council with this Ordinance, are in all respects approved and authorized, and the Village shall  
11 enter into such Agreements. The Mayor, or Mayor Pro Tem acting in his or her absence, is  
12 authorized to execute the Project Participation Agreement and the Intergovernmental Agreement,  
13 with only such changes as are not inconsistent with this Ordinance or such changes as may be  
14 recommended by the Village Administrator or the Village's legal counsel. The Mayor, Mayor  
15 Pro Tem, Village Administrator, and other officers of the Village are hereby authorized and  
16 directed to execute and deliver all other necessary documents, and to take all action necessary or  
17 appropriate to effectuate the provisions of this Ordinance.

18 **SECTION 4. *Severability.*** If any section, paragraph, clause or provision of this Ordinance  
19 shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of  
20 that section, paragraph, clause, or provision shall not affect any of the remaining provisions of  
21 this Ordinance.

22 **SECTION 5. *Repealer.*** All bylaws, ordinances, resolutions, and orders, or parts thereof,  
23 inconsistent with this Ordinance are repealed by this Ordinance but only to the extent of that  
24 inconsistency. This repealer shall not be construed to revive any bylaw, ordinance, resolution, or  
25 order, or part thereof, previously repealed.

26 **SECTION 6. *Effective Date.*** Upon due adoption of this Ordinance, it shall be recorded in the  
27 book of ordinances of the Village kept for that purpose, and this Ordinance shall be in full force  
28 and effect five days after the publication set forth below, in accordance with law

29 **SECTION 7. *General Summary for Publication.*** Pursuant to the general laws of the State, the  
30 title and a general summary of the subject matter contained in this Ordinance shall be published  
31 in substantially the following form:

(Form of Summary of Ordinance for Publication)

VILLAGE OF LOS LUNAS, NEW MEXICO  
NOTICE OF ADOPTION OF ORDINANCE No. 486

NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter of an ordinance, duly adopted and approved by the Village Council of the Village of Los Lunas, New Mexico (the "Village") on March 12, 2026.

Ordinance No. 486:

AN ORDINANCE APPROVING A LEDA PROJECT FOR THE BENEFIT OF GREATER KUDU, LLC (TOGETHER WITH ITS ASSIGNS, SUBSIDIARIES, AND AFFILIATES, THE "COMPANY"), PURSUANT TO THE LOCAL ECONOMIC DEVELOPMENT ACT AND THE VILLAGE OF LOS LUNAS LOCAL ECONOMIC DEVELOPMENT ACT PLAN TO PROVIDE PUBLIC SUPPORT FOR THE EXPANSION OF THE COMPANY'S EXISTING DATA CENTER CAMPUS, RELATED FACILITIES AND OTHER PERMITTED SIMILAR PROJECTS (THE "PROJECT") LOCATED WITHIN THE VILLAGE OF LOS LUNAS, NEW MEXICO (THE "VILLAGE") AND VALENCIA COUNTY (THE "COUNTY") FROM CERTAIN LOCAL GROSS RECEIPTS TAX REVENUE GENERATED BY THE CONSTRUCTION OF THE PROJECT; AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT, A PROJECT PARTICIPATION AGREEMENT, AND OTHER COOPERATIVE AGREEMENTS OR MEMORANDA AMONG OR BETWEEN THE STATE OF NEW MEXICO (THE "STATE"), THE COUNTY, AND THE VILLAGE; AUTHORIZING THE EXECUTION OF ALL OTHER NECESSARY DOCUMENTS; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

The following is a general summary of the subject matter contained in Ordinance No. 486

Preamble recites such matters as the authority of the Village to provide public support for the Company's expansion of its data center facility and related infrastructure; recites that, in exchange of the public support provided, the Company will provide substantial contributions to the local economy; recites that the Village has worked with the State Economic Development Department (the "State") to prepare and negotiate the Project Participation Agreement and other documents to be executed among the State, the County, the Village and the Company; and recites that the form of Project Participation Agreement and other documents are on deposit with the Village Clerk.

**SECTION 1** makes certain findings under the Local Economic Development Act and the Village's Local Economic Development Act Plan.

**SECTION 2** approves the Project and the Project Participation Agreement.

(SEAL)

**PASSED, APPROVED, ADOPTED, AND SIGNED** this 12<sup>th</sup> day of March 2026.

**VILLAGE OF LOS LUNAS, NEW MEXICO  
VILLAGE COUNCIL MEMBERS**

\_\_\_\_\_  
**CHARLES GRIEGO, MAYOR**

\_\_\_\_\_  
**CHRISTOPHER ORTIZ, COUNCILOR**

\_\_\_\_\_  
**GINO ROMERO, COUNCILOR**

\_\_\_\_\_  
**MATTHEW D. CHAVEZ, COUNCILOR**

\_\_\_\_\_  
**JAMES RUNYON, COUNCILOR**

**[SEAL]**

**ATTEST:**

\_\_\_\_\_  
**GREGORY D. MARTIN  
VILLAGE ADMINISTRATOR/VILLAGE CLERK**

**APPROVED AS TO FORM**

\_\_\_\_\_  
**TAFT STETTINIUS & HOLLISTER LLP  
SPECIAL COUNSEL**

## PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement (this “Agreement”) is made as of [\_\_\_\_], 2026, by and among the VILLAGE OF LOS LUNAS, NEW MEXICO (the “Village”); VALENCIA COUNTY, NEW MEXICO (the “County”); the NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT (“EDD” and together with the Village and the County, the “Contributors”), as agent for the State of New Mexico (the “State”); and GREATER KUDU LLC, a Delaware limited liability company, a Delaware limited liability company (the “Project Party,” and together with the Contributors, the “Parties” and each a “Party”).

### RECITALS:

A. Pursuant to the Local Economic Development Act, Chapter 5, Article 10 NMSA 1978 (the “Act”), the Village adopted Ordinance Nos. 400 and 431, now codified at Title 2, Chapter 2.46 of the Village Code of Ordinances, which approved the Village's Local Economic Development Act Plan (as amended from time to time, the “Village LEDA Plan”).

B. Pursuant to the Act, the County adopted Ordinance No. 2021-05, which approved the County's Local Economic Development Act Plan (as amended from time to time, the “County LEDA Plan,” and together with the Village LEDA Plan, the “LEDA Plan”).

C. The Project Party currently operates a data center located in the Village, within the County (the “Facility”).

D. The Project Party has submitted an application to the [Village and the County][EDD] (the “Application”), included as Schedule B hereof, to provide assistance under the LEDA Plan. In the Application, the Project Party has proposed that the Project Party would expand its Facility in exchange for certain public support (the “Project”). The Application further requests that the Village act as the fiscal agent with respect to an amount to be made available to the Village by the New Mexico Economic Development Department and the County.

E. The Village has adopted Ordinance No. [\_\_\_\_] approving the economic development project (the “Village Project Ordinance”), (i) finding that the Project Party is a qualifying entity as defined in Section 5-10-3(L) NMSA 1978; (ii) approving the Application for assistance with the Project pursuant to the Village LEDA Plan, which Application proposed that the Village direct 50% of the Village’s gross receipts and compensating tax (“GRT”) increment

generated by the taxable expenses related to the construction of the Project, as contemplated under Section 5-10-17(B) NMSA 1978, during the term of this Agreement pursuant to Sections 5-10-14 and Sections 5-10-17 NMSA 1978 (the “Village Increment”), all to finance certain statutorily eligible expenses of public infrastructure needed to support the Project (as further described in Exhibit A hereof, the “Infrastructure Improvements”); and (iii) approving this Agreement.

F. The County has adopted Ordinance No. 2026-[] approving the economic development project (the “County Project Ordinance,” and together with the Village Project Ordinance, the “Project Ordinances”), (i) finding that the Project Party is a qualifying entity as defined in Section 5-10-3(L) NMSA 1978; (ii) approving the Application for assistance with the Project pursuant to the County LEDA Plan, which Application proposed that the County direct 50% of the County’s GRT increment generated by the taxable expenses related to the construction of the Project, as contemplated under Section 5-10-17(B) NMSA 1978, during the term of this Agreement pursuant to Sections 5-10-14 and 5-10-17 NMSA 1978 (the “County Increment”) to finance the Infrastructure Improvements; and (iii) approving this Agreement.

G. By entering this Agreement, EDD approves the Application for assistance with the Project, which Application proposed that the State direct 50% of the State’s GRT increment generated by the taxable expenses related to the construction of the Project, as contemplated under Section 5-10-17(A) NMSA 1978, during the term of this Agreement pursuant to Sections 5-10-14 and 5-10-17 NMSA 1978 (the “State Increment” and together with the Village Increment and the County Increment, the “GRT Increment”) to finance the Infrastructure Improvements.

H. The Parties understand that GRT rates change from time to time at either the beginning of a calendar year or at the beginning of a fiscal year, and the actual rates of the Village Increment, County Increment, and State Increment may change proportionately to each Contributor’s total GRT increment, [which total increments as of the date of this Agreement are contained in Exhibit B], during the term of this Agreement.

I. The Parties have also concluded that it is desirable for the Village [and the County], rather than the Project Party, to enter into the construction and other related contracts for the acquisition, construction and installation of the Infrastructure Improvements (as defined herein) and for the reimbursement to the Village [and the County] of the costs thereof from certain funds of the Contributors.

## AGREEMENT

1. Definitions: In addition to the terms defined elsewhere in this Agreement, including the Recitals above, the following terms shall have the following meanings in this Agreement:

“Infrastructure Improvements” shall mean all infrastructure improvements described in Exhibit A of this Agreement.

“Proportionate Share” shall mean, with respect to each Infrastructure Improvement, the percentages set forth opposite such Infrastructure Improvement on Exhibit A to this Agreement.

2. GRT Increment Contribution: The Village has dedicated by ordinance the Village Increment, the County has dedicated by ordinance the County Increment, and EDD agrees to dedicate the State Increment to the Local Economic Development Act fund created by Section 5-10-14 NMSA 1978 (the “Fund”) for purposes related to all LEDA-eligible expenses associated with the construction of the Infrastructure Improvements. The New Mexico Taxation and Revenue Department will distribute the dedicated GRT Increment from the Fund as described in Section 3 herein.

3. GRT Increment Distributions

A. The Contributors anticipate that the GRT Increment will be deposited into the Fund as contemplated under Section 5-10-14(B) NMSA 1978 and delivered to the Village, as fiscal agent for the State and the County on the Project in connection with the Project Ordinances and the IGA. Upon receipt of the GRT Increment, the Village will [place the GRT Increment into a separate account established in connection with the Project (the “Special Fund”)].

B. The Contributors agree that their respective portions of the GRT Increment collected and generated by the taxable expenses related to the construction of the Project will be used by the Village, as fiscal agent for the State and the County, or partially distributed to the County by the Village, by the Termination Date (as defined herein). If by the Termination Date \$350,000,000 in expenses related to the construction of the Project in the State have not accrued, the Project Party will cooperate with the Village, the County, and EDD in satisfying their obligations under Section 5-10-17(A)(2) NMSA 1978 to collect the public support provided to the Project Party.

- C. [Taxable transactions that are eligible to generate GRT Increment will be reported with Location Code [\_\_\_\_]] [The Contributors will provide to Project Party as soon as it is available from the New Mexico Taxation and Revenue Department the specific reporting code for the Project.] [NEED TO DISCUSS WITH TRD]
  - D. Project Party agrees to provide to the Contributors all documentation as required in Section 5-10-17(A)(5) NMSA 1978 prior to the end of each month so that the Contributors will have sufficient time to confirm and verify all funds have been duly submitted and collected.
  - E. Project Party will require all contractors and subcontractors for the Project to provide monthly to Project Party documents consistent with the requirements of Section 5-10-17(A)(5) NMSA 1978, such as the CRS-1 (or its equivalent) filing to the New Mexico Taxation and Revenue Department, redacted to reflect GRT related to the Project or the specific reporting code for the Project. Project Party will provide a copy of all CRS-1s for the Project as well as a summary reflecting all GRT related to the Project on a monthly basis to the Village's Economic Development Department, the County, and EDD, all addressed as directed by such entities.
4. Infrastructure Improvements:
- A. Qualifying Project: The Contributors have deemed the Project to be a qualifying project under the Act and the LEDA Plan. Neither the Village, the County, nor the Project Party is under any obligation to construct, install or acquire the Infrastructure Improvements. The Infrastructure Improvements will be constructed, installed or acquired, if at all, in such order and at such rate and times as the Village, the County, and the Project Party deem appropriate.
  - B. Infrastructure Improvements:
    - (1) To the extent of moneys available in the Special Fund, the [Village and the County] shall construct, install or acquire the Infrastructure Improvements identified in Exhibit A hereof. The [Village and the County have] agreed to enter into such contracts as are necessary and appropriate to have the Infrastructure Improvements acquired, constructed and installed; provided that such improvements shall be payable solely from the GRT Increment and, if applicable, the

Proportionate Share Fund (as defined herein). [The Village and the County may enter into a memorandum of understanding or other intergovernmental agreement (the “MOU”) to agree on the priority of each project, order of execution, budget, and party responsible for construction and contracting.] In no event shall the [Village or the County] be liable for any payments to the contractors for the Infrastructure Improvements, other than as provided in the immediately preceding sentence.

(2) The only recourse for payment of the GRT Increment are the revenues collected from gross receipts taxes paid by the Project Party, either directly or indirectly, as evidenced by the applicable forms described in Section 3 above, and the Contributors have no other liability of whatever kind, whether in law or equity, relating to the GRT Increment .

C. Village and County Obligations:

(1) The [Village] shall pay from the GRT Increment the actual amount of the cost of the Infrastructure Improvements, in accordance with Section 4.C(3) below. The GRT Increment paid for the Infrastructure Improvements shall not exceed the actual cost thereof. The GRT Increment shall not be used for any purpose other than paying the cost of the Infrastructure Improvements.

(2) The Village shall deposit into the Special Fund on a monthly basis, the portion of the GRT Increment which derives from monthly distributions from the New Mexico Taxation and Revenue Department and reflect a two-month lag from actual revenue collections.

(3) The [Village] shall make payments for the Infrastructure Improvements from time to time pursuant to the contracts entered into by the Village [and/or the County] for such Infrastructure Improvements from amounts accumulated in the Special Fund and the amounts, if any, available in the Proportionate Share Fund established pursuant to Section 4.D. Such costs shall not be paid unless they qualify under LEDA.

D. Insufficient Moneys: If, at any time, there are insufficient moneys in the Special Fund to pay the costs then due and payable of any element of the Infrastructure Improvements, the County and the Village, subject to Section 4E of this Agreement, agree to contribute their Proportionate Share of the shortfall with respect to such element. The Proportionate Share moneys

contributed by the Village and the County shall be deposited by the Village in a special fund (the “Proportionate Share Fund”) and used only to pay costs of such element or elements of the Infrastructure Improvements. In the event the County or the Village does not pay its Proportionate Share when required pursuant to the foregoing provisions of this Section 4D, the Village [and the County, as applicable], may, at their sole option, cease work on the element of the Infrastructure Improvement for which the shortfall exists. In such event, any moneys on deposit in the Proportionate Share Fund shall be repaid to the Party which paid such amount.

E. Appropriation Required: The obligation of the Village and the County to pay their Proportionate Share pursuant to Section 4D is expressly subject to appropriation of such amounts by the Village Council and the Board of County Commissioners (each, a “Governing Body”) respectively. This Agreement shall not directly or indirectly obligate the Village or the County to make any payments pursuant to Section 4.D beyond those for which an appropriation has been effected by the appropriate Governing Body for its then current fiscal year. It is the intention of the Village and the County that any decision to effect an appropriation for the payment of its Proportionate Share shall be made solely by the applicable Governing Body and not by any other official of the Village or the County and the decision to make such appropriation is in the complete discretion of the applicable Governing Body. Nothing in Section 4.D of this Agreement shall be construed or interpreted as a delegation of governmental powers or as creating a direct or indirect debt or other financial obligation whatsoever of the Village or the County or a general obligation or other indebtedness of the Village or the County within the meaning of any constitutional or statutory debt limitation.

5. Substantive Contribution by the Project Party: The Project Party will materially participate by acting as developer of the Project. The terms and provisions of the Project Ordinances and Application are incorporated into this Agreement by reference, and the Project Ordinances and Application are attached hereto as Schedule A and Schedule B, respectively. As set forth in the Application, the Project Party will operate the Facility for a minimum of 10 years and invest a minimum of \$350,000,000 in the construction of the Project.

6. Security Provided to Village:

A. As security for its obligations hereunder, the Project Party has obtained a commitment of its parent, Facebook, Inc., (“Parent”) in the amount equal to (i) any funds received

by the Project Party from the GRT Increment pursuant and (ii) any funds provided by the Village or the County pursuant to Section 4.F of this Agreement and delivered to the Project Party (collectively, the “Commitment”) which shall remain in effect during the term of this Agreement.

B. If the Project Party fails to satisfy its payment obligations under Section 3(B) hereof, pursuant to the Commitment the Parent shall reimburse the Village for all of the public support provided to the Project Party.

C. Funds recovered by the Village pursuant to the Commitment, if any, shall be paid to the Contributors, proportionately based upon the amount of funds contributed by each Contributor as compared to the other Contributors, within 30 days after they are received by the Village from the Parent, and any property acquired or developed by the Village as a result of the Project , shall be used by the Village for future economic development purposes only.

7. Administrative Fees and Third Party Fees: The Project Party agrees to pay the Village, upon the Village’s request following the Effective Date, an administrative fee not to exceed \$[\_\_\_\_], plus New Mexico gross receipts tax, to defray the Village’s actual administrative expenses incurred in good faith in connection with this Agreement and the Project Property, including, but not limited to, review of such forms as may be created by the State of New Mexico for purposes of identifying applicable gross receipts tax and calculation of the Increment Revenues. From time to time, upon depletion of the administrative fee, the Village may request, and the Project Party shall authorize within 14 days of such request, the deposit by the Village of additional amounts from the GRT Increment deemed by the Village to be necessary to replenish the administrative fee for the purposes contemplated in this section. In addition, the Project Party will promptly pay or reimburse the Village and the County for all reasonable third-party expenses, which expenses may include, but are not limited to, those related to inspections of completed Infrastructure Improvements and performance review of audits related to the Project. The Project Party also will promptly pay or reimburse the Village and the County for the reasonable legal fees of outside counsel incurred by the Village and the County in good faith in connection with professional services relating to any default by the Project Party under this Agreement.

8. Ratification: The Contributors and the Project Party, respectively, hereby ratify all actions consistent with this Agreement that the Village or the Project Party or their respective agents may have taken in furtherance of the development of the Project Property.

9. Term of Project Participation Agreement: This Agreement will terminate on the earliest to occur of (a) the tenth anniversary of the Effective Date (the “Termination Date”), (b) the date on which the Village has paid all approved costs of the Infrastructure Improvements from the sources provided in this Agreement, or (c) the date on which electricity use associated with the Project is no longer subject to gross receipts tax. The Project Party may terminate this Agreement at any time, with no further obligations, and Contributors will be released of their obligation to contribute the GRT Increments to the Fund. Upon termination of this Agreement and payment of all funds due to the Village, the Fund created hereunder shall be dissolved, and any amounts remaining in the Fund shall be returned to the applicable Contributor to be included in their general fund. Notwithstanding the foregoing provisions of this Section 9, if the Parent and/or the Project Party have been requested to pay any other amounts owed under this Agreement required to be paid by the Parent or the Project Party (including amounts required by Section 5-10-17(A)(2) NMSA 1978 or the amounts described in Section 6.B), this Agreement shall not terminate until the Contributors have received payment in full of the amount so requested.

10. Miscellaneous:

A. Successors and Assigns: Subject to Section 10.E herein, this Agreement binds and inures to the benefit of the Contributors and the Project Party and their respective successors and assigns.

B. Changes to Agreement: This Agreement may be amended or modified only in a written instrument duly executed by the Contributors and the Project Party.

C. Further Assurances: Consistent with the terms and conditions hereof, each the Contributors and Project Party will execute and deliver such instruments, certificates and other documents and take such other action as any other Party may reasonably require in order to carry out this Agreement and the transactions contemplated hereby.

D. Delays or Omissions: No delay or omission to exercise any right, power or remedy accruing to any Party, upon any breach or default of any other Party, shall impair any such right, power or remedy of such non-breaching or non-defaulting Party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of in any similar breach or

default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Party of any breach or default under this Agreement, or any waiver on the part of any Party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any Party, shall be cumulative and not alternative.

E. Assignment: This Agreement may not be assigned by the Contributors without the consent of the Project Party. The rights of the Project Party under this Agreement may be assigned by the Project Party without the approval of the Village. No such assignment will relieve the Project Party from liability for the performance of its obligations under this Agreement to the same extent as though no assignment, had been made, unless (i) such assignment is to an affiliate of the Project Party, or (ii) such assignment is made to a person or entity having net assets or a net worth of at least equal to the lesser of (1) net assets or net worth of the Project Party at the time of such transaction or (2) ten percent (10%) of the fair market value of the Project Property at the time of such transfer, or (iii) with the written consent of the Village, which consent shall not be unreasonably withheld, conditioned or delayed. If an assignment is made to a person or entity that qualifies under subsection (i) of this Section 10.E, then, in such event, the Project Party, as transferor, shall be relieved from all further liability under this Agreement from and after the effective date of such assignment the transferee shall thereafter be the “Project Party” for all purposes hereunder. If an assignment is made to a person or entity that qualifies under subsection (ii) of this Section 10.E, then, in such event, the Project Party, as transferor, and the Parent shall be relieved from all further liability under this Agreement from and after the effective date of such assignment, and the transferee shall thereafter be the “Project Party” and the “Parent” for all purposes hereunder. If a transfer is consented to by the Village under this subsection 10.E(iii), then, in such event, the transferee shall thereafter be the “Project Party” for all purposes, but the transferor and the Parent shall be relieved of all further liability under this Agreement from and after the effective date of such transfer only to such extent as may be set forth in such consent. The Project Party will, no later than 30 days after the effective date of any assignment described in Section 10.E furnish or cause to be furnished to the Village a true and complete copy of such assignment.

F. Severability: If any provision of this Agreement becomes or is found to be illegal or unenforceable for any reason, such provision may be modified to the extent necessary to make this Agreement legal and enforceable. If such provision cannot be so modified, it shall be severed from this Agreement and the remainder of this Agreement shall remain in full force and effect.

G. Indemnity: The Project Party shall defend, indemnify and hold harmless the Contributors and their officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said persons because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from any asserted act or omission, neglect or misconduct of Project Party or Project Party's agents or employees or any subcontractor or its agents or employees.

H. Attorney's Fees and Costs: The Project Party agrees to pay to the State, Village, and County all costs and expenses, including reasonable attorney's fees, actually incurred by the State, Village, and County in exercising any of its rights or remedies in connection with the enforcement of this Agreement arising by an event of default by the Project Party.

I. Counterparts: This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument.

J. Governing Law: This Agreement is governed by and is to be construed in accordance with the law of the State of New Mexico, without regards to its conflicts of laws provisions, and the laws, rules and regulations of the Village and the County. The exclusive venue for actions arising out of this Agreements shall be the Thirteenth Judicial District Court of the State of New Mexico sitting in Valencia County, New Mexico, and the parties agree to submit to its jurisdiction.

K. Electronic Signatures: Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The Parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

GREATER KUDU LLC,  
a Delaware limited liability company

VILLAGE OF LOS LUNAS, NEW MEXICO

By \_\_\_\_\_  
[Vice President]

By \_\_\_\_\_  
Mayor

VALENCIA COUNTY, NEW MEXICO

NEW MEXICO ECONOMIC  
DEVELOPMENT DEPARTMENT

By \_\_\_\_\_  
Chair

By \_\_\_\_\_  
[Authorized Signatory]

*[Signature page to Project Participation Agreement]*

DRAFT

The Parent hereby acknowledges its Commitment described in Section 6 of this Project Participation Agreement dated \_\_\_\_\_, 2026, among the Village of Los Lunas, New Mexico; Valencia County, New Mexico; the New Mexico Economic Development Department; and Greater Kudu LLC, a Delaware limited liability company.

FACEBOOK, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature page of Parent as to Section 6 of the Project Participation Agreement]*

SCHEDULE A  
Project Ordinances

DRAFT

SCHEDULE B

Application

DRAFT

EXHIBIT A

Infrastructure Improvements

[TO BE UPDATED; NEED TO DISCUSS PRIORITY]

| <b>Infrastructure<br/>Improvement</b>                           | <b>Village<br/>Proportionate<br/>Share</b> | <b>County<br/>Proportionate<br/>Share</b> |
|-----------------------------------------------------------------|--------------------------------------------|-------------------------------------------|
| New Mexico Highway 6 Intersection Improvements and Connectivity |                                            |                                           |
| Huning Ranch Loop East                                          |                                            |                                           |
| Huning Ranch Loop West                                          |                                            |                                           |
| Eastside Expansion (Feasibility Study)                          |                                            |                                           |
| Safety Corridor (Manzano Expressway)                            |                                            |                                           |
| <b>Contingency Infrastructure Improvement:</b>                  |                                            |                                           |
| Los Lunas West Loop                                             |                                            |                                           |

[EXHIBIT B]

GRT Increment as of March 31, 2026

| <u><b>Jurisdiction</b></u> | <u><b>Increment</b></u> |
|----------------------------|-------------------------|
| Village                    |                         |
| County                     |                         |
| State                      |                         |

Total Increments as of March 31, 2026

| <u><b>Jurisdiction</b></u> | <u><b>Increment</b></u> |
|----------------------------|-------------------------|
| Village                    |                         |
| County                     |                         |
| State                      |                         |

**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN**  
**THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT,**  
**VALENCIA COUNTY AND THE VILLAGE OF LOS LUNAS**

This Intergovernmental Agreement (“Agreement”) is entered into as of [March 31], 2026, among the New Mexico Economic Development Department (“EDD”), the Village of Los Lunas, New Mexico (“Village”), and Valencia County, New Mexico (“County” and collectively referred to as “the Parties”).

**SECTION 1: RECITALS:**

**WHEREAS**, the purpose of the Local Economic Development Act, Chapter 5, Article 10 NMSA 1978 (“LEDA”), is to provide “public support for economic development to foster, promote and enhance local economic development efforts...;” and

**WHEREAS**, the Village has adopted Ordinance Nos. 400 and 431, now codified at Title 2, Chapter 2.46 of the Village Code of Ordinances, approving an economic development plan for the Village that promotes economic development within the Village (“Village LEDA Plan”); and

**WHEREAS**, the County has adopted Ordinance No. 2021-05, approving an economic development plan for the County that promotes economic development within the County (as amended by the Village Ordinance, the “County LEDA Plan”); and

**WHEREAS**, the Village has adopted Ordinance No. [ ] on March 12, 2026 (the “Village Ordinance”) to approve the economic development project proposed by Greater Kudu LLC, a Delaware limited liability company (“Kudu” or the “Company” or the “Qualifying Entity”) pursuant to which Kudu will expand a data center facility located in the Village, within the County (“Project”) and will operate the facility for a minimum of 10 years and invest a minimum of \$350,000,000 in the construction of the Project; and

**WHEREAS**, the Village has committed 50% of the Village’s gross receipts and compensating tax (“GRT”) increment generated by the taxable expenses related to the construction of the Project to the construction of the Public Infrastructure pursuant to Sections 5-10-14 and 5-10-17 NMSA 1978 (the “Village Increment”); and

**WHEREAS**, the County has adopted Ordinance No. [\_\_\_\_\_] on March 4, 2026 (the “County Ordinance”) to approve the Project pursuant to the County LEDA Plan, which approves the County commitment of 50% of the County’s GRT increment generated by the taxable expenses related to the construction of the Project to the construction of the Public Infrastructure pursuant to Sections 5-10-14 and 5-10-17 NMSA 1978 (the “County Increment”); and

**WHEREAS**, EDD has approved the Project and commits 50% of the State’s GRT increment generated by the taxable expenses related to the construction of the Project to the construction of the Public Infrastructure pursuant to Sections 5-10-14 and 5-10-17 NMSA 1978 (the “State Increment” and together with the Village Increment and County Increment, the “GRT Increment”); and

**WHEREAS**, Kudu has entered into a Local Economic Development Project Participation Agreement (hereinafter “PPA”) with the Parties and, pursuant to the terms of that PPA, Kudu will, among other things, invest a minimum of \$350,000,000 in the construction of the Project. A copy of the PPA is attached hereto as Exhibit A; and

**WHEREAS**, the Project will achieve job growth within the Village and County, thereby making a positive substantive contribution to the community; and

**WHEREAS**, the State Taxation and Revenue Department will transfer the GRT Increment to the Local Economic Development Act Fund (the “LEDA Fund”) as contemplated under Section 5-10-14 NMSA 1978 for use in the Project; and

**WHEREAS**, EDD will transfer the GRT Increment from the LEDA Fund to the Village based on Kudu tax filings with the State Taxation and Revenue Department. Upon receipt, the Village will place the GRT Increment into a special fund established in connection with the Project, as required by law.

**WHEREAS**, EDD, the Village and the County desire to enter into this Agreement as necessary to facilitate disbursement of funds for the Project;

**NOW THEREFORE**, the Parties do hereby agree to the following terms and conditions to accomplish the Project.

**SECTION 2. PURPOSE OF AGREEMENT:**

The purpose of this Agreement is to place the primary responsibility on the Village for overseeing and administering (i) the State Increment, (ii) the County Increment disbursed in connection with the disbursement of the GRT Increment by EDD, and (iii) the Village Increment disbursed in connection with the disbursement of the GRT Increment by EDD, all to support the Project.

The Parties agree that any and all State Increment and County Increment received will be accounted for by Village as the fiscal agent for EDD and the County in accordance with the procedures the Village will use to account for its own funds used to implement the Project.

### **SECTION 3. SCOPE OF WORK:**

The Village will act as fiscal agent for the State Increment and County Increment supporting the Project. The State Increment and County Increment will be granted to the Village to assist with the construction of the Public Infrastructure. The Company has agreed in the PPA that it will operate the facilities for a period of ten years and will invest a minimum of \$350,000,000 in the construction of the Project. All the terms, conditions and requirements set forth under the PPA are incorporated into this Agreement by reference

If by [March 31], 2036, \$350,000,000 in expenses related to the construction of the Project in the State have not accrued, Kudu will cooperate with the Village, the County and EDD in satisfying their obligations pursuant to Section 5-10-17(A)(2) NMSA 1978 to collect 100% of all GRT Increment received by Kudu, and the Village as fiscal agent under this Agreement will distribute the recovered GRT Increment to EDD, the County, and the Village based on respective GRT Increment contributions.

### **SECTION 4. VILLAGE OF LOS LUNAS RESPONSIBILITIES:**

The Village shall:

- A. Serve as Fiscal Agent for the State Increment transferred to it under this Agreement;
- B. Provide the County with reports, as provided herein, related to the GRT Increment deposited in the LEDA Fund and serve as Fiscal Agent for the County Increment transferred to it under this Agreement;
- C. Complete all of the following goals identified in this Agreement within the time limits agreed upon by the Parties:

- i. distribute the County Increment transferred to the Village to the County as provided for in the PPA;
  - ii. if and when provided in the PPA, distribute a portion of the State Increment transferred to the Village to the County;
  - iii. account for receipts and disbursements of said monies;
  - iv. provide EDD and the County with any required financial documentation pertaining to such disbursements; and
  - v. submit all required and reasonably requested documentation to EDD and the County.
- D. Any funds recaptured by the Village as the result of enforcing the provisions of the PPA will be used in accordance with Section 3 of this Agreement.

#### **SECTION 5. VILLAGE CERTIFICATIONS:**

As Fiscal Agent, the Village hereby represents and agrees that:

- A. It will comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and use of State Increment and County Increment;
- B. It has the legal authority to receive and expend the State Increment and County Increment;
- C. It will enforce the provisions of the Village Ordinance;
- D. It has exercised due diligence in evaluating the Project as a project with potential long term economic development benefits and will, upon request, provide EDD and the County with copies of all documentation and references to expertise it has relied upon in approving the Project, including all documentation received from Kudu, with the understanding EDD and the County independently approved the Project;
- E. It has entered into a PPA and has obtained all financial documentation it has deemed appropriate to protect the Village's investment in the Project;
- F. It will notify EDD and the County of any default on the part of Kudu of which it

becomes aware within 10 days of becoming aware of the event of default. Further, the Village shall provide the opportunity for any default to be cured by Kudu in accordance with the PPA.

- G. It will comply with the Village's procurement code and will keep files of all related procurement documents, including but not limited to requests for professional services, advertisements, minutes of pertinent meetings, selection and award criteria, contacts, subcontracts and agreements;
- H. It has complied with Article IX, Section 14, of the New Mexico Constitution known as the "anti-donation clause."

#### **SECTION 6. EDD RESPONSIBILITIES:**

- A. EDD shall:
  - i. Transfer to the Village the GRT Increment from the LEDA Fund pursuant to Section 5-10-14 NMSA 1978 to be used for the Project. Such transfer from the LEDA Fund shall be effected within thirty (30) days after deposit of the GRT Increment in the LEDA Fund. The State Increment shall be used only for the purpose stated in this Agreement.
  - ii. At its discretion, review and audit the Project if it is deemed to be necessary or desirable.

#### **SECTION 7. COUNTY RESPONSIBILITIES:**

- A. The County:
  - i. Has authorized the State Taxation and Revenue Department's transfer of the County Increment to the LEDA Fund to be used for the Project pursuant to Section 5-10-14 NMSA 1978 to be used for the Project. The County Increment shall be used only for the purpose stated in this Agreement.
  - ii. Shall, at its discretion, review and audit the Project if it is deemed to be necessary or desirable.

#### **SECTION 8. TERM OF AGREEMENT:**

This Agreement shall become effective on the date it is fully executed and shall terminate upon termination of the PPA.

## **SECTION 9. LIABILITY:**

No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act. The Village, the County and EDD may agree to reimburse one another under these liability provisions, subject to sufficient appropriation by the New Mexico Legislature or sufficient funds being available to the party, as determined by the party responsible for payment.

## **SECTION 10. RECORDS; RETURN OF SURPLUS FUNDS:**

- A. The Village shall keep such records as will fully disclose the amount and disposition of the total funds from all Village, County and State sources budgeted for the Project, the purposes for which such funds were used and such other records as EDD and the County may require.
- B. If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds received from the State or the County are possessed by Village, Village shall return said funds to EDD and County, as appropriate, for disposition in accordance with law.

## **SECTION 11. STRICT ACCOUNTABILITY:**

The Village shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EDD, the County and the New Mexico State Auditor quarterly or upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.

## **SECTION 12. REPORTS:**

The Village shall provide to EDD and the County copies of all reports received by the Village from the Company pursuant to the terms of the PPA. At the request of EDD or the County, the Village will request that Kudu provide to the Village, the County and EDD an affidavit signed by an officer of Kudu indicating the economic performance targets have been met as required under the PPA. The Village will provide EDD and the County with information regarding problems or delays encountered with respect to the Project and the reasons therefor

and such other information pertaining to the Project as may be requested by EDD or the County.

**SECTION 13. NOTICES; REPRESENTATIVES OF THE PARTIES:**

Any notice required to be given to any 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. The parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

To EDD:

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Joseph Montoya Building  
1100 St. Francis Drive  
Santa Fe, New Mexico 87505

To the County:

Valencia County  
Attn: County Manager  
(Jhonathan Aragon)  
444 Luna Avenue  
Los Lunas, NM 87031  
To the Village:

Village of Los Lunas  
Attn: Economic Development Division  
(Victoria Archuleta)  
660 Main St. NW  
Los Lunas, NM 87031

**SECTION 14. AMENDMENTS:**

This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto.

**SECTION 15. GOVERNING LAW:**

This Agreement shall be governed by the laws of the State of New Mexico.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below,

**VILLAGE OF LOS LUNAS, NEW MEXICO**

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

Name: Charles Griego

Title: Mayor

**APPROVED AS TO FORM**

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

Attorney for the Village of Los Lunas

**NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT**

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

Name: Rob Black

Title: Cabinet Secretary

**APPROVED AS TO FORM**

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

Name: \_\_\_\_\_

Title: General Counsel

(Signature Page IGA META 2026 S-1)

**VALENCIA COUNTY, NEW MEXICO**

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

Name: Jhonathan Aragon

Title: County Manager

**APPROVED AS TO FORM**

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

Attorney for Valencia County

(Signature Page IGA META 2026 S-2)



## VILLAGE COUNCIL AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item Title:

Vistas at Los Senderos Unit 1 Infrastructure Acceptance

Presenter:

Alex Ochoa

Department:

Community Development Department

Meeting Date:

March 12, 2026

Action Requested:

☒ Approval/Disapproval

☐ Informational

☐ Public Hearing

☐ Other

### OVERVIEW/ ANALYSIS

Community Design Solutions LLC, acting agent for LGI Homes NM, is requesting infrastructure acceptance for the Vistas at Los Senderos Unit 1 subdivision. The Village engineer, Molzen-Corbin, in coordination with the applicant and Public Works has recommended final approval of the installed infrastructure for the subdivision.

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## POSSIBLE ACTIONS

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- Approve item
- Approve item, with changes
- Deny item
- Postpone item to a future meeting (direct staff to conduct further research)
- Table item for future discussion (direct staff to conduct further research)
- No action at this time

---

## STRATEGIC PRIORITIES ALIGNMENT

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- ☐ I-25 Interchange/Los Lunas Boulevard Corridor Project
- ☐ Quality of Life Improvements
- ☐ Infrastructure Improvements
- ☐ Economic Development
- ☐ Personnel
- ☒ N/A

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## BUDGET IMPACT

---

n/a

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## LEGAL REVIEW

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- ☐ Yes, by:
- ☒ Not applicable

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## ATTACHMENTS

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- Request for infrastructure acceptance from CDSNM
- Final review letter from Molzen-Corbin

February 20, 2026

Mr. Alex Ochoa, AICP, CFM  
Community Development Director  
Village of Los Lunas  
660 Main Street NW  
Los Lunas, New Mexico 87031

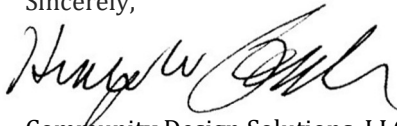
**RE: Vistas at Los Senderos Subdivision - Unit 1 and Huning Ranch Loop Offsite Improvements / Final Acceptance by Council**

Dear Mr. Ochoa:

In response to Molzin-Corbin's completed infrastructure acceptance letter dated February 19, 2026, submitted to the Village of Los Lunas, Community Design Solutions, LLC (CDS), on behalf of LGI Homes, Representatives from Salls Brothers, and Molzen-Corbin, submits this request to have the infrastructure final acceptance placed on the Council agenda for the March 12, 2026 Council hearing, which is scheduled for 6:00pm and is to be held at Village of Los Lunas, 660 Main St. NW in Los Lunas, NM 87031.

Please respond with concurrence of this request. Let us know if you have any questions or require additional information.

Sincerely,



Community Design Solutions, LLC  
Hugh Floyd, P.E.  
**CDS** | Managing Member  
505-366-4187

cc: Mr. Michael C. Jaramillo, MPA, Public Works Director, Village of Los Lunas  
Ms. Brittany Armijo, Assistant Public Works Director, Village of Los Lunas  
Ms. Sonia Walker, CZO, CFM, Community Planner, Village of Los Lunas  
Mr. Matthew Ryan, Current Planner, Village of Los Lunas

# MOLZENCORBIN

February 19, 2026

Mr. Alex Ochoa, AICP, CFM  
Community Development Director  
Village of Los Lunas  
660 Main Street NW  
Los Lunas, New Mexico 87031

**RE: Vistas at Los Senderos Subdivision  
Unit 1 and Huning Ranch Loop Offsite Improvements  
Punch List and Final Acceptance**

Dear Mr. Ochoa:

Representatives from Salls Brothers, LGI Homes, CDS, the Village of Los Lunas, and Molzen Corbin met for a walkthrough of Unit I and the offsite improvements of the Vistas at Los Senderos subdivision on Wednesday, December 10, 2025, and developed a Punch List of items to be addressed for final acceptance.

All parties met for a repeat walkthrough on Tuesday, January 27, 2026, and developed a secondary punchlist to be addressed for final acceptance. We reviewed the items from the Punch List and, as of February 19, 2026, it appears that the items have been addressed. From an engineering standpoint, the general concept of this material appears to comply with the requirements of the Village of Los Lunas.

**Based on the information provided by Community Design Solutions, LLC, it appears the referenced infrastructure is acceptable for maintenance if approved by the Village.**

If you have any questions, please contact me at 505-242-5700.

Sincerely,

MOLZEN CORBIN



Melinna Boyd, P.E.  
Project Engineer

cc: Mr. Michael C. Jaramillo, MPA, Public Works Director, Village of Los Lunas  
Ms. Brittany Armijo, Assistant Public Works Director, Village of Los Lunas  
Ms. Sonia Walker, CZO, CFM, Community Planner, Village of Los Lunas  
Mr. Matthew Ryan, Current Planner, Village of Los Lunas



## VILLAGE COUNCIL AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item Title:

Easement Agreement between Village and Westway Six BESS LLC

Presenter:

Michael Jaramillo

Department:

Public Works

Meeting Date:

Click or tap to enter a date.

Action Requested:

☒ Approval/Disapproval

☐ Informational

☐ Public Hearing

☐ Other

### OVERVIEW/ ANALYSIS

Westway Six, on behalf of Aypa Development Power LLC (hereinafter “Aypa”), is requesting an above ground power line easement along and over the eastern boundary of the Village Transfer Station property to the PNM Hidden Mountain electric facility. Aypa is the company that is developing a battery storage facility on a portion of Tract DD, which is adjacent to the Transfer Station facility. The requested easement is located along the eastern side of the Transfer Station property within the closure buffer area. The battery facility will receive excess power from Hidden Mountain, store the excess power in batteries, and during high demands for electricity, transmit the power stored in the batteries back into PNM’s power grid. The requested easement is one hundred and fifty feet (150’) wide and would encompass 119,912 square feet. Aypa will be paying the Village \$2.32 per square foot for the easement, with 3% increases every five years for twenty-five (25) years with two ten year (10) renewal options at a negotiated price. The cost per square foot was determined based upon appraised values for property in the vicinity.

### POSSIBLE ACTIONS

- Approve item
- Approve item, with changes
- Deny item
- Postpone item to a future meeting (direct staff to conduct further research)
- Table item for future discussion (direct staff to conduct further research)
- No action at this time

---

## STRATEGIC PRIORITIES ALIGNMENT

---

- ☐ I-25 Interchange/Los Lunas Boulevard Corridor Project
  - ☒ Quality of Life Improvements
  - ☐ Infrastructure Improvements
  - ☒ Economic Development
  - ☐ Personnel
  - ☐ N/A
- 

## BUDGET IMPACT

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## LEGAL REVIEW

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- ☒ Yes, by: Laurence P. Guggino, Jr.
  - ☐ Not applicable
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## ATTACHMENTS

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1. Draft Easement Agreement; and
2. Area map

**Recording Requested by  
And When Recorded Return to:**

Westway Six BESS LLC  
c/o Aypa Power Development LLC  
11801 Domain Blvd., Suite 450  
Austin, TX 78758  
Attn: Nate Crain

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(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

APN(s): \_\_\_\_\_

**TRANSMISSION FACILITIES EASEMENT AGREEMENT**

**THIS TRANSMISSION FACILITIES EASEMENT AGREEMENT (“Agreement”)** is made and entered into as of [\_\_\_\_\_] (“**Effective Date**”) by and between Village of Los Lunas, Municipality, 7480 Main St. NW Los Lunas, NM 87031 (“**Owner**”) and Westway Six BESS LLC (“**Company**”).

**RECITALS**

- A. Owner owns certain real property located in the Village of Los Lunas, Valencia County, State of New Mexico, which real property is more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (“**Property**”).
- B. Owner agrees to grant, and Company agrees to accept, the Easement (as defined below) with respect to the Property subject to the terms and conditions of this Agreement.

**AGREEMENT**

**1. GRANT OF EASEMENT.** Owner grants, transfers and conveys to Company and its assignees, subtenants, licensees, agents, invitees, successors and assigns exclusive easements on, over, under and across the Property (collectively, the “**Easement**”) as set forth in this Agreement. The Easement is an easement “in gross” which means it is an interest personal to Company and its successors and assignees and is not tied to any particular use or ownership by Company or its successors and assignees of any adjacent or other land.

**2. USE OF EASEMENT.** The Easement allows Company to use the Easement Area:

(a) to develop, install, erect, construct, reconstruct, replace, relocate, repair, improve, alter the voltage of, remove, operate, maintain and use from time to time above-ground transmission facilities on and, over the Easement Area (as defined below) for the transmission of

electric energy, data and communications solely necessary for the operation and monitoring of the Grantee's, their assigns, or successor's in interest of the Transmission Facilities and for no other purpose. (collectively, "**Transmission Facilities**"). Transmission Facilities may include no more than three poles, towers, cross arms and/or other supporting structures, foundations, anchors, conductors, wires and cables for the transmission, distribution and/or collection of electrical energy, communications and or data necessary for the operation and monitoring of the Transmission Facilities, and any other improvements, facilities, appliances, machinery and equipment in any way related to or associated with the transmission or distribution of electric energy, data and communications solely necessary for the operation and monitoring of the Company's, their assigns, or successors in interest of the Transmission Facilities and for no other purpose. (the Easement rights in this clause (a), collectively, the "**Transmission Easement**"). It shall be the responsibility of the Company to ensure that any development, installation, erection, construction, reconstruction, replacement, repair, improvement, alteration of voltage, removal, operation, maintenance and usage of the Transmission Facilities, and the Transmission Facilities as a whole, are in compliance with any and all federal, state or local law, ordinance or regulation, or the Permit issued to the Owner regarding the Property, as may be applicable;

(b) for reasonable vehicular (including cranes, trucks and other heavy construction equipment) and reasonable pedestrian ingress, egress and access by means of now existing or newly constructed roads of any kind, access routes, and entranceways within the Easement Area; provided, however, Company shall provide seventy-two (72) hours advanced written notice to Owner prior to accessing the Easement Area or the Staging Area, (the Easement rights in this clause (b), collectively, the "**Access Easement**") or by such route(s) and/or roads and trails as Company may construct, reconstruct, improve and maintain from time to time and which do not unreasonably interfere with Owner's activities on the Property (collectively, "**Road Improvements**"), and together with the Transmission Facilities, collectively, the "**Improvements**");

(c) the right, permission, and authority to trim, cut, clear or remove, from time to time and by any reasonable means (and, for the avoidance of doubt, in each case at the Company's cost), from and adjacent to the Easement Area trees, brush, debris, and any and all obstructions of whatsoever kind or character which, in the Company's reasonable judgment, may endanger the safety of, or otherwise interfere with Company's exercise of the rights in this Agreement, except that Company agrees to notify Owner, in writing, before conducting any major trimming, cutting, clearing, removing, or otherwise under this Section, and Company agrees to take reasonable steps to ensure any action taken under this Section will not unreasonably impact the City, unless there is no less impactful alternative available to the Company; and

(d) for the purpose of staging, storage, preparation, assembly, deployment and transportation of machinery, equipment, improvements, vehicles, equipment and other property (including, but not limited to, transmission line poles, wires, cables, cranes, heavy construction and/or transport vehicles and related equipment and property), except that Company agrees to notify and obtain permission from Owner, in writing, before conducting any major and/or long-term staging, storing, preparing, assembling, deploying, transporting, or otherwise under this section, such that the City may object or be unreasonably impacted by the use.

(e) the right to temporarily place, operate and use equipment, machinery, and other property in the Staging Area and Easement Area during the construction of the Transmission

Facilities. Company shall deliver to Owner a proposed plan showing the Easement Area, Staging Area (as hereinafter defined), and the contemplated location and route of the Easements (as such term is defined below) within such areas. Notwithstanding anything to the contrary contained in this Agreement, Company may use part of the Property adjacent to the Easement Area as shown and labeled on Exhibit B, as a temporary construction yard (the "Staging Area"), until the Transmission Facilities are substantially completed and otherwise in accordance with this Agreement, at which point the Staging Area shall revert back to Owner and Company shall have no further right to use the Staging Area.

(f) Owner represents and warrants that the use of the Easement as set forth herein, and none of the terms of this Agreement violate or are in conflict with that Closure Permit issued on \_\_\_\_\_, to the Owner by New Mexico Environment Department for the operation of Owner's Transfer Station and monitoring of the closed landfill located on the Property (hereinafter the "Permit"). Notwithstanding anything to the contrary in this Agreement, prior to Commencement of Construction of the Improvements or Transmission Facilities, Company shall submit its construction plans to Owner for review and approval, who shall, in turn promptly seek the review and approval of those construction plans from the New Mexico Environment Department. Owner shall promptly provide Company with any feedback from the New Mexico Environment Department and, if approved, written confirmation of such approval from both Owner and the New Mexico Environment Department. All costs incurred by the Owner to have the construction plans reviewed by NMED shall be borne by the Company. Company shall reimburse the Owner for all costs it incurs for NMED's review of the construction plans within thirty (30) days of the receipt of the invoice from the Owner. As used in this Agreement "Commencement of Construction of the Improvements or Transmission Facilities" shall mean the date that Company begins significant operations in the Easement Area using heavy machinery to prepare the land for the Improvements, but shall not mean any testing, surveying, planning, or other less invasive preparatory operations.

3. **EASEMENT AREA.** The contemplated locations of the Easement Area and Staging Area are defined and depicted on Exhibit B to this Agreement. The location of the Easements (the "**Easement Area**") and Staging Area is not fixed as of the Effective Date but shall be as close as is reasonably practicable in Company's good faith determination to the locations on the Property provided in **Exhibit B** attached hereto and incorporated herein by this reference. In any event, Company shall have the right to define and designate the Easement Area with maximum width of up to one-hundred and fifty (150) feet for Company's use as provided for in this Agreement. Prior to fixing the initial location of the Easement Area or Staging Area, Company may enter the proposed Easement Area for the purpose of surveying and evaluating proposed locations thereof and construction of any Improvements. From time to time while this Agreement is in effect and prior to the final agreed upon location of the Easement Area or Staging Area, Company shall have the right to fix and identify, the final location of the Easement Area and Staging Area, subject to review and approval by Owner, in writing, by recording (and, if requested by Company, Owner shall execute and acknowledge) a memorandum of amendment to this Agreement that provides or amends **Exhibit B** hereto. In addition, the Transmission Easement shall include the right (a) for transmission lines and cables connected to no more than three towers located within the Easement Area to sway outside of the Easement Area during high wind events, and (b) subject to the Permit to temporarily place, operate and use equipment, machinery and other property outside of (but

within reasonable proximity to) the Easement Area or Staging Area during the construction and maintenance of the Improvements.

4. **TERM**. The term of this Agreement and the Easement commences on the Effective Date and shall continue for a period of twenty-five (25) years unless terminated in accordance with the provisions of this Agreement (the “**Term**”); provided, however, Company, at its option, shall have the right, with the written consent of Owner, to extend the Term for two (2) additional periods of ten (10) years each (each, an “**Extension Term**”), commencing on the expiration of the initial Term or the expiration of the prior Extension Term, as applicable. If Company elects to extend the Term, Tenant shall do so by providing notice of the same to Owner in writing not less than six (6) months before the final day of the initial Term or Extension Term, as applicable. All Extension Terms and the Term shall collectively be referred to as the “Term” in this Agreement. Notwithstanding the foregoing, the Easement shall automatically terminate if the Company has not commenced construction of Transmission Facilities in the Easement Area within six (6) years of the Effective Date.

5. **PAYMENTS TO OWNER**. In consideration of the Easement granted in this Agreement, Company shall make the payments to Owner at the time and in the amount set forth in **Exhibit C** attached hereto and incorporated herein by this reference Agreement. **Exhibit C** shall not be recorded as part of this Agreement.

6. **OWNER’S REPRESENTATIONS, WARRANTIES AND COVENANTS**. Owner hereby represents, warrants and covenants to Company during the term of this Agreement and the Easement granted herein:

6.1 **Owner’s Authority**. Owner owns the Property in fee simple, subject to no liens or encumbrances except as disclosed in writing to Company in a title report or other document delivered to Company prior to execution of this Agreement. Owner and each person signing this Agreement on behalf of Owner has the full and unrestricted right and authority to execute this Agreement and to grant to Company the Easement and other rights granted hereunder. Each person signing this Agreement on behalf of Owner is authorized to do so. When signed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

6.2 **No Interference**. Owner’s activities and any grant of rights Owner makes to any person or entity, whether located on the Property or elsewhere, shall not (and could not reasonably be expected to), currently or in the future, impede or unreasonably interfere with: (i) the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Improvements, whether located on the Property or elsewhere; or (ii) exercise of Company’s rights pursuant to this Agreement. By way of example and not limitation, a non-exhaustive list of examples of activities that might violate the previous sentence are: (a) constructing improvements in the Easement Area or otherwise too close to Improvements; (b) constructing improvements that generate electromagnetic energy that might interfere with the operation of Transmission Facilities; and (c) construction of gates and fences impeding Company’s, its agents, assigns, contractors, invitees, or representatives access to the Easement Area. Subject to the foregoing, Owner reserves the right to use the Easement Area and to grant additional easements and other rights and interests

in, over, across and under the Easement Area for any use or purpose that does not unreasonably interfere with Grantee's use of the Easement Area or Grantee's rights under this Agreement.

6.3 Requirements of Government Agencies. Owner shall assist and fully cooperate with Company as it may request from time to time in complying with or obtaining any land use entitlements, permits or other approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact review or any other permits, licenses, certificates or other approvals required or deemed desirable by Company in connection with the development, construction, installation, replacement, relocation, maintenance, operation, removal or financing of any Improvements including, without limitation, execution of applications for such approvals, orders or conditions or approval, and delivery of information and documentation related thereto. Company shall reimburse Owner for all reasonable, actual out-of-pocket costs incurred by Owner in connection with such cooperation.

6.4 Title Review and Cooperation. Subject to the terms and conditions of the Permit, Owner shall cooperate with Company to obtain non-disturbance, subordination and other title curative agreements from any person with a lien, encumbrance, mortgage, lease or other exception to Owner's fee title to the Property to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Company under this Agreement.

6.5 Allocation of Risk. Owner shall be responsible for any damage to the property of Company or any injury to persons on the Property to the extent caused by the negligent or intentional acts or omissions of the Owner and its agents, employees, or contractors. Notwithstanding the foregoing, nothing in this Agreement shall extend the tort responsibility or liability of Owner beyond that required by New Mexico law or waive any provisions of the New Mexico Tort Claims Act, NMSA 1978, §47-4-1 *et seq.*

6.6 Hazardous Materials. Owner shall not violate by Owner or Owner's agents or contractors of any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under any current or future federal, state or local laws, ordinances or regulations, on or under the Property. The Parties hereto acknowledge that the Property and the Easement Area and Staging Area are located within the boundaries of a solid waste transfer station operated by the Owner and closed landfill that are subject to the terms and conditions of the Permit.

6.7 Quiet Enjoyment; Ownership of Improvements. Subject to the terms and conditions of this Agreement, Company shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire Term without hindrance or interruption by Owner or any person lawfully or equitably claiming by, through or under Owner. The Improvements shall be the sole and exclusive personal property of Company, and Owner waives any and all lien rights and other rights it may have in the Improvements. Within ten (10) days of Company request from time to time, Owner agrees to execute such reasonable instruments that evidence that Owner has no such interest in the Improvements (including, but not limited to, quitclaim deeds and subordination agreements). Company shall have the right to remove any of the Improvements from the Easement Area at any time.

## **7. COMPANY'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**

Company hereby represents, warrants and covenants to Owner that:

7.1 **Insurance.** No later than commencement of construction of the Improvements on the Easement Area, Company shall, at its expense, maintain a commercial general liability insurance policy insuring Company against loss or liability caused by Company's occupation and use of the Easement Area under this Agreement, in an amount not less than Two Million Dollars (\$2,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Owner shall be named as an additional insured. Certificates of such insurance evidencing the coverage required by this Agreement shall be provided to Owner upon Owner's request not more frequently than on an annual basis. Owner acknowledges that Company shall have the right to use a program of self-insurance to meet these insurance requirements.

7.2 **Indemnity.** Company will indemnify Owner against liability for physical damage to property and for physical injuries or death to Owner, Owner's property or the public, to the extent caused by Company's construction, operation or removal of Improvements on the Easement Area, including reasonable attorneys' fees and reasonable costs incurred by the Owner in defense of any claim, except to the extent such damages, injuries or death are caused by the act, negligence, omissions or willful misconduct of Owner or Owner's tenants, invitees or permittees. Notwithstanding the foregoing sentence, to the fullest extent permissible under applicable law, if the indemnification provided for in this section is unavailable to Owner for any reason whatsoever, the Company, in lieu of indemnifying Owner, shall contribute to the amount of damages, reasonable attorneys' fees, and reasonable costs incurred by Owner as allowed by law in accordance with NMSA 1978, §41-3-2 or NMSA 1978, §41-3A-1. The reference to property damage referred to in this section herein does not include any damages to crops or any losses of rent, business opportunities, profits and the like that may result from Owner's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of, Improvements pursuant to this Agreement.

7.3 **Construction Liens.** Company shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with Company's use of the Easement Area pursuant to this Agreement; provided, however, that if Company wishes to contest any such lien, it shall notify the Owner of its intentions and Company shall, within sixty (60) days after it receives notice of the filing of such lien, remove or bond around such lien pursuant to applicable law.

7.4 **Hazardous Materials.** Company shall not knowingly violate, and shall indemnify Owner against, any violation by Company or Company's agents or contractors of any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

8. **ASSIGNMENT.** Company shall at all times have the right to sell, assign, encumber, or transfer any or all of its rights and interests under this Agreement (including, without implied limitation, a partial assignment, subgrant, or partial conveyance of the Easement) without Owner's

consent. The burdens of the Easement and rights contained in this Agreement shall run with and against the Property and shall be a charge and burden thereon for the Term and shall be binding upon and against Owner and its successors, assigns, permittees, licensees, lessees, employees, and agents. The Easement shall inure to the benefit of Company and its successors, assigns, permittees, licensees, tenants, subtenants, employees, and agents and all persons claiming by or through them. Company agrees to provide Owner with written notice promptly following any transfer of its rights and interests under this Agreement (which notice shall have the full name and notice information of the assignee).

## **9. ENCUMBRANCE OF EASEMENTS.**

9.1 **Right to Encumber.** Company, Assignee (as defined below), and each of their successors and assigns may at any time and from time to time, without the consent of or joinder of Owner, mortgage, hypothecate, collaterally assign, encumber, pledge or grant (and permit a secured party to realize upon) security interests in its interest in this Agreement, or all or part of its interest in any Assignment (as defined below), the Easement and/or the Improvements or enter into funding transactions involving the Improvements (e.g., sale-lease transactions) with respect to the foregoing (any interest in this Agreement, any Assignment, the Easements and the Improvements, collectively, the “**Transmission Assets**”), which security interests in all or a part of the Transmission Assets are collectively referred to in this Agreement as “**Mortgages**” and the holders of the Mortgages, their designees and assigns are collectively referred to in this Agreement as “**Lender**” (Lender, collectively with any Assignee (as defined below), and each of their successors and assigns shall be collectively referred to in this Agreement as “**Interest Holders**”, and each constituent party therein, an “**Interest Holder**”). For avoidance of doubt, “Lender” and “Mortgages” shall include related counterparties to an Assignee and its related security interest. Company and its successors will provide contact information for Interest Holder at the time of mortgage. Under no circumstances shall any Interest Holder or any Assignee (as defined below) have any greater rights derivative of this Agreement or the Easement than the rights granted to Company in this Agreement and in no circumstances will Owner’s obligations hereunder be increased. As used in this Agreement, the term “**Assignee**” means each party that has any right, title, or interest in, or to, the Transmission Assets in accordance with this Agreement and the term “**Assignment**” means the grant or assignment of such rights from Company or an Assignee that was completed in accordance with this Agreement. Each Assignee agrees to provide Owner with written notice promptly following its grant of any Assignment (which notice shall have the full name and notice information for the assignee). The Improvements and the easement estate created hereby shall at all times remain separate and apart from the title to the Easement and Easement Area for all purposes relating to the interests of any mortgagees of Owner and Company. Any Mortgage or other security interest granted by Company pursuant to this Section shall not encumber or be a lien on Owner’s fee interest in the Property.

9.2 **Covenants for Interest Holder’s Benefit.** Should Company or any Assignee, or each of their successors and assigns mortgage or encumber any of its Transmission Assets as provided in Section 8.1 above, any Interest Holder, upon delivery to Owner of notice of its name and address, and for so long as the lien of its Mortgage or Assignment (as applicable) is in existence, shall be entitled to the following protections, which shall be in addition to those granted elsewhere in this Agreement or an Assignment, as the case may be, then Company and Owner expressly agree between themselves and for the benefit of any Interest Holder as follows:

9.2.1 Modification. They will not modify, surrender, or cancel this Agreement without the prior written consent of the Interest Holder (except where such modification would not have any material adverse effect on the interests of such Interest Holders), which consent shall not be unreasonably withheld or delayed.

9.2.2 Right to Cure. To prevent termination of this Agreement and the Easement or any Assignment, each Interest Holder shall have the right, but not the obligation, at any time prior to termination of this Agreement, the Easements or any Assignment, to do any act or thing required to be performed by Company or its successors and assigns under this Agreement, and any such act or thing performed by an Interest Holder shall be as effective to prevent a Default (as defined below) under this Agreement and/or a forfeiture of Company's rights under this Agreement as if done by Company itself.

9.2.3 Notice of Defaults. No Default shall be effective unless a like notice is given to all Interest Holders for whom Owner has been provided with a notice address in writing by Company, which notice shall specify in detail the alleged Default and the required remedy. If Owner shall become entitled to terminate this Agreement due to an uncured default by Company, then Owner will not terminate this Agreement, the Easements, or any Assignment unless it has first given notice of such uncured default and its intent to terminate to each Interest Holder and has given each Interest Holder the same period after receipt of a written notice of default to cure the Default as is given to Company plus at least thirty (30) additional days to cure the default to prevent such termination of this Agreement. Furthermore, if within such thirty (30) day period an Interest Holder notifies Owner that it must foreclose on Company's interest or otherwise take possession of Company's interest under Transmission Assets to cure the default (including possession by a receiver), institute foreclosure proceedings or otherwise perfect its right to effect such cure as provided in Section 9.2.4 below, Owner shall not have any right to terminate this Agreement or any Assignment and shall permit such Interest Holder a sufficient period of time as may be necessary for such Interest Holder to foreclose or acquire Company's or any Assignee's Transmission Assets and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Company or an Assignee, and the Interest Holder shall not be required to cure those Defaults which are not reasonably susceptible of being cured or performed by Interest Holder ("**Non-Curable Defaults**"). The Interest Holder shall have the absolute right to substitute itself (or any of its affiliates) for Company or any Assignee, as applicable, and perform the duties of Company or such Assignee for purposes of curing such Default. Owner shall have the option to expressly consent to such substitution, and shall have the option to agree to accept such performance, and authorize the Interest Holder, its affiliates (or either of their employees, agents, representatives or contractors) to enter upon the Easement Area to complete such performance with all of the rights and privileges of Company or such Assignee hereunder. Owner shall not terminate this Agreement or any Assignment prior to expiration of the cure periods available to an Interest Holder as set forth above. Further, (i) neither the bankruptcy nor the insolvency of Company or any Assignee shall be grounds for terminating this Agreement as long as the amounts payable by Company or any Assignee are paid to Owner in accordance with the terms thereof and (ii) Non-Curable Defaults shall be deemed waived by Owner upon completion of foreclosure proceedings or other acquisition of Company's or any Assignee's easement estate or subeasement hold estate of such Assignment (as applicable). Upon the sale or other transfer of any Transmission Assets and rights granted hereunder by any Interest Holder, such Interest Holder shall have no further duties or obligations hereunder.

9.2.4 Extended Cure Period. If any Default under this Agreement cannot be cured without the Interest Holder obtaining possession of all or part of the Transmission Assets, then Owner shall not terminate this Agreement so long as (i) Interest Holder cures all defaults in the payment of money within the cure period set forth in Sections 8.2.2 and 8.2.3 above and thereafter pays all amounts required to be paid by Company or an Assignee under this Agreement as and when the same becomes due and payable and (ii) within the cure period granted to Interest Holder in Sections 8.2.2 and 8.2.3, Interest Holder shall have acquired possession of such portions of the Transmission Assets as may be necessary to effect the cure, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same, and thereafter diligently and in good faith continuously prosecutes such proceedings to completion, and (iii) after gaining possession of such portions of the Transmission Assets as may be necessary to effect the cure of non-monetary defaults, the Interest Holder continues to pay all amounts required to be paid by Company or an Assignee under this Agreement as and when the same becomes due and payable and performs all other non-monetary obligations in accordance with the terms of this Agreement or the Assignment, as applicable. If an Interest Holder is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Company or any Assignee, as the case may be, from commencing or prosecuting the proceedings described above, the period specified above for commencing the proceedings shall be extended for the period of the prohibition.

9.2.5 Acquisition of Title. Following acquisition of all or a portion of the Transmission Assets by the Interest Holder, or its assignee or designee, as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement and any Assignment, as the case may be, shall continue in full force and effect, and the party acquiring title to the Transmission Assets shall, as promptly as reasonably possible commence the cure of all other non-monetary Defaults under this Agreement and thereafter diligently prosecute the cure to completion, whereupon Owner's right to terminate this Agreement based upon the Defaults shall be deemed waived, provided that the party acquiring title to the Transmission Assets shall (i) have no liability for monetary obligations of Company or an Assignee under this Agreement that are due and owing to Owner as of the assumption date unless those monetary obligations of Company or an Assignee were the subject of a timely notice of Default delivered to Company and all Interest Holders (but this provision shall not be interpreted to limit Owner's rights to proceed against Company) and (ii) shall not be required to cure those Non-Curable Defaults that are not reasonably susceptible of being cured or performed by the party acquiring title. Non-Curable Defaults shall be deemed waived by Owner upon completion of foreclosure proceedings or acquisition of Company's interest in this Agreement. Any Interest Holder or other party who acquires Company's or an Assignee's Transmission Assets, pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Company or such Assignee by this Agreement or an Assignment incurred or accruing after such party no longer has ownership of the Agreement, an Assignment possession of the Easement Area.

9.2.6 Interest Holder's Right to Possession, Right to Acquire and Right to Assign. An Interest Holder shall have the absolute right (i) to assign its Mortgage or Assignment, (ii) to enforce its lien and acquire title to all or any portion of the Transmission Assets in which it has an interest by any lawful means, (iii) to take possession of and operate all or any portion of the Transmission Assets in which it has an interest and to perform all obligations to be performed by Company or

Assignees under this Agreement, or to cause a receiver to be appointed to do so, and (iv) to acquire all or any portion of the Transmission Assets in which it has an interest by foreclosure or by an assignment in lieu of foreclosure and thereafter, after notifying Owner but without Owner's consent, to assign or transfer all or any portion of the Transmission Assets in which it has an interest to a third party as a result of any of the foregoing. Owner's consent shall not be required for any of the foregoing, and, upon acquisition of the interests of all or any portion of the Transmission Assets in which it has an interest by an Interest Holder or any other third party who acquires the interests from or on behalf of the Lender, Owner shall recognize the Interest Holder or such other party (as the case may be) as the Company's or Assignee's proper successor, and this Agreement, and the Easement shall remain in full force and effect.

9.2.7 Liability. Any Interest Holder that does not directly hold an interest in the Transmission Assets, or whose interest is held solely for security purposes, shall have no obligation or liability under this Agreement prior to the time the Interest Holder directly holds an interest in the Transmission Assets, or succeeds to title to Company's or an Assignee's interest therein. An Interest Holder shall be liable to perform Company's or an Assignee's obligations under this Agreement only for and during the period it directly holds title to the applicable Transmission Assets. Furthermore, if an Interest Holder elects to (i) perform Company's or an Assignee's obligations under this Agreement, (ii) continue operations on the Easement Area, (iii) acquire any portion of Company's or a Assignee's right, title or interest in all or any of the Transmission Assets or (iv) enter into a new Agreement as provided in Section 9.2.9, then the Interest Holder shall not have any personal liability to Owner, and Owner's sole recourse against Interest Holder shall be to execute against the Interest Holder's interest in the Transmission Assets. Moreover, any Interest Holder or other party who acquires an interest in the Transmission Assets by foreclosure or an assignment in lieu of foreclosure shall not be liable to perform any obligations under this Agreement to the extent the obligations are incurred or accrue after the Interest Holder or other party no longer has ownership of an interest in the Transmission Assets.

9.2.8 Termination. Neither the bankruptcy or the insolvency of Company or any Assignee shall be grounds for terminating this Agreement, or the Easements, so long as all monetary charges required to be paid by Company or the Assignee under this Agreement are paid by the Interest Holder in accordance with the terms of this Agreement.

9.2.9 New Agreement. In case of any termination of this Agreement or an Assignment as a result of any uncured default by Company or an Assignee, or because it is rejected or disaffirmed under bankruptcy law or any other law affecting creditors' rights, Owner shall give prompt notice to all Interest Holders. Owner shall, upon the written request of any Interest Holder made within sixty (60) days after such notice to Interest Holder, enter into a new easement agreement with such Interest Holder, or its designee, within twenty (20) days after the receipt of such request. Such new easement agreement shall be effective as of the date of the termination of this Agreement or an Assignment by reason of default of Company or any Assignee or the rejection, or disaffirmance and continuing for the remaining term before giving effect to the termination, rejection, or disaffirmance, and shall be upon the same terms, covenants, conditions and agreements contained in this Agreement or such Assignment (except for any requirements that have been fulfilled by Company or an Assignee prior to the termination, rejection, or disaffirmance), except that the term of the new easement agreement shall be adjusted so that it expires at the same time that this Agreement or the Assignment would have expired had it not been

terminated, rejected, or disaffirmed. Such new easement shall contain an easement agreement on, over, under, upon along and across the Property or such portion thereof as to which the Interest Holder held a lien on the date of the termination, rejection, or disaffirmance and enjoy the same priority as this Agreement or such Assignment has over any lien, encumbrance or other interest created by Owner. Upon the execution of any such new easement agreement, the Interest Holder shall pay Owner any amounts which are or would be due to Owner from Company or the applicable Assignee through the effective date of the new easement agreement had this Agreement or the Assignment not been terminated, rejected, or disaffirmed, to the extent not previously paid. If more than one Interest Holder makes a written request for a new Agreement or Assignment under this Section 9.2.9, then the new Agreement or Assignment shall be delivered to the Interest Holder whose lien is senior in priority on the condition that such Interest Holder be obligated to give the other Interest Holder similar rights under the new Agreement or Assignment as provided for Company (and, where applicable, Assignees) under this Agreement or Assignment. This Section 9.2.9 shall survive the termination before expiration of this Agreement.

9.2.10 Insurance and Condemnation Proceeds. The disposition of any casualty insurance and condemnation proceeds to which Company is entitled shall be governed by the terms of any first lien Mortgage of Company encumbering its interest in the Transmission Assets affected.

9.3 No Merger. There shall be no merger of this Agreement, or the easement estate created by this Agreement with the fee estate in the Property by reason of the fact that this Agreement, an Assignment, and any interest in the easement estate, sub-easement estate or any interest in the foregoing granted hereunder may be held, directly or indirectly, by or for the account of any party who shall own the fee estate or any interest therein, and no such merger shall occur unless and until the persons holding such interests in the Property, and all persons (including each Interest Holder) having an interest in the Improvements and the easement estate, sub-easement estate or any interest in any of the foregoing shall join in a written instrument effecting such merger and shall duly record the instrument.

9.4 Owner Mortgages. In the event Owner now or hereafter enters into any mortgage or deed of trust encumbering the Property, Owner shall cooperate with Company or any Assignee in obtaining a non-disturbance or recognition agreement from Owner's lender(s) in customary form which shall provide that such lender(s) shall not terminate this Agreement or Company's or an Assignee's use, possession or enjoyment of the Property nor shall such lender(s) disturb Company's or any Assignee's possession or rights under this Agreement or an Assignment or terminate Company's or any Assignee's interest except as may be permitted expressly by this Agreement.

## **10. DEFAULT AND TERMINATION.**

10.1 Default by Company. Except as qualified by Section 9.2, Owner shall have the right to terminate this Agreement if (a) a material default in the performance of Company's obligations under this Agreement has occurred and remains uncured, (b) Owner simultaneously notifies Company and all Lenders in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (c) the default has not been remedied within ninety (90) days after Company, or within one hundred and twenty (120) days in the case of all Lenders, receive the written notice, or, if cure will take longer than 90 days for

Company, or 120 days for any Lender, Company or a Lender on Company's behalf, has not begun diligently to undertake the cure within the relevant time period and thereafter prosecutes the cure to completion..

10.2 Company's Right to Terminate. Company shall have the right to terminate this Agreement, and assignees and subtenants of Company shall have the right to terminate their respective interests in or under, as to all or any part of the Property at any time, effective upon thirty (30) days' written notice to Owner. If such termination is as to only part of the Property, this Agreement shall remain in effect as to the remainder of the Property.

10.3 Effect of Termination. Upon termination of this Agreement, whether as to the entire Property or only as to part, Company shall: (a) upon written request by Owner, execute and record a quitclaim deed to Owner of all of Company's right, title and interest in and to the Property, or to that part thereof as to which the Agreement has been terminated, and (b) as soon as practicable thereafter, remove all above-grade Transmission Facilities installed by Company on the Property from the Property or portion as to which the Agreement was terminated and restore the soil surface on areas of the Property damaged by Company to a condition reasonably similar to its original condition.

11. **CONDEMNATION.** Should title or possession of any portion of the area of the Property affected by the Easements be taken by right of eminent domain (a "**Taking**"), rendering any remaining portion of either unsuitable for Company's use, then the location of the Easements shall be relocated to the extent practicable in light of Owner's then current interests in the Property, provided that the effect on then-existing uses of the Property by Owner shall be minimized or mitigated to the extent practical.

## 12. **MISCELLANEOUS.**

12.1 Notices. All written notices and demands of any kind which either party may be required or may desire to serve upon the other party in connection with this Agreement may be served by (a) personal service, (b) registered or certified mail (postage pre-paid), (c) email or (d) next day overnight delivery service. Any such notice or demand shall be addressed to the parties as listed in this Section 12. Service of any such notice or demand shall be deemed complete (i) upon receipt in the event of personal service, (ii) on the third business day after deposit in the U.S. mail if sent via registered or certified mail, (iii) upon transmission in the event sent via email and (iv) on the next business day if sent via an overnight delivery service, if sent to each party at the address set forth below with the required proper postage:

If to Owner:

Village of Los Lunas  
660 Main St.  
Los Lunas, NM 87031

If to Company:

Westway Six BESS LLC  
c/o Aypa Power Development LLC  
Attn: Nate Crain  
ncrain@aypa.com  
11801 Domain Blvd, Suite 450  
Austin, TX 78758

With a copy to:  
legal@aypa.com

Any party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this paragraph.

12.2 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between Owner and Company respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Agreement, or any other matter referenced herein not expressly set forth in this Agreement or a subsequent writing signed by both parties is null and void. This Agreement shall not be modified or amended except in a writing signed by both parties. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either party.

12.3 Successors and Assigns. This Agreement and the easements granted to Company hereunder shall burden the Property and shall run with the Property. This Agreement and the easements granted to Company hereunder shall inure to the benefit of and be binding upon Owner and Company and any assignee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

12.4 Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State New Mexico. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE ENTITLED TO, AND EACH OF OWNER AND COMPANY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.**

12.5 Partial Invalidity. Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of this Agreement be longer than, respectively, the longest period permitted by applicable law.

12.6 No Partnership. Nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the parties to this Agreement.

12.7 Ownership of Transmission Facilities. Owner shall have no ownership or other interest in any Improvements installed on the Property, and Company may remove any or all of the Transmission Facilities at any time.

12.8 Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties and their respective successors, and assigns.

12.9 Governing Law. This Agreement is governed by New Mexico law.

12.10 Further Assurances. Upon the request of Company, its tenants, successors and assigns and any Lender, Owner shall do any other acts and execute, acknowledge, and deliver any requested commercially reasonable documents in order to carry out the intent and purpose of this Agreement, including, without implied limitation, further conveyances, assignments, confirmations, instruments of further assurance, approvals, consents, and any further instruments or documents that are necessary, expedient, or proper to carry out the intent and purpose of this Agreement.

12.11 Counterparts. This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

*[Signatures on Following Page]*

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date.

**OWNER:**

Village of Los Lunas,  
A Municipality

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

Name: Charles Griego

Title: Village of Lonas Mayor

Date: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2025, by  
\_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_.

(S E A L)

\_\_\_\_\_  
Notary Public State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Notary Public Commission No. \_\_\_\_\_

**COMPANY:**

Westway Six BESS LLC,  
[a \_\_\_\_\_]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ by  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_, on behalf of such \_\_\_\_\_.

[SEAL]

\_\_\_\_\_  
Notary Public State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Notary Public Commission No. \_\_\_\_\_

## **EXHIBIT A**

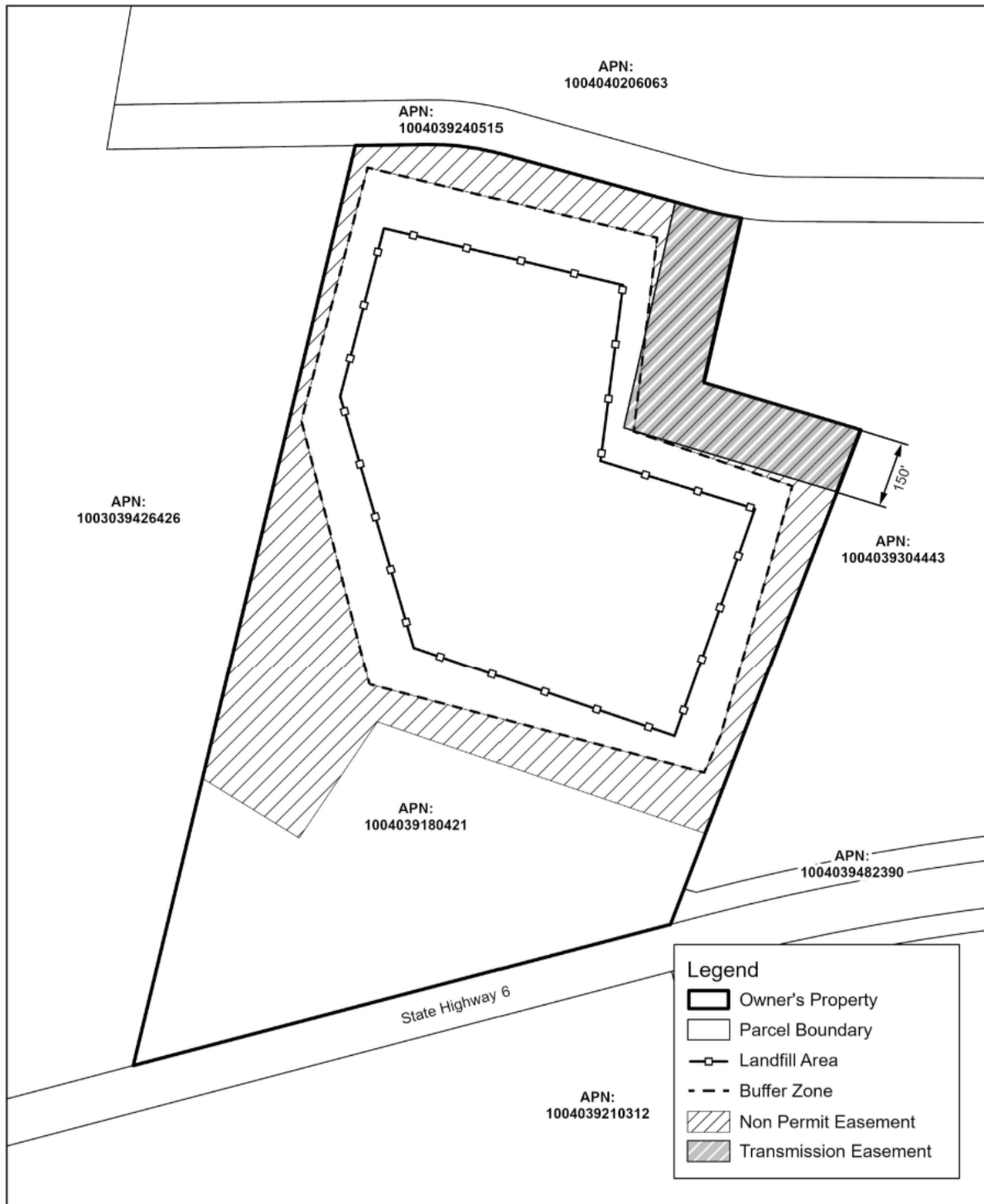
### **Description of the Property**

Real property situated in the County of Valencia, State of New Mexico, hereby described as follows:

## **EXHIBIT B**

### **Depiction of Easement Area**

Real property situated in the County of Valencia, State of New Mexico, hereby described as follows:



## **EXHIBIT C**

### **Payment Terms**

*[Attached hereto – Not to be recorded]*

## EXHIBIT C

**REMOVE THIS EXHIBIT C BEFORE RECORDING**

**DO NOT RECORD THIS EXHIBIT C**

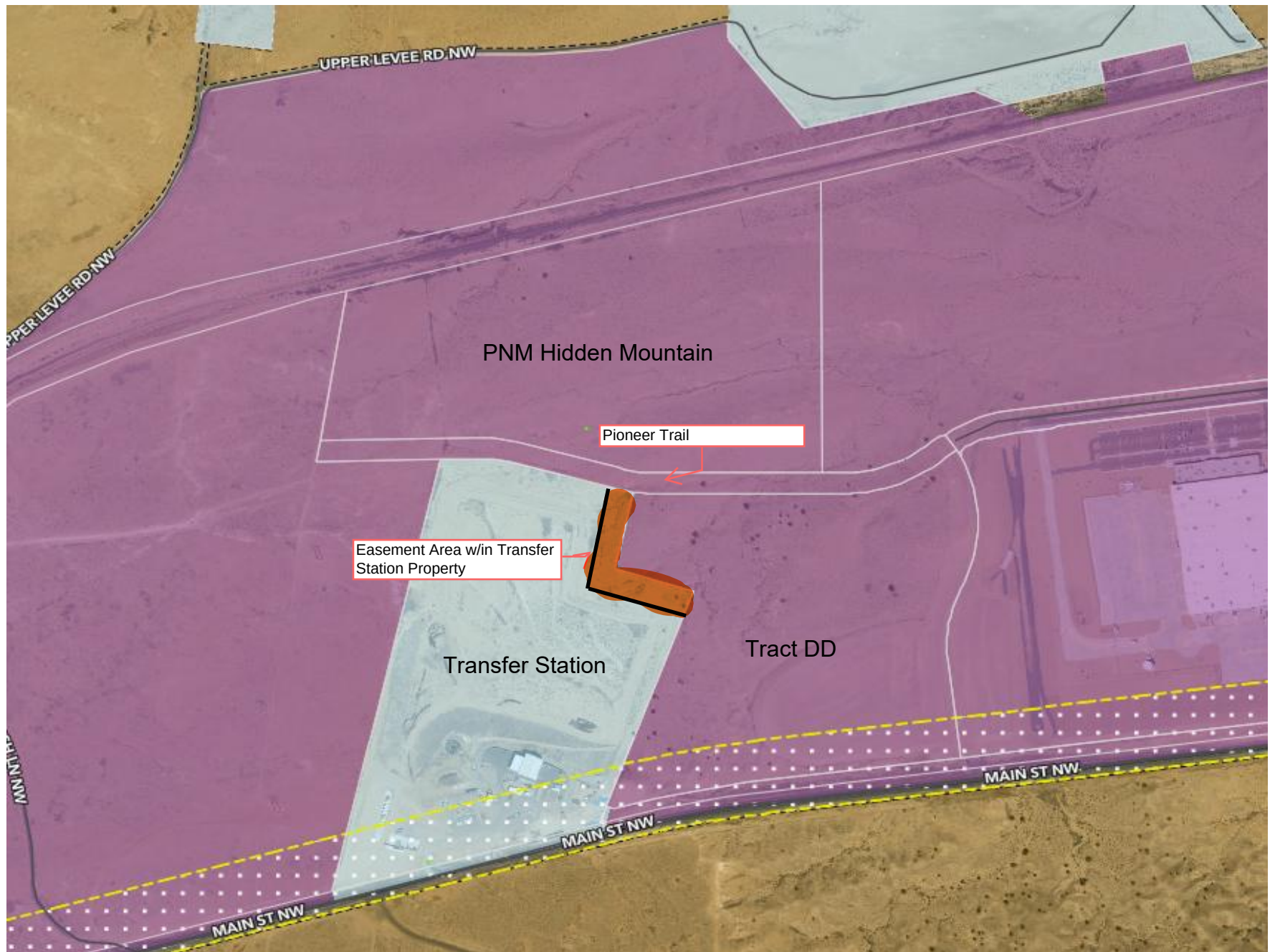
### Payment Terms

As full consideration for the Agreement and agreements of Owner therein, from the Effective Date until the expiration or earlier termination of this Agreement, Company shall make annual payments (**“Annual Payment”**) to Owner as follows:

- From the Effective Date until Commencement of Construction of the Improvements or Transmission Facilities, as defined in the Agreement, Company shall pay Owner five-thousand dollars (\$5,000.00) annually.
- Due fifteen calendar days after Commencement of Construction of the Improvements or Transmission Facilities and through year five (5) of the Term, Company shall pay Owner two-dollars and 32/100 (\$2.32) per square foot of the Easement Area.
- Beginning in year six (6) of the Term and every five years thereafter during the Term of this Agreement, the Annual Payment shall increase three percent (3%).

The initial Annual Payment shall be due within fifteen (15) business days of the full execution and notarization of the Agreement, and all following Annual Payments shall be due on each anniversary of the Effective Date until the expiration or earlier termination of this Agreement.

Prior to the disbursement of any payments pursuant to this **Exhibit C**, Owner shall provide a completed Request for Taxpayer Identification Number and Certification (Form W-9) to Company. Any Annual Payments due for a partial year shall be prorated on a *per diem* basis



**MINUTES  
VILLAGE OF LOS LUNAS  
THURSDAY, FEBRUARY 26,2026**

The Board of Trustees of the Village of Los Lunas, County of Valencia, and State of New Mexico met Thursday, February 26, 2026 in regular session at 6:00PM. Roll call was taken, and the following were present: Mayor Charles Griego, Councilor Gino Romero, Councilor Christopher Ortiz, Councilor James Runyon& Councilor Matthew Chavez. The meeting was conducted in person and recorded through TEAMS.

|                       |                                               |
|-----------------------|-----------------------------------------------|
| <b>Mayor:</b>         | Charles Griego                                |
| <b>Mayor Pro Tem:</b> | Christopher Ortiz                             |
| <b>Council:</b>       | Matthew Chavez<br>James Runyon<br>Gino Romero |

Also present were: Gregory D. Martin, Nancy Jo Gonzales, Debra Sanchez, Craig Donohue, and Luis Brown. In accordance with Ordinance 114A, the following agenda was prepared and circulated as required:

- 1. RESOLUTION 26-03: L300354 MAP FUNDING EXTENSION NM 6 & NM 263.**
- 2. RESOLUTION 26-04: NMDOT MAP FUNDING REQUEST 2026/202.**
- 3. RESOLUTION 26-05: LOCAL GOVERNMENT ROAD FUND (LGRF) REQUEST.**
- 4. EASEMENT AGREEMENT BETWEEN VILLAGE OF LOS LUNAS AND WESTWAY SIX BESS, LLC.**
- 5. COMPENSATION AND CLASSIFICATION STUDY.**
- 6. EXECUTIVE SESSION:**
  - a. Hire Transfer Station Truck Driver – Public Works Department.**
  - b. Hire Firefighter/EMT – Fire Department.**
  - c. Hire Certified Polic Officer – Police Department.**
- 7. APPROVAL OF MINUTES:**
  - a. Minutes from February 12, 2026, Council Meeting**
- 8. ADJOURNMENT.**

• **CALL MEETING TO ORDER.**

At 6:00PM, Mayor Griego brought the meeting to order and welcomed the audience.

• **PLEDGE OF ALLEGIANCE.**

Mayor Griego asked Jim Ricky to lead the Council and TEAMS participants in the Pledge of Allegiance.

• **PUBLIC INPUT FORUM.**

None.

**1. RESOLUTION 26-03: L300354 MAP FUNDING EXTENSION NM 6 & NM 263.**

Mr. Michael Jaramillo presented item one. This would be the second time that I bring this item. We've had some delays in our design work for this project, which is our MAP funding for New Mexico 6 and New Mexico 263. I come before you because the agreements expire in June and in order for us to meet the time frames, it's best for us to plan ahead just in case. So I'm here before you asking for an extension through this resolution of the funding for the design and construction of those improvements for New Mexico 6 and 263. Mayor Griego asked Council if there were any questions. Councilor Runyon asked when he anticipated this project to be completed. Michale replied, this is our third time that we've been in 100% review with the Department of Transportation. When I say that when we get to 100%, that means we're done. However, every time we go to get the final, they come back and say hey, we might need a little bit of an adjustment. The council was asked if they had any additional questions, there were none. Mayor Griego asked for a recommendation.

**APPROVAL:** Motion to approve resolution 26-03.

**MOVED:** Councilor Ortiz

**SECONDED:** Councilor Romero

**CARRIED:** Motion passed on a vote of **4 (Councilor Romero – yes; Councilor Ortiz – yes; Councilor Runyon – yes; Councilor Chavez – yes) FOR AND 0 AGAINST.**

**2. RESOLUTION 26-04: NMDOT MAP FUNDING REQUEST 2026/2027.**

Mr. Michael Jaramillo presented item two. I do pretty much every year when we apply for any type of funding for any roads in the village. This particular funding is what we call MAP funding, which is Municipal Arterial Program funding. It's for any municipal artillery road that we've categorized that would need some type of improvement, these are all kind of mostly all the DOT roads and a few of our major roads like north and south Los Lentos. This one here is actually for a segment for North Los Lentos. This would be for Taylor to Trujillo Rd. We just finished a project, our first phase on north Los Lentos and our goal is to get all the way to Griego and Hwy 314 at some point. So I'm asking council to give me permission to submit an application on the village's behalf for funding for this project. If we are awarded this project, I will be coming back with another resolution saying that the Council did approve that funding in the budget for FY2027. Mayor Griego asked council if they had any questions. Councilor Runyon thanked Michael for all his good work. The council was asked if they had any additional questions, there were none. Mayor Griego asked for a recommendation.

**APPROVAL:** Motion to approve resolution 26-04.

**MOVED:** Councilor Romero

**SECONDED:** Councilor Runyon

**CARRIED:** Motion passed on a vote of **4 (Councilor Romero – yes; Councilor Ortiz – yes; Councilor Runyon – yes; Councilor Chavez – yes) FOR AND 0 AGAINST.**

### ***3. RESOLUTION 26-05: LOCAL GOVERNMENT ROAD FUND (LGRF) REQUEST.***

Mr. Michael Jaramillo presented item three. We have a lot of roads in this Community that would qualify for this. It's a smaller pot of money; it can go anywhere to about \$100,000 to maybe \$300,000. Basically, as you know, we have a pavement condition index that we use to kind of keep track of the condition of our roads and basically all the Co-op applications that we have submitted are based on those roads that are in what we call our red zone that need to be replaced. We've been tackling for the past six years the Artistic Home neighborhood area. Those roads are a little bit better shape, but this is pretty much one of the last roads in that artistic neighborhood that needs to be done, and we will be caught up. The council was asked if they had any additional questions, there were none. Mayor Griego asked for a recommendation.

**APPROVAL:** Motion to approve resolution 26-05.

**MOVED:** Councilor Ortiz

**SECONDED:** Councilor Chavez

**CARRIED:** Motion passed on a vote of **4 (Councilor Romero – yes; Councilor Ortiz – yes; Councilor Runyon – yes; Councilor Chavez – yes) FOR AND 0 AGAINST.**

### ***4. EASEMENT AGREEMENT BETWEEN VILLAGE OF LOS LUNAS AND WESTWAY SIX BESS, LLC.***

Mr. Michael Jaramillo presented item five. In your packet you have a little map and basically if you look at the map, there is property that's highlighted (page 19) is basically the old landfill and we have a request from a company who wants to develop a battery storage facility just to the east of this parcel. There is another company who was wanting to do the same thing on the parcel that is just north of that, and that company isn't working with them to get access to be able to provide a transmission line or a battery storage line to the PNM substation. So they came to us asking if that we would assign them an easement through the landfill. We went through the regulations of what our permit allows us to do and we had told them that there is very limited work that you can actually do in the permitted landfill area, the section that you see in the map is not the landfill that is a buffer, so there is the ability for us to use it. We came up with several ideas on how we may get compensated for it. Overall we're here because we feel that we have worked out an understanding. This is not something that happened overnight. We've been working on it for about six months and we've looked at a lot of different options and we've done appraisals. This company is not a public utility company, so they have no franchise agreement. It's an overhead easement. So just like any other power line that's out there, there'll be two poles, though on the site that will be permanently put into the buffer area that's in the highlighted. Mayor Griego commented, but it's no different than the other power lines that are there. Michael replied, that's correct - it's about 100 feet tall. It's a controlled overhead easement. Councilor Chavez asked if they would be able to operate below the lines. Michael replied, yes. Mr. Larry Guggino approached the podium – he proceeded to talk about the appraisal. We took the appraisals that we had on the rail part for the tank site that we did that we paid. We used that as an example of what it the value would be worth for the land, and then we took some appraisals that we had done along I-25, we didn't use those to determine value, we used those to determine the percentage of value. It was about \$6/ft. more or less. Then we reduced it as our appraisers had done on some of the easements based on that percentage. So they are going to pay \$202.32 a square foot. They are going to pay us \$5000 a year for the period of time they are not building anything on it. Then once they start building it is \$2.32 a square foot for the entirety of the easement area. So, instead of paying us at one time, they are going to pay it over 25 years with five years escalations. Councilman Chavez commented, what these transmission lines are doing or these battery storage lines they're getting these easements and then once they secure an easement, they're going out there and selling it to the next highest bidder. This company has the right to sell/assign. Larry responded, they can sell it and assign it only to people using their property. So, if they sell the company the easement goes with the property. They don't have to ask our permission to do that. If this is approved, they'll pay us the \$5000 just to hold the place and the other the next agreement

will be them Crossing Pioneer Trail and we're working with the Hunings to figure out how we can what will eventually be a road, and so we want to make sure that any agreements to cross that road we are a party to those agreements. Michael commented, I know that I probably have some concerns myself, especially with the assignment of that easement, because my understanding was, that I don't want to lose it. I think I'm going to have to go back and look this over to the point that I don't think that it can be sold. I think it has to stay within the village because it's part of my permit and the last thing I need to do is if it's sold, even though it's associated with the battery company and it stays with the battery company because I can sell it another battery Company, I'd hate for us to be in a situation where we did not do our homework and then find out that we lost that piece that is essential to my permit. The council was asked if they had any additional questions, there were none. Mayor Griego asked for a recommendation.

**APPROVAL:** Motion to table easement agreement.

**MOVED:** Councilor Romero

**SECONDED:** Councilor Chavez

**CARRIED:** Motion passed on a vote of **4 (Councilor Romero – yes; Councilor Ortiz – yes; Councilor Runyon – yes; Councilor Chavez – yes) FOR AND 0 AGAINST.**

## **5. *COMPENSATION AND CLASSIFICATION STUDY. (Informational presentation)***

Mr. Marcos Castillo presented item five. So tonight and before you to present the results of our compensation and classification study from our personnel ordinance under pay plan provisions, the pay plan is intended to provide equitable compensation for all position classifications in relation to pay for other position classes. General rates of pay for similar employment. The village administrator shall regularly, but not less than every four years, perform or cause to be performed comparative compensation and classification studies of all the factors affecting level of pay and recommend such changes as may be justified. Such adjustments shall be made by increasing or decreasing the pay ranges provided in the basic pay schedule as approved by the Village council. Our last study was completed in 2023, out of this study, as some of you may recall came some pretty drastic adjustments and changes to our pay plan as part of a three-year plan which was approved by Council in the subsequent years Council did approve funding in fiscal year 2026 to complete the study a year earlier than is required by ordinance, as our current plan ends at the end of this fiscal year and I wanted to come into this budget season with some fresh data to ensure that we're still remain competitive in our market. As you've seen in the packet and you'll see shortly in case presentation, the village is in a very strong position in our market with our salaries and benefits and the recommendations that are being made are relatively minor in scope and fiscal impact. I want to thank the mayor and Council for their continued support in providing competitive salaries and benefits as we are able to recruit and retain employ. I'd like to introduce Kate Tisler, Vice president of PSPC. I'm pleased to be able to present this the findings and recommendations. So the scope of the project was to get a grasp of what the jobs are that exist here at the village and then to identify the number, type and distinct levels of jobs that exist. So as the village grows, sometimes more levels emerge, more occupations emerge. the salary survey kind of tells us where you are in the marketplace, but the next step is we'll know what we want to do with that data so the project goals would be to look at that market data and then determine what needs to happen to the village's existing salary administration practices. Do we need to make changes somewhere? Are things working? Are things not working? So looking at it holistically to identify what the market does and identify if there's things that need to be changed to help develop a better salary administrative policy. So our findings were that 98% of the village's positions. So we look at occupational job classes and whether somebody was working out of class or in class, 98% of the village's occupations were appropriately classified. We didn't have any classification issues within the titling or the placement of employees there externally. Our market data showed that we had about 59% of the village's jobs are competitive with the prevailing rate, so they were either at market  $\pm 5\%$  or ahead of the market. A handful of jobs were a little behind the market. It would cost the village \$595,000 or about 3.8% of payroll in order to get market competitive with the external prevailing rates. Also, we looked at benefits to make sure that the villages benefit offerings are still on par with where they want to be and competitive with others and had really no findings in the benefit area. I believe the village already has a goal of tying to the prevailing rates in the market and wanting to be competitive with that. So affirming that and that relationship being 100% of the market and then adopting the salary ranges which we have developed and are included in the package and then identifying how employees will be landing on a step gap. So there's some options there and the plan that we went with was to try and keep employees on their current steps. Within the village we found that 95.8% of the job classes required no change or a minor title modification. We do like to give a more descriptive title to the occupation, and so we feel widget worker senior widget worker lead widget worker, is more descriptive of the complexity that goes with each job class. So we kind of clean those up and that's sort of the basis. So we're not looking to get fancy with titles, but we do want to be descriptive and normally if it's not broke, we don't want to fix it. So within the survey, the objectives were to obtain information about salaries that are being paid to occupations in the marketplace and then also gather information about benefit data to make sure the villages benefits are still where they believe they should be. We looked at medical and dental and some other things that are going on. Additional compensation for things like education certification. Councilor Romero commented, we're being compared against a market that's inflated like severely inflated. And you know when you look at a tax base in Las Cruces versus a tax base in Los Lunas, it's night and day. Same thing with Alamogordo, Albuquerque, Carlsbad, Clovis, Farmington. I don't understand how we're being asked to be competitive with that high of a scale. It's not that high of a scale necessarily because so there's a couple of factors that come into this. So as we're looking at

surveying all of the titles that are on the screen in front of you now are all included and so as we as we know, mathematically speaking, you're going to have a high payer and a low payer. And when you run averages, they tend to balance themselves out. So there's that part of the equation you've got some high we got some low. We're looking at the occupation, how it's being paid. So just what's their salary structure look like in the highs and the lows you're going to in, in theory, balance themselves out? We're going to look at that survey data and that's where that competitiveness policy comes in. And when we look at, we say we've got a bunch of Albuquerque's and Alamogordo's that have a lot of money and that's where we truly draw our employees. So we need to know what they're paying, but we can't afford to pay at that rate and that's where we might be looking at not 100% of the average in the marketplace, but maybe 95% it is a low payer typically. So when you look at running the averages and that's where you start to arrive at the kind of balance each other. We did include private sector data because we know that, especially in Los Angeles, a lot more private sector companies coming in, big shops that are employing people. So we do have private sector data for those jobs that you compete with the private sector. Not all jobs are going to be competed with the private sector, but there are quite a few IT and HR finance labor trades where that private sector is going to be a player in your competition. So again, the survey answers the question where are we in the marketplace? And then the implementation is where do we want to be and that's the big question, because the village is in complete control of the where do we want to be in relation to the market? So there was a couple things that we did. So for the general job classes, we looked at the entire salary range that is offered for a job and we use the minimum and the maximum to calculate the middle of that range. So for general job classes, we use the midpoint. The midpoint is typically representative of a journey level competent performer, so somebody who's not a brand new person and not been in their job a long time. It's also the pay range not representative of an employee salary. If we're running into using employee salaries, there's a lot of things that can be going on because those salaries are related to a person, not an occupation. So our goal is to use the salary ranges for an occupation and find that midpoint. Councilor Runyon commented, How in the world in two years when we just did this and everybody was aligned perfectly and it was beautiful and we were all happy. Marcos replied, so the overall data isn't showing that we're 40% behind. It's when it's all gets crunched and we'll get this into a minute. Really what the overall impact of this is really showing that we're overall as a village less than 3% behind. So really what the ask is going to be at the tail end of. This is honestly going to be less than what we've asked for the last two years to get us aligned. Councilor Runyon replied, Is that where that 3% is correct, but 40% of our employees jobs are behind? Kate replied, 40% of the survey job classes and that was the occupations. That does not represent the employees' salaries, so it's entirely possible that 40% of your job titles were more than 5% behind the market.

But the employees within those are not behind the market. So that's where we talk about comparing occupations and occupational value in our survey, then the next step is bringing that data in to see where the employees are going to lie and what's going to be the cost in order to implement. If we move these salary grades so that they're within 5% of the market, what's the cost at the employee level. So the current structure we basically are utilizing the same structure that you have been using. The current structure contains 19 grades. However, between the grades and this may be because some of the grades got dropped. Sometimes what we find is that we have a structure with 50 grades. We're using thirty of them, and some of those grades disappear. So when I went to analyze the structure, I saw that some grades were 18% between two grades and some were 1.3. So you have 10 steps in each grade and 2 ½ percent between the steps, so within each grade there was not any angst or heartburn. However, what we wanted to do was clean up, so that between each incremental grade. So between grade one and grade two, we had a consistent amount. So instead of between 1.3% and in some grades 18%, we wanted to see a consistent 5% between each grade so we sort of added some new grades so that we had less space between some and created a little more space between others so that when we look at between. In grade one and grade two, grade three and Grade 4, it's a 5% consecutive in uniform separation between each of the grades. the 5% grade progression gives you the ability to not only be precise with the market rates, but it helps you to evaluate your internal alignment between job classes. Because when you see a supervisor is 2 grades higher than their subordinate, you know that's 10% separation so that helps you quickly and analyze how your valuing job classes. So the process is to go through all of our benchmark job classes and find any, especially those that are more than 5% behind and identify the salary grade whose midpoint is as close as possible to the market's midpoint. *Kate used an online slide to walk the council through this part of the presentation.* Now the village has expressed interest in maintaining the step placement for all employees. So that means that if an employee is on step five, it doesn't matter that when we move their grades, Step 2 is actually closer and gives them a small increase. We're doing what we refer to it as step ownership, meaning that if you're on five, you stay on five. You don't fall back in your grade, regardless of the fact that you might have gotten an increase by having a lower staff. We kept them on the same. So there was 218 employees to place the keep them on their steps if they were on step three, they stay on step three. If they were on step eight, they stay on step 8. Of course, nobody's salary went lower. All of these would have been a bump to a next level step or a bump to stay on their step. It's \$470,000. So the total is about 3.8% of your total payroll for all jobs to increase to the market. Councilor Runyon asked if this included a normal step increase coming in July or would it be in lieu of that. Marcos responded, this would not include the normal step increase. Councilor Romero commented, as a member of the Council, I've I do want to make sure that we're paying equitable wages and that we're competitive in the marketplace, we're not losing people, as mayor said. But as a resident that pays taxes it's concerning to me that you know, I would feel much better if we were to remove Albuquerque, Rio Rancho and Las Cruces. I think we would get a better snapshot of what it is that is in our more ability to pay, you know, right now, thankfully, we are doing well. But how sustainable is this gonna be going forward when we're being compared to municipalities with that kind of population, OK. Councilor Chavez asked what would the annual cost be with the benefits included. Kate and Marcos replied, she did not know the benefit burden. Marcos commented, it would be relative to any increase. So with the pair of contributions, you know, of course any increase in salary comes

with an increase. Contributions as far as the medical side were wait were we're shopping our medical insurance like we do every year. So that varies year to year greatly as you'll come to find, we've seen some pretty significant increases over the years just with our medical benefits cause we choose. So we're, we're still awaiting this year's numbers for our medical renewal. Our brokers actually shopping those through RFP as we speak. And we'll have those for budget when we're looking at what our medical numbers will be for next year. Kate continued, we did look at a bunch of different benefit things. This the comparator employers that we use for benefits were the same that we used in the salary survey. We included data on medical, dental, vision. We included pay time off, the incentive pays offered. I think that was the bigger one that the village was interested in is, you know, what are the incentive pay certification programs that are being offered elsewhere? And then we summarize the pair of plans and the contribution rates, and we found that overall the village's benefit packages are right in line with where everybody else is doing. So there was nothing that would be suggestive of the village being behind the market and benefit offerings. Longevity offered for fire employees with five years, 10 years, 15 years or 20 years of service and with 20 years being \$417.00 a month. So it's \$5000 years. So that's a pretty nice benefit compared to the others that offer their longevity pay and the village doesn't offer any of the other incentives. Mayor Griego asked council if there were any questions, there were none. Marcos commented, so the purpose of us being here tonight was kind of to set the stage for what we you know, to get council direction and kind of the feelings on everything before we do come to budget with any type of new recommendations. End of presentation.

## **6. EXECUTIVE SESSION.**

Mayor Griego announced that the Council would be going into executive session pursuant to NMSA 1978 Section 10-15-1(H), the following matters may be discussed in a closed session: Hiring of a Transfer Station Truck Driver, hire a Firefighter/EMT, and hire a Certified Police Officer.

**APPROVAL:** Motion to approve  
**MOVED:** Councilor Runyon  
**SECONDED:** Councilor Ortiz  
**CARRIED:** Motion passed on a vote of 4(Councilor Romero – yes; Councilor Ortiz – yes; Councilor Runyon – yes; Councilor Chavez – yes) FOR AND 0 AGAINST. 7:35PM

At 7:56PM, Mayor Griego asked for a motion from Council to reconvene after discussion: Hiring of a Transfer Station Truck Driver, hire a Firefighter/EMT, and hire a Certified Police Officer.

**APPROVAL:** Motion to approve.  
**MOVED:** Councilor Ortiz  
**SECONDED:** Councilor Chavez  
**CARRIED:** Motion passed on a vote of 4(Councilor Romero – yes; Councilor Ortiz – yes; Councilor Runyon – yes; Councilor Chavez – yes) FOR AND 0 AGAINST.

Regarding the Transfer Station Truck Driver – Mayor Griego recommended Narciso Martin Holguin.

**APPROVAL:** Motion to approve.  
**MOVED:** Councilor Runyon  
**SECONDED:** Councilor Chavez  
**CARRIED:** Motion passed on a vote of 4 (Councilor Romero – yes; Councilor Ortiz – yes; Councilor Runyon – yes; Councilor Chavez – yes) FOR AND 0 AGAINST.

Regarding the Firefighter/EMT – Mayor Griego rerecommended Issac Sanchez.

**APPROVAL:** Motion to approve.  
**MOVED:** Councilor Romero  
**SECONDED:** Councilor Runyon  
**CARRIED:** Motion passed on a vote of 4 (Councilor Romero – yes; Councilor Ortiz – yes; Councilor Runyon – yes; Councilor Chavez – yes) FOR AND 0 AGAINST.

Regarding the Certified Police Officer– Mayor Griego rerecommended Micah Bogue.

**APPROVAL:** Motion to approve.  
**MOVED:** Councilor Ortiz  
**SECONDED:** Councilor Runyon  
**CARRIED:** Motion passed on a vote of 4 (Councilor Romero – yes; Councilor Ortiz – yes; Councilor Runyon – yes; Councilor Chavez – yes) FOR AND 0 AGAINST.

**7. MINUTES**

Mayor Griego asked if there were corrections to the Council minutes of February 12, 2026 – there were none.

**APPROVAL:** Motion to approve.

**MOVED:** Councilor Ortiz

**SECONDED:** Councilor Chavez

**CARRIED:** Motion passed on vote of 4 (Councilor Romero – yes; Councilor Ortiz – yes; Councilor Runyon – yes; Councilor Chavez – yes) FOR AND 0 AGAINST.

**8. ADJOURNMENT.**

Council meeting adjourned at 7:59 PM.

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Gregory D. Martin, Village Administrator

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Charles Griego, Mayor