



A G E N D A
Carlsbad City Council
Regular Meeting
Municipal Building, 101 North Halagueno
Carlsbad, New Mexico
July 8, 2014 at 6:00 p.m.

Invocation – Pledge of Allegiance

- 1. Approval of Agenda**
- 2. Budget Review**
- 3. Consider approval or Resolution No 2014-31, a Resolution making certain Budgetary Adjustments to the 2013-2014 Fiscal Year Budget**
- 4. Routine and Regular Business**

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

- A. Minutes of the Regular City Council Meeting held on June 24, 2014**
- B. Personnel Report**
- C. Purchasing:**
 - 1) Consider approval to Award RFP No 2014-10, to AMEC Environment and Infrastructure, Inc. for On-Call Construction Quality Control Services for General Construction Projects and Double Eagle Waterline
 - 2) Consider approval to Award RFP No 2014-41, to Garden Mart, Inc. for the Grave Opening and Closing Services for Carlsbad Cemeteries
 - 3) Consider approval to Advertise Invitation for Request for Proposals for the PER and Final Design for Ligon Street
- D. Contracts and Agreements:**
 - 1) Consider approval of the Memorandum of Understanding between the Administrative Office of the Courts and Carlsbad Municipal Transit System for FY 2014-2015 for transportation to the Eddy County Magistrate DWI Drug Court Program
 - 2) Consider approval of the Memorandum of Understanding between the Administrative Office of the Courts and the Carlsbad Police Department for the FY 2014-2015 for participation in the Eddy County Magistrate DWI Drug Court Program
 - 3) Consider approval of Agreement between the City of Carlsbad and Gregory Rockhouse Ranch, Inc. regarding use of a 10,000 Barrel Reservoir
 - 4) Consider approval of 30 day Extension to the Agreement between the City of Carlsbad and Garden Mart, Inc. for grounds maintenance and Grave Opening and Closing at Carlsbad Cemetery and Sunset Gardens Cemetery
- E. Monthly Department Reports:**
 - 1) Consider approval of Personnel Department Monthly Report for June 2014

- F. **Set Date: (August 12, 2014)**
- 1) An Ordinance Amending Sections 32-77, 32-80, and 32-81 of the Code of Ordinances, City of Carlsbad, New Mexico, entitled "Clean Indoor Air Ordinance", to include the use of Electronic Smoking Devices as a form of Smoking
 - 2) An Ordinance Prohibiting the Sale of Electronic Smoking Devices to Minors
- G. **Board Appointment:**
- 1) Carlsbad Retired and Senior Volunteer Program Advisory Council (RSVP)
 - 2) Carlsbad Board of Water and Sewer Commissioners
5. Consider approval of Agreement between the City and Carlsbad Municipal Schools for FY 2014-2015 for a variety of services and facilities
 6. Consider approval of Renewal of Agreement between the City of Carlsbad and Metal Shop Live Productions, LLC for promotion and operation of the Walter Gerrells Performing Arts and Exhibition Center
 - A. Remove from Table
 - B. Consider Renewal of Agreement
 7. Consider approval of Business License to conduct door-to-door sales and installation of roofs by Rhino Roofing, Inc.
 8. Consider approval of Business License to conduct door-to-door sales and installation of roofs by Headmen Contracting
 9. Consider approval of Business License to conduct door-to-door sales and installation of roofs by Big Sky Roofing
 10. Consider approval of recommendation by the Carlsbad Cemetery Board for Columbarium Fees Update
 11. Consider approval of Ordinance No 2014-16, an Ordinance authorizing the sale to HB Waters Company, LLC of Tract 3-E, Carlsbad Airport Industrial Park Replat of a portion of Parcel 3, Unit 5, Containing Approximately 6.8210 Acres of Real Property
 - A. Public Hearing
 - B. Consider Ordinance No 2014-16
 12. Council Committee Reports
 13. Adjourn

INFORMATION ONLY

NEXT REGULAR CITY COUNCIL MEETINGS

- Regular City Council Meeting on Tuesday, July 22, 2014 at 6:00 p.m.
- Regular City Council Meeting on Tuesday, August 12, 2014 at 6:00 p.m.

<p>If you require hearing interpreters, language interpreters or auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator's office at (575) 887-1191 at least 48 hours prior to the scheduled meeting time.</p>
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Budget Review 5/31/2014

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	As of 5/31/2014	Current Budget	% to Date	TARGET = <u>92%</u>	
<u>Revenues</u>					
Gross Receipts Tax	32,787,416	30,400,000	108%		
Property Tax	1,934,860	2,212,924	87%		
Franchise Tax	713,711	700,100	102%		
Other	<u>2,380,450</u>	<u>2,931,164</u>	<u>81%</u>		
TOTAL	37,816,437	36,244,188	104%		
<u>Tranfers</u>					
IN	3,726,197	4,926,955	76%		
OUT	6,719,381	7,553,107	89%		
<u>General Fund Expenditures</u>					
Executive	1,983,159	2,852,093	70%	<u>Salaries*</u>	<u>Notes</u>
Personnel	200,879	232,479	86%	80%	
Judicial	410,431	565,010	73%	93%	
Riverwalk Recreation	431,235	594,774	73%	90%	
Information Technology	379,731	799,120	48%	85%	
Finance	1,473,141	1,778,836	83%	64%	
Public Safety	9,271,630	11,756,917	79%	91%	
Fire	6,330,090	7,808,675	81%	83%	
Street	1,796,054	2,377,913	76%	88%	
Garage	1,147,944	1,666,266	69%	74%	
Electrical	857,532	1,141,669	75%	85%	
Construction	923,838	1,233,685	75%	78%	
Community Service	262,414	321,213	82%	73%	
Golf	777,064	1,293,367	60%	90%	
Parks	1,874,130	2,785,089	67%	78%	
Airport	348,608	622,995	56%	90%	
Library	755,496	972,245	78%	84%	
Museum	286,277	415,468	69%	85%	
Planning, Engineering & Regulations	1,220,614	1,777,132	69%	89%	
Culture, Recreation & Community Svc	804,951	1,242,635	65%	81%	
San Jose SC	145,198	225,849	64%	75%	
North Mesa SC	<u>159,863</u>	<u>200,041</u>	<u>80%</u>	88%	
TOTAL	31,840,279	42,663,471	75%	85%	

* 24 of 26 pay periods = 92%

Budget Review
5/31/2014
other than GF

page 2 of 2

	As of 5/31/2014	Current Budget	% to Date	TARGET = <u>92%</u>
<u>Revenues</u>				
Transit	333,700	511,102	65%	
Civic Center	23,893			
Lodgers Tax	1,683,524	1,300,000	130%	
Solid Waste	4,935,944	5,061,893	98%	
Water & Sewer	15,425,948	13,468,000	115%	
Water & Sewer Loan/Grant	0	20,200,000	0%	
Total Joint W & S Revenues	15,425,948	33,668,000	46%	
RSVP	28,792	12,302	234%	

				<u>*Salaries</u>	<u>Notes</u>
<u>Expenditures</u>					
Transit	901,952	1,068,621	84%	88%	
Civic Center	104,358	336,275	31%	n/a	
Lodgers Tax	743,313	1,884,702	39%	n/a	
Solid Waste	2,781,763	3,537,017	79%	92%	
Water	4,185,553	5,698,867	73%	91%	
Sewer	1,143,512	1,562,445	73%	85%	
Double Eagle	1,599,846	29,516,421	5%	61%	
Lab Environmental Services	289,820	334,214	87%	90%	
Collection System	773,648	3,196,002	24%	87%	
Total Joint W & S	7,992,378	40,307,949	20%		
RSVP	40,781	83,844	49%	55%	

* 24 of 26 pay periods = 92%

RESOLUTION NO. 2014-31

**A RESOLUTION MAKING CERTAIN BUDGETARY
ADJUSTMENTS TO THE 2013-14 FISCAL YEAR BUDGET**

WHEREAS, it is necessary to amend the 2013-14 fiscal year budget to adjust revenues, transfers and expenditures as reflected on the attached pages, and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD that the 2013-14 fiscal year budget be amended as attached.

INTRODUCED, PASSED, ADOPTED AND APPROVED this 8th day of June, 2014.

Mayor

ATTEST:

City Clerk

**CITY OF CARLSBAD
FY 2013-2014 BUDGET**

	BEGINNING BUDGET	1ST QTR ADJ	2ND QTR ADJ	3RD QTR ADJ	APRIL ADJ	MAY ADJ	MAY ADJ(2)	JUNE ADJ	INC/DEC ADJ	REVISED BUDGET
GENERAL FUND FUND 01										
CASH BALANCE	18,461,987									18,461,987
REVENUE	36,212,989		-	3,949	2,000	25,250				36,244,188
NET TRANSFERS	(1,617,236)		415,209	(590,400)		(683,725)	(150,000)	(50,000)		(2,676,152)
TOTAL REVENUES AND TRANSFERS	34,595,753		415,209	(586,451)	2,000	(658,475)	(150,000)	(50,000)		33,568,036
PERSONNEL EXPENSE	28,925,226	12,996	446,034	17,322	-				600	29,402,178
OPERATING EXPENSE	7,134,749	18,600	41,175	(88,548)	2,000				148,222	7,256,198
CAPITAL OUTLAY	4,816,439	-	591,600	657,128		25,250	63,500		(148,822)	6,005,095
TOTAL EXPENSES	40,876,414	31,596	1,078,809	585,902	2,000	25,250	63,500			42,663,471
NET REVENUES/EXPENSES	(6,280,661)	(31,596)	(663,600)	(1,172,353)	-	(683,725)	(213,500)	(50,000)		(9,095,435)
ENDING CASH BALANCE	12,181,326	(31,596)	(663,600)	(1,172,353)	-	(683,725)	(213,500)	(50,000)		9,366,552

**CITY OF CARLSBAD
FY 2013-2014 BUDGET ADJUSTMENTS
4TH QTR**

		Current Budget	Change Budget	New Budget	Item #
01-0000-45006-000000	DISASTER PREPAREDNESS	0	(50,000)	(50,000)	1
	TRANSFER OUT TO COVER NEGATIVE BALANCE & OPERATING				
	EXPENDITURES RELATED TO FLOOD				
	TOTAL TRANSFERS GENERAL FUND		(50,000)		
	NET INC/DEC GENERAL FUND		(50,000)		

**CITY OF CARLSBAD
FY 2013-2014 BUDGET**

	BEGINNING BUDGET	1ST QTR ADJ	2ND QTR ADJ	3RD QTR ADJ	APRIL ADJ	MAY ADJ	MAY ADJ(2)	JUNE ADJ	INC/DEC ADJ	REVISED BUDGET
DISASTER PREPAREDNESS FUND 6										
CASH BALANCE	1,141,776									1,141,776
REVENUE	466,237		1,166,250							1,632,487
NET TRANSFERS	-		-					50,000		50,000
TOTAL REVENUES AND TRANSFERS	466,237		1,166,250	-				50,000		1,682,487
PERSONNEL EXPENSE	-		-							-
OPERATING EXPENSE	567,902		-	-				22,576		590,478
CAPITAL OUTLAY	-		1,555,000			54,945				1,609,945
TOTAL EXPENSES	567,902		1,555,000	-		54,945		22,576		2,200,423
NET REVENUES/EXPENSES	(101,665)		(388,750)	-		(54,945)		27,424		(517,936)
ENDING CASH BALANCE	1,040,111		(388,750)	-		(54,945)		27,424		623,840

**CITY OF CARLSBAD
FY 2013-2014 BUDGET ADJUSTMENTS
4TH QTR**

		Current Budget	Change Budget	New Budget	Item #
06-0000-40001-000000	GENERAL FUND	0	50,000	50,000	1
	TRANSFER IN TO COVER NEGATIVE BALANCE & OPERATING EXPENDITURES RELATED TO FLOOD				
	TOTAL TRANSFERS DISASTER PREPAREDNESS FUND		50,000		
06-0006-60025-000000	VEHICLE MAINTENANCE & REPAIR	0	8,187	8,187	1
	INCREASE FOR OPERATING EXPENSES RELATED TO FLOOD				
06-0006-60030-000000	MATERIAL & SUPPLIES	0	10,129	10,129	1
	INCREASE FOR OPERATING EXPENSES RELATED TO FLOOD				
06-0006-69000-000000	NON-DEPREC ASSET PURCHASES	0	4,260	4,260	1
	INCREASE FOR OPERATING EXPENSES RELATED TO FLOOD				
	TOTAL EXPENDITURES DISASTER PREPAREDNESS FUND		22,576		
	NET INC/DEC DISASTER PREPAREDNESS FUND		27,424		

**CITY OF CARLSBAD
FY 2013-2014 BUDGET**

	BEGINNING BUDGET	1ST QTR ADJ	2ND QTR ADJ	3RD QTR ADJ	APRIL ADJ	MAY ADJ	MAY ADJ(2)	JUNE ADJ	INC/DEC ADJ	REVISED BUDGET
SOLID WASTE FUND 24										
CASH BALANCE	851,594									851,594
REVENUE	5,061,893	-	-	-						5,061,893
NET TRANSFERS	(1,696,360)		30,821	-						(1,665,539)
TOTAL REVENUES AND TRANSFERS	3,365,533		30,821	-						3,396,354
PERSONNEL EXPENSE	1,570,609		30,821	-						1,601,430
OPERATING EXPENSE	1,850,587	-	-	55,000				130,000		2,035,587
CAPITAL OUTLAY	60,000	-	-	(30,000)						30,000
TOTAL EXPENSES	3,481,196	-	30,821	25,000				130,000		3,667,017
NET REVENUES/EXPENSES	(115,663)	-	-	(25,000)				(130,000)		(270,663)
ENDING CASH BALANCE	735,931	-	-	(25,000)				(130,000)		580,931

**CITY OF CARLSBAD
FY 2013-2014 BUDGET ADJUSTMENTS
4TH QTR**

		Current Budget	Change Budget	New Budget	Item #
24-0240-60025-000000	VEHICLE MAINTENANCE & REPAIR INCREASE TO ANTICIPATED ACTUALS	240,000	30,000	270,000	2
	TOTAL EXPENDITURES DEPT. 240 - SOLID WASTE		30,000		
24-0241-60305-000000	LANDFILL OPERATION & EQUIPMENT INCREASE TO ANTICIPATED ACTUALS	612,476	100,000	712,476	3
	TOTAL EXPENDITURES DEPT. 241 - SANDPOINT LANDFILL		100,000		
	TOTAL EXPENDITURES SOLID WASTE		130,000		
	NET INC/DEC SOLID WASTE		(130,000)		

**This item was not
available at the time
the Agenda packets
were compiled**

CITY OF CARLSBAD
PERSONNEL REPORT

July 8, 2014

APPOINTMENTS:

<u>NAME</u>	<u>DATE</u>	<u>DEPARTMENT</u>	<u>CLASSIFICATION</u>
Deanna Cavender	07/14/14	Permits, Eng. & Reg.	Code Enforcement Officer
Eydie Harrell	07/14/14	Permits, Eng. & Reg.	Code Enforcement Officer
Jazmin Martinez	07/14/14	Municipal Court	BPA Student

TERMINATIONS:

<u>NAME</u>	<u>DATE</u>	<u>DEPARTMENT</u>	<u>CLASSIFICATION</u>	<u>REASON</u>
Edwin O. Gonzalez	06/25/14	Airport	Foreman	Resigned

INTERNAL TRANSFERS AND PROMOTIONS:

<u>NAME</u>	<u>DATE</u>	<u>DEPARTMENT</u>	<u>CLASSIFICATION</u>
Patricia Carrasco	07/01/14	Finance	Executive Secretary
JoAnne Jaure	07/01/14	Finance	Account Clerk III
Eric L. Martinez	06/30/14	Parks	Caretaker
Scott F. Maxwell	07/01/14	Fire	Lieutenant/EMT-P
Dana Trevino	07/01/14	Finance	Account Clerk III
Michael A. Trujillo	07/01/14	Fire	Engineer/EMT-P
Todd R. Vannatter	07/01/14	Fire	Engineer/EMT-I
Larry G. Yturralde	07/01/14	Fire	Lieutenant/EMT-I

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

Steve McCutcheon, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Stephanie Shumsky, Planning Director

SUBJECT: Recommendation for Employment

DATE: July 3, 2014

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

General Information:

Name: Deanna Cavender Classification/Position: Code Enforcement

Department: Planning, Engineering & Regulation

<input checked="" type="checkbox"/> Regular	<input checked="" type="checkbox"/> Full-time	<input checked="" type="checkbox"/> Hourly \$ <u>21.00</u> per hour
<input type="checkbox"/> Seasonal	<input type="checkbox"/> Part-time	<input type="checkbox"/> Salary \$ _____ per annum
<input type="checkbox"/> Temporary	<input type="checkbox"/> On call	

Education Level:

<input type="checkbox"/> Associates Degree	<input checked="" type="checkbox"/> High School Diploma	<input type="checkbox"/> GED or equivalent
<input type="checkbox"/> Bachelors Degree	_____	
<input type="checkbox"/> Masters Degree	_____	
<input checked="" type="checkbox"/> Other	<u>some college classes in business at NMSU-C (1995-2001)</u>	

Employment:

Present or last Employer: MWI Oilfield Sundown, TX

From 2009 to present Classification: Office Manager

Duties: day-to-day operations, payroll, human resources, tax reporting, purchasing, DOT compliance, insurance, maintaining service agreements with customers, invoicing.

Related Experience: DOT compliance, reporting, record keeping, working with the public

Comments: _____

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

Steve McCutcheon, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Stephanie Shumsky, Planning Director

SUBJECT: Recommendation for Employment

DATE: July 3, 2014

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

General Information:

Name: Eydie Harrell Classification/Position: Code Enforcement

Department: Planning, Engineering & Regulation

<input checked="" type="checkbox"/> Regular	<input checked="" type="checkbox"/> Full-time	<input checked="" type="checkbox"/> Hourly \$ <u>21.00</u> per hour
<input type="checkbox"/> Seasonal	<input type="checkbox"/> Part-time	<input type="checkbox"/> Salary \$ _____ per annum
<input type="checkbox"/> Temporary	<input type="checkbox"/> On call	

Education Level:

<input checked="" type="checkbox"/> High School Diploma	<input type="checkbox"/> GED or equivalent
<input type="checkbox"/> Associates Degree	_____
<input type="checkbox"/> Bachelors Degree	_____
<input type="checkbox"/> Masters Degree	_____
<input type="checkbox"/> Other	_____

Employment:

Present or last Employer: State of NM - CYFD (Juvenile Reintegration Center)

From 2003 to present Classification: Steward

Duties: monitor clients, inventory, answer phone, secreary duties, order food, stock, paperwork and address situations as they arise

Related Experience: working with clients, paperwork, record keeping

Comments: _____

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

Jon R. Tully, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: David L. Redford, Municipal Judge

SUBJECT: Recommendation for Employment

DATE: June 24, 2014

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

General Information:

Name: Jazmin Martinez Classification/Position: B.P.A. Student

Department: Judicial

☐ Regular ☐ Full-time ☒ Hourly \$ 7.5 per hour
☐ Seasonal ☒ Part-time ☐ Salary \$ _____ per annum
☒ Temporary ☐ On call

Education Level:

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

Employment:

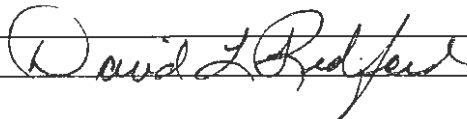
Present or last Employer: _____

From _____ to _____ Classification: _____

Duties: _____

Related Experience: _____

Comments: Has physical and office skills that can be helpful to the Municipal Court.



CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM PURCHASING RECOMMENDATION

Council Meeting Date: 7/08/14

Department: City Projects/Double Eagle	BY: Matt Fletcher, Purchasing Mgr.	Date: 7/2/14
SUBJECT: Services Description: On-Call Construction Quality Control Services for General Construction Projects and Double Eagle Waterline.		
SYNOPSIS: Qty <u>1</u> Total Est. Cost _____ Total Actual Cost _____ Budgeted Yes Est. City Share _____ Actual City Share _____ Account # _____ Account # _____ Account # _____ Account # _____ <div style="text-align: right; margin-top: 10px;">TOTAL _____ \$ 0.00</div>		
BACKGROUND, JUSTIFICATION AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) The City of Carlsbad solicited proposals for the provision of On-Call Construction Quality Control Services for general construction projects and the Double Eagle Waterline project. Two proposals were received from Smith Engineering and AMEC Environment & Infrastructure, Inc. AMEC Enviroment & Infrastructure is recommended for award with a point total of 94.25 out of a possible of 100 points. Smith Engineering scored 85.8 points.		
Requested action to be taken by Council: Advertise Invitation for Request for Proposal	Council Action Taken: Select one	Date:
Reviewed by City Administrator:		

POST BID/RFP RECOMMENDATION	Council Meeting Date: 07/08/2014
Requested action to be taken by Council: Award RFP Number 2014-10	Council Action Taken: Select one Date: 7-8-2014
ADDITIONAL INFORMATION: The City recommends awarding RFP 2014-10 to AMEC Environment & Infrastructure Inc., pending successful contract negotiation.	
Reviewed by City Administrator: /s/ Steve McCutcheon	

 ATTACHMENT(S): ☐ Specifications ☒ Bid/RFP Summary ☐ Other: _____

Evaluation Criteria

RFP # 2014-10

Construction Quality Control Services

Firm Name:	AMEC Enviroment & Infrastructure Albuquerque, NM	Smith Engineering Roswell, NM	
Point Category			
1. Specialized Services and Technical Competence			
15 points	13.0	13.0	
2. Capacity and Capability			
20 points	20.0	19.8	
3. Past Record of Performance			
10 points	8.8	10.0	
4. Familiarity with the Contracting Agency			
5 points	3.5	5.0	
5. Action Plan for Double Eagle Waterline Project			
10 points	9.0	9.5	
6. Proposed Fee Schedule for Testing and Services			
a) Services for general construction projects on-call			
20 points	20.0	14.3	
b) Services for Double Eagle Waterline Project			
20 points	20.0	14.3	
Total Points Possible = 100	94.25	85.80	

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM PURCHASING RECOMMENDATION

Council Meeting Date: 6/24/14

Department: Cemetery	BY: Matt Fletcher, Purchasing Mgr.	Date: 6/18/14
SUBJECT: Services Description: Grave Opening and Closing Services for Carlsbad Cemeteries		
SYNOPSIS: Qty <u>1</u> Total Est. Cost <u>\$ 96,000.00</u> Total Actual Cost <u>\$ 89,988.00</u> Budgeted Yes Est. City Share <u>\$ 96,000.00</u> Actual City Share <u>\$ 89,988.00</u> Account # <u>26-0260-60040</u> <u>\$ 96,000.00</u> Account # _____ Account # _____ Account # _____ TOTAL <u>\$ 96,000.00</u>		
BACKGROUND, JUSTIFICATION AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) The City of Carlsbad requested proposals for services to open and close graves for burials at City of Carlsbad Cemeteries. The City received one proposal from Garden Mart Inc. in the amount of \$7,499 per month, or \$89,988 annually. Garden Mart is the current contract holder.		
Requested action to be taken by Council: Other:	Council Action Taken: Select one	Date:
Reviewed by City Administrator:		

POST BID/RFP RECOMMENDATION	Council Meeting Date:	05/27/2014
Requested action to be taken by Council: Award RFP Number 2014-41	Council Action Taken: Select one	Date: 7-3-2014
ADDITIONAL INFORMATION: Given that only one proposal was received from the current contract holder and the proposed amount falls below the budgeted amount for this service for the 2014/15 fiscal year. It is recommended to award to Garden Mart Inc, pending successful contract negotiation.		
Reviewed by City Administrator: /s/ Steve McCutcheon		

ATTACHMENT(S): ☐ Specifications ☐ Bid/RFP Summary ☒ Other: Proposal Document

The Garden Mart Inc.

400 E. Hamilton

Carlsbad, NM 88220

Mark Walterscheid—Owner

575-8850773—Office

575-7061130—Cell

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke that ends in a small circle.

Proposer—Mark Walterscheid

The Garden Mart, Inc.

Address ---400 E. Hamilton

Carlsbad, New Mexico 88220

Telephone #--575-885-0773

575-706-1130 cell

575-887-5732 FAX

Corporation

State of Incorporation—New Mexico

Date of Incorporation—May 17, 2000

Names of Officers—

President—Mark Walterscheid

600 E. Hamilton,

Carlsbad, New Mexico 88220

Secretary—Mary Walterscheid

600 E. Hamilton

Carlsbad, New Mexico 88220

Treasurer—Mandy Funchess

7608 Rio Penasco Ct.

Albuquerque, New Mexico

87120

New Mexico Registered Agent- Mary Walterscheid

Home address: 400 Hamilton Street Carlsbad, NM

Organization plan for administration and maintenance services

Superintendent—Mark Walterscheid, degree in Agronomy NMSU 1983, farmed 700 acres of irrigated land for 5 years.

Assistant teacher Master Gardner Class- Eddy County Extension office. Excavation license in the State of New Mexico. License number 89218

Secretary—Mary Walterscheid

Business management experience for the past 35 years.

Foreman—Zach Walterscheid, Machine operator 5 years' experience.

Foreman--Robert Lopez, Machine operator specialist with 15 years' work experience with our corporation.

Experience of proposer in providing similar services:

***City of Carlsbad, 101 N. Halagueno St, Carlsbad, NM provided Cemetery burials and distermments for the City cemeteries.**

Proposer's understanding the scope of work

***As a local contractor providing the same excavation services for the City of Carlsbad, I am very aware of the city requirements for the opening and closing of the cemetery plots and cremations'. I have also disinterred many remains and casket burials. This was provided under the direct supervisor of many funeral homes. We also understand that the city now requires in this contract, the removal of all dirt from the grave area. This dirt will be moved out of sight and then returned after the funeral service is conducted. All dirt will be compacted as it is being placed into the grave. We have always used utmost professional care in the burials that we have performed. A respect to the family is always given.**

Proposers plan to perform services required by scope of work

***We will provide the services that we currently provide at the cemetery burial sites, and add the compacting and removal and replacement of the dirt.**

Specialized problem solving required in any phase of the Services required.

We have recently purchased a dump truck with hauling capabilities that will enable us to haul dirt away from the graveside. We also purchased an excavator instead of a backhoe to prevent soil compaction and the damage to the existing turf. We have recently acquired a compactor to compact the dirt in the grave. We have quickly and efficiently worked to resolve any concerns that families or funeral homes may have regarding the cemetery. We talk daily with the cemetery manager to insure that graves are marked in a timely manner. This allows us time to dig the graves and avoid any issues with possible rock, irrigation, and unknown burials. We will continue to attend cemetery board meetings.

Financial ability to perform services:

Our business has excellent financial stability. Our business was named the Eddy County New Mexico Small Business of the year, and the Carlsbad Chamber Business of the year. We have a long standing reputation of financial stability and a small Business within Carlsbad that shows longevity, and community Support.

Cost proposal and affordability:

7,499.00 Per month

Negotiable

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

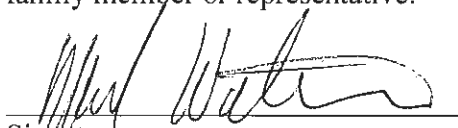
Signature

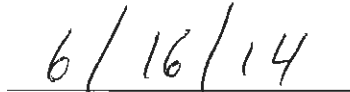
Date


Title (position)

--OR--

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


Signature


Date


Title (Position)

SPRINKLER CONTRACTOR LICENCE--89218

EXCAVATOR CONTRACTOR LICENCE—89218

COMERICAL PESTICIDE APPLICATOR LICENCE---55099

CRS# 02436414002

Certificate of Public Works Registration—
002513320120817



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/5/2014

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

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

PRODUCER Carlsbad Insurance 313 N. Canyon St. P O Box 490 Carlsbad NM 88220		CONTACT NAME: Juanita Chavez PHONE (A/C, No, Ext): (575) 887-1181 FAX (A/C, No): (575) 885-6583 E-MAIL ADDRESS:	
INSURED Garden Mart, Inc., The P.O. Box 5093 Carlsbad NM 88221		INSURER(S) AFFORDING COVERAGE INSURER A: Mountain States Indemnity NAIC # 10177 INSURER B: Mountain States Mutual INSURER C: Mountain State Mutual-Voluntary 14648 INSURER D: New Mexico Mutual 40627 INSURER E: INSURER F:	

COVERAGES**CERTIFICATE NUMBER:** 14-15**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY						EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X		CPP 0259188 01	5/9/2014	5/9/2015	MED EXP (Any one person) \$ 10,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS			BAP 0259189 01	5/9/2014	5/9/2015	BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
C	UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR					Medical payments \$ 5,000
	EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					EACH OCCURRENCE \$ 1,000,000
	DED	RETENTION \$	X	UMB 0259190 01	5/9/2014	5/9/2015	AGGREGATE \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N	N/A	18875.117	6/25/2013	6/25/2014	E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

CERTIFICATE HOLDER**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

David Long/VCL

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM PURCHASING RECOMMENDATION

Council Meeting Date: 07/08/14

Department: Streets	BY: Tom Carlson, Director of Public Works	Date: 06/23/14																												
SUBJECT: Services Description: PER and Final Design for Ligon Street																														
<table style="width:100%; border: none;"> <tr> <td style="width:15%;">SYNOPSIS:</td> <td style="width:25%;">Qty <u>1</u></td> <td style="width:25%;">Total Est. Cost <u>\$ 77,500.00</u></td> <td style="width:35%;">Total Actual Cost _____</td> </tr> <tr> <td></td> <td>Budgeted Yes</td> <td>Est. City Share <u>\$ 77,500.00</u></td> <td>Actual City Share _____</td> </tr> <tr> <td></td> <td>Account # <u>02-0002-84030</u></td> <td><u>\$ 775,000.00</u></td> <td></td> </tr> <tr> <td></td> <td>Account # _____</td> <td>_____</td> <td></td> </tr> <tr> <td></td> <td>Account # _____</td> <td>_____</td> <td></td> </tr> <tr> <td></td> <td>Account # _____</td> <td>_____</td> <td></td> </tr> <tr> <td align="right" colspan="2"></td> <td>TOTAL <u>\$ 775,000.00</u></td> <td></td> </tr> </table>			SYNOPSIS:	Qty <u>1</u>	Total Est. Cost <u>\$ 77,500.00</u>	Total Actual Cost _____		Budgeted Yes	Est. City Share <u>\$ 77,500.00</u>	Actual City Share _____		Account # <u>02-0002-84030</u>	<u>\$ 775,000.00</u>			Account # _____	_____			Account # _____	_____			Account # _____	_____				TOTAL <u>\$ 775,000.00</u>	
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	Account # _____	_____																												
	Account # _____	_____																												
		TOTAL <u>\$ 775,000.00</u>																												
BACKGROUND, JUSTIFICATION AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) The existing Ligon Street is a small road passing north of CARC Farm and entering Spring Hollow subdivision. The alignment of the street makes it possible to expand and extend the street to provide overflow relief for Callaway Drive and to open areas for development including the Municipal School System plans for a new Elementary School Complex and a possible new fire substation. This request is to advertise for Request for Proposals (RFP) from engineering firms to provide a Preliminary Engineering Report (PER) to determine the best options for the roadway alignment and to provide Final Engineering Design for the roadway. Upon completion, the project will be ready to open for construction bids.																														
Requested action to be taken by Council: Advertise Invitation for Request for Proposal	Council Action Taken: Select one	Date: 7-3-2014																												
Reviewed by City Administrator: /s/ Steve McCutcheon																														

POST BID/RFP RECOMMENDATION	Council Meeting Date:		
Requested action to be taken by Council: Select one	<table style="width:100%; border: none;"> <tr> <td style="width:50%;">Council Action Taken: Select one</td> <td style="width:50%;">Date:</td> </tr> </table>	Council Action Taken: Select one	Date:
Council Action Taken: Select one	Date:		
ADDITIONAL INFORMATION: 			
Reviewed by City Administrator:			

ATTACHMENT(S): ☐ Specifications ☒ Bid/RFP Summary ☐ Other: _____

**REQUEST FOR PROPOSALS
FOR
DESIGN PROFESSIONAL SERVICES**

RFP No. 2014-xx
PACKET No. _____



Project Name: **PER and Final Design for Ligon Street**

Contracting
Agency: City of Carlsbad

Address: 101 N. Halagueno,
P.O. Box 1569
Carlsbad, NM 88221-1569

Telephone: 575-887-1191

Date: **June 23, 2014**

Funding Type: **Legislative, State, Federal, Local**

This form was prepared by the City of Carlsbad, and is endorsed by the Professional Technical Advisory Board [composed of the Consulting Engineers Council of New Mexico, New Mexico society of Professional Engineers, the American Institute of Architects of New Mexico, the New Mexico society of Surveyors and Mappers, and the New Mexico Society of Landscape Architects, Local Government Division, Department of Finance and Administration, Rural Utility Service, U. S. Department of Agriculture, New Mexico Environmental Department and the New Mexico Finance Authority.

NOTICE OF REQUEST FOR PROPOSALS

Qualifications based competitive sealed proposals for design professional services will be received by the Contracting Agency, City of Carlsbad, for RFP No. 2014-xx

The Contracting Agency is requesting proposals for professional

- | | |
|--|---|
| <input type="checkbox"/> architectural service | <input checked="" type="checkbox"/> engineering services |
| <input type="checkbox"/> surveying services | <input type="checkbox"/> landscape architectural services |
| <input type="checkbox"/> planning services | |

for: PER and Final Design for Ligon Street

Project No. N/A

Proposals will be received at City of Carlsbad, Purchasing Department 101 N Halagueno, Carlsbad, NM 88220 or P.O. Box 1569, Carlsbad, NM 88221-1569 until August 4, 2014 at 5:00 pm. Copies of the Request for Proposals can be obtained in person at the office of the Purchasing Department, at the City of Carlsbad, 101 N. Halagueno, Carlsbad, NM or will be mailed upon written or telephone request to Purchasing Department at (575) 887-1191 extension 7905.

A Pre-Proposal Conference ☐ will ☒ will not be held.

PURCHASING AGENT:

Steve McCutcheon

Date _____

for Contracting Agency's Use Only)

Newspaper : _____ Publish: _____ P.O. No. _____

Newspaper: _____ Publish: _____ P.O. No. _____

Newspaper: _____ Publish: _____ P.O. No. _____

[Note: This Notice is issued pursuant to the requirements of § 13-1-104 NMSA 1978 and must be published not less than 10 calendar days prior to the date set for the receipt of proposals (§ 13-1-113) and published in a newspaper of general circulation in the area..]

1. PROJECT DESCRIPTION

The scope of work for this project is to provide a Preliminary Engineering Report (PER) for Ligon Street including the following engineering services, and to provide the Final Engineering Design and Construction Specification package for construction phase.

Provide PER for the best option to create a new street in the northern part of Carlsbad to utilize existing portions of Ligon Street and to continue past the northern portion of Quail Hollow Subdivision and cross the Carlsbad Irrigation District (CID) Main Canal and to connect with Callaway Drive. Include Alignment Study, ROW Study, Environmental Study, concept design with alternates and cost comparisons, and other pertinent information you may need to complete the work.

The Alignment Study should include planning and working with the following entities. Work with the owners and interested parties near the intersection of Cherry Lane and Callaway Drive to improve the intersection alignment. Work with owners to widen the ROW along existing Ligon Street north of the CARC Farm area. Work with Spring Hollow developer to improve roadway alignment through that subdivision. Work with Quail Hollow developer to provide added point of egress from that subdivision. Work with CID to allow a new bridge crossing for the Main Canal. Work with other land owners to determine the best alignment for future development and obtain new ROW back to Callaway Drive. Work with the engineer now improving Callaway Drive to provide the new intersection location. Work with Carlsbad water, sewer, power, communication, and other providers to make provision for new utility services as needed.

The Right-Of-Way Study should include determining ownership of the various lands and determining existing ROW and needed ROW. The current owners should be contacted and informed of the proposed plan in order to determine if transfer can be beneficial. Provide for future ROW connection to the intersection at Pierce and Skyline Drive. Provide surveying and ownership transfer papers ready for signature. It is preferable to provide deed ownership rather than easement on all areas.

The Environmental Study should include all necessary components required for federal funding. Storm water and drainage study should be included. Flood Plain restrictions should be considered. The PER document should present all recommendations, conclusions, and data such that the next phase of roadway design can progress seamlessly.

The Final Design and Construction Specification portion will include design drawings ready for construction and a complete specification package ready for construction bids. This work also includes bid opening, change orders, and request for information services as well as pay application approval.

2. SCOPE OF WORK

The Offeror shall perform the following professional services:

2.1 Provide standard **Basic Design Services**, consisting of:

Architects/Landscape Architects

- ☐ Programming Phase
- ☐ Schematic Phase
- ☐ Design Development Phase
- ☐ Construction Document Phase
- ☐ Bidding and Negotiations Phase
- ☐ Construction Administration Phase
- ☐ Post-Construction Phase

Engineers

- ☐ Study and Report Phase (PER)
- ☒ Preliminary Design Phase
- ☒ Final Design Phase
- ☐ Bidding and Negotiations Phase
- ☐ Construction Phase
- ☐ Operation Phase

Surveyors

- ☐ Property Boundary Survey
- ☐ Topographic Survey
- ☐ Easement Survey
- ☐ Right-of-Way Survey
- ☐ Inspection Report

Planning Studies

- ☐ Comprehensive Plan
- ☐ Strategic (i.e. issue specific) Plan
- ☐ Mapping and/or Zoning
- ☐ Other Planning Tasks

Additional Services

- ☐ Environmental Documentation
- ☐ Permitting
- ☐ Grant Administration
- ☐ Right of Way Acquisition

2.2 ☐ **Periodic** or ☐ **Full-time** on-site observation during construction,

2.3 Other (list):

- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

INSTRUCTIONS TO OFFERORS

1. DEFINITIONS AND TERMS

- 1.1 **Addendum:** a written or graphic instrument issued prior to the opening of Proposals which clarifies, corrects, or changes the Request for Proposals. Plural: addenda.
- 1.2 **Consultant:** means the Successful Offeror awarded the Agreement/Contract
- 1.3 **Determination:** means the written documentation of a decision of the procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (§ 13-1-52 NMSA 1978).
- 1.4 **Offeror:** any person, corporation or partnership legally licensed to provide design professional services in this state that chooses to submit a proposal in response to this request for Proposals.
- 1.5 **Procurement Manager:** means the person or designee authorized by the Contracting Agency to manage or administer a procurement requiring the evaluation of proposals.
- 1.6 **Request for Proposals:** or “RFP” means all documents, including those attached or incorporated by reference, used for soliciting proposals (§ 13-1-81 NMSA 1978).
- 1.7 **Responsible Offeror or Proposer:** means an offeror or proposer who submits a responsive proposal and who has furnished, when required, information and data to prove that the proposer’s financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal (§ 13-1-83 NMSA 1978).
- 1.8 **Responsive Offer or Proposal:** means an offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposal include, but are not limited to, price, quality, quantity, or delivery requirements (§ 13-1-85 NMSA 1978)
- 1.9 The terms **must, shall, will, is required or are required,** identify a mandatory item or factor that will result in the rejection of the offeror’s proposal.
- 1.10 The terms can, **may, should, preferably, or prefers** identify a desirable or discretionary item or factor.

2. REQUEST FOR PROPOSAL DOCUMENTS

2.1. COPIES OF REQUEST FOR PROPOSALS

- A. A complete set of Request for Proposals may be obtained from the Contracting Agent.
- B. A complete set of the Request for Proposals shall be used in preparing proposals. The Contracting Agency assumes no responsibility for error or misinterpretations resulting from the use of an incomplete set of the Request for Proposals.
- C. The Contracting Agency in making copies of Request for Proposals available on the above terms, does so only for the purpose of obtaining proposals on the Project and does not confer a license or grant for any other use.
- D. A copy of the RFP shall be made available for public inspection and shall be posted at the Administration Building of the Contracting Agency.

2.2. INTERPRETATIONS

- A. All question about the meaning or intent of the Request for Proposals shall be submitted to the Procurement Manager of the Contracting Agency in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the Contracting Agency as having received the Request for Proposals. Questions received less than five days prior to the date for opening of proposals will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect
- B. Offerors should promptly notify the Contracting Agency of any ambiguity, inconsistency, or error, which they may discover upon examination of the Request for Proposals.

2.3. ADDENDA

- A. Addenda will be mailed by certified mail with return receipt requested, by facsimile, by electronic mail, or hand delivered to all who are known by the Contracting Agency to have received a complete set of Request for Proposals
- B. Copies of Addenda will be made available for inspection wherever Requests for Proposals are on file for that purpose.

- C. No Addenda will be issued later than 5 days prior to the date for receipt of Proposals, except an Addendum withdrawing the Request for Proposals or one, which includes postponement of the date for receipt of Proposals.
- D. Each Offeror shall ascertain, prior to submitting the Proposal, that the Offeror has received all Addenda issued and shall acknowledge their receipt in the Proposal transmittal letter.

3. PROPOSAL SUBMITTAL PROCEDURES

3.1. NUMBER, FORM AND STYLE OF PROPOSALS

- A. Offerors shall provide **5 copies** of their proposal to the location specified on the cover page on or before the closing date and time for receipt of proposals.
- B. All proposals must be typewritten on standard 8 ½" x 11" paper and bound on the left-hand margin.
- C. All proposals must contain a maximum of **20 pages**, including title index etc., not including front and back covers.
- D. The proposal must be organized in the following format and must contain, as a minimum all listed item in the sequence indicated:
 - 1) Letter of Transmittal
 - 2) Response to Evaluation Criteria
 - 3) Other supporting or resource material.
- E. Any proposal that does not adhere to this format, and which does not address each specification and requirement within the RFP may be deemed non-responsive and rejected on that basis.
- F. Offerors may request in writing nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. A request that states that the entire proposal be kept confidential will not be acceptable. Only matters, which clearly are of confidential nature, will be considered.
- G. Any cost incurred by the Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror,

3.2. SUBCONSULTANTS

- A. The Offeror shall list and state the qualifications for each Sub-consultant the Offeror proposes to use for all subcontracted Work.

- B. The Offeror is specifically advised that any person or other party, to whom it is proposed to award a subcontract under this proposal, must be acceptable to the Contracting Agency after verification by the Contracting Agency of the current eligibility status including but not limited to suspension or debarment by the Contracting Agency.

3.3. PREQUALIFICATION PROCESS

A business may be pre-qualified by the Purchasing Agent as an Offeror for particular types of service. Mailing lists of potential Offerors shall include but shall not be limited to such pre-qualified businesses (§ 13-1-134 NMSA 1978). For purposes of this RFP, if pre-qualification is utilized, special instructions will be attached as an exhibit to this RFP.

3.4. DEBARRED OR SUSPENDED CONTRACTORS

A business (contractor, subcontractor or supplier) that has either been debarred or suspended pursuant to the requirements of § 13-1-177 through § 13-1-180, and §13-3-11 through § 13-4-17 NMSA 1978 as amended, shall not be permitted to do business with the Contracting Agency and shall not be considered for award of the contract during the period for which it is debarred or suspended with the Contracting Agency.

3.5. SUBMITTAL OF PROPOSAL

- A. Proposals shall be submitted at the time and place indicated in the Notice of Request for Proposal and shall be included in an opaque sealed envelope marked with the Project title and name and address of the Offeror and accompanied by the documents listed in the Request for Proposal.
- B. The envelope shall be addressed to the Purchasing Agent/Procurement Officer of the Contracting Agency. The following information shall be provided on the front lower left corner of the Bid envelope: Project title, Project No., Request for Proposal number, date of opening, and time of opening. If the Proposal is sent by mail, the sealed envelope shall have the notation "SEALED PROPOSAL ENCLOSED" on the face thereof.
- C. Proposals received after the date and time for receipt of Proposals will be returned unopened.
- D. The Offeror shall assume full responsibility for timely delivery of proposals at the Purchasing

Agent's office, including those proposals submitted by mail. Hand delivered proposals shall be submitted to the Purchasing Agent or the Purchasing Agent's designee and will be clocked in/time stamped at the time received, which must be prior to the time specified.

- E. After the date established for receipt of proposal, a register of proposals will be prepared which includes the name of each Offeror, a description sufficient to identify the service, the names and addresses of the required witnesses and such other information as may be specified by the Purchasing Agent.
- F. Oral, telephonic, or telegraphic proposals are invalid and will not receive consideration.

3.6. CORRECTION OR WITHDRAWAL OF PROPOSALS

- A. A Proposal containing a mistake discovered before proposal opening may be modified or withdrawn by an Offeror prior to the time set for proposal opening by delivering written or telegraphic notice to the location designated in the Request for Proposals as the place where Proposals are to be received.
- B. Withdrawn Proposals may be resubmitted up to the time and date designated for the receipt of Proposals, provided they are then fully in conformance with the Request for Proposals.

3.7. NOTICE OF CONTRACT REQUIREMENTS BINDING ON OFFEROR

- A. In submitting this proposal, the Offeror represents that the Offeror has familiarized himself with the nature and extend of the Request for Proposals dealing with federal, state and local requirements, which are a part of these Request for Proposals.
- B. Laws and Regulations: The Offerors' attention is directed to all applicable federal and state laws, local ordinances and regulations and the rules and regulations of all authorities having jurisdiction over the services of the Project.

3.8. REJECTION OR CANCELLATION OF PROPOSALS

This Request for Proposals may be canceled, or any or all proposals may be rejected in whole or in part, when it is in the best interest of the Contracting Agency. A determination containing the reasons

therefore shall be mad part of the project file (§ 13-1-131 NMSA 1978).

4. CONSIDERATION OF PROPOSAL

4.1. RECEIPT, OPENING AND RECORDING

- A. Proposals received on time will be opened publicly or in the presence of one or more witnesses and the name of the Offeror and address will be read aloud.
- B. The names of all businesses submitting proposals the names of all businesses, if any, selected for interview shall be public information. After an award has been made, final ranking and evaluation scores for all proposals shall become public information (§ 13-1-120 NMSA 1978). The contents of any proposal shall not be disclosed so as to be available to competing Offerors during the negotiation process (§ 13-1-116 NMSA 1978).

4.2. PROPOSAL EVALUATION

- A. Proposals shall be evaluated on the basis of demonstrated competence and qualifications for the type of service required, and shall be based on the evaluation factors set in this RFP. For the purpose of conducting discussions, proposals may initially be classified as:
 - 1) Acceptable,
 - 2) Potentially acceptable, that is, reasonably assured of being made acceptable, or
 - 3) Unacceptable (Offerors whose proposals are unacceptable shall be notified promptly).
- B. The Contracting Agency shall have the right to waive technical irregularities in the form of the Proposal of the Offeror, which do not alter the quality or quantity of the services (§ 13-1-132 NMSA 1978).
- C. If an Offeror who otherwise would have been awarded a contract is found not to be a responsible Offeror; a Determination that the Offeror is not a responsible Offeror, setting forth the basis of the finding, shall be prepared by the Purchasing Agent/Procurement Manager. The unreasonable failure of the Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a responsible Offeror (§ 13-1-133 NMSA 1978). Businesses, which have not been selected, shall be so notified in writing within twenty-one days after an award is made (§ 13-1-12- NMSA 1978).
- D. Selection Process: (§ 13-1-120 NMSA 1978)

- 1) An evaluation committee composed of representatives selected by the Contracting Agency will perform an evaluation of proposals. The committee shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services
- 2) If fewer than three businesses have submitted a statement of qualifications for a particular project, the committee may:
 - a) Rank in order of qualifications and submit to the local governing body for award those businesses which have submitted a statement of qualifications; or
 - b) Recommend termination of the selection process and sending out of new notices of proposed procurement pursuant to § 13-1-104 NMSA 1978.

4.3. NEGOTIATIONS (§ 13-1-122 NMSA 1978)

- A. The Contracting Agency's designee shall negotiate a contract with the highest qualified business for the services contemplated under this RFP at compensation determined in writing to be fair and reasonable. In making this decision, the designee shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services.
- B. Should the designee be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The designee shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee shall formally terminate negotiations with that business.
- C. The designee shall then undertake negotiations with the third most qualified business.
- D. Should the designee be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications and the designee shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposal is initiated.

- E. The Contracting Agency shall publicly announce the business selected for award.

4.4. NOTICE OF AWARD

After award by the local governing body, a written notice of award shall be issued by the Contracting Agency after review and approval of the Proposal and related documents by the Contracting Agency with reasonable promptness (§ 13-1-100 and § 13-1-108 NMSA 1978).

5. POST-PROPOSAL INFORMATION

5.1. PROTESTS

- A. Any Offeror who is aggrieved in connection with a solicitation or award of an Agreement may protest to the Contracting Agency's Purchasing Agent and the Chief Administrator/Clerk in accordance with the requirements of the Contracting Agency's Procurement Regulations and the State Procurement Code. The protest should be made in writing within 24 hours after the facts or occurrences giving rise thereto, but in no case later than 15 calendar days after the fact or occurrences giving rise thereto (§ 13-1-172 NMSA 1978).
- B. In the event of a timely protest under this section the Purchasing Agent and the Contracting Agency shall not proceed further with the procurement unless the Purchasing Agent makes a determination that the award of Agreement is necessary to protect substantial interests of the Contracting Agency (§ 13-1-173 NMSA 1978).
- C. The Purchasing Agent or the Purchasing Agent's designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (§ 13-1-174 NMSA 1978).
- D. The Purchasing Agent or the Purchasing Agent's designee shall promptly issue a determination relating to the protest. The determination shall:
 - 1) State the reasons for the action taken; and
 - 2) Inform the protestant of the right to judicial review of the determination pursuant to §13-1-183 NMSA 1978
- E. A copy of the determination issued under §13-1-175 NMSA 1978 shall immediately be mailed to the protestant and other Offerors involved in the procurement (§ 13-1-176 NMSA 1979).

5.2. EXECUTION AND APPROVAL OF AGREEMENT

The Agreement shall be signed by the Successful Offeror and returned within an agreed time frame after the date of the Notice of Award. No Agreement shall be effective until it has been fully executed by all of the parties thereto.

5.3. NOTICE TO PROCEED

The Contracting Agency will issue a written Notice to Proceed to the Consultant.

5.4. OFFEROR'S QUALIFICATION STATEMENT

Offeror to whom award of an Agreement is under consideration shall submit, upon request, information and data to prove that their financial resources, production or services facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services described in the Request for Proposals (§13-1-82 NMSA 1978).

6. OTHER INSTRUCTION TO OFFERORS

(NONE)

GENERAL TERMS AND CONDITIONS

1. GOVERNING LAW

The Agreement shall be governed exclusively by the laws of the State of New Mexico as the same from time to time exists.

2. INDEPENDENT CONTRACTORS

The Consultant (design professionals) and the Consultant's agents and employees are independent Contractors and are not employees of the Contracting Agency. The Consultant and Consultant's agents and employees shall not accrue leave, retirement, insurance, bonding, use of Contracting Agency vehicles, or any other benefits afforded to employees of the Contracting Agency as a result of the Agreement.

3. BRIBES, GRATUITIES AND KICK BACKS

Pursuant to §13-1-191 NMSA 1978, reference is hereby made to the criminal law of New Mexico (including § 30-14-1, § 30-24-2, and § 30-41-1 through § 30-41-3 NMSA 1978) which prohibits bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (§ 13-1-28 through §13-1-199 NMSA 1978) imposes civil and criminal penalties for its violation.

4. STANDARD FORM OF AGREEMENT BETWEEN CONTRACTING AGENCY AND CONSULTANT (Design Professional)

The form of agreement required by the funding agency or issued by the Contracting Agency will be used for this project. Copies are available and may be reviewed upon request.

5. FEES

A lump sum fixed fee for Basic Service will be negotiated with the Offeror selected.

6. FUNDING

This solicitation is subject to the availability of funds to accomplish the work

7. DESIGN PROFESSIONAL REGISTRATION

All work shall be under the direction of the applicable design professional legally licensed and registered by the state.

8. PROFESSIONAL LIABILITY INSURANCE

The Offeror ☒ **will** ☐ **will not** be required to carry professional liability (errors and omissions) insurance. If required to carry such insurance, the amount of coverage will be \$1,000,000.

NOTE TO OWNER REGARDING EVALUATION CRITERIA

The Request for Proposal must include each of the following evaluation criteria* as required by statute (13-1-120.B NMSA 1978). Each proposal submitted must address the required evaluation criteria. Based on the complexity of the project, the owner may add additional items of concern. The Owner must include a weight factor with each of the evaluation criteria to communicate to the Offerors the relative importance of each.

EVALUATION CRITERIA:

1. **Specialized Design and Technical Competence***

Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required.

2. **Capacity and Capability***

Capacity and capability of the business to perform the work, including any specialized services, within the time frame

3. **Past Record of Performance***

Past record of performance on contracts with government agencies or private industry with respect to such factor as control of costs, quality of work an ability to meet schedules.

4. **Familiarity with the Contracting Agency***

Proximity to or familiarity with the area in which the project is located.

5. **Work to be done in New Mexico***

The amount of design work that will be produced by a New Mexico business within this state. Note that this criterion is not allowed for federally funded projects.

6. **Current Volume of Work with the Contracting Agency not 75% Complete***

The volume of work previously done for the entity requesting proposals which is not seventy-five percent complete with respect to basic professional design services [through bidding phase], with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring the interest of the public in having available a substantial number of qualified businesses is protected; however, that the principal of selection of the most highly qualified business in not violated.

Firm should indicate the volume of work they currently have underway with the Contracting Agency that is less than 75 percent complete. The purpose of this criterion is to help distribute projects among qualified firms. An example of how points can be assigned is provided below:

Value of work not yet completed on projects that are not 75 % Complete	Points to be allowed for this item
None	5
\$1 to \$25,000	4
25,001 to 50,000	3
50,001 to 75,000	2
75,001 to 100,000	1
100,001 or more	0

7. **Other Contracting Agency Criteria**

The Owner may add additional elements of interest, such as ability to conduct public meetings and assign points according to importance. Note: Price cannot be a factor.

EVALUATION CRITERIA

CRITERIA AND POINT VALUES

OFFERORS:

Proposal must address each of the following criteria. Each proposal may be awarded points up to the amount listed.

RATING SHEET FOR:		
Application _____		
ITEM	POSSIBLE POINTS (Example)	SCORE
PLANNING & DESIGN SERVICES		
1. Specialized Planning & Design and Technical Competence*	<u>30</u> (30)	
2. Capacity and Capability*	<u>30</u> (30)	
3. Past Record of Performance*	<u>20</u> (20)	
4. Familiarity with the Contracting Agency*	<u>15</u> (10)	
5. Current volume of work with the Contracting Agency that is less than 75% complete*	<u>5</u> (5)	
6. The amount of design work to be done in New Mexico*	N/A (5)	
7. Other	_____	
8. Other	_____	
SUBTOTAL PLANNING & DESIGN SERVICES	<u>100</u> (100)	

*Items required by statute (13-1-120.B NMSA 1978)

ITEM	POSSIBLE POINTS (Example)	SCORE
CONSTRUCTION SERVICES		
1. Specialized construction management experience	<u>N/A</u> (20)	
2. Specialized experience with start up assistance to the Owner of new facilities.	<u>N/A</u> (15)	
3. Capacity and capability of the consultant to perform the work within the Owner's timeframe.	<u>N/A</u> (15)	
4. History of past performance on the three similar projects itemized in PLANNING & DESIGN SERVICES in Item Number 1, including the record of bid amount versus final close out contract amount.	<u>N/A</u> (10)	
5. History of claims on three similar construction projects and their resolution. The consultant should detail their claims avoidance approach and construction management philosophy.	<u>N/A</u> (10)	
6. Other	_____	
7. Other	_____	
SUBTOTAL CONSTRUCTION SERVICES	<u>N/A</u> (70)	
TOTAL SCORE	100 (170)	

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

The following definitions apply:

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

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

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

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution (s) Made: _____

Amount (s) of Contribution (s) _____

Nature of Contribution (s) _____

Purpose of Contribution (s) _____

Signature

Date

Title (position)

--OR --

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

Signature

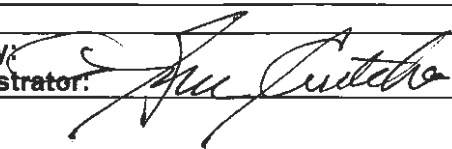
Date

Title (Position)

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM

Council Meeting Date: July 8, 2014

DEPARTMENT: Transit	BY: Jo Ann Moore	DATE: June 26, 2014											
SUBJECT: Memorandum of Understanding between the Administrative Office of the Courts and the City of Carlsbad/Carlsbad Municipal Transit System													
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) This is the Memorandum of Understanding between the Administrative Office of the Courts and the City of Carlsbad Municipal Transit System for FY 2014-2015. The Administrative Office of the Courts has received funds to be used towards the operating cost of the Eddy County Magistrate DWI Drug Court Program. The AOC will transfer \$800.00 of those funds to Carlsbad Municipal Transit for transportation. Carlsbad Municipal Transit will provide transportation services for EDWI program participants within the Eddy County area of coverage.													
DEPARTMENT RECOMMENDATION: If it is the pleasure of the City Council, it is recommended that the Memorandum of Understanding be approved.													
BOARD/COMMISSION/COMMITTEE ACTION: <table border="0"> <tr> <td><input type="checkbox"/> P & Z</td> <td><input type="checkbox"/> Lodgers Tax Board</td> <td><input type="checkbox"/> Cemetery Board</td> <td rowspan="2">} <input type="checkbox"/> APPROVED</td> </tr> <tr> <td><input type="checkbox"/> Museum Board</td> <td><input type="checkbox"/> San Jose Board</td> <td><input type="checkbox"/> Water Board</td> </tr> <tr> <td><input type="checkbox"/> Library Board</td> <td><input type="checkbox"/> N. Mesa Board</td> <td><input type="checkbox"/> Beautification Committee</td> <td>} <input type="checkbox"/> DISAPPROVED</td> </tr> </table>			<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	} <input type="checkbox"/> APPROVED	<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> Beautification Committee	} <input type="checkbox"/> DISAPPROVED
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<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> Beautification Committee	} <input type="checkbox"/> DISAPPROVED										
Reviewed by:  City Administrator:		Date: 7-3-14											

ATTACHMENT: Memorandum of Understanding

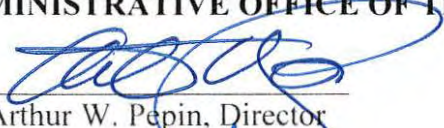
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) between the Administrative Office of the Courts ("AOC") and Carlsbad Municipal Transit System (CMTS) is entered into effective July 1, 2014.

Whereas, the AOC has received funds to apply towards operating costs of the Eddy County Magistrate DWI Drug Court Program (EDWI) in Carlsbad, New Mexico and whereas, the AOC wishes to transfer a specific portion on those funds to CMTS for any transportation costs incurred as a result of participant in the EDWI program, the parties agree as follows:

1. CMTS shall provide transportation services to the EDWI program participants within the Eddy County area of coverage as needed for program requirements.
2. These services shall be provided via van/bus shuttles within the boundaries of Eddy County and according to the rules set forth by CMTS. Program participants must present a voucher issued by the program authorizing the purchase of a bus pass.
3. This Memorandum of Understanding will be effective July 1, 2014 and will terminate June 30, 2015.
4. This Memorandum of Understanding shall not exceed \$800.00 (eight hundred dollars).
5. This Memorandum of Understanding may be amended at any time by written agreement of the parties.
6. The AOC shall reimburse CMTS for bus passes as a result of an invoice for the total amount purchased.
7. The terms of this MOU are contingent upon sufficient for the performance of this MOU. If sufficient funds and authorization are not available, this MOU shall terminate immediately upon written notice being given by the AOC to CMTS. The AOC's decision as to whether sufficient funds are available shall be accepted by the CMTS and shall be final.

ADMINISTRATIVE OFFICE OF THE COURTS

By: 
Arthur W. Pepin, Director

6/18/2014
Date

Approved: 
Fern Goodman, General Counsel

6-17-14
Date

CARLSBAD MUNICIPAL TRANIST SYSTEM

By: _____

Date

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM

Council Meeting Date: 7/08/14

DEPARTMENT: Police	BY: Kent Waller <i>DKW</i> <i>07/02/14</i>	DATE: 7/02/14
SUBJECT: DWI/Drug Court Program		
<p>BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)</p> <p>The Administrative Office of the Courts (AOC) and the Carlsbad Police Department (CPD) have entered into a Memorandum of Understanding (MOU), effective July 1, 2014.</p> <p>The CPD shall provide a member of law enforcement, specifically Assistant Chief Kevin Florez, or an approved designee, to serve on the Eddy Magistrate DWI/Drug Court Team. The AOC shall reimburse the CPD for overtime incurred as a result of participation in the Eddy Magistrate DWI/Drug Court program, in an amount not to exceed \$700.00 inclusive of gross receipts tax. This MOU will be effective July 1, 2014 and will terminate June 30, 2015.</p>		
DEPARTMENT RECOMMENDATION: Recommended for approval.		
BOARD/COMMISSION/COMMITTEE ACTION:		
<input type="checkbox"/> P & Z <input type="checkbox"/> Museum Board <input type="checkbox"/> Library Board	<input type="checkbox"/> Lodgers Tax Board <input type="checkbox"/> San Jose Board <input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> Cemetery Board <input type="checkbox"/> Water Board <input type="checkbox"/> _____ Committee
		<input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED
Reviewed by: <i>[Signature]</i> City Administrator:		Date: 7-3-14

ATTACHMENT(S): Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) between the Administrative Office of the Courts (AOC) and the Carlsbad Police Department (CPD) is entered into effective July 1, 2014.

Whereas, the AOC has received funds to apply towards operating costs of the Eddy County Magistrate DWI/Drug Court program. Whereas, the Eddy County DWI Drug Court program needs a member of Law Enforcement to serve as a member of the Eddy County DWI Drug Court Team.

Therefore, the parties agree as follows:

1. The CPD shall provide a member of law enforcement to serve on the Eddy County DWI Drug Court Team. This law enforcement officer will also provide the team with expert consultation services in the area of law enforcement.
2. The law enforcement officer shall participate in all Eddy County DWI Drug Court Team matters, including, but not limited to, planning, procedural establishment, organization structure, confidentiality agreements, bi-weekly staffing and meeting attendance as needed, bi-weekly hearings, field visits to the participants home, program evaluation, training opportunities, and discussions of future program expansion.
3. The AOC shall reimburse the CPD for any overtime incurred as a result of participation in the Eddy County Magistrate DWI Drug Court program, in an amount not to exceed Seven Hundred Dollars (\$700) inclusive of gross receipts tax. The CPD shall provide the AOC with a written statement of expenses on a monthly basis for services provided at the overtime rate per hour, plus gross receipts tax paid by the CPD. Documentation of the actual work performed will accompany the written statement of expenditures of funds. The AOC will reimburse the CPD upon receipt of the monthly written statement.
4. This Memorandum of Understanding may be amended at any time by written agreement of the parties.
5. This Memorandum of Understanding will be effective July 1, 2014 and will terminate June 30, 2015.
6. The terms of this MOU are contingent upon sufficient funds for the performance of this MOU. If sufficient funds and authorization are not available, this MOU shall terminate immediately upon written notice being given by the AOC to the CPD. The AOC's decision as to whether sufficient funds are available shall be accepted by the CPD and shall be final.

ADMINISTRATIVE OFFICE OF THE COURTS

By: 

Arthur W. Pepin, Director


Date Signed

Carlsbad Police Department

By: 


Date Signed

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This Memorandum of Understanding (MOU) between the Administrative Office of the Courts (AOC) and the Carlsbad Police Department (CPD) is entered into effective July 1, 2014.

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ADMINISTRATIVE OFFICE OF THE COURTS

By: 

Arthur W. Pepin, Director


Date Signed

Carlsbad Police Department

By: 


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3/10
6-17-15
ADMINISTRATIVE OFFICE OF THE COURTS

By: 

Arthur W. Pepin, Director

6/18/2014
Date Signed

Carlsbad Police Department

By: 

07/02/14
Date Signed

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7/10
6-12-15
ADMINISTRATIVE OFFICE OF THE COURTS

By: _____

Arthur W. Pepin, Director

6/18/2014
Date Signed

Carlsbad Police Department

By: _____

07/02/14
Date Signed

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7/10
6-17-15
ADMINISTRATIVE OFFICE OF THE COURTS

By: 

Arthur W. Pepin, Director

6/18/2014
Date Signed

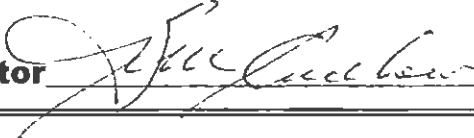
Carlsbad Police Department

By: 

07/02/14
Date Signed

CITY OF CARLSBAD
AGENDA BRIEFING MEMORANDUM

Council Meeting Date: 8 July 2014

DEPARTMENT: Legal	BY: E. Riordan	DATE: 30 June 2014											
SUBJECT: Consider Approval of Agreement Between the City and Gregory Rockhouse Ranch, Inc. Regarding Use of a 10,000 Barrel Reservoir.													
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) Within the City's Double Eagle water system is a 10,000 barrel water tank. It is north of the Lovington / Artesia highway. The City does not use the tank at this time. The tank is older and in poor shape. It needs extensive work before it could be put to use. The City sought proposals to lease the tank in RFP No. 2014-23. Gregory Rockhouse Ranch, Inc. submitted a proposal. Council awarded the RFP to Gregory Rockhouse Ranch, Inc. during its meeting on June 24, 2014. Under the terms of the proposed agreement, Gregory would be responsible for applying for and obtaining the State Land Office's permission to use the reservoir. It would also have to repair the tank to American Water Works Association Standards. The repairs, construction, improvements, and additions to the tank would become the City's property. Gregory would pay the City \$500 / year and would be responsible for any costs or fees due to the State Land Office for the tank and Gregory's use of it. The agreement is for five years.													
DEPARTMENT RECOMMENDATION: Approve the proposed agreement.													
BOARD/COMMISSION/COMMITTEE ACTION: <table style="width:100%"><tr><td><input type="checkbox"/> P & Z</td><td><input type="checkbox"/> Lodgers Tax Board</td><td><input type="checkbox"/> Cemetery Board</td><td rowspan="2">} <input type="checkbox"/> APPROVED</td></tr><tr><td><input type="checkbox"/> Museum Board</td><td><input type="checkbox"/> San Jose Board</td><td><input type="checkbox"/> Water Board</td></tr><tr><td><input type="checkbox"/> Library Board</td><td><input type="checkbox"/> North Mesa Board</td><td><input type="checkbox"/> _____ Committee</td><td>} <input type="checkbox"/> DISAPPROVED</td></tr></table>			<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	} <input type="checkbox"/> APPROVED	<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	<input type="checkbox"/> Library Board	<input type="checkbox"/> North Mesa Board	<input type="checkbox"/> _____ Committee	} <input type="checkbox"/> DISAPPROVED
<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	} <input type="checkbox"/> APPROVED										
<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board											
<input type="checkbox"/> Library Board	<input type="checkbox"/> North Mesa Board	<input type="checkbox"/> _____ Committee	} <input type="checkbox"/> DISAPPROVED										
Reviewed by: City Administrator  Date: <u>6/30/14</u>													

ATTACHMENT(S):

Agreement Between the City and Gregory Rockhouse Ranch, Inc. Regarding Use of a 10,000 Barrel Reservoir

**AGREEMENT BETWEEN THE CITY OF CARLSBAD AND
GREGORY ROCKHOUSE RANCH, INC. REGARDING
USE OF A 10,000 BARREL RESERVOIR**

THIS AGREEMENT is entered into this ____ day of _____, 2014 by and between the CITY OF CARLSBAD, New Mexico, a municipal corporation (hereinafter referred to as "City") and the GREGORY ROCKHOUSE RANCH, INC., a New Mexico corporation, (hereinafter referred to as "Gregory").

WHEREAS, the City of Carlsbad owns and operates an industrial water system commonly known as the Double Eagle Water System; and

WHEREAS, the Double Eagle Water System includes a water tank commonly known as the 10,000 barrel reservoir in Eddy County, NE1/4, NE1/4 Section 12, Township 17 South, Range 28 East, and more particularly shown on Exhibit "A" attached hereto and incorporated herein, (hereinafter referred to as "the Reservoir"); and

WHEREAS, the City does not currently use the Reservoir for water storage;

WHEREAS, in RFP 2014-23 the City sought proposals for the lease of the Reservoir; and

WHEREAS, Gregory Rockhouse Ranch, Inc. was the only respondent to the request; and

WHEREAS, the parties wish to enter into a lease of the Reservoir.

NOW THEREFORE, the parties, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, agree as follows:

1. **Use of the Reservoir.** Upon Gregory's performance of the terms and covenants of this Agreement, the City hereby agrees to permit Gregory to use the Reservoir to store water for resale by Gregory to oil and gas operations in the area. This Agreement includes only the Reservoir itself. It does not include the use of any pipes or valves currently at the Reservoir site nor does it include the provision or use of any City water.

2. **AS IS Condition of the Reservoir.** Prior to the commencement of this Agreement, Gregory has fully examined and inspected the Reservoir to its satisfaction, and all fixtures, improvements, and appurtenances to it, if any. Gregory found the Reservoir to be in poor condition and in need of repair before it can be used. Gregory accepts the Reservoir and such fixtures, improvements, and appurtenances in their existing condition and state of repair. Gregory accepts them in an **AS IS CONDITION**. Gregory agrees that no representations, statements, or warranties, express or implied, have been made by or on behalf of the City in any respect thereto, including, but not limited to their suitability for any purpose, and the City shall in no event be liable for any latent defects.

1 3. **Requirements Prior to Use of the Reservoir.** Before Gregory may make any use of the
2 Reservoir:

3 A. **SLO Approval.** Prior to any use of the Reservoir, Gregory shall apply for and obtain
4 the written approval of the New Mexico State Land Office of its use of the Reservoir
5 pursuant to this Agreement. Gregory shall provide the City with a copy of its application to
6 the State Land Office and the written approval or other response of State Land Office. If the
7 State Land Office does not grant its approval, this Agreement shall terminate without penalty
8 to either party.

9 B. **Repair to Reservoir.** Gregory shall repair the Reservoir to meet federal, state, and
10 City drinking water standards. Such work shall be done in complete accordance with all
11 applicable standards of the American Water Works Association (“AWWA”). All repair
12 work shall be completed within sixty (60) days of the commencement of this Agreement.
13 The cost of any and all repairs and maintenance shall not be credited towards any rent or
14 payment due to the City or to a third party, and such costs shall not be refunded to Gregory
15 at the termination of this Agreement.

16 C. **Pipeline Installation.** Gregory shall install any and all pipelines into or out of the
17 Reservoir in compliance with the lease held by the City from the State Land Office.

18 D. **Cut Off Valve and Back Flow Preventer.** Gregory shall verify that the existing cut
19 off valve and a back flow preventer on its side of the water meter are of the proper size and
20 in proper working condition to meet City standards. Gregory shall maintain the cut off valve
21 and back flow preventer in proper working order.

22 E. **Air Gaps.** Gregory shall install an air gap at the Reservoir and shall require all those
23 taking water from the Reservoir to install air gaps at the water’s point of discharge at all
24 storage reservoirs. Gregory shall maintain all air gaps in proper working order and shall
25 require those taking water from the Reservoir to also so maintain all air gaps.

26
27 4. **Use of the Reservoir.**

28 A. **Permitted Uses.** Gregory shall have the use of the Reservoir solely for the storage
29 of water for resale to oil and gas operations in the area. Gregory shall not deliver water at
30 the Reservoir. Gregory shall transport the water stored in the Reservoir to another site or
31 sites for delivery. Gregory shall not engage in any use of the Reservoir which is not directly
32 related to that permitted use without obtaining the prior written approval of the City
33 Administrator. Such additional authorized uses, if any, shall be subject to those terms and
34 conditions as may be set forth in the written approval. All activities at the Reservoir shall
35 be done in compliance with the lease agreement between the City and the State Land Office
36 and in compliance with all requirements set by the State Land Office in its written approval
37 of Gregory’s use of the Reservoir.

38 B. **Standards.** Gregory shall ensure that the use, operation, and maintenance of the
39 Reservoir shall conform at all times with all applicable laws, ordinances, rules, regulations,
40 and policies, including but not limited to the AWWA and the lease agreement between the
41 City and the State Land Office, as they are now and as they may be made or amended from
42 time to time. In the event this covenant is breached in any manner, Gregory shall
43 immediately notify the City in writing and Gregory shall cease all use of the Reservoir.

1 C. **Hazards and Interference.** No use of the Reservoir shall in any manner interfere
2 with the operations of or constitute a hazard to City operations or the Double Eagle Water
3 System. In the event this covenant is breached, Gregory shall cease all use of the Reservoir
4 and the City shall have the right to require Gregory to stop any and all activities at or with
5 the Reservoir, to enter upon the Reservoir and cause the abatement of such interference or
6 hazard at the expense of Gregory, and/or terminate this Agreement.

7 D. **Inspection.** Gregory shall allow representatives of the City to inspect the Reservoir
8 and all improvements and appurtenances, including, but not limited to, the cut off valve(s),
9 back flow preventer(s), air gaps, water system and storage facilities to assure compliance
10 with this Agreement.

11
12 5. **Term.** The term of this Contract shall be for five (5) years beginning the 9th day of July,
13 2014 and terminating on the 8th day of July, 2019.

14
15 6. **Payment and Compensation.**

16 A. **SLO Rent.** Gregory shall be solely responsible for the timely payment of any and
17 all rent, taxes, fees, or other amounts, if any, which may be assessed by the State Land Office
18 against the Reservoir, or any equipment or other property belonging to Gregory related to the
19 Reservoir, or which arise in any manner from this Agreement. Gregory shall present the City
20 with written proof of the amount or amounts due the State Land Office, the due date of the
21 amount or amounts, and payment thereof. Gregory shall provide such written proof to the
22 City within five (5) days of due date of the amount or amounts.

23 B. **Annual Rent.** As compensation for this Agreement, Gregory shall pay the City Five
24 Hundred Dollars (\$500.00) each year. That compensation shall hereinafter referred to as
25 "Rent". The Rent shall be due on the day of the execution of this Agreement, and then on
26 the same day of each year thereafter.

27 C. **Due in Advance and Without Notice.** All rental payments shall be due and payable
28 in advance and without notice. Rent shall be paid to P.O. Box 1569, Carlsbad, NM 88221-
29 1569, Attention City Finance Director, or such other place as the City may direct in writing.

30 D. **Late Fee.** On any rental payment made ten (10) or more days after the payment due
31 date, Gregory shall, in addition to the Rent, pay a late charge of ten percent (10%) of the Rent
32 for each month or part of a month that the rental payment is late.

33 E. **No Refunds.** Gregory may terminate this Agreement pursuant to the requirements
34 of Paragraph 23, below, however, in that event, Gregory shall not be entitled to a refund of
35 any rent or fees of any kind paid or for a credit or refund of the costs or expenses incurred
36 for the repair or maintenance of the Reservoir.

37 F. **Holding Over.** In the event Gregory shall continue to occupy the Reservoir, or any
38 portion thereof beyond the term of this Agreement, such holding over shall not constitute a
39 renewal of this Agreement but shall be a month-to-month tenancy only. The amount of Rent
40 to be paid during this hold over period shall equal two (2) times the normal rent chargeable
41 at the termination of the lease.

1 **7. Maintenance.**

2 **A. Gregory to Maintain.** Gregory shall keep the Reservoir in good order and repair at
3 all times and shall use all reasonable cautions to prevent waste, damage, or injury to the
4 Reservoir and all fixtures, improvements, and appurtenances thereto. At its sole expense,
5 Gregory shall keep, repair, maintain, improve, and operate the Reservoir and any and all
6 fixtures, improvements, and appurtenances in a safe, sanitary, orderly, and workmanlike
7 manner in accordance with all applicable laws, ordinances, codes, rules, regulations, and
8 policies, including but not limited to the standards described in Paragraph 4(B), above, as
9 such standards may be amended or superceded from time to time.

10 **B. Right to Correct Deficiencies.** The City shall have the right to require reasonable
11 maintenance of and repairs to the Reservoir and all fixtures, improvements, and
12 appurtenances as required by this Agreement. Should Gregory fail to make the required
13 corrections, the City shall have the right to terminate this Agreement without incurring any
14 penalty or further liability.

15
16 **8. Title to Improvements.** All alterations, additions, improvements, construction, repairs, and
17 installations on or to the Reservoir at the commencement of this Agreement and that may be erected
18 or installed during the term of this Agreement shall become a part of the Reservoir and the sole
19 property of the City. Gregory waives all claims for payment or offset thereof.

20
21 **9. Additions, Alterations, and Improvements.** No alteration, addition, improvement,
22 construction, repair, installation, or demolition on or to the Reservoir shall be done without the prior
23 written consent of the City Administrator. All such activity shall be performed in a workmanlike
24 manner. Other conditions with respect to additions, alterations, improvements, construction, repairs,
25 installations, or demolitions are as follows:

26 **A. City Approval.** The plans and specifications for any such activity shall be submitted
27 to the City Administrator for written approval prior to commencing such activity;

28 **B. Filing.** Before commencement of any such activity, all plans and specifications shall
29 be filed with, approved by, and permitted by all governmental departments and authorities
30 having jurisdiction;

31 **C. Licensed Contractor.** All such activity shall be done by appropriately licensed
32 contractors and shall be done in accordance with all applicable laws, ordinances, codes, rules,
33 regulations, and policies;

34 **D. Standards.** All plans, additions, alterations, improvements, construction, repairs,
35 installation, or demolition shall be done in accordance with the standards described in
36 Paragraph 4(B), above, as such standards may be amended or superceded from time to time.

37
38 **10. Damage or Destruction.** If the Reservoir is damaged or destroyed such that repairs cannot
39 be commenced within six (6) months and completed within six (6) months thereafter, and if such
40 damage or destruction was not caused in whole or in part by the acts or omissions of Gregory or its
41 officers, directors, employees, or agents, then this Agreement may be terminated without penalty to
42 either party. Such termination shall be effective as of the date of the occurrence of the damage or
43 destruction, and made effective by either party hereto by serving written notice upon the other.

11. **Taxes, Licenses, and Permits.** Gregory shall be solely responsible for:

A. **Taxes.** The timely payment of any and all taxes, if any, which may be assessed against the Reservoir or any equipment or other property belonging to Gregory related to the Reservoir, or which arise in any manner from this agreement. In the event any real estate taxes are assessed against the Reservoir during the term of this Agreement, such taxes shall be paid by Gregory.

B. **Licenses and Permits.** Obtaining and paying for all licenses, permits, certifications, fees, or other authorizations or charges as required under federal, state, or local laws, ordinances, codes, rules, regulations, or policies insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

12. **Right to Enter and Inspect.** The City shall have the right, at any reasonable time, to enter Gregory operations and to inspect or have a third party enter and inspect the Reservoir and all fixtures, improvements, and appurtenances and any other thing or item at or on the Reservoir.

13. **Insurance.** During the term of this Agreement and for any further time that Gregory shall hold the Reservoir:

A. **Public Liability Insurance.** Gregory shall obtain and maintain at its own expense general public liability insurance insuring against such claims and which insurance names the City as an additional insured. This insurance shall have an aggregate limit in the amount of one million dollars (\$1,000,000.00), or as required to meet the requirements of the New Mexico Tort Claims Act or its successor in law, whichever is greater.

B. **Property and Casualty.** Should it desire such insurance, Gregory shall be responsible for obtaining and maintaining, at its own expense, property and casualty insurance covering its interests in and to any and all property used in connection with the Reservoir or this agreement. The City assumes no responsibility for such property. The City, its officers, directors, employees, and agents are hereby expressly released and discharged from any responsibility whatsoever for any such property.

C. **Certificate(s) of Insurance.** All insurance shall be with a company or companies licensed and authorized to do business in the State of New Mexico. No later than the effective date of this Agreement, Gregory shall provide the City Administrator with a Certificate of Insurance reflecting the coverages specified herein and naming the City as an additional insured. Gregory shall annually furnish to the City Administrator a Certificate of Insurance for the above required insurances. Gregory shall provide the City Administrator with notice of any change thereof, and furnish to the City Administrator evidence of acquirement of a substitute therefore, and payment of the premium thereof. If Gregory should fail to maintain such insurance coverage or coverages, then the City may, at its sole discretion, obtain such insurance to insure its interests. If the City does so, it may recover the cost of that insurance from Gregory.

D. **Self-Insurance.** Gregory may self-insure by filing with the City a letter of credit in the amounts listed above and in the form approved by the City, or by filing another approved promissory or escrowed monetary instrument.

1 E. **Tort Claims Act.** The City and its “public employees” as defined in the New
2 Mexico Tort Claims Act, do not waive any sovereign immunity, defense, or limitation of
3 liability pursuant to law. No provision of this Agreement modifies and/or waives any
4 provision of the New Mexico Tort Claims Act.

5 F. **Proceeds of City Insurance.** Gregory shall have no right or claim to any insurance
6 benefits or proceeds from any insurance policy purchased or maintained by the City.
7

8 14. **Indemnification of City.** Gregory shall indemnify, save, and hold harmless the City, its
9 officers, directors, employees, and agents, and shall provide such assistance as the City may require
10 with respect to any and all claims, liabilities, obligations, governmental penalties, fines, causes of
11 action, damages, losses, and expenses of every kind, together with any attorney’s fees and litigation
12 costs, made arising out of, or from, or associated in any manner with this Agreement.
13

14 15. **Release of Liability.** The City shall not be responsible for any personal injury, death, or
15 property damage to Gregory, its agents, employees, officers, representatives, assigns, or invitees nor
16 shall the City be liable to Gregory for any loss or damage to Gregory’s personal property, equipment,
17 furniture, or fixtures arising from any cause or causes whatsoever during the term of this Agreement,
18 or during any further time that Gregory shall use the Reservoir.
19

20 16. **Force Majeure.** The City shall not be responsible for or liable to Gregory for any loss,
21 claim, or damage due to force majeure, acts of God, strikes, lockouts or industrial disturbances, civil
22 disturbances, arrests and restraints, interruptions by government or court orders, present and future
23 valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots,
24 blockades, insurrections, inability to secure labor or materials, including inability to secure materials
25 as a result of allocations promulgated by authorized governmental agencies, epidemics, landslides,
26 lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or accident to machinery
27 or equipment, or any other cause, whether of the kind herein enumerated or otherwise, not reasonably
28 within the control of the City.
29

30 17. **Loss of Easement or Rights of Way.** In the event the easement or right of way for the
31 Reservoir or any portion thereof ceases to be in effect and, if such cessation was not caused in whole
32 or in part by the acts or omissions of Gregory or its officers, directors, employees, or agents, then this
33 Agreement shall terminate without penalty to either party.
34

35 18. **Compliance with Laws.** Gregory shall comply with all applicable local, state, and federal
36 laws, ordinances, codes, rules, regulations, and policies and shall obtain and maintain any and all
37 permits, licenses, or certifications that may be necessary to carry out the operations contemplated by
38 this Agreement. Gregory shall require all its agents, employees, officers, representatives, assigns,
39 and invitees to comply with all applicable local, state, and federal laws, ordinances, codes, rules,
40 regulations, and policies. Any penalties and costs levied as a result of a breach of any of applicable
41 local, state, and federal laws, ordinances, codes, rules, regulations, and policies shall be borne solely
42 by Gregory.
43

19. **Assignment, Mortgage, or Sublease.** Gregory may not assign, rent, or sublease the Reservoir or permit the Reservoir to be used or occupied by others without the prior written permission of the City. Neither Gregory nor its successors or assigns, if any, shall assign, mortgage, pledge, or encumber this Agreement in whole or in part, nor shall this Agreement be assigned or transferred by operation of law without the prior written consent of the City in each instance. If there is an approved assignment, mortgage, pledge, or encumbrance, Gregory shall continue to be liable hereunder in accordance with the terms and conditions of this Agreement and Gregory shall not be released from the performance of the terms and conditions hereof. The consent by the City to an assignment, mortgage, pledge, encumbrance, sublease, or transfer shall not be construed to relieve Gregory from obtaining the express written consent of the City to any future transfer of interest.

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

A. **Bankruptcy Filing.** If Gregory shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for the benefit of creditors.

B. **Involuntary Proceedings.** If involuntary proceedings under any bankruptcy law or insolvency act shall be instituted against Gregory, or if a receiver or trustee shall be appointed for all or substantially all of the property of Gregory and such proceedings shall not be dismissed or the receivership or trusteeship vacated within sixty (60) days after the institution or appointment.

C. **Failure to Comply.** If Gregory fails to perform or comply with any of the conditions of this Agreement, and if the nonperformance shall continue for a period of fifteen (15) days after notice thereof by the City to Gregory, or if the performance cannot be reasonably had within the fifteen (15) day period, and Gregory shall not in good faith have commenced performance within the fifteen (15) day period and then diligently proceeded to completion of performance.

D. **Vacation of Premises.** If Gregory shall vacate or abandon the Reservoir.

E. **Transfer of Agreement.** If this Agreement shall be transferred to or shall pass to or devolve to any other person or party, except in the manner specified herein.

21. **Effect of Default.** In the event of default hereunder as set forth in this Agreement, the rights of the City be as follows:

A. **Termination of Agreement.** The City shall have the right to cancel and terminate this Agreement. On expiration of the time fixed in the notice, this Agreement and all rights, title, and interest of Gregory hereunder shall terminate in the same manner and with the same force and effect, except as to Gregory's liability, as if the date fixed in the notice of cancellation and termination were the end of the term herein originally determined.

B. **Correction by City.** The City may elect, but shall not be obligated, to make any payment required of Gregory herein or comply with any agreement, term, or condition required hereby to be performed by Gregory, and the City shall have the right to enter Gregory Rockhouse Ranch and the Reservoir for the purpose of directing or remedying any such default and to remain until the default has been corrected or remedied; but any

expenditure for correction by the City shall not be deemed to waive or release the default of Gregory or the right of the City to take any action as may be otherwise permissible or to seek other remedy under the law. If the City does so, it may recover the cost of such payment, compliance, or correction from Gregory and charge interest thereon at the rate of fifteen percent (15%) per annum from the time of payment.

C. **Other Remedies.** The City may pursue any other remedy available at law or in equity. No right or remedy is exclusive of any other provided herein or permitted by law or equity. All such rights and remedies shall be cumulative and may be enforced concurrently or individually.

22. **Waiver.** Failure of the City to insist upon strict performance of any of the terms and conditions hereof shall be deemed a waiver of the rights or remedies that the City may have regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or default in any term or condition.

23. **Termination.** Either party may terminate this Agreement without cause by providing the other party with written notice of its intention to terminate this Agreement at least thirty (30) days prior to the termination date.

24. **Surrender of Possession.** On the last day of the term of this Agreement or upon the earlier termination or forfeiture of this Agreement, Gregory shall promptly, peaceably, and quietly vacate, quit, surrender, and deliver the Reservoir to the City free of subtenancies, and the City shall have the right to re-enter upon, possess, and use the Reservoir as if this Agreement had not been undertaken by the parties. Gregory shall surrender the Reservoir in at least as good order and condition as it was at the commencement of this Agreement, reasonable wear and tear excepted. Prior to the last day of the term of this Agreement or upon the earlier termination or forfeiture of this Agreement, Gregory shall clean and disinfect the Reservoir as per AWWA standards.

25. **Independent Contractor.** Gregory and its employees, officers, and agents are independent contractors and are not employees of the City. Gregory and its employees, officers, and agents shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to the employees of the City of Carlsbad as a result of this Agreement.

26. **Notices.** All notices permitted or required by the terms of this Agreement shall be in writing and be deemed to have been duly given and delivered, if mailed, certified postage prepaid:

If to City:

City of Carlsbad
c/o City Administrator
P.O. Box 1569
Carlsbad, NM 88221-1569

If to Gregory:

Gregory Rockhouse Ranch, Inc.
c/o Larry Gregory, Vice President
1108 West Pierce
Carlsbad, NM 88220

The parties shall notify each other in writing of any change in the above names or addresses.

1 27. **Entirety of Agreement.** This Agreement incorporates all the agreements, covenants, and
2 understandings between the parties hereto concerning the subject matter hereof, and all such
3 covenants, agreements, and understandings have been merged into this written Agreement. No prior
4 agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or
5 enforceable unless embodied in this Agreement. The parties expressly waive any other or further
6 representations, warranties, or agreements not set forth in this document. This Agreement cannot
7 be changed except by a written instrument subsequently executed with the same formalities as with
8 this Agreement.

9
10 28. **Workers' Compensation.** Gregory agrees to comply with any and all applicable state laws,
11 rules, and regulations regarding workers' compensation benefits for its employees. Should Gregory
12 fail to comply with the Workers' Compensation Act and applicable rules when required to do so, this
13 Agreement may be terminated by the City.

14
15 29. **Successors and Assigns.** All of the terms, covenants, conditions, and agreements contained
16 hercin shall be binding upon and shall inure to the benefit of the successors and assigns of the
17 parties.

18
19 30. **ARBITRATION.** SHOULD ANY DISPUTE ARISE BETWEEN THE PARTIES IN
20 CONNECTION WITH THE AGREEMENT AND IF SUCH DISPUTE CANNOT BE RESOLVED
21 BY DISCUSSION BETWEEN THE PARTIES, THE PARTIES AGREE TO SUBMIT THE
22 UNRESOLVED DISPUTE TO BINDING ARBITRATION IN LIEU OF LITIGATION.

23
24 31. **WAIVER OF JURY TRIAL.** THE PARTIES HEREBY WAIVE THE RIGHT TO A
25 JURY TRIAL ON ANY ISSUE ARISING OUT OF OR RELATING, DIRECTLY OR
26 INDIRECTLY, TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED
27 HEREBY.

28
29 32. **New Mexico Law and Venue.** The parties agree this Agreement shall be construed and
30 controlled by the laws of New Mexico. The parties further agree that any legal action arising out of
31 this Agreement shall be brought in the District Court of Eddy County, New Mexico for the Fifth
32 Judicial District. The parties expressly consent to both in personam and subject matter jurisdiction
33 of the Eddy County District Court and agree that venue shall properly lie in the Eddy County, New
34 Mexico District Court.

35
36 33. **Captions.** The captions of any articles, paragraphs or sections hereof are made for
37 convenience only and shall not control or affect the meaning or construction of any of the provisions
38 thereof.

39
40 34. **Exhibits.** Any instrument or document made and attached to this Agreement shall constitute
41 a part hereof as though set forth in full in the body of this Agreement, whether made a part hereof
42 by reference or whether made a part hereof by attachment.

CITY OF CARLSBAD, NEW MEXICO:

DALE JANWAY, MAYOR

ATTESTED:

CITY CLERK

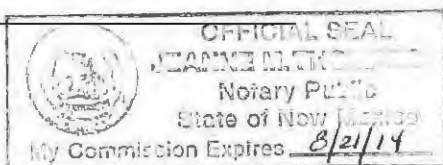
GREGORY ROCKHOUSE RANCH, INC.

LARRY GREGORY, VICE PRESIDENT

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

The forgoing instrument was signed and acknowledged before me this 30 day of June, 2014, by LARRY GREGORY, Vice President, Gregory Rockhouse Ranch, Inc.

My Commission Expires:



NOTARY PUBLIC

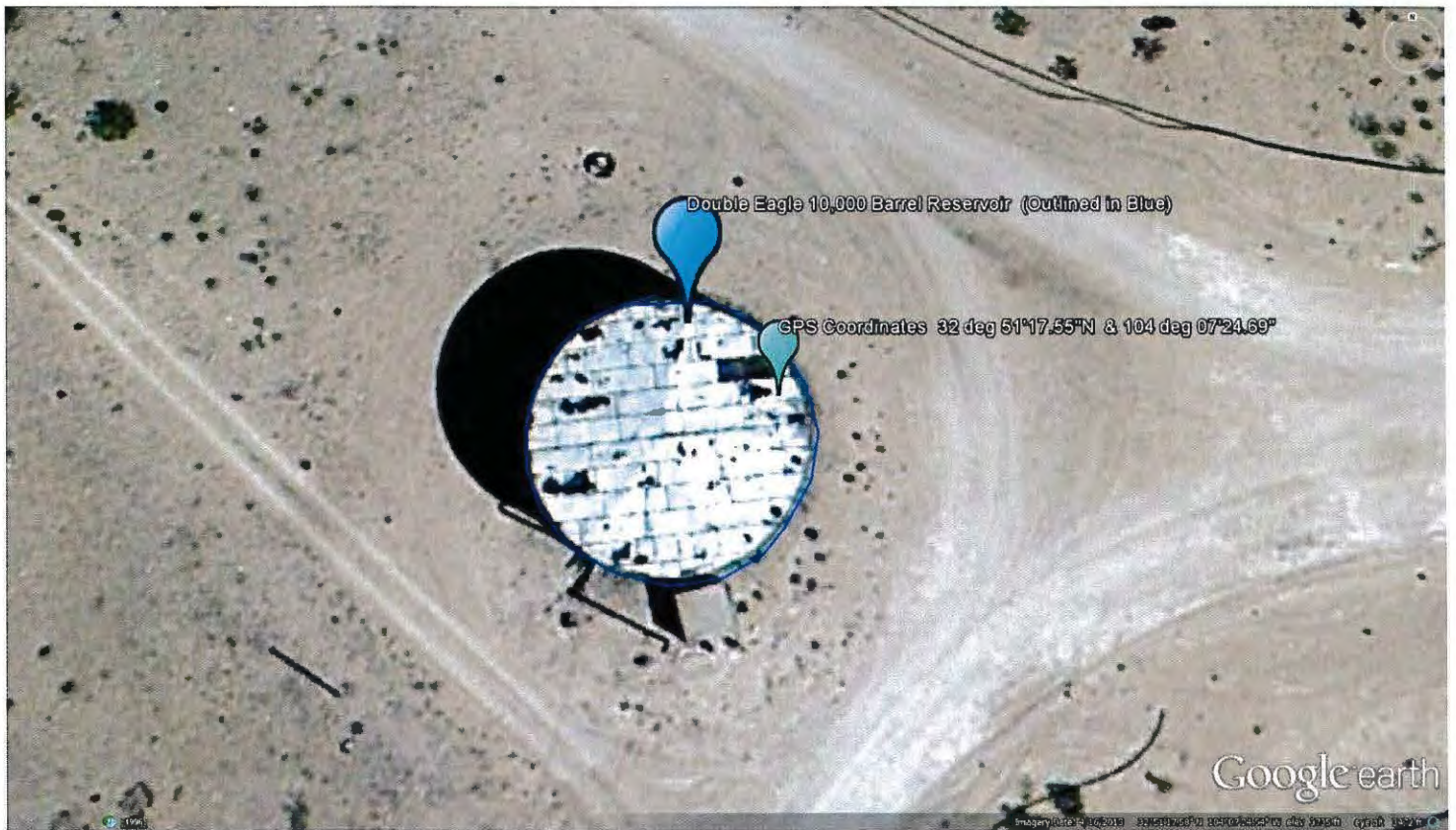


Exhibit "A"

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM

Council Meeting Date: July 8, 2014

DEPARTMENT: Cemetery / Culture, Recreation & Community Services	BY: Lupe Ornelas	DATE: July 2, 2014
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SUBJECT: Proposed agreement between the City and Garden Mart, Inc. for an extension of 30 days on the recently expired contract for grounds maintenance at Carlsbad Cemetery and Sunset Gardens Cemetery


BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)

The existing agreement with Garden Mart, Inc. expired on June 30, 2014. Bids have been received for the new contract but the final recommendation of the winning bid is pending. Maintenance must continue uninterrupted. Management is requesting that the agreement with Garden Mart, Inc. be extended for 30 days to allow for continued services.

DEPARTMENT RECOMMENDATION: If it is the pleasure of the City Council, it is recommended that the agreement with Garden Mart, Inc. be extended for 30 days.

BOARD/COMMISSION/COMMITTEE ACTION:

<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	<input type="checkbox"/> APPROVED
<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	<input type="checkbox"/> DISAPPROVED
<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> Beautification Committee	

Reviewed by: 	Date: 07-3-14
City Administrator:	

ATTACHMENTS: Original agreement / amendment

**EXTENSION OF
SIXTH RENEWAL
OF AGREEMENT BETWEEN THE CITY OF CARLSBAD
AND THE GARDEN MART, INC. FOR GROUNDS MAINTENANCE
AND GRAVE OPENING AND CLOSING SERVICES
AT THE CITY OF CARLSBAD CEMETERY AND
AS AMENDED IN 2011 TO INCLUDE SUNSET GARDENS CEMETERY**

1 THIS EXTENSION is entered into at Carlsbad, New Mexico, this ____ day of
2 _____, 2014, by and between the CITY OF CARLSBAD, New Mexico, a municipal
3 corporation, hereinafter referred to as "City" and THE GARDEN MART, INC., a New Mexico
4 corporation, hereinafter referred to as "Garden Mart".

5
6 WHEREAS, the City of Carlsbad owns and operates the City of Carlsbad Cemetery,
7 hereinafter referred to as the "Cemetery"; and

8
9 WHEREAS, the City requested proposals for grounds maintenance and grave opening and
10 closing services at the Cemetery in its RFP No. 2007-08; and

11
12 WHEREAS, after reviewing the proposals received, the City recommended awarding the bid
13 to The Garden Mart, Inc.; and

14
15 WHEREAS, on 1 August 2007, the City entered into an Agreement with Garden Mart to
16 provide grounds maintenance and grave opening and closing services at the City of Carlsbad
17 Cemetery (the "Agreement"); and

18
19 WHEREAS, the City and Garden Mart renewed the Agreement for the years of 2008, 2009,
20 and 2010; and

21
22 WHEREAS, in RFP No. 2011-14, the City requested proposals for grounds maintenance and
23 grave opening and closing services at Sunset Gardens Cemetery ("Sunset Gardens");

24
25 WHEREAS, Garden Mart's response to RFP No. 2011-14 was approved by the Carlsbad City
26 Council; and

27
28 WHEREAS, in June 2011, 2012, and 2013, the Agreement was renewed for a fourth, fifth,
29 and sixth time as amended to include ground maintenance and grave opening and closing services
30 at Sunset Gardens; and

31
32 WHEREAS, the City has published requests for proposals for the provision of grounds
33 maintenance and grave opening and closing services, but the procurement process has not yet been
34 completed; and

35
36 WHEREAS, the Sixth Renewal expired on June 30th, 2014; and

1 WHEREAS, the parties wish to extend the Sixth Renewal for one month so that the
2 procurement process may be completed.

3
4 NOW, THEREFORE, FOR THE CONSIDERATION SPECIFIED HEREIN THE PARTIES
5 AGREE AS FOLLOWS:

- 6
7 1. Attached to this renewal are the following documents:
8 A. The Agreement Between the City of Carlsbad and the Garden Mart, Inc. for Grounds
9 Maintenance and Grave Opening and Closing Services at the City of Carlsbad Cemetery,
10 dated the 1st day of August 2007; and
11 B. The Amendment to the Agreement Between the City of Carlsbad and the Garden
12 Mart, Inc. for Grounds Maintenance and Grave Opening and Closing Services at the City of
13 Carlsbad Cemetery to Add Sunset Gardens Cemetery dated the 14 day of June 2011.
14
15 2. The parties agree to renew the Agreement as attached as Attachment "A" as it was amended
16 by Attachment "B" for 1 July 2014 and ending on 31 July 2014.
17
18 3. This renewal shall be under the same terms and conditions, and the parties shall have the
19 same rights and responsibilities as the Agreement as it was amended.
20

21
22 **CITY OF CARLSBAD:**

23
24
25 _____
26 DALE JANWAY, MAYOR
27

28
29 ATTEST:

30
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32 _____
33 CITY CLERK
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1 **THE GARDEN MART, INC**

2
3
4
5 MARK WALTERSCHEID, PRESIDENT

6
7 STATE OF NEW MEXICO)
8) ss.
9 COUNTY OF EDDY)

10
11 The foregoing instrument was acknowledged before me this _____ day of
12 _____, 2014, by MARK WALTERSCHEID, President, The Garden Mart, Inc.

13
14 My Commission Expires:

15
16 _____
NOTARY PUBLIC

**AMENDMENT TO THE
AGREEMENT BETWEEN THE CITY OF CARLSBAD AND
THE GARDEN MART, INC. FOR GROUNDS MAINTENANCE
AND GRAVE OPENING AND CLOSING SERVICES
AT THE CITY OF CARLSBAD CEMETERY
TO ADD SUNSET GARDENS CEMETERY**

1 THIS AMENDMENT TO THE Agreement between the parties for Grounds Maintenance
2 and Grave Opening and Closing Services is entered into at Carlsbad, New Mexico, this 14th day of
3 June, 2011, by and between the **CITY OF CARLSBAD**, New Mexico, a municipal
4 corporation, hereinafter referred to as "City," and **GARDEN MART, INC.**, a corporation
5 incorporated in the State of New Mexico, hereinafter referred to as "**Garden Mart**".

6
7 WHEREAS, in August 2007, the City of Carlsbad and Garden Mart, Inc. entered into an
8 agreement pursuant to which Garden Mart provided the City with grounds maintenance and grave
9 opening and closing services at the City of Carlsbad Cemetery; and

10
11 WHEREAS, since entering into that Agreement, the City acquired another cemetery
12 commonly known as Sunset Gardens Cemetery, 1406 East Wood Avenue, hereinafter "Sunset
13 Gardens"; and

14
15 WHEREAS, the City requested proposals for grounds maintenance and grave opening and
16 closing services at Sunset Gardens in its RFP No. 2011-14; and

17
18 WHEREAS, after reviewing the proposals received in response to that RFP, Carlsbad
19 Cemetery Board, hereinafter the "Cemetery Board," has recommended awarding the bid to Garden
20 Mart; and

21
22 WHEREAS, the Carlsbad City Council approved Garden Mart's proposal subject to the
23 successful negotiation of a contract; and

24
25 WHEREAS, the parties wish to amend the existing agreement to include Sunset Gardens.

26
27
28 NOW THEREFORE, the parties agree to the following amendment to the existing
29 Agreement:

30
31 1. **Agreement.** The Agreement Between the City of Carlsbad and Garden Mart, Inc. for
32 Grounds Maintenance and Grave Opening and Closing Services at the City of Carlsbad Cemetery,
33 entered into on August 1, 2007, and renewed in 2008, 2009, and 2010, hereinafter the "Agreement",
34 is attached as Exhibit "C" and is incorporated herein and made a part of this Amendment.
35
36

1 2. **Sunset Gardens Description.** The Cemetery, as defined in Paragraph 2 of the Agreement,
2 is hereby amended to include the Sunset Gardens Cemetery ("Sunset Gardens") as shown on the
3 attached Exhibit "D". Sunset Gardens shall further include all property up to the edge of any
4 abutting improved road and to the centerline of any abutting alley.

5
6 3. **AS IS Condition.** Prior to the commencement of this Agreement, Garden Mart has fully
7 examined and inspected Sunset Gardens and all improvements, buildings, fixtures, appliances, and
8 personal property therein. Garden Mart accepts Sunset Gardens and such improvements, buildings,
9 fixtures, appliances, and personal property in their existing condition and state of repair. Garden
10 Mart accepts them in an **AS IS CONDITION**. Garden Mart agrees that no representations,
11 statements, or warranties, express or implied, have been made by or on behalf of the City in respect
12 thereto, including, but not limited to their suitability for any purpose, and the City shall in no event
13 be liable for any latent defects.

14
15 4. **Garden Mart Provided Services.** Garden Mart shall provide the City with full General
16 Services, Grounds Maintenance, and Grave Opening and Closing services as described in the
17 Agreement, with the following modifications regarding the services to be provided at Sunset
18 Gardens:

19 A. **General Services.**

20 i. **Janitorial.** Provide all janitorial services and routine maintenance of the
21 mausoleum and all structures used by Garden Mart.

22 B. **Grave Opening and Closing.**

23 i. **Mausoleum Burial Vault.** Grave Opening and Closing services shall
24 include the removal of mausoleum burial vault access panels prior to the scheduled
25 time of a service and the replacement of them after the remains have been eniched.

26
27 5. **Compensation.** In consideration for all services provided pursuant to this Addendum, the
28 City shall pay Garden Mart the following amounts:

29 A. **General, Grounds, and Grave Services.** For the provision of all General Services,
30 Grounds Maintenance, and Grave Opening and Closing services, the City shall pay Garden
31 Mart Eight thousand dollars per month (\$8,000.00/mo.). Garden Mart shall submit an
32 invoice to the City by the fifth (5th) day of each month for the previous month's grounds
33 maintenance and grave openings and closings.

34 B. **Water Well Improvements.** For the provision and installation of a new submersible
35 10 hp or greater pump and wiring system at the existing water well at Sunset Gardens, the
36 City shall pay Garden Mart Five thousand dollars (\$5,000.00) after the City has inspected
37 and accepted those improvements.

38 C. **Irrigation System.** For each irrigation zone, as shown on Exhibit "E", designed,
39 constructed, installed, and completed in accordance with Exhibit "E", the City shall pay
40 Garden Mart Three thousand twelve dollars and 06/100ths (\$3,012.06) after the City has
41 inspected and accepted those improvements.

1 6. **Term.** The term of this Agreement shall be for one (1) year beginning on the 1st day of July
2 2011, and terminating on the 30th day of June 2012. This Agreement may be renewed for three (3)
3 additional one (1) year terms upon the mutual agreement of the parties upon such terms and
4 conditions as may be mutually agreeable. Not later than thirty (30) days before the expiration of this
5 contract, if both parties desire to renew for an additional year, the parties shall meet to negotiate
6 renewal terms and conditions, including compensation.

7
8 7. **Insurance.** At all times material to this Agreement:

9 A. **Public Liability Insurance.** Garden Mart shall obtain and maintain, at its own
10 expense, public liability and automobile liability insurance insuring against such claims and
11 which insurance names the City as an additional insured. This insurance shall have an
12 aggregate limit in the amount of two million dollars (\$2,000,000.00).

13 B. **Certificate Insurance.** Garden Mart shall provide the City with a current Certificate
14 of Insurance. The insurance shall be with a company or companies licensed and authorized
15 to do business in the State of New Mexico. Garden Mart shall annually furnish to the City
16 a Certificate of Insurance for the above required insurances. Garden Mart shall provide the
17 City with notice of any change thereof, and furnish to the City evidence of acquirement of
18 a substitute therefore, and payment of the premium thereof.

19 C. **Tort Claims Act.** The City and its "public employees" as defined in the New
20 Mexico Tort Claims Act do not waive any sovereign immunity, defense, or limitation of
21 liability pursuant to law. No provision of this Agreement modifies and/or waives any
22 provision of the New Mexico Tort Claims Act.

23
24 8. **Procurement Code Penalties.** The Procurement Code, NMSA 1978, Sections 13-1-28 et
25 al., imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal
26 statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

27
28 9. **Campaign Contribution Disclosure.** The Procurement Code, NMSA 1978, Sections 13-1-
29 28, et al., requires certain prospective contractors to submit a fully completed campaign contribution
30 disclosure statement. Garden Mart states that it has complied with all such applicable requirements.

31
32 10. **Captions.** The captions of any articles, paragraphs, or sections hereof are made for
33 convenience only and shall not control or affect the meaning or construction of any of the provisions
34 thereof.

35
36 11. **Exhibits.** Any instrument or document made and attached to this Agreement shall constitute
37 a part hereof as though set forth in full in the body of this Agreement, whether made a part hereof
38 by reference or whether made a part hereof by attachment.

CITY OF CARLSBAD

Wesley Carter, MAYOR ProTem

ATTEST:

CITY CLERK

THE GARDEN MART, INC:

MARK WALTERSCHEID, PRESIDENT

[illegible]

The foregoing instrument was signed and acknowledged before me this 13th day of June, 2011, by MARK WALTERSCHEID, President of The Garden Mart, Inc.

My commission expires: 5-23-15

NOTARY PUBLIC



ATTACHMENT "A"

Agreement Between the City of Carlsbad and the Garden Mart, Inc. for Grounds Maintenance and Grave Opening and Closing Services at the City of Carlsbad Cemetery, dated the 1st day of August 2007, and with its two exhibits

**AGREEMENT BETWEEN THE CITY OF CARLSBAD AND
THE GARDEN MART, INC. FOR GROUNDS MAINTENANCE
AND GRAVE OPENING AND CLOSING SERVICES
AT THE CITY OF CARLSBAD CEMETERY**

THIS AGREEMENT is entered into at Carlsbad, New Mexico, this 18th day of Aug., 2007, by and between the **CITY OF CARLSBAD**, New Mexico, a municipal corporation, hereinafter referred to as "**City**," and **GARDEN MART, INC.**, a corporation incorporated in the State of New Mexico, hereinafter referred to as "**Garden Mart**".

WHEREAS, the City of Carlsbad owns and operates the City of Carlsbad Cemetery, hereinafter referred to as the "Cemetery"; and

WHEREAS, the CITY requested proposals for grounds maintenance and grave opening and closing services at the Cemetery in its RFP No. 2007-08; and

WHEREAS, after reviewing the proposals received, the Carlsbad Cemetery Board, hereinafter the "Cemetery Board," recommended awarding the bid to Garden Mart; and

WHEREAS, the Carlsbad City Council approved Garden Mart's proposal subject to the successful negotiation of a contract by the Carlsbad City Administrator.

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

1. **Cemetery Description.** The City of Carlsbad Cemetery ("Cemetery") shall consist of the property shown on the attached Exhibit "A". The Cemetery shall further include all property up to the edge of any abutting improved road and to the centerline of any abutting alley.
2. **AS IS Condition.** Prior to the commencement of this Agreement, Garden Mart has fully examined and inspected the Cemetery and all improvements, buildings, fixtures, appliances, and personal property therein. Garden Mart accepts the Cemetery and such improvements, buildings, fixtures, appliances, and personal property in their existing condition and state of repair. Garden Mart accepts them in an **AS IS CONDITION**. Garden Mart agrees that no representations, statements, or warranties, express or implied, have been made by or on behalf of the City in respect thereto, including, but not limited to their suitability for any purpose, and the City shall in no event be liable for any latent defects.
3. **Garden Mart Provided Services.** Garden Mart shall provide the CITY with full grounds maintenance and grave opening and closing services at the Cemetery including, but not limited to, the following:
 - A. **General Services.** General Services as defined herein.
 - B. **Grounds Maintenance.** Grounds Maintenance as defined herein.
 - C. **Grave Opening and Closing.** Grave Opening and Closing as defined herein.

4. **General Services.** "General Services" shall include, but not necessarily be limited to, the following:

A. **Gates.** Open the Cemetery gates no later than 8:00 a.m. each day and close the gates at 6:00 p.m. each day.

B. **Janitorial.** Provide all janitorial services and routine maintenance of the restroom in the Caretaker's house and all other structures used by Garden Mart.

C. **Meetings.** Attend Cemetery Board meetings as scheduled and other meetings that may be necessary from time to time with the City Administrator, City staff, or Governing Body.

D. **Monthly Reports.** Prepare and submit monthly grave opening and closing reports and monthly maintenance reports in a format to be agreed to by the parties.

E. **Annual Budget.** No later than April 1st of each year, Garden Mart shall provide the City with an itemized budget for the City's following fiscal year's expenses for the items to be provided by the City pursuant to Paragraph 7(C), below.

F. **Master Plan.** Develop a Cemetery Operations Master Plan including, but not limited to a weed and pest control program, a water management program, a plant replacement program, and a turf mowing cycle.

G. **Additional Duties.** Such additional duties as may from time to time be mutually agreed to by the parties.

H. **Equipment.** Provide all equipment, tools, and materials required to perform the duties required by this Agreement and all repair, maintenance, and operational costs of such equipment or tools.

I. **Labor.** Provide all labor necessary to perform the duties required by this Agreement.

5. **Grounds Maintenance.** "Grounds Maintenance" services shall include, but not necessarily be limited to, the following:

A. **Mowing.** Mowing, weed eating, and edging as necessary to insure that, at all times, the Cemetery grounds present a well-manicured, well-tended appearance;

B. **Watering.** Irrigation and watering of the Cemetery grounds as necessary, but in a manner consistent with prudent conservation practices, to promote and maintain all ground coverings and landscaping in good condition.

C. **Irrigation Maintenance.** Maintenance, adjustment, and repair of the Cemetery irrigation systems, generally limited to those portions of the systems with piping no larger than three inches in diameter.

D. **Fertilizing.** Application of fertilizers and herbicides as necessary to promote and maintain all ground coverings and landscaping in good condition.

E. **Pesticide.** Application of pesticide and use of vermin control measures as necessary to promote a well-maintained appearance.

F. **Planting.** Planting all new trees and shrubs as approved by the City. All new plantings shall be appropriately staked and watered.

G. **Pruning.** Tree and shrub pruning and trimming as necessary to insure a well manicured, well tended appearance, to promote proper growth and to remove dead, diseased, unsightly or hazardous limbs and branches.

H. **Subsidence.** Garden Mart shall use fill dirt to correct all subsidences within forty-eight hours of becoming aware of the subsidence.

I. **Litter.** Removal of litter, debris, trash and yard waste to a designated collection area at the Cemetery to insure that the grounds are, at all times, free of unsightly accumulations and to facilitate retrieval and disposition by the City's Solid Waste Department.

6. **Grave Opening and Closing.** "Grave Opening and Closing" services shall include, but not necessarily be limited to, the following:

A. **Opening Graves.** Open each designated grave site upon receipt of a work order from the City of Carlsbad. All excavations shall be done in accordance with all applicable laws, rules, regulations, policies and procedures. Excavated material shall be placed in a mound, a reasonable distance from the site, and all equipment and personnel shall be removed from the grounds prior to the scheduled time for the service. Open, unattended graves shall be properly marked and barricaded until the scheduled time for the service. Graves shall be excavated to the following dimensions:

i. **Adult Single Depth Grave:**

a. Without a Vault - Eight feet (8') long by Thirty-two inches (32") wide by Five feet (5') deep;

b. With a Vault - Eight feet (8') long by Thirty-eight inches (38") wide by Five feet (5') deep;

ii. **Adult Double Depth Grave:**

a. Without a Vault - Eight feet (8') feet long by Thirty-two inches (32") wide by Eight and one half feet (8.5') deep;

b. With a Vault - Eight feet (8') long by Thirty-eight inches (38") wide by Eight and one half feet (8.5') deep;

iii. **Infant Grave:**

Three feet (3') long by Two feet (2') wide by Three feet (3') deep; and

iv. **Cremains Grave:**

One foot (1') long by One foot (1') wide by thirty inches (30") deep.

B. **Two Hours.** Graves shall be fully opened and prepared for use no less than two hours prior to the scheduled funeral service or placement of the remains. Any open, unattended grave must be properly marked and barricaded.

C. **Vaults.** If required, vaults shall be set and in the prescribed manner.

D. **Closing Graves.** Graves shall be closed as soon as practical after the funeral service or placement of the remains. Graves shall be closed in such a manner so as to ensure reasonable compaction and to prevent undue settling.

E. **Clean Site.** Removal of litter, debris, trash, yard waste, and excess soil from the grave site or excavation area to designated collection areas at the Cemetery to insure that the grounds are at all times free of unsightly accumulations and to facilitate retrieval and disposition by the City.

F. **Repair.** Repair of any damage caused by the opening or closing of the grave including, but not limited to the filling of any tire impressions left in the soil. Turf tires, appropriately sized, shall be used on all equipment so that no damage or rutting will occur

on the Cemetery.

G. **Decorations.** Flowers and/or decorations shall be left at the gravesite for a minimum of seven days after burial. Where there is no headstone but flowers have been placed in a vase elevated above soil level, such a vase shall not be removed for 45 days after burial.

7. **City Provided Services.** The City shall be responsible for the following at the Cemetery:

A. **Notification Procedure.** The City shall notify Garden Mart of a grave to be opened or closed pursuant to the Notification Procedure attached as Exhibit "B" as it may be amended from time to time.

B. **Utility Services.** The City shall pay all reasonable utility expenses including water service, sewer service, electric service, natural gas service, and garbage and trash collection.

C. **Materials.** The City shall provide fill dirt, grass seed, herbicide, pesticide, irrigation system repair components as necessary to adequately maintain the Cemetery.

D. **Tree Purchase.** The City shall purchase or otherwise provide all landscaping trees and shrubs.

E. **Repairs.** Except for damage or vandalism by Garden Mart officers, employees, or agents, the City shall provide structural, electrical and mechanical repair or maintenance of Cemetery structures and systems, including irrigation systems, fences, and roadways and those repairs covered by the City's insurance.

8. **Compensation.** In consideration for all services provided pursuant to this Agreement, the City shall pay Garden Mart Eighteen thousand three hundred and thirty three dollars and 33/100ths per month (\$18,333.33/mo.). Garden Mart shall submit an invoice to the City by the fifth (5th) day of each month for the previous month's grounds maintenance and grave openings and closings.

9. **Term.** The term of this Agreement shall be for eleven (11) months beginning on the 1st day of August 2007, and terminating on the 30th day of June 2008. This Agreement may be renewed for seven (7) additional one (1) year terms upon the mutual agreement of the parties upon such terms and conditions as may be mutually agreeable. Not later than thirty (30) days before the expiration of this contract, if both parties desire to renew for an additional year, the parties shall meet to negotiate renewal terms and conditions, including compensation.

10. **Prevention of Waste and Damage.** Garden Mart shall use all reasonable cautions to prevent waste, damage, or injury to the Cemetery in the performance of its obligations under this Agreement. This shall include, but not be limited to, the use of turf tires, appropriately sized, on all equipment so that no damage or rutting will occur on the Cemetery. Garden Mart shall be solely responsible for any damage to or destruction of the Cemetery or its improvements caused by the acts, willful or otherwise, of Garden Mart's officers, employees, or agents.

11. **Reporting Damage.** Garden Mart shall immediately verbally report any vandalism, damage, or destruction as well as any repair or maintenance needed to be performed by the City. It shall also report such matters in writing within five (5) business days.

12. **Storage of Equipment and Materials.** Garden Mart may store its equipment and materials at the Cemetery in locations designated by the City. Garden Mart shall be solely responsible for insuring, for the security of any equipment or material so stored, and for all needed janitorial services and routine maintenance of the storage areas or structures used by Garden Mart. Storage or disposal on the Cemetery of any materials or waste defined as hazardous or toxic by local, state, or federal laws, rules or regulations shall be prohibited except with the prior written permission of the City. Additionally, Garden Mart shall not install, construct, use, or permit another to install, construct, or use any aboveground or underground storage tank at the Cemetery without obtaining the City's prior written permission.

13. **Rules and Regulations.** The City may adopt and enforce reasonable rules and regulations designed to facilitate the safe and orderly use and operation of the Cemetery and its appurtenances, facilities, improvements, equipment and services. Garden Mart agrees to observe and obey those rules and regulations.

14. **Compliance with Laws.** Garden Mart shall comply with all applicable local, state, and federal laws, rules, regulations, and policies and shall obtain and maintain any and all permits, licenses, or certifications that may be necessary to carry out the operations contemplated by this Agreement. In the event Garden Mart should cease to be properly permitted, licensed, or certified, it shall immediately inform the City Administrator and shall immediately cease its operations pursuant to this Agreement. Within five (5) days of ceasing to be properly permitted, licensed, or certified, Garden Mart shall also notify the City in writing of that event. Garden Mart shall require all its employees, officers, and agents, to comply with all applicable local, state, and federal laws, rules, regulations, and policies.

15. **Structural Changes.** Garden Mart shall not make any structural changes to the Cemetery or to any structure or building used by Garden Mart, without the prior written consent of the City. All such changes shall be performed in a workmanlike manner and shall be done in accordance with all applicable laws, rules, and regulations. All alterations, additions, and improvements to the Cemetery shall become a part of the Cemetery and the sole property of the City, except as agreed by the parties in writing. Garden Mart shall also:

A. **City Approval.** Submit all plans and specifications to the City Administrator for written approval prior to commencing any work; and

B. **Filing.** File with and obtain the approval of all plans and specifications with all governmental departments and authorities having jurisdiction, prior to the commencement of any work.

C. **Licensed Contractor.** All such activity shall be done by appropriately licensed contractors and shall be done in accordance with all applicable laws, rules, and regulations.

16. **Right to Enter and Inspect.** The City shall have the right to enter the Cemetery and to inspect the Cemetery or to have a third party enter and inspect the Cemetery and all improvements, structures, and appurtenances at any reasonable time

17. **Surrender of Cemetery.** Garden Mart shall, on the last day of the term of this Agreement or on earlier termination and forfeiture of this Agreement, peaceably and quietly surrender and deliver the Cemetery free of subtenancies, including all buildings, additions and improvements constructed or placed thereon by Garden Mart, except movable trade fixtures, all in good condition and repair. Any trade fixtures or personal property belonging to Garden Mart, not removed within 30 days after the termination of this Agreement, and if the City shall so elect, shall be deemed abandoned and become the property of the City without any payment or offset thereof.

18. **Destruction of Cemetery.** In the event the Cemetery or any portion of it is totally destroyed or so partially destroyed or damaged as to render it incapable of reasonable use, then the City may, at its sole discretion, choose to repair the damage or destruction or choose to terminate this Agreement without incurring any penalty or further liability.

19. **Records.** For the term of this Agreement and for five (5) years after the expiration or termination of this Agreement, Garden Mart shall maintain copies of all records regarding any and all activities it conducts pursuant to this Agreement. The City shall have the right to inspect and copy such records upon reasonable notice to Garden Mart.

20. **Indemnification.** Garden Mart agrees to indemnify, save, and hold harmless the City, its officers, and employees against all liability, claims, damages, losses, or expenses of every kind, including reasonable attorneys' fees together with costs and expenses of litigation, arising out of, from, or associated in any manner with the acts or omissions of Garden Mart, its officers, agents, or employees.

21. **Insurance.** At all times material to this Agreement:

A. **Public Liability Insurance.** Garden Mart shall obtain and maintain, at its own expense, public liability and automobile liability insurance insuring against such claims and which insurance names the City as an additional insured. This insurance shall have an aggregate limit in the amount of two million dollars (\$2,000,000.00).

B. **Certificate Insurance.** Garden Mart shall provide the City with a current Certificate of Insurance. The insurance shall be with a company or companies licensed and authorized to do business in the State of New Mexico. Garden Mart shall annually furnish to the City a Certificate of Insurance for the above required insurances. Garden Mart shall provide the City with notice of any change thereof, and furnish to the City evidence of acquirement of a substitute therefore, and payment of the premium thereof.

C. **Tort Claims Act.** The City and its "public employees" as defined in the New Mexico Tort Claims Act do not waive any sovereign immunity, defense, or limitation of liability pursuant to law. No provision of this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

22. **Release.** Garden Mart, upon final payment of the amount due under this Agreement, releases the City, its officers, and employees from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. Garden Mart agrees not to purport to bind the City of Carlsbad,

1 unless Garden Mart has express written authority to do so, and then only within the strict limits of
2 that authority.

3
4 23. **Default or Breach.** Each of the following event shall constitute a default or breach of this
5 Agreement:

6 A. **Bankruptcy.** If Garden Mart, during the term of this Agreement, shall file a petition
7 in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall
8 voluntarily take advantage of any such act by answer or otherwise, or shall make an
9 assignment for the benefit of creditors.

10 B. **Involuntary Proceedings.** If involuntary proceedings under any bankruptcy law or
11 insolvency act shall be instituted against Garden Mart, or if a receiver or trustee shall be
12 appointed for all or substantially all of the property of Garden Mart and such proceedings
13 shall not be dismissed or the receivership or trusteeship vacated within sixty (60) days after
14 the institution or appointment.

15 C. **Failure to Comply.** If Garden Mart fails to perform or comply with any of the
16 conditions of this Agreement, and if the nonperformance shall continue for a period of fifteen
17 (15) days after notice thereof by the City to Garden Mart, or, if the performance cannot be
18 reasonably had within the fifteen (15) day period, and Garden Mart shall not in good faith
19 have commenced performance within the fifteen (15) day period and then diligently
20 proceeded to completion of performance.

21 D. **Transfer of Agreement.** If this Agreement shall be transferred to or shall pass to or
22 devolve to any other person or party, except in the manner specified herein.

23
24 24. **Effect of Default.** In the event of default hereunder as set forth in this Agreement, the rights
25 of the non-defaulting party shall be as follows:

26 A. **Cancel.** The non-defaulting party shall have the right to cancel and terminate this
27 Agreement. On expiration of the time fixed in the notice, this Agreement and all rights, title,
28 and interest of the defaulting party hereunder shall terminate in the same manner and with
29 the same force and effect, except as to the defaulting party's liability, as if the date fixed in
30 the notice of cancellation and termination were the end of the term herein originally
31 determined.

32 B. **Payment.** The non-defaulting party may elect, but shall not be obligated, to make
33 any payment required of the defaulting party herein or comply with any agreement, term, or
34 condition required hereby to be performed by the defaulting party, and the non-defaulting
35 party shall have the right to enter the Cemetery for the purpose of directing or remedying any
36 such default and to remain until the default has been corrected or remedied; but any
37 expenditure for correction by the non-defaulting party shall not be deemed to waive or
38 release the default of the defaulting party or the right of the non-defaulting party to take any
39 action as may be otherwise permissible or to seek other remedy under the law.

40
41 25. **Non-Waiver.** Waiver by the City of any default in performance by Garden Mart of any of
42 the terms or conditions contained in this Agreement shall not be deemed a continuing waiver of that
43 default or any subsequent default.

1 26. **Funding Availability.** The funding of this Agreement is subject to the availability and
2 appropriation of funds by the City Council of Carlsbad, New Mexico. If sufficient funding is not
3 available or not appropriated by the City Council, then this Agreement is terminated and the City
4 shall not incur any penalty or further liability.
5

6 27. **Termination.** Either party may terminate this Agreement without cause by providing the
7 other party with written notice of its intention to terminate this Agreement at least ninety (90) days
8 prior to the termination date. By such termination, neither party may nullify obligations already
9 incurred prior to the date of termination of the Agreement. However, neither party shall have any
10 obligation to perform services or make payment for such services rendered after such date of
11 termination.
12

13 28. **Entirety of Agreement.** This Agreement incorporates all the agreements, covenants, and
14 understandings between the parties hereto concerning the subject matter hereof, and all such
15 covenants, agreements, and understandings have been merged into this written Agreement. No prior
16 agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or
17 enforceable unless embodied in this Agreement. The parties expressly waive any other or further
18 representations, warranties, or agreements not set forth in this document. This Agreement cannot
19 be changed except by a written instrument subsequently executed with the same formalities as with
20 this Agreement.
21

22 29. **Assignment of Agreement.** Neither Garden Mart nor its successors or assigns, if any, shall
23 assign, transfer, mortgage, pledge, or encumber any interest in or right to this Agreement or the
24 Cemetery without the prior written approval of the City. If there is an approved assignment, transfer,
25 mortgage, pledge, or encumbrance, Garden Mart shall continue to be liable hereunder in accordance
26 with the terms and conditions of this Agreement and shall not be released from the performance of
27 the terms and conditions hereof. The consent by the City to an assignment, transfer, mortgage,
28 pledge, or encumbrance shall not be construed to relieve Garden Mart from obtaining the express
29 written consent of the City to any future transfer of interest.
30

31 30. **Independent Contractor.** Garden Mart, its officers, employees, and agents are independent
32 contractors performing professional services for the City and are not employees of the City. Garden
33 Mart and its officers, employees, and agents shall not accrue leave, retirement, insurance, bonding,
34 use of city vehicles, or any other benefits afforded to the employees of the City of Carlsbad as a
35 result of this Agreement.
36

37 31. **Workers' Compensation.** Garden Mart agrees to comply with state laws and rules
38 applicable to workers compensation benefits for its employees. If Garden Mart fails to comply with
39 the Workers' Compensation Act and applicable rules when required to do so, this agreement may be
40 terminated by the City.
41
42
43

32. **Procurement Code Penalties.** The Procurement Code, NMSA 1978, Sections 13-1-28 et al., imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

33. **Campaign Contribution Disclosure.** The Procurement Code, NMSA 1978, Sections 13-1-28, et al., requires certain prospective contractors to submit a fully completed campaign contribution disclosure statement. Garden Mart states that it has complied with all such applicable requirements.

34. **Notices.** All notices permitted or required by the terms of this Agreement shall be in writing and be deemed to have been duly given and delivered, if mailed, certified postage prepaid:

If to City:

The City of Carlsbad
c/o City Administrator
P.O. Box 1569
Carlsbad, NM 88221-1569

If to Garden Mart:

The Garden Mart, Inc.
c/o Mark Walterschied, President
600 E. Hamilton Street
Carlsbad, NM 88220

The parties shall notify each other in writing of any change in the above information.

35. **New Mexico Law and Venue.** This Agreement shall be construed in accordance with New Mexico law. The parties agree that, in the event any legal action arising out of this Agreement is permitted to be brought other than in arbitration, such action shall be brought in the District Court of Eddy County, New Mexico for the Fifth Judicial District. The parties expressly consent to both in personam and subject matter jurisdiction of the Eddy County District Court and agree that venue shall properly lie in the Eddy County, New Mexico District Court.

36. **Arbitration.** Should any dispute arise between the parties in connection with the Agreement and if such dispute cannot be resolved by discussion between the parties, the parties agree to submit the unresolved dispute to binding arbitration in lieu of litigation. The parties expressly consent to holding all arbitration proceedings in Eddy County, New Mexico.

37. **Captions.** The captions of any articles, paragraphs, or sections hereof are made for convenience only and shall not control or affect the meaning or construction of any of the provisions thereof.

38. **Exhibits.** Any instrument or document made and attached to this Agreement shall constitute a part hereof as though set forth in full in the body of this Agreement, whether made a part hereof by reference or whether made a part hereof by attachment.

CITY OF CARLSBAD:


NED Z. ELKINS, MAYOR PRO TEMPORE

1 ATTEST:

2
3
4 Jane Chambers
5 CITY CLERK
6
7
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11

12 THE GARDEN MART, INC:

13
14
15 Mark Walterscheid
16 MARK WALTERSCHEID, PRESIDENT
17
18

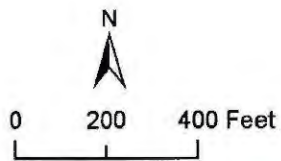
19 STATE OF NEW MEXICO)

20) ss.

21 COUNTY OF EDDY)
22

23 The foregoing instrument was signed and acknowledged before me this 16th day of
24 July, 2007, by MARK WALTERSCHEID, President of The Garden Mart, Inc.
25

26 My commission expires: November 19, 2009 Rosario D. Methola
27 NOTARY PUBLIC
28



CITY OF CARLSBAD
NEW MEXICO

CARLSBAD CEMETERY

BOUNDARY MAP

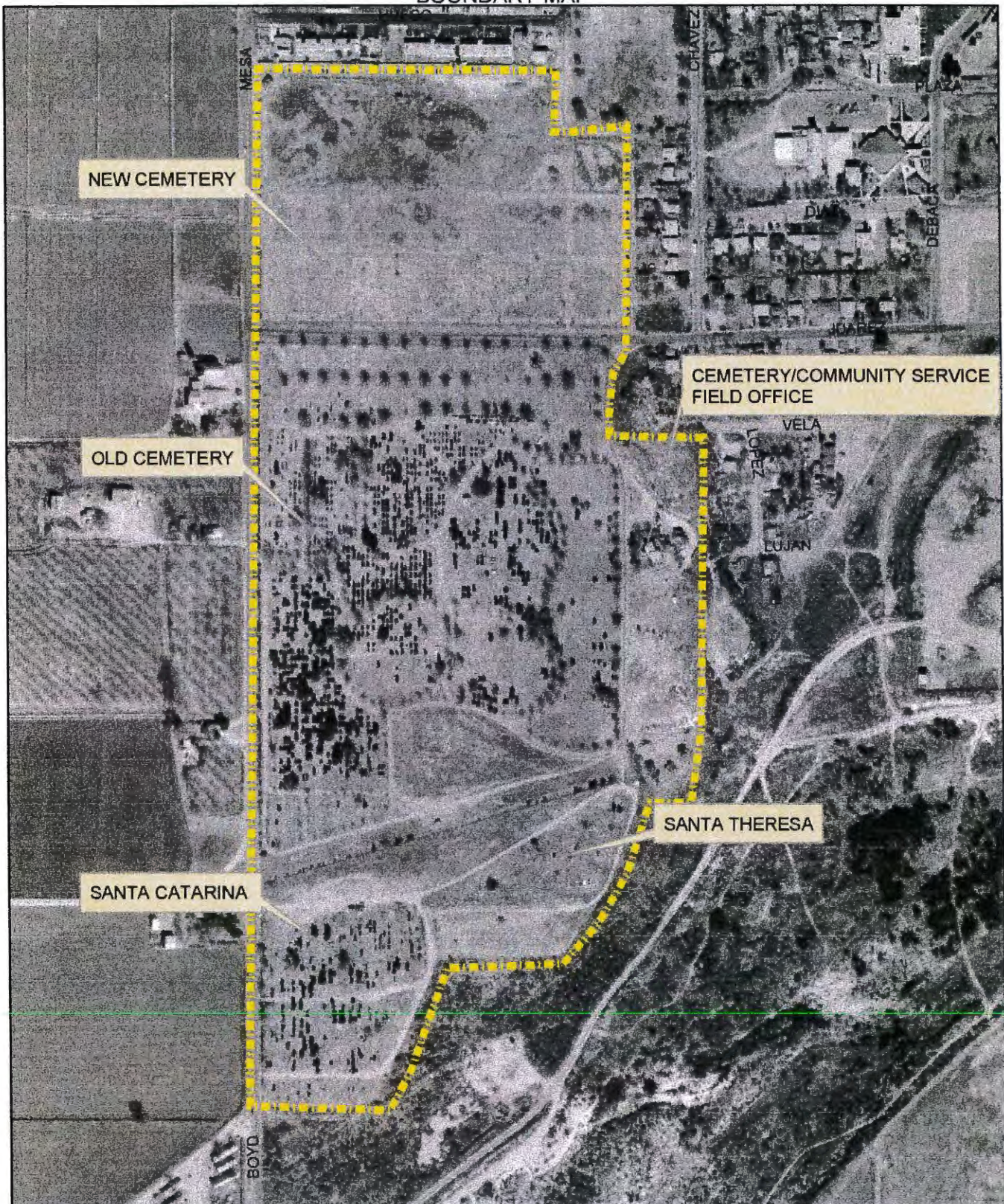


EXHIBIT "A"

ATTACHMENT “B”

The Amendment to the Agreement Between the City of Carlsbad and the Garden Mart, Inc. for Grounds Maintenance and Grave Opening and Closing Services at the City of Carlsbad Cemetery to Add Sunset Gardens Cemetery, dated the 14 day of June 2011, with its exhibit showing Sunset Gardens Cemetery

**AMENDMENT TO
THE SIXTH RENEWAL
OF AGREEMENT BETWEEN THE CITY OF CARLSBAD
AND THE GARDEN MART, INC. FOR GROUNDS MAINTENANCE
AND GRAVE OPENING AND CLOSING SERVICES
AT THE CITY OF CARLSBAD CEMETERY AND
AS AMENDED IN 2011 TO INCLUDE SUNSET GARDENS CEMETERY
REGARDING THE INSTALLATION OF AN IRRIGATION SYSTEM
IN SECTION Q OF THE CITY OF CARLSBAD CEMETERY**

1 THIS AMENDMENT to the Sixth Renewal of the Agreement Between the City of Carlsbad
2 and the Garden Mart, Inc. For Grounds Maintenance and Grave Opening and Closing Services at the
3 City of Carlsbad Cemetery and as Amended in 2011 to Include Sunset Gardens Cemetery regarding
4 the installation of an irrigation system in Section Q of the City of Carlsbad Cemetery, is entered into
5 at Carlsbad, New Mexico, this 12th day of February, 2014, by and between the CITY OF
6 CARLSBAD, New Mexico, a municipal corporation, hereinafter referred to as "City" and THE
7 GARDEN MART, INC., a New Mexico corporation, hereinafter referred to as "Garden Mart".
8

9
10 WHEREAS, the City of Carlsbad and The Garden Mart, Inc. entered into an agreement in
11 2007 pursuant to which Garden Mart provides the City with grounds maintenance and grave opening
12 and closing services at the City of Carlsbad Cemetery; and
13

14 WHEREAS, that agreement was amended in 2011 to include Sunset Gardens Cemetery as
15 a cemetery at which Garden Mart would provide its services; and
16

17 WHEREAS, in May 2013 the parties entered into the Sixth renewal of that agreement; and
18

19 WHEREAS, the parties wish to amend the existing agreement to have Garden Mart construct
20 and install a sprinkler irrigation system for Section Q, Blocks 1, 2, 3, and 4 at the City of Carlsbad
21 Cemetery.
22

23 NOW, THEREFORE, FOR THE CONSIDERATION SPECIFIED HEREIN THE PARTIES
24 AGREE AS FOLLOWS:
25

- 26 1. **Agreements.** The following documents are attached to this renewal and incorporated herein:
27 A. The Agreement Between the City of Carlsbad and the Garden Mart, Inc. for Grounds
28 Maintenance and Grave Opening and Closing Services at the City of Carlsbad Cemetery,
29 with such agreement dated the 1st day of August 2007, hereinafter the "2007 Agreement".
30 B. The Amendment to the Agreement Between the City of Carlsbad and the Garden
31 Mart, Inc. for Grounds Maintenance and Grave Opening and Closing Services at the City of
32 Carlsbad Cemetery to Add Sunset Gardens Cemetery with such amendment dated the 14 day
33 of June 2011, hereinafter the "2011 Amendment".
34

C. The Sixth Renewal of Agreement Between the City of Carlsbad and the Garden Mart, Inc. for Grounds Maintenance and Grave Opening and Closing Services at the City of Carlsbad Cemetery and as Amended in 2011 to Include Sunset Gardens Cemetery with such renewal dated May 29, 2013, hereinafter the "6th Renewal".

Collectively the 2007 Agreement, the 2011 Amendment, and the 6th Renewal are hereinafter the "Agreements".

2. **Amendment of Grounds Maintenance Services.** Paragraph 5 of the 2007 Agreement is amended to add the following provisions:

J. **Irrigation System.** Garden Mart shall construct and install the sprinkler irrigation system for Section Q, Blocks 1, 2, 3, and 4 of the City of Carlsbad Cemetery as shown on Exhibit "D", attached and incorporated herein, in a good and workmanlike manner. Garden Mart shall obtain all necessary permits and shall provide all equipment, tools, materials, and labor required to perform said irrigation construction and installation. Garden Mart shall perform all necessary cleanup required to leave a rock-free and smooth area after the construction and installation.

3. **Amendment to Compensation.** Paragraph 8 of the 2007 Agreement as amended by Paragraph 5 of the 2011 Amendment is further amended to add the following provisions:

D. **Carlsbad Cemetery Irrigation System.** The City and/or its agents shall inspect the sprinkler irrigation system constructed and installed in Section Q, hereinafter referred to as the Sprinkler Irrigation System. The City may accept the Sprinkler Irrigation System, or, if the City in its sole discretion finds the Sprinkler Irrigation System has not been constructed or installed as shown on Exhibit "D", it may reject the Sprinkler Irrigation System. If the City rejects the Sprinkler Irrigation System, it shall notify Garden Mart of the deficiency or deficiencies found by the City. Garden Mart shall then correct the deficiency or deficiencies. Upon the City's acceptance of the Sprinkler Irrigation System and in consideration for all services provided by Garden Mart for the construction and installation of the Sprinkler Irrigation System, the City shall pay Garden Mart, a total of Nine Thousand Five Hundred Forty-Five Dollars and 45/100 (\$9,545.45). That compensation includes all taxes, fees and expenses.

4. Except as amended above, the Agreements shall remain in effect, and the parties shall have the same rights and responsibilities.

CITY OF CARLSBAD:


DALE JANWAY, MAYOR

1 ATTEST:

2
3 Annette Peirine
4 CITY CLERK
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9

10 THE GARDEN MART, INC

11 [Signature]
12
13 MARK WALTERSCHEID, PRESIDENT
14
15

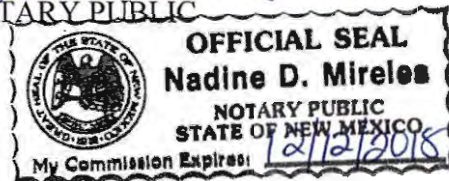
16 STATE OF NEW MEXICO)
17) ss.
18 COUNTY OF EDDY)
19

20 The foregoing instrument was acknowledged before me this 24th day of
21 January, 2014, by MARK WALTERSCHEID, President, The Garden Mart, Inc.
22

23 My Commission Expires:

24 December 12, 2015
25

Nadine D. Mireles
NOTARY PUBLIC



ATTACHMENT "A"

The August 2007 Agreement.

ATTACHMENT "B"

The June 2011 Amendment adding Sunset Gardens.

ATTACHMENT “C”

The May 2013 6th Renewal.

ATTACHMENT “D”

The irrigation system design and plans.

**City of Carlsbad
Personnel Department**

**Action Report
Month of June 2014**

**Submitted by
Scot D. Bendixsen, HR Director**

DRUG TESTS	Number Given
Pre-employment	12
Probationary	2
Post Accident	13
Random	6
Periodic	0
Probable Cause	0

PHYSICAL EXAMINATIONS	Number Given
Pre-employment	
Return to Work Evaluation	0
Functional Capacity Evaluation	0

TESTING	Number Given
Firefighter, physical	42
Firefighter, written	31
Typing	6

VACANCIES BID	Department
Receptionist P/T	Finance
Secretary P/T	Personnel
Executive Secretary	Finance

VACANCIES ADVERTISED	Applications Received
Construction Maintenance	10
Code Enforcement	21
Laborer	11
Facility Maintenance	8
Firefighter	48
Receptionist	27
ARC Driver	3
IT Technician	3
Community Service Officer	7
Telecommunicator	Pending
Patrolman	Pending
N. Mesa Sr. Rec. Ctr. Attend. P/T	Pending
School Crossing Guard	Pending
Heavy Equipment Operator	Pending

City of Carlsbad
Personnel Department Action Report
Month of June 2014

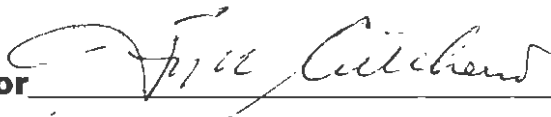
EMPLOYEE REPORT	Beginning of Month	New Hires	Terminations	Transfers In	Transfers Out	End of Month
Full-Time Employees	396	9	6	1	3	397
Part-Time/Temp Employees	78	9	2	3	1	87
Total Employees	474	18	8	4	4	484
Administrative	16	2	1			17
Judicial	8					8
Finance	17					17
Police	105		4			101
Fire	66	1				67
Culture & Recreation	107	8	2		1	112
Planning & Regulation	14					14
Utilities	72	5				77
Transportation & Facilities	69	2	1	1		71
TOTAL	474	18	8	1	1	484

WEEKLY INDEMNITY	Beginning of Month	New Claims	Released To Work	Terminated	End of Month
Employees on WI	3	0	0	0	3

UNEMPLOYMENT CLAIMS	Claims Received	Claims Returned	Claims Denied	Claims Approved	Claims Pending	Claims Appealed
Current Month	0	0	0	1	0	0

CITY OF CARLSBAD
AGENDA BRIEFING MEMORANDUM

Council Meeting Date: 8 July 2014

DEPARTMENT: Legal	BY: E. Riordan	DATE: 1 July 2014				
SUBJECT: An ordinance amending the Carlsbad Municipal Code's Clean Indoor Air Ordinance to include the use of electronic cigarettes as a form of smoking						
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) In 2000, the City adopted the Clean Indoor Air Ordinance prohibiting smoking in certain places open to the public. Electronic smoking devices were not in general use at that time. Since then, they have become widely available. The U.S. Food and Drug Administration, along with other organizations such as the American Lung Association and the American Cancer Society, have expressed concerns about the safety and potential health risks of those devices. The proposed ordinance would amend the Clean Indoor Air Ordinance to treat the use of electronic smoking devices similarly to the use of cigarettes and other tobacco products and would prohibit their use in many places open to the public. The majority of the changes would be to amend several existing definitions and to add new definitions. The use of electronic smoking devices would be permitted in electronic cigarette retail stores.						
DEPARTMENT RECOMMENDATION: N/A						
BOARD/COMMISSION/COMMITTEE ACTION: Reviewed and Approved Draft Ordinance <table style="width: 100%; border: none;"><tr><td style="width: 33%; vertical-align: top;"><input type="checkbox"/> P & Z <input type="checkbox"/> Museum Board <input type="checkbox"/> Library Board</td><td style="width: 33%; vertical-align: top;"><input type="checkbox"/> Lodgers Tax Board <input type="checkbox"/> San Jose Board <input type="checkbox"/> North Mesa Board</td><td style="width: 33%; vertical-align: top;"><input type="checkbox"/> Cemetery Board <input type="checkbox"/> Water Board <input type="checkbox"/> Ordinance Committee</td><td style="width: 10%; vertical-align: top; text-align: right;">} <input type="checkbox"/> APPROVED } } <input type="checkbox"/> DISAPPROVED</td></tr></table>			<input type="checkbox"/> P & Z <input type="checkbox"/> Museum Board <input type="checkbox"/> Library Board	<input type="checkbox"/> Lodgers Tax Board <input type="checkbox"/> San Jose Board <input type="checkbox"/> North Mesa Board	<input type="checkbox"/> Cemetery Board <input type="checkbox"/> Water Board <input type="checkbox"/> Ordinance Committee	} <input type="checkbox"/> APPROVED } } <input type="checkbox"/> DISAPPROVED
<input type="checkbox"/> P & Z <input type="checkbox"/> Museum Board <input type="checkbox"/> Library Board	<input type="checkbox"/> Lodgers Tax Board <input type="checkbox"/> San Jose Board <input type="checkbox"/> North Mesa Board	<input type="checkbox"/> Cemetery Board <input type="checkbox"/> Water Board <input type="checkbox"/> Ordinance Committee	} <input type="checkbox"/> APPROVED } } <input type="checkbox"/> DISAPPROVED			
Reviewed by: City Administrator <u></u> Date: <u>7/1/14</u>						

ATTACHMENT(S): Ordinance draft

ORDINANCE NO. 2014-____

AN ORDINANCE AMENDING SECTIONS 32-77, 32-80, AND 32-81 OF THE CODE OF ORDINANCES, CITY OF CARLSBAD, NEW MEXICO, ENTITLED "CLEAN INDOOR AIR ORDINANCE", TO INCLUDE THE USE OF ELECTRONIC SMOKING DEVICES AS A FORM OF SMOKING.

WHEREAS, the City of Carlsbad adopted Ordinance No. 2000-07 prohibiting smoking in certain public places; and

WHEREAS, since the adoption of that ordinance, electronic smoking devices have become increasingly advertised and used; and

WHEREAS, the U.S. Food and Drug Administration and other health experts have warned consumers about the potential health risks associated with electronic cigarettes;

WHEREAS, the City wishes to amend its Clean Indoor Air Ordinance to include products such as electronic smoking devices.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, EDDY COUNTY, NEW MEXICO, that:

1. Section 32-77 shall be amended to add the following definitions to the existing list:
 - A. *Electronic smoking device* means any product containing, delivering or designed or intended to contain or deliver nicotine or any substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. *Electronic smoking device* includes any component part of such product whether or not sold separately.
 - B. *Electronic smoking device retail store* means a retail store utilized primarily for the sale of electronic smoking devices and accessories and in which the sale of other products is merely incidental.
 - C. *Smoke* or *smoking* means inhaling, exhaling, burning, using, holding or carrying any lighted or activated cigarette, cigar, cigarillo, pipe, or other lighted or activated tobacco product in any manner or in any form. *Smoke* also means the gaseous products, vapor or particles created by the use of a lighted cigarette, cigar, cigarillo, pipe or any other kind of smoking equipment.

D. *Tobacco product* means any product that is made from tobacco or contains nicotine or any substance intended to be inhaled or ingested in a way that simulates smoking, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus or an electronic smoking device.

2. Section 32-80 shall be amended to state:

Outdoor smoking shall occur at a reasonable distance from any enclosed area where smoking is prohibited to insure that smoke does not enter the area through entrances, windows, ventilation systems, or any other means.

3. Section 32-81(a) shall be amended to add the following to the list of areas which shall not be subject to the restrictions of Chapter 32, Article III:

(5) Electronic smoking device retail store.

INTRODUCED, PASSED, ADOPTED AND APPROVED this ____ day of _____, 2014.

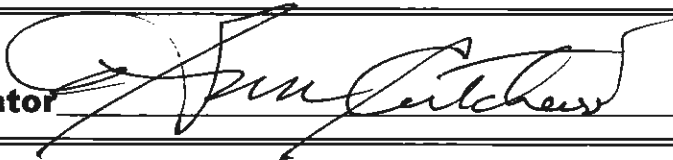
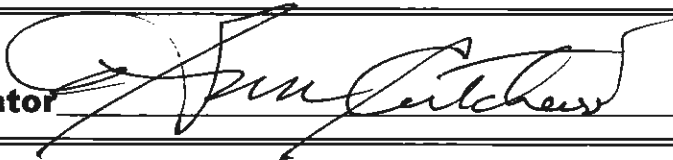
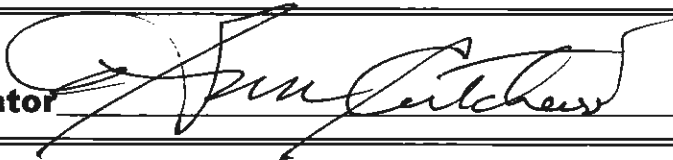
DALE JANWAY, MAYOR

ATTEST:

CITY CLERK

CITY OF CARLSBAD
AGENDA BRIEFING MEMORANDUM

Council Meeting Date: 8 July 2014

DEPARTMENT: Legal	BY: E. Riordan	DATE: 1 July 2014											
SUBJECT: An ordinance prohibiting the sale of electronic smoking devices to minors													
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) The U.S. Food and Drug Administration and other organizations such as the American Lung Association and the American Cancer Society have expressed concerns about the safety and potential health risks of electronic smoking devices. Staff was requested to prepare an ordinance banning the sale of such devices to minors. Existing state law banning the sale of cigarettes to minors was used as the basis of the proposed ordinance. If adopted, this ordinance would make it illegal to sell, offer to sell, barter or give an electronic smoking device to a person less than 18 years old. Electronic smoking devices could not be sold by a self-service display such as a vending machine. The maximum sentence for a person convicted of a violation would be a \$500 fine and / or 90 days incarceration.													
DEPARTMENT RECOMMENDATION: N/A													
BOARD/COMMISSION/COMMITTEE ACTION: Reviewed and Approved Draft Ordinance <table style="width: 100%; border: none;"><tr><td><input type="checkbox"/> P & Z</td><td><input type="checkbox"/> Lodgers Tax Board</td><td><input type="checkbox"/> Cemetery Board</td><td rowspan="2" style="vertical-align: middle;">} <input type="checkbox"/> APPROVED } <input type="checkbox"/> DISAPPROVED</td></tr><tr><td><input type="checkbox"/> Museum Board</td><td><input type="checkbox"/> San Jose Board</td><td><input type="checkbox"/> Water Board</td></tr><tr><td><input type="checkbox"/> Library Board</td><td><input type="checkbox"/> North Mesa Board</td><td><input type="checkbox"/> Ordinance Committee</td><td></td></tr></table>			<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	} <input type="checkbox"/> APPROVED } <input type="checkbox"/> DISAPPROVED	<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	<input type="checkbox"/> Library Board	<input type="checkbox"/> North Mesa Board	<input type="checkbox"/> Ordinance Committee	
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<table style="width: 100%; border: none;"><tr><td style="width: 30%;">Reviewed by:</td><td style="width: 40%; text-align: center;"></td><td style="width: 30%;"></td></tr><tr><td>City Administrator</td><td></td><td>Date: <u>7-3-14</u></td></tr></table>			Reviewed by:			City Administrator		Date: <u>7-3-14</u>					
Reviewed by:													
City Administrator		Date: <u>7-3-14</u>											

ATTACHMENT(S): Ordinance draft

ORDINANCE NO. 2014-_____

AN ORDINANCE PROHIBITING THE SALE OF ELECTRONIC SMOKING DEVICES TO MINORS.

WHEREAS, electronic smoking devices have become widely available in recent years; and

WHEREAS, the U.S. Food and Drug Administration has warned consumers about the potential health risks associated with electronic cigarettes; and

WHEREAS, the City finds that public health and safety would be best served if electronic smoking devices could not be sold or given to minors.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, EDDY COUNTY, NEW MEXICO, that:

1. *Electronic smoking device* means any product containing, delivering or designed or intended to contain or deliver nicotine or any substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. *Electronic smoking device* includes any component part of such product whether or not sold separately.

Minor means an individual who is less than eighteen years of age.

2. No person shall knowingly sell, offer to sell, barter or give any electronic smoking device to any minor.

3. Evidence of the age and identity of the person may be shown by any document that contains a picture of the person issued by a federal, state, county or municipal government, including a motor vehicle driver's license or an identification card issued to a member of the armed forces.

Any person selling goods at retail or wholesale may refuse to sell electronic smoking devices to any person who is unable to produce an identity card as evidence that he is eighteen years of age or over.

A person, firm, corporation, partnership or other entity engaged in the sale at retail of electronic smoking devices shall prominently display in the place where electronic smoking devices are sold a printed sign or decal that reads as follows:

"IT IS A CRIME TO SELL AN ELECTRONIC SMOKING DEVICE TO A
PERSON LESS THAN 18 YEARS OF AGE."

4. A person shall not sell electronic smoking devices at a retail location by any means other than a direct, face-to-face exchange between the customer and the seller or the seller's employee. A person selling goods at a retail location shall not use a self-service display for electronic smoking devices. A "self-service display" means a display to which the public has access without the assistance of the seller or the seller's employee.

5. Any person who violates any provision of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to Section 1-6 of the Code of Ordinances of the City of Carlsbad, New Mexico. Each violation is a separate and distinct offense.

INTRODUCED, PASSED, ADOPTED AND APPROVED this ____ day of _____,
2014.

DALE JANWAY, MAYOR

ATTEST:

CITY CLERK

CITY OF CARLSBAD

INTER-OFFICE MEMORANDUM

Dale Janway, Mayor

Steve McCutcheon, City Administrator

July 2, 2014

TO: Council Members
FROM: Mayor Dale Janway
RE: Board, Commission and Committee Appointments

Subject to the approval of the Governing Body, I would like to appoint the following:

Carlsbad Retired and Senior Volunteer Program (RSVP) Advisory Council

Re-appoint Dorothy Perkowski 4 year term

Carlsbad Board of Water and Sewer Commissioners

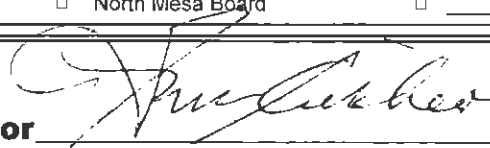
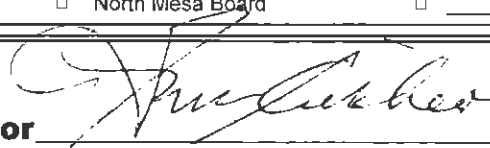
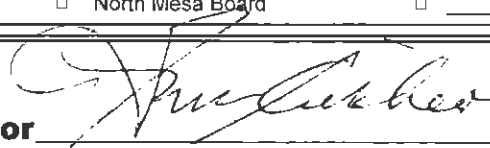
Re-appoint Larry Sells Remainder 6 year term

Thank you.

DJ/cm

CITY OF CARLSBAD
AGENDA BRIEFING MEMORANDUM

Council Meeting Date: 8 July 2014

DEPARTMENT: Legal	BY: E. Riordan	DATE: 30 June 2014											
SUBJECT: Consider approval of Agreement Between the City and Carlsbad Municipal Schools for Fiscal Year 2014-2015													
<p>BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)</p> <p>For a number of years, the City and Carlsbad Municipal Schools have had an agreement regarding a variety of services and facilities. Pursuant to the agreement, those items include:</p> <ul style="list-style-type: none">A. School Zone Warning Lights The City and Schools equally share the cost to install new lights. The City pays for the electricity for lights installed prior to July 1, 1993.B. Crossing Guards The Schools pay the City \$7,000. The annual cost to the City is estimated at \$64,000.C. School Natatorium Operation The Schools agree that the High School natatorium will be available to the general public.D. Summer Recreation Program The City and Schools will mutually agree to an amount prior to June 1, 2015E. Summer Academy The City pays \$38,696F. Youth Citizenship Program The City pays \$7,500G. Tutoring The City pays \$25,000H. Eddy Alternative School Program The City pays \$150,000 <p>School Resource Officers are not part of this agreement. Those services are under a separate agreement.</p>													
<p>DEPARTMENT RECOMMENDATION:</p> <p>Adopt the proposed agreement.</p>													
<p>BOARD/COMMISSION/COMMITTEE ACTION: N/A</p> <table style="width: 100%;"><tr><td><input type="checkbox"/> P & Z</td><td><input type="checkbox"/> Lodgers Tax Board</td><td><input type="checkbox"/> Cemetery Board</td><td rowspan="2">} <input type="checkbox"/> APPROVED</td></tr><tr><td><input type="checkbox"/> Museum Board</td><td><input type="checkbox"/> San Jose Board</td><td><input type="checkbox"/> Water Board</td></tr><tr><td><input type="checkbox"/> Library Board</td><td><input type="checkbox"/> North Mesa Board</td><td><input type="checkbox"/> _____ Committee</td><td>} <input type="checkbox"/> DISAPPROVED</td></tr></table>			<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	} <input type="checkbox"/> APPROVED	<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	<input type="checkbox"/> Library Board	<input type="checkbox"/> North Mesa Board	<input type="checkbox"/> _____ Committee	} <input type="checkbox"/> DISAPPROVED
<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	} <input type="checkbox"/> APPROVED										
<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board											
<input type="checkbox"/> Library Board	<input type="checkbox"/> North Mesa Board	<input type="checkbox"/> _____ Committee	} <input type="checkbox"/> DISAPPROVED										
<table style="width: 100%; border: 1px solid black;"><tr><td style="width: 30%;">Reviewed by:</td><td style="width: 40%; text-align: center;"></td><td style="width: 30%;">Date: <u>6/30/14</u></td></tr><tr><td colspan="3">City Administrator</td></tr></table>			Reviewed by:		Date: <u>6/30/14</u>	City Administrator							
Reviewed by:		Date: <u>6/30/14</u>											
City Administrator													

ATTACHMENT(S):
Agreement Between the City and Carlsbad Municipal Schools for Fiscal Year 2014-2015

**AGREEMENT BETWEEN
CITY OF CARLSBAD AND THE CARLSBAD MUNICIPAL SCHOOLS
FOR FISCAL YEAR 2014-2015**

THIS AGREEMENT is entered into at Carlsbad, New Mexico, this _____ day of _____, 2014, by and between the **CITY OF CARLSBAD**, New Mexico, a municipal corporation, hereinafter referred to as "**City**", and the **CARLSBAD MUNICIPAL SCHOOLS**, an independent school district under the laws of the State of New Mexico, hereinafter referred to as "**Schools**".

WHEREAS, the parties have mutual interests in the areas of school safety zones, community recreation programs, and youth education; and

WHEREAS, the parties entered into an agreement for the year beginning on 1 July 2000 regarding certain programs and facilities offered through the Schools; and

WHEREAS, the parties renewed that agreement each year from July 2001, to July 2013, modifying it as the parties' needs have changed; and

WHEREAS, the parties desire to continue that agreement for an additional year beginning on July 1, 2014; and

WHEREAS, the parties desire to cooperate in the implementation and funding of such programs.

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

A. School Zone Warning Lights.

1. For the installation of school zone flashing lights in the city limits, after the effective date of this Agreement, the City and Schools shall each pay 50% of the capital and labor costs for such installation.
2. The Schools will pay the electric utility charges for each light installed after July 1, 1993.
3. The City will continue to pay the electric utility charges for lights installed prior to July 1, 1993.
4. The City and Schools shall prioritize the need for such school zone flashing lights and shall determine the appropriate location.

B. Crossing Guards.

1. The City will provide School Crossing Guards at the following locations during the 2014 - 2015 school year:
 - Alta Vista Middle School;
 - Center Street;
 - Craft Elementary;

Early Childhood Education Center;
George and Pierce Streets;
Hillcrest Elementary;
Joe Stanley Smith Elementary;
Monterrey Elementary;
Pate Elementary;
Pate and Pierce Streets;
P.R. Leyva Middle School;
Riverside Elementary; and
Sunset Elementary.

2. The City will also provide School Crossing Guards at the following locations for the K-3 Plus Program beginning on June 19, 2014, and ending on July 25, 2014:

Craft Elementary;
Hillcrest Elementary;
Joe Stanley Elementary;
Pate Elementary; and
Sunset Elementary.

C. **Natatorium Operation.**

The Schools will operate and maintain a natatorium facility at Carlsbad High School and make such facility available to the general public at reasonable times.

D. **Summer Recreation Program.**

The City and Schools agree to cooperate to provide a summer recreation program for community youth. The Schools shall provide all facilities and equipment needed for such recreation program. The summer recreation program shall be available to all community youth.

E. **Summer Academy.**

The City and Schools agree to cooperate to provide a summer academy to increase the early literacy and reading skills of first, second, and third grade students in the Carlsbad Municipal Schools.

F. **Youth Citizenship Program.**

The Schools shall provide programs for its students to encourage the development of citizens of good character with an emphasis on ethics and citizenship.

G. **Tutoring.**

The Schools shall provide an after school academic tutoring program for its students.

H. **Eddy Alternative School Program**

The City shall provide the Schools with a one-time payment of One hundred Fifty Thousand Dollars (\$150,000) to be used by the Schools to pay for instructional costs of personnel and support staff providing educational services for students of the Eddy Alternative School during the 2013 - 2014 academic year.

1 I. **Term.**

2 The term of this Agreement shall be from 1 July 2014 to 30 June 2015.

3
4 J. **Compensation.**

5 In consideration for the services provided by the Schools, the City shall pay the Schools the
6 amount reflected on Exhibit A, attached hereto and incorporated herein.

7
8 K. **Amendment.**

9 No changes or amendments shall be made to this Agreement during its term, except such
10 changes or amendments as are agreed to in writing between the parties.

11
12 L. **Meetings.**

13 The Schools and City shall meet as necessary, but no less than once per year, to discuss the
14 parties' needs and matters of mutual concern.

15
16 CITY OF CARLSBAD:

17
18
19 _____
20 DALE JANWAY, MAYOR

21
22 ATTEST:

23
24
25 _____
26 CITY CLERK

27
28 CARLSBAD MUNICIPAL SCHOOLS:

29
30
31 _____
32 GARY PERKOWSKI
33 SUPERINTENDENT OF SCHOOLS

34
35 STATE OF NEW MEXICO)
36) ss.
37 COUNTY OF EDDY)

38
39 The foregoing instrument was signed and acknowledged before me this _____ day of _____
40 _____, 2014 by Gary Perkowski, Carlsbad Municipal Schools, Superintendent of Schools.

41
42
43 My Commission Expires:

44 _____
45 NOTARY PUBLIC

ATTACHMENT "A"

Fiscal Year 2014-2015
Budgeted Amounts

Crossing Guards

Annual cost to City about \$64,000

Schools to pay City \$7,000

Natatorium

City to pay Schools \$27,000

Summer Recreation

The extent and funding of such program shall be determined by mutual agreement prior to
1 June 2015.

Summer Academy

\$38,696.00

Youth Citizenship Program

\$7,500.00

Tutoring

City to pay Schools \$25,000

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM

Council Meeting Date: July 8, 2014

DEPARTMENT: Culture, Recreation & Community Services	BY: Patsy Jackson-Christopher	DATE: 7-1-14
SUBJECT: Renewal of Contract between the City of Carlsbad and Metal Shop Live Productions, LLC		
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)		
<p align="center">THIS ITEM WAS TABLED AT THE JUNE 24, 2014 CITY COUNCIL MEETING.</p> <p>The City of Carlsbad and Metal Shop Live entered into an agreement on August 2013 for the management of the Walter Gerrells Performing Arts Center.</p> <p>Their responsibilities include coordinating, facilitating and scheduling the use of the WGPAC. Metal Shop Live is also responsibility for promotional services of the WGPAC by advertising, publicizing and promoting its facilities and its events within the Carlsbad area and maintain the full utilization of the WGPAC.</p> <p>The current contract expires September 1, 2014. The City of Carlsbad would like to renew this contract in order for the promoter to successfully commit to contracts for the fall and spring season.</p>		
DEPARTMENT RECOMMENDATION: If it is the pleasure of the City Council, it is recommended that the Contract with Metal Shop Live Productions, LLC be renewed.		
BOARD/COMMISSION/COMMITTEE ACTION:		
<input type="checkbox"/> P & Z <input type="checkbox"/> Museum Board <input type="checkbox"/> Library Board	<input type="checkbox"/> Lodgers Tax Board <input type="checkbox"/> San Jose Board <input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> Cemetery Board <input type="checkbox"/> Water Board <input type="checkbox"/> Beautification Committee
		<input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED

Reviewed by: City Administrator: /s/ Steve McCutcheon	Date: July 3, 2014
--	---------------------------

ATTACHMENT(S): Contract

**FIRST RENEWAL OF THE
AGREEMENT BETWEEN THE CITY OF CARLSBAD AND
METAL SHOP LIVE PRODUCTIONS, LLC FOR
PROMOTION AND OPERATION OF
THE WALTER GERRELLS PERFORMING ARTS AND EXHIBITION CENTER**

1 THIS AGREEMENT is entered into at Carlsbad, New Mexico, this ____ day of _____,
2 2014, by and between the CITY OF CARLSBAD, New Mexico, a municipal corporation, hereinafter
3 referred to as "City" and METAL SHOP LIVE PRODUCTIONS, LLC, hereinafter referred to as
4 "Metal Shop".

5
6 WHEREAS, the City of Carlsbad owns the Walter Gerrells Performing Arts and Exhibition
7 Center ("WGPAEC"); and

8
9 WHEREAS, the Carlsbad City Council created the Walter Gerrells Performing Arts and
10 Exhibition Centre Advisory Board (the "Advisory Board") to promulgate rules and regulations for
11 the operation, management, care, and custody of the WGPAEC subject to the approval of the City
12 Council; and

13
14 WHEREAS, it was recommended that the City enter into an agreement, through the Request
15 for Proposals process, with a promoter to manage the WGPAEC, to promote the facility, and to bring
16 events to it; and

17
18 WHEREAS, the City advertised RFP No. 2013-19 seeking such promotion, management,
19 and events services for the WGPAEC; and

20
21 WHEREAS, the committee which reviewed the responses to the RFP recommended that
22 Metal Shop Live Productions, LLC be awarded the proposal;

23
24 WHEREAS, the City and Metal Shop entered into an agreement for the year beginning on
25 1 September 2013; and

26
27 WHEREAS, the parties wish to renew that agreement for an additional year.

28
29 NOW, THEREFORE, FOR THE CONSIDERATION SPECIFIED HEREIN THE PARTIES
30 AGREE AS FOLLOWS:

31
32 1. **Agreement.** The Agreement Between the City of Carlsbad and Metal Shop Live
33 Productions, LLC for Promotion and Operation of the Walter Gerrells Performing Arts and
34 Exhibition Center dated 14th day of August 2013 (the "2013 Agreement"), is attached and is
35 incorporated herein and made a part of this Renewal Agreement.

36
37 2. **Renewal Term.** The parties agree to renew the 2013 Agreement for the year beginning 1
38 September 2014, and ending 31 August 2015.

3. **Terms & Conditions.** This renewal shall be under the same terms and conditions, and the parties shall have the same rights and responsibilities as in the attached Agreement.

4. **Captions.** The captions of any articles, paragraphs or sections hereof are made for convenience only and shall not control or affect the meaning or construction of any of the provisions thereof.

5. **Exhibits.** Any instrument or document attached to or referred to by this Agreement shall constitute a part hereof as though set forth in full in the body of this Agreement, whether made a part hereof by reference or whether made a part hereof by attachment.

CITY OF CARLSBAD:

DALE JANWAY, MAYOR

ATTEST:

CITY CLERK

METAL SHOP LIVE PRODUCTIONS, LLC

CURTIS McKINNEY, MANAGING PARTNER

[illegible]

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by CURTIS McKINNEY, Managing Partner, Metal Shop Live Productions, LLC.

My Commission Expires:

NOTARY PUBLIC

June 2014 Report

Rentals for June 2014 at the Walter Gerrells PAC

Emery Carrasco	\$ 750.00	6/7/2014
Cynthia Calderon	\$ 500.00	6/14/2014
Patricia Hartert	\$ 1,000.00	6/21/2014
Knights of Columbus	\$ 1,000.00	6/29/2014

We collected \$3250.00 in Rentals for June, 2014. Of which we paid the City of Carlsbad \$2762.50 which represents 85% of the rental fees. MSL Productions retained \$487.50 for our 15%.

Upcoming events:

Saul Sanchez
WF Gun Show
Maribel Grado
Jim Yeager
Margot Cabrera
Monica Pineda
Sammy Saiz
Patricia Moreno

The upcoming events represent bookings through September, 2014.

**Metal Shop Live Productions, LLC**

2110 Tower Drive
Carlsbad, NM 88220
United States
Tel: 575-302-6722
www.crankeduplive.com

Invoice

Metal Shop Live Productions, LLC

BILL TO

City of Carlsbad
P.O. Box 1569
Carlsbad, 88220
United States

INVOICE NUMBER

0167

INVOICE DATE

June 30, 2014

DUE DATE

June 30, 2014

YOUR P.O./S.O.

146912

AMOUNT DUE

\$8,000.00

PRODUCT**QTY****PRICE****AMOUNT****Management of WGPAC**

For Management Services of the Walter Gerrells Performing Arts Center.

1

\$8000.00

\$8,000.00

Total**\$8,000.00****NOTES**

Thank you for your business!
Please make checks payable to:
Metal Shop Live Productions, LLC

Amount due**\$8,000.00**

Metal Shop Live Productions, LLC

Patsy Jackson's Copy

**Metal Shop Live Productions, LLC**

2110 Tower Drive
Carlsbad, NM 88220
United States
Tel: 575-302-6722
www.crankeduplive.com

Invoice

Metal Shop Live Productions, LLC

BILL TO

City of Carlsbad
P.O. Box 1569
Carlsbad, 88220
United States

INVOICE NUMBER

0168

INVOICE DATE

June 30, 2014

DUE DATE

June 30, 2014

AMOUNT DUE

\$(2,762.50)

PRODUCT**QTY****PRICE****AMOUNT****85% Return to City of Carlsbad**

85% Rental of the Walter Gerrells PAC.

1

-\$2762.50

\$(2,762.50)

Total**\$(2,762.50)****Amount due****\$(2,762.50)****NOTES**

Thank you for your business!
Please make checks payable to:
Metal Shop Live Productions, LLC

Metal Shop Live Productions, LLC

CITY OF CARLSBAD
AGENDA BRIEFING MEMORANDUM

Council Meeting Date: 7/8/14

DEPARTMENT: Planning, Engineering & Regulation	BY: Jeff Patterson, Deputy Planning Director	DATE: 7/2/14																				
SUBJECT: Business License to conduct door to door sales and installation of roofs by Rhino Roofing, Inc., 3720 Commercial St. NE, Ste. 400, Albuquerque, NM 87107 (Contact: David Wilson/David Gibson), pursuant to Carlsbad Code of Ordinances, Chapter 28, as amended by Ord. 2012-16.																						
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) The applicant is requesting a business license to conduct door-to-door solicitations for the sale and installation of roofs. A report was requested from the Police Department on June 26 th , but as of the printing of this ABM it has not been received. Section 28-43(b), as recently amended by Ord. 2012-16, of the Carlsbad Code of Ordinances states that: "In making its decision, the city council shall consider, but is not limited to, how such business will affect the health, safety and general welfare of the public; the level of supervision such business may require; the degree to which such business may attract crowds or children or affect vehicle or pedestrian traffic; the accessibility of the proprietors of such business if complaints made to the city are to be investigated; and the possibility of illegal activity transpiring at the proposed place of business." In addition, Section 28-161 et. Seq. specifically applies to solicitations and Section 28-166 states: "A city solicitation license may be granted only upon approval by the city council at a regular meeting of the council. The city council shall not consider approval of a solicitation license application unless the chief of police has filed a report on his investigation of the employer or person seeking the license. " (emphasis added) <div style="text-align: center;">(see attached sections of Chapter 28)</div>																						
RECOMMENDATION: Denial of the Business License in compliance with Sec. 28-166. If the investigation report is received from the police department prior to the Council hearing and the report is positive, staff recommends approval of the business license.																						
BOARD/COMMISSION/COMMITTEE ACTION: N/A <table style="width: 100%; border: none;"><tr><td style="width: 33%; border: none;"> P & Z</td><td style="width: 33%; border: none;"> Lodgers Tax Board</td><td style="width: 33%; border: none;"> Cemetery Board</td><td style="width: 10%; border: none;">}</td><td style="width: 10%; border: none;">APPROVED</td></tr><tr><td style="border: none;"> Museum Board</td><td style="border: none;"> San Jose Board</td><td style="border: none;"> Water Board</td><td style="border: none;">}</td><td style="border: none;"></td></tr><tr><td style="border: none;"> Library Board</td><td style="border: none;"> N. Mesa Board</td><td style="border: none;"> _____</td><td style="border: none;">}</td><td style="border: none;"></td></tr><tr><td colspan="3" style="border: none; text-align: center;">Committee</td><td style="border: none;"></td><td style="border: none;">DISAPPROVED</td></tr></table>			P & Z	Lodgers Tax Board	Cemetery Board	}	APPROVED	Museum Board	San Jose Board	Water Board	}		Library Board	N. Mesa Board	_____	}		Committee				DISAPPROVED
P & Z	Lodgers Tax Board	Cemetery Board	}	APPROVED																		
Museum Board	San Jose Board	Water Board	}																			
Library Board	N. Mesa Board	_____	}																			
Committee				DISAPPROVED																		
Reviewed By: City Administrator: <u>/s/ Steve McCutcheon</u> Date: <u>July 3, 2014</u>																						

ATTACHMENT(S): Application and applicable Chapter 28 sections

ARTICLE VI. SOLICITATIONS

Sec. 28-161. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Employer means any person, firm, partnership, association, corporation or other natural or legal entity employing any person in the capacity of agent, servant, employee or representative on an exclusive or nonexclusive basis.

Insurance agent means any person appointed by an insurance company licensed to transact business in the state to act as representative in any given locality for the purpose of soliciting and writing insurance bonds, and such other duties in connection with the handling of the business of such agent as may be authorized, and paid for his services either on a commission basis or salary basis, or part by commission and part by salary.

Insurance solicitor means any person employed by the licensed agent of an insurance company licensed to transact business in the state to act as representative in any given locality for the purpose of soliciting and writing insurance or bonds, and such other duties in connection with the handling of the business of such agent as may be authorized, and paid for his services either on a commission basis or salary basis, or part by commission and part by salary.

Solicitation means the going in or upon or telephoning to one or more private residences in the city by any person not having been requested or invited to do so by the owners or occupants of such private residence or residences for the purpose of soliciting orders for the sale of goods, wares, merchandise, any article or thing of whatsoever description intended for the use or benefit of the recipient thereof, property either real or personal or tangible or intangible, or services; for the purpose of peddling or hawking any of the same; for the purpose of making or requesting appointments or procuring interviews or arranging for demonstrations or explanations preliminary to any actual solicitation of orders; or for the purpose of selling, peddling or hawking of any of the same.

(Code 1974, § 31-1)

Sec. 28-162. General prohibition.

(a) *Violation deemed misdemeanor.* Whoever commits solicitation in violation of this article commits a misdemeanor.

(b) *Elements of prima facie case of solicitation.* Any person or employer who goes in or upon or who telephones any one residence for the purpose of solicitation shall be deemed prima facie to have committed solicitation and a continued practice need not be shown.

(Code 1974, §§ 31-2, 31-3)

Sec. 28-163. Exceptions to prohibition.

The provisions of section 28-162(a) shall not apply to any person if such person for himself, or through his employer, shall have:

(1) Posted a surety bond, with a surety licensed to do business in the state, in the amount of \$1,000.00, to the city and the residents of the city conditioned that the person posting the surety bond shall comply fully with all the provisions of the ordinances of the city and the statutes of the state regulating and concerning the business licensed, and guaranteeing to any resident of the city that all money paid will be accounted for and applied according to the representations of the licensee, and further guaranteeing to any resident of the city doing business with such licensee that the property or services purchased will be delivered or furnished according to representations made by the licensee, and will conform to such representation, whether such representations be oral or in writing, and that the licensee's contract in all respects will be fully performed. Action on such bond may be brought in the name of the city to the use and benefit of the aggrieved person or in the name of the aggrieved person. The term of such bond shall be at least one year.

a. Any employer may purchase such a bond for any person employed by him or representing him in any capacity. If such bond is purchased by an employer of more than one employee, he shall purchase one such bond in the amount of \$2,000.00, which bond shall cover all persons employed by him or representing him in any capacity.

b. Any person who solicits for one or more employers shall file with the city administrator evidence of a surety bond having been posted by each employer in the manner heretofore described.

(2) Obtained a state school tax license and a city solicitation license as provided in section 28-166.

(3) Obtained a peddler's identification card. Such card shall be issued upon written proof of compliance with this section. The city administrator is authorized to require any such person to be properly identified

by fingerprinting and photography; provided, however, that such fingerprinting shall be required only at the time of the filing of the original application for such card; except, that if the city administrator finds that the fingerprints lack sufficient clarity or are otherwise inadequate or unavailable for proper identification of such person, the city administrator may require such person to be fingerprinted again. The card shall be renewed every two years. The application of such card and every renewal thereof shall be made on such form as shall be provided by the city administrator. The service charge for investigation and printing the original card and for each renewal thereof shall be as set from time to time by the council and a schedule of such charges is on file in the office of the city clerk. The city council shall, after notice and hearing, suspend or revoke any such card upon finding such person has been convicted of a felony or misdemeanor involving moral turpitude in this state or any of the United States, or upon finding that such person gave false information on the application; provided, however, that nothing herein contained shall prohibit the city administrator from withholding the issuance of the aforementioned identification card until an adequate police record check is obtained.

(Code 1974, § 31-4)

Sec. 28-164. Peddler's identification card.

(a) *Contents.* The peddler's identification card shall contain the following:

- (1) The name and address of the bearer.
- (2) The name and address of each employer or, if self-employed, the words "self-employed" or, where applicable, both the name and address of each employer and the words "self-employed."
- (3) A wallet-size photograph of the bearer, to be furnished by the bearer.
- (4) The name and address of each bonding company and the employer bonded, if any.
- (5) The legend: "THE CITY OF CARLSBAD DOES NOT ENDORSE OR GUARANTEE THE PRODUCT OR SERVICE OF THE BEARER OR HIS COMPANY."

(b) *Carrying; exhibition.* Any person who solicits in the city shall carry his own peddler's identification card at all times while engaged in solicitation. Such card shall be exhibited to any owner or occupant of any residence or, upon demand, to any police officer of the city.

(Code 1974, §§ 31-5, 31-6)

Sec. 28-165. Insurance agents and insurance solicitors; real estate brokers and real estate salespersons.

(a) The provisions of sections 28-162(a), 28-163 and 28-164 shall not apply to any insurance agent or insurance solicitor who has obtained a license from the state superintendent of insurance, nor to any real estate broker or real estate salesperson who has obtained a license from the state real estate commission, and who carries such license on his person and who exhibits such license to any owner or occupant of any residence or, upon demand, exhibits such license to any police officer of the city.

(b) No person shall solicit for the purchase of insurance without a license from the state superintendent of insurance.

(Code 1974, § 31-9; Ord. No. 1035, 1-14-92)

Sec. 28-166. Grant of license; investigation report prerequisite to consideration.

A city solicitation license may be granted only upon approval by the city council at a regular meeting of the council. The city council shall not consider approval of a solicitation license application unless the chief of police has filed a report on his investigation of the employer or person seeking the license.

(Code 1974, § 31-10)

Sec. 28-167. Posted property.

Except where he has been requested or invited to do so by the owner or occupant of property, it is unlawful for any person, whether or not authorized by compliance with section 28-163 to solicit, to commit an act of solicitation in or upon any premises if required by anyone not to do so, or if there is placed on such premises in a conspicuous place near the entrance thereof a sign bearing the words: "No Trespassing," "No Peddlers," "No Agents," "No Solicitors," "No Advertisements" or any similar notice indicating in any manner that the occupants of such premises do not desire to be molested or have their privacy disturbed.

(Code 1974, § 31-7)

Sec. 28-168. Representation of city approval prohibited.

It is unlawful for any person to make any claim or representation, whether orally or in writing, during the solicitation that the city has approved, endorsed or guaranteed his product or service.

(Code 1974, § 31-8)

Sec. 28-169. Time limitation.

No person shall engage in solicitation after 9:00 p.m.

(Code 1974, § 31-11)

CITY OF CARLSBAD, NEW MEXICO

BUSINESS LICENSES

RHINO ROOFING

DOOR TO DOOR APPLICAT

01-0000-30650

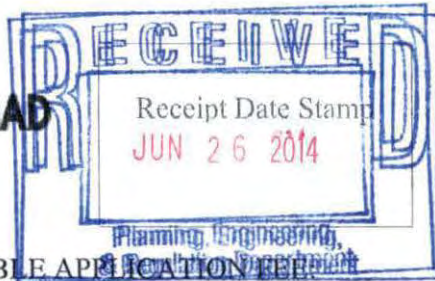
CKN4034

AMOUNT	25.00
CHECK TENDERED	25.00
CHANGE ISSUED	.00

CASHIER: PISTOLEP

RECEIPT NO 3594163

DATE 08:41 AM 6/26/14

**CITY OF CARLSBAD**

Planning, Engineering, and Development Dept.

Phone (575) 887-1191, Ext. 7920 or 7921

Fax (575) 885-9871

pd. pvp
✓ Date: 6-24-14**NON-REFUNDABLE APPLICATION FEE**

- ☒ \$25 Door to Door--City Solicitation License
(as regulated by Sec. 28.161)
- ☐ \$25 Dance, per day
- ☐ \$200 Dance, per year
- ☐ \$50 Boxing, wrestling, fighting, or martial arts
exhibitions or contests, per performance
- ☐ \$100 Carnival, circus, or menagerie, per day
- ☐ \$250 Pawnbroker, per year

BUSINESS NAME:

Rhino Roofing, Inc

TYPE OF BUSINESS/PURPOSE OF LICENSE:

Roofing Company

LOCATION OF BUSINESS (Physical Address):

3720 Commercial St NE - Ste 400
Albuquerque, NM 87107

NM ID #:

03-184897-004

MAILING ADDRESS:

3720 Commercial St NE - Ste 400
Albuquerque, NM 87107

BUSINESS OWNER:

DAVID Wilson / David Gibson

E-MAIL

ADDRESS: dave.rhinorroofing@gmail.comPHONE NUMBER: 505-242-1602

DATES OF LICENSE USE:

2014

APPLICANT'S SIGNATURE:

[Signature]**FOR OFFICIAL USE ONLY**Solicitor's License? ☐ Yes ☐ NoCouncil Action: ☐ Approved ☐ Denied

Date: _____

Conditions Required: _____

CITY OF CARLSBAD PROCEDURES FOR APPLYING FOR BUSINESS LICENSE

MEETING TIME AND DATE: Business License Requests are presented to the City Council. This application will be set for Council on July 8, 2014.

DEADLINE: The deadline for submitting applications for City Council is July 2.

APPLICATION FEE: The Fee is due upon submission of application. Fees are listed on first page of application.

LETTER OF INTENT: A letter explaining the reason for the request must be submitted. The letter should be typed and addressed to the Carlsbad City Council.

BOND: (from Section 28-163 of the City of Carlsbad, Code of Ordinances, bold type added)

"The provisions of section 28-162(a) shall not apply to any person if such person for himself, or through his employer, shall have:

(1) Posted a surety bond, with a surety licensed to do business in the state, in the amount of \$1,000.00, to the city and the residents of the city conditioned that the person posting the surety bond shall comply fully with all the provisions of the ordinances of the city and the statutes of the state regulating and concerning the business licensed, and guaranteeing to any resident of the city that all money paid will be accounted for and applied according to the representations of the licensee, and further guaranteeing to any resident of the city doing business with such licensee that the property or services purchased will be delivered or furnished according to representations made by the licensee, and will conform to such representation, whether such representations be oral or in writing, and that the licensee's contract in all respects will be fully performed. Action on such bond may be brought in the name of the city to the use and benefit of the aggrieved person or in the name of the aggrieved person. **The term of such bond shall be at least one year.**

a. Any employer may purchase such a bond for any person employed by him or representing him in any capacity. If such bond is purchased by an employer of **more than one employee**, he shall purchase one such bond in the amount of **\$2,000.00**, which bond shall cover all persons employed by him or representing him in any capacity."

ATTACHMENTS: Any additional information about business such as brochures, plans, or deeds should be submitted with the application.

SUBMIT TO:

City of Carlsbad
Planning, Engineering, and Regulation Department
101 N. Halagueno (or mail to PO Box 1569)
Carlsbad, NM 88220
Phone: (575) 887-1191

PRESENCE AT MEETING: The Carlsbad City Council will vote on the request during a regularly scheduled City Council meeting. The applicant or his/her representative must be present to address any questions that the Mayor or Council members may have.



RLI Insurance Company
P.O. Box 3967 Peoria IL 61612-3967
Phone: (309)692-1000 Fax: (309)683-1610

CONTINUOUS LICENSE AND PERMIT BOND

Bond No. LSM0588575

KNOW ALL MEN BY THESE PRESENTS:

That we, Rhino Roofing Inc.,
3720 Commercial, Suite 400
Albuquerque, NM 87107

as Principal, and the RLI Insurance Company, a corporation duly
licensed to do business in the State of New Mexico, as Surety, are held and firmly bound unto the
City of Carlsbad, State of New Mexico,
Obligee, in the penal sum of Two Thousand and 00/100
DOLLARS (\$ 2,000.00), lawful money of the United States, to be paid to the said Obligee, for which payment well and
truly to be made, we bind ourselves and our legal representatives, jointly and severally by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas, the said Principal has been licensed as a(n) _____
Construction Contractor by the Obligee.

NOW, THEREFORE, if the said Principal shall faithfully perform the duties and in all things comply with the laws and ordinances,
including all Amendments thereto, pertaining to the license or permit applied for, then this obligation to be void, otherwise to remain in
full force and effect for a period commencing on the 17th day of June, 2014.

This bond may be terminated at any time by the Surety upon sending written notice to the clerk of the Political Subdivision with whom
this bond is filed and to the Principal, addressed to them at their first known address, and at the expiration of thirty (30) days from the
mailing of said notice, or as soon thereafter as permitted by applicable law, whichever is later, this bond shall terminate and the Surety
shall thereupon be relieved from any liability for any acts or omissions of the Principal subsequent to said date.

Dated this 17th day of June, 2014.

Rhino Roofing Inc.

Principal
(Individual, Partner, or Corporate Officer)

RLI Insurance Company

By Vice President
Roy C. Die





RLI Insurance Company
P.O. Box 3967 Peoria IL 61612-3967
Phone: (309)692-1000 Fax: (309)683-1610

POWER OF ATTORNEY

RLI Insurance Company

Bond No. LSM0588575

Know All Men by These Presents:

That the RLI Insurance Company, a corporation organized and existing under the laws of the State of Illinois, and authorized and licensed to do business in all states and the District of Columbia does hereby make, constitute and appoint: Roy C. Die in the City of Peoria, State of Illinois, as Vice President, with full power and authority hereby conferred upon him/her to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds, undertakings, and recognizances in an amount not to exceed One Million and 00/100 Dollars (\$ 1,000,000.00) for any single obligation, and specifically for the following described bond.

Principal: Rhino Roofing Inc.

Obligee: City of Carlsbad

(Valid only when a County, City, Town or Village is named as Obligee)

Type Bond: Construction Contractor

Bond Amount: \$ 2,000.00

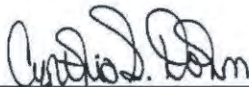
Effective Date: June 17, 2014

The RLI Insurance Company further certifies that the following is a true and exact copy of a Resolution adopted by the Board of Directors of RLI Insurance Company, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the RLI Insurance Company has caused these presents to be executed by its Vice President with its corporate seal affixed this 17th day of June, 2014.

ATTEST:


Cynthia S. Dohm

Assistant Secretary

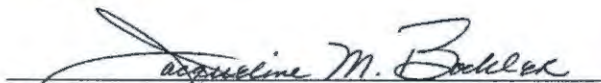


RLI Insurance Company

Roy C. Die

Vice President

On this 17th day of June, 2014 before me, a Notary Public, personally appeared Roy C. Die and Cynthia S. Dohm, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as Vice President and Assistant Secretary, respectively, of the said RLI Insurance Company, and acknowledged said instrument to be the voluntary act and deed of said corporation.


Jacqueline M. Bockler
Notary Public



A0083506

CITY OF CARLSBAD
AGENDA BRIEFING MEMORANDUM

Council Meeting Date: 7/8/14

DEPARTMENT: Planning, Engineering & Regulation	BY: Stephanie Shumsky, Planning Director	DATE: 7/2/14											
SUBJECT: Business License to conduct door to door sales and installation of roofs by Headmen Contracting, 3608 N. Prince St., Suite C (Box 303), Clovis, NM 88101 (Contact: Kyla Contreras), pursuant to Carlsbad Code of Ordinances, Chapter 28, as amended by Ord. 2012-16.													
<p>BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)</p> <p>The applicant is requesting a business license to conduct door-to-door solicitations for the sale and installation of roofs.</p> <p>The report from the Police Department is attached. The report recommends denial of this business license.</p> <p>Section 28-43(b), as recently amended by Ord. 2012-16, of the Carlsbad Code of Ordinances states that:</p> <p style="padding-left: 40px;">“In making its decision, the city council shall consider, but is not limited to, how such business will affect the health, safety and general welfare of the public; the level of supervision such business may require; the degree to which such business may attract crowds or children or affect vehicle or pedestrian traffic; the accessibility of the proprietors of such business if complaints made to the city are to be investigated; and the possibility of illegal activity transpiring at the proposed place of business.”</p> <p>In addition, Section 28-161 et. Seq. specifically applies to solicitations and Section 28-166 states:</p> <p style="padding-left: 40px;">“A city solicitation license may be granted only upon approval by the city council at a regular meeting of the council. The city council shall not consider approval of a solicitation license application unless the chief of police has filed a report on his investigation of the employer or person seeking the license.” (emphasis added)</p> <p style="text-align:center">(see attached sections of Chapter 28)</p>													
RECOMMENDATION: Denial of the Business License, based on the Police Department's report.													
<p>BOARD/COMMISSION/COMMITTEE ACTION: N/A</p> <table style="width:100%"><tr><td><input type="checkbox"/> P & Z</td><td><input type="checkbox"/> Lodgers Tax Board</td><td><input type="checkbox"/> Cemetery Board</td><td rowspan="2">} <input type="checkbox"/> APPROVED</td></tr><tr><td><input type="checkbox"/> Museum Board</td><td><input type="checkbox"/> San Jose Board</td><td><input type="checkbox"/> Water Board</td></tr><tr><td><input type="checkbox"/> Library Board</td><td><input type="checkbox"/> N. Mesa Board</td><td><input type="checkbox"/> _____ Committee</td><td>} <input type="checkbox"/> DISAPPROVED</td></tr></table>			<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	} <input type="checkbox"/> APPROVED	<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> _____ Committee	} <input type="checkbox"/> DISAPPROVED
<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	} <input type="checkbox"/> APPROVED										
<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board											
<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> _____ Committee	} <input type="checkbox"/> DISAPPROVED										
<p>Reviewed By:</p> <p>City Administrator: <u>/s/ Steve McCutcheon</u> Date: <u>July 3, 2014</u></p>													

ATTACHMENT(S): Application and applicable Chapter 28 sections

Carlsbad Police Department

602 W. Mermod St.
Carlsbad, NM 88220
575.885.2111 (phone)
575.885.6547 (fax)



Memo

To: Stephanie Shumsky
From: Captain Jarod A. Florez
Date: June 30, 2014
Subject: Headmen Contracting Special License Application

The following information is the findings determined in the research of Headmen Contracting, who has filed a Special License Application with the City of Carlsbad requesting door-to-door solicitations. I have performed research on this company and have compiled these findings.

According to the letter provided with the application, Headmen Contracting is a construction company based out of Clovis, NM that focuses on roofing and small remodels for their customers

Upon researching the Better Business Bureau (BBB) website, Headmen Contracting was not listed as an accredited business, nor was it listed as an unaccredited business.

I was not able to find any information provided on the internet about Headmen Contracting out of Clovis, NM. There was no business telephone listing in the yellow pages. There were no independent internet review sites that had any reviews or information about Headmen Contracting.

In the letter provided with the application, Ms. Contreras, explained that Headmen Contracting is currently "applying" for a New Mexico Business License. I was able to confirm through the New Mexico Regulation and Licensing Department website that Headmen Contracting **does not** currently have a New Mexico business license.

In conclusion, through my investigation Headmen Contracting is not a New Mexico licensed contracting business. Based on this information, I do not feel that the Carlsbad Police Department should endorse the approval for this application. In the event of Headmen Contracting obtaining a NM business license, I feel that they should be re-evaluated at that time if they choose to seek further business opportunities of this nature with the citizens of Carlsbad. I feel if we are going to let an out of town business to come into our town to service the citizens within the community, we should be very selective and get only the best reputable ones.

Kent Waller, Chief of Police

Kevin Florez, Assistant Chief

Jarod Florez, Captain

Jon Moyers, Captain

ARTICLE VI. SOLICITATIONS

Sec. 28-161. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Employer means any person, firm, partnership, association, corporation or other natural or legal entity employing any person in the capacity of agent, servant, employee or representative on an exclusive or nonexclusive basis.

Insurance agent means any person appointed by an insurance company licensed to transact business in the state to act as representative in any given locality for the purpose of soliciting and writing insurance bonds, and such other duties in connection with the handling of the business of such agent as may be authorized, and paid for his services either on a commission basis or salary basis, or part by commission and part by salary.

Insurance solicitor means any person employed by the licensed agent of an insurance company licensed to transact business in the state to act as representative in any given locality for the purpose of soliciting and writing insurance or bonds, and such other duties in connection with the handling of the business of such agent as may be authorized, and paid for his services either on a commission basis or salary basis, or part by commission and part by salary.

Solicitation means the going in or upon or telephoning to one or more private residences in the city by any person not having been requested or invited to do so by the owners or occupants of such private residence or residences for the purpose of soliciting orders for the sale of goods, wares, merchandise, any article or thing of whatsoever description intended for the use or benefit of the recipient thereof, property either real or personal or tangible or intangible, or services; for the purpose of peddling or hawking any of the same; for the purpose of making or requesting appointments or procuring interviews or arranging for demonstrations or explanations preliminary to any actual solicitation of orders; or for the purpose of selling, peddling or hawking of any of the same.

(Code 1974, § 31-1)

Sec. 28-162. General prohibition.

(a) *Violation deemed misdemeanor.* Whoever commits solicitation in violation of this article commits a misdemeanor.

(b) *Elements of prima facie case of solicitation.* Any person or employer who goes in or upon or who telephones any one residence for the purpose of solicitation shall be deemed prima facie to have committed solicitation and a continued practice need not be shown.

(Code 1974, §§ 31-2, 31-3)

Sec. 28-163. Exceptions to prohibition.

The provisions of section 28-162(a) shall not apply to any person if such person for himself, or through his employer, shall have:

(1) Posted a surety bond, with a surety licensed to do business in the state, in the amount of \$1,000.00, to the city and the residents of the city conditioned that the person posting the surety bond shall comply fully with all the provisions of the ordinances of the city and the statutes of the state regulating and concerning the business licensed, and guaranteeing to any resident of the city that all money paid will be accounted for and applied according to the representations of the licensee, and further guaranteeing to any resident of the city doing business with such licensee that the property or services purchased will be delivered or furnished according to representations made by the licensee, and will conform to such representation, whether such representations be oral or in writing, and that the licensee's contract in all respects will be fully performed. Action on such bond may be brought in the name of the city to the use and benefit of the aggrieved person or in the name of the aggrieved person. The term of such bond shall be at least one year.

a. Any employer may purchase such a bond for any person employed by him or representing him in any capacity. If such bond is purchased by an employer of more than one employee, he shall purchase one such bond in the amount of \$2,000.00, which bond shall cover all persons employed by him or representing him in any capacity.

b. Any person who solicits for one or more employers shall file with the city administrator evidence of a surety bond having been posted by each employer in the manner heretofore described.

(2) Obtained a state school tax license and a city solicitation license as provided in section 28-166.

(3) Obtained a peddler's identification card. Such card shall be issued upon written proof of compliance with this section. The city administrator is authorized to require any such person to be properly identified

by fingerprinting and photography; provided, however, that such fingerprinting shall be required only at the time of the filing of the original application for such card; except, that if the city administrator finds that the fingerprints lack sufficient clarity or are otherwise inadequate or unavailable for proper identification of such person, the city administrator may require such person to be fingerprinted again. The card shall be renewed every two years. The application of such card and every renewal thereof shall be made on such form as shall be provided by the city administrator. The service charge for investigation and printing the original card and for each renewal thereof shall be as set from time to time by the council and a schedule of such charges is on file in the office of the city clerk. The city council shall, after notice and hearing, suspend or revoke any such card upon finding such person has been convicted of a felony or misdemeanor involving moral turpitude in this state or any of the United States, or upon finding that such person gave false information on the application; provided, however, that nothing herein contained shall prohibit the city administrator from withholding the issuance of the aforementioned identification card until an adequate police record check is obtained.

(Code 1974, § 31-4)

Sec. 28-164. Peddler's identification card.

(a) *Contents.* The peddler's identification card shall contain the following:

- (1) The name and address of the bearer.
- (2) The name and address of each employer or, if self-employed, the words "self-employed" or, where applicable, both the name and address of each employer and the words "self-employed."
- (3) A wallet-size photograph of the bearer, to be furnished by the bearer.
- (4) The name and address of each bonding company and the employer bonded, if any.
- (5) The legend: "THE CITY OF CARLSBAD DOES NOT ENDORSE OR GUARANTEE THE PRODUCT OR SERVICE OF THE BEARER OR HIS COMPANY."

(b) *Carrying; exhibition.* Any person who solicits in the city shall carry his own peddler's identification card at all times while engaged in solicitation. Such card shall be exhibited to any owner or occupant of any residence or, upon demand, to any police officer of the city.

(Code 1974, §§ 31-5, 31-6)

Sec. 28-165. Insurance agents and insurance solicitors; real estate brokers and real estate salespersons.

(a) The provisions of sections 28-162(a), 28-163 and 28-164 shall not apply to any insurance agent or insurance solicitor who has obtained a license from the state superintendent of insurance, nor to any real estate broker or real estate salesperson who has obtained a license from the state real estate commission, and who carries such license on his person and who exhibits such license to any owner or occupant of any residence or, upon demand, exhibits such license to any police officer of the city.

(b) No person shall solicit for the purchase of insurance without a license from the state superintendent of insurance.

(Code 1974, § 31-9; Ord. No. 1035, 1-14-92)

Sec. 28-166. Grant of license; investigation report prerequisite to consideration.

A city solicitation license may be granted only upon approval by the city council at a regular meeting of the council. The city council shall not consider approval of a solicitation license application unless the chief of police has filed a report on his investigation of the employer or person seeking the license.

(Code 1974, § 31-10)

Sec. 28-167. Posted property.

Except where he has been requested or invited to do so by the owner or occupant of property, it is unlawful for any person, whether or not authorized by compliance with section 28-163 to solicit, to commit an act of solicitation in or upon any premises if required by anyone not to do so, or if there is placed on such premises in a conspicuous place near the entrance thereof a sign bearing the words: "No Trespassing," "No Peddlers," "No Agents," "No Solicitors," "No Advertisements" or any similar notice indicating in any manner that the occupants of such premises do not desire to be molested or have their privacy disturbed.

(Code 1974, § 31-7)

Sec. 28-168. Representation of city approval prohibited.

It is unlawful for any person to make any claim or representation, whether orally or in writing, during the solicitation that the city has approved, endorsed or guaranteed his product or service.

(Code 1974, § 31-8)

Sec. 28-169. Time limitation.

No person shall engage in solicitation after 9:00 p.m.
(Code 1974, § 31-11)

CITY OF CARLSBAD, NEW MEXICO

BUSINESS LICENSES

HEADMAN CONTRACTING

LLC

DOOR TO DOOR

CKW00442

AMOUNT	25.00
CHECK TENDERED	25.00
CHANGE ISSUED	.00

CASHIER: JCASTILLO

RECEIPT NO 3592717

DATE 03:02 PM 6/19/14

**CITY OF CARLSBAD**

Planning, Engineering, and Development Dept.

Phone (575) 887-1191, Ext. 7920 or 7921

Fax (575) 885-9871

Date: 6/13/14**NON-REFUNDABLE APPLICATION FEE:**

- ☒ \$25 Door to Door--City Solicitation License
(as regulated by Sec. 28.161)
- ☐ \$25 Dance, per day
- ☐ \$200 Dance, per year
- ☐ \$50 Boxing, wrestling, fighting, or martial arts
exhibitions or contests, per performance
- ☐ \$100 Carnival, circus, or menagerie, per day
- ☐ \$250 Pawnbroker, per year

**BUSINESS LICENSE
(SPECIAL EVENTS/PAWNBROKERS)
APPLICATION**

BUSINESS NAME:

Headmen Contracting

TYPE OF BUSINESS/PURPOSE OF LICENSE:

General Contracting Roofing

LOCATION OF BUSINESS (Physical Address):

3608 N Prince St
Suite C (Box 303)
Clovis, NM 88101

NM ID #:

BUSINESS OWNER:

Kyla Contreras

MAILING ADDRESS:

E-MAIL

ADDRESS: Kyla@headmenco.comPHONE NUMBER: 404-590-0683

DATES OF LICENSE USE:

6/16/14

APPLICANT'S SIGNATURE:

FOR OFFICIAL USE ONLYSolicitor's License? ☐ Yes ☐ NoCouncil Action: ☐ Approved ☐ Denied

Date: _____

Conditions Required: _____

CITY OF CARLSBAD PROCEDURES FOR APPLYING FOR BUSINESS LICENSE

MEETING TIME AND DATE: Business License Requests are presented to the City Council. This application will be set for Council on _____.

DEADLINE: The deadline for submitting applications for City Council is _____.

APPLICATION FEE: The Fee is due upon submission of application. Fees are listed on first page of application.

LETTER OF INTENT: A letter explaining the reason for the request must be submitted. The letter should be typed and addressed to the Carlsbad City Council.

BOND: (from Section 28-163 of the City of Carlsbad, Code of Ordinances, bold type added)
"The provisions of section 28-162(a) shall not apply to any person if such person for himself, or through his employer, shall have:
(1) Posted a surety bond, with a surety licensed to do business in the state, in the amount of \$1,000.00, to the city and the residents of the city conditioned that the person posting the surety bond shall comply fully with all the provisions of the ordinances of the city and the statutes of the state regulating and concerning the business licensed, and guaranteeing to any resident of the city that all money paid will be accounted for and applied according to the representations of the licensee, and further guaranteeing to any resident of the city doing business with such licensee that the property or services purchased will be delivered or furnished according to representations made by the licensee, and will conform to such representation, whether such representations be oral or in writing, and that the licensee's contract in all respects will be fully performed. Action on such bond may be brought in the name of the city to the use and benefit of the aggrieved person or in the name of the aggrieved person. **The term of such bond shall be at least one year.**
a. Any employer may purchase such a bond for any person employed by him or representing him in any capacity. If such bond is purchased by an employer of **more than one employee**, he shall purchase one such bond in the amount of **\$2,000.00**, which bond shall cover all persons employed by him or representing him in any capacity."

ATTACHMENTS: Any additional information about business such as brochures, plans, or deeds should be submitted with the application.

SUBMIT TO: City of Carlsbad
Planning, Engineering, and Regulation Department
101 N. Halagueno (or mail to PO Box 1569)
Carlsbad, NM 88220
Phone: (575) 887-1191

PRESENCE AT MEETING: The Carlsbad City Council will vote on the request during a regularly scheduled City Council meeting. The applicant or his/her representative must be present to address any questions that the Mayor or Council members may have.



CITY OF CARLSBAD

Planning, Engineering, and Regulation Department

101 N. Halagueno, PO Box 1569

Carlsbad, New Mexico 88220

Phone (575) 887-1191, Fax (575) 885-9871

BUSINESS LICENSE SOLICITOR REGULATIONS (Sec. 28-161 to 169)

1. Post a surety bond, with a surety licensed to do business in the state, in the amount of \$1,000.00, or \$2,000.00 for more than one employee, to the City; and
2. Obtain a City Business Registration; and
3. Obtain a Peddler's Identification Card. However, since the capability for issuance of Peddler Identification Cards no longer exists as detailed in Ordinance Section 28-163(3), the following information shall be displayed on the business registration:
 - a. the name and address of the bearer;
 - b. the name and address of the employer;
 - c. a "wallet-sized" photograph of the applicant;
 - d. the name and address of the bonding company;
 - e. the statement: "THE CITY OF CARLSBAD DOES NOT ENDORSE OR GUARANTEE THE PRODUCT OR SERVICE OF THE PERMITTEE OR HIS COMPANY." ; and
4. Hours of operation be limited to start no earlier than 10:00 AM and terminate each day no later than 9pm or ½ hour prior to sunset, whichever occurs first; and
5. Solicitors are prohibited from using a loudspeaker to announce or advertise his or her presence or otherwise disturb peace and tranquility; and
6. Solicitors shall not enter property unless requested or invited to do so by the owner or occupant of property. Solicitors shall not enter property if there is a sign posted in a conspicuous place that reads: "No Trespassing," "No Peddlers," "No Agents," "No Solicitors," "No Advertisements" or any similar notice.

*"For they will
restore "*



*" The places
long devastated "*

Kyla Contreras
Managing Director
3608 N Prince St. Suite C (Box #303)
Clovis, NM 88101
Kyla@headmenco.com
(404) 908-9512

6/13/2014

City Of Carlsbad
Planning and Engineering and Regulations Department
101 N. Halagueno, P.O Box 1569
Carlsbad, New Mexico 88220

Dear City of Carlsbad,

Headmen Contracting is applying for a Business License in New Mexico, our main focus' are roofing and small remodels. A lot of our contracts are either out of pocket repairs or storm restoration. What our company does is help homeowners and business owners to restore damaged property such as replacing their roofs and anything else that has been badly damaged in storm.

Our company's sole purpose is to ensure that the job at hand is taken care of diligently, and the needs of our clients are taken into consideration and met, not forgetting why we are here which is to serve. Headmen Contracting is a Christian based company and we take our projects very seriously, whether it's a large project as a roof or the smallest project such as a shed.

*"For they will
restore "*



*" The places
long devastated "*

We are a versatile company we don't only handle Roofs for commercial and residential properties, we also offer other services such as remodeling for example dry wall, painting, pressure washing, siding, gutters, decks, windows and doors and so much more.

Our Business has been in good standing with all our clients and that's how we want to be as we shoot for the future.

We enjoy what we do, and we are thorough in picking our employees. We believe that although there is a profit in remodeling it is a byproduct of what we enjoy doing. We would like nothing more than to be taken into consideration to do business in your state , and strongly believe that we may even be a great help in your economic growth.

We thank you for your time to review our request and hope to be doing business in your county soon. If you should have any questions please do not hesitate to call us with the information provided above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kyla Contreras', written over a horizontal line.

Kyla Contreras
Managing Director



"For They will
Restore"

"The Places Long
Devastated"

P.O. Box 727 Tyrone, GA 30290 Ph: 404-590-0683 Fax: 770-629-6156

Fax Cover Page

Date: 6-26-14

To: Engineering & development dept.

From: Headmen Contracting

Subject: Surety bond

ATTENTION: _____

Total Number of Pages Including Cover: 3

Notes: This is the surety bond for Headmen
Contracting fax over application last week

Headmen Contracting
Ph: (404) 590-0683
Fax: (770) 629-6156
Email: Info@headmenco.com
- Have a Blessed Day



RLI Insurance Company
P.O. Box 3967 Peoria IL 61612-3967
Phone: (309)692-1000 Fax: (309)683-1610

LICENSE AND PERMIT BOND

Bond No. LSM0645302

KNOW ALL MEN BY THESE PRESENTS:

That we, HEADMEN CONTRACTING, LLC
3608 N PRINCE ST
Clovis, NM 88101

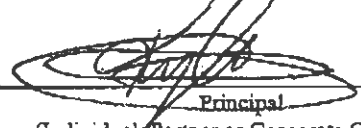
as Principal, and the RLI Insurance Company, a corporation duly licensed to do business in the state of New Mexico, as Surety, are held and firmly bound unto the City of Carlsbad - Planning Engineering & Regulation Dept, State of New Mexico, Oblige, in the penal sum of Two Thousand and 00/100 (\$ 2,000.00) DOLLARS, lawful money of the United States, to be paid to the said Oblige, for which payment well and truly to be made, we bind ourselves and our legal representatives, jointly and severally by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas, the said Principal has been licensed as a(n) Solicitation license for construction work by the Oblige.

NOW, THEREFORE, if the said Principal shall faithfully perform the duties and in all things comply with the laws and ordinances, including all Amendments thereto, pertaining to the license or permit applied for, then this obligation to be void, otherwise to remain in full force and effect for a period commencing on the 25th day of June, 2014, and ending on the 25th day of June, 2015.

This bond may be terminated at any time by the Surety upon sending written notice to the clerk of the Political Subdivision with whom this bond is filed and to the Principal, addressed to them at their first known address, and at the expiration of thirty (30) days from the mailing of said notice, or as soon thereafter as permitted by applicable law, whichever is later, this bond shall terminate and the Surety shall thereupon be relieved from any liability for any acts or omissions of the Principal subsequent to said date.

Dated this 25th day of June, 2014.



Principal
(Individual, Partner or Corporate Officer)
KYLA CONTRERAS OWNER



RLI Insurance Company

By
Roy C. Die

Vice President

R0002307-20,30



RLI Insurance Company
P.O. Box 3967 Peoria IL 61612-3967
Phone: (309)692-1000 Fax: (309)683-1610

POWER OF ATTORNEY

RLI Insurance Company

Bond No. LSM0645302

Know All Men by These Presents:

That the RLI Insurance Company, a corporation organized and existing under the laws of the State of Illinois, and authorized and licensed to do business in all states and the District of Columbia does hereby make, constitute and appoint: Roy C. Die in the City of Peoria, State of Illinois, as Vice President, with full power and authority hereby conferred upon him/her to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds, undertakings, and recognizances in an amount not to exceed One Million and 00/100 Dollars (\$1,000,000.00) for any single obligation, and specifically for the following described bond.

Principal: HEADMEN CONTRACTING, LLC

Obligee: City of Carlsbad - Planning Engineering & Regulation Dept

(Valid only when a County, City, Town or Village is named as Obligee)

Type Bond: Solicitation license for construction work

Bond Amount: \$ 2,000.00

Effective Date: June 25, 2014

The RLI Insurance Company further certifies that the following is a true and exact copy of a Resolution adopted by the Board of Directors of RLI Insurance Company, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the RLI Insurance Company has caused these presents to be executed by its Vice President with its corporate seal affixed this 25th day of June, 2014.

ATTEST:

Cynthia S. Dohm
Cynthia S. Dohm

Assistant Secretary



RLI Insurance Company

Roy C. Die

Vice President

On 25th day of June, 2014 before me, a Notary Public, personally appeared Roy C. Die and Cynthia S. Dohm, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as Vice President and Assistant Secretary, respectively, of the said RLI Insurance Company, and acknowledged said instrument to be the voluntary act and deed of said corporation.

Jacqueline M. Bockler
Jacqueline M. Bockler

lic



CITY OF CARLSBAD
AGENDA BRIEFING MEMORANDUM

Council Meeting Date: 7/8/14

DEPARTMENT: Planning, Engineering & Regulation	BY: Stephanie Shumsky, Planning Director	DATE: 7/2/14					
SUBJECT: Business License to conduct door to door sales and installation of roofs by Big Sky Roofing, 1500 Mabry Drive, PO Box 185, Clovis, NM 88101 (Contact: Roger LeClear), pursuant to Carlsbad Code of Ordinances, Chapter 28, as amended by Ord. 2012-16.							
<p>BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)</p> <p>The applicant is requesting a business license to conduct door-to-door solicitations for the sale and installation of roofs.</p> <p>A report was received from the Police Department, which recommends denial of this request..</p> <p>Section 28-43(b), as recently amended by Ord. 2012-16, of the Carlsbad Code of Ordinances states that:</p> <p style="padding-left: 40px;">“In making its decision, the city council shall consider, but is not limited to, how such business will affect the health, safety and general welfare of the public; the level of supervision such business may require; the degree to which such business may attract crowds or children or affect vehicle or pedestrian traffic; the accessibility of the proprietors of such business if complaints made to the city are to be investigated; and the possibility of illegal activity transpiring at the proposed place of business.”</p> <p>In addition, Section 28-161 et. Seq. specifically applies to solicitations and Section 28-166 states:</p> <p style="padding-left: 40px;">“A city solicitation license may be granted only upon approval by the city council at a regular meeting of the council. The city council shall not consider approval of a solicitation license application unless the chief of police has filed a report on his investigation of the employer or person seeking the license.” (emphasis added)</p> <p style="text-align: center;">(see attached sections of Chapter 28)</p>							
RECOMMENDATION: Denial of the Business License, based on the Police Department's report.							
<p>BOARD/COMMISSION/COMMITTEE ACTION: N/A</p> <table style="width: 100%; border: none;"><tr><td style="width: 33%; vertical-align: top;"><input type="checkbox"/> P & Z <input type="checkbox"/> Museum Board <input type="checkbox"/> Library Board</td><td style="width: 33%; vertical-align: top;"><input type="checkbox"/> Lodgers Tax Board <input type="checkbox"/> San Jose Board <input type="checkbox"/> N. Mesa Board</td><td style="width: 33%; vertical-align: top;"><input type="checkbox"/> Cemetery Board <input type="checkbox"/> Water Board <input type="checkbox"/> _____ Committee</td><td style="width: 10%; vertical-align: top; text-align: center;">} } } <input type="checkbox"/></td><td style="width: 10%; vertical-align: top; text-align: center;"><input type="checkbox"/> DISAPPROVED</td></tr></table>			<input type="checkbox"/> P & Z <input type="checkbox"/> Museum Board <input type="checkbox"/> Library Board	<input type="checkbox"/> Lodgers Tax Board <input type="checkbox"/> San Jose Board <input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> Cemetery Board <input type="checkbox"/> Water Board <input type="checkbox"/> _____ Committee	} } } <input type="checkbox"/>	<input type="checkbox"/> DISAPPROVED
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<p>Reviewed By:</p> <p>City Administrator: <u>/s/ Steve McCutcheon</u> Date: <u>July 3, 2014</u></p>							

ATTACHMENT(S): Application and applicable Chapter 28 sections

Carlsbad Police Department

602 W. Mermod St.
Carlsbad, NM 88220
575.885.2111 (phone)
575.885.6547 (fax)



Memo

To: Stephanie Shumsky
From: Captain Jarod A. Florez
Date: June 30, 2014
Subject: Headmen Contracting Special License Application

The following information is the findings determined in the research of Headmen Contracting, who has filed a Special License Application with the City of Carlsbad requesting door-to-door solicitations. I have performed research on this company and have compiled these findings.

According to the letter provided with the application, Headmen Contracting is a construction company based out of Clovis, NM that focuses on roofing and small remodels for their customers

Upon researching the Better Business Bureau (BBB) website, Headmen Contracting was not listed as an accredited business, nor was it listed as an unaccredited business.

I was not able to find any information provided on the internet about Headmen Contracting out of Clovis, NM. There was no business telephone listing in the yellow pages. There were no independent internet review sites that had any reviews or information about Headmen Contracting.

In the letter provided with the application, Ms. Contreras, explained that Headmen Contracting is currently "applying" for a New Mexico Business License. I was able to confirm through the New Mexico Regulation and Licensing Department website that Headmen Contracting **does not** currently have a New Mexico business license.

In conclusion, through my investigation Headmen Contracting is not a New Mexico licensed contracting business. Based on this information, I do not feel that the Carlsbad Police Department should endorse the approval for this application. In the event of Headmen Contracting obtaining a NM business license, I feel that they should be re-evaluated at that time if they choose to seek further business opportunities of this nature with the citizens of Carlsbad. I feel if we are going to let an out of town business to come into our town to service the citizens within the community, we should be very selective and get only the best reputable ones.

Kent Waller, Chief of Police

Kevin Florez, Assistant Chief

Jarod Florez, Captain

Jon Moyers, Captain

ARTICLE VI. SOLICITATIONS

Sec. 28-161. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Employer means any person, firm, partnership, association, corporation or other natural or legal entity employing any person in the capacity of agent, servant, employee or representative on an exclusive or nonexclusive basis.

Insurance agent means any person appointed by an insurance company licensed to transact business in the state to act as representative in any given locality for the purpose of soliciting and writing insurance bonds, and such other duties in connection with the handling of the business of such agent as may be authorized, and paid for his services either on a commission basis or salary basis, or part by commission and part by salary.

Insurance solicitor means any person employed by the licensed agent of an insurance company licensed to transact business in the state to act as representative in any given locality for the purpose of soliciting and writing insurance or bonds, and such other duties in connection with the handling of the business of such agent as may be authorized, and paid for his services either on a commission basis or salary basis, or part by commission and part by salary.

Solicitation means the going in or upon or telephoning to one or more private residences in the city by any person not having been requested or invited to do so by the owners or occupants of such private residence or residences for the purpose of soliciting orders for the sale of goods, wares, merchandise, any article or thing of whatsoever description intended for the use or benefit of the recipient thereof, property either real or personal or tangible or intangible, or services; for the purpose of peddling or hawking any of the same; for the purpose of making or requesting appointments or procuring interviews or arranging for demonstrations or explanations preliminary to any actual solicitation of orders; or for the purpose of selling, peddling or hawking of any of the same.

(Code 1974, § 31-1)

Sec. 28-162. General prohibition.

(a) *Violation deemed misdemeanor.* Whoever commits solicitation in violation of this article commits a misdemeanor.

(b) *Elements of prima facie case of solicitation.* Any person or employer who goes in or upon or who telephones any one residence for the purpose of solicitation shall be deemed prima facie to have committed solicitation and a continued practice need not be shown.

(Code 1974, §§ 31-2, 31-3)

Sec. 28-163. Exceptions to prohibition.

The provisions of section 28-162(a) shall not apply to any person if such person for himself, or through his employer, shall have:

(1) Posted a surety bond, with a surety licensed to do business in the state, in the amount of \$1,000.00, to the city and the residents of the city conditioned that the person posting the surety bond shall comply fully with all the provisions of the ordinances of the city and the statutes of the state regulating and concerning the business licensed, and guaranteeing to any resident of the city that all money paid will be accounted for and applied according to the representations of the licensee, and further guaranteeing to any resident of the city doing business with such licensee that the property or services purchased will be delivered or furnished according to representations made by the licensee, and will conform to such representation, whether such representations be oral or in writing, and that the licensee's contract in all respects will be fully performed. Action on such bond may be brought in the name of the city to the use and benefit of the aggrieved person or in the name of the aggrieved person. The term of such bond shall be at least one year.

a. Any employer may purchase such a bond for any person employed by him or representing him in any capacity. If such bond is purchased by an employer of more than one employee, he shall purchase one such bond in the amount of \$2,000.00, which bond shall cover all persons employed by him or representing him in any capacity.

b. Any person who solicits for one or more employers shall file with the city administrator evidence of a surety bond having been posted by each employer in the manner heretofore described.

(2) Obtained a state school tax license and a city solicitation license as provided in section 28-166.

(3) Obtained a peddler's identification card. Such card shall be issued upon written proof of compliance with this section. The city administrator is authorized to require any such person to be properly identified by fingerprinting and photography; provided, however, that such fingerprinting shall be required only at the

time of the filing of the original application for such card; except, that if the city administrator finds that the fingerprints lack sufficient clarity or are otherwise inadequate or unavailable for proper identification of such person, the city administrator may require such person to be fingerprinted again. The card shall be renewed every two years. The application of such card and every renewal thereof shall be made on such form as shall be provided by the city administrator. The service charge for investigation and printing the original card and for each renewal thereof shall be as set from time to time by the council and a schedule of such charges is on file in the office of the city clerk. The city council shall, after notice and hearing, suspend or revoke any such card upon finding such person has been convicted of a felony or misdemeanor involving moral turpitude in this state or any of the United States, or upon finding that such person gave false information on the application; provided, however, that nothing herein contained shall prohibit the city administrator from withholding the issuance of the aforementioned identification card until an adequate police record check is obtained.

(Code 1974, § 31-4)

Sec. 28-164. Peddler's identification card.

(a) *Contents.* The peddler's identification card shall contain the following:

- (1) The name and address of the bearer.
- (2) The name and address of each employer or, if self-employed, the words "self-employed" or, where applicable, both the name and address of each employer and the words "self-employed."
- (3) A wallet-size photograph of the bearer, to be furnished by the bearer.
- (4) The name and address of each bonding company and the employer bonded, if any.
- (5) The legend: "THE CITY OF CARLSBAD DOES NOT ENDORSE OR GUARANTEE THE PRODUCT OR SERVICE OF THE BEARER OR HIS COMPANY."

(b) *Carrying; exhibition.* Any person who solicits in the city shall carry his own peddler's identification card at all times while engaged in solicitation. Such card shall be exhibited to any owner or occupant of any residence or, upon demand, to any police officer of the city.

(Code 1974, §§ 31-5, 31-6)

Sec. 28-165. Insurance agents and insurance solicitors; real estate brokers and real estate salespersons.

(a) The provisions of sections 28-162(a), 28-163 and 28-164 shall not apply to any insurance agent or insurance solicitor who has obtained a license from the state superintendent of insurance, nor to any real estate broker or real estate salesperson who has obtained a license from the state real estate commission, and who carries such license on his person and who exhibits such license to any owner or occupant of any residence or, upon demand, exhibits such license to any police officer of the city.

(b) No person shall solicit for the purchase of insurance without a license from the state superintendent of insurance.

(Code 1974, § 31-9; Ord. No. 1035, 1-14-92)

Sec. 28-166. Grant of license; investigation report prerequisite to consideration.

A city solicitation license may be granted only upon approval by the city council at a regular meeting of the council. The city council shall not consider approval of a solicitation license application unless the chief of police has filed a report on his investigation of the employer or person seeking the license.

(Code 1974, § 31-10)

Sec. 28-167. Posted property.

Except where he has been requested or invited to do so by the owner or occupant of property, it is unlawful for any person, whether or not authorized by compliance with section 28-163 to solicit, to commit an act of solicitation in or upon any premises if required by anyone not to do so, or if there is placed on such premises in a conspicuous place near the entrance thereof a sign bearing the words: "No Trespassing," "No Peddlers," "No Agents," "No Solicitors," "No Advertisements" or any similar notice indicating in any manner that the occupants of such premises do not desire to be molested or have their privacy disturbed.

(Code 1974, § 31-7)

Sec. 28-168. Representation of city approval prohibited.

It is unlawful for any person to make any claim or representation, whether orally or in writing, during the solicitation that the city has approved, endorsed or guaranteed his product or service.

(Code 1974, § 31-8)

Sec. 28-169. Time limitation.

No person shall engage in solicitation after 9:00 p.m.
(Code 1974, § 31-11)



CITY OF CARLSBAD

Planning, Engineering, and Development Dept.

Phone (575) 887-1191, Ext. 7920 or 7921

Fax (575) 885-9871

Date: 6/29/14

NON-REFUNDABLE APPLICATION FEE:

- ☒ \$25 Door to Door--City Solicitation License
(as regulated by Sec. 28.161)
- ☐ \$25 Dance, per day
- ☐ \$200 Dance, per year
- ☐ \$50 Boxing, wrestling, fighting, or martial arts exhibitions or contests, per performance
- ☐ \$100 Carnival, circus, or menagerie, per day
- ☐ \$250 Pawnbroker, per year

**BUSINESS LICENSE
(SPECIAL EVENTS/PAWNBROKERS)
APPLICATION**

BUSINESS NAME:

Big Sky Roofing

TYPE OF BUSINESS/PURPOSE OF LICENSE:

Roofing

LOCATION OF BUSINESS (Physical Address):

1500 Mabry drive
Clavis NM 88101

NM ID #:

02469900004

MAILING ADDRESS:

PO 185
Clavis NM

BUSINESS OWNER:

Roger LeCher

E-MAIL

ADDRESS: bigskyroofingnm@hotmail

PHONE NUMBER: 575 200 8902

APPLICANT'S SIGNATURE:

Roger LeCher

DATES OF LICENSE USE:

June 8 2014 Dec 8 2014

FOR OFFICIAL USE ONLY

Solicitor's License? ☐ Yes ☐ No

Council Action: ☐ Approved ☐ Denied Date: _____

Conditions Required: _____

CITY OF CARLSBAD PROCEDURES FOR APPLYING FOR BUSINESS LICENSE

MEETING TIME AND DATE: Business License Requests are presented to the City Council. This application will be set for Council on July 8th 2014

DEADLINE: The deadline for submitting applications for City Council is July 2.

APPLICATION FEE: The Fee is due upon submission of application. Fees are listed on first page of application.

LETTER OF INTENT: A letter explaining the reason for the request must be submitted. The

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM

Council Meeting Date: July 8, 2014

DEPARTMENT: Cemetery / Culture, Recreation & Community Services	BY: Lupe Ornelas	DATE: July 2, 2014												
SUBJECT: Columbarium Fees Update														
BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.) <p>The current price for a columbarium niche is \$500 plus \$125 for the open/close fee. The price for a regular burial plot is \$550.00 plus \$125.00 open/close fee for cremains. Up to six cremains can be interred in a regular plot and only 2 in a columbarium niche. Presently there are complaints about the open/close fee for the niches and questions about the price differences. The <u>Cemetery Advisory Board</u> <u>would like to adjust the fees</u> for the columbarium niches in order to make them more competitive with the regular plots and make them more attractive to clients, thus increasing sales. The Board recommends that columbarium niches be priced at \$550 with no open/close fee. Prices for the regular burial plots will remain the same, i.e. \$550 plus \$125.00 open/close fee for cremains.</p>														
DEPARTMENT RECOMMENDATION: If it is the pleasure of the City Council, it is recommended that the Columbarium niche price be adjusted to \$550 with no open/close fee.														
BOARD/COMMISSION/COMMITTEE ACTION: <table border="0"> <tr> <td><input type="checkbox"/> P & Z</td> <td><input type="checkbox"/> Lodgers Tax Board</td> <td><input checked="" type="checkbox"/> Cemetery Board</td> <td><input checked="" type="checkbox"/> APPROVED</td> </tr> <tr> <td><input type="checkbox"/> Museum Board</td> <td><input type="checkbox"/> San Jose Board</td> <td><input type="checkbox"/> Water Board</td> <td><input type="checkbox"/> DISAPPROVED</td> </tr> <tr> <td><input type="checkbox"/> Library Board</td> <td><input type="checkbox"/> N. Mesa Board</td> <td><input type="checkbox"/> Beautification Committee</td> <td></td> </tr> </table>			<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input checked="" type="checkbox"/> Cemetery Board	<input checked="" type="checkbox"/> APPROVED	<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	<input type="checkbox"/> DISAPPROVED	<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> Beautification Committee	
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<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> Beautification Committee												

Reviewed by:
City Administrator: /s/ Steve McCutcheon

Date: July 3, 2014

ORDINANCE NO. 2014- 16

**AN ORDINANCE AUTHORIZING THE SALE
TO HB WATERS COMPANY, LLC OF TRACT
3-E, CARLSBAD AIRPORT INDUSTRIAL
PARK REPLAT OF A PORTION OF PARCEL 3,
UNIT 5, CONTAINING APPROXIMATELY
6.8210 ACRES OF REAL PROPERTY.**

WHEREAS, the City of Carlsbad (hereinafter "City") holds title to the real estate described as follows:

THE SURFACE ESTATE ONLY OF:

Tract 3-E, Carlsbad Airport Industrial Park Replat of
a Portion of Parcel 3, Unit 5 as filed with the County
Clerk in Cabinet 6, Slide 56-1, containing about
6.8210 acres.

(hereinafter "Property"); and

WHEREAS, HB Waters Company, LLC, a New Mexico limited liability company, desires to purchase the Property for such uses as are permitted by law, including but not limited to the requirements of Chapter 3, Article II of the Carlsbad City code of Ordinances, as such may be amended from time to time; and

WHEREAS, the Property shall be subject to all restrictions set forth in Chapter 3, Article II of the Carlsbad City code of Ordinances, as such may be amended from time to time, and subject to all covenants, conditions, restrictions, reservations, encumbrances, and easements of record or in open view; and

WHEREAS, the City desires to sell the Property for economic development purposes including the establishment of such uses as are permitted by law, including but not limited to the requirements of Chapter 3, Article II of the Carlsbad City code of Ordinances, as such may be amended from time to time; and

WHEREAS, a qualified appraiser has appraised property within the Carlsbad Airport Industrial Park at a value of Six Thousand Dollars per acre (\$6,000.00/acre); and

WHEREAS, the City wishes to sell the Property to Buyer for a total purchase price of Forty Thousand Nine Hundred Twenty-six Dollars and 00/100ths (\$40,926.00); and

WHEREAS, the City has published notice of this sale prior to the consideration of this Ordinance as required by N.M.S.A. 1978, Sec. 3-54-1(D) (1999);

NOW THEREFORE, be it ordained by the Governing Body of the City of Carlsbad, County of Eddy, State of New Mexico, as follows:

1. The sale of the above described real estate by the City of Carlsbad to HB Waters Company, LLC, a New Mexico limited liability company, for a total purchase price of Forty Thousand Nine Hundred Twenty-six Dollars and 00/100ths (\$40,926.00) is hereby approved.
2. The total purchase price shall be due and payable to the City at closing.
3. The City shall purchase Title Insurance in the amount of the total purchase price. All other closing costs shall be borne by the Buyer.
4. The Mayor and City Administrator are authorized to execute all documents necessary to implement the terms of this ordinance.
5. Notice shall be published pursuant to the terms of N.M.S.A. 1978, Sec. 3-54-1 (1999).

DONE AND APPROVED this 8th day of July, 2014.

DALE JANWAY, MAYOR

ATTEST:

CITY CLERK

Tourism Director/Convention Sales Report

Tourism/Convention Sales Report June 2014

Pecos River Village Conference Center

Total number of rentals for the month of June was 23

Meetings Attended

Virgin Galactic Spaceport American customer service training June 9th Alamogordo/Spaceport USA

Tourism Legislative Finance Committee meeting Artesia June 30th

Advertising Placed

Full page ad in New Mexico Travel Guide featuring Guadalupe Mountains National Park

Summer Advertising campaign-advertising was placed in El Paso/West Texas, New Mexico (state wide) Phoenix, Houston and Dallas. Radio, TV and print advertising will run from Mid May through the end of July.

Items completed during the month May for Social Media

Facebook and twitter updates are posted daily with regards to local events in Carlsbad. Area attraction information is posted on facebook daily such as Carlsbad Caverns, Guadalupe Mountains, Living Desert Zoo and Gardens and the museum and art center.

Go-New Mexico updates-photos added to website for Carlsbad Visitor page-326 leads for the business month of June. Visitor guides are sent out to each one of these leads requesting additional information on Carlsbad.

Items currently working on

Film crew will be in Carlsbad June 24th-28th. They will be filming the following areas: Guadalupe Mountains National Park, Living Desert Zoo and Gardens State Park, Carlsbad Caverns National Park and the Pecos River recreation area. The film obtained will be used for future TV and web based advertising.

Trade Shows Attended

None

Travel Writers/Tour Groups/Tourism Industry Professionals

Travel writer from USA today was in Carlsbad doing a story on Carlsbad Caverns National Park

Travel writer from New Mexico Magazine was in Carlsbad June 16th-17th. The article which will appear in the November addition will feature places to stay and dine in Carlsbad as well as Carlsbad Caverns National Park and Living Desert Zoo and Gardens State Park.

Upcoming Tradeshow and meetings

AARP National Convention-San Diego September 1st-6th