A G E N D A

Carlsbad City Council Regular Meeting at the Municipal Annex, 114 S. Halagueno Street Carlsbad, New Mexico

March 14, 2017 at 6:00 p.m.

Invocation – Pledge of Allegiance

1. Approval of Agenda

2. 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 February 28, 2017
B. Minutes of the Special City Council Meeting Held on March 3, 2017
C. City Personnel Report
D. Monthly Reports:
   1) Municipal Court Monthly Report, February 2017
   2) Personnel Department Monthly Report, February 2017
   3) Planning, Engineering, Regulation Department Monthly Report, February 2017
   4) Transportation and Facilities Department Monthly Report, January 2017
E. Contracts and Agreements:
   1) Consider approval of an Agreement between the County of Eddy, the City of Carlsbad and FTI Consulting, LLC, for Lobbyist Services
   2) Consider approval of an Agreement between the City of Carlsbad and the Shorthorn Little League for League Services at the Bob Forrest Youth Sports Complex
   3) Consider approval of an Agreement between the City of Carlsbad and the National Little League for League Services at the Bob Forrest Youth Sports Complex
   4) Consider approval of Renewal of Agreement with AMEC Foster Wheeler Environment and Infrastructure, Inc. for Construction Observation Services
   5) Consider approval of Renewal of Agreement with AMEC Foster Wheeler Environment and Infrastructure, Inc. for Construction Quality Control Services
F. Set Date-April 25, 2017
   1) An Ordinance Rezoning part of “I” Industrial District to ”R-1” Residential District for an approximately 0.82 acre property, located at 2502 South Canal Street, legally described as Tract B, Pope Replat No. 1, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(B) and 56-140(l), Carlsbad Code of Ordinances
   2) An Ordinance Rezoning part of “I” Industrial District to “C-2” Commercial District for an approximately 5.44 acre property, located at 2502 South Canal Street, legally described as Tract A, Pope Replat No. 1, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(B) and 56-140(I), Carlsbad Code of Ordinances
3. Consider approval of a Beer and Wine Restaurant License located at 106 W. Bonbright Street for Marion’s New American Restaurant; Applicant: Nicholas Melbourne

4. Consider approval of Resolution No. 2017-12, a Resolution Declaring Certain City Property Unusable or Obsolete

5. Consider approval of an Appeal of the Planning and Zoning Commission’s decision to deny a Variance request from Section 56-90(b) to allow a front-yard setback variance of 24.5’, which would result in a 5-5’ front-yard setback at 3317 Kuykendall Street: Eric Robinson

6. Consider approval of Ordinance No. 2017-03 Annexing a portion of Land containing 15.59 Acres more or less, contiguous to the City of Carlsbad, New Mexico, located along Center Avenue, legally described as the West 135 Feet of Lot 19, Block A, Hall’s Subdivision less the South 100 Feet And less The North 445 Feet (4.60 Acres), Lot 17, Block A, Hall’s Subdivision less the South 150 Feet of the East 50 Feet as described (0.26 Acres), Lot 18, Block B, Hall’s Subdivision (4.80 Acres), Lots 32 and 33, Fuson Land Division (4.78 Acres), part of Jasmine Street (0.12 Acres), part of Center Avenue (1.03 Acres), pursuant to the Petition Method Provided for in Section 3-7-1 et. Seq., NMSA 1978
   A. Remove from Table
   B. Public Hearing
   C. Consider Ordinance No. 2017-03

7. Consider Approval of Ordinance No. 2017-04, establishing "R-R" Rural Residential District in conjunction with the Annexation of approximately 15.59 acres of property, located along Center Avenue, legally described as the West 135 Feet of Lot 19, Block A, Hall’s Subdivision less the South 100 Feet and less the North 445 Feet (4.60 Acres), Lot 17, Block A, Hall’s Subdivision less the South 150 Feet of the East 50 Feet as described (0.26 Acres), Lot 18, Block B, Hall’s Subdivision (4.80 Acres), Lots 32 and 33, Fuson Land Division (4.78 Acres), part of Jasmine Street (0.12 Acres), part of Center Avenue (1.03 Acres), pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(B) and 56-140(l), Carlsbad Code of Ordinances
   A. Remove from Table
   B. Public Hearing
   C. Consider Ordinance No. 2017-04

8. Council Committee Reports

9. Adjourn
FOR INFORMATION ONLY

Agendas and City Council minutes are available on the City web site: cityofcarlsbadnm.com or may be viewed in the Office of the City Clerk or at the Carlsbad Public Library during normal and regular business hours.

CARLSBAD CITY COUNCIL MEETING SCHEDULE
• Regular meeting - Tuesday, March 28, 2017 at 6:00 p.m.
• Regular meeting - Tuesday, April 11, 2017 at 6:00 p.m.

If you require hearing interpreter, 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.
Call Meeting to Order

Invocation – Pledge of Allegiance

1. APPROVAL OF AGENDA

Motion
The motion was made by Councilor Carter and seconded by Councilor Doss to approve the Agenda
Vote
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent - Doporto; The motion carried.

2. CONSIDER APPROVAL OF RESOLUTION NO. 2017-07, A RESOLUTION MAKING CERTAIN BUDGETARY ADJUSTMENTS TO THE 2016-2017 FISCAL YEAR BUDGET (3RD QUARTER)
Mrs. Gonzales reviewed the revenue and expenditures making certain Budgetary Adjustments to the 2016-2017 Fiscal Year Budget highlighting the General Fund, the Lodgers' Tax Fund, the Sports Complex Fund, the CIEP Fund, the NM Finance Authority Loans Fund, and the Permanent Water & Sewer Fund.

Motion
The motion was made by Councilor Doss and seconded by Councilor Estrada to approve Resolution No. 2017-07, a Resolution making certain Budgetary Adjustments to the 2016-2017 Fiscal Year Budget (3rd Quarter)

Vote
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent - Doporto; The motion carried.

3. CONSIDER APPROVAL OF JANUARY 2017 FINANCIAL REPORT
Ms. Hammett reviewed the revenues and expenditures as of January 2017 for the General Fund and selected Enterprise and Special Funds contained within the City Budget.

Mr. McCutcheon explained that no vote is required on this item.

4. CONSIDER APPROVAL OF THE YEAR ENDED JUNE 30, 2016 ANNUAL AUDIT BY FARLEY VENER
Mr. Farley Vener presented the 2016 Audit Summary:
- Audit Communications
- Summary of Audit Results
- Finding/Recommendations
- Review Financial State Trends

Mr. McCutcheon expressed his appreciation to the staff for all of their hard work. He also thanked Mr. Vener and his staff for the extra effort to complete the audit for timely submittal. He added that the standards have been set for a timely submittal and no audit findings, staff needs to continue doing so in the years to come.

Councilor Doss said this is gratifying to see. He said Mr. Vener and his staff are very professional and he appreciates all of their help.
Mr. Vener said he appreciated working with City staff.

Mayor Janway thanked Mr. Vener and staff for all of their efforts to complete the audit.

0:16:51  **Motion**
The motion was made by Councilor Doss and seconded by Councilor Estrada to approve the Year Ended June 30, 2016 Annual Audit by Farley Vener

0:16:59  **Vote**
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent - Doporto; The motion carried.

5. **ROUTINE AND REGULAR BUSINESS**
A. Minutes of the Regular City Council Meeting Held on February 14, 2017
B. City Personnel Report
C. Purchasing:
   1) Consider approval to Advertise Invitation for Bids for the Improvements to the Entrance of the Cavern City Air Terminal
   2) Consider approval to purchase three (3) Compactors and eight (8) 30-CY Roll-Off Containers
   3) Consider approval to Advertise Invitation for Request for Proposals for Pre-Audit Preparation Services for the FY-2016-2017 Audit
D. Monthly Reports:
   1) Arts and Culture Department Monthly Report, January 2017
   2) Sports and Recreation Department Monthly Report, January 2017
E. Board Appointments:
   1) Budget Committee: Appointment: Interim-City Councilor Jason Shirley
F. Contracts and Agreements:
   1) Consider approval of Memorandum of Understanding between the City of Carlsbad and the US Department of Energy, Carlsbad Field Office concerning local Law Enforcement Support
G. Set Date-March 28, 2017
   1) An Ordinance rezoning part of “R-2” Residential District to “C-1” Commercial District for an approximately 0.34 acre property, located at 502 North Sixth Street, Legally described as the South 1/2 of the Northwest ¼ of Section 1, Township 22 South, Range 26 East, pursuant to Section 3-21-1 et seq, NMSA 1978 and Sections 56-150(B) and 56-140-(I), Carlsbad Code of Ordinances

0:17:35  **Mayor Janway** asked Mr. McCutcheon to discuss Item C.2 Consider approval to purchase three (3) Compactors and eight (8) 30-CY Roll-Off Containers.
Mr. McCutcheon explained this item is for the approval to purchase 3 compactors and 8 30 cubic yard roll-offs. He explained staff is struggling to meet the demand for roll-offs. He said these items have been budgeted and approved by the Budget Committee. He asked Mr. Hernandez how many compactors are currently being used. **Mr. Hernandez**
said 4 and gave the locations of Albertsons, the Hospital, Lowe's, and Ross. **Mr. McCutcheon** explained when compactors are set it does make a big difference to the city. He said with the compactors, staff does not need to frequent as often to pick up commercial containers. He said staff is interested in expanding the compactors because the compactors will save the city money.

0:18:49 **Motion**
The motion was made by Councilor Carter and seconded by Councilor Rodriguez to approve Routine and Regular Business

0:18:56 **Vote**
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent - Doporto; The motion carried.

0:19:11 6. **CONSIDER APPROVAL OF A BEER WHOLESALER LIQUOR LICENSE, MASTER LICENSE NO. 1027283, FOR MILTON'S BREWERY, LLC, LOCATED AT 108 E. MERMOD ST.**
**Mr. McCutcheon** explained this license is an addition to Milton's Brewery license which will allow Milton's to brew and distribute beer to other establishments.

0:20:26 **Motion**
The motion was made by Councilor Carter and seconded by Councilor Rodriguez to approve a Beer Wholesaler Liquor License, Master License No. 1027283, for Milton's Brewery, LLC, located at 108 E. Mermod St.

0:20:31 **Vote**
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent - Doporto; The motion carried.

0:20:41 7. **CONSIDER APPROVAL OF RESOLUTION NO. 2017-08, A RESOLUTION DECLARING CERTAIN CITY PROPERTY UNUSABLE OR OBSOLETE**
**Mr. McCutcheon** explained this is the standard Resolution for following statute to dispose of obsolete and unusable City property.

0:21:12 **Motion**
The motion was made by Councilor Shirley and seconded by Councilor Anaya Flores to approve Resolution No. 2017-08, a Resolution declaring certain City Property Unusable or Obsolete

0:21:18 **Vote**
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent - Doporto; The motion carried.
8. CONSIDER APPROVAL OF RESOLUTION NO. 2017-09, A RESOLUTION SUPPORTING FRIENDSHIP PARK

Ms. Deanna Taylor said the Resolution explains that the committee would like to provide a playground that will be accessible and usable by everyone. She explained this all began with Superintendent Gary Perkowski and the teachers who teach our children. She explained the location for the Park would be near Rotary Park. She said the Rotary Park equipment is in excellent shape so the new playground would be extended from Rotary Park. She explained the committee would like to install turf and would like the City to build the sidewalk around the area. She said she is requesting the City to approve the location and the committee will provide the funding for the playground.

Ms. Wanda Welch introduced the members of the Friendship Park Committee. She named herself, Deanna Taylor, Gary Perkowski, Jennifer Schoolcraft, Hope Massengill, and Denise Griffith. She explained that Ms. Taylor has wanted to build this park for many years. She said the committee is requesting the City’s support in building this park to make dreams come true for the community.

Councilor Rodriguez asked for an idea of the future maintenance of the park. Ms. Welch said the turf has a 15 year life expectancy and the equipment has a lifetime guarantee. She said she has spoken with the Parks and Recreation Department and they support the idea 100%.

Councilor Rodriguez said it looks as if the requested location has no trees and will be in direct sunlight. Ms. Taylor said there will be some shade with the tree growth. Ms. Welch said the trees have been trimmed and when they are grown out, they will provide shade. Ms. Welch added the park is exciting for this town and the children. Ms. Taylor added the committee is waiting for the approval before requesting funding for the Park.

Mayor Janway thanked the Committee for their efforts and said he believes this is a great project.

Motion
The motion was made by Councilor Doss and seconded by Councilor Anaya Flores to approve Resolution No. 2017-09, a Resolution supporting Friendship Park

Vote
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent - Doporto; The motion carried.

9. CONSIDER APPROVAL OF RESOLUTION NO. 2017-10 A RESOLUTION IN SUPPORT OF THE SUBMITTAL OF AN APPLICATION FOR MUNICIPAL ARTERIAL PROJECTS (MAP) GRANT FUNDING ADMINISTERED
BY NM DEPARTMENT OF TRANSPORTATION (NMDOT) FOR THE RECONSTRUCTION OF SAN JOSE BOULEVARD

Mr. McCutcheon explained this is a request for staff to submit funding through the NMDOT, allowing the city to complete the final phase of San Jose Boulevard. He said this request is subject to funding availability, which is very limited. He said staff is asking for approval to submit the application.

0:35:22 Motion
The motion was made by Councilor Carter and seconded by Councilor Rodriguez to approve Resolution No. 2017-10, a Resolution in support of the submittal of an application for Municipal Arterial Projects (MAP) Grant Funding Administered by NM Department of Transportation (NMDOT) for the Reconstruction of San Jose Boulevard

0:35:27 Vote
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent - Doporto; The motion carried.

0:35:37 10. CONSIDER APPROVAL OF RESOLUTION NO. 2017-11, A RESOLUTION IN SUPPORT OF THE SUBMITTAL OF AN APPLICATION FOR LOCAL GOVERNMENT ROAD FUNDING (LGRF) COOPERATIVE PROGRAM ADMINISTERED BY THE NM DEPARTMENT OF TRANSPORTATION FOR MULTIPLE STREET REMEDIATION PROJECTS WITHIN THE CITY OF CARLSBAD

Mr. McCutcheon explained this is another grant from NMDOT that staff is asking for approval to submit. He said the grant is for maintenance of existing roads.

0:36:41 Motion
The motion was made by Councilor Rodriguez and seconded by Councilor Anaya Flores to approve Resolution No. 2017-11, a Resolution in support of the submittal of an application for Local Government Road Funding (LGRF) Cooperative Program Administered by the NM Department of Transportation for Multiple Street Remediation Projects within the City of Carlsbad

0:36:46 Vote
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent - Doporto; The motion carried.

0:36:56 11. CONSIDER APPROVAL AUTHORIZING PARTICIPATION IN THE WELLS FARGO COMMUNITY & URBAN STABILIZATION PROGRAM AND THE ACCEPTANCE OF THE DONATION OF LAND AND STRUCTURE LOCATED AT 211 S. WALNUT STREET

Ms. Shumsky explained this is an exciting opportunity with Wells Fargo. She explained Wells Fargo contacted her and informed her that they can offer foreclosed properties to nonprofit organizations that rehab housing for affordable housing. She
said Wells Fargo can also offer to the municipalities or counties the property is in. She
said in order for the city to participate the Council would need to approve the
participation. She said Wells Fargo will handle all the transaction fees, taxes, platting
issues, deed transfers, and Wells Fargo will provide a certain amount of money that can
be used to demolish the property, rehab the property, or a number of other things that
the city see fit. She said she is excited and feels it is a good opportunity for the city to
gain control over dilapidated properties to clean up neighborhoods and she is
recommending approval.

0:40:24  **Councilor Doss** asked Chief Waller if this is a structure that we have had
problems with. **Chief Waller** said he is not familiar with the property. He added
anytime there is a property that is open like this, the property becomes a target and
creates a problem.

**Councilor Doss** asked how much the city currently pays to demolish property. **Ms.
Riordan** said the cost depends on the structure. She said the costs in the past have been
from $4,000 to well above $15,000 depending on each structure.

0:42:41  **Motion**
The motion was made by Councilor Rodriguez and seconded by Councilor Anaya
Flores to approve authorizing participation in the Wells Fargo Community & Urban
Stabilization Program and the acceptance of the donation of land and structure located
at 211 S. Walnut Street

0:42:58  **Vote**
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores;
No - None; Absent - Doporto; The motion carried.

0:43:16  **12. COUNCIL COMMITTEE REPORTS**
**Mayor Janway** thanked Representative Catherine Brown for her effort in making sure
the Carlsbad Fire Department's Combat Challenge Team is honored at the state level.
He said the Fire Fighters are going to receive a special honor at 10:30 a.m. on Thursday
at the Round House in Santa Fe. He said he is proud of the team for setting the World
Record in the Fire Fighter Combat Challenge and winning the World and National title
this year.

**Chief Lopez** said he appreciates Representative Brown for the recognition. He said this
is a great honor for the Fire Department, for the Team, and for the City of Carlsbad. He
said he is very proud and thankful and is looking forward to going to Santa Fe for their
recognition.

**Mayor Janway** added this shows what a world class fire department we have in
Carlsbad.
Councilor Doss said he would like to discuss a problem that we have locally that involves Representative Brown, the potential of the sinkhole at the south Y. He explained at the committee hearing the Brine Well was approved to establish the authority to start looking at options to fix. He said the problem seems to have stalled in the House with the funding portion and is not sure where the issue stands in the Senate. He said he can't stress enough the possibility of death of our citizens and the enormous financial consideration the sinkhole will cause, along with the negative publicity the city will receive across the country. He added the negative publicity will affect tourism, oil and gas, and potash.

Mr. McCutcheon said he just received a message from Representative Brown that states she is in final negotiations and is working on a deal for 400K plus. She explained it would be 200K from the Oil and Gas Reclamation fund, 200K from the Hazardous Waste Emergency Fund, 50K from the City of Carlsbad, and 50K from Eddy County. He said this item is not on the agenda, no action can be taken. He added he and the Mayor just received the information prior to the Council meeting tonight.

Councilor Doss said the State authorized the well, monitored the well, collected the royalties from the well, and the shut down the well. He said this is a state problem and the magnitude approaches 1 billion dollars and can bankrupt the city and state.

Councilor Shirley said he and Councilor Doss were in Washington, DC and worked with the city's representative Jeff Murray to talk to our senators for help in finding potential revenue streams.

Councilor Doss said he feels there is a lack of a sense of urgency as to what can happen with the sinkhole. Councilor Rodriguez said there is a lack of understanding.

Mayor Janway said the potential sinkhole is a bad situation and staff is going to try to pull out all of the stops to fix the situation.

Councilor Shirley congratulated Milton's for their finish in the Hobbs Febrewary contest.

0:51:11 13. ADJOURN

0:51:15 Motion
The motion was made by Councilor Anaya Flores and seconded by Councilor Rodriguez to Adjourn

0:51:21 Vote
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent - Doporto; The motion carried.
Adjourn

There being no further business, the meeting was adjourned at 6:52 p.m.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
PRESENT: Dale Janway, Mayor
Lisa A. Anaya Flores, Councilor
Edward T. Rodriguez, Councilor
Leo B. Estrada, Councilor
Wesley A. Carter, Councilor
Jason Shirley, Councilor
Richard Doss, Councilor

ABSENT: J.R. Doporto, Councilor
Ward 4, Vacancy

ALSO PRESENT: Steve McCutcheon, City Administrator
Stephanie Shumsky, Deputy City Administrator
Eileen P. Riordan, City Attorney
Annette Barrick, City Clerk
Luis Camero, Director of Engineering Services
Wendy Hammett, Finance Director
Jeff Patterson, Planning Director
Kent D. Waller, Police Chief

TIME STAMPS AND HEADINGS BELOW CORRESPOND TO RECORDING OF MEETING AND THE RECORDING IS HEREBY MADE A PART OF THE OFFICIAL RECORD.

0:00:00 CALL MEETING TO ORDER

0:00:03 INVOCATION – PLEDGE OF ALLEGIANCE

0:00:31 1. APPROVAL OF AGENDA

0:00:34 MOTION
The motion was made by Councilor Shirley and seconded by Councilor Carter to approve the Agenda

0:00:39 VOTE
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent - Doporto; The motion carried.
2. CONSIDER APPROVAL OF ALTERNATE FUNDING SOURCE FOR THE CARLSBAD BRINE WELL CAVERN FOR CASH OR IN-KIND SERVICES IN THE AMOUNT OF $50,000

Mr. McCutcheon explained there is a proposal in the legislature to put together 500K to create the authority to move forward on the Brine well mitigation. He explained times are difficult for the city financially but this is a critical problem. He said this funding will show good faith from the city and will hopefully move the effort forward because the Brine well is a critical situation.

Councilor Doss said over the years the city has put in 2 million dollars, with some of the funds reimbursed. He asked if the city knows the status of the 4 bills going through the House and the Senate. Mr. Heaton said the House Bill is in the Senate and the Senate Bill is in the House. He said there is a large chance that one of the bills will pass. He said the bill he is speaking of is the Authority Bill and added he suspects the Funding Bill is stuck in Senate finance.

Motion
The motion was made by Councilor Doss and seconded by Councilor Rodriguez to approve Alternate Funding Source for the Carlsbad Brine Well Cavern for cash or in-kind services in the amount of $50,000, with the condition that the County and the State approve their portions

Vote
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent - Doporto; The motion carried.

Mr. McCutcheon said he does not know if the issue will be presented as an emergency status. He said he suspects it will take time to get the legislative funding in place and will begin to move forward July 1. He said from an administrative standpoint staff would bring a budget adjustment to the Budget Committee and bring the adjustment to Council by July 1, 2016.

Mr. Heaton said this project is really about the money to get the project done. He said estimates have been about 25 million dollars to remediate the Brine Well. He explained there is a reclamation fund and he has done some calculations and the reality is that between 2010-2014 the fund generated over 10 million, he said if you add in 2015 its probably somewhere between 11 and 11.5 million dollars in addition to what was placed in the fund previously. He said the bill allows money to be used for reclamation of any kind of oil activity needs including Brine Wells. He said in reality the department has taken 11 million dollars that should have gone into the fund and into this project. He said he feels the Energy and Minerals Department needs to commit some portion of their mediation fund into the Authority, without this commitment bonding will be impossible. He said a lot of money has been spent on studies and tests and he thinks it’s time to fill the well and get the problems solved.
Mr. McCutcheon said Mr. Heaton has raised some good points. He said one of the proposals is for 200K to come from the remedial fund. He said the proposal is to take the Authority and do the final fill study and put out an RFP for final engineering design and fill services.

Mr. Heaton said the Interior is receiving a lot of money from the state of New Mexico. He said we need to get congressional delegations involved to figure out the path forward and revenue sources.

0:13:08 3. ADJOURN

0:13:16 Motion
The motion was made by Councilor Anaya Flores and seconded by Councilor Shirley to Adjourn

0:13:25 Vote
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Shirley, Carter, Anaya Flores; No - None; Absent - Doporto; The motion carried.

0:13:40 Adjourn

There being no further business, the meeting was adjourned at 9:16 a.m.

__________________________________
Mayor

ATTEST:

__________________________________
City Clerk
**APPOINTMENTS:**

<table>
<thead>
<tr>
<th>NAME</th>
<th>DATE</th>
<th>DEPARTMENT</th>
<th>CLASSIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>AJ Armendariz</td>
<td>03/20/17</td>
<td>Riverwalk Rec.Ctr.</td>
<td>Recreation Attendant, on call</td>
</tr>
<tr>
<td>D. William Dando</td>
<td>03/20/17</td>
<td>Electrical</td>
<td>HVAC Technician</td>
</tr>
<tr>
<td>Isaiah Fernandez</td>
<td>03/20/17</td>
<td>Riverwalk Rec.Ctr.</td>
<td>Recreation Attendant, on call</td>
</tr>
<tr>
<td>Rhonda Sapien</td>
<td>03/20/17</td>
<td>Riverwalk Rec.Ctr.</td>
<td>Recreation Attendant, on call</td>
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**TERMINATIONS:**

<table>
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<tr>
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<th>DATE</th>
<th>DEPARTMENT</th>
<th>CLASSIFICATION</th>
<th>REASON</th>
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<tbody>
<tr>
<td>Robin Beauchamp</td>
<td>03/03/17</td>
<td>Planning &amp; Regulation</td>
<td>Customer Service Op.</td>
<td>Resignation</td>
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**INTERNAL TRANSFERS AND PROMOTIONS:**

<table>
<thead>
<tr>
<th>NAME</th>
<th>DATE</th>
<th>DEPARTMENT</th>
<th>CLASSIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joseph Florez</td>
<td>03/06/17</td>
<td>Collections</td>
<td>Vactor Operator</td>
</tr>
<tr>
<td>Elias Abel Lara</td>
<td>02/27/17</td>
<td>Waste Water</td>
<td>Waste Water Foreman 3</td>
</tr>
<tr>
<td>Cari Pickens</td>
<td>03/01/17</td>
<td>Planning &amp; Regulation</td>
<td>Customer Service Operator</td>
</tr>
</tbody>
</table>
TO: The Honorable Mayor Dale Janway & Members of the City Council
FROM: Renee Madrid, Manager Riverwalk Recreation Complex
SUBJECT: Recommendation for Employment
DATE: March 8, 2017

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:**

<table>
<thead>
<tr>
<th>Name: AJ Armendariz</th>
<th>Classification/Position: Recreation Attendant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department: Riverwalk Recreation Complex</td>
<td></td>
</tr>
</tbody>
</table>

- [x] Regular
- [ ] Full-time
- [x] Hourly $12 per hour
- [ ] Seasonal
- [ ] Part-time
- [ ] Salary $________ per annum
- [ ] Temporary
- [x] On call

**Education Level:**

- [x] High School Diploma
- [ ] GED or equivalent
- [ ] Associates Degree
- [ ] Bachelors Degree
- [ ] Masters Degree
- [ ] Other

**Employment:**

- Present or last Employer: Dexan Drywall Div.
- From Sep-16 to Nov-17
- Classification: Drywall
- Duties: Drywall, hanging sheet rock

**Comments:** AJ will be a great asset to the Riverwalk Recreation Complex.
TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Patrick Cass, Director of Public Works

SUBJECT: Recommendation for Employment

DATE: March 8, 2017

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

**General Information:**

<table>
<thead>
<tr>
<th>Name: Donald William Dando</th>
<th>Classification/Position: HVAC Technician</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department:</td>
<td></td>
</tr>
<tr>
<td>X Regular</td>
<td>X Full-time</td>
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<tr>
<td></td>
<td>X Hourly $29.59 per hour</td>
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<tr>
<td></td>
<td>X Seasonal</td>
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<tr>
<td></td>
<td>X Part-time</td>
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<tr>
<td></td>
<td>X Salary $________ per hour</td>
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<tr>
<td></td>
<td>X Temporary</td>
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<tr>
<td></td>
<td>X On call</td>
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<tr>
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**Education Level:**

<table>
<thead>
<tr>
<th>X High School Diploma</th>
<th>GED or equivalent</th>
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<tbody>
<tr>
<td>Associates Degree</td>
<td></td>
</tr>
<tr>
<td>Bachelors Degree</td>
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</tr>
<tr>
<td>Masters Degree</td>
<td></td>
</tr>
<tr>
<td>Other</td>
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</tbody>
</table>

**Employment:**

Present or last Employer: Intrepid Potash

From 03/2013 to 02/2016 Classification: HVAC Technician

Duties: Maintain all HVAC equipment up to 160 Ton-1.5 Ton Equipment, repair and troubleshoot.

Related Experience: 20 years HVAC Experience

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

FROM: Renee Madrid, Manager Riverwalk Recreation Complex

SUBJECT: Recommendation for Employment

DATE: March 8, 2017

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: Isaiah Fernandez
Department: Riverwalk Recreation Complex
Classification/Position: Recreation Attendant

Regular √ Full-time □
Seasonal □ Part-time □
Temporary □ On call

Education Level:
High School Diploma √ GED or equivalent □
Associates Degree □
Bachelors Degree □
Masters Degree □
Other □

Employment:
Present or last Employer: Tornado Wash
From Feb-17 to Present Classification: Car wash attendant
Duties: Prepare cars, clean, and greet customers.

Related Experience: Isaiah has volunteered at Riverwalk Recreation, Relay for Life, coaching, and working with the public.

Comments: Isaiah has previous experience with the public and working with kids. Mr. Fernandez will be a great asset to the City of Carlsbad.
TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Renee Madrid, Manager Riverwalk Recreation Complex

SUBJECT: Recommendation for Employment

DATE: March 8, 2017

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:**

<table>
<thead>
<tr>
<th>Name:</th>
<th>Rhonda Sapien</th>
<th>Classification/Position:</th>
<th>Recreation Attendant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department:</td>
<td>Riverwalk Recreation Complex</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>X Regular</td>
<td>☐ Full-time</td>
<td>☒ Hourly</td>
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<td>☐ Seasonal</td>
<td>☐ Part-time</td>
<td>☐ Salary</td>
<td>$ per annum</td>
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<td>☐ Temporary</td>
<td>☒ On call</td>
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</table>

**Education Level:**

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

**Employment:**

Present or last Employer: Carlsbad Municipal Schools

From Oct-15 to Present

Classification: Instructional Asst.

Duties: Help the teachers and other Assistants, assist the children.

Related Experience: Rhonda works with the public, is bilingual.

Comments: Rhonda has previous experience with the public and working with kids. Rhonda will be a great asset to the City of Carlsbad.
CARLSBAD MUNICIPAL COURT  
CITY OF CARLSBAD  
MONTHLY REPORT  
FEBRUARY 2017  

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Number of Cases</td>
<td>773</td>
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<tr>
<td>Warrants Outstanding</td>
<td>3246</td>
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<tr>
<td>Amount of Fines</td>
<td>$53,464.00</td>
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<td>Cases on Appeal</td>
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**FINES**

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<tr>
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<tr>
<td>Total Fines</td>
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<tr>
<td>Total Prevention Fees</td>
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<td>Total Lab Fees</td>
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<td>Total Correction Fees</td>
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<td>Total Automation Fees</td>
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<td>Judicial Fees</td>
<td>$1,974.00</td>
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<td>Notary Fees</td>
<td>$9.00</td>
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<td>Victim Restitution</td>
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<td><strong>TOTAL</strong></td>
<td><strong>$53,464.00</strong></td>
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TOTAL FINES WORKED OUT THROUGH COMMUNITY SERVICE - $1,339.00

cc: Chief  
City Administrator  
Finance Department  

Municipal Judge, Interim
City of Carlsbad  
Personnel Department Action Report  
Month of February 2017

<table>
<thead>
<tr>
<th>EMPLOYEE REPORT</th>
<th>Beginning of Month</th>
<th>New Hires</th>
<th>Terminations</th>
<th>Transfers In</th>
<th>Transfers Out</th>
<th>End of Month</th>
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<tr>
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<td>Part-Time/Temp Employees</td>
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<td>Fire</td>
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<td>Planning &amp; Regulation</td>
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<td>Transportation &amp; Facilities</td>
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<tr>
<th>WEEKLY INDEMNITY</th>
<th>Beginning of Month</th>
<th>New Claims</th>
<th>Released To Work</th>
<th>Terminated</th>
<th>End of Month</th>
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<tbody>
<tr>
<td>Employees on WI</td>
<td>7</td>
<td>3</td>
<td>2</td>
<td>0</td>
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<table>
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<tr>
<th>UNEMPLOYMENT CLAIMS</th>
<th>Claims Received</th>
<th>Claims Returned</th>
<th>Claims Denied</th>
<th>Claims Approved</th>
<th>Claims Pending</th>
<th>Claims Appealed</th>
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<td>Current Month</td>
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### DRUG TESTS

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<td>Probationary</td>
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<td>Post Accident</td>
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<td>Random</td>
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<td>Probable Cause</td>
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### VACANCIES BID

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<thead>
<tr>
<th>VACANCIES BID</th>
<th>Department</th>
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<tbody>
<tr>
<td>Waste Water Foreman 3 or 4</td>
<td>WWTP</td>
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<tr>
<td>Recreation Attendant</td>
<td>Riverwalk Rec. Ctr.</td>
</tr>
<tr>
<td>ARC Driver</td>
<td>Solid Waste</td>
</tr>
<tr>
<td>Caretaker</td>
<td>Golf Course</td>
</tr>
<tr>
<td>Caretaker</td>
<td>Parks</td>
</tr>
<tr>
<td>Customer Service Operator</td>
<td>Planning &amp; Regulation</td>
</tr>
<tr>
<td>Vactor Operator</td>
<td>Collections</td>
</tr>
<tr>
<td>Archive Clerk</td>
<td>Executive</td>
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<tr>
<td>Assistant Library Director</td>
<td>Library</td>
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### PHYSICAL EXAMINATIONS

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<thead>
<tr>
<th>PHYSICAL EXAMINATIONS</th>
<th>Number Given</th>
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<tr>
<td>Pre-employment</td>
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<tr>
<td>Return to Work Evaluation</td>
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<tr>
<td>Functional Capacity Evaluation</td>
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</table>

### VACANCIES ADVERTISED

<table>
<thead>
<tr>
<th>VACANCIES ADVERTISED</th>
<th>Applications Received</th>
</tr>
</thead>
<tbody>
<tr>
<td>HVAC Technician</td>
<td>1</td>
</tr>
<tr>
<td>Heavy Equipment Operator</td>
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</tr>
</tbody>
</table>

### TESTING

<table>
<thead>
<tr>
<th>TESTING</th>
<th>Number Given</th>
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</thead>
<tbody>
<tr>
<td>Typing</td>
<td>5</td>
</tr>
</tbody>
</table>
# MONTHLY ACTIVITY REPORT
Planning, Engineering, & Regulation Department
FEBRUARY 2017

## ACTIVITY SUMMARY

1. **Business Activity:**
   - New Businesses: 35
   - Temporary Businesses: 14
   - Business Renewals: 574

2. **Miscellaneous Permits:**
   - Dances: 0
   - Shelter Rentals: 6
   - Other: 0

3. **Building Permits & Inspections:**
   - Permits Issued: 139
   - Permit Revenue: $17,034.25
   - Inspections Completed: 201
   - 49—Building Permits
   - 31—Plumbing/Mechanical
   - 59—Electrical Permits

4. **Code Enforcement**
   - 25—New Cases
   - 123—Closed Cases

5. **Planning & Engineering activities for the month of February 2017:**
   - **NEW**
     - Three Planning & Zoning Applications Received for March Meeting
     - Asset Management Plan—Data Collection Continues
     - 1,300 acre Montclair Development Moving Forward
     - Affordable Housing Applications Submitted—Approved
     - Encroachment Permit Process Being Overhauled
   - **ONGOING**
     - Infrastructure Mapping (GIS)
     - Development Review
     - Subdivision Review and Approvals
     - Leased Properties Inspections
     - Code Enforcement Continuing to Respond to 311’s and Continuing Weed Blitz

## PLANNING AND ZONING COMMISSION
Meets the first Monday of each month at 5 p.m. in the City Annex Planning Room, 114 S. Halagueno.

Signed: [Signature]
Jeff Patterson, Planning Director
CITY OF CARLSBAD

TRANSPORTATION AND FACILITIES
JANUARY 2017

Monthly Reports from:

• Community Service
• Construction
• Electrical
• Garage
• Parks
• Street

Reviewed and approved by Patrick Cass, Director of Public Works
MONTHLY WORK REPORT

DEPARTMENT: COMMUNITY SERVICE  MONTH: JANUARY 2017

NO. OF EMPLOYEES: 4  NO. OF DAYS IN MONTH: 31

HOLIDAYS THIS MONTH: 2  NO. OF WORK DAYS THIS MONTH: 20

No. of Community Service Workers: 3
Hours of Work Performed by Community Service Workers: 53.50

Week of January 2nd through January 6th

The crew started the week with litter control at Eddy House, Spring Park, Ocotillo trail, Canal Street, and Six Mile Dam. They cleaned out drains, on Canyon Street, Doepp Drive, Bryan Circle and San Jose Boulevard. They cleanup on Muscatel and Nelson Street and ended the week with litter control at Eddy House, Spring Park, Ocotillo Trail, Canal Street and Six Mile Dam.

Week of January 9th through January 13th

The crew started the week with litter control at Eddy House, Spring Park, Ocotillo Trails, Canal Street and Six Mile Dam. They cleaned and trimmed Ocotillo Trail, Skyline Drive and ended the week with litter control at Eddy House, Spring Park, Ocotillo Trail, Canal Street and Six Mile Dam.

Week of January 16th through January 20th

The week was started with litter control at the Eddy House, Spring Park, Ocotillo Trails, Canal Street and Six Mile Dam. They cleaned the tree-line on Pierce Street, the drain next to Oasis Church on Main Street, Tenth Street, and South Canal. They ended the week litter control at Eddy House, Spring Park Ocotillo Trail, Six Mile Dam, and Canal Street. The crew assisted the Street Department in trimming trees on Mesa Street behind Ross Department Store.

Week of January 23rd through January 27th

The Community Service crew started the week with litter control at the Eddy House, Spring Park, Ocotillo Trail, Canal Street and Six Mile Dam. They trimmed trees on Pierce Street next to Stripes and the drain on North Shore Tree Bush. They trimmed and cleaned up Ocotillo Trail, the drain in front of South West LP Gas, drain on Lea Street, First Street, Greene Street next to the miners parking lot, cleaned drain in the alley off Pisano Street from Garden Street to Camp Street. They cleaned Canyon Street and ended the week with litter control at Eddy House, Spring Park, Ocotillo Trail, Canal Street and Six Mile Dam.

Week of January 30th through January 31st

The crew started the week with litter control at Eddy House, Spring Park, Ocotillo Trail, and Six Mile Dam. They did litter control on Pierce Street and cleaned up the drain behind the mall.

Prepared by: Victor Tavarez, Street Superintendent
### MONTHLY WORK REPORT

<table>
<thead>
<tr>
<th>DEPARTMENT: Construction</th>
<th>MONTH: January 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO. OF EMPLOYEES: 15</td>
<td>NO. OF DAYS IN MONTH: 31</td>
</tr>
<tr>
<td>HOLIDAYS THIS MONTH: 2</td>
<td>NO. OF WORK DAYS THIS MONTH: 20</td>
</tr>
</tbody>
</table>

1. Started total remodel of restroom on the golf course
2. Built wall at Civic Center for office
3. Poured foundation at Waste Water Treatment Plant for covered storage
4. Repaired roof at MLK Pavilion
5. Removed and re-poured concrete walk and handicap ramp at 214 W Fox St
6. Replaced bad (unsafe) sidewalk at 604 W Church St
7. Jack hammered out old concrete around manhole at Greene and Mesa for water dept. Made a concrete cap with manhole cover and ring incorporated and installed.
8. Started construction of the Hall of Fame display cases at Library Annex
9. Repaired street light base north of Ford Town for Electric shop
10. Repaired boat docks east of Blodgett St RR
11. Repaired door at community service office

Prepared by [Signature]

David Gonzales, Construction Superintendent
## MONTHLY WORK REPORT

**DEPARTMENT:** ELECTRICAL  
**MONTH:** JANUARY 2017

**NO. OF EMPLOYEES:** 7  
**NO. OF DAYS IN THE MONTH:** 31

**HOLIDAYS THIS MONTH:** 2  
**NO. OF WORK DAYS THIS MONTH:** 20

### Number of Jobs Performed for Individual Departments

<table>
<thead>
<tr>
<th>No.</th>
<th>Department</th>
<th>Jobs Preformed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Airport</td>
<td>19</td>
</tr>
<tr>
<td>2.</td>
<td>Golf Course</td>
<td>21</td>
</tr>
<tr>
<td>3.</td>
<td>Parks</td>
<td>38</td>
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</table>

### 4. Waste Water

- **a. Treatment Plant:** 24
- **b. Primary Lift:** 07
- **c. Lift Station:** 13
- **d. Other:** 0

### 5. Water

- **a. Water Wells:** 19
- **b. Double Eagle:** 18
- **c. Yard:** 0
- **d. Other:** 0

### 6. Public Building and Yards

- **a. City Hall:** 14
- **b. Library:** 06
- **c. Museum:** 16
- **d. Mesa Senior Rec.:** 15
- **e. San Jose Sr. Rec.:** 06
- **f. Riverwalk Rec.:** 12
- **g. Rifle Range:** 05
- **h. Community Soup Kitchen:** 02
- **i. Antique Lights:** 13
- **j. Pecos River Village:** 11
- **k. Convention Center:** 06
- **l. Civic Center:** 01
- **m. Reintegration:** 0
- **n. Literacy Building:** 0
- **o. Public Works Yard:** 19
- **p. Bob Forrest Sports Complex:** 27
- **q. Sign Shop:** 0
- **r. Port Jefferson:** 0
- **s. Landfill:** 0
- **t. Solid Waste:** 12
- **u. PFA Garage:** 0
- **v. Police Department:** 28
- **w. Fire Department:** 29

### 7. Traffic

- **Traffic:** 22

### 8. Streets

- **Streets:** 29

### 9. School Crossing Lights

- **School Crossing Lights:** 06

### 10. Transportation

- **Transportation:** 02

### 11. Cascades

- **Cascades:** 03

### 12. Sunnyview Catch Basin

- **Sunnyview Catch Basin:** 0

### 13. Underground Line Locates

- **Underground Line Locates:** 67

---

*Prepared by*  
Patrick Cass, Deputy Director of Public Works
MONTHLY WORK REPORT

DEPARTMENT: GARAGE
MONTH: January 2017
NO. OF EMPLOYEES: 16
NO. OF DAYS IN MONTH: 31
HOLIDAYS THIS MONTH: 2
NO. OF WORK DAYS THIS MONTH: 20

Summary of Work Performed

Garage Department Master Mechanics and Mechanics
Performed necessary repairs and adjustments to keep the Public Works equipment operable as indicated in the vehicle and equipment repair summary. Perform preventive maintenance checks on various vehicles and equipment to prevent costly repairs in the future. Made service calls for all departments as required.

Lubrication
Check fluid levels on refuse collection trucks daily. Deliver fuel to various locations and projects. Washed and steam cleaned cars and trucks. Perform preventive maintenance on units (changed oil and filters, lubricated, serviced batteries, and cleaned batter cables) according to maintenance schedule. Check all vehicles anti-freeze levels. Steam cleaned parts for mechanics

Tire Repair Shop
Removed, repaired, and reinstalled tires for Public Works, equipment and fleet vehicles to keep them in service. Filled out requisitions and got purchase orders for tire repairs and tire purchases for all departments. Deliver tires to different locations. Made service calls for tire repairs or to air tires as required. Kept spare tire room supplied and tire inventory current.

Welding Shop
Performed various repairs for the following departments:

Solid Waste
Unit 10789 Weld & install fan shroud aluminum clip
Unit 1796 Trim battery box lid
Unit 10783 Weld cracks on side mast and timing blocks
Unit 10783 Adjust clevis on tipper and tack backside
Unit 10780 Heat and remove turbo bolts
Fabricate dumpster locks
Unit 9090 Cut and re-weld muffler brace
Unit 10823 Repair screen bracket
Unit 10780 Fabricate fan shroud reinforcement plate
Unit 12332 Fabricate bracket for battery box
Unit 12333 Repair hose suction sleeve for turbo
Unit 11592 Weld hole in AC line
Unit 10783 Fix rear door
Unit 12332 Drill holes in battery box
Unit 14732 Weld nuts on cover
Unit 10789 Repair side mast lift cylinder junction block
Unit 10781 Fix ladder and weld timing blocks
Unit 12332 Notch bumper, and cut deflector plate
Unit 10823 Cut & Remove hydraulic valve bracket
Unit 15397 Fabricate skid plate

**Garage Department**
Fabricate funnel covers
Safety Meeting
Prepare and weld extension transmission funnel
Clean Shop
Fabricate step stool
Install casters and rack
Fabricate saw horses
Fabricate cord reels
Install Plasma Cam air line filter
Cut & Fabricate skid plates

**Water Department**
Fabricate hand shovels
Unit 14133 Weld aluminum rack

**Parks Department**
Cut material for shooting gongs

**Street**
Weld signs
Unit 2098 Cut bolts
Fabricate light bases
Fabricate merion signs
Weld post on Primrose

**Collections**
Unit 3034 Heat nipples on heat exchanger

**Construction**
Cut rebar on man hole

**Golf Course**
Fabricate fence panels
Install fence panels
Weld handles on T post

**Electric**
Fabricate 1” thick base plate for light pole
Modify light pole base
Weld light pole stand
Weld extension to break away for light pole

**City Hall**
Fabricate hand rails and cut Zia symbols
Public Works
Prepare and install gate
Redo hinges on gate
Weld gate and fabricate lock box

Double Eagle
Cut mounting bolts

RRC
Repair floor scrubber aluminum ear

Fire
Unit A-6 Refabricate air filter port retainer plate

PFA
Repair car door

Safety
Safety Training

San Jose Rec Center
Repair exercise equipment
Repair weight bench

Municipal Court
Weld holding room benches

Prepared by: Terry Mathis, Maintenance Superintendent
MONTHLY WORK REPORT

DEPARTMENT: PARKS
NO. OF EMPLOYEES: 12
HOLIDAYS THIS MONTH: 2
MONTH JANUARY 2017
NO. OF DAYS IN MONTH: 31
NO. OF WORK DAYS THIS MONTH: 20

Week of January 2nd through January 6th
January 2nd was the New Year Holiday. Four employees trimmed trees at the Old Campground and Dr. Martin Luther King Jr. Park. Four employees replaced the trash can liners at the beach area, Riverview Park, The Lower Tansill Area and the Ray Anaya Plaza De San Jose (RAPDSJ). Three employees repaired irrigation systems at Riverview Park, The Lower Tansill Area and Plumbing repairs at the beach area restrooms. Two employees did gopher control at Lamont Street Park, Arcadia Park, The Lower Tansill Area, Dr. Martin Luther King Jr. Park, and Riverview Park. Three employees repaired the Carlsbad Municipal Tennis Court windscreens.

Week of January 9th through January 13th
Five employees mowed and trimmed the following Park/Areas: The Carlsbad Municipal Shooting Range, and Dr. Martin Luther King Jr. Park. Four employees replaced the trash can liners at the beach area, Riverview Park, The Lower Tansill Area and the RAPDSJ. Three employees repaired the plumbing at the Tennis Courts Restrooms and irrigation system repairs at the cascades, City of Carlsbad Dog Park, Lower Tansill Area, Riverview Park, and the Carlsbad Veterans Memorial Park. Two employees did gopher control at Dr. Martin Luther King Jr. Park and the Lower Tansill Area. Four employees installed a walk thru gate and repaired the fence at the Public Works Yard. Two employees power washed the pavilion floors at Dr. Martin Luther King Jr. Park, the band shell and Riverview Park.

Week of January 16th through January 20th
Monday 16th was the Dr. Martin Luther King Jr. Holiday. Five employees mowed and trimmed the following Park/Areas: Heritage Park, Spring Park, and the RAPDSJ. Four employees replaced the trash can liners at the beach area, Riverview Park, The Lower Tansill Area and the RAPDSJ. Three employees repaired bubbler irrigation systems throughout the parks, trenched for conduit installation at the Shooting Range and built tree wells. Three employees trimmed trees at the RAPDSJ. Ten employees attended safety classes at the Pecos River Village Conference Center.

Week of January 23rd through January 27th
Three employees trimmed trees at the Lower Tansill Area. Four employees replaced the trash can liners at the beach area, Riverview Park, The Lower Tansill Area and the RAPDSJ. Three employees inspected and repaired bubblers irrigation systems throughout the landscape area and repaired restrooms at Blodgett Street and The Tennis Courts. Three employees dug out tree wells for watering trees at the Shooting Range, Lake Carlsbad Recreation Area, and the Carlsbad Veterans Memorial park. Two employees removed litter, and debris from the Pecos River Village Conference Center. Two employees did gopher control at Lamont Street Park and the Lower Tansill Area. Two employees sandblasted, and painted new sign post for the Carlsbad Disc Golf Course Maps. Three employees spread compost at the Lower Tansill Area.
Week of January 30th through January 31st
Four employees replaced the trash can liners at the beach area, Riverview Park, The Lower Tansill area and the RAPDSJ. Three employees repaired the irrigation systems at the Carlsbad Veterans Memorial park and South James Street Park. Four employee spread compost at the Lower Tansill Area. Three employees trimmed trees at the Moose Lodge and Park Drive.

Prepared by: 

Luis Renteria, Parks Superintendent
The Street Department mows, patches, sweep streets, repair/clean alleys and other various jobs as needed.

**Week of January 2\textsuperscript{nd} through January 6\textsuperscript{th}**
January 2\textsuperscript{nd} was the New Year Holiday.
The Street Department removed the salt spreader from the dump truck. They hauled debris from Lower Tansill area, CID drain between Lea and Radio Boulevard. The crew patched Area 10, Normandy Addition, RV Park entrance, on National Parks Highway, North Street at Violet intersection, Quay Street, Area 7, east of the river, alley between Alameda and Halagueno, Bonbright and Hagerman, alley entrance at 1024 Birch Lane and hot spots, and downtown area.
The crew swept Canal and Pierce, Area 10, Normandy Addition, Area 2, Pecos Acres, Area 9 East of the river, and downtown hot spots. They saw cut driveways on Cypress Street and installed the salt spreader back on the dump truck.

**Week of January 9\textsuperscript{th} through January 13\textsuperscript{th}**
The crew hauled debris from the CID drain between Lea and Radio Boulevard from the Lower Tansill. They removed the salt spreader from the dump truck and patched hot spots in Area 3 Solana and Area 8 east of Canal. They swept Canal and Pierce Street, Area 3 Solana, Area 8, east of Canal, Area 4, Lamont and hotspots on S. Canyon and downtown around the parade route. They installed cable on the wench Low Boy Trailer, mowed the Shooting Range and cleaned the storm debris around town.

**Week of January 16\textsuperscript{th} through January 20\textsuperscript{th}**
Monday January 16\textsuperscript{th} was the Martin Luther King Jr. Holiday. The crew hauled debris from the Ross Store to the Lower Tansill. They cleaned drains around town. The sweeper passed through Canal and Pierce, Area 7, Canal to Mesa, Area 11, Hall Addition, Area 6, Mesa to CID, hot spots and downtown area. They set up the traffic counter on Westridge. The crew saw cut at the Shooting Range and built a pad for the dumpster behind the Ross Store. They covered oil at the Public Works Yard, patched hot spots around town and assisted the Parks Department with limb removal at the Ray Anaya Plaza De San Jose.

**Week of January 23\textsuperscript{rd} through January 31\textsuperscript{st}**
The crew did alley repairs at the 1000 block between Tansill and Greene Street, South 200 block between Guadalupe and Mesa, South 100 block between Mesquite and Guadalupe, South 100 block between Guadalupe and Alameda, South 300 block between Guadalupe and Mesquite, The block of 1100 between Lea and Bronson, Dairy Lea Alley, and Both alleys on Hueco. The street sweeper serviced Canal and Pierce Street, Area 12, Standpipe, medians on Canal and Greene, Area 13, Sunnyview and San Jose, Area 14, South Carlsbad, Mesa Street, and Hot Spot, and the downtown area.

The crew hauled debris from Lower Tansill. They saw-cut Forrest Tire parking lot at Halagueno and Tansill Street. They patched hot spots around town and hot mixed cuts on 4\textsuperscript{th} Street, Forrest Tire parking lot on Tansill and Halagueno, and the edge of the road at the Lower Tansill Area.

The crew painted stripes on Old Cavern Highway, North Canal and Lamont Street.
### Signs and Markings Division of the Street Department

<table>
<thead>
<tr>
<th>Type of Sign</th>
<th>Repaired</th>
<th>Stripped</th>
<th>Replaced</th>
<th>Installed</th>
<th>Constructed</th>
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<tr>
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<td></td>
<td>06</td>
<td>06</td>
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<tr>
<td>Guide Signs</td>
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<tr>
<td>Regulatory Signs</td>
<td>09</td>
<td>02</td>
<td>08</td>
<td>10</td>
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</tr>
</tbody>
</table>

**Other work performed by Signs and Markings Division of the Street Department**

- Painted double yellow lines on Kircher from Prospect to National Parks.
- Painted double yellow lines and yellow dashes on Old Cavern Highway from National Parks Highway Park to Chapman Road.

Prepared by: ________________________________
Victor Tavarez, Street Superintendent

Digitally signed by Victor Tavarez
DN: cn=Victor Tavarez, o, ou, email=vrtavarez@cityofcarlsbadnm.com, c=US
Date: 2017.02.14 14:26:12 -07'00'
EDDY COUNTY
AGREEMENT A-16-81

THIS AGREEMENT is made and entered into by and between the County of Eddy and the City of Carlsbad, hereinafter referred to as the "County" and "City" respectively and/or "the Local Government Bodies," and, FTI Consulting (Government Affairs), LLC, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Eddy County Board of County Commissioners.

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**
   The Contractor shall perform the work outlined in the Scope of Work attached hereto as **Attachment 1** and incorporated herein by reference.

2. **Compensation.**
   A. The Local Government Bodies shall pay to the Contractor in full payment for those services set forth in Attachment 1 satisfactorily performed, One Hundred Seventy-Eight Thousand, Eight Hundred dollars ($178,800.00) annually, excluding gross receipts tax. The foregoing annual amount shall be paid in equal monthly installments of $14,900.00. In no event will the Contractor be paid for any services provided which will result in compensation exceeding the amounts set forth above, without this Agreement being amended, in writing, to reflect any such modifications.

   B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to, Scope of Work. All invoices MUST BE received by the County no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

   C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Local Government Bodies find that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Local Government Bodies that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the County shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

   D. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).
3. **Term.**

This Agreement shall be an annual contract based on the fiscal year of July 1 to June 30. The initial term shall be from January 24, 2017 to June 30, 2017. This Agreement may be renewed by the Local Government Bodies for up to three (3) additional one (1) year terms contingent on the approval of the Local Government Bodies prior to the expiration of the current term ending on June 30, 2017, or any of the one (1) year extensions. Provided, this agreement may be terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

   **A.** Termination. This Agreement may be terminated by any of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the County’s sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the Local Government Bodies are the terminating parties, or the Contractor’s sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party’s liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Local Government Bodies or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of government funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE Local Government Bodies OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

   **B.** Termination Management. Immediately upon receipt by either the County, City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Local Government Bodies; 2) comply with all directives issued by the County or City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the County or City shall direct for the protection, preservation, retention or transfer of all property titled to the County or City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the County upon termination and shall be submitted to the County as soon as practicable.

5. **Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Board of County Commissioners, this Agreement shall terminate immediately upon written notice being given by
the County to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the County proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

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

7. **Assignment.**  
The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Local Government Bodies.

8. **Subcontracting.**  
The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Local Government Bodies. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the County. In all cases, the contractor is solely responsible for fulfillment of this Agreement.

9. **Release.**  
Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the County, its officers and employees, and the Local Government Bodies from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. **Confidentiality.**  
Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

11. **Product of Service -- Copyright.**  
All materials developed or acquired by the Contractor under this Agreement shall become the property of the County of Eddy and shall be delivered to the County no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.
12. Conflict of Interest; Governmental Conduct Act.

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

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

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any County employee while such employee was or is employed by the County of Eddy or City of Carlsbad and participating directly or indirectly in the County’s contracting process;

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the County of Eddy or City of Carlsbad; (ii) the Contractor is not a member of the family of a public officer or employee of the County of Eddy or City of Carlsbad; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the County of Eddy or City of Carlsbad, a member of the family of a public officer or employee of the County of Eddy or City of Carlsbad, or a business in which a public officer or employee of the County of Eddy or City of Carlsbad or the family of a public officer or employee of the County of Eddy or City of Carlsbad has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the County of Eddy or City of Carlsbad within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the County of Eddy or City of Carlsbad whose official act, while in County or City employment, directly resulted in the Local Government Bodies making this Agreement;

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

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Local Government Bodies.

C. Contractor’s representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Local Government Bodies relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Local Government Bodies if, at any time during the term of this Agreement, Contractor learns that Contractor’s representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor’s representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies
available to the Local Government Bodies and notwithstanding anything in the Agreement to the contrary, the County or City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in Article 12(B).

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

   B. If the Local Government Bodies propose an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. **Merger.**
   This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. **Penalties for violation of law.**
   The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

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

17. **Applicable Law.**
   The laws of the State of New Mexico shall govern this Agreement and shall be enforceable in the Fifth Judicial District Court in Eddy County. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.
18. **Worker’s Compensation.**

The Contractor agrees to comply with state laws and rules applicable to worker’s compensation benefits for its employees. If the Contractor fails to comply with the Worker’s Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the County.

19. **Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement’s term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Local Government Bodies, the Department of Finance and Administration, and the State Auditor. The Local Government Bodies shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Local Government Bodies to recover excessive or illegal payments.

20. **Disclaimer and Hold Harmless/Insurance**

Eddy County and the City of Carlsbad shall not be liable to the Contractor, or the Contractor’s successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold Eddy County and the City of Carlsbad harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by Local Government Bodies in connection with the performance by Contractor of Contractor's duties according to this Agreement.

Contractor agrees to have insurance as follows: Comprehensive General Liability - $1,000,000 per occurrence, $3,000,000 General Aggregate; Professional liability- $1,000,000 per occurrence, $3,000,000 General Aggregate. “Occurrence” type, if available; if not “Claims Made” type with a minimum of a six (6) year “tail.”

21. **Indemnification.**

The Contractor shall defend, indemnify and hold harmless the County of Eddy and City of Carlsbad from all actions, proceeding, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the County of Eddy and the New Mexico Association of Counties by certified mail.

22. **Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.
23. **Enforcement of Agreement.**
   A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

24. **Authority.**
   The individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

25. **Approval of Contractor Personnel.**
   Personnel proposed in the Contractor's written proposal to the Local Government Bodies are considered material to any work performed under this Agreement. No changes of personnel will be made by the Contractor without prior written consent of the procuring agency of the Local Government Bodies, in this instance, Eddy County. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The procuring agency of the Local Government Bodies shall retain the right to request the removal of any of the Contractor's personnel at any time.

26. **Limit of Liability.**
   The contractor's liability to the Local Government Bodies for any cause whatsoever shall be limited to the purchase price paid to the contractor for the products and services that are the subject of County's claim. The foregoing limitation does not apply to the paragraphs entitled "Indemnification" and "Patent, Copyright, Trademark and Trade Secret Indemnification" of this agreement or to damages resulting from personal injury caused by the contractor's negligence. In no event will the contractor be liable for any damages resulting from loss of data or use, lost profits or any incidental or consequential damages.

27. **Survival.**
   The agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification"; "Indemnification"; and "Limit of Liability" shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement.

28. **Succession.**
   This agreement shall extend to and be binding upon the successors and assigns of the parties.

29. **Force Majeure.**
   A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance,
epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party’s control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

30. **Mediation.**

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

31. **Notice to Proceed.**

It is expressly understood that this Agreement is not binding upon the County until it is executed by the Board of County Commissioners after voting on the contract at a public meeting or unless it is executed by the Eddy County Manager, if the amount of the contract is $5,000.00 or less. The Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully signed copy of the Agreement.

32. **Attorney’s Fees.**

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall be entitled to an award of attorneys’ fees and court costs.

33. **Cooperation.**

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

34. **Incorporation and Order of Precedence.**

Request for Proposals No. B-16-10, Attempt #2 and the contractor's proposal are incorporated by reference into this agreement and are made a part of this agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

1. Any contract amendment(s), in reverse chronological order; then
2. this contract itself; then
3. the Request for Proposals; then
4. the Contractors Best and Final Offer(s), in reverse chronological order; then
5. the contractor’s proposal; then
6. the contractor’s standard agreement terms and conditions (which may or may not have been submitted as part of the contractor's proposal).

35. **Patent, Copyright, Trademark and Trade Secret Indemnification.**

A. The contractor shall defend, at its own expense, the County of Eddy and City of Carlsbad against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs,
damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the Local Government Bodies based upon the contractor's trade secret infringement relating to any product or service provided under this agreement, the contractor agrees to reimburse the Local Government Bodies for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the County of Eddy shall:

i. give the contractor prompt written notice of any claim;
ii. allow the contractor to control the defense or settlement of the claim; and
iii. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:

i. provide a procuring agency of the County the right to continue using the product or service;
ii. replace or modify the product or service so that it becomes non-infringing; or
iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the procuring agency of the County to the extent such modification is the cause of the claim.

36. Contractor's Payment of Property Taxes.

Contractor acknowledges that County has established a policy of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations to mitigate the economic burden otherwise imposed upon County and its taxpayers. Contractor warrants and certifies that it is presently not delinquent in the payment of its property tax obligations, and that it will not become delinquent during the term of this Contract.

37. Termination for Failure to Comply with County's Tax Reduction Policy.

Without limiting the rights and remedies available to County under any other provision of this contract, failure of Contractor to cure a property tax delinquency within 10 days of notice shall be grounds upon which County may terminate this Contract.


Upon completion of all work and the contract is over, there will be a review of all work done by the Contractor and/or any sub-contractors to be kept on file by Local Government Bodies for future use to help ensure the County picks the best potential Offerors and Awardees.

39. Default

The County reserves the right to cancel all or any part of any orders placed under this contract without cost to the Local Government Bodies, if the Contractor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the Local Government Bodies due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes
beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the Local Government Bodies determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the Local Government Bodies provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

40. Notices.

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

To the County: County Manager // 101 W. Greene // Carlsbad, NM 88220

To the Contractor: FTI Consulting // 325 7th Street, NW Suite 400 // Washington, DC // 20004

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signatures below.

By: FTI Consulting

Contractor

Date: 2-27-17

By: Eddy County Board of County Commissioners

Stella Davis, BOCC Chair

Date: January 24, 2017

Attest:

Robin Van Natta, County Clerk

Date: 1-24-17

By: City of Carlsbad

Dale Janway, City of Carlsbad Mayor

Date:

Attest:

City Clerk

Date:
Attachment 1
Scope of Work
And
Deliverables

The Consultant will keep Eddy County and City of Carlsbad Administrative Officials apprised of pending legislation, operational changes or regulation by the federal government, through constant communication with their staff in the matters of the nuclear industry, as it relates specifically to the Waste Isolation Pilot Plant (WIPP) and the Eddy-Lea Energy Alliance.

**Deliverable:**
Communicate with the Local Government Bodies regarding changes/regulation by the government as they relate to the Waste Isolation Pilot Plan (WIPP) and the Eddy-Lea Energy Alliance.

The Consultant will provide daily, weekly and monthly updates on progress to include summaries of actions taken on behalf of the County and City. The Consultant will also provide analyses of current projects worked on behalf of the County and City.

**Deliverable:**
Provide updates of actions taken on behalf of the Local Government Bodies and analyses of projects being worked on behalf of the County and City. These updates will include keeping County and City officials apprised on information from legislators regarding oil and gas, potash, Bureau of Land Management and the United States Forest Service. The County and City will also be made aware of any information or changes regarding legislation pertaining to the areas Federal Law Enforcement Training Center (FLETC) and Border Patrol programs.

The Consultant will communicate the need for County and City officials to call and/or make trips to Washington, D.C. so they may lobby on behalf of the Nuclear Industry, WIPP, the Eddy-Lea Energy Alliance, the oil and gas industry, the potash industry, the Bureau of Land Management, the United States Forest Service, FLETC, the Border Patrol and any other industry pertaining to area needs.

**Deliverable:**
Communicate with Local Government Body elected officials, the need to call or make trips so they may lobby on behalf of the above name industries/programs/institutions.

The Consultant, during regular appropriation, continuing resolution and/or supplemental appropriations time(s) will weekly update County and City officials as to any changes or budgetary cuts made to identified interests.

**Deliverable:**
Will provide updates to Local Government Officials as to any budget cuts to identified interests.

The Consultant will provide a detailed schedule of events which will include congressional and committee meeting schedules and outcomes of those meetings which benefited the County and City.
Deliverable:
Provide detailed schedule of meetings and events and accurate, timely reports of those meetings which benefited the Local Government Bodies.

The Consultant will educate congressmen and their staff regarding County and City shared interest in nuclear and energy programs.

Deliverable:
Provide detailed schedule of meetings and events and accurate, timely reports of those meetings which benefited the Local Government Bodies.

The Consultant will coordinate visits with County and City officials.

Deliverable:
Coordinate visits for the Local Government Bodies officials.

The Consultant also will educate, advocate and communicate other nuclear or energy industry needs as directed by County or City officials.

Deliverable:
Educate, advocate and communicate other energy industry needs as directed by the Local Government Bodies.
CITY OF CARLSBAD
AGENDA BRIEFING MEMORANDUM

COUNCIL MEETING DATE: 3-14-17

<table>
<thead>
<tr>
<th>DEPARTMENT: Sports Complex</th>
<th>BY: John Lowe, Sports Superintendent</th>
<th>DATE: 3-7-17</th>
</tr>
</thead>
</table>

SUBJECT: Agreement with Shorthorn Little League for League Services at Bob Forrest Youth Sports Complex

SYNOPSIS, HISTORY and IMPACT (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.):

The Bob Forrest Youth Sports Complex Advisory Board has recommended that the city enter into an agreement with Shorthorn Little League to provide services at the sports complex. Those services include:

- Umpires for their games.
- Chalking fields before games.
- Raking fields after games.
- Keeping the fields, dugouts, & bleachers free of litter during practices and games.
- All materials & supplies needed for practice, games, and tournaments.

The city would pay the league $30.00 for the T-ball & Pee Wee division games, $40.00 for the Minor & Major division games, and $60.00 for All-Star games for which the league hosts and provides league services for. Under the terms of this agreement the city shall pay the league no more than $19,000.00 for services provided for regular and tournament games.

DEPARTMENT RECOMMENDATION: Approve this agreement for league services with Shorthorn Little League.

BOARD/COMMISSION/COMMITTEE ACTION:

- P&Z
- Museum Board
- Library Board
- Lodgers Tax Board
- San Jose Board
- N. Mesa Board
- Cemetery Board
- Water Board
- Sports Complex Adv. Board

- APPROVED
- DISSAPPROVED

Reviewed by City Administrator: Stephen Humm, Apr 7 Date: 3/7/2017

ATTACHMENTS: Agreement signed by Shorthorn Little League President Debbie Chitwood
AGREEMENT BETWEEN THE CITY OF CARLSBAD
AND THE SHORTHORN LITTLE LEAGUE
FOR SPORTS SERVICES AT THE BOB FORREST SPORTS COMPLEX

THIS AGREEMENT made and entered into this ______ day of
____________________, 2017, by and between the CITY OF CARLSBAD, a municipal
corporation, hereinafter referred to as the "City", and the SHORTHORN LITTLE LEAGUE,
a New Mexico domestic nonprofit corporation, hereinafter referred to as the "League".

WHEREAS, the City owns and operates a facility known as the Bob Forrest Sports
Complex, hereinafter referred to as the "Complex", at which there is a variety of youth
sports venues including baseball and softball fields; and

WHEREAS, the League organizes, manages, coordinates, and supervises a
baseball league for Carlsbad area youth; and

WHEREAS, the League holds its baseball practice, games, and related activities
at the Complex; and

WHEREAS, the Bob Forrest Sports Complex Advisory Board, hereinafter referred
to as the "Board", has determined that it is in the best interest of the League that the
agreement be renewed for the League season from March 27 to December 31, 2017; and

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

1. Definitions.
   A. "Board" shall mean the Bob Forrest Sports Complex Advisory Board as it
      is now composed or as it may be amended in the future.
   B. "Complex" shall mean the real property and all improvements, buildings,
      and fixtures thereon commonly known as the Bob Forrest Sports Complex, 3001
      West Lea Street, Carlsbad, New Mexico.
   C. "League Services" shall include, but not necessarily be limited to:
      i. Within ten (10) days of the League’s execution of this Agreement,
         providing the City with the League’s schedule of practices, games and
         tournaments;
      ii. Providing the umpires necessary for each game at the Complex in
          which a League team is participating;
      iii. Providing necessary field chalking and maintenance before, during,
           and after each practice and each game at the Complex in which a
           League team is participating;
      iv. Keeping the fields, dugouts, and stands in a safe, sanitary, orderly,
          and sightly manner, and free of litter, trash, and debris during and
          after all practices and all games at the Complex in which a League
          team is participating and properly disposing of all litter, trash, and
debris;
v. Keeping the fields, dugouts, and stands in a safe, sanitary, orderly, and sightly manner, and free of litter, trash, and debris during and after each tournament sponsored or hosted by the League, if any, and properly disposing of all litter, trash, and debris;

vi. Furnishing all materials and supplies necessary for practice, games, and tournaments, if any;

vii. Paying promptly all taxes, licenses, and fees of whatever nature that are applicable to the operations pursuant to this Agreement;

viii. Preparing and submitting reports in a format to be agreed to by the parties;

ix. Attending meetings as may be requested by City Council, the Board, and/or City administration or staff; and

x. Performing such additional duties as may from time to time be mutually agreed to by the parties.

2. **League Provided Services.** The League shall provide the City with full League Services at the Complex. In addition to such services, the League shall provide:

   A. **Labor & Materials.** All labor, materials, supplies, equipment, and tools needed to perform the League Services. The League shall be solely responsible for all work performed and for the selection, operation, maintenance, and repair of all materials, supplies, equipment and tools used; and

   B. **Personnel.** All necessary personnel, appropriately selected, qualified, and supervised.

3. **Compensation.** Prior to receiving any monies from the City, the League shall submit a current IRS Form W9 to City’s Finance Department. In consideration for the services provided pursuant to this Agreement, the City shall pay the League for each “Game” as described below:

   A. **T-Ball & PeeWee Division Games.** For each T-Ball or PeeWee game in which a League team participates and for which the League provides services, the City shall pay the League Thirty dollars ($30.00)

   B. **Minor & Major Division Games.** For each Minor or Major League game in which a League team participates and for which the League provides services, the City shall pay the League Forty dollars ($40.00)

   C. **Junior & Senior League Games.** For each Junior or Senior League game in which a League team participates and for which the League provides services, the City shall pay the League Sixty dollars ($60.00)

   D. **All-Star Games.** For each All-Star League game for which the League provides League Services, the City shall pay the League Sixty dollars ($60.00)

Such amounts include all taxes or fees that may be assessed. Under no circumstances, and regardless of the number of games played or services provided, during the term of this Agreement the City shall not pay the League more than Nineteen thousand Dollars ($19,000.00) for services provided.
4. **Invoices.** The League shall submit invoices to the City’s Purchasing Department on the following dates:
   
   A. **First Half.** At the end of the first half of the recreational play season.
   
   B. **Second Half.** At the end if the second half of the recreational play season.
   
   C. **Tournament Play.** At the end of the tournament play season.

   Each invoice shall state how many of each type of Games were played during the time period covered by the invoice and a breakdown of the compensation due for the services performed.

5. **Right to Inspect and Audit.** Upon reasonable notice to the League, the City shall have the right, but not the obligation, to inspect, copy, and audit or have its representative inspect, copy, and audit all records maintained by or on behalf of the League as may be necessary to make a full, proper, and complete audit of all business transacted by the League in connection with their operations hereunder.

6. **Prevention of Waste and Damage.** The League shall use all reasonable cautions to prevent waste, damage, or injury to property of the City in the performance of its obligations under this Agreement. The League shall be solely responsible for any damage to or destruction of City property caused by the acts, willful or otherwise, of the League, its directors, officers, employees, members, agents, or volunteers.

7. **Reporting Damage.** Upon learning of any vandalism, damage, or destruction to the Complex, the League shall immediately report it verbally to the City. It shall also report such matters in writing within five (5) business days.

8. **Structural Changes.** The League shall not make any structural changes to any structure, building, fixture, appurtenance, or improvement at or to the Complex.

9. **Right to Enter and Inspect.** The City shall have the right to enter the Complex to inspect or to have its representative enter and inspect the Complex, including but not limited to all improvements, buildings, fixtures, appliances, and personal property at any time.

10. **Compliance with Laws.** The League shall comply with all applicable local, state, and federal laws, rules, regulations, policies, and inspections 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 the League 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, the League shall also notify the City in writing of that event. The League shall require all its employees, officers, and agents, to comply with all applicable local, state, and federal laws, rules, regulations, policies, and inspections.
11. **Assignment of Agreement.** The League shall not sublease, assign, or transfer any interest in or right to this Agreement without the prior written approval of the City.

12. **AS IS Condition.** Prior to the commencement of this Agreement, the League fully examined and inspected the Complex and its improvements, buildings, fixtures, appliances, and personal property therein. The League accepts the Complex and such improvements, buildings, fixtures, appliances, and personal property in their existing condition and state of repair. The League accepts them in an **AS IS CONDITION.** The League 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.

13. **Term.** The term of this Agreement shall begin on the 27th day of March 2017 and terminate on the 31st of December 2017.

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

15. **Indemnification.** The League 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 the League, its directors, officers, employees, members, agents, employees, or volunteers. The City will not be responsible for any special, indirect, or consequential damages.

16. **Release.** The League and its directors, officers, employees, members, agents, and volunteers release and discharge the City, its officers, agents, directors, and employees from any and all claims, damages, suits, or losses sustained by the League, its directors, officers, employees, members, agents, and volunteers or their heirs which the League, directors, officers, employees, members, agents, and volunteers or their heirs may have now or hereinafter and which are associated, in any manner, with this Agreement.

17. **Insurance.** At all times material to this Agreement and for any further time that the League may occupy any portion of the Complex:
   A. **Public Liability Insurance.** The League shall obtain and maintain, at its own expense, public liability insurance in the sum of two million dollars ($2,000,000.00). Such insurance shall name the City as an additional insured.
   B. **Automobile Liability Insurance.** The League shall obtain and maintain, at its own expense, automobile liability insurance in the sum of two million dollars ($2,000,000.00). Such insurance shall name the City as an additional insured.
   C. **League Property and Casualty.** The League shall be responsible for obtaining and maintaining, at its own expense, fire, property, and casualty insurance.
covering all improvements, fixtures, appliances, and appurtenances owned by the
League or used or placed at the Complex by the League should it desire such
insurance. The League knows and understands that the City shall NOT PROVIDE
fire, property, or casualty insurance for any improvements, fixtures, appliances, and
appurtenances not owned by the City. The League shall be solely responsible for
obtaining and maintaining such coverage. The City assumes no responsibility for
any property used or placed at the Complex. The City, its officers, employees, and
agents are hereby expressly released and discharged from any responsibility
whatsoever for any such property.

D. **Certificates 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, the League shall provide the City
Administrator with a Certificate of Insurance reflecting the coverages specified
herein and naming the City as loss payee as its interests may exist and as an
additional insured. The League shall annually furnish to the City Administrator a
Certificate of Insurance for the above required insurances. The League shall
provide the City Administrator with notice of any change thereof, and furnish to the
City Administrator evidence of acquisition of a substitute therefor, and payment
of the premium thereof. If the League 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 the League. The City’s acquisition of such insurance shall not relive
the League of its obligation to obtain and maintain insurance as required herein.

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

A. **Failure to Comply.** If the League 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 the League, or, if the
performance cannot be reasonably had within the fifteen (15) day period, and the
League shall not in good faith have commenced performance within the fifteen (15)
day period and then diligently proceeded to completion of performance.

B. **Loss of Corporate Status.** If the League ceases to be a New Mexico
nonprofit corporation in good standing with the New Mexico Public Regulation
Commission or the Commission’s successor agency.

C. **Transfer.** 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.

19. **Effect of Default.** In the event of the League’s default of any of the terms or
conditions set forth in this Agreement, the City shall have the right to cancel and terminate
this Agreement by giving the League not less than fifteen (15) days written notice of such
cancellation and termination.
20. **Non-Waiver.** Waiver by the City of any default in performance by the League of any of the terms or conditions contained in this Agreement shall not be deemed a continuing waiver of that default or any subsequent default.

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

22. **Destruction of the Complex.** In the event the Complex 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.

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

24. **Surrender of the Complex.** The League 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 Complex, including all buildings, additions and improvements constructed or placed thereon by the League, except movable trade fixtures, all in good condition and repair. Any trade fixtures or personal property belonging to the League, not removed within thirty (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.

25. **Entirety of Agreement; Modifications.** This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. The parties expressly waive any other or further representations, warranties, or agreements not set forth in this document. Neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing executed with the same formality as with this Agreement and then only to the extent set forth in such instrument.

26. **Independent Contractor.** The League, its directors, officers, employees, members, agents, and volunteers are independent contractors performing services for the City and are not employees of the City. The League, its directors, officers, employees, members, agents, and volunteers 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.

27. **Limit of Authority.** The League shall not purport to bind the City of Carlsbad, unless the League has express written authority to do so, and then only within the strict limits of that authority.

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

29. **Procurement Code Penalties.** The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

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

   If to the League:
   
   Shorthorn Little League  
   c/o Debbie Chitwood, President  
   P.O. Box 3228  
   Carlsbad, NM 88221-3228

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

31. **New Mexico Law.** This Agreement shall be construed in accordance with New Mexico law, and the Agreement may not be changed except by writing executed with the same formality as with this Agreement.

32. **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 PURSUANT TO THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION IN LIEU OF LITIGATION.

33. **Venue.** The parties agree that legal actions arising out of this Agreement, should there be any, shall be brought in the District Court of Eddy County, New Mexico for the Fifth Judicial District. The parties expressly consent to both in personam and subject matter jurisdiction of the Eddy County District Court and agree that venue shall properly lie in the Eddy County, New Mexico District Court.
34. **WAIVER OF JURY TRIAL.** THE PARTIES HEREBY WAIVE THE RIGHT TO A JURY TRIAL ON ANY ISSUE ARISING OUT OF OR RELATING, DIRECTLY OR INDIRECTLY, TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

35. **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.

36. **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:**

DALE JANWAY, MAYOR

ATTEST:

CITY CLERK

**SHORTHORN LITTLE LEAGUE**

DEBBIE CHITWOOD, PRESIDENT

STATE OF NEW MEXICO )
COUNTY OF EDDY ) ss.

The foregoing instrument was signed and acknowledged before me this 7th day of March, 2017, by DEBBIE CHITWOOD, as President of the Shorthorn Little League.

My commission expires:

2/22/2020

Valerie D'Ortio

OFFICIAL SEAL
NOTARY PUBLIC
SYNOPSIS, HISTORY and IMPACT (SAFETY AND WELFARE/FINANCIAL/PERSOENNEL/INFRASTRUCTURE/ETC.):

The Bob Forrest Youth Sports Complex Advisory Board has recommended that the city enter into an agreement with National Little League to provide services at the sports complex. Those services include:

- Umpires for their games.
- Chalking fields before games.
- Raking fields after games.
- Keeping the fields, dugouts, & bleachers free of litter during practices and games.
- All materials & supplies needed for practice, games, and tournaments.

The city would pay the league $30.00 for the T-ball & Pee Wee division games, $40.00 for the Minor & Major division games, and $60.00 for All-Star games for which the league hosts and provides league services for. Under the terms of this agreement the city shall pay the league no more than $19,000.00 for services provided for regular and tournament games.
AGREEMENT BETWEEN THE CITY OF CARLSBAD
AND THE CARLSBAD NATIONAL LITTLE LEAGUE
FOR SPORTS SERVICES AT THE BOB FORREST SPORTS COMPLEX

THIS AGREEMENT made and entered into this _____ day of
______________________, 2015, by and between the CITY OF CARLSBAD, a municipal
corporation, hereinafter referred to as the "City", and the CARLSBAD NATIONAL LITTLE
LEAGUE, a New Mexico domestic nonprofit corporation, hereinafter referred to as the
"League".

WHEREAS, the City owns and operates a facility known as the Bob Forrest Sports
Complex, hereinafter referred to as the "Complex", at which there is a variety of youth
sports venues including baseball and softball fields; and

WHEREAS, the League organizes, manages, coordinates, and supervises a
baseball league for Carlsbad area youth; and

WHEREAS, the League holds its baseball practice, games, and related activities
at the Complex; and

WHEREAS, the Bob Forrest Sports Complex Advisory Board, hereinafter referred
to as the "Board", has determined that it is in the best interest of the League that the
agreement be renewed for the League season from March 27 to December 31, 2017; and

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

1. Definitions.
   A. "Board" shall mean the Bob Forrest Sports Complex Advisory Board as it
      is now composed or as it may be amended in the future.
   B. "Complex" shall mean the real property and all improvements, buildings,
      and fixtures thereon commonly known as the Bob Forrest Sports Complex, 3001
      West Lea Street, Carlsbad, New Mexico.
   C. "League Services" shall include, but not necessarily be limited to:
      i. Within ten (10) days of the League's execution of this Agreement,
         providing the City with the League's schedule of practices, games and
         tournaments;
      ii. Providing the umpires necessary for each game at the Complex in
         which a League team is participating;
      iii. Providing necessary field chalking and maintenance before, during,
         and after each practice and each game at the Complex in which a
         League team is participating;
      iv. Keeping the fields, dugouts, and stands in a safe, sanitary, orderly,
         and sightly manner, and free of litter, trash, and debris during and
         after all practices and all games at the Complex in which a League
         team is participating and properly disposing of all litter, trash, and
         debris;
v. Keeping the fields, dugouts, and stands in a safe, sanitary, orderly, and sightly manner, and free of litter, trash, and debris during and after each tournament sponsored or hosted by the League, if any, and properly disposing of all litter, trash, and debris;
vi. Furnishing all materials and supplies necessary for practice, games, and tournaments, if any;

vii. Paying promptly all taxes, licenses, and fees of whatever nature that are applicable to the operations pursuant to this Agreement;

viii. Preparing and submitting reports in a format to be agreed to by the parties;

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A. **Labor & Materials.** All labor, materials, supplies, equipment, and tools needed to perform the League Services. The League shall be solely responsible for all work performed and for the selection, operation, maintenance, and repair of all materials, supplies, equipment and tools used; and

B. **Personnel.** All necessary personnel, appropriately selected, qualified, and supervised.

3. **Compensation.** Prior to receiving any monies from the City, the League shall submit a current IRS Form W9 to City’s Finance Department. In consideration for the services provided pursuant to this Agreement, the City shall pay the League for each “Game” as described below:

A. **T-Ball & PeeWee Division Games.** For each T-Ball or Peewee game in which a League team participates and for which the League provides services, the City shall pay the League Thirty dollars ($30.00)

B. **Minor & Major Division Games.** For each Minor or Major League game in which a League team participates and for which the League provides services, the City shall pay the League Forty dollars ($40.00)

C. **All-Star Games.** For each All-Star League game for which the League provides League Services, the City shall pay the League Sixty dollars ($60.00)

Such amounts include all taxes or fees that may be assessed. Under no circumstances, and regardless of the number of games played or services provided, during the term of this Agreement the City shall not pay the League more than Nineteen thousand Dollars ($19,000.00) for services provided.

4. **Invoices.** The League shall submit invoices to the City’s Purchasing Department on the following dates:

A. **First Half.** At the end of the first half of the recreational play season.
B. Second Half. At the end of the second half of the recreational play season.

C. Tournament Play. At the end of the tournament play season.

Each invoice shall state how many of each type of Games were played during the time period covered by the invoice and a breakdown of the compensation due for the services performed.

5. Right to Inspect and Audit. Upon reasonable notice to the League, the City shall have the right, but not the obligation, to inspect, copy, and audit or have its representative inspect, copy, and audit all records maintained by or on behalf of the League as may be necessary to make a full, proper, and complete audit of all business transacted by the League in connection with their operations hereunder.

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7. Reporting Damage. Upon learning of any vandalism, damage, or destruction to the Complex, the League shall immediately report it verbally to the City. It shall also report such matters in writing within five (5) business days.

8. Structural Changes. The League shall not make any structural changes to any structure, building, fixture, appurtenance, or improvement at or to the Complex.

9. Right to Enter and Inspect. The City shall have the right to enter the Complex to inspect or to have its representative enter and inspect the Complex, including but not limited to all improvements, buildings, fixtures, appliances, and personal property at any time.

10. Compliance with Laws. The League shall comply with all applicable local, state, and federal laws, rules, regulations, policies, and inspections 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 the League 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, the League shall also notify the City in writing of that event. The League shall require all its employees, officers, and agents, to comply with all applicable local, state, and federal laws, rules, regulations, policies, and inspections.

11. Assignment of Agreement. The League shall not sublease, assign, or transfer any interest in or right to this Agreement without the prior written approval of the City.
12. **AS IS Condition.** Prior to the commencement of this Agreement, the League fully examined and inspected the Complex and its improvements, buildings, fixtures, appliances, and personal property therein. The League accepts the Complex and such improvements, buildings, fixtures, appliances, and personal property in their existing condition and state of repair. The League accepts them in an **AS IS CONDITION.** The League 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.

13. **Term.** The term of this Agreement shall begin on the 13th day of March 2017 and terminate on the 31st of December 2017.

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

15. **Indemnification.** The League 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 the League, its directors, officers, employees, members, agents, employees, or volunteers. The City will not be responsible for any special, indirect, or consequential damages.

16. **Release.** The League and its directors, officers, employees, members, agents, and volunteers release and discharge the City, its officers, directors, and employees from any and all claims, damages, suits, or losses sustained by the League, its directors, officers, employees, members, agents, and volunteers or their heirs which the League, directors, officers, employees, members, agents, and volunteers or their heirs may have now or hereinafter and which are associated, in any manner, with this Agreement.

17. **Insurance.** At all times material to this Agreement and for any further time that the League may occupy any portion of the Complex:
   A. **Public Liability Insurance.** The League shall obtain and maintain, at its own expense, public liability insurance in the sum of two million dollars ($2,000,000.00). Such insurance shall name the City as an additional insured.
   B. **Automobile Liability Insurance.** The League shall obtain and maintain, at its own expense, automobile liability insurance in the sum of two million dollars ($2,000,000.00). Such insurance shall name the City as an additional insured.
   C. **League Property and Casualty.** The League shall be responsible for obtaining and maintaining, at its own expense, fire, property, and casualty insurance covering all improvements, fixtures, appliances, and appurtenances owned by the League or used or placed at the Complex by the League should it desire such
insurance. The League knows and understands that the City shall NOT PROVIDE fire, property, or casualty insurance for any improvements, fixtures, appliances, and appurtenances not owned by the City. The League shall be solely responsible for obtaining and maintaining such coverage. The City assumes no responsibility for any property used or placed at the Complex. The City, its officers, employees, and agents are hereby expressly released and discharged from any responsibility whatsoever for any such property.

D. **Certificates 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, the League shall provide the City Administrator with a Certificate of Insurance reflecting the coverages specified herein and naming the City as loss payee as its interests may exist and as an additional insured. The League shall annually furnish to the City Administrator a Certificate of Insurance for the above required insurances. The League 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 the League 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 the League. The City's acquisition of such insurance shall not relieve the League of its obligation to obtain and maintain insurance as required herein.

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

A. **Failure to Comply.** If the League 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 the League, or, if the performance cannot be reasonably had within the fifteen (15) day period, and the League shall not in good faith have commenced performance within the fifteen (15) day period and then diligently proceeded to completion of performance.

B. **Loss of Corporate Status.** If the League ceases to be a New Mexico nonprofit corporation in good standing with the New Mexico Public Regulation Commission or the Commission's successor agency.

C. **Transfer.** 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.

19. **Effect of Default.** In the event of the League's default of any of the terms or conditions set forth in this Agreement, the City shall have the right to cancel and terminate this Agreement by giving the League not less than fifteen (15) days written notice of such cancellation and termination.

20. **Non-Waiver.** Waiver by the City of any default in performance by the League of any of the terms or conditions contained in this Agreement shall not be deemed a continuing waiver of that default or any subsequent default.
21. **Funding Availability.** The funding of this Agreement is subject to the availability and appropriation of funds by the City Council of Carlsbad, New Mexico. If sufficient funding is not available or not appropriated by the City Council, then this Agreement is terminated and the City shall not incur any penalty or further liability.

22. **Destruction of the Complex.** In the event the Complex 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.

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

24. **Surrender of the Complex.** The League 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 Complex, including all buildings, additions and improvements constructed or placed thereon by the League, except movable trade fixtures, all in good condition and repair. Any trade fixtures or personal property belonging to the League, not removed within thirty (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.

25. **Entirety of Agreement; Modifications.** This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. The parties expressly waive any other or further representations, warranties, or agreements not set forth in this document. Neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing executed with the same formality as with this Agreement and then only to the extent set forth in such instrument.

26. **Independent Contractor.** The League, its directors, officers, employees, members, agents, and volunteers are independent contractors performing services for the City and are not employees of the City. The League, its directors, officers, employees, members, agents, and volunteers 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.
27. **Limit of Authority.** The League shall not purport to bind the City of Carlsbad, unless the League has express written authority to do so, and then only within the strict limits of that authority.

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

29. **Procurement Code Penalties.** The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

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

   If to the League:
   - Carlsbad National Little League
   - c/o Lee Austin
   - P.O. Box 5403
   - Carlsbad, NM 88221-5403

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

31. **New Mexico Law.** This Agreement shall be construed in accordance with New Mexico law, and the Agreement may not be changed except by writing executed with the same formality as with this Agreement.

32. **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 PURSUANT TO THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION IN LIEU OF LITIGATION.

33. **Venue.** The parties agree that legal actions arising out of this Agreement, should there be any, shall be brought in the District Court of Eddy County, New Mexico for the Fifth Judicial District. The parties expressly consent to both in personam and subject matter jurisdiction of the Eddy County District Court and agree that venue shall properly lie in the Eddy County, New Mexico District Court.

34. **WAIVER OF JURY TRIAL.** THE PARTIES HEREBY WAIVE THE RIGHT TO A JURY TRIAL ON ANY ISSUE ARISING OUT OF OR RELATING, DIRECTLY OR INDIRECTLY, TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
35. **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.

36. **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:**

__________________________
Dale Janway, Mayor

ATTEST:

__________________________
City Clerk

**CARLSBAD NATIONAL LITTLE LEAGUE**

__________________________
Lee Austin, President

STATE OF NEW MEXICO          )
COUNTY OF EDDY                ) ss.

The foregoing instrument was signed and acknowledged before me this __3__ day of __March__, 2017, by LEE AUSTIN, as President of the Carlsbad National Little League.

My commission expires: 1-2-18

__________________________
Notary Public
# CITY OF CARLSBAD
## AGENDA BRIEFING MEMORANDUM

<table>
<thead>
<tr>
<th>DEPARTMENT:</th>
<th>Projects</th>
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<tbody>
<tr>
<td>BY:</td>
<td>Jason Burns – Projects Administrator</td>
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<td>DATE:</td>
<td>03-08-17</td>
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**COUNCIL MEETING DATE: 03-14-17**

### SUBJECT:
AMEC Construction Observation Contract Extension

**SYNOPSIS, HISTORY and IMPACT** (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.):

**BACKGROUND:**

The contract for professional services to AMEC to provide Construction Observation for City of Carlsbad projects has expired. The City requests an extension of the current contract for an additional 1 year.

Council consideration is requested to approve, and execute, the attached contract/amendment, for AMEC to continue to provide Professional Construction Observation for City of Carlsbad projects.

**DEPARTMENT RECOMMENDATION:**

Approval

**BOARD/COMMISSION/COMMITTEE ACTION:**

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<tr>
<th>P&amp;Z</th>
<th>Lodgers Tax Board</th>
<th>Cemetery Board</th>
<th>Museum Board</th>
<th>San Jose Board</th>
<th>N. Mesa Board</th>
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□ APPROVED  □ DISSAPPROVED

Reviewed by

City Administrator /s/ Stephanie Shumsky  Date: 3-9-2017

**ATTACHMENTS:**

Proposed Agreement between AMEC and the CITY OF CARLSBAD.
AGREEMENT BETWEEN THE CITY OF CARLSBAD AND AMEC FOSTER WHEELER ENVIRONMENT & INFRASTRUCTURE, INC. FOR CONSTRUCTION OBSERVATION SERVICES

THIS AGREEMENT is entered into at Carlsbad, New Mexico, this __________ day of ____________________, 2017, by and between the CITY OF CARLSBAD, New Mexico, a municipal corporation, HEREAFTER REFERRED TO AS “City” and AMEC FOSTER WHEELER ENVIRONMENT & INFRASTRUCTURE, INC., a New Mexico corporation, hereinafter referred to as “AMECFW”.

WHEREAS, the City of Carlsbad annually engages in a number of building, road, utility, and infrastructure construction projects; and

WHEREAS, in order to assure quality construction in those projects, the City wishes to obtain professional construction quality control services to include, but not be necessarily limited to materials sampling, materials laboratory analysis and field testing; and

WHEREAS, in its RFP No. 2015-05, the City sought proposals from properly qualified entities for the provision of such professional construction quality control services; and

WHEREAS, AMECFW submitted a proposal in response to that RFP; and

WHEREAS, after reviewing the proposals received in response to the RFP, the Carlsbad City Council approved AMECFW’s proposal subject to the successful negotiation of a contract by the Mayor and the City Administrator and approval of that agreement by the City Council.

NOW, THEREFORE, FOR THE CONSIDERATION SPECIFIED HEREIN THE PARTIFS AGREE AS FOLLOWS:

1. Services to be Provided by AMECFW
   A. Construction Observation Services. AMECFW shall provide the City with Construction Observation Services for various projects as directed by and under the supervision of the project engineer the City, pursuant to set standards for such services as provided by the Standard General Documents Committee, and by the Engineers Joint Contract Documents Committee, and by the supplementary conditions of any project’s specifications and contract documents under such headings as Resident Project Representative or Construction Observant. Periodic or full time on-site observation services are to be provided for one or more projects which may be under construction at the same time. The City shall issue a written purchase order to AMECFW relative to each construction project for which the City requires Construction Observation Services. AMECFW shall provide no services and no cost shall be incurred prior to the receipt of the project specific purchase order. Such purchase order shall be in a form mutually agreed to by the parties and shall contain at a minimum, the project name, the project location, the scope of services, the duration of services, and contact names and telephone numbers. AMECFW shall use the skill and care ordinarily used by members of
its profession in the provision of these services.

B. Included Services. Such Construction Observation Services shall include, but not be limited to:
   i. Providing all labor, materials, supplies, equipment, and tools needed to perform the services. AMECFWFW shall be solely responsible for all work performed and for the selection, operation, maintenance, and repair of all materials, supplies, equipment, and tools used;
   ii. Providing all necessary personnel, appropriately selected, retained, qualified and supervised;
   iii. Submitting to the City written reports for each inspection performed with such reports to include all information specified in the Task Order and to be signed by and bear the seal of a Professional Engineer, licensed in New Mexico, or qualified Project Manager who is employed by AMECFWFW;
   iv. Promptly notifying the City, the Engineer, and the Contractor of any and all observed irregularities or deficiencies of work or products;
   v. Attending meetings as directed and scheduled from time to time with the City Administrator, City Staff, committees, and the governing body of the City; and
   vi. Performing such additional duties as may be mutually agreed to by the parties in writing. AMECFWFW shall not perform any services, or other work, which could reasonably be expected to alter the amount of compensation to be paid or materially alter the services to be provided by AMECFW until the City has approved such a change in writing.

2. Compensation.
   A. Rates. In consideration for the services provided hereunder, the City shall pay AMECFW within thirty days of receipt of AMECFW’s invoice according to the rates as follows:
      I. For Construction Inspector Services, $95.00 per hour
      II. For Staff Engineer/Project Manager, $110.00 per hour
      III. For Services requiring Specialists in certain disciplines, a rate to be negotiated between AMECFWFW and the City as such services, if any are required.
      IV. All rates enumerated above shall be exclusive of New Mexico Gross Receipts.

   B. Invoice. AMECFWFW shall submit invoices to the City by the 5th day of each month for the services rendered during the previous month. Separate invoices shall be submitted for each project and shall identify with specificity the date services were performed, the nature of such services, and a breakdown of the fees and taxes due for the services performed.

3. Prior Approval. No work requiring the approval of the City shall be undertaken until the City’s written approval has been requested and obtained. Any deviation from this requirement shall be considered a material breach of this Agreement and grounds for termination.

4. Compliance with Laws. AMECFWFW shall comply with all applicable local, state, and federal laws, ordinances, codes, rules, regulations, and policies. AMECFWFW shall require all its agents, employees, officers, representatives, and assigns to comply with all applicable local, state, and federal laws, ordinances, codes, rules, regulations, and policies. Any penalties and costs levied as a result of a breach of any of applicable local,
state, and federal law, ordinance, code, rule, regulation, and policy shall be borne solely by AMECFW.

5. **Permits and Certifications.** AMECFW shall obtain and maintain at all times any and all permits, licenses, or certifications that may be necessary for AMECFW to carry out the operations contemplated by this Agreement.

6. **Term.** The term of this Agreement shall be for one year beginning on the 27th day of May 2017, and terminating on the 26th day of May 2018. This Agreement may be renewed for one (1) 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 agreement, if both parties desire to renew for an additional year, the parties shall meet to negotiate renewal terms and conditions.

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

8. **Inspection of Records.** AMECFW shall maintain copies of all records regarding any activity it conducts pursuant to this Agreement for five years. The City shall have the right during regular office hours and upon reasonable notice to inspect and copy the financial records and other records, documents, and items that AMECFW may have in its possession relating to the services rendered or consideration paid pursuant to this Agreement.

9. **Use of Documents.** No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of AMECFW. The City may make and retain copies of any and all reports, maps, or other documents for its use and as may be required by law.

10. **Insurance.** At all times material to this Agreement, AMECFW shall obtain and maintain public liability insurance in the sum of one million dollars ($1,000,000.00). Such insurance shall name the City as an additional insured. AMECFW 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. AMECFW shall annually furnish the City a Certificate of Insurance for the above-required insurance. AMECFW shall provide the City with notice of any cancellation thereof and furnish to the City evidence of acquisition of a substitute therefore, and payment of the premium thereof.

11. **New Mexico Tort Claims Act.** Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, as it may be amended.

12. **Indemnification.** AMECFW shall indemnify the City against all expenses and liabilities, including reasonable attorney's fees made by or on behalf of any person or entity arising out of the negligent act, error, or omission of AMECFW.
13. **Release of Liability.** The City shall not be responsible for any personal injury, death, or property damage to AMECFW, its agents, employees, officers, representatives, or assigns incurred in the performance of the services specified herein and AMECFW shall hold the City completely harmless from any and all such claims.

14. **Assignment, Mortgage, or Sublease.** AMECFW shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written consent of the City. If there is an approved assignment or transfer, AMECFW shall continue to be liable hereunder in accordance with the terms and conditions of this Agreement and shall not be released from the performance of the terms and conditions hereof. The consent by the City to an assignment or transfer shall not be construed to relieve AMECFW from obtaining the express written consent of the City to any future transfer of interest.

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

   A. **Voluntary Proceedings.** If AMECFW, during the term of this Agreement, shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for the benefit of creditors.

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

   C. **Failure to Comply.** If AMECFW, through any cause, fails to fulfill in a timely and proper manner its obligations under this Agreement, or if AMECFW should fail to perform or comply with any of the conditions of this Agreement, and if the nonperformance shall continue for a period of ten (10) days after notice thereof by the City to AMECFW, or if the performance cannot be reasonably had within the ten (10) day period, and AMECFW shall not have in good faith commenced performance within the ten (10) day period and then diligently proceeded to completion of performance.

   D. **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.

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

   A. **Termination of Agreement.** The non-defaulting party shall have the right to cancel and terminate this Agreement as provided in this Paragraph. If a default occurs, the non-defaulting party may elect to give a written notice of default to the defaulting party setting forth in reasonable detail the nature and extent of the default and including the provision(s) of this Agreement which have been breached. If the defaulting party fails to cure the default set forth in such notice within (10) ten days after it receives such notice or (ii) such longer period as may reasonably be required to cure the default, the non-defaulting party may cancel and terminate this Agreement by delivering a written notice of cancellation and termination to the defaulting party. Upon such delivery, this Agreement and all rights, title, and
interest of the defaulting party hereunder shall terminate in the same manner and with the same force and effect, except as to the defaulting party'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 Non-Defaulting Party.** The non-defaulting party may elect, but shall not be obligated, to make any payment required of the defaulting party herein or comply with any agreement, term, or condition required hereby to be performed by the defaulting party; but any expenditure for correction by the non-defaulting party shall not be deemed to waive or release the default of the defaulting party or the right of the non-defaulting party to take any action as may be otherwise permissible or to seek other remedy under the law. If the non-defaulting party does so, it may recover the cost of such payment, compliance, or correction from defaulting party and charge interest thereon as is permitted by law.

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

18. **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:

<table>
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<tr>
<th>If to the City:</th>
<th>If to AMECFW:</th>
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<tbody>
<tr>
<td>City of Carlsbad</td>
<td>AMECFW Environment &amp; Infrastructure</td>
</tr>
<tr>
<td>Steve McCutcheon, City Administrator</td>
<td>Dan Kwiecinski, NM Operations Manager</td>
</tr>
<tr>
<td>P.O. Box 1569</td>
<td>8519 Jefferson NE</td>
</tr>
<tr>
<td>Carlsbad, NM 88221-1569</td>
<td>Albuquerque, NM 87113</td>
</tr>
</tbody>
</table>

Noting herein shall preclude the giving of any such written notice by personal service. The parties shall notify each other in writing of any change in the above names or addresses.

19. **Independent Contractor.** AMECFW, its officers, employees, representatives, and agents are independent contractors performing professional services for the City and are not employees of the City. AMECFW and its officers, employees, representatives, and agents shall not accrue leave, retirement, insurance, bonding, rights to use City vehicles, nor any other benefits afforded to employees of the City of Carlsbad.

20. **Limits of Authority.** AMECFW agrees not to purport to bind the City to any obligation not assumed herein by the City unless AMECFW has express written authority to do so, and then only within the strict limits of that authority.

21. **Procurement Code Penalties.** The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, as it may be amended from time to time, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

22. **Entirety of Agreement.** This Agreement incorporates all the agreements, covenants, and
understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. The parties expressly waive any other or further representations, warranties, or agreements not set forth in this document. This Agreement cannot be changed except by a written instrument duly executed by the parties.

23. **Workers' Compensation.** AMECFW agrees to comply with any and all applicable state laws, rules, and regulations regarding workers' compensation benefits for its employees. Should AMECFW fail to comply with the New Mexico Workers' Compensation Act and applicable rules when required to do so, AMECFW shall be in default.

24. **Successors and Assigns.** All of the terms, covenants, conditions, and agreements contained herein shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

25. **WAIVER OF JURY TRIAL.** THE PARTIES HEREBY WAIVE THE RIGHT TO A JURY TRIAL ON ANY ISSUE ARISING OUT OF OR RELATING, DIRECTLY OR INDIRECTLY, TO THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREBY.

26. **ARBITRATION.** SHOULD ANY DISPUTE ARISE BETWEEN THE PARTIES IN CONNECTION WITH THIS 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.

27. **New Mexico Law and Venue.** The parties agree this Agreement shall be construed and controlled by the laws of the state of New Mexico. The parties further agree that any legal actions arising out of this agreement shall be brought in the District Court of Eddy County, New Mexico for the Fifth Judicial District. The parties expressly consent to both in personam and subject matter jurisdiction of the Eddy County District Court and agree that venue shall properly lie in the Eddy County, New Mexico District Court.

28. **Savings Clause.** If any term, clause or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then it is the intention of the parties hereto that the remainder of this Agreement, or the application of such term, clause or provision to persons or circumstances other than those to which it is held illegal, invalid, or unenforceable, shall not be affected thereby, and its applicability to persons or circumstances other than those to which it is held illegal, invalid, or unenforceable shall not be affected thereby. It is also the intention of the parties hereto that, in lieu of such term, clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a term, clause, or provision as similar in terms to such illegal, invalid, or unenforceable term, clause, or provision as may be possible so that said provision be legal, valid, and enforceable.

29. **Non-appropriation.** The funding of this Agreement is subject to the availability and appropriation of funds by the City Council of Carlsbad, New Mexico. If sufficient
funding is not available or not appropriated by the City Council, then this Agreement is terminated and the City shall not incur any penalty or further liability.

30. **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.

31. **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.

[Remainder of Page Left Blank]
CITY OF CARLSBAD:

Dale W. Janway, Mayor

ATTEST:

Annette Barrick, Clerk

Amec Foster Wheeler Environment & Infrastructure, Inc.:

[Signature]

DAN KWIECINSKI, NM Operations Manager

STATE OF NEW MEXICO )
COUNTY OF EDDY ) ss.

BERNALILLO

The foregoing instrument was acknowledged before me this 17 day of March, 2017, by DAN KWIECINSKI, NM Operations Manager, Amec Foster Wheeler Environment & Infrastructure, Inc.

My Commission Expires:

3/31/20

[Signature]

NOTARY PUBLIC

[Seal]
AMEC Engineered Materials Testing Contract Extension

The contract for professional services to AMEC to provide engineered materials testing for City of Carlsbad projects has expired. The City requests an extension of the current contract for an additional 1 year.

Council consideration is requested to approve, and execute, the attached contract/amendment, for AMEC to continue to provide Professional Engineered Materials Testing for City of Carlsbad projects.

DEPARTMENT RECOMMENDATION:

Approval

BOARD/COMMISSION/COMMITTEE ACTION:

- P&Z
- Lodgers Tax Board
- Cemetery Board
- APPROVED
- Museum Board
- San Jose Board
- Water Board
- DISSAPPROVED
- Library Board
- N. Mesa Board
- __________ Committee

Reviewed by
City Administrator /s/ Stephanie Shumsky Date: 3–9–2017

ATTACHMENTS:

Proposed Agreement between AMEC and the CITY OF CARLSBAD.
AGREEMENT BETWEEN THE CITY OF CARLSBAD
AND AMEC FOSTER WHEELER ENVIRONMENT & INFRASTRUCTURE, INC.
FOR CONSTRUCTION QUALITY CONTROL SERVICES

THIS AGREEMENT is entered into at Carlsbad, New Mexico, this _______ day of
__________, 2017, by and between the CITY OF CARLSBAD, New Mexico, a municipal
corporation, HEREAFTER REFERRED TO AS "City" and AMEC FOSTER WHEELER
ENVIRONMENT & INFRASTRUCTURE, INC., a New Mexico corporation, hereinafter
referred to as "AMECFW".

WHEREAS, the City of Carlsbad annually engages in a number of building, road,
utility, and infrastructure construction projects; and

WHEREAS, in order to assure quality construction in those projects, the City wishes to
obtain professional construction quality control services to include, but not be
necessarily limited to materials sampling, materials laboratory analysis and field testing; and

WHEREAS, in its RFP No. 2014-10, the City sought proposals from properly
qualified entities for the provision of such professional construction quality control
services; and

WHEREAS, AMECFW submitted a proposal in response to that RFP; and

WHEREAS, after reviewing the proposals received in response to the RFP, the
Carlsbad City Council approved AMECFW's proposal subject to the successful
negotiation of a contract by the Mayor and the City Administrator and approval of that
agreement by the City Council.

NOW, THEREFORE, FOR THE CONSIDERATION SPECIFIED HEREIN THE PARTIFS
AGREE AS FOLLOWS:

1. Services to be Provided by AMECFW
   A. Construction Quality Control Services. AMECFW shall provide the City with
      Construction Quality Control Services as directed by the City. The City shall issue a
      written purchase order to AMECFW relative to each construction project for which the
      City requires Construction Quality Control Services. AMECFW shall provide no
      services and no cost shall be incurred prior to the receipt of the project specific
      purchase order. Such purchase order shall be in a form mutually agreed to by the
      parties and shall contain at a minimum, the project name, the project location, the
      scope of services, the duration of services, and contact names and telephone
      numbers. AMECFW shall use the skill and care ordinarily used by members of its
      profession in the provision of these services.

   B. Included Services. Such Construction Quality Control Services shall include, but not
      be limited to:
      i. Providing all labor, materials, supplies, equipment, and tools needed to
         perform the services. AMECFW shall be solely responsible for all work
performed and for the selection, operation, maintenance, and repair of all materials, supplies, equipment, and tools used;

ii. Providing all necessary personnel, appropriately selected, retained, qualified and supervised;

iii. Submitting to the City written reports for each inspection performed with such reports to include all information specified in the Task Order and to be signed by and bear the seal of a Professional Engineer, licensed in New Mexico, or qualified Project Manager and who is employed by AMECFW;

iv. Promptly notifying the City, the Engineer, and the Contractor of any and all observed irregularities or deficiencies of work or products;

v. Attending meetings as directed and scheduled from time to time with the City Administrator, City Staff, committees, and the governing body of the City; and

vi. Performing such additional duties as may be mutually agreed to by the parties in writing. AMECFW shall not perform any services, or other work, which could reasonably be expected to alter the amount of compensation to be paid or materially alter the services to be provided by AMECFW until the City has approved such a change in writing.

2. **Compensation.**

   A. **Rates.** In consideration for the services provided hereunder, the City shall pay AMECFW according to the rates shown on Exhibit "A" attached hereto. Additional services, if approved by the City, shall be charged as agreed to in writing by the parties in advance of the provision of such services. All rates enumerated above shall be exclusive of New Mexico Gross Receipts tax.

   B. **Invoice.** AMECFW shall submit invoices to the City by the 5th day of each month for the services rendered during the previous month. Separate invoices shall be submitted for each project and shall identify with specificity the date services were performed, the nature of such services, and a breakdown of the fees and taxes due for the services performed.

3. **Prior Approval.** No work requiring the approval of the City shall be undertaken until the City's written approval has been requested and obtained. Any deviation from this requirement shall be considered a material breach of this Agreement and grounds for termination.

4. **Compliance with Laws.** AMECFW shall comply with all applicable local state, and federal laws, ordinances, codes, rules, regulations, and policies. AMECFW shall require all its agents, employees, officers, representatives, and assigns to comply with all applicable local, state, and federal laws, ordinances, codes, rules, regulations, and policies. Any penalties and costs levied as a result of a breach of any of applicable local, state, and federal law, ordinance, code, rule, regulation, and policy shall be borne solely by AMECFW.

5. **Permits and Certifications.** AMECFW shall obtain and maintain at all times any and all permits, licenses, or certifications that may be necessary for AMECFW to carry out the operations contemplated by this Agreement. Such permits, licenses, and certifications, shall include, but not be limited to:

   i. Meeting or exceeding basic requirements of ASTM E329, "Standard Specification Agencies Engaged in Testing and/ or Inspection of Materials Used in Construction" as such may be amended;
ii. Having and maintaining at all times the authorization to operate in New Mexico under the AASHTO Accreditation Program; and

iii. Using testing equipment calibrated at reasonable intervals by devices of accuracy traceable to either the National Bureau of Standards or accepted values of natural physical constants.

6. **Term.** The term of this Agreement shall be for one year beginning on the 1st day of October 2016, and terminating on the 30th day of September 2017. This Agreement may be renewed for two (2) 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 agreement, if both parties desire to renew for an additional year, the parties shall meet to negotiate renewal terms and conditions.

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

8. **Inspection of Records.** AMECFW shall maintain copies of all records regarding any activity it conducts pursuant to this Agreement for five years. The City shall have the right during regular office hours and upon reasonable notice to inspect and copy the financial records and other records, documents, and items that AMECFW may have in its possession relating to the services rendered or consideration paid pursuant to this Agreement.

9. **Use of Documents.** No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of AMECFW. The City may make and retain copies of any and all reports, maps, or other documents for its use and as may be required by law.

10. **Insurance.** At all times material to this Agreement, AMECFW shall obtain and maintain public liability insurance in the sum of one million dollars ($1,000,000.00). Such insurance shall name the City as an additional insured. AMECFW 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. AMECFW shall annually furnish the City a Certificate of Insurance for the above-required insurance. AMECFW shall provide the City with notice of any cancellation thereof and furnish to the City evidence of acquirement of a substitute therefore, and payment of the premium thereof.

11. **New Mexico Tort Claims Act.** Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, as it may be amended.

12. **Indemnification.** AMECFW shall indemnify the City against all expenses and liabilities, including reasonable attorney's fees made by or on behalf of any person or entity arising out of the negligent act, error, or omission of AMECFW.
13. **Release of Liability.** The City shall not be responsible for any personal injury, death, or property damage to AMECFW, its agents, employees, officers, representatives, or assigns incurred in the performance of the services specified herein and AMECFW shall hold the City completely harmless from any and all such claims.

14. **Assignment, Mortgage, or Sublease.** AMECFW shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written consent of the City. If there is an approved assignment or transfer, AMECFW shall continue to be liable hereunder in accordance with the terms and conditions of this Agreement and shall not be released from the performance of the terms and conditions hereof. The consent by the City to an assignment or transfer shall not be construed to relieve AMECFW from obtaining the express written consent of the City to any future transfer of interest.

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

   A. **Voluntary Proceedings.** If AMECFW, during the term of this Agreement, shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for the benefit of creditors.

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

   C. **Failure to Comply.** If AMECFW, through any cause, fails to fulfill in a timely and proper manner its obligations under this Agreement, or if AMECFW should fail to perform or comply with any of the conditions of this Agreement, and if the nonperformance shall continue for a period of ten (10) days after notice thereof by the City to AMECFW, or if the performance cannot be reasonably had within the ten (10) day period, and AMECFW shall not have in good faith commenced performance within the ten (10) day period and then diligently proceeded to completion of performance.

   D. **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.

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

   A. **Termination of Agreement.** The non-defaulting party shall have the right to cancel and terminate this Agreement as provided in this Paragraph. If a default occurs, the non-defaulting party may elect to give a written notice of default to the defaulting party setting forth in reasonable detail the nature and extent of the default and including the provision(s) of this Agreement which have been breached. If the defaulting party fails to cure the defaults set forth in such notice within (10) ten days after it receives such notice or (ii) such longer period as may reasonably be required to cure the default, the non-defaulting party may cancel and terminate this Agreement by delivering a written notice of cancellation and termination to the defaulting party. Upon such delivery, this Agreement and all rights, title, and
interest of the defaulting party hereunder shall terminate in the same manner and with the same force and effect, except as to the defaulting party'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 Non-Defaulting Party.** The non-defaulting party may elect, but shall not be obligated, to make any payment required of the defaulting party herein or comply with any agreement, term, or condition required hereby to be performed by the defaulting party; but any expenditure for correction by the non-defaulting party shall not be deemed to waive or release the default of the defaulting party or the right of the non-defaulting party to take any action as may be otherwise permissible or to seek other remedy under the law. If the non-defaulting party does so, it may recover the cost of such payment, compliance, or correction from defaulting party and charge interest thereon as is permitted by law.

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

18. **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 the City:**
City of Carlsbad
Steve McCutcheon, City Administrator
P.O. Box 1569
Carlsbad, NM 88221-1569

**If to Amec Foster Wheeler:**
AMECFW Environment & Infrastructure
Dan Kwiecinski, NM Ops Manager
8519 Jefferson NE
Albuquerque, NM 87113

Noting herein shall preclude the giving of any such written notice by personal service. The parties shall notify each other in writing of any change in the above names or addresses.

19. **Independent Contractor.** AMECFW, its officers, employees, representatives, and agents are independent contractors performing professional services for the City and are not employees of the City. AMECFW and its officers, employees, representatives, and agents shall not accrue leave, retirement, insurance, bonding, rights to use City vehicles, nor any other benefits afforded to employees of the City of Carlsbad.

20. **Limits of Authority.** AMECFW agrees not to purport to bind the City to any obligation not assumed herein by the City unless AMECFW has express written authority to do so, and then only within the strict limits of that authority.

21. **Procurement Code Penalties.** The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, as it may be amended from time to time, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

22. **Entirety of Agreement.** This Agreement incorporates all the agreements, covenants, and
understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. The parties expressly waive any other or further representations, warranties, or agreements not set forth in this document. This Agreement cannot be changed except by a written instrument duly executed by the parties.

23. **Workers' Compensation.** AMECFW agrees to comply with any and all applicable state laws, rules, and regulations regarding workers' compensation benefits for its employees. Should AMECFW fail to comply with the New Mexico Workers' Compensation Act and applicable rules when required to do so, AMECFW shall be in default.

24. **Successors and Assigns.** All of the terms, covenants, conditions, and agreements contained herein shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

25. **WAIVER OF JURY TRIAL.** The parties hereby waive the right to a jury trial on any issue arising out of or relating, directly or indirectly, to this Agreement or the transaction contemplated hereby.

26. **ARBITRATION.** Should any dispute arise between the parties in connection with this 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.

27. **New Mexico Law and Venue.** The parties agree this Agreement shall be construed and controlled by the laws of the state of New Mexico. The parties further agree that any legal actions arising out of this agreement shall be brought in the District Court of Eddy County, New Mexico for the Fifth Judicial District. The parties expressly consent to both in personam and subject matter jurisdiction of the Eddy County District Court and agree that venue shall properly lie in the Eddy County, New Mexico District Court.

28. **Savings Clause.** If any term, clause or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then it is the intention of the parties hereto that the remainder of this Agreement, or the application of such term, clause or provision to persons or circumstances other than those to which it is held illegal, invalid, or unenforceable, shall not be affected thereby, and its applicability to persons or circumstances other than those to which it is held illegal, invalid, or unenforceable shall not be affected thereby. It is also the intention of the parties hereto that, in lieu of such term, clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a term, clause, or provision as similar in terms to such illegal, invalid, or unenforceable term, clause, or provision as may be possible so that said provision be legal, valid, and enforceable.

29. **Non-appropriation.** The funding of this Agreement is subject to the availability and appropriation of funds by the City Council of Carlsbad, New Mexico. If sufficient
funding is not available or not appropriated by the City Council, then this Agreement is terminated and the City shall not incur any penalty or further liability.

30. 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.

31. 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.

[Remainder of Page Left Blank]
CITY OF CARLSBAD:

Dale W. Janway, Mayor

ATTEST:

Annette Barrick, Clerk

Amec Foster Wheeler Environment & Infrastructure, Inc.:

DAN KWIECINSKI, NM Operations Manager

STATE OF NEW MEXICO )
COUNTY OF Eddy ) ss.

The foregoing instrument was acknowledged before me this 7 day of March, 2017, by DAN KWIECINSKI, NM Operations Manager, Amec Foster Wheeler Environment & Infrastructure, Inc.

My Commission Expires:

Rosanne Klaus
NOTARY PUBLIC

OFFICIAL SEAL

ROSANNE KLAUS
Notary Public
State of New Mexico
My Comm. Expires 3/21/20
ORDINANCE NO. 2017-____

AN ORDINANCE REZONING PART OF “I” INDUSTRIAL DISTRICT TO "R-1" RESIDENTIAL DISTRICT FOR AN APPROXIMATELY 0.82 ACRE PROPERTY, LOCATED AT 2502 SOUTH CANAL STREET, LEGALLY DESCRIBED AS TRACT B, POPE REPLAT NO. 1, PURSUANT TO SECTION 3-21-1 ET. SEQ. NMSA 1978 AND SECTIONS 56-150(B) AND 56-140(I), CARLSBAD CODE OF ORDINANCES.

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

The official zoning map of the City is hereby amended to rezone part of "I" Industrial District to "R-1" Residential District, for an approximately 0.82 acre property, located at 2502 S. Canal St., Carlsbad, NM, legally described as:

TRACT B, POPE REPLAT NO.1

INTRODUCED, PASSED, ADOPTED AND APPROVED this 25th day of April, 2017.

____________________________________
DALE JANWAY, MAYOR

ATTEST:

__________________________________
CITY CLERK
ORDINANCE NO. 2017-____

AN ORDINANCE REZONING PART OF “I” INDUSTRIAL DISTRICT TO "C-2" COMMERCIAL DISTRICT FOR AN APPROXIMATELY 5.44 ACRE PROPERTY, LOCATED AT 2502 SOUTH CANAL STREET, LEGALLY DESCRIBED AS TRACT A, POPE REPLAT NO. 1, PURSUANT TO SECTION 3-21-1 ET. SEQ. NMSA 1978 AND SECTIONS 56-150(B) AND 56-140(I), CARLSBAD CODE OF ORDINANCES.

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

The official zoning map of the City is hereby amended to rezone part of "I" Industrial District to "C-2" Commercial District, for an approximately 5.44 acre property, located at 2502 S. Canal St., Carlsbad, NM, legally described as:

TRACT A, POPE REPLAT NO.1

INTRODUCED, PASSED, ADOPTED AND APPROVED this 25th day of April, 2017.

____________________________________
DALE JANWAY, MAYOR

ATTEST:

____________________________________
CITY CLERK
MINUTES OF A PUBLIC HEARING IN THE MUNICIPAL BUILDING
ON MARCH 2, 2017 AT 2:00 P.M.

IN THE MATTER OF: A Beer and Wine Restaurant License, License No. 1032439

Proposed Owner & Location:
Nicholas Melbourne
Marion's Restaurant, LLC
106 W. Bonbright Street
Carlsbad, NM 88220

Present:
Stephanie Shumsky, Hearing Officer
Annette Barrick, Exec. Assistant/City Clerk
Nicholas Melbourne
Chip Foster

Ms. Shumsky convened the hearing at 2:02 p.m. to consider a Restaurant Beer and Wine Liquor License, License No. 1032439 at 106 W. Bonbright Street, Carlsbad, NM. The purpose of the hearing was to approve/disapprove a Restaurant Beer and Wine Liquor License.

The matter was received by the City of Carlsbad on February 10, 2017. The hearing was conducted in accordance with Section 60-6B-4 NMSA of the Liquor Control Act.

For the record, public notice was properly made on February 15, and February 22, 2017, in accordance with the applicable statutes. Persons representing the applicant were present. The proposed location is within an area where the sale of alcoholic beverages is allowed by the laws of New Mexico.

Ms. Shumsky asked for comments from those present at the hearing. Mr. Melbourne explained that the Restaurant is located in a location that was previously operated as a Restaurant with a Beer and Wine License.

There was no opposition to the requested Restaurant Beer and Liquor License, License No. 1032439.

Ms. Shumsky explained that the License would be considered by the Carlsbad City Council at their next regular scheduled on March 14, 2017.

There being no further comments, the hearing was adjourned at 2:05 p.m.

Stephanie Shumsky
Hearing Officer
February 6, 2017

City of Carlsbad
Attn: Annette Barick, Clerk
PO Box 1569
Carlsbad, NM 88221-1569

Re: Lic. No./Appl. No.: Application No. 1032439
Name of Applicant: Marion’s Restaurant, LLC
Doing Business As: Marion’s New American Restaurant
Proposed Location: 106 W. Bonbright, Carlsbad, NM 88220

Greetings:

The Director of the Alcohol and Gaming Division has reviewed the referenced Application and granted Preliminary Approval. It is being forwarded to you for Local Option District approval or disapproval of the Liquor License Application.

While the law states that “within forty-five (45) days after receipt of a Notice from the Alcohol and Gaming Division, the governing body shall hold a Public Hearing in the question of whether the department should approve the proposed issuance or transfer”, we recognize the potential for conflict between the requirement for publication of 30 day notice and the 45 day hearing requirement. Should the Local Governing Body be unable to meet one of these requirements, please send a Request for Waiver/Extension by email to the assigned AGD Hearing Officer listed on page 2.

Notice of the Public Hearing required by the Liquor Control Act shall be given by the governing body by publishing a notice of the date, time, and place of the hearing twice during the 30 days prior to the hearing in a newspaper of general circulation within the territorial limits of the governing body. The first notice must be published at least thirty (30) days before the hearing. Both publications must occur before a hearing can be conducted. The notice shall include:

(A) Name and address of the Applicant/Licensee;
(B) The action proposed to be taken by the Alcohol & Gaming Division;
(C) The location of the licensed premises.

In addition, if the Local Option District has a website, the Notice shall also be published on the website.

The governing body is required to send notice by certified mail to the Applicant of the date, time, and place of the Public Hearing. The governing body may designate a Hearing Officer to conduct the hearing. A record shall be made of the hearing.

THE APPLICANT IS SEEKING A RESTAURANT BEER AND WINE LICENSE WITH ON PREMISES CONSUMPTION ONLY WITH PATIO SERVICE.
Within thirty (30) days after the Public Hearing, the governing body shall notify the Alcohol and Gaming Division of their decision to approve or disapprove the issuance or transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application must be returned together with the notices of publication. If the Governing Body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the Public Hearing, the Director may issue the license.

If the Governing Body disapproves the issuance or transfer of the license, it shall notify the Alcohol and Gaming Division within thirty (30) days setting forth the reasons for the disapproval. A copy of the Minutes of the Public Hearing shall be submitted to the Alcohol and Gaming Division with the Notice of Disapproval (Page 1 of the Application, noting disapproval).

Respectfully,

Charmaine Martinez, Hearing Officer
New Mexico Regulation & Licensing Dept. | Alcohol & Gaming Division
Phone: (505) 476-4804 Fax: (505) 476-4595
Email: charmaine.martinez2@state.nm.us

Enclosures:
1. Original Page 1 of the Application (must be signed and returned w/notices of publication)
2. Copy of Page 2 of the Application
3. Copy of Zoning Statement
RESTAURANT LIQUOR LICENSE APPLICATION

$200.00 Application Fee, non-refundable.

Check appropriate boxes:

Application is for: [ ] New Restaurant Liquor License
[ ] Limited Liability Company
[ ] Corporation
[ ] Partnership (General/Limited)

NAME OF APPLICANT (company or individual): Marion's Restaurant LLC
ADDRESS (including city, state, zip): 106 W. Bonbright, Carlsbad, NM 88220
TELEPHONE NUMBER: cell: 210-807-2733
D/B/A Name to be used: Marion's New American Restaurant
Business Phone #: cell: 210-807-2738
Email Address (required): nmelbourne7@gmail.com

Physical location where license is to be used: (Include street number / highway number / state road, city and county, state, and zip code)
106 W. Bonbright, Carlsbad, NM 88220

Mailing Address:

Agent/Contact Person: Nicholas Melbourne
Phone#: 210-807-2738
Email: nmelbourne7@gmail.com

Are alcoholic beverages currently being dispensed at the proposed location? [ ] Yes [ ] No
If Yes, License # / Type:

I, (print name) Nicholas Melbourne, as (title) Exec. Chef/Owner
being first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s) that if any statements or representations herein are found to be false, the Director may refuse to issue or renew the license or may refuse the license to be revoked at any time.

You must sign and date this form before a Notary Public:

Signature of Applicant: ____________________________ Date: 12/22/2016

NOTARY PUBLIC USE ONLY: (State of New Mexico, County of Eddy)
SUBSCRIBED AND SWORN TO before me this 22 day of December, 2016
By: Nicholas Melbourne
Notary Public: Veronica McAllister
My Commission Expires: 6/28/17

FOR LOCAL OPTION DISTRICT USE ONLY: Local Governing Body of:
Public Hearing held on ________________, 2016. Check one: [ ] Approved [ ] Disapproved
Signature and Title of City/County Official: __________________________________________

FOR ALCOHOL AND GAMING DIVISION USE ONLY: [ ] Approved [ ] Disapproved

Signed by Director: ____________________________ Date: ____________________________
PREMISES LOCATION, OWNERSHIP, AND DESCRIPTION
NMSA §60-6B-10

1. The land and building which is proposed to be the licensed premises is: (check one)
   - [ ] Owned by Applicant, copy of deed/document attached
   - [X] Leased by Applicant, copy of lease/document attached
   - [ ] Other (provide details): Subletting from Michael Peraic SEP Investment

2. If the land and building are not owned by Applicant, indicate the following:
   - A. Owner(s):
     Martha Chapman Robman Inc
   - B. Date and Term of Lease: 8/15/2016 to 2/15/2019

3. Premises location is Zoned (example C-1, see Zoning Statement):
   [X] Zoning Statement attached, which must be obtained from the Local Government, listing the proposed location by address, Type of Zone, state whether alcoholic beverages are allowed at proposed location, and if applicable, whether packaged sales, patio service and/or manufacturing is allowable. If there is no zoning in the proposed location, attach Statement from the local government, indicating there is no zoning.

4. Distance* from nearest Church: (Property line of church to closest point of licensed premises—shortest distance)
   - Name of Church: Grace Episcopal Church
   - Miles/feet: 9 miles
   - Address/location of Church: 508 W. Fox St. Carlsbad NM 88220

5. Distance* from nearest School: (Property line of school to closest point of licensed premises—shortest distance)
   - Name of School: Coast Elementary School
   - Miles/feet: 2 miles
   - Address/location of School: 408 N. Canyon St. Carlsbad NM 88220

6. Distance from military installation *(Property line of military installation to closest point of licensed premises—shortest distance.)
   - Name of Military Installation: circle one: Kirtland Air Force Base (Albuquerque), White Sands Missile Range (Las Cruces), Holloman Air Force Base (Alamogordo)
   - Miles: 157

7. Attach Detailed Floor Plan, must include the Total Square Footage of premises; List nearest cross street; Show which direction is North; Show each level (floor) where alcoholic beverages will be sold or consumed, exterior walls, doors, and interior walls; Patio Area with type of barrier used; Highlight Bonded Areas. The floor plan should be no larger than 8½ x 11 inches and must be labeled with designated areas highlighted, which will reflect the proposed Licensed Premises.

8. Type of Operation: [ ] Hotel [ ] Lounge [ ] Package Grocery [X] Restaurant [ ] Racetrack
   - [ ] Small Brewer [ ] Craft Distiller [ ] Winery [ ] Wholesaler
   - [ ] Other (specify):

*NOTE: If the distance is beyond 300 feet, but less than 400 feet, a Registered Engineer or Licensed Surveyor must complete a Survey Certificate showing the exact distance.
October 14, 2016

ZONING DISTRICT DETERMINATION

Nicholas Melbourne
106 W. Bonbright St.
Carlsbad, NM 88220

Property Address: 106 W. Bonbright St.

Legal Description: Tract 1, Robin & Martha Chapman Tract

Business Name: Marion’s New American Restaurant

Business Address: 106 W. Bonbright St.

Zoning District: “C-1” Commercial

The proposed restaurant (including sales of alcohol) is an allowed use within the “C-1” Commercial District. For additional uses allowed in this zoning district please refer to the City’s webpage at www.cityofcarlsbadnm.com and then click on the planning, Engineering and Regulation Department’s link

Thank you,

Georgia Goad,
Deputy Planning Director
NOTICE OF LIQUOR LICENSE HEARING

Notice is hereby given that a public hearing will be held by the City of Carlsbad, New Mexico, in the Planning Room of the Municipal Building, 101 North Halagueno Street, Carlsbad, NM at 2:00 p.m. on March 2, 2017.

The purpose of the hearing will be on whether the Alcohol and Gaming Division should approve or disapprove the proposed issuance of a Restaurant Beer and Wine License Application #1032439.

Only questions relating to the issuance of the Restaurant Beer and Wine License will be considered. Written comments regarding this matter may be directed to the office of the City Administrator, City of Carlsbad, 101 N. Halagueno Street, PO Box 1569, Carlsbad, New Mexico, 88220, and will be accepted until 2:00 p.m. on March 2, 2017.

Proposed Owner and Location:
Nicholas Melbourne
Marion's
Restaurant, LLC
106 W. Bonbright
Carlsbad, NM 88220

/s/ Steve McCutcheon
City Administrator
NOTICE OF LIQUOR LICENSE HEARING

Notice is hereby given that a public hearing will be held by the City of Carlsbad, New Mexico in the Planning Room of the Municipal Building, 101 North Halagueno Street, Carlsbad, NM at 2:00 p.m. on March 2, 2017.

The purpose of the hearing will be on whether the Alcohol and Gaming Division should approve or disapprove the proposed issuance of a Restaurant Beer and Wine License Application #1032439.

Only questions relating to the issuance of the Restaurant Beer and Wine License will be considered. Written comments regarding this matter may be directed to the office of the City Administrator, City of Carlsbad, 101 N Halagueno Street, PO Box 1569, Carlsbad, New Mexico, 88220, and will be accepted until 2:00 p.m. on March 2, 2017.

Proposed Owner and Location: Nicholas Melbourne, Marion's Restaurant, LLC 106 W Bonbright Carlsbad, NM 88220

/s/ Steve McCutcheon
City Administrator
RESOLUTION NO. 2017-___

WHEREAS, the attached lists of materials, equipment, and supplies are considered surplus and nonessential for municipal purposes; and

WHEREAS, it is to the City’s advantage to dispose of those things listed; and

WHEREAS, the State regulations allow for such disposal of public property.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, NEW MEXICO that the items listed on the attached pages and incorporated herein are declared unusable and obsolete and that said items be disposed of by public sale or as otherwise provided by law.

APPROVED, PASSED, AND ADOPTED this ___ day of __________, 2017.

__________________________
Mayor

ATTEST:

__________________________
City Clerk
FIRST VERIFICATION (Prior to Actual Disposal)

Each of the below-signed officials of the City of Carlsbad, New Mexico do hereby verify that, upon information and belief, the attached document is a list of tangible personal property belonging to the City of Carlsbad, such property has a value of five thousand dollars ($5,000.00) or less, such property is worn-out, unusable, or obsolete to the extent that it is no longer economical or safe for continued use by the City of Carlsbad, and each official approves of the disposition of such property as provided by law.

Patrick Cass, Director of Public Works

Michael A. Hernandez, Director of Utilities

Richard D. Lopez, Fire Chief

D. Kent Waller, Police Chief

STATE OF NEW MEXICO )
COUNTY OF EDDY )

Signed and sworn to me this 28th day of February, 2017, by Pat Cass, Director of Public Works.

My commission expires: 7/1/19

Ellen B. Bonney
Notary Public

STATE OF NEW MEXICO )
COUNTY OF EDDY )

Signed and sworn to me this 28th day of February, 2017, by Michael A. Hernandez, Director of Utilities.

My commission expires: 7/1/19

Ellen B. Bonney
Notary Public

STATE OF NEW MEXICO )
COUNTY OF EDDY )

Signed and sworn to me this 28th day of February, 2017, by Richard D. Lopez, Fire Chief.

My commission expires: 7/1/19

Ellen B. Bonney
Notary Public

STATE OF NEW MEXICO )
COUNTY OF EDDY )

Signed and sworn to me this 28th day of February, 2017, by Kent Waller, Chief of Police.

My commission expires: 7/1/19

Ellen B. Bonney
Notary Public
UNUSABLE OR OBSOLETE CITY PROPERTY

Department: ELECTRIC

Date: 2-20-17

Department Head: PAT CASS

The City property described below is unusable or obsolete and has been. It is recommended that the governing body declare such property unusable or obsolete and authorize disposition by public sale or as otherwise provided by law.

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<th>Item #</th>
<th>Description</th>
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UNUSABLE OR OBSOLETE CITY PROPERTY

Department: AIRPORT Date: 2-22-17

Department Head: SHERRI CHANDLER

The City property described below is unusable or obsolete and has been. It is recommended that the governing body declare such property unusable or obsolete and authorize disposition by public sale or as otherwise provided by law.

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The City property described below is unusable or obsolete and has been. It is recommended that the governing body declare such property unusable or obsolete and authorize disposition by public sale or as otherwise provided by law.

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<td>NORSTAR PHONE SYSTEM</td>
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<td></td>
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</table>
SUBJECT: Appeal of the Planning & Zoning Commission’s decision to deny a variance request from Section 56-90(b) to allow a front-yard setback variance of 24.5’, which would result in a 5.5’ front-yard setback at 3317 Kuykendall St., Zoned R-1 Residential District.

Appellant:
Eric Robinson
3317 Kuykendall
Carlsbad, NM 88220

SYNOPSIS, HISTORY and IMPACT (SAFETY AND WELFARE/FINANCIAL/PERSO MNEL/INFRASTRUCTURE/ETC.):
At their regularly scheduled meeting on January 9, 2017, the Planning and Zoning Commission considered the request as stated above. The appellant had a carport placed at his residence within the required 30’ front setback along Kuykendall St. prior to getting a building permit for the carport and prior to requesting a Variance from the Planning and Zoning Commission to reduce the required front setback. The applicant stated at the January 9 Planning and Zoning Commission meeting that the contractor from which they had purchased the carport placed the carport at the applicant’s residence without consulting the applicant, therefore, it was placed before they could get the building permit or request the Variance. The Commission considered the Variance request and voted to deny this request with five (5) Commission members in favor of the denial and zero (0) members against the denial. The appellant submitted a letter of appeal asking to appeal his case to the City Council (email attached).

Appeals are regulated by Code of Ordinances Sections 56-140(k) and 56-150(c). Section 56-140(k) states (emphasis added):

“Pursuant to this Zoning Ordinance, administrative decisions made by the Planning Director may be reviewed on appeal by the Planning and Zoning Commission. All final decisions made by the Planning and Zoning Commission may be reviewed on appeal to the City Council. Final decisions of the City Council may be appealed to District Court pursuant to Section 3-21-9 NMSA 1978. A decision made pursuant to this Zoning Ordinance is final unless an appeal is filed, within 15-days, and as required by law. Substantial deviations from this Zoning Ordinance are considered variances and are a form of appeal and may not be approved by city staff but rather shall be considered by the Planning and Zoning Commission.”

Section 56-150(c) states:

1. Aggrieved Persons May Appeal.

A person aggrieved by a decision of the Planning Director, City Engineer, other City staff, or the Planning and Zoning Commission, may file an appeal with the City Administrator. An aggrieved person is one who has a personal or pecuniary interest or property right adversely affected by the decision. The interest must be immediate and substantial, not merely nominal or remote.

2. Submittal Requirements.

An appeal is made by filing a written notice of appeal with the City Administrator which clearly articulates the reasons for the appeal, specifically citing and explaining one or more alleged error:

(a) In applying adopted City plans, policies and ordinances in arriving at the decision;
In the appealed action or decision, including its stated facts; and/or
In acting fraudulently, arbitrarily or capriciously.

   (a) An appeal must be filed with the City Administrator within fifteen (15) days after the date of the decision. Untimely appeals shall not be considered.
   (b) Upon receipt of a notice of appeal, the City Administrator shall transmit to the City Council or the Planning and Zoning Commission, whichever is the appellant body, all the papers and other documents which constitute the record relating to the action appealed. The appeal shall be heard no later than forty-five (45) days from receipt of the appeal by the City Administrator, unless a waiver is mutually agreed upon by all concerned parties.
   (c) An appeal stays all actions by the Planning Director seeking enforcement of or compliance with the decision appealed, unless the Planning Director certifies to the City Council that a stay would cause imminent peril to life or property, because of facts stated in the decision. In which case actions shall not be stayed except by order of the City Council or a court.
   (d) The City Council, by a concurring vote of two-thirds of all members, or the Planning and Zoning Commission, by a simple majority, whichever the case might be, may reverse, affirm (wholly or partly), remand back or modify the requirement, decision or determination and shall make any requirement, decision or determination that, in its opinion, ought to be made in order to remedy those situations noted in the appeal.

   The purpose of the appeal procedure is to determine if the decision being appealed meets the requirements of this Zoning Ordinance. The City Council or the Planning and Zoning Commission, when hearing an appeal, is limited to the following determinations:
   (a) The decision-maker made an error in reviewing whether a standard was met, by a misreading of the facts, plans, regulations or an error in judgment.
   (b) Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility.
   (c) The decision-maker made the decision on standards not contained in this or other City ordinances, regulations or state law; or a standard was applied more strictly or broadly than is appropriate to implement the City's Comprehensive Plan and this Zoning Ordinance.

5. Judicial Review.
   The final decision on any application may be appealed to District Court, pursuant to N.M.S.A. 1978, Section 3-21-9, provided all administrative remedies have been exhausted."

In accordance with the appeal process stated above, the appellant filed the appeal on January 23, 2017, which was within 15-days of the date of the decision. The appellant cited item two from the allowed criteria for appeal found in Sec. 56-150(c)(2), stating that the Planning and Zoning Commission erred in the appealed decision, including its stated facts. The City Council, by a concurring vote of two-thirds of all members, may reverse, affirm (wholly or partly), remand back or modify the requirement, decision or determination and shall make any requirement, decision or determination that, in its opinion, ought to be made in order to remedy those situations noted in the appeal.

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<tr>
<td>☐ N. Mesa Board</td>
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<td>☐ __________ Committee</td>
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ATTACHMENTS: Appellant's email, January 9, 2017 P&Z minutes, application materials.
MINUTES OF THE REGULAR MEETING OF THE

City of Carlsbad
Planning & Zoning Commission

January 9, 2017, at 5:00 p.m.

Meeting Held in the Annex Planning Room
114 S. Halagueno
1. Roll call of voting members and determination of quorum.
2. Approval of Agenda.
3. Approval of Minutes from Special Meeting held December 12, 2016.
4. Consider a recommendation for a Zone Change from “C-2” Commercial District/“R-R” Rural Residential to “C-2” Commercial District at 4100 & 4208 National Parks Hwy., legally described as Tract 2, Garringer Land Division and Tract A, Knittel Land Division.
5. Consider a Conditional Use Permit for a new Communications Tower at 5308 National Parks Hwy.
6. Consider an Appeal (Variance) for a fall radius less than the required 105% for a new Communications Tower located at 603 W. Cherry Ln.
7. Consider a Conditional Use Permit for a new Communications Tower at 603 W. Cherry Ln.
8. Consider a Conditional Use Permit at 4100 National Parks Hwy. for incidental welding as part of General Contracting, legally described as Tract 2, Garringer Land Division.
9. Consider Preliminary/Final subdivision plat for Hargiss Subdivision Replat #1, located at the corner of Elgin Rd. and Cowboy Country Rd. creating 6 new residential building lots.
10. Consider an Appeal (variance) for Hargiss Subdivision Replat #1 to allow no curb and gutter and no sidewalks to be installed along Elgin Rd. and Cowboy Country Rd. as part of the Hargiss Subdivision Replat #1 development.
11. Consider a final plat for Freedom Way Subdivision located at the corner of W. McKay St. and N. Elm Street.
12. Consider a recommendation to the Carlsbad City Council concerning a petition for Annexation of properties along Center Ave., approximately 15.59 acres.
13. Consider an application of Zoning (R-R Rural Residential) for Properties along Center Ave.
14. Consider a Final Plat regarding the donation of right-of-way along S. 14th St.
15. Consider an Appeal (variance) to allow a carport to be placed in the required front setback at 3317 Kuykendall St.
17. Adjourn.

If you require hearing interpreters, language interpreters, auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator's offices at (575) 887-1191 at least 48 hours prior to the scheduled meeting.
MINUTES OF A REGULAR MEETING OF THE CITY OF CARLSBAD PLANNING & ZONING COMMISSION HELD IN THE MUNICIPAL ANNEX PLANNING ROOM, 114 S. HALAGUENO STREET, JANUARY 9, 2017, AT 5:00 P.M.

VOTING MEMBERS PRESENT:
  JAMES KNOTT        CHAIRPERSON
  JAMES MCCORMICK    COMMISSION SECRETARY
  BRIGIDO GARCIA    COMMISSIONER
  WANDA DURHAM      COMMISSIONER
  LASON BARNEY      COMMISSIONER

VOTING MEMBERS ABSENT:  NONE

EX-OFFICIO MEMBERS PRESENT:
  JEFF PATTERSON  PLANNING DIRECTOR
  GEORGIA GOAD  PLANNING DEPUTY DIRECTOR
  MICHAEL HERNANDEZ  DIRECTOR OF UTILITIES

SECRETARY PRESENT:
  PATTIE PISTOLE  PLANNING, ENGINEERING AND REGULATION DEPARTMENT SECRETARY

OTHERS PRESENT:
  ERIC ROBINSON  3317 KUYKENDALL
  DAVID L. O’DELL  LOS RANCHOS, NM
  CHRIS Y ROBINSON  3317 KUYKENDALL
  ANNE-MARIE (AMY) MCKENZIE  ALBUQUERQUE, NM
  PHILIP D. MCCULLOUGH  1016 CENTER
  NICOLE RAGAIN  1001 ELGIN ROAD
  EUGENE QUIONZON  1001 ELGIN ROAD
  MIKE MOE  4100 NATIONAL PARKS HWY
  GEORGE DUNAGAN  212 W STEVENS
  FRED TOOTHMAN  1713 SANDY LANE
  DON SCHLOSSER  2017 JASMINE STREET
  JIMMIE KEENE  2017 JASMINE STREET
  KENT THURSTON  LAS CRUCES
  RICK THURSTON  LAS CRUCES
  KEN THURSTON  LAS CRUCES
  DAN REDDY  904 N GUADALUPE
  JEFF MCLEAN  1107 N SHORE DRIVE
  MARIA KNITTEL  1107 N SHORE DRIVE
  GARY PROCTOR  3319 KUYKENDALL

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

0:00:00  Start Recording [5:00:25 PM]

0:00:03  1.  Roll call of Voting Members and Determination of Quorum.
Roll was called, confirming the presence of a quorum of commission members. The following members were present—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Garcia; Absent—Mr. Barney. (Mr. Barney arrived at 5:01 and was present for the remainder of the meeting.)

0:00:28  2. Approval of Agenda.

Mr. McCormick made a motion to approve the Agenda, and Ms. Durham seconded the motion. The vote was as follows: Yes—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Garcia; No—None; Abstained—None; Absent—Mr. Barney. The motion carried. (Mr. Barney arrived at 5:01 and was present for the remainder of the meeting.)

0:01:04  3. Approval of Minutes from Meeting held December 12, 2016.

Ms. Durham made a motion to approve the Minutes, and Mr. Barney seconded the motion. The vote was as follows: Yes—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No—None; Abstained—None; Absent—None. The motion carried.

0:02:01  4. Consider a recommendation for a Zone Change from “C-2” Commercial District/“R-R” Rural Residential to “C-2” Commercial District at 4100 & 4208 National Parks Hwy., legally described as Tract 2, Garringer Land Division and Tract A, Knittel Land Division.

Mr. McLean and Ms. Knittel were present to ask for the Zone Change. Mr. Patterson explained that part of the property is C-2 already, and that it fits with the area. Staff recommended approval. There was no public comment.

Ms. Durham made a motion to recommend approval of the Zone Change. Mr. Garcia seconded the motion. The vote was as follows: Yes—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No—None; Abstained—None; Absent—None. The motion carried.

0:07:06  5. Consider a Conditional Use Permit for a new Communications Tower at 5308 National Parks Hwy.

Ms. McKenzie attended to represent Verizon. Mr. Patterson stated that there was documentation stating that there would be no hazard to air navigation at this location. Staff recommended approval. Ms. McKenzie explained that the tower is needed to improve coverage and capacity in the area. In answer to a question, she stated that other companies would be able to co-locate on this tower, so it would cut down on the number of towers needed in the area. There was no public comment.

Mr. McCormick made a motion to approve the Conditional Use. Mr. Barney seconded the motion. The vote was as follows: Yes—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No—None; Abstained—None; Absent—None. The motion carried.

0:15:22  6. Consider an Appeal (Variance) for a fall radius less than the required 105% for a new Communications Tower located at 603 W. Cherry Ln.
Ms. McKenzie represented Verizon. Mr. Patterson stated that the tower has a 50’ fall radius and is designed to be partially collapsible, so that it would collapse vertically. It would break at 45’ and fall within the property line. Staff recommended approval. Ms. McKenzie added that it is designed to look like a pine tree for stealth coverage, which is more appealing for the area. There is spotty coverage in the area, and the tower will improve coverage and capacity.

During public comment, Mr. Toothman expressed his opposition to a tower being in a residential area. He did not think it would look like a pine tree. Ms. Goad explained that there is actually a safety factor involved. Many people are now using cell phones exclusively, and E911 is trying to find ways to extend coverage for emergency calls.

Ms. Durham made a motion to approve the Variance. Mr. McCormick seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott; No–Mr. Barney, Mr. Garcia; Abstained–None; Absent–None. The motion carried.

Mr. Patterson explained the appeal process to Mr. Toothman—he would need to send him a letter or e-mail within 15 days to be scheduled to appear before the City Council, if he wished to appeal the decision.

0:36:34 7. Consider a Conditional Use Permit for a new Communications Tower at 603 W. Cherry Ln.

This item regards the tower previously discussed in Item 6. There was no public comment.

Mr. Barney made a motion to approve the Conditional Use on the condition that the plat was approved. Ms. Durham seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney; No–Mr. Garcia; Abstained–None; Absent–None. The motion carried.

Mr. Patterson explained the appeal process again—sending a letter or e-mail within 15 days to be scheduled to appear before the City Council, if anyone wished to do so.

0:39:30 8. Consider a Conditional Use Permit at 4100 National Parks Hwy for incidental welding as part of General Contracting, legally described as Tract 2, Garringer Land Division.

Mr. Dunagan and Mr. Moe came forward to discuss the Conditional Use. Mr. Patterson said the applicant wants to cover all his bases to make sure any incidental welding would be allowed. The property is zoned for commercial use, and Staff recommended approval with conditions. Mr. Moe explained that they only want to do maintenance welding and testing of welders; they have no intention of doing any fabrication. There was no public comment.

Mr. Garcia made a motion to approve the Conditional Use. Mr. McCormick seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

0:44:58 9. Consider Preliminary/Final subdivision plat for Hargiss Subdivision Replat #1, located at the corner of Elgin Rd. and Cowboy Country Rd. creating 6 new residential building lots.
Mr. Thurston attended to answer any questions regarding the application. Mr. Patterson explained that streets and sidewalks are normally required when property is split into this many lots. However, utility lines are already in place. Laterals will just need to be run to the lots created. Staff recommended approval, if all the requirements from Public Works and Engineering are addressed, and if the Variance for no sidewalks and gutters is approved. It was discussed that technically one of the lots already exists, so five lots are being created. Mr. Thurston wanted clarification regarding setbacks. He was in agreement with the recommendation. There was no public comment.

Mr. McCormick made a motion to approve the Preliminary/Final Plat with conditions stated and setbacks discussed (30 feet in the front, 5 feet on the sides). Also, plans for water and sewer must be provided. Ms. Durham seconded the motion. The vote was as follows: Yes—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No—None; Abstained—None; Absent—None. The motion carried.

0:59:38  10. Consider an Appeal (variance) for Hargiss Subdivision Replat #1 to allow no curb and gutter and no sidewalks to be installed along Elgin Rd. and Cowboy Country Rd. as part of the Hargiss Subdivision Replat #1 development.

Mr. Patterson explained that there are no sidewalks in the entire area to tie onto. The developer has provided for ponding on each property, so not much water will go into the street. If sidewalks and curbs and gutters are installed, it would only be along the six lots, not all the way down the street. Planning Staff recommended approval. During public comment, Mr. Quionzon spoke in favor of the variance. He said he had no problem with it.

Ms. Durham expressed her feeling that it is a matter of public safety. It is more costly, but it is in the City Ordinance to put in curbs, gutters, and sidewalks in new subdivisions. Why not enforce it? This property is on the outskirts of town now, but what about in ten years? It wasn’t a problem in her neighborhood when it was built, but now it is.

Mr. Knott made a motion to approve the Variance. Mr. McCormick seconded the motion. The vote was as follows: Yes—Mr. McCormick, Mr. Knott, Mr. Garcia; No—Mr. Barney, Ms. Durham; Abstained–None; Absent–None. The motion carried.

1:25:30  11. Consider a final plat for Freedom Way Subdivision located at the corner of W. McKay St. and N. Elm Street.

David O’Dell came forward to present the application. Mr. Patterson said that Planning Staff recommended approval, pending a walk-through. Utilities and Public Works need to approve it. Mr. O’Dell said he followed all the City requirements. There was no public comment.

Mr. McCormick made a motion to approve the Final Plat with recommendations listed in Staff comments and with proof of testing. Ms. Durham seconded the motion. The vote was as follows: Yes—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

1:34:04  12. Consider a recommendation to the Carlsbad City Council concerning a petition for Annexation of properties along Center Ave., approximately 15.59 acres.
Mr. McCullough and Mr. Reddy answered questions regarding the application. Ms. Goad explained that the applicant owns property on both sides of Center. His home is in the City limits, so he wants to annex the remainder of his property where he has a nursery. Mr. McCullough agreed that he wants to annex his property to get City water. During public comment, Mr. Keene wanted to know how it would affect his property. It was explained to him that this issue only pertained to the property owned by Mr. McCullough.

Mr. Barney made a motion to recommend approval of the Annexation. Mr. Garcia seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

1:51:22  13. Consider an application of Zoning (R-R Rural Residential) for Properties along Center Ave.

Because the property, which was discussed in the previous item, may be annexed into the City, zoning needed to be assigned.

Mr. McCormick made a motion to recommend approval of the Zone Change. Mr. Garcia seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

1:52:56  14. Consider a Final Plat regarding the donation of right-of-way along S. 14th St.

The City was the applicant for this issue. There was no public comment.

Ms. Durham made a motion to approve the Final Plat. Mr. Barney seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

1:58:32  15. Consider an Appeal (variance) to allow a carport to be placed in the required front set-back at 3317 Kuykendall St.

Mr. and Mrs. Robinson were the applicants for this request. Mr. Patterson explained that they want a setback of 5½ feet in the front, rather than 30 feet, because they have built a carport there without getting a building permit. Staff recommended denial. Since this is a corner lot, setbacks would be 30 feet on both sides facing streets. He said that amendments to the City Ordinance were submitted in October, which proposed carports be allowed in setbacks without having to get variances. The Council struck that part from the amendments to the Ordinance, so that variances are still required for carports in the setback. Ms. Robinson asked that they be allowed to keep the carport, since it cost over $1,000, was not obstructing, and is not a safety factor. The Robinsons said that the installer put up the carport before they had a chance to get a permit. During public comment, their neighbor Mr. Proctor stated that he had no problem with it staying. He is in favor of a variance.

Mr. McCormick made a motion to approve the Variance, provided the sides stay open and all other Building Code requirements are followed. The motion died for lack of a second.
Mr. Barney made a motion to deny the Variance. Mr. Garcia seconded the motion. The vote to deny was as follows: Yes–Ms. Durham, Mr. Barney, Mr. Garcia; No–Mr. McCormick, Mr. Knott; Abstained–None; Absent–None. The motion carried to deny the Variance.

It was explained that to appeal the decision, the applicant needs to send a letter or e-mail to Mr. Patterson within 15 days. Then he would schedule the matter to go before City Council. He also suggested calling to talk to Mr. Cass.


There was brief discussion of the plats signed by the commission designees during the previous month.


There being no further business, the meeting was adjourned.

2:32:21 Stop Recording [7:32:45 PM]
Carport setback variance appeal

7 messages

Chrissy Robinson <sweet.pea311@hotmail.com>  
Mon, Jan 23, 2017 at 2:57 PM

Mr. Patterson, I am sending this email to notify you that Eric and I would like to officially appeal the decision of the planning and zoning committee regarding the setback variance for our carport. We would like to request a meeting with the city counsel. Thank you for your time and consideration on this matter.

Sent from my iPhone

Jeff Patterson <jepatterson@cityofcarlsbadnm.com>  
Mon, Jan 23, 2017 at 3:41 PM

Ms. Robinson, I will schedule this item for Council and let you know the date the appeal will be heard.

On Mon, Jan 23, 2017 at 2:57 PM, Chrissy Robinson <sweet.pea311@hotmail.com> wrote:

Mr. Patterson, I am sending this email to notify you that Eric and I would like to officially appeal the decision of the planning and zoning committee regarding the setback variance for our carport. We would like to request a meeting with the city counsel. Thank you for your time and consideration on this matter.

Sent from my iPhone

Jeff Patterson
Director, Planning and Regulation Dept.
City of Carlsbad
575-885-1185
Ext. 2221

Jeff Patterson <jepatterson@cityofcarlsbadnm.com>  
Mon, Feb 6, 2017 at 1:45 PM

Ms. Robinson, I am preparing your appeal to go before Council. Could you take a look at the following criteria and let me know in which criteria the Planning and Zoning Commission erred in in coming to their decision? Thank you.

Section 56-150(c)(2):

An appeal is made by filing a written notice of appeal with the City Administrator which clearly articulates the reasons for the appeal, specifically citing and explaining one or more alleged error:

(a) In applying adopted City plans, policies and ordinances in arriving at the decision;

(b) In the appealed action or decision, including its stated facts; and/or

(c) In acting fraudulently, arbitrarily or capriciously.

[Quoted text hidden]

Chrissy Robinson <sweet.pea311@hotmail.com>  
Mon, Feb 6, 2017 at 2:26 PM

https://mail.google.com/mail/u/0/?ui=2&ik=82d3784e3b&view=pt&search=all&composing=false&th=159cd55e12c10476&siml=159cd55e12c10476&siml=159cd7f39782bb&si...
Mr. Patterson, I will give this some thought and get back with you as soon as possible.

Thank you

Sent from my iPhone

[Quoted text hidden]

---

Jeff Patterson <jepatterson@cityofcarlsbadnm.com>  
To: Chrissy Robinson <sweet.pea311@hotmail.com>  
Mon, Feb 27, 2017 at 3:43 PM

Ms. Robinson, have you made a decision as to which criteria you would like cite as in error regarding the Planning and Zoning Commission's decision to deny your Variance request for your carport?

[Quoted text hidden]

Chrissy Robinson <sweet.pea311@hotmail.com>  
To: Jeff Patterson <jepatterson@cityofcarlsbadnm.com>  
Wed, Mar 1, 2017 at 3:22 PM

Having given some thought to this, I believe B.) is the closest to meeting the criteria.

Thank you,

Chrissy

Sent from my iPhone

[Quoted text hidden]

Jeff Patterson <jepatterson@cityofcarlsbadnm.com>  
To: Chrissy Robinson <sweet.pea311@hotmail.com>  
Wed, Mar 1, 2017 at 3:28 PM

Ok, I will prepare the appeal packet to take before the City Council. I plan on taking this to the March 14th meeting, and I will send you official notification of the meeting it will appear at Council.

[Quoted text hidden]
BOARD OF APPEALS APPLICATION
(VARIANCE FROM SUBDIVISION OR ZONING ORDINANCE)
Sec. 47-7 or Sec. 56-150(c)

PROCESS FOR ACCEPTANCE AND REVIEW
OF PLANNING AND ZONING COMMISSION MATTERS

1. The Planning and Zoning Commission's regularly scheduled meetings are on the FIRST MONDAY OF THE MONTH. Applicant should obtain an Application Packet for the particular type of request (Zone Change, Subdivision, Variance, Annexation, Conditional Use, etc.) from the City of Carlsbad, Planning, Engineering, and Regulation Office.

2. **Applicant must submit a completed Application to the Planning, Engineering, and Regulation Office on or before, the FIRST FRIDAY OF THE MONTH prior to the desired Commission meeting.** The minimum application packet submittal is one (1) copy of the Application with original signatures and all required supporting documents. A letter of explanation or clarification may also be provided. The required non-refundable application fee is due with submittal of the application.

   The desired maximum size for all documents is 11”x17”. However, if the applicant wishes to support his or her application with larger size documents, **an original and fifteen (15) copies need to be provided**. Separate arrangements for copying these large documents may be possible, but will incur additional costs.

3. The Planning, Engineering, and Regulation Office will give the Application an initial cursory review. If deficiencies or questions are noted, the Applicant will be advised and provided an opportunity to supplement the application. If the Applicant fails to complete and resubmit the application prior to the above deadline, the matter will not be heard until the next subsequent Commission meeting. The original application fee will be retained and will suffice for the specific original application for a period of 90-days from the date of the original application.

4. Applications appearing complete will be set for full evaluation by City Staff prior to the Commission meeting. The purpose of this evaluation is to develop and provide a full briefing report for the Commission. Applicants will be advised of deficiencies noted during this review and will be afforded opportunity to supplement their application during their presentation to the Commission, if they so desire.

5. The Planning and Zoning Commission will vote to approve or deny the request. Applicant or his/her representative must be present to address any questions that Planning and Zoning Commissioners may have. Appeals of Planning and Zoning Commission decisions will be heard by the City Council pursuant to Sec. 56-150(c).

6. The **applicant shall mail notice of the Planning and Zoning Commission hearing, via certified mail, to all property owners within one-hundred feet (100') of the subject site. Evidence of such notification shall be provided with the application.** In addition, the applicant shall post a sign, provided by the City, at the property at least 5 days prior to the public hearing.
CITY OF CARLSBAD
Planning, Engineering,
and Regulation Department
PO Box 1569, Carlsbad, NM 88221
Phone (575) 885-1185
Fax (575) 628-8379

BOARD OF APPEALS APPLICATION
(VARIANCE FROM SUBDIVISION OR ZONING ORDINANCE)
Sec. 47-7 or Sec. 56-150(c)

Application Date: 10-7-16
Fee Paid ($50.00): ✓

APPLICANT INFORMATION:
Name: Eric Robison
Address: 3317 Kuykendall

CITY STATE ZIP PHONE EMAIL
Carlsbad NM 88220 575-302-6105 evirobison@yahoo.com

PROPERTY OWNER INFORMATION (IF DIFFERENT FROM APPLICANT):
NAME ADDRESS

CITY STATE ZIP PHONE EMAIL

LEGAL DESCRIPTION AND/OR STREET ADDRESS OF PROPERTY (FOR WHICH VARIANCE IS REQUESTED): 3317 Kuykendall

TYPE OF REQUEST (CHECK ONE):

VAR. VARIANCE FROM THE SUBDIVISION REGULATIONS (CHAPTER 47 - CODE OF ORDINANCES) AS PROVIDED FOR IN SECTION 47-7, VARIANCES.

SPECIFY REGULATION AND/OR SUBSECTION:

VAR. VARIANCE FROM THE ZONING ORDINANCE (CHAPTER 56 - CODE OF ORDINANCES) AS PROVIDED FOR IN SECTION 56-150(c).

SPECIFY REGULATION AND/OR SUBSECTION: 56-90(b) Table 6
JUSTIFICATION FOR REQUEST AND SITE PLAN: (Describe the topographical uniqueness of the property or extreme practical difficulties or undue hardship that would result from the strict application of the requirement(s) contained in the ordinance section from which the variance is requested. Include a site plan drawn to scale or with accurate dimensions showing property lines, existing and proposed fences and/or walls, setbacks, building and structure locations and parking areas. Attach a separate sheet if necessary.)

I would like to keep this galvanized carport to protect my vehicles from the regularly occurring hail storms. It was placed by the company, prior to the agreed upon date. So I was unable to obtain a building permit prior to that date, when I went to get permit I found it was beyond the set back.
Zoning Ordinance
Criteria for Appeals - Sec. 56-150(c)(4):
The purpose of the appeal procedure is to determine if the decision being appealed meets the requirements of this Zoning Ordinance. The City Council or the Planning and Zoning Commission, when hearing an appeal, is limited to the following determinations:

(a) The decision-maker made an error in reviewing whether a standard was met, by a misreading of the facts, plans, regulations or an error in judgment.
(b) Where conflicting evidence exists, the appeal is limited to determining what evidence or testimony bears the greatest credibility.
(c) The decision-maker made the decision on standards not contained in this or other City ordinances, regulations or state law; or a standard was applied more strictly or broadly than is appropriate to implement the City's Comprehensive Plan and this Zoning Ordinance.

Subdivision Regulations
Criteria for Appeals – Sec. 47-7
Whenever, in the opinion of the board of appeals, the strict application of the requirements contained in this chapter would result in extreme practical difficulties or undue misuse of property, the board may modify such requirements as are necessary so that the subdivider is allowed to develop his/her property in a reasonable manner providing that the public interests of the community and its citizens are protected and the general intent and spirit of these regulations are preserved. The board shall grant such a variance or modification only upon determination that:

1. The variance will not be detrimental to the public health, safety and general welfare of the community;
2. The variance will not adversely affect the reasonable development of adjacent property;
3. The variance is justified because of topographic or other special conditions unique to the property involved in contradistinction to mere inconvenience or financial disadvantage;
4. The variance is consistent with the objectives of this chapter and will not have the effect of nullifying the intent or purpose of this chapter or the comprehensive plan;
5. The variance has been shown to be in the best interest of the general public and not only of interest to the developer, land owner or other interested party;
6. The hardship must not be pecuniary and must be a direct result of the land location, topography or other characteristic;
7. Where a variance is requested from the required provision of sidewalks, and ADA compliant, alternative route to the nearest bus stop or school is required. If an alternative route cannot be provided, a variance shall not be approved.

<table>
<thead>
<tr>
<th>REQUIRED PRIOR TO P &amp; Z:</th>
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<tbody>
<tr>
<td>Complete Application Including:</td>
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<tr>
<td>□ Site Plan □ Fee □ Notification □ Letter of Explanation</td>
</tr>
<tr>
<td>□ Sign Posting Agreement □ Sign Posted</td>
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<tr>
<td>□ ABM □ Staff Comments □ Application Packet</td>
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<th>P &amp; Z Action:</th>
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<tr>
<td>□ Approved □ Denied □ Other</td>
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Date: __________
CITY OF CARLSBAD
AFFIDAVIT BY PROPERTY OWNER(S)

IF AN APPLICATION IS MADE BY SOMEONE OTHER THAN THE PROPERTY OWNER THIS FORM MUST ACCOMPANY THE APPLICATION MATERIALS.

APPLICATION TYPE:

☐ ZONING CHANGE  ☐ CONDITIONAL USE  ☐ VARIANCE  ☐ TEMPORARY USE

I (WE) HEREBY CERTIFY that I am (we are) the owners of record of the property described as follows:

ADDRESS OF PROPERTY: ________________________________________________________________

STREET ADDRESS: ________________________________________________________________

LEGAL DESCRIPTION: ________________________________________________________________

SUBDIVISION: ________________________________________________________________

BLOCK: ________________________________________________________________

LOT OR TRACT: ________________________________________________________________

I (WE) HAVE AUTHORIZED the following individuals to act as my (our) agent with regard to this application.

AGENT: ________________________________________________________________

NAME ________________________________________________________________

PHONE: __________________________

ADDRESS: ________________________________________________________________

I (WE) UNDERSTAND, CONCUR AND AFFIRM:

That this application may be approved, approved with conditions or denied and that, as the property owner, it is my responsibility to ensure that any conditions are complied with and to ensure that the property is maintained in a condition so as not to jeopardize the health, safety or welfare of others and that compliance with all applicable City ordinances is required, and

I (WE) HEREBY EXECUTE THIS AFFIDAVIT in support of the proposed application as presented:

OWNER 1:

BY: __________________________  SIGNATURE: __________________________

BY: __________________________  PRINTED NAME: __________________________

DATE: __________________________  DATE SIGNED: __________________________

OWNER 2: (IF APPLICABLE)

BY: __________________________  SIGNATURE: __________________________

BY: __________________________  PRINTED NAME: __________________________

DATE: __________________________  DATE SIGNED: __________________________

ADDITIONAL OWNERS: ATTACH SEPARATE SHEETS AS NECESSARY
NOTIFICATION SIGN
POSTING AGREEMENT

Notification of Public Hearings before the City of Carlsbad Planning and Zoning Commission is required pursuant to Sec. 56-140(i).

- Signs shall be posted a minimum of 5 days prior to and shall be removed a maximum of 5 days after the public hearing.
- If the sign is not posted as required, the application will be delayed and will not be considered at the public hearing as scheduled.
- The sign shall be posted at the street side property line with a secure stake provided by the applicant.

I have read and understand these requirements. I understand where the sign is to be located and my obligation to post the sign prior to the public hearing and remove it afterwards.

APPLICANT SIGNATURE

DATE

Sign issued by: SWT Member

Rev. 10/11
Dear Property Owner,

This letter serves as legal notification of a pending action before the City of Carlsbad Planning and Zoning Commission in accordance with Code of Ordinances Sec. 56-140(i). You are being notified because you are a property owner within one-hundred feet (100') of the subject site.

Applicant: Eric Robinson 575-302-6105
Subject Site Location: 3317 Kuykendall

The proposed action is a:
☐ Zoning Change from _______ to _______ in accordance with Sec. 56-150(b).
☒ Variance/Appeal from Sec. 56-90(b) Table 6 in accordance with Sec. 56-150(c).

The purpose of the variance/appeal is:
To keep a metal carport built in the setback.

☐ Conditional Use Permit in accordance with Sec. 56-150(f). The purpose of the permit is for a:
☐ Home Occupation: __________________________
☐ Other Use: ________________________________

The Planning and Zoning Commission will consider this request at a Public Hearing on:
Date: Jan. 9, 2017
Time: 5:00pm
Place: City Annex Planning Room
114 S. Halagueno St.
Carlsbad, NM 88220

The Code of Ordinances can be found on the City’s website www.cityofcarlsbadnm.com. For details about this request contact the applicant OR contact the City Planner at 575-885-1185 or via email at jepatterson@cityofcarlsbadnm.com.

Sincerely,

Applicant/Agent
3317 Kukendall St.
DEPARTMENT: Planning, Engineering & Regulation

BY: Jeff Patterson, Planning Director

DATE: 3/7/17

SUBJECT: Annexation of approximately 15.59 acres located at 1018, 1121, 1125, and 1127 Center Ave., legal descriptions attached, pursuant to the petition method as provided for in Section 3-7-1 et. Seq. NMSA 1978.

Applicant:
Phillip McCullough
1016 Center Avenue
Carlsbad, NM 88220

*The applicant provided the required notification to property owners within 100’ and agreed to post the required sign 5-days prior to the public hearing as required by Sec. 56-140(i). The City will notify the property owners’ 15-days prior to the City Council hearing and publish notification in the newspaper 30-days prior to said hearing.

SYNOPSIS, HISTORY AND IMPACT (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.):

This item was initially heard by Council at the 2/14/2017 City Council meeting. At this meeting, OTIS Water Cooperative spoke in reference to this proposed annexation stating that the property being proposed for annexation fell in the area that is served by OTIS water. As such, if the City were to approve the annexation, it would jeopardize federal funding that OTIS has received. The problem arises from how OTIS claims the federal funding is structured. If OTIS were to lose a property that currently falls within its service area, then the federal funding would be in jeopardy. The proposed property for annexation falls within OTIS’s service area. As a result of this, a representative for OTIS water asked the Council to table this item until a later meeting in order to meet with the applicant and the City to discuss this item further. The Council voted to table the item until the March 14, 2017, meeting. However, the applicant has given the Planning Department a letter requesting that the Council postpone hearing this item again until a later meeting in order to continue gathering information about his annexation proposal and the OTIS water situation.

The applicant has submitted a petition for annexation of approximately 15.59 acres (five properties total) located along Center Ave. See the attached annexation plat for property locations and legal descriptions. This annexation petition is pursuant to the petition method as provided for in Section 3-7-1 et. Seq. NMSA 1978 and more specifically, Section 3-7-17, which states:

“3-7-17. Annexation; petition by owners of contiguous territory; duty of governing body; ordinance; appeal.
A. Except as provided in Sections 3-7-17.1 and 3-57-4 NMSA 1978, whenever a petition:
(1) seeks the annexation of territory contiguous to a municipality;
(2) is signed by the owners of a majority of the number of acres in the contiguous territory;
(3) is accompanied by a map that shows the external boundary of the territory proposed to be annexed and the relationship of the territory proposed to be annexed to the existing boundary of the municipality; and
(4) is presented to the governing body, the governing body shall by ordinance express its consent or rejection to the annexation of such contiguous territory.
B. If the ordinance consents to the annexation of the contiguous territory, a copy of the ordinance, with a copy of the plat of the territory so annexed, shall be filed in the office of the county clerk. After the filing, the contiguous territory is part of the municipality. The clerk of the municipality shall also send copies of the ordinance annexing the territory and of the plat of the territory so annexed to the secretary of finance and administration and to the secretary of taxation and revenue.
C. Within thirty days after the filing of the copy of the ordinance in the office of the county clerk, any person owning land within the territory annexed to the municipality may appeal to the district court questioning the validity of the annexation proceedings. If no appeal to the district court is filed within thirty days after the filing of the ordinance in the office of the county clerk or if the court renders judgment in favor of the municipality, the annexation shall be deemed complete.

History: 1953 Comp., § 14-7-17, enacted by Laws 1965, ch. 300; 1981, ch. 204, § 9; 1998, ch. 42, § 1.”
The applicant is the land owner and the petition was accompanied by a map which showed the required detail as required by Section 3-7-18.

Currently, the proposed annexation area has mixed zoning with the majority being “R-1” Residential District and some “R-R” Rural Residential District zoned properties. Water and Sewer lines are available along Center Ave. for extension to the subject properties at the owner’s expense.

The Greater Carlsbad Comprehensive Plan: Strategy 2030 goals applicable to this request are:

**Chapter 3: Land Use**

- **Goal 1:** The City of Carlsbad will adopt policies to support the Infill/Redevelopment Land Use Scenario.
- **Goal 2:** The City of Carlsbad will make efficient use of government resources through well-planned land use decisions.

**PLANNING AND ZONING COMMISSION RECOMMENDATION:** Based on review of the application and staff comments, at their meeting on January 9, 2017, the Planning and Zoning Commission considered this item and recommended approval with a vote of five (5) in favor, none (0) against, and none (0) absent.

**DEPARTMENT RECOMMENDATION (please check):**

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<tr>
<th>Department</th>
<th>Approval</th>
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<tr>
<td>Public Works</td>
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<td>Culture &amp; Rec. Dept.</td>
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**DEPARTMENT COMMENTS:**

Public Works: No comments received.

Utilities Department: 1121 Center Ave - In regards to all listed address on Center - Property Owner or developer would be responsible for extending any water and sewer lines necessary to property. No problems with actual annexation or zone change.

Building Department: No comments received.

Fire Department: No comments received.

Code Enforcement: No comments received.

Legal Department: No comments received.

Planning Department: No comments received.

Police Department: 1121 Center Ave. - Annexation - Approved: Reviewed; No additional comments.

Culture & Recreation: No comments received.

City Engineer: N/A

Carlsbad Irrigation District: These applications do not affect CID operations.
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<td>☐  Lodgers Tax Board</td>
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<td>☐  Cemetery Board</td>
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<td>☐  Library Board</td>
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<td>☐  N. Mesa Board</td>
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<td>☐  ___________ Committee</td>
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Reviewed by
City Administrator /s/ Stephanie Shumsky  Date: 3-10-2017

ATTACHMENTS: Application materials, Ordinance, P & Z Minutes.
AN ORDINANCE ANNEXING A PORTION OF LAND CONTAINING 15.59 ACRES MORE OR LESS, CONTIGUOUS TO THE CITY OF CARLSBAD, NEW MEXICO, LOCATED ALONG CENTER AVENUE, LEGALLY DESCRIBED AS THE WEST 135 FEET OF LOT 19, BLOCK A, HALL’S SUBDIVISION LESS THE SOUTH 100 FEET AND LESS THE NORTH 445 FEET (4.60 ACRES), LOT 17, BLOCK A, HALL’S SUBDIVISION LESS THE SOUTH 150 FEET OF THE EAST 50 FEET AS DESCRIBED (0.26 ACRES), LOT 18, BLOCK B, HALL SUBDIVISION (4.80 ACRES), LOTS 32 AND 33, FUSON LAND DIVISION (4.78 ACRES), PART OF JASMINE STREET (0.12 ACRES), PART OF CENTER AVENUE (1.03 ACRES), PURSUANT TO THE PETITION METHOD PROVIDED FOR IN SECTION 3-7-1 ET. SEQ., NMSA 1978.

WHEREAS, a petition for annexation of territory contiguous to the City of Carlsbad has been presented to the Governing Body of the City of Carlsbad; and

WHEREAS, said petition is accompanied by a map showing the external boundary of the territory proposed to be annexed and its relationship to the existing boundary of the City of Carlsbad, New Mexico.

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

Section 1. Subject to the proviso contained in Section 2 hereof, the City of Carlsbad hereby consents to the annexation of 15.59 acres, more or less, of contiguous territory situated in Eddy County, New Mexico, located along Center Avenue, legally described as the West 135 ft. of Lot 19, Block A, Hall’s Subdivision less the South 100 ft. and less the North 445 ft., Lot 17, Block A, Hall’s Subdivision less the South 150 ft. of the East 50 ft., Lot 18, Block B, Hall Subdivision, Lots 32 and 33, Fuson Land Division, part of Jasmine St. and part of Center Ave.

Section 2. A copy of this ordinance and the plat of said property shall be filed in the office of the County Clerk of Eddy County. After such filing, the property shall be included in and be a part of the City of Carlsbad. Appeal may be made by any person owning land within this said territory to the District Court of Eddy County within thirty (30) days on the grounds and in the manner provided by law.

INTRODUCED, PASSED, ADOPTED, AND APPROVED THIS 14TH DAY OF MARCH, 2017.
Call Meeting to Order

Invocation – Pledge of Allegiance

1. APPROVAL OF AGENDA

Motion
The motion was made by Councilor Rodriguez and seconded by Councilor Shirley to approve the Agenda
0:00:39 **Vote**
The vote was as follows: Yes - Doporto, Doss, Rodriguez, Carter, Anaya Flores; No - None; Absent- Estrada; The motion carried.

0:01:00 **Mayor Pro Tem Doss** asked Mr. McCutcheon to join him in presenting service awards honoring employees who have achieved 20, 25, 30 and 35 years of service with the City of Carlsbad. **Mayor Pro Tem Doss** added the City of Carlsbad has outstanding employees and we are proud of each one of you.

0:06:22 **2. ROUTINE AND REGULAR BUSINESS**
A. Minutes of the Regular City Council Meeting Held on January 24, 2017
B. Minutes of the Special City Council Meeting Held on January 26, 2017
C. City Personnel Report
D. Purchasing:
   1) Consider approval to Advertise Request for Proposals for General Engineering Services for Airport Improvement Projects for the Cavern City Air Terminal
   2) Consider approval to Award Bid No. 2016-34, to White Cloud Pipeline Construction for Sheep Draw Well No. 6, Replacement
   3) Consider approval to Award RFP to Souder, Miller & Associates for Professional Design Services for the Dark Canyon Bridge Project
   4) Consider approval to Purchase from AK Sales and Consulting through a CES Contract; Portable Stage Lighting & Equipment for the Cavern Theater
E. Monthly Reports:
   1) Municipal Court Monthly Report, January 2017
   2) Personnel Department Monthly Report, January 2017
F. Board Appointments:
   1) Carlsbad Museum and Arts Center Advisory Board: K.C. Sparks, remainder of 5-year term
G. Contracts and Agreements:
   1) Consider approval of Agreement between the City of Carlsbad and Southeastern NM Economic Development District/Council of Governments for Fiscal Agent Services
   2) Consider approval of Agreement between the City of Carlsbad and the Carlsbad Municipal Schools for FY 2016-2017, for provision services
   3) Consider approval of Agreement between the City of Carlsbad and the Carlsbad Little Girls Softball League for League Services at the Bob Forrest Youth Sports Complex

0:07:00 **Mayor Pro Tem Doss** asked Mr. McCutcheon to discuss Item D.4 Consider approval to Purchase from AK Sales and Consulting through a CES Contract; Portable Stage Lighting & Equipment for the Cavern Theater.
**Mr. McCutcheon** explained this item is to request approval of a CES Contract from AK Sales for a Portable Stage, Lighting and Equipment. He said the wording on the Agenda is a little misleading. He explained the staging is not specifically for the Cavern
Theater the staging is portable and the intention of the City is to use the equipment at other City sponsored events to create a more professional appearance.

Councilor Shirley asked if Item D.4 could be moved from the consent agenda to be voted on, on its own merit. Mayor Pro Tem Doss said Item D.4 would be moved to Item No. 11.

0:08:24 Motion
The motion was made by Councilor Shirley and seconded by Councilor Doporto to approve Routine and Regular Business

0:08:31 Vote
The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:09:15 3. PRESENTATION BY THE PECOS VALLEY DRUG TASK FORCE
Chief Waller said the Pecos Valley Drug Task Force is present to inform the Council on what the Task Force does and what the HIDTA initiative is in this area and how it affects us. He introduced Commander James McCormick to give the presentation.

0:10:27 Commander James A. McCormick’s presentation reviewed the following:
- Executive Board
- HIDTA (High Intensity Drug Trafficking Area)
  - Established in 1990
  - 16 Counties in NM
  - Executive Committee
  - Funding Levels
- PVDTF Trends
  - Cases per year
  - Firearms Seizures
  - Meth Seizures
  - Cocaine Seizures
  - Heroin Seizures
  - Marijuana Seizures
  - Majority of PVDTF cases are in Carlsbad
  - Multi-billion dollar industry
- Narcotics Smuggling Routes
- Dangers, Threats
- Facebook Page/Crime stoppers

Mayor Pro Tem Doss thanked Commander McCormick for all of the hard work.
Chief Waller added the backbone of the operation is made up of the personnel provided through the City of Carlsbad, City of Artesia, and Eddy County.

Commander McCormick said all of the PVDTF agents are cross commissioned and have some federal authority when working cases.

0:34:21  4. CONSIDER APPROVAL TO ADOPT THE STATEWIDE AMBULANCE TARIFF SET BY THE NM PUBLIC REGULATIONS COMMISSION
Mr. McCutcheon explained this is a process to set Statewide Ambulance Tariffs. He said traditionally the city adopts the tariff and staff recommends approval.

0:34:59  Motion
The motion was made by Councilor Doporto and seconded by Councilor Anaya Flores to approve to adopt the Statewide Ambulance Tariff set by the NM Public Regulations Commission

0:35:06  Vote
The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:35:19  5. CONSIDER APPROVAL OF RESOLUTION NO. 2017-04, A RESOLUTION DECLARING CERTAIN CITY PROPERTY UNUSABLE OR OBSOLETE
Mr. McCutcheon explained this is the standard Resolution for following statute to dispose of obsolete and unusable City property.

0:35:58  Motion
The motion was made by Councilor Shirley and seconded by Councilor Doporto to approve Resolution No. 2017-04, a Resolution Declaring Certain City Property Unusable or Obsolete

0:36:05  Vote
The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:36:17  6. CONSIDER APPROVAL OF RESOLUTION NO. 2017-5, A RESOLUTION FOR PARTICIPATION WITH THE NM DEPARTMENT OF TRANSPORTATION, CAPITAL OUTLAY PROGRAM FOR THE 2015 CAPITAL OUTLAY LEGISLATIVE GRANT FOR SAN JOSE BOULEVARD, PHASE 5
Mr. McCutcheon explained this is a small grant the City was approved to assist with San Jose Blvd. He said staff is recommending approval to accept the grant.
0:37:02 **Motion**
The motion was made by Councilor Anaya Flores and seconded by Councilor Rodriguez to approve Resolution No. 2017-05, a Resolution for participation with the NM Department of Transportation, Capital Outlay Program for the 2015 Capital Outlay Legislative Grant for San Jose Boulevard, Phase 5.

0:37:09 **Vote**
The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - None; Absent - None; The motion carried.


Mr. Patterson explained this item is a petition for annexation for approximately 15.59 acres located along Center Avenue. He said the applicant has fulfilled the requirements for the annexation. He said the Planning and Zoning Commission heard the request at the January 9, 2017 meeting and recommended approval.

**Councilor Doporto** asked if the applicant is requesting rural residential zoning. Mr. Patterson said yes if the annexation is approved he is requesting rural residential zoning.

0:40:13 A. **Public Hearing**

0:40:17 **Mayor Pro Tem Doss** asked if anyone would like to speak in favor of the Ordinance to please come forward.

Mr. McCullough said he is the applicant and is in favor of the annexation because he would like to have City water.

**Mayor Pro Tem Doss** asked if the water would be used for commercial or residential. Mr. McCullough said he is not sure yet.

0:41:26 **Mayor Pro Tem Doss** asked if anyone would like to speak against the Ordinance.

Mr. Tom Martin, representing Otis water users, said Otis water users have over the years borrowed money from the USDA for their operations and system. He explained Otis has had to pledge their entire system as well as their customers as security to meet
the obligations to the USDA. He said this obligation is ongoing of Otis water users. He said this proposed annexation will take in a portion of the Otis system and pick up one if not more customers which could result in a violation of the security agreements with the USDA. He said ultimately the annexation could be treated as a default which could open issues for Otis and for the City of Carlsbad. He said the City and Otis need to discuss and recommends tabling to a later date to allow time for discussion. He said the issue is of critical importance to Otis water users and the City of Carlsbad.

0:44:23 Mayor Pro Tem Doss asked if anyone would like to speak regarding the Ordinance. No one appeared and the Mayor Pro Tem declared the public hearing closed and reconvened the Council in regular session.

0:44:37 B. Consider Ordinance No. 2017-03

0:44:37 Motion to Table
The motion was made by Councilor Carter and seconded by Councilor Estrada to table approval of Ordinance No. 2017-03, an Ordinance annexing a portion of land containing 15.59 acres more or less, contiguous to the City of Carlsbad, New Mexico, located along Center Avenue, legally described as the West 135' of Lot 19, Block A, Hall Subdivision, less the South 100' and less the North 445', Lot 17, Block A, Hall Subdivision, less the South 150' of the East 50' described as Lot 18, Block B, Hall Subdivision, Lots 32 and 33, Fuson Land Division, part of Jasmine Street, part of Center Avenue, pursuant to the Petition Method provided for in Sec. 3-7-1 et. seq., NMSA 1978; Applicant: Phillip McCullough till March 14, 2017.

0:44:55 Vote
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - Doporto; Absent- None; The motion carried.

0:45:34 8. CONSIDER APPROVAL OF ORDINANCE NO. 2017-04, AN ORDINANCE ESTABLISHING “R-R” RURAL RESIDENTIAL DISTRICT IN CONJUNCTION WITH THE ANNEXATION OF APPROXIMATELY 15.59 ACRES OF PROPERTY, LOCATED ALONG CENTER AVENUE; APPLICANT: PHILLIP MCCULLOUGH

Mayor Pro Tem explained because Item No. 7 was tabled Item No. 8 cannot be acted on.

0:45:56 Motion to Table
The motion was made by Councilor Carter and seconded by Councilor Shirley to table approval of Ordinance No. 2017-04, an Ordinance establishing "R-R" Rural Residential District in conjunction with the Annexation of approximately 15.59 acres of property, located along Center Avenue; Applicant: Phillip McCullough till March 14, 2017
0:46:10 **Vote**
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - Doporto; Absent - None; The motion carried.

0:46:26 **9. CONSIDER APPROVAL OF ORDINANCE NO. 2017-05, AN ORDINANCE REZONING PART OF “R-R” RURAL RESIDENTIAL DISTRICT TO “C-2” COMMERCIAL DISTRICT FOR AN APPROXIMATELY 2.90 ACRES LOCATED AT 4100 NATIONAL PARKS HIGHWAY; OWNER: MARIA KNITTEL**

Mr. Patterson explained this request is for a zone change. He said the property is 2.9 acres with a portion of the property zoned "C-2" and the other portion is zoned "R-R". He explained the applicant would like to apply "C-2" zoning to the entirety of the property. He said the Planning and Zoning Commission recommend approval.

0:48:15 **A. Public Hearing**

0:48:17 Mayor Pro Tem Doss asked if anyone would like to speak in favor of the Ordinance. Ms. Knittel said the property has two commercial buildings and she is asking for approval.

0:48:42 Mayor Pro Tem Doss asked if anyone would like to speak regarding the Ordinance. No one appeared and the Mayor Pro Tem declared the public hearing closed and reconvened the Council in regular session.

0:48:59 **B. Consider Ordinance No. 2017-05**

0:49:01 **Motion**
The motion was made by Councilor Carter and seconded by Councilor Estrada to approve Ordinance No. 2017-05, an Ordinance rezoning part of "R-R" Rural Residential District to "C-2" Commercial District for an approximately 2.90 acres located at 4100 National Parks Highway; Owner: Maria Knittel

0:49:06 **Vote**
The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - None; Absent - None; The motion carried.

0:49:21 **10. CONSIDER APPROVAL OF ORDINANCE NO. 2017-06, AN ORDINANCE REZONING PART OF “R-R” RURAL RESIDENTIAL DISTRICT TO “C-2” COMMERCIAL DISTRICT FOR AN APPROXIMATELY 3.43 ACRE PROPERTY LOCATED AT 4208 NATIONAL PARKS HIGHWAY; OWNER: MARIA KNITTEL**

Mr. Patterson said this item is similar to the previous item and is the same applicant. He explained the applicant is requesting that "C-2" zoning be applied to the entirety of her property.
A. Public Hearing

Mayor Pro Tem Doss asked if anyone would like to speak in favor of the Ordinance. Ms. Knittel said she is requesting approval for the zone change.

Mayor Pro Tem Doss asked if anyone would like to speak regarding the Ordinance. No one appeared and the Mayor Pro Tem declared the public hearing closed and reconvened the Council in regular session.

B. CONSIDER ORDINANCE NO. 2017-06

Motion
The motion was made by Councilor Rodriguez and seconded by Councilor Shirley to approve Ordinance No. 2017-06, an Ordinance Rezoning Park of "R-R" Rural Residential District to "C-2" Commercial District for an approximately 3.43 Acre property located at 4208 National Parks Highway; Owner: Maria Knittel

Vote
The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

11. CONSIDER APPROVAL TO PURCHASE FROM AK SALES AND CONSULTING THROUGH A CES CONTRACT PORTABLE STAGE LIGHTING & EQUIPMENT FOR THE CAVERN THEATER

Councilor Shirley said it appears to him to be a portable stage to be used at multiple locations, with the lighting being permanently installed at the Cavern Theater. Ms. Jackson-Christopher said the entire set up is what you would typically see at a street concert. She said the entire rigging including the lighting, back drapery, and the stage is all portable.

Councilor Shirley said he would like to ensure that the equipment is going to be used at events other than the Cavern Theater.

Mr. McCutcheon said the money to purchase will come out of the general fund. He added if the equipment had not had support for use in other places, staff would not have been able to purchase the equipment.

Motion
The motion was made by Councilor Shirley and seconded by Councilor Rodriguez to approve the purchase from AK Sales and Consulting through a CES Contract; Portable Stage, Lighting & Equipment to be used at City events.
0:55:26  **Vote**
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - Doporto; Absent - None; The motion carried.

0:55:52  **12. COUNCIL COMMITTEE REPORTS**
Mayor Pro Tem Doss said he attended the Bat Brigade, State Legislature trip. He added that he, Councilor Carter, and Councilor Shirley went back to Santa Fe to attend hearings on the house bill for the Brine well problem. He said the trip went very well and next week there will be a group from Carlsbad visiting Washington, DC to meet with FEMA. He said they would like to discuss fixing the problem rather than waiting for it to sink.

0:58:04  **13. ADJOURN**

There being no further business, the meeting was adjourned at 6:59 p.m.

__________________________________  Mayor

ATTEST:

__________________________________  City Clerk
MINUTES OF THE REGULAR MEETING OF THE

City of Carlsbad
Planning & Zoning Commission

January 9, 2017, at 5:00 p.m.

Meeting Held in the Annex Planning Room
114 S. Halagueno
CITY OF CARLSBAD
CARLSBAD, NEW MEXICO

PLANNING AND ZONING COMMISSION

Monday, January 9, 2017, at 5:00 PM
Municipal Annex 114 S. Halagueno Street
Planning Room

1. Roll call of voting members and determination of quorum.
2. Approval of Agenda.
3. Approval of Minutes from Special Meeting held December 12, 2016.
4. Consider a recommendation for a Zone Change from “C-2” Commercial District/“R-R” Rural Residential to “C-2” Commercial District at 4100 & 4208 National Parks Hwy., legally described as Tract 2, Garringer Land Division and Tract A, Knittel Land Division.
5. Consider a Conditional Use Permit for a new Communications Tower at 5308 National Parks Hwy.
6. Consider an Appeal (Variance) for a fall radius less than the required 105% for a new Communications Tower located at 603 W. Cherry Ln.
7. Consider a Conditional Use Permit for a new Communications Tower at 603 W. Cherry Ln.
8. Consider a Conditional Use Permit at 4100 National Parks Hwy. for incidental welding as part of General Contracting, legally described as Tract 2, Garringer Land Division.
9. Consider Preliminary/Final subdivision plat for Hargiss Subdivision Replat #1, located at the corner of Elgin Rd. and Cowboy Country Rd. creating 6 new residential building lots.
10. Consider an Appeal (variance) for Hargiss Subdivision Replat #1 to allow no curb and gutter and no sidewalks to be installed along Elgin Rd. and Cowboy Country Rd. as part of the Hargiss Subdivision Replat #1 development.
11. Consider a final plat for Freedom Way Subdivision located at the corner of W. McKay St. and N. Elm Street.
12. Consider a recommendation to the Carlsbad City Council concerning a petition for Annexation of properties along Center Ave., approximately 15.59 acres.
13. Consider an application of Zoning (R-R Rural Residential) for Properties along Center Ave.
14. Consider a Final Plat regarding the donation of right-of-way along S. 14th St.
15. Consider an Appeal (variance) to allow a carport to be placed in the required front setback at 3317 Kuykendall St.
17. Adjourn.

If you require hearing interpreters, language interpreters, auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator's offices at (575) 887-1191 at least 48 hours prior to the scheduled meeting.
MINUTES OF A REGULAR MEETING OF THE CITY OF CARLSBAD PLANNING & ZONING COMMISSION HELD IN THE MUNICIPAL ANNEX PLANNING ROOM, 114 S. HALAGUENO STREET, JANUARY 9, 2017, AT 5:00 P.M.

VOTING MEMBERS PRESENT:

JAMES KNOTT CHAIRPERSON
JAMES MCCORMICK COMMISSION SECRETARY
BRIGIDO GARCIA COMMISSIONER
WANDA DURHAM COMMISSIONER
LASON BARNEY COMMISSIONER

VOTING MEMBERS ABSENT: NONE

EX-OFFICIO MEMBERS PRESENT:

JEFF PATTERSON PLANNING DIRECTOR
GEORGIA GOAD PLANNING DEPUTY DIRECTOR
MICHAEL HERNANDEZ DIRECTOR OF UTILITIES

SECRETARY PRESENT:

PATTIE PISTOLE PLANNING, ENGINEERING AND REGULATION DEPARTMENT SECRETARY

OTHERS PRESENT:

ERIC ROBINSON 3317 KUYKENDALL
DAVID L. O’DELL LOS RANCHOS, NM
CHRISSY ROBINSON 3317 KUYKENDALL
ANNE-MARIE (AMY) MCKENZIE ALBUQUERQUE, NM
PHILIP D. MCCULLOUGH 1016 CENTER
NICOLE RAGAIN 1001 ELGIN ROAD
EUGENE QUIONZON 1001 ELGIN ROAD
MIKE MOE 4100 NATIONAL PARKS HWY
GEORGE DUNAGAN 212 W STEVENS
FRED TOOTHMAN 1713 SANDY LANE
DON SCHLOSSER 2017 JASMINE STREET
JIMMIE KEENE 2017 JASMINE STREET
KENT THURSTON LAS CRUCES
RICK THURSTON LAS CRUCES
KEN THURSTON LAS CRUCES
DAN REDDY 904 N GUADALUPE
JEFF MCLEAN 1107 N SHORE DRIVE
MARIA KNITTEL 1107 N SHORE DRIVE
GARY PROCTOR 3319 KUYKENDALL

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

0:00:00 Start Recording [5:00:25 PM]

0:00:03 1. Roll call of Voting Members and Determination of Quorum.
Roll was called, confirming the presence of a quorum of commission members. The following members were present—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Garcia; Absent—Mr. Barney. (Mr. Barney arrived at 5:01 and was present for the remainder of the meeting.)

0:00:28  2. Approval of Agenda.

Mr. McCormick made a motion to approve the Agenda, and Ms. Durham seconded the motion. The vote was as follows: Yes—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Garcia; No—None; Abstained—None; Absent—Mr. Barney. The motion carried. (Mr. Barney arrived at 5:01 and was present for the remainder of the meeting.)

0:01:04  3. Approval of Minutes from Meeting held December 12, 2016.

Ms. Durham made a motion to approve the Minutes, and Mr. Barney seconded the motion. The vote was as follows: Yes—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No—None; Abstained—None; Absent—None. The motion carried.

0:02:01  4. Consider a recommendation for a Zone Change from “C-2” Commercial District/“R-R” Rural Residential to “C-2” Commercial District at 4100 & 4208 National Parks Hwy., legally described as Tract 2, Garringer Land Division and Tract A, Knittel Land Division.

Mr. McLean and Ms. Knittel were present to ask for the Zone Change. Mr. Patterson explained that part of the property is C-2 already, and that it fits with the area. Staff recommended approval. There was no public comment.

Ms. Durham made a motion to recommend approval of the Zone Change. Mr. Garcia seconded the motion. The vote was as follows: Yes—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No—None; Abstained—None; Absent—None. The motion carried.

0:07:06  5. Consider a Conditional Use Permit for a new Communications Tower at 5308 National Parks Hwy.

Ms. McKenzie attended to represent Verizon. Mr. Patterson stated that there was documentation stating that there would be no hazard to air navigation at this location. Staff recommended approval. Ms. McKenzie explained that the tower is needed to improve coverage and capacity in the area. In answer to a question, she stated that other companies would be able to co-locate on this tower, so it would cut down on the number of towers needed in the area. There was no public comment.

Mr. McCormick made a motion to approve the Conditional Use. Mr. Barney seconded the motion. The vote was as follows: Yes—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No—None; Abstained—None; Absent—None. The motion carried.

0:15:22  6. Consider an Appeal (Variance) for a fall radius less than the required 105% for a new Communications Tower located at 603 W. Cherry Ln.
Ms. McKenzie represented Verizon. Mr. Patterson stated that the tower has a 50’ fall radius and is designed to be partially collapsible, so that it would collapse vertically. It would break at 45’ and fall within the property line. Staff recommended approval. Ms. McKenzie added that it is designed to look like a pine tree for stealth coverage, which is more appealing for the area. There is spotty coverage in the area, and the tower will improve coverage and capacity.

During public comment, Mr. Toothman expressed his opposition to a tower being in a residential area. He did not think it would look like a pine tree. Ms. Goad explained that there is actually a safety factor involved. Many people are now using cell phones exclusively, and E911 is trying to find ways to extend coverage for emergency calls.

Ms. Durham made a motion to approve the Variance. Mr. McCormick seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott; No–Mr. Barney, Mr. Garcia; Abstained–None; Absent–None. The motion carried.

Mr. Patterson explained the appeal process to Mr. Toothman—he would need to send him a letter or e-mail within 15 days to be scheduled to appear before the City Council, if he wished to appeal the decision.

0:36:34 7. Consider a Conditional Use Permit for a new Communications Tower at 603 W. Cherry Ln.

This item regards the tower previously discussed in Item 6. There was no public comment.

Mr. Barney made a motion to approve the Conditional Use on the condition that the plat was approved. Ms. Durham seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney; No–Mr. Garcia; Abstained–None; Absent–None. The motion carried.

Mr. Patterson explained the appeal process again—sending a letter or e-mail within 15 days to be scheduled to appear before the City Council, if anyone wished to do so.

0:39:30 8. Consider a Conditional Use Permit at 4100 National Parks Hwy. for incidental welding as part of General Contracting, legally described as Tract 2, Garringer Land Division.

Mr. Dunagan and Mr. Moe came forward to discuss the Conditional Use. Mr. Patterson said the applicant wants to cover all his bases to make sure any incidental welding would be allowed. The property is zoned for commercial use, and Staff recommended approval with conditions. Mr. Moe explained that they only want to do maintenance welding and testing of welders; they have no intention of doing any fabrication. There was no public comment.

Mr. Garcia made a motion to approve the Conditional Use. Mr. McCormick seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

0:44:58 9. Consider Preliminary/Final subdivision plat for Hargiss Subdivision Replat #1, located at the corner of Elgin Rd. and Cowboy Country Rd. creating 6 new residential building lots.
Mr. Thurston attended to answer any questions regarding the application. Mr. Patterson explained that streets and sidewalks are normally required when property is split into this many lots. However, utility lines are already in place. Laterals will just need to be run to the lots created. Staff recommended approval, if all the requirements from Public Works and Engineering are addressed, and if the Variance for no sidewalks and gutters is approved. It was discussed that technically one of the lots already exists, so five lots are being created. Mr. Thurston wanted clarification regarding setbacks. He was in agreement with the recommendation. There was no public comment.

Mr. McCormick made a motion to approve the Preliminary/Final Plat with conditions stated and setbacks discussed (30 feet in the front, 5 feet on the sides). Also, plans for water and sewer must be provided. Ms. Durham seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

0:59:38 10. Consider an Appeal (variance) for Hargiss Subdivision Replat #1 to allow no curb and gutter and no sidewalks to be installed along Elgin Rd. and Cowboy Country Rd. as part of the Hargiss Subdivision Replat #1 development.

Mr. Patterson explained that there are no sidewalks in the entire area to tie onto. The developer has provided for ponding on each property, so not much water will go into the street. If sidewalks and curbs and gutters are installed, it would only be along the six lots, not all the way down the street. Planning Staff recommended approval. During public comment, Mr. Quionzon spoke in favor of the variance. He said he had no problem with it.

Ms. Durham expressed her feeling that it is a matter of public safety. It is more costly, but it is in the City Ordinance to put in curbs, gutters, and sidewalks in new subdivisions. Why not enforce it? This property is on the outskirts of town now, but what about in ten years? It wasn’t a problem in her neighborhood when it was built, but now it is.

Mr. Knott made a motion to approve the Variance. Mr. McCormick seconded the motion. The vote was as follows: Yes–Mr. McCormick, Mr. Knott, Mr. Garcia; No–Mr. Barney, Ms. Durham; Abstained–None; Absent–None. The motion carried.

1:25:30 11. Consider a final plat for Freedom Way Subdivision located at the corner of W. McKay St. and N. Elm Street.

David O’Dell came forward to present the application. Mr. Patterson said that Planning Staff recommended approval, pending a walk-through. Utilities and Public Works need to approve it. Mr. O’Dell said he followed all the City requirements. There was no public comment.

Mr. McCormick made a motion to approve the Final Plat with recommendations listed in Staff comments and with proof of testing. Ms. Durham seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

1:34:04 12. Consider a recommendation to the Carlsbad City Council concerning a petition for Annexation of properties along Center Ave., approximately 15.59 acres.
Mr. McCullough and Mr. Reddy answered questions regarding the application. Ms. Goad explained that the applicant owns property on both sides of Center. His home is in the City limits, so he wants to annex the remainder of his property where he has a nursery. Mr. McCullough agreed that he wants to annex his property to get City water. During public comment, Mr. Keene wanted to know how it would affect his property. It was explained to him that this issue only pertained to the property owned by Mr. McCullough.

Mr. Barney made a motion to recommend approval of the Annexation. Mr. Garcia seconded the motion. The vote was as follows: Yes—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No—None; Abstained—None; Absent—None. The motion carried.

1:51:22 13. Consider an application of Zoning (R-R Rural Residential) for Properties along Center Ave.

Because the property, which was discussed in the previous item, may be annexed into the City, zoning needed to be assigned.

Mr. McCormick made a motion to recommend approval of the Zone Change. Mr. Garcia seconded the motion. The vote was as follows: Yes—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No—None; Abstained—None; Absent—None. The motion carried.

1:52:56 14. Consider a Final Plat regarding the donation of right-of-way along S. 14th St.

The City was the applicant for this issue. There was no public comment.

Ms. Durham made a motion to approve the Final Plat. Mr. Barney seconded the motion. The vote was as follows: Yes—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No—None; Abstained—None; Absent—None. The motion carried.

1:58:32 15. Consider an Appeal (variance) to allow a carport to be placed in the required front set-back at 3317 Kuykendall St.

Mr. and Mrs. Robinson were the applicants for this request. Mr. Patterson explained that they want a setback of 5½ feet in the front, rather than 30 feet, because they have built a carport there without getting a building permit. Staff recommended denial. Since this is a corner lot, setbacks would be 30 feet on both sides facing streets. He said that amendments to the City Ordinance were submitted in October, which proposed carports be allowed in setbacks without having to get variances. The Council struck that part from the amendments to the Ordinance, so that variances are still required for carports in the setback. Ms. Robinson asked that they be allowed to keep the carport, since it cost over $1,000, was not obstructing, and is not a safety factor. The Robinsons said that the installer put up the carport before they had a chance to get a permit. During public comment, their neighbor Mr. Proctor stated that he had no problem with it staying. He is in favor of a variance.

Mr. McCormick made a motion to approve the Variance, provided the sides stay open and all other Building Code requirements are followed. The motion died for lack of a second.
Mr. Barney made a motion to deny the Variance. Mr. Garcia seconded the motion. The vote to deny was as follows: Yes–Ms. Durham, Mr. Barney, Mr. Garcia; No–Mr. McCormick, Mr. Knott; Abstained–None; Absent–None. The motion carried to deny the Variance.

It was explained that to appeal the decision, the applicant needs to send a letter or e-mail to Mr. Patterson within 15 days. Then he would schedule the matter to go before City Council. He also suggested calling to talk to Mr. Cass.


There was brief discussion of the plats signed by the commission designees during the previous month.


There being no further business, the meeting was adjourned.

2:32:21 Stop Recording [7:32:45 PM]
APPLICATION FOR ANNEXATION
(SEE 3-7-17 NMSA, 1978, FOR PETITION REQUIREMENTS)

PROCESS FOR ACCEPTANCE AND REVIEW
OF PLANNING AND ZONING COMMISSION MATTERS

1. The Planning and Zoning Commission's regularly scheduled meetings are on the FIRST MONDAY OF THE MONTH. Applicant should obtain an Application Packet for the particular type of request (Zone Change, Subdivision, Variance, Annexation, Special Property Use, etc.) from the City of Carlsbad, Planning, Engineering, and Regulation Office.

2. With the exception of Summary Reviews, Applicant must submit a completed Application to the Planning, Engineering, and Regulation Office on, or before, the FIRST FRIDAY OF THE MONTH prior to the desired Commission meeting. (As per Section 3-20-8 NMSA 1978 and Chapter 47 Code of Ordinances, Summary Reviews may be submitted at any time.) The minimum application packet submittal is one (1) copy of the Application with original signatures and all required supporting documents. If desired, a letter of explanation or clarification may also be provided. The required non-refundable application fee is due with submittal of the application.

   The desired maximum size for all documents is 11"x17". However, if the applicant wishes to support his or her application with larger size documents, an original and fifteen (15) copies need to be provided. (For Summary Review—an original and three (3) copies are required.) Separate arrangements for copying these large documents may be possible, but will incur additional costs.

3. The Planning, Engineering, and Regulation Office will give the Application an initial cursory review. If deficiencies or questions are noted, the Applicant will be advised and provided an opportunity to supplement the Application. If the Applicant fails to complete and resubmit the application prior to the above deadline, the matter will not be heard until the next subsequent Commission meeting. The original application fee will be retained and will suffice for the specific original application for a period of four months from the date of the original application.

4. Applications appearing complete will be set for full evaluation by City Staff prior to the Commission meeting. The purpose of this evaluation is to develop and provide a full briefing report for the Commission. Applicants will be advised of deficiencies noted during this review and will be afforded opportunity to supplement their application during their presentation to the Commission, if they so desire.
PETITION FOR ANNEXATION
(SEE 3-7-17 NMSA, 1978, FOR PETITION REQUIREMENTS)

Application Date: 8/18/2016

I/We, the undersigned owners of the following described real estate, do by our signature, hereby present the City of Carlsbad with this petition for Annexation under Article 7, Section 3-17 et. seq. NMSA 1978, which regulates the annexation of land. As the property owner(s), I/we understand that all required information must be provided in accordance with these regulations. In addition, I/we understand that the construction or upgrade of public infrastructure may be required as a condition of approval. In this case, a Development Agreement or an Assessment District may be required by the City. As the applicant, I/we may be required to provide a financial guarantee for the construction of said improvements. The financial guarantee and timeline for completion are subject to approval by the City.

Legal description of property being annexed (attach copy of Annexation Plat):

ANNEXATION PLAT ATTACHED

Total acreage:

Current Zoning: N/A Proposed Zoning: R-R (Please attach a completed Zoning Change application, a separate fee may be required)
ANNEXATION PLAT:
ORDINANCE NO: __________
RECORDED IN BOOK_______, PAGE_______ EDDY COUNTY RECORDS.

PROPERTY TO BE ANNEXED
THE WEST 135 FEET OF LOT 19, BLOCK A HALL'S SUBDIVISION LESS THE SOUTH 100 FEET AND LESS THE NORTH 445 FEET. 4.60 AC.
and
LOT 17, BLOCK A HALL'S SUBDIVISION LESS THE SOUTH 150 FEET OF THE EAST 50 FEET AS DESCRIBED...
and
LOT 18, BLOCK R HALL SUBDIVISION 4.80 AC.
and
LOTS 32 AND 33 4.78 AC.
FUSION LAND DIVISION
PART OF JASMINE STREET 0.12 AC.
PART OF CENTER AVENUE 1.03 AC.
TOTAL ANNEXATION 15.59 AC.

NOTE: PROPERTY NOT INCLUDED IN ANNEXATION IS SHOWN AS "OUT"

FILING DATA:
STATE OF NEW MEXICO:

COUNTY OF EDDY
I HEREBY CERTIFY THIS INSTRUMENT WAS FILED FOR RECORD ON THIS ________DAY OF ________, 2017 AT ________O'CLOCK ________M., AND IS DULY FILED IN CABINET ________, SLIDE ________, OF THE RECORD OF MAPS OF SAID COUNTY.

ROBIN VAN NATTA - COUNTY CLERK

INDEXING INFORMATION FOR COUNTY CLERK
OWNER - PHILIP McCULLOUGH
SECTION 17, T23S, R7E
9.66 ACRES IN HALL ADDITION AND 4.78 ACRES IN FUSION LAND DIVISION
ALSO PUBLIC ROADS AS FOLLOWS:
PART OF JASMINE STREET 0.12 AC.
PART OF CENTER AVENUE 1.03 AC.

PLANNING COMMISSION APPROVAL
I HEREBY CERTIFY THIS PLAT HAS BEEN APPROVED AND ACCEPTED BY THE PLANNING COMMISSION OF THE CITY OF CARLSBAD, COUNTY OF EDDY, STATE OF NEW MEXICO ON THE ________DAY OF ________, 2017

CHAIRMAN ____________________
SECRETARY ____________________

PLANNING COMMISSION APPROVAL
I HEREBY CERTIFY THIS PLAT HAS BEEN APPROVED AND ACCEPTED BY THE CITY OF CARLSBAD, COUNTY OF EDDY, STATE OF NEW MEXICO ON THE ________DAY OF ________, 2017

MAYOR ____________________

CERTIFICATION:
THIS IS TO CERTIFY THAT THE FOREGOING PLAT WAS MADE FROM PROPERTY DESCRIPTIONS OF RECORD, FILED WITH THE EDDY COUNTY, NEW MEXICO COUNTY CLERK'S OFFICE, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

PHIL McCULLOUGH

PREPARED FOR: PHILIP McCULLOUGH
575 887-6483 DECEMBER 7, 2016
401 W. GREENE ST./P.O. BOX 597
CARLSBAD, NM 88221-0597

PREPARED FOR: PHILIP McCULLOUGH
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CARLSBAD, NM 88221-0597

INDEXING INFORMATION FOR COUNTY CLERK
OWNER - PHILIP McCULLOUGH
SECTION 17, T23S, R7E
9.66 ACRES IN HALL ADDITION AND 4.78 ACRES IN FUSION LAND DIVISION
ALSO PUBLIC ROADS AS FOLLOWS:
PART OF JASMINE STREET 0.12 AC.
PART OF CENTER AVENUE 1.03 AC.
DEPARTMENT: Planning, Engineering & Regulation  
BY: Jeff Patterson, Planning Director  
DATE: 3/7/17

SUBJECT: Application of zoning from County to City of Carlsbad “R-R” Rural Residential District for several lots on Center Ave. as shown on the attached annexation plat., pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.

Applicant/Owner:
Philip McCullough
1016 Center St.
Carlsbad, NM 88220

*The applicant provided the required notification to property owners within 100’ and agreed to post the required sign 5-days prior to the public hearing as required by Sec. 56-140(i). The City will notify the property owners’ 15-days prior to the City Council hearing and publish notification in the newspaper 30-days prior to said hearing.

SYNOPSIS, HISTORY AND IMPACT (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.):

This item was initially heard by Council at the 2/14/2017 City Council meeting. At this meeting, OTIS Water Cooperative spoke in reference to this proposed annexation stating that the property being proposed for annexation fell in the area that is served by OTIS water. As such, if the City were to approve the annexation, it would jeopardize federal funding that OTIS has received. The problem arises from how OTIS claims the federal funding is structured. If OTIS were to lose a property that currently falls within its service area, then the federal funding would be in jeopardy. The proposed property for annexation falls within OTIS’s service area. As a result of this, a representative for OTIS water asked the Council to table this item until a later meeting in order to meet with the applicant and the City to discuss this item further. The Council voted to table the item until the March 14, 2017, meeting. However, the applicant has given the Planning Department a letter requesting that the Council postpone hearing this item again until a later meeting in order to continue gathering information about his annexation proposal and the OTIS water situation. The applicant is requesting zoning on various parcels to be annexed into the municipality as “R-R” Rural Residential District legally described as shown on the attached annexation plat. “R-R” Rural Residential zoning fits the current and intended use of the properties. This will not create a spot zone.

According to Zoning Ordinance Sec. 56-150(b)(4). Amendments, Findings Required, a statement of fact regarding each of the following findings is required:

(a) The proposed amendment will or will not adversely impact the public health, safety or general welfare and will or will not promote the original purposes of the Zoning Ordinance; and

(b) The proposed amendment responds or does not respond to changed conditions, such as changes in public capital investments, road locations or functional classification, population trends, density, use or further studies that have been completed since adoption of the Zoning Ordinance; and

(c) The proposed amendment is or is not necessary in order to respond to State and/or Federal legislation; and

(d) The proposed amendment provides or does not provide additional flexibility in meeting the objectives of this Zoning Ordinance without lowering the standards of the Zoning Ordinance; and

(e) The proposed amendment is or is not in substantial compliance with the City’s Comprehensive Plan or other City Master Plan; and

(f) The proposed amendment will or will not adversely affect the implementation of the goals and policies of
the City’s Comprehensive Plan or other City Master Plan; and

(g) The proposed amendment is justified in order to correct a mistake in the Official Zoning Map or the text of the Zoning Ordinance; and

(h) The proposed amendment is justified in order to respond to changes in the City’s Comprehensive Plan or other City Master Plan including, but not limited to, changes in land use assumptions, surrounding uses, population forecasts, rates of land consumption, anticipated community needs or other factors.

According to Zoning Ordinance Sec. 56-150(b)(4)(f): The proposed amendment will or will not adversely affect the implementation of the goals and policies of the City’s Comprehensive Plan or other City Master Plan.

Comprehensive Plan: Strategy 2030 goals and policies that are applicable to this request are:

Chapter 3: Land Use

Goal 1: The City of Carlsbad will adopt policies to support the Infill/Redevelopment Land Use Scenario.

Goal 2: The City of Carlsbad will make efficient use of government resources through well-planned land use decisions.

Goal 4: The City of Carlsbad will strive to create an aesthetically pleasing built environment.

Goal 5: The City of Carlsbad will ensure that land use does not negatively impact the city’s environmental resources.

Chapter 5: Economic Development

Goal 4: Improve the appearance of Carlsbad.

Goal 6: Support the efforts and expansion of existing major industries, such as potash mining, oil and gas drilling, and nuclear waste disposal.

PLANNING AND ZONING COMMISSION RECOMMENDATION: Based on review of the application and staff comments, at their meeting on January 9, 2017, the Planning and Zoning Commission considered this item and recommended approval with a vote of five (5) in favor, none (0) against, and none (0) absent.

DEPARTMENT RECOMMENDATION (please check):

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<th>Department</th>
<th>Approval</th>
<th>Denial</th>
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<td>Building &amp; Regulation Division</td>
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<tr>
<td>Culture &amp; Rec. Dept.</td>
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<td></td>
<td></td>
<td>Carlsbad Irrigation District</td>
<td>x</td>
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</tbody>
</table>

DEPARTMENT COMMENTS:

Public Works: No comments.

Utilities Department: 1121 Center Ave - In regards to all listed address on Center - Property Owner or developer would be responsible for extending any water and sewer lines necessary to property. No problems with actual annexation or zone change.

Building Department: No comments.

Fire Department: No comments.

Code Enforcement: No comments.

Legal Department: No comments.

Planning Department: See above.
Police Department: E. Center - Zone Change - NA to R-R - Approved: Reviewed; No additional comments.

Culture & Rec. Dept.: No comments.

City Engineer: N/A

Carlsbad Irrigation District: CID neither supports nor objects to this application since it does not affect our operations.

City Administration: No comments.

BOARD/COMMISSION/COMMITTEE ACTION:

- ☑ P&Z ☐ Lodgers Tax Board ☐ Cemetery Board ☑ APPROVED
- ☐ Museum Board ☐ San Jose Board ☐ Water Board ☐ DISSAPPROVED
- ☐ Library Board ☐ N. Mesa Board ☐ __________ Committee

Reviewed by
City Administrator /s/ Stephanie Shumsky Date: 3-10-2017

ATTACHMENTS: Application materials, Ordinance, P & Z Minutes.
ORDINANCE NO. 2017-____

AN ORDINANCE ESTABLISHING "R-R" RURAL RESIDENTIAL DISTRICT IN CONJUNCTION WITH THE ANNEXATION OF APPROXIMATELY 15.59 ACRES OF PROPERTY, LOCATED ALONG CENTER AVENUE, LEGALLY DESCRIBED AS THE WEST 135 FEET OF LOT 19, BLOCK A, HALL’S SUBDIVISION LESS THE SOUTH 100 FEET AND LESS THE NORTH 445 FEET (4.60 ACRES), LOT 17, BLOCK A, HALL’S SUBDIVISION LESS THE SOUTH 150 FEET OF THE EAST 50 FEET AS DESCRIBED (0.26 ACRES), LOT 18, BLOCK B, HALL SUBDIVISION (4.80 ACRES), LOTS 32 AND 33, FUSON LAND DIVISION (4.78 ACRES), PART OF JASMINE STREET (0.12 ACRES), PART OF CENTER AVENUE (1.03 ACRES), PURSUANT TO SECTION 3-21-1 ET. SEQ. NMSA 1978 AND SECTIONS 56-150(B) AND 56-140(I), CARLSBAD CODE OF ORDINANCES.

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

The official zoning map of the City is hereby amended to establish “R-R” Rural Residential District for approximately 15.59 acres of property, located along Center Ave., Carlsbad, NM, legally described as:

THE WEST 135 FEET OF LOT 19, BLOCK A, HALL’S SUBDIVISION LESS THE SOUTH 100 FEET AND LESS THE NORTH 445 FEET (4.60 ACRES), LOT 17, BLOCK A, HALL’S SUBDIVISION LESS THE SOUTH 150 FEET OF THE EAST 50 FEET AS DESCRIBED (0.26 ACRES), LOT 18, BLOCK B, HALL SUBDIVISION (4.80 ACRES), LOTS
32 AND 33, FUSON LAND DIVISION (4.78 ACRES), PART OF JASMINE STREET (0.12 ACRES), PART OF CENTER AVENUE (1.03 ACRES)

INTRODUCED, PASSED, ADOPTED AND APPROVED this 14th day of March, 2017.

__________________________________
DALE JANWAY, MAYOR

ATTEST:

__________________________________
CITY CLERK
0:00:00 Call Meeting to Order

0:00:03 Invocation – Pledge of Allegiance

0:00:33 1. APPROVAL OF AGENDA

0:00:35 Motion
The motion was made by Councilor Rodriguez and seconded by Councilor Shirley to approve the Agenda
0:00:39  **Vote**  
The vote was as follows: Yes - Doporto, Doss, Rodriguez, Carter, Anaya Flores;  No - None; Absent - Estrada; The motion carried.

0:01:00  **Mayor Pro Tem Doss** asked Mr. McCutcheon to join him in presenting service awards honoring employees who have achieved 20, 25, 30 and 35 years of service with the City of Carlsbad. **Mayor Pro Tem Doss** added the City of Carlsbad has outstanding employees and we are proud of each one of you.

0:06:22  **2. ROUTINE AND REGULAR BUSINESS**
A. Minutes of the Regular City Council Meeting Held on January 24, 2017  
B. Minutes of the Special City Council Meeting Held on January 26, 2017  
C. City Personnel Report  
D. Purchasing:
   1) Consider approval to Advertise Request for Proposals for General Engineering Services for Airport Improvement Projects for the Cavern City Air Terminal  
   2) Consider approval to Award Bid No. 2016-34, to White Cloud Pipeline Construction for Sheep Draw Well No. 6, Replacement  
   3) Consider approval to Award RFP to Souder, Miller & Associates for Professional Design Services for the Dark Canyon Bridge Project  
   4) Consider approval to Purchase from AK Sales and Consulting through a CES Contract; Portable Stage Lighting & Equipment for the Cavern Theater  
E. Monthly Reports:
   1) Municipal Court Monthly Report, January 2017  
   2) Personnel Department Monthly Report, January 2017  
F. Board Appointments:
   1) Carlsbad Museum and Arts Center Advisory Board: K.C. Sparks, remainder of 5-year term  
G. Contracts and Agreements:
   1) Consider approval of Agreement between the City of Carlsbad and Southeastern NM Economic Development District/Council of Governments for Fiscal Agent Services  
   2) Consider approval of Agreement between the City of Carlsbad and the Carlsbad Municipal Schools for FY 2016-2017, for provision services  
   3) Consider approval of Agreement between the City of Carlsbad and the Carlsbad Little Girls Softball League for League Services at the Bob Forrest Youth Sports Complex  

0:07:00  **Mayor Pro Tem Doss** asked Mr. McCutcheon to discuss Item D.4 Consider approval to Purchase from AK Sales and Consulting through a CES Contract; Portable Stage Lighting & Equipment for the Cavern Theater.  
**Mr. McCutcheon** explained this item is to request approval of a CES Contract from AK Sales for a Portable Stage, Lighting and Equipment. He said the wording on the Agenda is a little misleading. He explained the staging is not specifically for the Cavern
Theater the staging is portable and the intention of the City is to use the equipment at other City sponsored events to create a more professional appearance.

Councilor Shirley asked if Item D.4 could be moved from the consent agenda to be voted on, on its own merit. Mayor Pro Tem Doss said Item D.4 would be moved to Item No. 11.

0:08:24 Motion
The motion was made by Councilor Shirley and seconded by Councilor Doporto to approve Routine and Regular Business

0:08:31 Vote
The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - None; Absent - None; The motion carried.

0:09:15 3. PRESENTATION BY THE PECOS VALLEY DRUG TASK FORCE
Chief Waller said the Pecos Valley Drug Task Force is present to inform the Council on what the Task Force does and what the HIDTA initiative is in this area and how it affects us. He introduced Commander James McCormick to give the presentation.

0:10:27 Commander James A. McCormick’s presentation reviewed the following:
- Executive Board
- HIDTA (High Intensity Drug Trafficking Area)
  - Established in 1990
  - 16 Counties in NM
  - Executive Committee
  - Funding Levels
- PVDTF Trends
  - Cases per year
  - Firearms Seizures
  - Meth Seizures
  - Cocaine Seizures
  - Heroin Seizures
  - Marijuana Seizures
  - Majority of PVDTF cases are in Carlsbad
  - Multi-billion dollar industry
- Narcotics Smuggling Routes
- Dangers, Threats
- Facebook Page/Crime stoppers

Mayor Pro Tem Doss thanked Commander McCormick for all of the hard work.
Chief Waller added the backbone of the operation is made up of the personnel provided through the City of Carlsbad, City of Artesia, and Eddy County.

Commander McCormick said all of the PVDTF agents are cross commissioned and have some federal authority when working cases.

0:34:21 4. CONSIDER APPROVAL TO ADOPT THE STATEWIDE AMBULANCE TARIFF SET BY THE NM PUBLIC REGULATIONS COMMISSION

Mr. McCutcheon explained this is a process to set Statewide Ambulance Tariffs. He said traditionally the city adopts the tariff and staff recommends approval.

0:34:59 Motion
The motion was made by Councilor Doporto and seconded by Councilor Anaya Flores to approve to adopt the Statewide Ambulance Tariff set by the NM Public Regulations Commission

0:35:06 Vote
The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:35:19 5. CONSIDER APPROVAL OF RESOLUTION NO. 2017-04, A RESOLUTION DECLARING CERTAIN CITY PROPERTY UNUSABLE OR OBSOLETE

Mr. McCutcheon explained this is the standard Resolution for following statute to dispose of obsolete and unusable City property.

0:35:58 Motion
The motion was made by Councilor Shirley and seconded by Councilor Doporto to approve Resolution No. 2017-04, a Resolution Declaring Certain City Property Unusable or Obsolete

0:36:05 Vote
The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:36:17 6. CONSIDER APPROVAL OF RESOLUTION NO. 2017-5, A RESOLUTION FOR PARTICIPATION WITH THE NM DEPARTMENT OF TRANSPORTATION, CAPITAL OUTLAY PROGRAM FOR THE 2015 CAPITAL OUTLAY LEGISLATIVE GRANT FOR SAN JOSE BOULEVARD, PHASE 5

Mr. McCutcheon explained this is a small grant the City was approved to assist with San Jose Blvd. He said staff is recommending approval to accept the grant.
Motion
The motion was made by Councilor Anaya Flores and seconded by Councilor Rodriguez to approve Resolution No. 2017-05, a Resolution for participation with the NM Department of Transportation, Capital Outlay Program for the 2015 Capital Outlay Legislative Grant for San Jose Boulevard, Phase 5.

Vote
The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - None; Absent - None; The motion carried.

Consider Approval of Ordinance No. 2017-03

Mr. Patterson explained this item is a petition for annexation for approximately 15.59 acres located along Center Avenue. He said the applicant has fulfilled the requirements for the annexation. He said the Planning and Zoning Commission heard the request at the January 9, 2017 meeting and recommended approval.

Councilor Doporto asked if the applicant is requesting rural residential zoning. Mr. Patterson said yes if the annexation is approved he is requesting rural residential zoning.

Public Hearing

Mayor Pro Tem Doss asked if anyone would like to speak in favor of the Ordinance to please come forward.

Mr. McCullough said he is the applicant and is in favor of the annexation because he would like to have City water.

Mayor Pro Tem Doss asked if the water would be used for commercial or residential. Mr. McCullough said he is not sure yet.

Mayor Pro Tem Doss asked if anyone would like to speak against the Ordinance.

Mr. Tom Martin, representing Otis water users, said Otis water users have over the years borrowed money from the USDA for their operations and system. He explained Otis has had to pledge their entire system as well as their customers as security to meet...
the obligations to the USDA. He said this obligation is ongoing of Otis water users. He said this proposed annexation will take in a portion of the Otis system and pick up one if not more customers which could result in a violation of the security agreements with the USDA. He said ultimately the annexation could be treated as a default which could open issues for Otis and for the City of Carlsbad. He said the City and Otis need to discuss and recommends tabling to a later date to allow time for discussion. He said the issue is of critical importance to Otis water users and the City of Carlsbad.

0:44:23 Mayor Pro Tem Doss asked if anyone would like to speak regarding the Ordinance. No one appeared and the Mayor Pro Tem declared the public hearing closed and reconvened the Council in regular session.

0:44:37 B. Consider Ordinance No. 2017-03

0:44:37 Motion to Table
The motion was made by Councilor Carter and seconded by Councilor Estrada to table approval of Ordinance No. 2017-03, an Ordinance annexing a portion of land containing 15.59 acres more or less, contiguous to the City of Carlsbad, New Mexico, located along Center Avenue, legally described as the West 135' of Lot 19, Block A, Hall Subdivision, less the South 100' and less the North 445', Lot 17, Block A, Hall Subdivision, less the South 150' of the East 50' described as Lot 18, Block B, Hall Subdivision, Lots 32 and 33, Fuson Land Division, part of Jasmine Street, part of Center Avenue, pursuant to the Petition Method provided for in Sec. 3-7-1 et. seq., NMSA 1978; Applicant: Phillip McCullough till March 14, 2017.

0:44:55 Vote
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - Doporto; Absent- None; The motion carried.

0:45:34 8. CONSIDER APPROVAL OF ORDINANCE NO. 2017-04, AN ORDINANCE ESTABLISHING “R-R” RURAL RESIDENTIAL DISTRICT IN CONJUNCTION WITH THE ANNEXATION OF APPROXIMATELY 15.59 ACRES OF PROPERTY, LOCATED ALONG CENTER AVENUE; APPLICANT: PHILLIP MCCULLOUGH

Mayor Pro Tem explained because Item No. 7 was tabled Item No. 8 cannot be acted on.

0:45:56 Motion to Table
The motion was made by Councilor Carter and seconded by Councilor Shirley to table approval of Ordinance No. 2017-04, an Ordinance establishing "R-R" Rural Residential District in conjunction with the Annexation of approximately 15.59 acres of property, located along Center Avenue; Applicant: Phillip McCullough till March 14, 2017
0:46:10  **Vote**
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - Doporto; Absent- None; The motion carried.

0:46:26  **9. CONSIDER APPROVAL OF ORDINANCE NO. 2017-05, AN ORDINANCE REZONING PART OF “R-R” RURAL RESIDENTIAL DISTRICT TO “C-2” COMMERCIAL DISTRICT FOR AN APPROXIMATELY 2.90 ACRES LOCATED AT 4100 NATIONAL PARKS HIGHWAY; OWNER: MARIA KNITTEL**

**Mr. Patterson** explained this request is for a zone change. He said the property is 2.9 acres with a portion of the property zoned "C-2" and the other portion is zoned "R-R". He explained the applicant would like to apply "C-2" zoning to the entirety of the property. He said the Planning and Zoning Commission recommend approval.

0:48:15  **A. Public Hearing**

0:48:17  **Mayor Pro Tem Doss** asked if anyone would like to speak in favor of the Ordinance. **Ms. Knittel** said the property has two commercial buildings and she is asking for approval.

0:48:42  **Mayor Pro Tem Doss** asked if anyone would like to speak regarding the Ordinance. No one appeared and the Mayor Pro Tem declared the public hearing closed and reconvened the Council in regular session.

0:48:59  **B. Consider Ordinance No. 2017-05**

0:49:01  **Motion**
The motion was made by Councilor Carter and seconded by Councilor Estrada to approve Ordinance No. 2017-05, an Ordinance rezoning part of "R-R" Rural Residential District to "C-2" Commercial District for an approximately 2.90 acres located at 4100 National Parks Highway; Owner: Maria Knittel

0:49:06  **Vote**
The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

0:49:21  **10. CONSIDER APPROVAL OF ORDINANCE NO. 2017-06, AN ORDINANCE REZONING PART OF “R-R” RURAL RESIDENTIAL DISTRICT TO “C-2” COMMERCIAL DISTRICT FOR AN APPROXIMATELY 3.43 ACRE PROPERTY LOCATED AT 4208 NATIONAL PARKS HIGHWAY; OWNER: MARIA KNITTEL**

**Mr. Patterson** said this item is similar to the previous item and is the same applicant. He explained the applicant is requesting that "C-2" zoning be applied to the entirety of her property.
A. Public Hearing

Mayor Pro Tem Doss asked if anyone would like to speak in favor of the Ordinance. Ms. Knittel said she is requesting approval for the zone change.

Mayor Pro Tem Doss asked if anyone would like to speak regarding the Ordinance. No one appeared and the Mayor Pro Tem declared the public hearing closed and reconvened the Council in regular session.

B. CONSIDER ORDINANCE NO. 2017-06

Motion
The motion was made by Councilor Rodriguez and seconded by Councilor Shirley to approve Ordinance No. 2017-06, an Ordinance Rezoning Park of "R-R" Rural Residential District to "C-2" Commercial District for an approximately 3.43 Acre property located at 4208 National Parks Highway; Owner: Maria Knittel

Vote
The vote was as follows: Yes - Doporto, Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - None; Absent- None; The motion carried.

11. CONSIDER APPROVAL TO PURCHASE FROM AK SALES AND CONSULTING THROUGH A CES CONTRACT PORTABLE STAGE LIGHTING & EQUIPMENT FOR THE CAVERN THEATER

Councilor Shirley said it appears to him to be a portable stage to be used at multiple locations, with the lighting being permanently installed at the Cavern Theater. Ms. Jackson-Christopher said the entire set up is what you would typically see at a street concert. She said the entire rigging including the lighting, back drapery, and the stage is all portable.

Councilor Shirley said he would like to ensure that the equipment is going to be used at events other than the Cavern Theater.

Mr. McCutcheon said the money to purchase will come out of the general fund. He added if the equipment had not had support for use in other places, staff would not have been able to purchase the equipment.

Motion
The motion was made by Councilor Shirley and seconded by Councilor Rodriguez to approve the purchase from AK Sales and Consulting through a CES Contract; Portable Stage, Lighting & Equipment to be used at City events.
0:55:26  **Vote**
The vote was as follows: Yes - Doss, Estrada, Rodriguez, Carter, Anaya Flores; No - Doporto; Absent- None; The motion carried.

0:55:52  **12. COUNCIL COMMITTEE REPORTS**
**Mayor Pro Tem Doss** said he attended the Bat Brigade, State Legislature trip. He added that he, Councilor Carter, and Councilor Shirley went back to Santa Fe to attend hearings on the house bill for the Brine well problem. He said the trip went very well and next week there will be a group from Carlsbad visiting Washington, DC to meet with FEMA. He said they would like to discuss fixing the problem rather than waiting for it to sink.

0:58:04  **13. ADJOURN**
There being no further business, the meeting was adjourned at 6:59 p.m.

__________________________________________________________

Mayor

ATTEST:

__________________________________________________________

City Clerk
MINUTES OF THE REGULAR MEETING OF THE

City of Carlsbad
Planning & Zoning Commission

January 9, 2017, at 5:00 p.m.

Meeting Held in the Annex Planning Room
114 S. Halagueno
1. Roll call of voting members and determination of quorum.
2. Approval of Agenda.
3. Approval of Minutes from Special Meeting held December 12, 2016.
4. Consider a recommendation for a Zone Change from “C-2” Commercial District/“R-R” Rural Residential to “C-2” Commercial District at 4100 & 4208 National Parks Hwy., legally described as Tract 2, Garringer Land Division and Tract A, Knittel Land Division.
5. Consider a Conditional Use Permit for a new Communications Tower at 5308 National Parks Hwy.
6. Consider an Appeal (Variance) for a fall radius less than the required 105% for a new Communications Tower located at 603 W. Cherry Ln.
7. Consider a Conditional Use Permit for a new Communications Tower at 603 W. Cherry Ln.
8. Consider a Conditional Use Permit at 4100 National Parks Hwy. for incidental welding as part of General Contracting, legally described as Tract 2, Garringer Land Division.
9. Consider Preliminary/Final subdivision plat for Hargiss Subdivision Replat #1, located at the corner of Elgin Rd. and Cowboy Country Rd. creating 6 new residential building lots.
10. Consider an Appeal (variance) for Hargiss Subdivision Replat #1 to allow no curb and gutter and no sidewalks to be installed along Elgin Rd. and Cowboy Country Rd. as part of the Hargiss Subdivision Replat #1 development.
11. Consider a final plat for Freedom Way Subdivision located at the corner of W. McKay St. and N. Elm Street.
12. Consider a recommendation to the Carlsbad City Council concerning a petition for Annexation of properties along Center Ave., approximately 15.59 acres.
13. Consider an application of Zoning (R-R Rural Residential) for Properties along Center Ave.
14. Consider a Final Plat regarding the donation of right-of-way along S. 14th St.
15. Consider an Appeal (variance) to allow a carport to be placed in the required front setback at 3317 Kuykendall St.
17. Adjourn.

If you require hearing interpreters, language interpreters, auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator's offices at (575) 887-1191 at least 48 hours prior to the scheduled meeting.
MINUTES OF A REGULAR MEETING OF THE CITY OF CARLSBAD PLANNING &
ZONING COMMISSION HELD IN THE MUNICIPAL ANNEX PLANNING ROOM, 114 S.
HALAGUENO STREET, JANUARY 9, 2017, AT 5:00 P.M.

VOTING MEMBERS PRESENT:
  JAMES KNOTT  CHAIRPERSON
  JAMES MCCORMICK  COMMISSION SECRETARY
  BRIGIDO GARCIA  COMMISSIONER
  WANDA DURHAM  COMMISSIONER
  LASON BARNEY  COMMISSIONER

VOTING MEMBERS ABSENT:  NONE

EX-OFFICIO MEMBERS PRESENT:
  JEFF PATTERSON  PLANNING DIRECTOR
  GEORGIA GOAD  PLANNING DEPUTY DIRECTOR
  MICHAEL HERNANDEZ  DIRECTOR OF UTILITIES

SECRETARY PRESENT:
  PATTIE PISTOLE  PLANNING, ENGINEERING
  AND REGULATION DEPARTMENT
  SECRETARY

OTHERS PRESENT:
  ERIC ROBINSON  3317 KUYKENDALL
  DAVID L. O’DELL  LOS RANCHOS, NM
  CHRISSY ROBINSON  3317 KUYKENDALL
  ANNE-MARIE (AMY) MCKENZIE  ALBUQUERQUE, NM
  PHILIP D. MCCULLOUGH  1016 CENTER
  NICOLE RAGAIN  1001 ELGIN ROAD
  EUGENE QUIONZON  1001 ELGIN ROAD
  MIKE MOE  4100 NATIONAL PARKS HWY
  GEORGE DUNAGAN  212 W STEVENS
  FRED TOOTHMAN  1713 SANDY LANE
  DON SCHLOSSER  2017 JASMINE STREET
  JIMMIE KEENE  2017 JASMINE STREET
  KENT THURSTON  LAS CRUCES
  RICK THURSTON  LAS CRUCES
  KEN THURSTON  LAS CRUCES
  DAN REDDY  904 N GUADALUPE
  JEFF MCLEAN  1107 N SHORE DRIVE
  MARIA KNITTEL  1107 N SHORE DRIVE
  GARY PROCTOR  3319 KUYKENDALL

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

0:00:00  Start Recording [5:00:25 PM]

0:00:03  1. Roll call of Voting Members and Determination of Quorum.
Roll was called, confirming the presence of a quorum of commission members. The following members were present—Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Garcia; Absent–Mr. Barney. (Mr. Barney arrived at 5:01 and was present for the remainder of the meeting.)

0:00:28  

2. Approval of Agenda.

Mr. McCormick made a motion to approve the Agenda, and Ms. Durham seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Garcia; No–None; Abstained–None; Absent–Mr. Barney. The motion carried. (Mr. Barney arrived at 5:01 and was present for the remainder of the meeting.)

0:01:04  

3. Approval of Minutes from Meeting held December 12, 2016.

Ms. Durham made a motion to approve the Minutes, and Mr. Barney seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

0:02:01  

4. Consider a recommendation for a Zone Change from “C-2” Commercial District/“R-R” Rural Residential to “C-2” Commercial District at 4100 & 4208 National Parks Hwy., legally described as Tract 2, Garringer Land Division and Tract A, Knittel Land Division.

Mr. McLean and Ms. Knittel were present to ask for the Zone Change. Mr. Patterson explained that part of the property is C-2 already, and that it fits with the area. Staff recommended approval. There was no public comment.

Ms. Durham made a motion to recommend approval of the Zone Change. Mr. Garcia seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

0:07:06  

5. Consider a Conditional Use Permit for a new Communications Tower at 5308 National Parks Hwy.

Ms. McKenzie attended to represent Verizon. Mr. Patterson stated that there was documentation stating that there would be no hazard to air navigation at this location. Staff recommended approval. Ms. McKenzie explained that the tower is needed to improve coverage and capacity in the area. In answer to a question, she stated that other companies would be able to co-locate on this tower, so it would cut down on the number of towers needed in the area. There was no public comment.

Mr. McCormick made a motion to approve the Conditional Use. Mr. Barney seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

0:15:22  

6. Consider an Appeal (Variance) for a fall radius less than the required 105% for a new Communications Tower located at 603 W. Cherry Ln.
Ms. McKenzie represented Verizon. Mr. Patterson stated that the tower has a 50’ fall radius and is designed to be partially collapsible, so that it would collapse vertically. It would break at 45’ and fall within the property line. Staff recommended approval. Ms. McKenzie added that it is designed to look like a pine tree for stealth coverage, which is more appealing for the area. There is spotty coverage in the area, and the tower will improve coverage and capacity.

During public comment, Mr. Toothman expressed his opposition to a tower being in a residential area. He did not think it would look like a pine tree. Ms. Goad explained that there is actually a safety factor involved. Many people are now using cell phones exclusively, and E911 is trying to find ways to extend coverage for emergency calls.

Ms. Durham made a motion to approve the Variance. Mr. McCormick seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott; No–Mr. Barney, Mr. Garcia; Abstained–None; Absent–None. The motion carried.

Mr. Patterson explained the appeal process to Mr. Toothman—he would need to send him a letter or e-mail within 15 days to be scheduled to appear before the City Council, if he wished to appeal the decision.

0:36:34 7. Consider a Conditional Use Permit for a new Communications Tower at 603 W. Cherry Ln.

This item regards the tower previously discussed in Item 6. There was no public comment.

Mr. Barney made a motion to approve the Conditional Use on the condition that the plat was approved. Ms. Durham seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney; No–Mr. Garcia; Abstained–None; Absent–None. The motion carried.

Mr. Patterson explained the appeal process again—sending a letter or e-mail within 15 days to be scheduled to appear before the City Council, if anyone wished to do so.

0:39:30 8. Consider a Conditional Use Permit at 4100 National Parks Hwy. for incidental welding as part of General Contracting, legally described as Tract 2, Garringer Land Division.

Mr. Dunagan and Mr. Moe came forward to discuss the Conditional Use. Mr. Patterson said the applicant wants to cover all his bases to make sure any incidental welding would be allowed. The property is zoned for commercial use, and Staff recommended approval with conditions. Mr. Moe explained that they only want to do maintenance welding and testing of welders; they have no intention of doing any fabrication. There was no public comment.

Mr. Garcia made a motion to approve the Conditional Use. Mr. McCormick seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

0:44:58 9. Consider Preliminary/Final subdivision plat for Hargiss Subdivision Replat #1, located at the corner of Elgin Rd. and Cowboy Country Rd. creating 6 new residential building lots.
Mr. Thurston attended to answer any questions regarding the application. Mr. Patterson explained that streets and sidewalks are normally required when property is split into this many lots. However, utility lines are already in place. Laterals will just need to be run to the lots created. Staff recommended approval, if all the requirements from Public Works and Engineering are addressed, and if the Variance for no sidewalks and gutters is approved. It was discussed that technically one of the lots already exists, so five lots are being created. Mr. Thurston wanted clarification regarding setbacks. He was in agreement with the recommendation. There was no public comment.

Mr. McCormick made a motion to approve the Preliminary/Final Plat with conditions stated and setbacks discussed (30 feet in the front, 5 feet on the sides). Also, plans for water and sewer must be provided. Ms. Durham seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

1:25:30 11. Consider a final plat for Freedom Way Subdivision located at the corner of W. McKay St. and N. Elm Street.

David O’Dell came forward to present the application. Mr. Patterson said that Planning Staff recommended approval, pending a walk-through. Utilities and Public Works need to approve it. Mr. O’Dell said he followed all the City requirements. There was no public comment.

Mr. McCormick made a motion to approve the Final Plat with recommendations listed in Staff comments and with proof of testing. Ms. Durham seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

1:34:04 12. Consider a recommendation to the Carlsbad City Council concerning a petition for Annexation of properties along Center Ave., approximately 15.59 acres.
Mr. McCullough and Mr. Reddy answered questions regarding the application. Ms. Goad explained that the applicant owns property on both sides of Center. His home is in the City limits, so he wants to annex the remainder of his property where he has a nursery. Mr. McCullough agreed that he wants to annex his property to get City water. During public comment, Mr. Keene wanted to know how it would affect his property. It was explained to him that this issue only pertained to the property owned by Mr. McCullough.

Mr. Barney made a motion to recommend approval of the Annexation. Mr. Garcia seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

1:51:22 13. Consider an application of Zoning (R-R Rural Residential) for Properties along Center Ave.

Because the property, which was discussed in the previous item, may be annexed into the City, zoning needed to be assigned.

Mr. McCormick made a motion to recommend approval of the Zone Change. Mr. Garcia seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

1:52:56 14. Consider a Final Plat regarding the donation of right-of-way along S. 14th St.

The City was the applicant for this issue. There was no public comment.

Ms. Durham made a motion to approve the Final Plat. Mr. Barney seconded the motion. The vote was as follows: Yes–Mr. McCormick, Ms. Durham, Mr. Knott, Mr. Barney, Mr. Garcia; No–None; Abstained–None; Absent–None. The motion carried.

1:58:32 15. Consider an Appeal (variance) to allow a carport to be placed in the required front set-back at 3317 Kuykendall St.

Mr. and Mrs. Robinson were the applicants for this request. Mr. Patterson explained that they want a setback of 5½ feet in the front, rather than 30 feet, because they have built a carport there without getting a building permit. Staff recommended denial. Since this is a corner lot, setbacks would be 30 feet on both sides facing streets. He said that amendments to the City Ordinance were submitted in October, which proposed carports be allowed in setbacks without having to get variances. The Council struck that part from the amendments to the Ordinance, so that variances are still required for carports in the setback. Ms. Robinson asked that they be allowed to keep the carport, since it cost over $1,000, was not obstructing, and is not a safety factor. The Robinsons said that the installer put up the carport before they had a chance to get a permit. During public comment, their neighbor Mr. Proctor stated that he had no problem with it staying. He is in favor of a variance.

Mr. McCormick made a motion to approve the Variance, provided the sides stay open and all other Building Code requirements are followed. The motion died for lack of a second.
Mr. Barney made a motion to deny the Variance. Mr. Garcia seconded the motion. The vote to deny was as follows: Yes–Ms. Durham, Mr. Barney, Mr. Garcia; No–Mr. McCormick, Mr. Knott; Abstained–None; Absent–None. The motion carried to deny the Variance.

It was explained that to appeal the decision, the applicant needs to send a letter or e-mail to Mr. Patterson within 15 days. Then he would schedule the matter to go before City Council. He also suggested calling to talk to Mr. Cass.


There was brief discussion of the plats signed by the commission designees during the previous month.


There being no further business, the meeting was adjourned.

2:32:21  Stop Recording [7:32:45 PM]
ZONING CHANGE APPLICATION

Sec. 56-150(b)

PROCESS FOR ACCEPTANCE AND REVIEW
OF PLANNING AND ZONING COMMISSION MATTERS

1. The Planning and Zoning Commission's regularly scheduled meetings are on the FIRST MONDAY OF THE MONTH. Applicant should obtain an Application Packet for the particular type of request (Zone Change, Subdivision, Variance, Annexation, Conditional Use, etc.) from the City of Carlsbad, Planning, Engineering, and Regulation Office.

2. Applicant must submit a completed Application to the Planning, Engineering, and Regulation Office on, or before, the FIRST FRIDAY OF THE MONTH prior to the desired Commission meeting. The minimum application packet submittal is one (1) copy of the Application with original signatures and all required supporting documents. A letter of explanation or clarification may also be provided. The required non-refundable application fee is due with submittal of the application.

The desired maximum size for all documents is 11"x17". However, if the applicant wishes to support his or her application with larger size documents, an original and fifteen (15) copies need to be provided. Separate arrangements for copying these large documents may be possible, but will incur additional costs.

3. The Planning, Engineering, and Regulation Office will give the Application an initial cursory review. If deficiencies or questions are noted, the Applicant will be advised and provided an opportunity to supplement the Application. If the Applicant fails to complete and resubmit the application prior to the above deadline, the matter will not be heard until the next subsequent Commission meeting. The original application fee will be retained and will suffice for the specific original application for a period of 90-days from the date of the original application.

4. Applications appearing complete will be set for full evaluation by City Staff prior to the Commission meeting. The purpose of this evaluation is to develop and provide a full briefing report for the Commission. Applicants will be advised of deficiencies noted during this review and will be afforded opportunity to supplement their application during their presentation to the Commission, if they so desire.
ADDITIONAL PROCEDURAL REQUIREMENTS FOR ZONING CHANGES:

1) **PRESENCE AT MEETING:** The Planning and Zoning Commission will vote to recommend to the City Council approval or denial of request. Applicant or his/her representative must be present to address any questions that Planning and Zoning Commissioners may have.

2) **CITY COUNCIL SETS A HEARING DATE:** After the Planning and Zoning Commission has made a recommendation on the request, the City Council (at their next regular meeting) will set a date for a public hearing. The date will be set for a regularly scheduled City Council meeting a minimum of 30 days from that date. A “notice of public hearing” is published in the Current Argus at least 30 days prior to the hearing.

3) **NOTIFICATION:** The applicant shall mail notice of the Planning and Zoning Commission meeting, via certified mail, to all property owners within one-hundred feet (100’) of the subject site. Evidence of such notification shall be provided with the application. In addition, the applicant shall post a sign, provided by the City, at the property at least 5 days prior to the public hearing. At least fifteen (15) days prior to the City Council hearing, the City will notify adjacent property owners within 100’ of the subject property via first-class mail for properties greater than one (1) block in size, or via certified mail for properties one (1) block or less in size. The notification will include a description of the request, applicant’s information, legal description of subject property, and the date of the hearing.

4) **PUBLIC HEARING:** The Public Hearing will be held during a regularly scheduled City Council meeting, and the applicant or his/her representative **MUST BE PRESENT** to address any questions that the Mayor or Council members may have.

5) **ZONING CHANGE IS FINAL:** If the City Council approves the zone change, the ordinance is published in the Current Argus. The change is considered final five (5) days after publication.
# ZONING CHANGE APPLICATION

**Sec. 56-150(b)**

**Application Date:** 10/18/2016  
**Fee Paid ($100.00):** \[\]  
**Proposed Zoning:** R-R

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<th>APPLICANT INFORMATION:</th>
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<tbody>
<tr>
<td><strong>NAME</strong></td>
<td><strong>ADDRESS</strong></td>
</tr>
<tr>
<td>PHILIP D. MACMULLOCH</td>
<td>1016 CENTER AVE</td>
</tr>
<tr>
<td>CARLSBAD, NM 88220</td>
<td>575-302-3714</td>
</tr>
<tr>
<td>EMAIL</td>
<td><a href="mailto:PHIL-LANDSCAPING@YAHOO.COM">PHIL-LANDSCAPING@YAHOO.COM</a></td>
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**PROPERTY OWNER INFORMATION** (attach separate sheet for multiple owners):

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
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**LEGAL DESCRIPTION AND/OR STREET ADDRESS OF PROPERTY** (INCLUDE A MEETS AND BOUNDS DESCRIPTION FOR UNPLATTED LAND, ATTACH SEPARATE SHEET, IF NECESSARY):

**SEE ATTACHED ALLOCATION PLAT**

---

* A signed affidavit from the property owner(s), consenting to submittal of the application, must be included with the application.
REASON FOR THE REQUEST
An amendment to the Official Zoning Map or to the Text of the Zoning Ordinance must be justified by one or more of the following. Check all that apply:

☐ The proposed amendment will not adversely impact the public health, safety or general welfare and will or will not promote the original purposes of the Zoning Ordinance.

☐ The proposed amendment responds to changed conditions, such as changes in public capital investments, road locations or functional classification, population trends, density, use or further studies that have been completed since adoption of the Zoning Ordinance.

☐ The proposed amendment is necessary in order to respond to State and/or Federal legislation.

☐ The proposed amendment provides additional flexibility in meeting the objectives of this Zoning Ordinance without lowering the standards of the Zoning Ordinance.

☐ The proposed amendment is in substantial compliance with the City's Comprehensive Plan or other City Master Plan.

☐ The proposed amendment will not adversely affect the implementation of the goals and policies of the City's Comprehensive Plan or other City Master Plan.

☐ The proposed amendment will correct a mistake in the Official Zoning Map or the text of the Zoning Ordinance.

☐ The proposed amendment is justified in order to respond to changes in the City's Comprehensive Plan or other City Master Plan including, but not limited to, changes in land use assumptions, surrounding uses, population forecasts, rates of land consumption, anticipated community needs or other factors.

---

FOR OFFICIAL USE ONLY

Required prior to P & Z:
Complete Application Including: □ Map □ Fee □ Letter □ Notification □ Sign Agreement

Required prior to City Council:
Council Hearing Date: ___________________ Publication Date: ___________________

Property Owner Notification Sent (within 100' minimum): ___________________

☐ ABM ☐ Staff Comments ☐ Application Packet ☐ Draft Ordinance ☐ P&Z Minutes

Council Action: ☐ Approved ☐ Denied ☐ Other Ordinance No.: ____________
CITY OF CARLSBAD
AFFIDAVIT BY PROPERTY OWNER(S)

IF AN APPLICATION IS MADE BY SOMEONE OTHER THAN THE PROPERTY OWNER THIS FORM MUST ACCOMPANY THE APPLICATION MATERIALS.

APPLICATION TYPE:
☐ ZONING CHANGE  ☐ CONDITIONAL USE  ☐ VARIANCE  ☐ TEMPORARY USE

I (WE) HEREBY CERTIFY that I am (we are) the owners of record of the property described as follows:

ADDRESS OF PROPERTY:  

LEGAL DESCRIPTION:  

I (WE) HAVE AUTHORIZED the following individuals to act as my (our) agent with regard to this application.

AGENT:  

I (WE) UNDERSTAND, CONCUR AND AFFIRM:

That this application may be approved, approved with conditions or denied and that, as the property owner, it is my responsibility to ensure that any conditions are complied with and to ensure that the property is maintained in a condition so as not to jeopardize the health, safety or welfare of others and that compliance with all applicable City ordinances is required, and

I (WE) HEREBY EXECUTE THIS AFFIDAVIT in support of the proposed application as presented:

OWNER 1:

BY:  

SIGNATURE  

NOTARY SEAL

DATE:  

DATE SIGNED

OWNER 2: (IF APPLICABLE)

BY:  

SIGNATURE  

NOTARY SEAL

DATE:  

DATE SIGNED

ADDITIONAL OWNERS: ATTACH SEPARATE SHEETS AS NECESSARY
NOTIFICATION SIGN
POSTING AGREEMENT

Notification of Public Hearings before the City of Carlsbad Planning and Zoning Commission is required pursuant to Sec. 56-140(i).

- Signs shall be posted a minimum of 5 days prior to and shall be removed a maximum of 5 days after the public hearing.
- If the sign is not posted as required, the application will be delayed and will not be considered at the public hearing as scheduled.
- The sign shall be posted at the street side property line with a secure stake provided by the applicant.

I have read and understand these requirements. I understand where the sign is to be located and my obligation to post the sign prior to the public hearing and remove it afterwards.

APPLICANT SIGNATURE

DATE

Sign issued by:
Staff Member

Notification Agreement Rev. 10/11
Dear Property Owner,

This letter serves as legal notification of a pending action before the City of Carlsbad Planning and Zoning Commission in accordance with Code of Ordinances Sec. 56-140(i). You are being notified because you are a property owner within one-hundred feet (100') of the subject site.

Applicant: PHILIP D. McCULLOUGH 1014 CENTER AVE. CARLSBAD, NM 88220

Subject Site Location: 1014, 1121, 1125, E 1127 W. CENTER AVE.

The proposed action is a:

☒ Zoning Change from N/A to R-R in accordance with Sec. 56-150(b).

☐ Variance/Appeal from Sec. ____________ in accordance with Sec. 56-150(c).

The purpose of the variance/appeal is:

☐ Conditional Use Permit in accordance with Sec. 56-150(f). The purpose of the permit is for a:

☐ Home Occupation: _________________

☐ Other Use: _________________

The Planning and Zoning Commission will consider this request at a Public Hearing on:

Date: JANUARY 9, 2017

Time: 5:00pm

Place: City Annex Planning Room
114 S. Halagueno St.
Carlsbad, NM 88220

The Code of Ordinances can be found on the City’s website www.cityofcarlsbadnm.com.

For details about this request contact the applicant OR contact the City Planner at 575-885-1185 or via email at jepatterson@cityofcarlsbadnm.com.

Sincerely,

Phil McCullough

Applicant/Agent
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ANNEXATION PLAT:
ORDINANCE NO. _______________________
RECORDED IN BOOK__________, PAGE______ EDDY COUNTY RECORDS.

PROPERTY TO BE ANNEXED
THE WEST 145 FEET OF LOT 19, BLOCK A HALL'S SUBDIVISION LESS THE SOUTH 160 FEET and LESS THE NORTH 445 FEET. 4.60 AC.
and
LOT 17, BLOCK A HALL'S SUBDIVISION LESS THE SOUTH 150 FEET OF THE EAST 50 FEET 0.26 AC.
and
LOT 18, BLOCK B HALL SUBDIVISION 4.80 AC.
and
LOTS 32 AND 33 FUSON LAND DIVISION PART OF JASMINE STREET 0.12 AC.
PART OF CENTER AVENUE 0.13 AC.
TOTAL ANNEXATION 15.59 AC.

I HEREBY CERTIFY THIS INSTRUMENT WAS FILED FOR RECORD ON THIS _______ DAY OF ________ 2017 AT ______ O'CLOCK ______ M., AND IS DUTY FILED IN CABINET______, SLIDE_______, OF THE RECORD OF MAPS OF SAID COUNTY.

ROBIN VAN NATTA — COUNTY CLERK

INDEXING INFORMATION FOR COUNTY CLERK
OWNER — PHILIP McCULLOUGH
SECTION 17, T32R, R27E
6.66 ACRES IN HALL ADDITION AND 4.78 ACRES IN FUSON LAND DIVISION
ALSO PUBLIC ROADS AS FOLLOWS:
PART OF JASMINE STREET 0.12 AC.
PART OF CENTER AVENUE 1.03 AC.

PLANNING COMMISSION APPROVAL

CHAIRMAN ___________________ SECRETARY ___________________

PLANNING COMMISSION APPROVAL
I HEREBY CERTIFY THIS PLAT HAS BEEN APPROVED AND ACCEPTED BY THE CITY OF CARLSBAD, COUNTY OF EDDY, STATE OF NEW MEXICO ON THE _______ DAY OF ________ 2017.

MAYOR ___________________

CERTIFICATION:
THIS IS TO CERTIFY THAT THE FOREGOING PLAT WAS MADE FROM PROPERTY DESCRIPTIONS OF RECORD, FILED WITH THE EDDY COUNTY, NEW MEXICO COUNTY CLERK'S OFFICE, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DAN R. REDDY
NEW MEXICO LICENSED PROFESSIONAL ENGINEER
401 W. GREENE ST./P.O. BOX 597
CARLSBAD, NM 88221-0597
(575) 887-6492 DECEMBER 7, 2016
PREPARED FOR: PHILIP McCULLOUGH

FINALLY, THE CITY OF CARLSBAD RECORDS THIS PLAT ON THE BOOK ____, PAGE ______.

RECORD, MEXICO COUNTY CLERKS
401 W. GREENE ST. / P.O. BOX 597
CARLSBAD, NM 88221-0597
(575) 887-6492 DECEMBER 7, 2016
PREPARED FOR: PHILIP McCULLOUGH

PROPERTY TO BE ANNEXED
THE WEST 145 FEET OF LOT 19, BLOCK A HALL'S SUBDIVISION LESS THE SOUTH 160 FEET and LESS THE NORTH 445 FEET. 4.60 AC.
and
LOT 17, BLOCK A HALL'S SUBDIVISION LESS THE SOUTH 150 FEET OF THE EAST 50 FEET 0.26 AC.
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PART OF JASMINE STREET 0.12 AC.
PART OF CENTER AVENUE 1.03 AC.

PLANNING COMMISSION APPROVAL

CHAIRMAN ___________________ SECRETARY ___________________

PLANNING COMMISSION APPROVAL
I HEREBY CERTIFY THIS PLAT HAS BEEN APPROVED AND ACCEPTED BY THE CITY OF CARLSBAD, COUNTY OF EDDY, STATE OF NEW MEXICO ON THE _______ DAY OF ________ 2017.

MAYOR ___________________

CERTIFICATION:
THIS IS TO CERTIFY THAT THE FOREGOING PLAT WAS MADE FROM PROPERTY DESCRIPTIONS OF RECORD, FILED WITH THE EDDY COUNTY, NEW MEXICO COUNTY CLERK'S OFFICE, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DAN R. REDDY
NEW MEXICO LICENSED PROFESSIONAL ENGINEER
401 W. GREENE ST./P.O. BOX 597
CARLSBAD, NM 88221-0597
(575) 887-6492 DECEMBER 7, 2016
PREPARED FOR: PHILIP McCULLOUGH

FINALLY, THE CITY OF CARLSBAD RECORDS THIS PLAT ON THE BOOK ____, PAGE ______.

RECORD, MEXICO COUNTY CLERKS
Council Committee Reports
ADJOURN
### New Business Registrations

<table>
<thead>
<tr>
<th>MONTH</th>
<th>15-16 Fiscal Year</th>
<th>16-17 Fiscal Year</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>July</td>
<td>35</td>
<td>21</td>
<td>-40%</td>
</tr>
<tr>
<td>August</td>
<td>31</td>
<td>37</td>
<td>+19%</td>
</tr>
<tr>
<td>September</td>
<td>34</td>
<td>42</td>
<td>+24%</td>
</tr>
<tr>
<td>October</td>
<td>25</td>
<td>25</td>
<td>0%</td>
</tr>
<tr>
<td>November</td>
<td>27</td>
<td>13</td>
<td>-52%</td>
</tr>
<tr>
<td>December</td>
<td>17</td>
<td>21</td>
<td>+24%</td>
</tr>
<tr>
<td>January</td>
<td>31</td>
<td>37</td>
<td>+19%</td>
</tr>
<tr>
<td>February</td>
<td>47</td>
<td>35</td>
<td>-26%</td>
</tr>
<tr>
<td>March</td>
<td>39</td>
<td></td>
<td></td>
</tr>
<tr>
<td>April</td>
<td>23</td>
<td></td>
<td></td>
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<tr>
<td>May</td>
<td>27</td>
<td></td>
<td></td>
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<tr>
<td>June</td>
<td>37</td>
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<tr>
<td>Year to Date</td>
<td>373</td>
<td>231</td>
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### Number of Building Permits

<table>
<thead>
<tr>
<th>MONTH</th>
<th>15-16 Fiscal Year</th>
<th>16-17 Fiscal Year</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>July</td>
<td>370</td>
<td>184</td>
<td>-50%</td>
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<tr>
<td>August</td>
<td>264</td>
<td>178</td>
<td>-33%</td>
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<tr>
<td>September</td>
<td>319</td>
<td>142</td>
<td>-55%</td>
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<tr>
<td>October</td>
<td>205</td>
<td>192</td>
<td>-6%</td>
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<tr>
<td>November</td>
<td>178</td>
<td>136</td>
<td>-24%</td>
</tr>
<tr>
<td>December</td>
<td>132</td>
<td>130</td>
<td>-2%</td>
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<tr>
<td>January</td>
<td>162</td>
<td>195</td>
<td>+20%</td>
</tr>
<tr>
<td>February</td>
<td>198</td>
<td>139</td>
<td>-30%</td>
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<tr>
<td>March</td>
<td>213</td>
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<tr>
<td>April</td>
<td>208</td>
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<td></td>
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<tr>
<td>May</td>
<td>174</td>
<td></td>
<td></td>
</tr>
<tr>
<td>June</td>
<td>265</td>
<td></td>
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<tr>
<td>Year to Date</td>
<td>2,688</td>
<td>1,296</td>
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### Valuation of Building Permits

<table>
<thead>
<tr>
<th>MONTH</th>
<th>15-16 Fiscal Year</th>
<th>16-17 Fiscal Year</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>July</td>
<td>$3,089,789</td>
<td>2,857,379</td>
<td>-8%</td>
</tr>
<tr>
<td>August</td>
<td>11,956,107</td>
<td>1,502,690</td>
<td>-87%</td>
</tr>
<tr>
<td>September</td>
<td>3,851,413</td>
<td>1,967,577</td>
<td>-49%</td>
</tr>
<tr>
<td>October</td>
<td>2,603,480</td>
<td>4,787,546</td>
<td>+84%</td>
</tr>
<tr>
<td>November</td>
<td>2,543,927</td>
<td>13,209,519</td>
<td>+419%</td>
</tr>
<tr>
<td>December</td>
<td>3,171,532</td>
<td>1,288,584</td>
<td>-59%</td>
</tr>
<tr>
<td>January</td>
<td>1,830,155</td>
<td>3,904,044</td>
<td>113%</td>
</tr>
<tr>
<td>February</td>
<td>3,819,281</td>
<td>2,825,676</td>
<td>26%</td>
</tr>
<tr>
<td>March</td>
<td>5,512,197</td>
<td></td>
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</tr>
<tr>
<td>April</td>
<td>1,656,627</td>
<td></td>
<td></td>
</tr>
<tr>
<td>May</td>
<td>1,968,906</td>
<td></td>
<td></td>
</tr>
<tr>
<td>June</td>
<td>4,518,851</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Year to Date</td>
<td>$46,522,265</td>
<td>32,343,015</td>
<td></td>
</tr>
</tbody>
</table>
February 6, 2017

Mr. Steve McCutcheon  
City Administrator  
City of Carlsbad  
P.O. Box 1569  
Carlsbad, NM 88221

Dear Mr. McCutcheon:

The following report is submitted to the City of Carlsbad to provide an update on the progress and status of the Carlsbad MainStreet Project for December 2016, per the Downtown Revitalization Services Contract. With this report, MainStreet is enclosing an invoice requesting the November monthly allocation from the City of Carlsbad in the amount of $3,750 based on the total annual services contract of $45,000.

MainStreet America and New Mexico MainStreet recognized Carlsbad MainStreet
- We have been informed that Carlsbad MainStreet has met all of the requirements and are recognized as a 2017 Accredited Main Street America™ Program!

New Mexico Main Street (NMMS) required meetings (MainStreet Executive Director):
- Winter Leadership meeting/New Mexico MainStreet Coalition meeting with legislators February 8-10, 2017, Santa Fe, New Mexico
- National MainStreet Conference, May 1-4, Pittsburg, PA

NMMS Coalition
- Meeting February 8 in Santa Fe

Executive Director Boards and Committees:
- In addition to MainStreet activities, the Carlsbad MainStreet Executive Director serves on the following boards and committees related to downtown promotion and economic development and attends weekly and monthly meetings in support of their priorities and activities:
  - Farmers’ Market, Cavern Theater, Retirement Council, Creative Carlsbad (Arts Council), Tourism Council, Mayors Fine Arts and Acquisition Committee (FAAV), Rotary, Chamber of Commerce, City Council, School Board Meeting, City Lodgers’ Tax, Mayor’s Downtown Security Committee

MainStreet Matters: Attached are the following documents that demonstrates statistics, support and legislative information that pertains to Carlsbad MainStreet and New Mexico MainStreet.
- Communities Served by New Mexico MainStreet
- Growing NM Economy Locally
• Carlsbad MainStreet Reinvestment Statistics
• NM Coalition of MainStreet Communities
• NMMS Delivers Results
• Letter to Cabinet Secretary, Matt Geisel, about New Mexico MainStreet
• Sustain MainStreet Recurring Funds Information: NM MainStreet Delivers Results
• Restore MainStreet Special Appropriation Information

MainStreet Business
• Visit with MainStreet merchants
• Completed: Cone Jeweler’s, 111 S. Canyon awarded Façade grant for $2000
• Waiting for completion: Raul Quintana’s building at 109 S. Canyon awarded Façade grant $2000

New Mexico Magazine
• Advertisements for Carlsbad MainStreet’s Second Annual CavernFest

CavernFest 2017
• First sponsors have donated $10,000 for CavernFest 2017 (Bhakta-Waters Construction and Thunder Run Concrete)
• Will be delivering sponsorship letters around town starting in February

Upcoming MainStreet Events:

MainStreet CavernFest 2017
  o Saturday, June 3, 2017, 12:00 am – 10 pm
Downtown Farmers’ Market
  o Opening will be Saturday, June 17, 2017
Progressive Dinner 2017
  o Late September/early October on a Thursday
Fall Festival
  o Tuesday, October 31, 2017 from 4 – 6 pm
Small Business Saturday
  o Saturday, November 25, 2017
Electric Light Parade
  o Saturday, November 25, 2017

Thank you for your continued support of Carlsbad MainStreet!

Respectfully,

[Signature]
Karla Hamel, Executive Director
Carlsbad MainStreet