

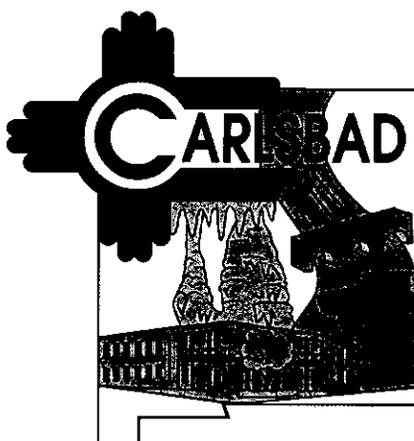
City of Carlsbad

REQUEST FOR PROPOSALS (RFP)

Oil & Gas Well Inspection Services

Code Classification(s):

**90742, 90783, 91107,
91103, 91126, 91157, 91158**



RFP# 2017-07

Release Date: March 31, 2017

Due Date: April 14, 2017

I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of Oil & Gas Well Inspection Services.

The City of Carlsbad seeks proposals from qualified entities for inspection services related to the drilling and operation of oil and gas wells and associated infrastructure to comply with the requirements of City Ordinance No. 2004-17 and other City requirements.

B. SCOPE OF PROCUREMENT

The scope of services shall include the applicable requirements of Ordinance No. 2004-17 as further set forth in the Sample Contract (Appendix C).

Additional services may include, from time to time, review and inspection of oil and gas related operations in the City's Wellhead and Water Facilities Protection areas pursuant to City Ordinance No. 2000-13, as set forth in the Sample Contract (Appendix C)

Additional services may also include, from time to time, inspection services relating to oil and gas operations on City owned property subject to the surface use requirements contained in City Council Resolution 2003-51, as set forth in the Sample Contract (Appendix C)

C. QUALIFICATIONS

The successful proposer will demonstrate an in-depth knowledge of:

1. All aspects of the drilling and operation of oil and gas wells, associated pipelines and oil and gas production infrastructure.
2. The rules and regulations of the New Mexico Oil Conservation Division and the United States Bureau of Land Management related to oil and gas operations.

The successful proposer will further demonstrate that it has sufficient resources and qualified personnel to provide professional inspection services in a timely manner for both routine and exigent circumstance situations.

The successful proposer will further demonstrate that it has a successful history of practical experience in providing the services sought by this proposal or similar services related to oil and gas well operations.

D. PROCUREMENT MANAGER

1. The City of Carlsbad has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Matt Fletcher, CCPO, Procurement Manager
Address: 101 N. Halagueno Street, Room 114
Carlsbad, NM 88220

Telephone: (575) 234-7905
Email: msfletcher@cityofcarlsbadnm.com
Website: <http://www.cityofcarlsbadnm.com/purchasing.cfm>

2. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other City employees or Evaluation Committee members do not have the authority to respond on behalf of the City. **Protests of the solicitation or award must be delivered by mail to the Protest Manager.** As A Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Emailed protests will not be considered as properly submitted nor will protests delivered to the Procurement Manager be considered properly submitted.
3. Proposals may be submitted via UPS or FedEx to the following address:

City of Carlsbad Purchasing Manager
101 N. Halagueno Street, Room 114
Carlsbad, NM 88220

Or via US Postal Service to:

City of Carlsbad Purchasing Manager, Room 114
PO Box 1569
Carlsbad, NM 88221-1569

E. DEFINITION OF TERMINOLOGY

This section contains standard definitions and terms that may be used throughout this procurement document, including appropriate abbreviations:

“**Agency**” means the City of Carlsbad Municipal Government

“Authorized Purchaser” means an individual authorized by a Participating Entity to place orders against this contract.

“Award” means the final execution of the contract document.

“Business Hours” means 8:00 AM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“Close of Business” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

“Confidential” means confidential financial information concerning offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information.

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

“Contractor” means any business having a contract with a local public body.

“Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“Desirable” the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

“Electronic Version/Copy” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain. The digital form may be submitted using a compact disc (cd) or USB flash drive. The electronic version/copy can NOT be emailed.

“Evaluation Committee” means a body appointed to perform the evaluation of Offerors’ proposals.

“Evaluation Committee Report” means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

“Finalist” means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“Hourly Rate” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

“IT” means Information Technology.

“Mandatory” – the terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

“Minor Technical Irregularities” means anything in the proposal that does not affect the price quality and quantity or any other mandatory requirement.

“Multiple Source Award” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.

“Offeror” is any person, corporation, or partnership who chooses to submit a proposal.

“Procurement Manager” means any person or designee authorized by the local public body to enter into or administer contracts and make written determinations with respect thereto.

“Procuring Agency” means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

“Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.

“Redacted” means a version/copy of the proposal with the information considered confidential as defined by NMAC 1.4.1.45 and defined herein and outlined in Section II.C.8 of this RFP blacked out BUT NOT omitted or removed.

“Request for Proposals (RFP)” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“Responsible Offeror” means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

“Responsive Offer” or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.

“Sealed” means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

“Staff” means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.

“Statement of Concurrence” means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable” etc.)

“Unredacted” means a version/copy of the proposal containing all complete information including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.

“Written” means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

F. PROCUREMENT LIBRARY

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection. Any addenda posted in regards to this solicitation will be provided in the procurement library at the following email address:

<http://www.cityofcarlsbadnm.com/purchasing.cfm>

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule, description and conditions governing the procurement.

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsible Party	Due Dates
1. Issue RFP	Procurement Manager	March 31, 2017
2. Distribution List	Agency	March 31, 2017
3. Pre-Proposal Conference	Agency	Not Applicable
4. Deadline to submit Questions	Potential Offerors	April 10 , 2017
5. Response to Written Questions	Procurement Manager	April 12, 2017
6. Submission of Proposal	Potential Offerors	April 14, 2017
7. Proposal Evaluation	Evaluation Committee	April 17, 2017
8. Selection of Finalists	Evaluation Committee	April 19, 2017
9. Award Recommendation	Procurement Manager	April 19, 2017
10. City Council Award Approval	City Council	April 25 2017
11. Finalize Contractual Agreements	Agency/Finalist Offerors	TBD
12. Contract Awards	Agency/ Finalist Offerors	TBD
13. Protest Deadline	Procurement Manager	Award Date +15 days

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II. A., above.

1. Issuance of RFP

This RFP is being issued on behalf of the City of Carlsbad.

2. Acknowledgement of Receipt

Potential Offerors should hand deliver, return by facsimile or registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Procurement Manager by 5:00 P.M. Mountain Time on or before **April 12, 2017**.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

3. Pre-Proposal Conference

A pre-proposal conference will not be held as indicated in the sequence of events.

4. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until **April 10, 2017 by 5:00 P.M.** Mountain Standard Time/Daylight Time as indicated in the sequence of events. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

5. Response to Written Questions

Written responses to written questions will be distributed as indicated in the sequence of events to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Offeror's that provide Acknowledgement of Receipt Forms described in II.B.2 before the deadline. Additional copies will be posted to:

<http://www.cityofcarlsbadnm.com/purchasing.cfm>

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN **5:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON April 14, 2017**. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to **RFP 2017-07 Oil and Gas Well Inspection Services**. *Proposals submitted by facsimile, or other electronic means, will not be accepted.*

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, § 13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required signature on the contract(s) resulting from the procurement has been obtained.

7. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

8. Selection of Finalists

The Evaluation Committee will select and the Procurement Manager will notify the finalist as per schedule Section II. A., Sequence of Events or as soon as possible.

Best and Final Offers Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule Section II. A., Sequence of Events or as soon as possible.

Oral Presentations by Finalist Offerors may be required to conduct an oral presentation at a location to be determined as per schedule Section II. A., Sequence of Events or as soon as possible. Whether or not oral presentations will be held is at the discretion of the Evaluation Committee and Procurement Manager.

9. Award Recommendation

Once the Evaluation Committee has finalized their selection, the Procurement Manager will prepare an award recommendation to be presented to the Carlsbad City Council at their regular scheduled meeting.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the City of Carlsbad, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points.

10. City Council Approval

Final approval of the award is at the discretion of the Carlsbad City Council.

11. Finalize Contractual Agreements

Upon approval by the City Council, any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule Section II. A., Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the Procurement Manager or relevant Agency Procurement office. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the City reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

12. Contract Awards

After contract negotiations are finalized, the contract will be brought before the City Council for approval. Once the City Council approves the contract, the document will be signed by the City and presented to the awardee for signature.

13. Protest Deadline

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. As a Procurement Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Procurement Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15 calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 pm Mountain Standard Time/Daylight Time on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number.

It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below.

The protest must be delivered to:

City of Carlsbad Procurement Manager
101 N. Halagueno Street, Room 114
Carlsbad, NM 88220

** Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with the City which may derive from this RFP. The City entering into a contractual agreement with a vendor will make payments to only the prime contractor.

4. Subcontractors/Consent

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the agency awarding any resultant contract, before any subcontractor is used during the term of this agreement.

5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The City personnel will not merge, collate, or assemble proposal materials.

6. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

8. Disclosure of Proposal Contents

- A. Proposals will be kept confidential until negotiations and the award are completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- B. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- C. Confidential data is restricted to:
 - 1. confidential financial information concerning the Offeror's organization;
 - 2. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
 - 3. PLEASE NOTE: The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Procurement Manager shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation

This RFP in no manner obligates the City of Carlsbad or any of its Agencies to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the agency determines such action to be in the best interest of the City of Carlsbad.

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be effected by sending written notice to the contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The Agency requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

13. Governing Law

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied, in writing, by the Agency through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The contract between an agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the RFP Sample Contract (Addendum C). However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Agency discourages exceptions from the contract terms and conditions as set forth in the RFP. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Contract (Appendix C), strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Agency. Please see Section II.C.15 for requirements.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, § 13-1-83 and 13-1-85.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

The Agency reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Agency, adequately meeting the needs of the Agency.

21. Notice of Penalties

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

22. Agency Rights

The Agency in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

23. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the City of Carlsbad.

25. Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP 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 Agency.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Agency's written permission.

26. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to:

<http://www.cityofcarlsbadnm.com/purchasing.cfm>

New Mexico Employees Health Coverage

- A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information
<http://www.insurenwemexico.state.nm.us/>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month

after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

28. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, APPENDIX B, as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for an elected official or other identified official. Failure to complete and return the signed unaltered form will result in disqualification.

29. Letter of Transmittal

Offeror's proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX E which must be completed and signed by an individual person authorized to obligate the company. The letter of transmittal MUST:

1. Identify the submitting business entity.
2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
5. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award.
6. Describe the relationship with any other entity which will be used in the performance of this awarded contract.
7. Identify the following with a check mark and signature where required:
 - a. **Explicitly** indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
 - b. **Explicitly indicate acceptance of Section V of this RFP; and**
 - c. Acknowledge receipt of any and all amendments to this RFP.
8. Be signed by the person identified in para 2 above.

30. Pay Equity Reporting Requirements

- A. If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249) if they are awarded a contract. Out-of-state Contractors that have no facilities and no employees working in New Mexico are exempt if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local vendor.

- B. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.
- C. Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Offeror must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.
- D. Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

31. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
 - 1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
 - 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
 - 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;

4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the Procurement Manager or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the Procurement Manager or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City Procurement Manager or other recognized City Official, may terminate the involved contract for cause. Still further the Procurement Manager or

authorized City Representative may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the Procurement Manager or authorized City Representative.

32. New Mexico Preferences

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

A. New Mexico Business Preference

B. New Mexico Resident Veterans Business Preference

In addition to a copy of the certification, the Offeror should sign and complete the Resident Veterans Preference Certificate form, as provided in this RFP.

An agency shall not award a business both a resident business preference and a resident veteran business preference.

The New Mexico Preferences shall not apply when the expenditures for this RFP includes federal funds.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit Six (6) one proposal in response to this RFP.

B. NUMBER OF COPIES

1. Hard Copy Responses

Offeror's proposal must be clearly labeled and numbered and indexed as outlined in **Section III.C. Proposal Format**. Proposals must be submitted as outlined below. The original copy shall be clearly marked as such on the front of the binder. Each portion of the proposal (technical/cost) must be submitted in separate binders or envelopes and must be prominently displayed on the front cover. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:

Offerors should deliver:

1. **Technical Proposals** – Six (6) HARD COPIES, containing ONLY the Technical Proposal;
 - Proposals containing confidential information **must** be submitted as two separate binders:
 - **Unredacted** version for evaluation purposes
 - **Redacted** version (information blacked out and not omitted or removed) for the public file
2. **Cost Proposals** – One (1) ORIGINAL, containing ONLY the Cost Proposal. Cost Proposal shall be in separate labeled binders from the Technical Proposals.

The original, hard copy and copy information **must** be identical. In the event of a conflict between versions of the submitted proposal, the Original hard copy shall govern.

Any proposal that does not adhere to the requirements of this Section and **Section III.C.1 Response Format and Organization**, may be deemed non-responsive and rejected on that basis at the discretion of the Evaluation Committee with the approval of the Procurement Manager.

Any proposal that does not adhere to the requirements of this Section and **Section III.C.1 Response Format and Organization** may be deemed non-responsive and rejected on that basis.

C. PROPOSAL FORMAT

All proposals must be submitted as follows:

Hard copies must be typewritten on standard 8 ½ x 11 inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section. Within each section of the proposal, Offerors should address the items in the order provided below.

All discussion of proposed costs, rates or expenses must occur only in **Binder/Envelope #2 on the cost response form**.

The proposal summary may be included by potential Offerors to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

Proposal Content and Organization

Proposers shall submit Six (6) copies of their proposals, typed double spaced on 8 ½ x 11 inch paper on one side only of each page. The proposal shall contain no more than 25 pages including cover letter, and shall be tabbed as follows:

Technical Proposal (Binder 1):

Tab #1 Proposer Information

Tab #1 shall contain the full legal name of the proposer, address and telephone numbers, and the type of business ie: corporation, limited liability corporation, partnership, sole proprietorship. For corporations and limited liability corporations, the proposer shall include evidence of good standing with the New Mexico Public Regulatory Commission.

Signed Letter of Transmittal

- The Offeror's proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX E. The form must be completed and must be signed by the person authorized to obligate the company.

Tab #2 Key Personnel

Tab #2 shall contain a listing of the names and qualifications of each of the proposer's key personnel who will be personally providing the services sought by this proposal and who will be overseeing or supervising the employees providing such services. Resumes for each such individual shall be provided outlining all applicable education, training and experience relevant to the inspection of oil and gas wells and related operations. Addresses, telephone numbers

- Offerors should describe in detail how they meet the qualification requirements listed in Section IV (C)

including cell phone numbers, fax numbers and e-mail addresses shall be provided for each individual.

Tab #3 Experience History

Tab #3 shall include a detailed narrative outlining the proposer's experience in having provided inspection services for gas and oil related operations or similar such services. This narrative shall be in sufficient detail to allow the City to evaluate the qualifications of the proposer. Tab #3 shall also include a listing of other governmental entities or private businesses for which proposer has provided similar services.

Offerors **must**:

- a) provide a description of relevant corporate experience with state, county or local government and private sector. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a provider of similar services.
- b) indicate how many contracts of this nature have been performed in the last two years.

Tab #4 Additional Information and Required Forms

All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal.

Signed Campaign Contribution Form (Required)

- The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. *(See APPENDIX B)*

New Mexico Resident Business or Veteran's Business Preference Certification

- To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate in this section. In addition, for resident Veterans Preference, the attached certification Form *(APPENDIX F)* must accompany any Offer and any business wishing to receive the preference must complete and sign the form. **(If applicable)**

BINDER #2 Cost Proposal *(Provide in a separate envelope or binder)*

- Offerors must complete the Cost Response Form in *(APPENDIX D)*.

Oral Presentation (if Requested)

If selected as a finalist, Offerors agree to provide the Evaluation Committee the opportunity to interview proposed staff members identified by the Evaluation Committee, at the option of the Agency. The Evaluation Committee may request a finalist to provide an oral presentation of the proposal as an opportunity for the Evaluation Committee to ask questions and seek clarifications.

IV. PROJECT SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

A. SCOPE OF WORK OVERVIEW

The City of Carlsbad seeks proposals from qualified entities for inspection services related to the drilling and operation of oil and gas wells and associated infrastructure to comply with the requirements of City Ordinance No. 2004-17 and other City requirements.

B. TASKS AND PERFORMANCE MEASURES

The scope of services shall include the applicable requirements of Ordinance No. 2004-17 as further set forth in the Sample Contract (Appendix C)

Additional services may include, from time to time, review and inspection of oil and gas related operations in the City's Wellhead and Water Facilities Protection areas pursuant to City Ordinance No. 2000-13 as set forth in the Sample Contract (Appendix C):

Additional services may also include, from time to time, inspection services relating to oil and gas operations on City owned property subject to the surface use requirements contained in City Council Resolution 2003-51, as set forth in the Sample Contract (Appendix C):

C. QUALIFICATIONS

The successful proposer will demonstrate an in-depth knowledge of:

1. All aspects of the drilling and operation of oil and gas wells, associated pipelines and oil and gas production infrastructure.
2. The rules and regulations of the New Mexico Oil Conservation Division and the United States Bureau of Land Management related to oil and gas operations.

The successful proposer will further demonstrate that it has sufficient resources and qualified personnel to provide professional inspection services in a timely manner for both routine and exigent circumstance situations.

The successful proposer will further demonstrate that it has a successful history of practical experience in providing the services sought by this proposal or similar services related to oil and gas well operations.

V. EVALUATION CRITERIA

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category. They may be found in Section IV (A-D)

Factors	Points Available
Each Offer will be evaluated by the following categories from Section III C. and assigned a point value for each category for a total possible score of 100 points.	Points must be assigned and defined for all factors (must total 100% of available points)
Qualifications and Experience	40
Ability to Provide Timely Service	40
Business Specifications	
Letter Of Transmittal	Pass/Fail
Signed Campaign Contribution Disclosure Form	Pass/Fail
Cost	20
TOTAL	100
III C.(J). New Mexico Preference - Resident Vendor Points per Section V B. 7	5
III C.(J) New Mexico Preference - Resident Veterans Points per Section V B.7	Varies

Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

1. Organizational Experience

- Points may be awarded, based on, but not limited to, the offerors number of years of experience, quality of offerors experience relative to the scope of work, number of similar contracts cited and the level of success achieved with those contracts. (20 Points)

2. Qualifications

- Points will be awarded to each offeror based on how well their qualifications match the qualifications list provided in Section IV C. For example: Fully qualified offerors would receive the full 20 points. Less qualified firms will receive a pro-rated score based on the number of qualifications criteria met.

3. Letter of Transmittal (See Table 1)

- Pass/Fail only. No points assigned.

4. Campaign Contribution Disclosure Form

- Pass/Fail only. No points assigned.

5. Cost (20 Points)

- The evaluation of each Offeror's cost proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Offer Bid}}{\text{This Offeror's Bid}} \times \text{Available Award Points}$$

1. New Mexico Preferences

- Percentages will be determined based upon the point based system outlined in NMSA 1978, § 13-1-21 (as amended).

A. New Mexico Business Preference

If the Offeror has provided their Preference Certificate the Preference Points for a New Mexico Business is 5%.

B. New Mexico Resident Veterans Business Preference

If the Offeror has provided their Preference Certificate and the Resident Veterans Certification Form the Preference Point are one of the following:

- 10% for less than \$1M (prior year revenue)
- 8% for more than \$1M but less than \$5M (prior year revenue)
- 7% for more than \$5M(prior year revenue)

C. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. The Evaluation Committee may use other sources to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the factors in Section V, which have been assigned a point value. The responsible Offeror with the highest score will be selected as the finalist Offeror, based upon the proposals submitted. The responsible Offeror whose proposal is most advantageous to the City taking into consideration the evaluation factors in Section V will be recommended for award (as specified in Section II. B.8). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM

APPENDIX A

REQUEST FOR PROPOSAL

OIL AND GAS WELL INSPECTION SERVICES
RFP 2017-07

ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with APPENDIX F.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to the Request for Proposal.

Firm does/does not (circle one) intend to respond to this Request for Proposal.

Matt Fletcher, Procurement Manager
RFP 2017-07, Oil and Gas Well Inspection Services
PO Box 1569, 101 N. Halagueno St., Rm 114
Carlsbad, NM 88221
Fax: 575-885-9871
E-mail: msfletcher@cityofcarlsbadnm.com

APPENDIX B

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

—OR—

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

Signature

Date

Title (Position)

APPENDIX C
SAMPLE CONTRACT

SAMPLE CONTRACT

AGREEMENT BETWEEN THE CITY OF CARLSBAD AND AMEC ENVIRONMENT & INFRASTRUCTURE, INC. FOR INSPECTION SERVICES FOR WELLS, PIPELINES, AND RELATED FACILITIES

THIS AGREEMENT is entered into at Carlsbad, New Mexico, this 14th day of May, 2013, by and between the CITY OF CARLSBAD, New Mexico, a municipal corporation, hereinafter referred to as "City," and _____ corporation, hereinafter referred to as "Inspector."

WHEREAS, in order to protect its vital water supply and the related infrastructure, the Wellhead and Water Facilities Protection Ordinance was adopted by the City in Ordinance No. 2000-13; and

WHEREAS, in Resolution No. 2003-51, the City adopted a surface use policy regarding oil and gas exploration and extraction on City-owned surface estates; and

WHEREAS, City adopted Ordinance No. 2004-17 regarding oil and gas wells and pipelines within the City's jurisdiction; and

WHEREAS, in order to meet the requirements of the of those ordinances and that resolution, the City has retained a properly qualified entity for the provision of oil and gas inspection services since 2004; and

WHEREAS, the City issued its RFP No. 2013-17, in which it sought proposals for the continued provision of those inspection services; and

WHEREAS, _____ submitted its proposal in response to that RFP; and

WHEREAS, the Carlsbad City Council approved Inspector'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, the parties, in consideration of the mutual covenants and agreements herein contained, agree as follows:

1. **Definitions.**

- A. "Inspection Services" shall include, but not necessarily be limited to:
- i. Performing complete reviews, assessments and inspections of such wells, pipelines, facilities, sites, or uses, and / or the plans, specifications, and permits for proposed facilities or uses as may required by the Oil and Gas Ordinance, the Surface Use Policy, or the Wellhead and Water Facilities Protection Ordinance, or as directed by the Carlsbad City Administrator;
 - ii. Preparing both oral and written reports as required or directed;

- iii. Attending Carlsbad City Council meetings as scheduled and such other meetings as may be necessary with applicants, permittees, regulating or permitting agencies or bodies, the City Administrator, and City staff;
 - iv. Providing all needed materials, supplies, equipment, labor, and personnel, appropriately qualified and supervised; and
- B. **"Oil and Gas Ordinance"** shall mean Ordinance No. 2004-17, attached as Exhibit "A", as it may be amended from time to time;
 - C. **"Optional Services"** shall mean such additional duties as may from time to time be mutually agreed to by the parties.
 - D. **"Surface Use Policy"** shall mean Resolution No. 2003-51, attached as Exhibit "B", as it may be amended from time to time; and
 - E. **"Wellhead and Water Facilities Protection Ordinance"** shall mean Ordinance No. 2000-13, attached as Exhibit "C", as it may be amended from time to time.
2. **Personnel Requirements.** Inspector agrees to provide all personnel needed for Inspection Services and such Optional Services as is mutually agreed to by the parties. Such personnel shall be appropriately qualified and supervised.
3. **Services Provided by Inspector.** Inspector shall provide the City with full Inspection Services as directed by the City as well as such Optional Services as may be agreed to in writing by the parties. In general, Inspector shall:
- A. **Applications.** Review all applications submitted to it by the City for compliance with all applicable local, state, and federal laws, rules, regulations, and policies;
 - B. **Reports.** Prepare and submit to the City a written report regarding the application and a proposed Field Monitoring Task Order including fee and cost estimates;
 - C. **Meetings.** Attend such meetings of the Carlsbad City Council as specified by the City;
 - D. **Field Monitoring.** Perform such field monitoring as agreed to by the parties; and
 - E. **Facility Monitoring.** Monitor facilities and/or uses as agreed to by the parties.
4. **Compliance with Laws.** Inspector shall comply with all applicable local, state, and federal laws, rules, regulations, and policies and shall obtain and maintain any and all permits, licenses, or certifications that may be necessary to carry out the operations contemplated by this Agreement. In the event Inspector 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, Inspector shall also notify the City in writing of that event. Inspector shall require all its employees, officers, and agents, to comply with all applicable local, state, and federal laws, rules, regulations, and policies.
5. **Assignment of Agreement.** Inspector shall not sublease, assign, or transfer any interest in or right to this Agreement without the prior written approval of the City.

6. **Compensation.** As compensation for the services rendered by Inspector, the City shall pay Inspector:

A. **Compensation Schedule.** According to the Compensation Schedule attached hereto as Exhibit "D".

B. **Option Services.** In the event the parties agree in writing that Inspector shall perform Optional Services, the scope of and the consideration for such Optional Services to be provided by Inspector shall be as the parties set forth in the mutual agreement for such services. Prior to providing any Optional Services, Inspector shall obtain the City's written approval of such Optional Services.

C. **IRS Form W-9.** Prior to receiving any monies from the City, Inspector shall submit its current IRS Form W-9 to the City's Finance Department.

7. **Invoice.** Inspector shall submit an invoice to the City by the fifth (5th) day of each month for the previous month's Inspection Services. The invoice shall identify each well, pipeline, or other facility or use, or proposed facility or use for which Inspection Services were performed, the date the services were performed, a detailed description of the Inspection Services provided, and a breakdown of the amounts due for the Inspection Services performed.

8. **Term.** The term of this Agreement shall be for four (4) years beginning on the 15th day of May 2013, and terminating on the 14th day of May 2017. This Agreement may be extended upon the agreement of the parties and upon such terms and conditions as the parties may mutually agree.

9. **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 sixty (60) 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.

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

11. **Indemnification.** Inspector 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 Inspector, its officers, agents, or employees.

12. **Insurance.** At all times material to this Agreement, Inspector shall obtain and maintain, at its own expense:

A. **Public Liability Insurance.** Inspector 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.** Inspector shall obtain and maintain, at its own expense, automobile liability insurance in the sum of one million dollars (\$1,000,000.00). Such insurance shall name the City as an additional insured.

C. **Inspector Property and Casualty.** Inspector shall be responsible for obtaining and maintaining, at its own expense, fire, property, and casualty insurance covering all material and equipment owned or used by Inspector in its performance of its duties pursuant to this Agreement. The City assumes no responsibility for any such material or equipment. 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, Inspector shall provide the City Administrator with a Certificate or Certificates of Insurance reflecting the coverages specified herein and naming the City as an additional insured. Inspector shall annually furnish to the City Administrator a Certificate or Certificates of Insurance for the above required insurances. Inspector 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 Inspector 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 Inspector. The City's acquisition of such insurance shall not relieve Inspector of its obligation to obtain and maintain insurance as required herein.

13. **Release.** Inspector, upon final payment of the amount due under this Agreement, releases the City, its officers, and employees from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. Inspector agrees not to purport to bind the City of Carlsbad, unless Inspector has express written authority to do so, and then only within the strict limits of that authority.

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

A. **Petition in Bankruptcy.** If Inspector, 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 Inspector, or if a receiver or trustee shall be appointed for all or substantially all of the property of Inspector and such proceedings shall not be dismissed or the receivership or trusteeship vacated within sixty (60) days after the institution or appointment.

C. **Failure to Perform.** If Inspector 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 Inspector, or, if the performance cannot be reasonably had within the fifteen (15) day period, and Inspector shall not in good faith have commenced performance within the fifteen (15) 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.

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

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

B. **Compliance by City.** The City may elect, but shall not be obligated, to make any payment required of Inspector herein or comply with any agreement, term, or condition required hereby to be performed by Inspector; but any expenditure for correction by the City shall not be deemed to waive or release the default of Inspector or the right of the City to take any action as may be otherwise permissible or to seek other remedy under the law.

16. **Non-Waiver.** Waiver by the City of any default in performance by Inspector 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.

17. **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.

18. **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.

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

20. **Workers' Compensation.** Inspector agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If Inspector fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this agreement may be terminated by the City.

21. **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.

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

If to City:

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

If to Inspector:

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

23. **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.

24. **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, to the extent such lawsuit is not precluded by Paragraph 26, below, 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.

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 TRANSACTIONS CONTEMPLATED HEREBY.

26. **ARBITRATION.** SHOULD ANY DISPUTE ARISE BETWEEN THE PARTIES IN CONNECTION WITH THE AGREEMENT AND IF SUCH DISPUTE CANNOT BE RESOLVED BY DISCUSSION BETWEEN THE PARTIES, THE PARTIES AGREE TO SUBMIT THE UNRESOLVED DISPUTE TO BINDING ARBITRATION IN LIEU OF LITIGATION IN ACCORDANCE WITH THE ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION.

27. **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.

28. **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:

[Signature]
DALE JANWAY, MAYOR

ATTEST:

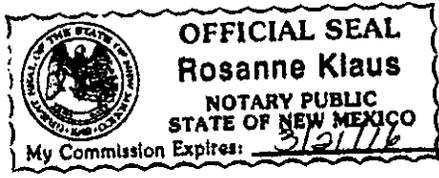
Annette Barriere
CITY CLERK

STATE OF New Mexico
COUNTY OF Bernalillo) ss.

The foregoing instrument was signed and acknowledged before me this 7 day of May 2013,
by DAVID KONDZIOLKA, Vice President of AMEC Environment & Infrastructure, Inc.

My commission expires: 3/21/16

Rosanne Klaus
NOTARY PUBLIC



ORDINANCE NO. 2004- 17

AN ORDINANCE DELETING ARTICLES I, II AND III OF CHAPTER 34 OF THE CITY OF CARLSBAD CODE OF ORDINANCES REGARDING OIL AND GAS WELLS AND PIPELINES AND REPLACING THOSE ARTICLES WITH AMENDED ARTICLES I, II, III.

WHEREAS, on Thursday, 11 March 2004, a gas well being drilled within the City of Carlsbad experienced a blowout and the uncontrolled release of pressurized hydrocarbons from the well hole; and

WHEREAS, that blowout and release created an immediate danger to the public health, safety and welfare of the municipality; and

WHEREAS, in order to preserve the peace and order within the City and to protect the property of the City and its inhabitants, the Mayor of the City of Carlsbad appointed a committee of City Council Members, Citizens, and members of the Oil and Gas Industry to review Chapter 34 of the City of Carlsbad Code of Ordinances, entitled Oil and Gas Wells and Pipelines; and

WHEREAS, the committee has extensively reviewed that chapter and made these recommendations regarding revisions;

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

1. Chapter 34, Articles I, II, and III of the City of Carlsbad Code of Ordinances are hereby repealed.
2. The following sections are hereby adopted as Chapter 34, Articles I, II, and III:

ARTICLE I. IN GENERAL

Sec. 34-1. Definitions.

All technical or oil and gas industry words or phrases used in this chapter and not specifically defined shall have that meaning customarily attributable thereto by prudent operators in the oil and gas industry. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the

context clearly indicates a different meaning:

(a) *Commercial Building* shall mean any building or structure used for commercial or business purposes and which, when in use, is regularly occupied by people.

(b) *Drilling Program* shall mean a detailed description of the proposed well drilling operation including, but not limited to the following information:

- (1) Estimated top of geological markers;
- (2) Estimated depths of anticipated fresh water, oil, and/or gas;
- (3) Pressure control equipment;
- (4) Proposed casing and cementing programs;
- (5) Mud program;
- (6) Evaluation program;
- (7) Downhole conditions;
- (8) Anticipated starting date; and
- (9) Such other information as may be specified by the city.

(c) *Gathering lines* shall mean all pipelines operated incidental to the development and operation of wells, expressly including their rights-of-way as defined and established by instruments of record in the office of the county clerk of this county.

(d) *Inspector* shall mean the person or entity retained by the city pursuant to Section 34-32, herein.

(e) *OCD* shall mean that body or those bodies created by the Oil and Gas Act, NMSA 1978, Sections 70-2-1, et seq., as that Act may be amended, and having jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste of potash as a result of oil and gas operations in New Mexico.

(f) *Permittee* shall mean the person to whom is issued a permit or certificate for the drilling, operating and producing of a well or for the construction and operation of a pipeline under the provisions of this chapter, and that person's heirs, legal representatives, successors and assigns. The applicant for a permit shall be the well or pipeline operator.

(g) *Pipelines* shall mean trunk lines, gathering lines, and discharge lines, expressly including their rights-of-way as defined and established by instruments of record in the office of the county clerk of this county.

(h) *Residence* shall mean a building used as a home or dwelling place.

(i) *Right-of-way* shall mean, and is expressly limited to, all public rights-of-way or streets or other public property within the city.

(j) *Street* shall mean any street, highway, sidewalk, alley, avenue, recessed parking area or other public right-of-way, including the entire right-of-way.

(k) *Trunk line* shall mean common carrier pipelines and other main pipelines not included in the definition of gathering lines, expressly including their rights-of-way as defined and established by instruments of record in the office of the county clerk of this county.

(l) *Well* shall mean any hole or bore to any sand, horizon, formation, strata or depth for the purpose of producing any oil, gas, liquid hydrocarbon, brine water, sulphur water or for use as an injection well for secondary recovery or disposal of any of the foregoing products.

Sec. 34-2. Penalties.

(a) It shall be unlawful and an offense for any person to violate or fail to comply with any provision of this chapter, irrespective of whether or not the verbiage of each section hereof contains the specific language that such violation or failure to comply. Any person who shall violate any of the provisions of this chapter, or any of the provisions of a permit issued pursuant hereto, or who shall fail to comply with the terms hereof, shall be guilty of a misdemeanor and shall on conviction thereof, be punished in accordance with section 1-6. A separate offense shall be deemed committed on each day during or on which a violation of this chapter occurs or continues to occur.

(b) The city shall have the right to enforce the provisions of this chapter through both its civil and criminal jurisdiction in both the Municipal Court of the City of Carlsbad or the District Court of the State of New Mexico. In the event of a violation of this chapter, the appropriate authorities of the city, in addition to other available remedies, may institute injunction, mandamus, or other appropriate action or proceeding to prevent, enjoin or remedy such violation.

Sec. 34-3. Compliance with Wellhead and Water Facilities Protection Ordinance.

Notwithstanding any provision of this chapter to the contrary, all activities required to be permitted under this chapter shall comply in all respects with the requirements of the City of Carlsbad Wellhead and Water Facilities Protection Ordinance.

Secs. 34-4--34-30. Reserved.

ARTICLE II. PERMITS

Sec. 34-31. Required.

(a) It shall be unlawful and an offense for any person acting either for himself or acting as agent, employee, independent contractor or servant for any person to knowingly drill, reenter or deepen any well or to install or operate any water or gas repressurizing or injection facility or to construct or operate a pipeline within the corporate limits of the city without a permit having first been issued by the authority of the city council in accordance with the terms of this section.

(b) When a permit has been issued for the drilling of a well, such permit shall constitute sufficient authority for drilling, operation, production, gathering of production, maintenance, repair, reworking, testing, plugging and abandonment of the well, and for the construction and use of all facilities reasonably necessary or convenient in connection therewith, including gathering lines and discharge lines by the permittee and its employees, agents and contractors; provided, however, that a new permit shall be obtained before such well may be reentered or deepened below the geological formation in which it was

originally completed and before it may be used for repressurizing or injection of water or gas.

(c) When a permit has been issued for the installation of any trunk line, water or gas repressurization or injection facility, such permit shall constitute sufficient authority for the construction, operation, maintenance of pipelines and for conversion of existing wells to injection wells and the repair and abandonment of such facility, and for all facilities reasonably necessary or convenient in connection therewith, including gathering lines, by permittee and its employees, agents and contractors.

(d) No permit shall authorize the drilling of more than one well or more than one water or gas repressurizing or injection facility. No permit shall authorize the construction and operation of more than the one pipeline described in the permit.

(e) Any permit issued pursuant to this chapter shall expire one (1) year after the date of its approval if the permittee has not undertaken the activity authorized by the permit.

Sec. 34-32. Inspector: retention, duties, and reports.

(a) The Mayor, with the approval of the City Council, shall retain a qualified person or entity to act as the Inspector. The Inspector's duties shall include, but not be limited to:

- (1) Reviewing all applications for the drilling, reentry or deepening of a well;
- (2) Making written recommendations to the City Council regarding whether a permit should be issued and the conditions and requirements to be made part of a permit, in the event a permit is granted;
- (3) Identifying in writing key operations and phases of a drilling program including blowout prevention and system tests and a list of anticipated inspections and site visits;
- (4) Inspecting drilling operations and equipment;
- (5) Confirming a permittee's compliance with the conditions and requirements of the applicable permit;
- (6) Reviewing and approving, approving with conditions, modifying, rejecting, or referring to city council permit modification requests
- (7) For applications to reenter or deepen a well, meeting with the applicant's representative prior to the public hearing before the City Council to discuss the application; and
- (8) Such other duties as may be set by the City Council.

(b) The Inspector shall report to and be responsible to the City Administrator or the City Administrator's appointee. The City Administrator shall report to the City Council at each regular meeting of the City Council about the progress and status of all ongoing drilling, reentry, and deepening operations.

Sec. 34-33. Application and filing fee.

(a) Every application for a permit to drill a well or to install a water or gas repressurizing or injection facility or a trunk line, and the reentering or deepening to a deeper formation of a well, shall be in writing, signed by the applicant or some person duly authorized to sign on its behalf; and it shall be filed with the city administrator and accompanied by a non-refundable filing fee of:

- (1) One thousand five hundred dollars (\$1,500.00) for each application to drill, reenter or deepen a well; or
- (2) Five hundred dollars (\$500.00) for all other applications.

(b) A separate application shall be required for each well, trunk line or water or gas repressurizing or injection facility. The application shall include full information, including the following:

- (1) The type of permit being requested, such as a well, trunk line, or water or gas repressurizing or injection facility permit.
- (2) The date of the application.
- (3) The name of the applicant.
- (4) The address of the applicant.
- (5) If the applicant is a corporation, the name of its registered agent.
- (6) Name, title, telephone number, and address of the applicant's contact person regarding application process matters.
- (7) The Drilling Program for a well.
- (8) Proposed site of the well (including proposed location of gathering lines), the pipeline, or the water or gas repressurizing or injection facility, including:
 - A. Name of the lease owner(s).
 - B. Accurate description of the well location, together with a legal description of all the acreage dedicated to the well; or a legal description of the easements to be used by the pipeline.
 - C. A plat certified by a professional surveyor licensed in the state of New Mexico, showing the location with respect to:
 - (i) Property lines,
 - (ii) Right-of-way boundaries,
 - (iii) Surface contours; and
 - (iv) All structures within the proximity limits set forth in section 34-63 including the distance to such structures.
 - D. Ground elevation at well site.
- (9) The proposed depth of the well or pipeline.
- (10) Detailed explanation of operating pressures of all pipelines and facilities.
- (11) Location of compressor, compressor control, or safety devices with explanation of operating characteristics of each.
- (12) The name, title, telephone number and address of the person to be notified in case of an emergency.
- (13) Complete copies of all applications and forms submitted to OCD, the

State Land Office, and the Bureau of Land Management regarding the site or activity to be permitted by the city.

(14) The application to install any pipeline with pressures in excess of 250 psi should include specifications of the safety provisions and equipment.

(15) If the application is for reentry or deepening of an existing well, the additional requirements of subsection (c) shall apply.

(c) It shall be unlawful and an offense for any person to reenter or deepen a well unless that person first obtains a new permit. As a part of the new permit application and in addition to all other requirements, the applicant shall:

(1) Submit the following additional information:

(A) The existing condition of the well and the casing therein and the source of that information.

(B) The depth to which it is proposed that such well will be deepened.

(C) The proposed casing and cementing programs to be used in connection with the proposed deepening operation.

(D) Approval by OCD, the State Land Office, and the Bureau of Land Management, as applicable, to engage in the proposed activity.

(2) Meet with the Inspector prior to the public hearing before the City Council to discuss the application and proposed operations.

Sec. 34-34. Notice.

(a) Each applicant for the drilling or deepening of any well or the installation of a water or gas repressurizing or injection facility shall provide notice to the public by both:

(1) Publication in a newspaper published in Carlsbad with such publication:

(A) Being made once a week for the three weeks immediately preceding the City Council meeting at which the public hearing on the permit will be held; and

(B) To include, at a minimum, the following information:

(i) Name, address, and telephone number of a person with the applicant who is able to respond to requests for information about the application;

(ii) Type of activity sought to be permitted, including well depth, if applicable;

(iii) Legal description of the location of the activity sought to be permitted;

(iv) Plain language description of the location of the activity sought to be permitted, including the distance to and names of the nearest street intersection;

(v) Date, time, and place of the public hearing before the City Council; and

(vi) Copies of the application may be obtained at the Office

of the City Clerk; and

(2) Posting a sign at the nearest intersection of public streets with such sign:

(A) Being posted continuously for the two weeks immediately preceding the City Council meeting at which the public hearing on the permit will be held;

(B) Being not less than nine square feet (9 sq. ft.) in area with black letters at least three inches high on a white background; and

(C) Containing, at a minimum, the following information:

(i) Name, address, and telephone number of a person with the applicant who is able to respond to requests for information about the application;

(ii) Type of activity sought to be permitted, including for a well, if applicable, the hole size, casing program, mud program, cementing program and total depth to which the well will be drilled; and

(iii) Date, time, and place of the public hearing before the City Council; and

(D) Being constructed, placed, and maintained in compliance with all applicable laws, rules, and regulations.

(b) At least one day prior to the date of the public hearing before the City Council, each applicant for the drilling or deepening of any well or to install a water or gas repressurizing or injection facility shall provide the city with an affidavit stating that notice has been made as required.

Sec. 34-35. Issuance or refusal to issue.

(a) The Inspector shall review each application and shall provide the city with recommendations regarding whether the permit should be issued and the conditions and requirements to be made part of a permit, in the event a permit is granted. Those recommendations shall be submitted to the city and the applicant and shall be made available for public inspection no more than fifteen (15) days after the application is filed with the city.

(b) Within 45 days after the filing of the application with the city, the City Council will, after a public hearing, determine whether or not the application complies in all respects with the provisions of this chapter. The City Council shall disapprove any application where it appears that the operation, drilling, reentry or deepening of a well, the installation or operation any water or gas repressurizing or injection facility or the construction or operation of a pipeline will, even after full compliance with the safety requirements of this chapter, constitute a hazard to life and property.

(c) A permit approved by the City Council shall not be issued until and unless the applicant has met all the requirements regarding bonding and insurance including, but not limited to, providing the City with a current, valid bond and certificate of insurance as set forth in the permit and in section 34-39.

(d) Each permit shall:

(1) Specify the location of the proposed well, pipeline or repressurizing or injection facility with particularity to lot number, block number, name of addition or subdivision, section line or other available correct legal description.

(2) By reference have incorporated therein all the provisions of this chapter and the applicable requirements of OCD, the State Land Office, and the Bureau of Land Management with the same force and effect as if each of those requirements was copied verbatim in such permit.

(3) For wells:

(A) Specify the approved Drilling Program and operating conditions; and

(B) Include by reference, the specifications and requirements of:
(i) Bureau of Land Management Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2, Drilling Operations, 43 CFR 3160; and

(ii) OCD Rule 118, Hydrogen Sulfide Gas – Public Safety; as such may be amended from time to time, whether or not the well is otherwise subject to the jurisdiction or control of the Bureau of Land Management or the OCD. The specifications and requirements of that Order No. 2 and Rule 118 shall constitute minimum acceptable levels of performance. When this chapter, the permit, or other applicable law, rule or regulation impose a higher or more stringent standard, then that higher or more stringent standard shall apply.

(4) Contain and specify that the term of the permit shall be for a period of one (1) year from the date the permit is approved and so long thereafter as oil and gas is produced or until such time as the permittee has abandoned the operation of such well or facility for which the permit was issued.

(5) Contain and specify such other terms and provisions as the city may consider to be necessary in a particular case to accomplish the purposes of this chapter.

(e) Such permit, in triplicate originals, shall be signed by the city administrator, and prior to delivery to permittee shall be signed by the permittee (with one original to be retained by the city and the others by the permittee); and when so signed, it shall constitute the permittee's drilling and installation license, as well as the contractual obligation of the permittee to comply with the terms of such permit and of this chapter.

Sec. 34-36. Permit suspension.

In the event of a failure of a permittee to comply with any provision of this chapter or the permit, the Inspector shall issue in writing a notice to the permittee of the nature of the noncompliance and stating a reasonable time necessary to gain compliance. After lapse of such reasonable time, if compliance has not been made, the Inspector may suspend the

permit and all activities taken pursuant to that permit until full compliance has been achieved. In the event a permit is suspended, the permittee is responsible for implementing all things necessary to insure public health and safety and the security and stability of the site.

Sec. 34-37. Permit revocation; hearing required.

No permit shall be revoked by the city council without due cause having been shown for such revocation, and in no event until such permittee has been given a hearing thereon and has been given at least ten days' notice of such hearing to be held at any regular meeting of the city council. In the event a permit is revoked, the permittee is responsible for implementing all things necessary to insure public health and safety and the security and stability of the site.

Sec. 34-38. Modification of permit.

If, after a permit has been properly issued, the permittee wishes to modify the conditions and requirements of the permit:

(a) For a non-emergency matter, the permittee shall make a request in writing to the Inspector stating the requested modification and the reason or reasons for such change.

(b) If a requested modification requires an immediate response to prevent an adverse impact on public health and safety, the permittee may make a verbal request to the Inspector for modification as specified in the permit. The Inspector may, at the Inspector's discretion, provide a verbal response to such a request. Within twenty-four (24) hours of making a verbal request, the permittee shall submit the request in writing to the Inspector and the Inspector shall document, in writing, his response to that request.

(c) When a permittee requests a modification, the Inspector may:

- (1) Approve it;
- (2) Approve it with conditions;
- (3) Modify it;
- (4) Reject it; or
- (5) Refer it to the city council for its review.

(d) The permittee shall submit to the Inspector a copy of the Form C-103 report filed with OCD or a copy of the Variance and Sundry Report from Bureau of Land Management, if such forms are applicable.

Sec. 34-39. Bond and insurance.

(a) No permit shall be issued and no actual operations shall be commenced unless the permittee shall first file with the city administrator a bond and certificate(s) of insurance as follows:

- (1) A bond in the principal sum of such amount as may be determined by the city council, but which shall be no less than one hundred thousand

dollars (\$100,000). The bond shall be on a form approved by the city, executed by a reliable company authorized to do business in the state, as surety, with the applicant as principal, running to the city for the benefit of the city and all persons concerned, under the condition that the permittee shall comply with the terms and conditions of this chapter and the permit.

(2) Such bond shall become effective on or before the date it is filed with the city administrator and shall remain in force and effect for at least a period of six months subsequent to the expiration of the term of the permit issued; and in addition, the bond will be conditioned that the permittee shall promptly:

(A) Pay all fees and costs of the Inspector, all legally imposed fines, penalties, attorneys' fees and other assessments imposed upon permittee by reason of its breach of any of the terms, provisions and conditions of this chapter or the permit;

(B) Restore or have a third party restore, the streets and sidewalks and other public property of the city, which may be disturbed or damaged in the operations, to the standards specified by the city;

(C) Clear all premises of all litter, trash, waste and other substances used, allowed or occurring in the operations;

(D) After abandonment or completion, grade, level and restore such property to the same surface conditions, as nearly as possible, as existed when operations were first commenced;

(E) Pay all damages resulting from its operations or from its breach of any of the terms, provisions or conditions of this chapter or the permit; and

(F) Indemnify and hold the city harmless from any and all liability growing out of or attributable to the granting of such permit.

If at any time the city council shall, after a hearing thereon, deem any permittee's bond to be insufficient for any reason, it may require the permittee to file a new bond.

(3) If the permittee has complied with all the provisions and conditions of this chapter and the permit, and after the permittee's Completion Report has been accepted by the OCD, then the permittee may cancel its bond after providing the city with fifteen (15) days notice of that cancellation.

(4) During reworking operations, the permittee shall file a new bond with the city.

(b) In addition to the bond required in subsection (a) of this section, the permittee shall obtain a policy or policies of standard comprehensive public liability insurance with such coverage to include explosion, blowout, and cratering coverage in a form acceptable to the city council, including contractual liability for bodily injuries and property damage. The policy shall name the permittee and the city as insured parties, except as may be prohibited by NMSA 1978, Sec. 56-7-2. Such policy or policies in the aggregate, shall provide for minimum coverages which shall be set from time to time by the council, but which shall be no less than five million dollars (\$5,000,000).

(c) The permittee shall file with the city administrator a certificate of such insurance, together with a full and complete copy of the policy. The insurance policy shall not be cancelled without written notice to the city administrator at least fifteen days prior to the effective date of such cancellation. If such insurance policy is cancelled, the permit granted shall terminate, and the permittee's right to operate under such permit shall cease until permittee files additional insurance.

(d) If after the completion of a well, or other project, the permittee has complied with all the provisions of this chapter, such as removing any derrick, completion of the pipeline, clearing of the premises, etc., it may apply to the city council to have such insurance policy reduced. During reworking operations, the amount of the insurance coverage shall be increased to the original amount.

Secs. 34-40--34-60. Reserved.

ARTICLE III. REGULATIONS AND STANDARDS

Sec. 34-61. Streets and alleys--Use.

(a) No permittee shall make any excavations for any purpose or construct any pipelines for conveyance of fuel, water or minerals on, under or through the streets or other land of the city without an express easement or right-of-way license from the city, at a reasonable price to be agreed upon, and then only in strict compliance with this chapter and the specifications established by the city engineer.

(b) The digging up, excavating, tunneling, undermining, breaking up or damaging of any street or other land of the city or leaving upon any street or other land of the city any earth or other material or obstruction, shall not be permitted unless such persons shall first have obtained written permission from the city engineer, and then only in compliance with specifications established by the city engineer.

(c) The permittee shall repair or have repaired all damage to the streets or other land of the city. Such repair shall be done to the standards established by the city engineer.

Sec. 34-62. Same--Obstructions; permits.

No well shall be drilled and no permit shall be issued for any well to be drilled at any location which is within any of the streets of the city or streets shown by the master plan of the city, and no street shall be blocked or encumbered or closed in any drilling or production operation except by written permission of the police chief or the chief's designee, and then not more than 24 hours.

Sec. 34-63. Proximity of well, tanks or pipelines to buildings.

(a) No well shall be drilled at any location within the city, and no permit shall be issued for any well to be drilled at any location within the city nor shall any storage tank be located within the city nearer than five hundred feet (500') to any existing residence or commercial building. Provided, however, that the council may, in considering any application for a permit, require a greater distance, depending on the circumstances, and so specify in the permit.

(b) No high pressure gas injection well or a compressor used in conjunction therewith shall be located nearer than five hundred feet (500') to any existing residence or commercial building. Provided, however, that the council may, in considering any application for a permit, require a greater distance, depending on the circumstances, and so specify in the permit.

(c) No pipeline shall be placed within forty feet (40') feet of any existing residential, commercial or industrial structure. No residential, commercial or industrial structure, other than structures necessary to operate the pipeline, shall be erected or moved to a location nearer than forty feet (40') feet to any pipeline transporting gas when the pipeline operating pressure is greater than two hundred fifty pounds per square inch (250 psi), unless a greater distance is recommended by the applicable ASA Code.

Sec. 34-64. Operations and equipment.

(a) All drilling and operations at any well and all other activities performed by a permittee pursuant to a permit issued by the city shall be conducted in accordance with the conditions of the permit and the practices of a reasonable and prudent operator in the county. Blowout preventer equipment, choke equipment, drilling fluid characteristics, drilling fluid monitors and the conduct of drilling procedures shall be such as are necessary to prevent the blowout of any well.

(b) Prior to entry into the Wolfcamp Formation, the permittee shall have a Tool Pusher and an Operator Representative on the drilling site at all times. A Tool Pusher and an Operator Representative shall remain on the drilling site from any entry into the Wolfcamp formation until the rig is released.

(c) If a well is to be drilled deeper than the Bone Springs formation, a pressure protection casing string shall be set and cemented into the top of the Wolfcamp or lower formation.

(d) During drilling operations below the pressure protection casing string, a trip tank or some other accurate method of measurement of drill pipe displacement and hole fill up should be installed, understood by all, and used on all drill pipe trips. If proper fill up is not observed, drill pipe must be tripped back into the hole to total depth in order to remedy the situation unless well conditions do not allow.

(e) It shall be unlawful and an offense for any person to use or operate in connection with the drilling or reworking of any well within the corporate limits of the city any engine unless it is equipped with adequate mufflers.

(f) The drilling rig or derrick shall be removed from the premises within thirty (30) days from the date of the completion of the drilling operations, and thereafter, when necessary, such completed well shall be served by portable rigs, which shall be removed

from the premises within fifteen (15) days from the completion of the servicing operation.

(g) In addition to the requirements set forth above, each permittee shall observe and follow any and all applicable laws, rules, regulations, and requirements of the OCD, the State Land Office, and the Bureau of Land Management.

Sec. 34-65. Tests, inspections and fees.

(a) Before commencing drilling operations, the permittee must deliver to the city administrator of the city an inspection fee of seven thousand five hundred dollars (\$7,500.00) in cash, cashier's check or certified check made payable to the city. This inspection fee shall be used to pay all fees and costs incurred by or on behalf of the city to assure compliance with the requirements of this chapter and any permit issued hereunder. If the fees and costs incurred by or on behalf of the city are greater than the inspection fee paid by the permittee, the permittee shall pay the city the additional amount requested within thirty (30) days of the city's request for the additional amount. The permittee's bond shall be liable for such additional expenses in the event the additional amount is not paid to the city as required. If, after completion of all activities and after payment of all fees and costs, there remains any portion of the inspection fee, the City shall return such excess portion to the permittee within thirty (30) days.

(b) It shall be unlawful and an offense for any permittee to continue or proceed with drilling operations unless such permittee has satisfactorily passed all of the tests required in this chapter, and by the OCD, the State Land Office, and the Bureau of Land Management.

(c) Gas flared on drill stem tests, completion or any workover shall be done in compliance with all requirements of section 34-70. Drill stem tests shall be conducted with the test tool open only during daylight hours.

(d) All pipelines constructed shall be tested prior to being placed in operation and the standard for testing will be the ASA standard test. Valves shall be installed on all pipelines at such locations and spacing to safely and adequately control the operation of the line and to minimize the quantity of gas, oil or water that would be released from the line in case of line failure or rupture. The types and locations of all valves shall be indicated on a plan layout, and approved by the Inspector.

Sec. 34-66. Practices and standards.

(a) Internal combustion engines or electrical equipment may be used in the drilling operations of the well, and if an internal combustion engine is used, mufflers shall be installed on engines so as to reduce noise to a minimum, all of such installations to be done in a manner satisfactory to the Inspector. For production purposes, only electric power may be used, except that whenever electric power is unavailable, impractical or it becomes economically more feasible for an internal combustion engine to be used, then such an engine may be used for production purposes upon the issuance of a permit therefor by the Inspector. Drilling operations must be conducted in such a manner that percolating of groundwater will not be adversely affected including the prevention of vertical

movement of percolating water.

(b) All oil or gas drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, noise, vibration or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for and the production of oil, gas and other hydrocarbon substances. Proven technological improvements in drilling and production methods shall be adopted as they may become, from time to time, available, if capable of reducing factors of nuisance and annoyance. There shall be no venting of gas into the open air except in cases of emergency. In such cases, the permittee shall immediately notify the city fire department and the city police department.

(c) Except in cases of emergency, no materials, equipment, tools or pipe used for production operations shall be delivered to or removed from the site except between the hours of 6:00 a.m. and 9:00 p.m. on any day.

(d) Adequate firefighting apparatus and supplies shall be maintained on the drilling site at all times during drilling and production operations. No refining process or any process for the extraction of products from natural gas shall be carried on at the drill site except for the separation of liquids from natural gas. Any such separator shall serve only one well.

(e) The well site shall not be used for the storage of pipe, equipment or materials except during the drilling or servicing of the well or the construction of production facilities allowed on the site.

(f) No refinery, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises at any time. This shall not be deemed to exclude a simple gas separation process or a single well dehydrator.

(g) All operations relative to the design, installation, maintenance and operation of pipelines shall conform to the requirements of this chapter and the applicable ASA Codes and the standards of performance of the reasonable and prudent operators of the trades involved.

(h) Pipeline location markers shall be approved, as to type and location, by the Inspector and the removal of any pipeline marker by the operator without the express permission of the Inspector shall constitute a violation of this chapter.

(i) Pipelines crossing certain streets, designated by the Inspector, shall be cased and vented in accordance with accepted practice of the pipeline industry.

(j) The permittee shall correct and abate all graffiti, vandalism, and damage as soon as is reasonably possible after its occurrence, but no later than four (4) days after notification by the city.

Sec. 34-67. Cleanliness and sanitation.

(a) The premises shall be kept in a clean and sanitary condition. The permittee shall take reasonable precautions to prevent any mud, wastewater, oil, slush or other waste matters from flowing into the streets, lots or leases within the corporate limits of the city. Suitable and adequate toilet facilities shall be made available in a clean and sanitary condition at all times during drilling operations.

(b) A permittee's premises shall be kept clear of high grass, weeds and trash. All waste shall be disposed of in such a manner as to comply with the air and water pollution control regulations of the federal government, the state and this chapter.

(c) The permittee shall:

(1) For a well:

(A) Clean up the premises within three (3) weeks of the completion of the well;

(B) Restore the reserve pit, if any, to the standards set forth by OCD within six (6) months of completion of the well or as soon as is practicable;

(C) If a drilling operation results in a dry hole, restore the premises, other than the reserve pit, to the condition it was in prior to the drilling, consistent with standards set forth by the Bureau of Land Management, within one (1) month of the well plugging; and

(D) If a drilling operation is plugged after operation, restore the premises to the standards set forth by the Bureau of Land Management within one (1) month.

(2) For a use or facility other than a well:

(A) Clean and restore the premises to the condition it was in prior to the use or facility within one (1) month.

Sec. 34-68. Surface equipment, storage tanks and separators.

(a) Completed wells shall be equipped with high-low valves or automatic shut-in equipment to shut in the well in the event of any malfunction downstream from the wellhead.

(b) All crude oil, condensate or water storage tanks used, constructed or operated on any permitted site shall be low-profile tanks so constructed and maintained as to be vapor tight and properly vented. A permittee may use, construct and operate a steel conventional separator, vapor recovery unit and such other approved tanks and appurtenances as are necessary for treating oil with each of such facilities, to be so constructed and maintained as to be vapor tight. Each oil/gas separator shall be equipped with both a regulation pressure relief safety valve and bursting head. All such tanks shall be placed above ground, and the tanks shall be placed upon a suitable earth or concrete pad.

(c) The use of a central tank battery is permitted, but must comply with the requirements of section 34-68(b), above.

(d) Unless prohibited by Federal Emergency Management regulations, tanks shall be enclosed within a conventional type fire wall constructed of compacted earth; sufficient water shall be used during the fire wall construction to assure adequate compaction.

(e) The fire wall enclosing the tanks shall have a minimum capacity equal to one and one-third (1 and 1/3) times the volume of the tanks enclosed.

(f) The top or crown of the fire wall shall have a normal height of three feet

above normal ground elevation. The location of the tank site shall be approved by the Inspector.

Sec. 34-69. Fences with locking gates required.

(a) During drilling operations, the permittee shall erect and maintain a fence designed to keep children and animals safely outside the drilling location.

(b) Any person who completes any well as a producer shall, prior to marketing the well product, enclose such well, together with its surface facilities, by a substantial chain link fence six feet high, properly built and thereafter maintained so as to ordinarily keep persons and animals out of the enclosure. In noncongested areas, the Inspector, in his discretion, may designate the type of fence to be erected and maintained. All gates thereto are to be kept locked when the permittee or its employees are not within the enclosure.

(c) The permittee shall place a sign at each entrance to each well location or site identifying:

- (1) The site;
- (2) The operator; and
- (3) Emergency contact information.

(d) The compressor unit or pump station and injection well location shall be enclosed on all sides by a minimum six-foot chain link fence with double strands of barbed wire along the top. The chain link fence shall have a minimum of two gates or exit ways, remotely located, on the site and adequately marked, and the gates shall be kept locked at all times when the permittee or its employees are not within the enclosure.

Sec. 34-70. Requirements for flaring; fire prevention.

(a) Any permittee engaged in the drilling or operation of an oil or gas well or the operation of any facility used in conjunction with the production of oil or gas within the corporate limits of the city shall take reasonable precautions to prevent gas from escaping into the air.

(b) No permittee shall flare or burn gas from a torch or any similar means within the corporate limits of the city; provided, gas may be burned for a limited time when necessary to complete any oil or gas well upon the original completion or upon the recompletion of workover jobs upon oil or gas wells, so long as the same does not constitute a fire hazard to the property of others within the vicinity of such oil or gas well. Not more than the rate of 3,000,000 cubic feet of gas per day shall be flared or burned under this exception. The permittee shall notify both the Inspector and the city fire chief prior to flaring of any gas. Flaring shall not be permitted in residential areas without the prior written authorization of both the Inspector and the fire chief. If such written authorization is not obtained, Permittee shall be required to conduct flaring into nonresidential areas by laying lines for such purposes.

(c) In very limited circumstances and only upon the written permission of the city council, a permittee may be allowed to conduct long-term, low-volume flaring if no other

option is feasible.

(d) Emergency firefighting apparatus and supplies shall be maintained on the drill site at all times during the drilling operations and on the site of each compressor used for gas injection operations.

Sec. 34-71. Attorney's fees.

The issuance of a permit pursuant to section 34-35 constitutes a contract between the city and the permittee that the permittee shall be liable and must pay the reasonable attorney's fees and costs incurred by the city in a successful enforcement of the provisions of this chapter.

Sec. 34-72. Changing agents for service of process.

(a) The agent for service of process required in section 34-33(b)(5) of this chapter shall remain the corporate permittee's agent until another is designated according to state law. All noncorporate permittees may be served with process by service being made upon the person designated in the application as required by section 34-33(b)(6). Such person shall remain the noncorporate permittee's agent until another person is designated by the noncorporate permittee and the city administrator is so notified in writing.

(b) It is the city's intention that all permittees shall at all times be subject to legal process, by service upon some readily identifiable person within the city, or in the case of corporate permittees, within the state. Failure to have an agent for service of process constitutes a revocation of any permit issued under this chapter.

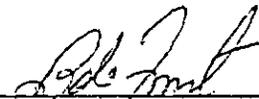
Sec. 34-73. Directional drilling.

The city council realizes that, because of the restrictions of this chapter, some mineral sections may not be developed unless the permittee utilizes directional drilling methods. Population density and surface improvements may make the risks of normal drilling too high. Therefore, the use of directional drilling is to be encouraged. Directionally drilled wells are subject to all the requirements of this chapter.

Sec. 34-74. Nonconforming uses.

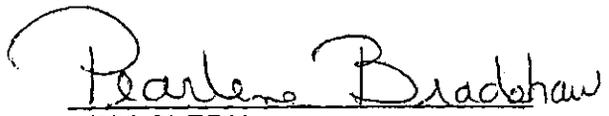
The requirements of this chapter shall not be construed to require the change or alteration of any structure or use that was previously a lawful use, except that safety and security devices, such as, but not limited to, fences, gates and signs shall be required of all sites to which this chapter applies. If the nonconforming structure or use is discontinued or its normal operation stopped for a period of one year or more, such structure or use shall be deemed to have been abandoned by the permittee, or user, or both, and the structure or use shall thereafter conform to the requirements of this chapter.

INTRODUCED, PASSED, ADOPTED, AND APPROVED this 10th day of Aug,
2004.



BOB FORREST, MAYOR

ATTEST:



CITY CLERK

RESOLUTION NO. 2003-51

A RESOLUTION ESTABLISHING POLICIES REGARDING THE SURFACE USE OF CITY-OWNED PROPERTY IN CONNECTION WITH OIL AND GAS WELLS, PIPELINES AND RELATED FACILITIES

Whereas, the City of Carlsbad owns real property that has been and may continue in the future to be subject to existing and future mineral leases, including oil and gas leases; and

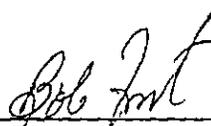
Whereas, the development of minerals can and frequently does result in damage to the surface of the ground; and

Whereas, the City Council, as stewards of the City's lands, desires to implement policies that will: a) minimize damage to the surface of City-owned properties; b) provide adequate compensation for such damages; and c) insure appropriate reclamation and remediation of such damages.

Now, therefore, it is resolved by the Governing Body of the City Carlsbad that:

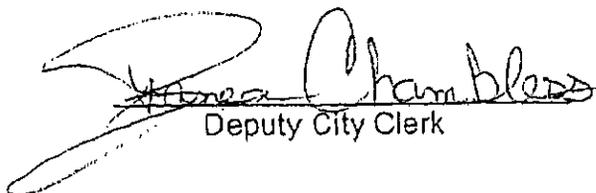
1. The policy regarding surface use of City-owned property, attached hereto and incorporated by reference, is hereby adopted and made effective on the date and time of such adoption.
2. Such policy shall, on and after the date of adoption, govern the use, compensation for and reclamation of City-owned surface lands as such use is necessary to the development of mineral leases.
3. No surface use of City-owned property shall be permitted unless the Governing Body has authorized such use and the applicable terms and conditions in a written binding contract executed by the City and applicant for such surface use.
4. Notwithstanding any provision herein to the contrary, the Governing Body may negotiate the terms and conditions of a surface use agreement, require or waive any or all terms and conditions contained in the attached policy and modify the terms of the attached policy by subsequent resolution.

INTRODUCED, PASSED, ADOPTED AND APPROVED this 28th day of October, 2003.



Mayor

ATTEST:



Deputy City Clerk

**CITY OF CARLSBAD REAL PROPERTY
SURFACE USE POLICY
Adopted pursuant to Resolution No. 2003-
Effective Date:**

	Surface Use	Initial (New)	Annually On & After 10th Anniversary	Minimum Terms, Conditions, Requirements
1	Use of existing City-owned or City maintained roads	\$5.00 per rod	Not applicable	Grantee shall maintain the road in a condition equal to or better than the existing conditions at the time of initial use.
2	New road construction	\$25.00 per rod	\$1.00 per rod	<ul style="list-style-type: none"> A) Minimum width - 24 feet B) Maximum width - 30 feet C) Designed, constructed and maintained to all-weather standards acceptable to the City D) Shoulders must be unobstructed, free of berms, rocks and debris E) Road shall also be kept free of weeds, debris, trash, litter and brush F) Construction of new roads in the City's Wellhead Protection areas shall comply in all respects with the City of Carlsbad Wellhead and Water Facilities Protection Ordinance (Ord. No. 2000-13 as it may be amended)
3	Flow lines/power line easements	\$10.00 per rod	\$1.00 per rod	<ul style="list-style-type: none"> A) Top of flow lines shall be buried not less than 24 inches below the surface B) Grantee shall provide City with an easement survey by a Registered Surveyor suitable for filing prior to the granting of any easement C) Grantee shall use "double ditching" method in all pipeline installations. "Double ditching" shall mean the removal of the top soil in one operation and keeping it separate from the underlying caliche, rock, gravel or clay and then first refilling the pipeline excavation with the underlying caliche, rock, gravel or clay followed by replacement of the top soil with such compacting as to insure that the easement is not at a lower level than the surrounding surface of the ground. D) Lines within the City's Wellhead Protection areas shall comply in all respects with the City of Carlsbad Wellhead and Water Facilities Protection Ordinance (Ord. No. 2000-13 as it may be amended)
4	Well pads, cathodic unit sites, compressor sites, etc.	\$5,000	\$1,000	<ul style="list-style-type: none"> A) The dimensions of well pads and similar surface sites shall be the minimum necessary for efficient and safe operation. B) Well pads and similar sites shall be constructed in accordance with applicable laws and regulations and Grantee shall utilize construction methods to minimize the disturbance of adjacent areas and preserve top soil for reclamation. Grantee shall, at the time application is made for surface use, provide the City with information regarding the exact location and dimensions of the well pad or surface use site. C) In constructing pads and other surface sites, Grantee shall not utilize any caliche, clay or other similar materials removed from City owned property without the prior written approval of the City.

	Surface Use	Initial (New)	Annually On & After 10th Anniversary	Minimum Terms, Conditions, Requirements
5	Main pipelines	\$75.00 per rod	\$2.50 per rod	<p>A) Grantee shall provide the City with a survey of the pipeline easement suitable for filing and performed by a Registered Surveyor prior to the grant of any easement.</p> <p>B) Right-of-way shall not exceed 50 feet (25 feet either side of center line of the pipeline)</p> <p>C) Top of the pipeline must be buried not less than 36 inches below surface</p> <p>D) Right-of-way shall not be used as a road without the prior written permission of the City.</p> <p>E) Pipeline excavation shall be refilled utilizing the "double ditching" method specified in Paragraph 3 C above</p> <p>F) Pipelines within the City's Wellhead Protection areas shall comply in all respects with the City of Carlsbad Wellhead and Water Facilities Protection Ordinance (Ord. No. 2000-13 as it may be amended)</p>
6	Surface Use - General			<p>A) Grantee shall comply with the following terms, conditions and requirements regarding surface contamination:</p> <ol style="list-style-type: none"> 1. Grantee shall not contaminate the surface or subsurface in any manner. 2. No trash or debris shall be burned on the surface nor buried below surface. 3. All trash, debris, surplus items, scraps, equipment and miscellaneous items not in use shall be removed on a regular basis and in any event within 30 days from the completion of a job or construction site on which the items were used and/or stored. 4. Any of the items described in paragraph 3 above not removed in accordance with paragraph 3 above may be removed by the City and disposed of at Grantee's expense. 5. No hydrocarbons, chemicals, brine, produced water, solids or liquids shall be discharged onto the surface of the ground. 6. Notwithstanding any approval from the Bureau of Land Management or the Oil Conservation Division to the contrary, no hydrocarbons, chemicals, brine, produced water, solids or liquids shall be discharged, injected or reinjected below the surface of the ground without the prior written permission of the City and only in accordance with the terms of this policy. 7. All surface and subsurface use in the City's Wellhead Protection areas shall comply in all respects with the City of Carlsbad Wellhead and Water Facilities Protection Ordinance (Ord. No. 2000-13 as it may be amended) 8. In the event there is leak, discharge, spill, deposit of contaminated fluids or materials, fire or any other damage to the surface, Grantee shall immediately after the discovery of the occurrence notify the City Administrator by telephone at (505) 887-1191 or by fax at (505) 885-1101. <p>B) Grantee shall comply with the following terms and conditions regarding environmental assessment of all surface or subsurface contamination and remediation thereof:</p> <ol style="list-style-type: none"> 1. Grantee shall, not later than 24 hours after learning of or discovering the occurrence of any surface or subsurface contamination, have the contaminated site assessed by a qualified person or

Surface Use	Initial (New)	Annually On & After 10th Anniversary	Minimum Terms, Conditions, Requirements
6 Surface Use - General (cont.)			<p>company who shall provide the City with a written report not later than seven (7) days after the assessment with such written report to contain the following information at a minimum:</p> <ol style="list-style-type: none"> a. Exact location b. Detailed surface survey map c. Description of the type and amount of the contamination d. Photographs of the site e. A detailed written recommendation for the remediation of the contaminated site and the reclamation of the affected surface area. <ol style="list-style-type: none"> 2. Grantee shall, if requested to do so by the City, conduct additional response activities and/or site assessments subsequent to the environmental assessment with the scope of such requirements to be specified by the City. 3. If required by the City, Grantee shall provide a report of the additional response activities and/or site assessments to the City within 14 days after the completion of such activities or assessment. 4. Grantee shall, immediately upon learning of contamination of the surface or subsurface, remove all freestanding liquid and other contaminating materials to prevent the spread of such contamination. 5. Grantee shall, within 14 days after notice by the City to do so, implement the remediation work plan approved by the City. All mitigation and remediation of a contaminated surface or subsurface shall be conducted in accordance with the recommendations of the work plan and in accordance with all applicable laws, ordinances and regulations. <p>C) Grantee shall, in all cases, comply with the following general reclamation requirements:</p> <ol style="list-style-type: none"> 1. Upon abandonment of any road, flow line, power line, pipeline, well pad, cathodic unit site, compressor site, pit or any other surface use, Grantee shall implement the following reclamation procedures: <ol style="list-style-type: none"> a. Any pits, if permitted, shall be filled with clean, uncontaminated soil utilizing the "double ditching" method described herein and reasonably compacted to insure that the pit area is no lower than the adjacent ground surfaces. b. All abandoned pipelines shall be removed within 90 days after abandonment unless the Grantee has received written authorization from the City to leave the pipeline in place. c. The trenches for abandoned pipelines shall be excavated and refilled in accordance with the "double ditching" method described herein. d. Upon the completion of drilling activities, well pads shall be reduced to the minimum size necessary for a producing well or, in the event of a "dry hole," the well shall be plugged and capped in accordance with applicable laws and regulations and the well pad reclaimed by removal of all caliche and clay and replacement thereof by suitable top soil. e. Abandoned roadways shall, unless the City waives the requirement in writing, be reclaimed by removal of all caliche and clay and replacement thereof by suitable top soil.

Surface Use	Initial (New)	Annually On & After 10th Anniversary	Minimum Terms, Conditions, Requirements
6 Surface Use - General (cont.)			<p>f. All reclaimed disturbed areas of the surface shall be reseeded with a native grass seed mixture approved by the City. Reseeding shall be done at a date and time approved by the City.</p> <p>D) Grantee shall, in all cases, comply with the following insurance requirements:</p> <ol style="list-style-type: none"> 1. General Liability <ol style="list-style-type: none"> a. During all times for which surface use of City property is permitted, Grantee shall maintain General Liability Insurance in an amount not less than \$2,000,000 for combined single limits for bodily injury, death or property damage for any one occurrence. b. Grantee shall maintain Excess Liability coverage with a limit of not less than \$4,000,000 for bodily injury, death or property damage. c. Prior to any surface use and annually thereafter, Grantee shall provide the City with a Certificate of Insurance affirming the coverages specified above and naming the City as an Additional Insured and Loss Payee. 2. Auto Liability <ol style="list-style-type: none"> a. At all times relevant to the surface uses permitted, Grantee shall maintain Automobile Liability in an amount not less than \$1,050,000. b. Grantee shall further insure that all its contractors, subcontractors, service providers and any other persons or entities operating motor vehicles on City property in connection with the surface use comply with the requirements for the above paragraph. c. Prior to any surface use and annually thereafter, Grantee shall provide Certificates of Insurance reflecting the above coverages and showing the City as Additional Insured and Loss Payee. 3. Workers' Compensation Insurance <ol style="list-style-type: none"> a. At all times relevant to the surface use, Grantee shall maintain Workers' Compensation Insurance as required by applicable New Mexico law. b. Prior to any surface use and annually thereafter, Grantee shall provide the City with evidence that Grantee, its contractor, subcontractors, agents and service providers are in compliance with applicable New Mexico law regarding Workers' Compensation. 4. Assumption of Liability <ol style="list-style-type: none"> a. Grantee shall, in any agreement for surface use of City property, agree to assume all liabilities for damages arising from its operations directly or indirectly associated with the surface use on City property with such assumption of liability to include Grantee's agreement to defend, indemnify and hold the City harmless from and against any and all costs, expenses, liabilities and obligations of any kind arising in any manner in connection with Grantees use of the surface. b. Grantee shall be responsible for any costs incurred by the City to enforce the provisions of a surface use agreement, including but not limited to reasonable attorney fees.

ORDINANCE NO. 2000 - 13

CITY OF CARLSBAD WELLHEAD AND
WATER FACILITIES PROTECTION
ORDINANCE

1 WHEREAS, the City of Carlsbad ("City") receives its entire Municipal Water Supply from
2 groundwater; and

3
4 WHEREAS, the City maintains two Wellfields and associated Water Facilities which pump,
5 store and transport water from the Sheep Draw Wellfield (the Capitan Aquifer) in Eddy County and
6 from the Double Eagle Wellfield (the Ogallala Aquifer) in Lea County to within the municipal
7 boundaries of the City; and

8
9 WHEREAS, the City recognizes that certain land uses or activities in the vicinity of the
10 City's municipal Wellfields or Water Facilities can contaminate the groundwater used for the City's
11 Municipal Water Supply; and

12
13 WHEREAS, the City recognizes that certain activities in the vicinity of the municipal
14 Wellfields or Water Facilities can contribute to contamination or otherwise interfere with the City's
15 Municipal Water Supply; and

16
17 WHEREAS, the City is authorized pursuant to NMSA 1978, § 3-27-3 to adopt any ordinance
18 applicable within and without the boundary of the municipality to protect its water facilities and
19 water from pollution, including ordinances and regulations applicable to all territory occupied by
20 the water facilities, all reservoirs, streams and other sources supplying the reservoirs and streams,
21 and up to five miles above the point from which water is taken; and

22
23 WHEREAS, the City is authorized pursuant to NMSA 1978, § 3-17-1 to adopt any ordinance
24 for the purpose of providing for the safety and preserving the health of the municipality and its
25 inhabitants; and

26
27 WHEREAS, the City is authorized pursuant to NMSA 1978, § 3-18-1 to adopt ordinances
28 to protect the property of the municipality; and

29
30 WHEREAS, the City is authorized pursuant to NMSA 1978, § 3-18-17 to adopt ordinances
31 to define and abate public nuisances; and

32
33 WHEREAS, the City is empowered to enforce such ordinances either civilly or criminally;
34 and

35
36 WHEREAS, the City has determined that a Wellhead and Water Facilities Protection
37 Ordinance is in the best interests of its citizens for purposes of protecting the Municipal Water
38 Supply and Water Facilities.

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

Section 1. Purpose. The purpose of this Ordinance is to protect the Municipal Water Supply and Water Facilities of the City from: (1) sources identified as potential water supply contaminants; and (2) from activities which may impair the quality or quantity of the City's Municipal Water Supply through adverse impacts on the City's Wellfields or Water Facilities.

Section 2. Authority and Jurisdiction. The authority for this Ordinance and the City's jurisdiction to adopt and enforce such Ordinance is pursuant to NMSA 1978, § 3-27-3, providing the City with the authority to protect its Municipal Water Supply and Water Facilities; the general authority of the City to regulate for the public welfare of its citizens pursuant to NMSA 1978, § 3-17-1; the authority of the City to protect the property of the municipality pursuant to NMSA 1978, § 3-18-1; and the authority authorizing the City to define, abate and penalize nuisances pursuant to NMSA 1978, § 3-18-17; as such statutes may be amended from time to time.

Section 3. Definitions.

- A. **Critical Impact Zones.** Those portions of the Wellhead Protection Areas within which water will travel to the Wellfields within two years.
- B. **Crossing.** Any and all pipelines, roadways or any structures of any kind which cross above or below any part of the City's Water Facilities, whether above or below the surface of the ground.
- C. **Double Eagle Wellfield.** That Wellfield in the Ogallala Aquifer (Lea Groundwater Basin) operated by the City in Lea, Eddy, and Chaves Counties as configured on the date of this Ordinance, or as may be configured in the future, which current configuration is depicted on the City of Carlsbad Double Eagle Wellfield Wellhead Protection Areas Map incorporated into and hereby made a part of this Ordinance.
- D. **Hazardous Waste.** Any waste defined as hazardous pursuant to the New Mexico Hazardous Waste Act, NMSA 1978, § 74-4-1 et seq., or pursuant to any federal environmental statute, rule, or regulation.
- E. **Municipal Water or Groundwater Supply.** Those water resources in the Capitan Aquifer, Carlsbad Groundwater Basin, and the Ogallala Aquifer, Lea Groundwater Basin available for use by the City of Carlsbad.
- F. **Person.** As used in this Ordinance, person shall mean any individual, entity, partnership, association, agency or corporation both profit and not-for-profit, or any other organization of any kind.
- G. **Pollution.** Contamination of groundwater by any substance, or any act or action which could or does impair or affect the quantity or quality of the City's Municipal Water Supply or Water Facilities through the introduction of contaminants.

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
- H. **Primary Containment System.** A tank, pit, container, pipe or vessel of first containment of a liquid or chemical.
 - I. **Secondary Containment System.** A second tank, catchment, pit, pipe or vessel that limits and contains liquid or chemical leaking or leaching from a Primary Containment System.
 - J. **Significant Impact Zones.** Those portions of the Wellhead Protection Areas located outside the Critical Impact Zones.
 - K. **Sheep Draw Wellfield.** That Wellfield in the Capitan Aquifer (Carlsbad Groundwater Basin) operated by the City in Eddy County as configured on the date of this Ordinance, or as may be configured in the future, which current configuration is depicted on the City of Carlsbad Sheep Draw Wellfield Wellhead Protection Areas Map incorporated into and hereby made a part of this Ordinance.
 - L. **Time of Travel Distance.** That distance groundwater will travel in a specified time through an aquifer. The time of travel distance is primarily a function of the porosity of the aquifer.
 - M. **Water Facilities.** Facilities, buildings or structures, owned, operated or used by the City now or in the future, for purposes of pumping, storing, transporting or using the City's Municipal Groundwater Supply, including without limitation, the City's wells (including casings and pumps), storage facilities, any and all piping or pipelines and the City's wastewater treatment plant. The Water Facilities also include the territory occupied by the Facilities. The Water Facilities are depicted on the Water Facilities Map incorporated into and hereby made a part of this Ordinance.
 - N. **Water Facilities Protection Area.** That area occupied by the City's Water Facilities and all the Facilities contained therein as defined in this Ordinance and as more specifically delineated on the City's Water Facilities Map.
 - O. **Wellfield(s).** The City's Double Eagle and Sheep Draw municipal wellfields located in the Carlsbad Groundwater Basin, Eddy County and the Lea Groundwater Basin, Lea County, as depicted on the City of Carlsbad Double Eagle Wellfield Wellhead Protection Areas, the City of Carlsbad Sheep Draw Wellfield Wellhead Protection Areas, and the City's Water Facilities Map.
 - P. **Wellhead Protection Areas.** Those areas within which water will travel to the Wellfields within ten (10) years, encompassing both the Critical and Significant Impact Zones. The Wellhead Protection Areas are more specifically delineated on the City of Carlsbad Double Eagle Wellfield Wellhead Protection Areas Map and the City of Carlsbad Sheep Draw Wellfield Wellhead Protection Areas Map and extend to a depth of 2,500 feet below the surface of the ground.

Section 4. Protection of Water Facilities.

A. **Signage.** The City shall post signs at reasonable intervals to denote the location of the City's Water Facilities.

B. **Crossings.**

1. **License Required.** Any person desiring to construct, replace, modify, alter, or repair any Crossing as defined in this Ordinance shall obtain a license from the City prior to any construction, replacement, modification, alteration or repair, and shall be subject to the specifications and standards contained in the license. Such license and the incorporated specifications and standards shall be in addition to any state or federal requirements, provided the license requirements and specification and standards are not inconsistent with state or federal standards. Issuance of a license for a Crossing shall not cause the City to accept or incur any liability for such Crossing.

2. **License Review Process/Approval.**

a. A Crossing License Application Form (available in the Office of the City Administrator) shall be fully completed and submitted to the City Administrator along with the applicant's proposed specifications for the Crossing. The specifications shall fully delineate the proposed design and construction of the Crossing. The City Board of Water and Sewer Commissioners may adopt uniform standards for Crossings at any time. The applicant's proposed specifications shall meet minimum performance standards required by the City at the time of application.

b. Upon receipt of a completed Crossing License Application Form and specifications for design and construction, the City Administrator, or the City Administrator's designee, shall review and approve or disapprove the application. If approved, the City Administrator shall issue a preliminary approval/authorization to proceed with construction of the Crossing subject to an on-site inspection by the City after completion of construction. The City Administrator shall not issue a preliminary approval/authorization to proceed until the applicant submits specifications acceptable to the City Administrator. Upon request, the City Administrator shall provide any applicant with recommended specifications.

c. The applicant shall notify the City Administrator in writing of the completion of the construction.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

d. Upon notification of completion of construction, the City Administrator, or the City Administrator's designee, shall conduct an on site inspection. If the applicant has satisfied all conditions of the Crossing License Application Form and preliminary approval/authorization to proceed, the City Administrator shall grant a license to the applicant for the Crossing. If the license application is denied, the applicant may appeal the denial to the City Council within thirty (30) days of receipt of notification of the denial. An appeal shall be made on a form obtained from and submitted to the City Administrator. The City Council shall hear all appeals at regularly scheduled council meetings within sixty (60) days of the filing of the appeal.

3. **Penalty for Use Without Licensure.** The use of a pipeline or any other Crossing prior to final approval and licensure as provided in this Ordinance shall be a violation of this Ordinance and be subject to the penalties and remedies set forth herein.

4. **Exemptions.** Any Crossing in place prior to enactment of this Ordinance shall be exempted from the license requirement of Section 4(B). Any replacement, modification, repair or alteration of a Crossing existing as of the date of enactment of this Ordinance shall be subject to the requirements of Section 4(B) and shall require a license for the replacement, modification, repair, or alteration.

C. **Use of Water Facilities.** In addition to the requirements for Crossings set forth in Section 4(B) of this Ordinance, no person shall make use of the Water Facilities in any manner without obtaining a license for such use from the City.

D. **Prohibited Acts.** No person shall destroy, remove, shoot, puncture, disturb, vandalize or otherwise damage, interfere with or impair in any manner the City's Water Facilities or trespass in any enclosed area of the Water Facilities. No person shall access or tap into the Municipal Water Supply or otherwise use the Municipal Water Supply for any purpose or for resale without prior written approval of the City.

E. **Unauthorized Crossings and uses declared a nuisance.** Any unauthorized Crossings, uses or violation of this section shall be deemed a public nuisance as provided in NMSA 1978, § 3-18-17, and the City shall abate such nuisance or impose penalties for such nuisance as provided in Section 6 of this Ordinance or as otherwise provided by NMSA 1978, § 30-8-1, or other applicable law.

Section 5. Wellhead Protection Areas.

A. Signage. The City shall post signs at reasonable intervals to denote the location of the City's Wellhead Protection Areas.

B. Critical Impact Zones.

1. Prohibited Uses. The following uses are prohibited within the Critical Impact Zones due to the nature of contaminants generated by the use and the threat to the Municipal Water Supply if a release of contaminants occurred.

- a. Automobile body/repair shop;
- b. Gas station;
- c. Cleaning facilities;
- d. Fleet/trucking/bus terminal;
- e. Manufacturing facility;
- f. Chemical processing/storage facility;
- g. Wood preserving/treating facility;
- h. Junk/scrap/salvage yard;
- i. Mines/gravel pit;
- j. Confined animal feeding operations/animal waste storage facilities;
- k. Asphalt products manufacturing;
- l. Subdivisions resulting in density of septic systems greater than 1 per acre;
- m. Equipment maintenance/fueling areas;
- n. Injection wells/dry wells/sumps;
- o. Underground storage tanks;
- p. Petroleum drilling except as provided in Section 5(B)(3);
- q. All other facilities involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or waste having a potentially harmful impact on groundwater quality.

2. Permitted Uses/Encouraged Uses. The following uses are permitted or encouraged in Critical Impact Zones provided they comply with the Wellhead Protection Areas Performance Standards of Section 5(D) of this Ordinance.

- a. Parks; provided there are no on-site waste disposal or fuel oil storage tank facilities on site;
- b. Wildlife areas;
- c. Non-motorized trails such as for hiking, biking, nature and fitness trails;
- d. Agricultural uses;
- e. Commercial and industrial uses except those as prohibited under Section 5(B)(1) of this ordinance.

1
2
3 **3. Petroleum Drilling.**

4 a. Petroleum and related drilling is prohibited in the Wellhead
5 Protection Areas except as provided in this section. This prohibition
6 is based on the unique geologies of the Capitan and Ogallala Aquifers
7 whereby drilling production and related wells introduces liquid and
8 semi-liquid contaminants into the freshwater-bearing portions of the
9 aquifer used by the City for its Municipal Water Supply. Drilling of
10 production wells through the freshwater aquifer and into the brine
11 water and petroleum-bearing layers provides a direct conduit for
12 contamination of the overlying freshwater.

13 b. **Requirements.**

14
15 1. Any entity desiring to drill in the Wellhead Protection Areas
16 shall apply to the City for permission for such drilling
17 pursuant to Section 5(B)(3)(c). Such application shall be in
18 addition to any federal or state requirements. The applicant
19 must demonstrate there are no reasonable or feasible
20 alternatives to drilling in the Wellhead Protection Areas. The
21 City shall determine, in its sole discretion, whether there are
22 reasonable or feasible alternatives. If there are no reasonable
23 or feasible alternatives, the applicant must comply with
24 Section 5(B)(3)(c) and the following requirements shall
25 apply:

26
27 a. Drilling within the Wellhead Protection Areas
28 requires a minimum of three recirculating strings in
29 addition to the production line.

30
31 b. The surface casing must extend to the top of the
32 freshwater bearing strata.

33
34 c. The second casing must extend a minimum of 100
35 feet below the bottom of the freshwater-bearing strata.

36
37 d. The third casing must extend a minimum of 100 feet
38 below the bottom of the brinewater-bearing strata
39 immediately underlying the freshwater-bearing strata.

40
41 e. The required casings, set forth in Sections
42 5(B)(3)(b)(1)(b) through (d), must be cemented to the
43 surface.

44
45 f. Fresh, high quality water shall be used in the drilling
46 process.

- g. No open pits, ponds, etc. shall be permitted (i.e. only closed mud systems).
- h. All liquids shall be contained in a sealed reservoir.
- i. If, in the City's sole discretion, the production or related well poses a threat of H₂S (hydrogen sulfide) exposure to City Water Facilities or personnel, the applicant shall train the City Water Department in H₂S safety courses and provide protective gear at the applicant's expense.
- j. Drilling shall not be permitted on City-owned property within the Wellhead Protection Areas.
- k. Pursuant to the 1986 amendments to the Federal Safe Drinking Water Act as implemented by the State of New Mexico Environment Department, drilling shall not be permitted within a 1,000 foot radius of any City well.

c. **Permit Required.**

- 1. Any person demonstrating there is no reasonable or feasible alternative and desiring to drill a petroleum production or related well in the City's Wellhead Protection Areas shall obtain a permit from the City prior to any such drilling. A drilling permit application form, available at the office of the City Administrator, shall be completed and submitted by the Applicant to the City Administrator along with the following attachments:
 - i. A 7.5 topographical map clearly showing the location of the proposed well;
 - ii. A copy of all Oil Conservation Division permitting documentation; and
 - iii. A copy of the proposed drilling program.
- 2. The City Administrator, or the City Administrator's designee, shall review the permit application for approval or disapproval. If the application is found to be complete with all required attachments and the drilling program conforms to the requirements of this Ordinance, the City Administrator shall issue a permit. Permit applications that are not approved will be returned with an explanation as to the

deficiencies found. Issuance of a permit for drilling shall not cause the City to accept or incur any liability for such drilling.

3. If the permit application is denied, the applicant may appeal the denial to the City Council within thirty (30) days of receipt of notification of the denial. An appeal shall be made on a form obtained from and submitted to the City Administrator. The City Council shall hear all appeals at regularly scheduled council meetings within sixty (60) days of the filing of the appeal.

d. **Penalty for Drilling Without Permit.** The drilling or operation of any petroleum production or related well prior to final approval and permitting as provided in this Ordinance shall be a violation of this Ordinance and be subject to the penalties and remedies set forth herein.

e. **Exemptions.** Any well in place prior to enactment of this Ordinance shall be exempted from the permit requirements of Section 5(B)(3). Any replacement, modification, repair, or alteration of a well existing as of the date of enactment of this Ordinance, shall be subject to the requirements of Section 5(B)(3) and shall require a license for the replacement, modification, repair, or alteration.

C. **Significant Impact Zones.**

1. **Permitted Uses.** All uses are permitted in the Significant Impact Zones provided such uses meet the Wellhead Protection Areas Performance Standards as set forth in Section 5(D) of this Ordinance.

D. **Performance Standards for Wellhead Protection Areas.** The following standards apply to uses within both Critical and Significant Impact Zones of the Wellhead Protection Areas.

1. Any facility within the Wellhead Protection Areas involving the collection, handling, manufacture, use, storage, transfer or disposal of any solid or liquid material or wastes, which has the potential to contaminate groundwater, must have a Secondary Containment System which is readily inspected and which purpose is to intercept any leak or release from the Primary Containment System. Underground tanks or buried pipes carrying such materials must have double walls and inspectable sumps.

2. All permitted facilities must comply with all applicable local, state, and federal standards for storage, handling and disposal of any hazardous waste materials.

3. All abandoned wells must be capped and comply with all applicable local, state, and federal regulations.
4. All permitted facilities must have in place a contingency plan to prevent the release of hazardous materials. The contingency plan must contain a provision for immediate notification of the City of Carlsbad in the event of a release of hazardous material within the Wellhead Protection Areas. The facility causing said release shall immediately commence a cleanup satisfactory to the City of Carlsbad. All costs and liability for cleanup shall be borne by the facility.

E. **Exemptions.** Any land use or activity which is fully constructed and operational at the time of enactment of this Ordinance shall be exempted from the requirements of this Ordinance; provided any land use or activity otherwise exempted shall lose such exemption upon cessation of the land use or activity for a period of more than twelve (12) consecutive months. The burden is on the landowner to demonstrate that the use at issue is entitled to the exemption of this paragraph.

Section 6. Enforcement. The City shall have the right to enforce this Ordinance through both its civil or criminal jurisdiction in both the Municipal Court of the City of Carlsbad or the District Court of the State of New Mexico. In the event of a violation of this Ordinance, the appropriate authorities of the City, in addition to other available remedies, may institute injunction, mandamus or other appropriate action or proceeding to prevent, enjoin or remedy such violation. Violation of this Ordinance when prosecuted criminally is a petty misdemeanor and may be punishable by imprisonment of not more than ninety (90) days or imposition of a fine of not more than \$500.00 or both. The City may, in its discretion and as provided for in applicable law, refer any violation of this Ordinance to the District Attorney of Lea, Chaves, or Eddy County for appropriate prosecution. A separate offense shall be deemed committed on each day during or on which a violation of this Ordinance occurs or continues to occur.

Section 7. Cooperation With Local, State and Federal Authorities. In implementing and enforcing this Ordinance, the City shall cooperate with local, state and federal authorities to the extent necessary and as otherwise provided by law or agreement.

Section 8. Savings Clause. Should any section or provision of this Ordinance be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole or any other part thereof.

Section 9. Attachments. The following documents are attached hereto and incorporated herein by reference:

- A. City of Carlsbad Double Eagle Wellfield Wellhead Protection Areas Map;
- B. City of Carlsbad Sheep Draw Wellfield Wellhead Protection Areas Map; and
- C. Water Wellfield Facilities Map, Index and Sheets 1 through 11.

1
2 INTRODUCED, PASSED, ADOPTED, AND APPROVED this 28 day of November,
3 2000.
4
5
6
7
8
9

10
11
12
13
14
15
16
17
18
19
20
21
22

GARY L. PERKOWSKI, MAYOR

ATTEST:

11
12
13
14
15
16
17
18
19
20
21
22

City Clerk

Approved as to form:

20
21
22

City Attorney

APPENDIX D

COST RESPONSE FORM

Description	Type		Hourly Rate
Hourly Services			\$
			\$
			\$
			\$
			\$
			\$
Additional Fees (please list)			
			\$
			\$
Reimbursable Expenses (please list)			
			\$
			\$
			\$

****Attach additional forms if needed.**

APPENDIX E

LETTER OF TRANSMITTAL FORM

APPENDIX E
Letter of Transmittal Form

RFP#: _____

Offeror Name: _____ FED ID# _____

Items #1 to #7 EACH MUST BE COMPLETED IN FULL Failure to respond to all seven items WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!

1. **Identity (Name) and Mailing Address** of the submitting organization:

2. For the person authorized by the organization to contractually obligate on behalf of this Offer:

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

3. For the person authorized by the organization to negotiate on behalf of this Offer:

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

4. For the person authorized by the organization to clarify/respond to queries regarding this Offer:

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

5. Use of Sub-Contractors (Select one)

No sub-contractors will be used in the performance of any resultant contract OR

The following sub-contractors will be used in the performance of any resultant contract:

(Attach extra sheets, as needed)

6. Please describe any relationship with any entity (other than Subcontractors listed in (5) above) which will be used in the performance of any resultant contract.

(Attach extra sheets, as needed)

7. On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II. C.1.

I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

I acknowledge receipt of any and all amendments to this RFP.

_____, 2017
Authorized Signature and Date (Must be signed by the person identified in item #2, above.)

APPENDIX F
RESIDENT VETERANS CERTIFICATION

New Mexico Preference Resident Veterans Certification

Reminder, a copy of Resident Veterans Preference Certificate must be submitted with the proposal in order to ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended).

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

Please check one box only

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under NMSA 1978, § 13-1-21 or 13-1-22, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative)* (Date)

*Must be an authorized signatory for the Business. The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or termination of award of the procurement involved if the statements are proven to be incorrect.