



# CITY OF ALBUQUERQUE

*Albuquerque, New Mexico*

**Planning Department**

Mayor Timothy M. Keller

## INTER-OFFICE MEMORANDUM

February 10, 2023

**TO:** Pat Davis, President, City Council

**FROM:** Alan Varela, Planning Director   
Alan Varela (Feb 8, 2023 16:22 MST)

**SUBJECT:** AC-23-9, PR-2021-006366, VA-2023-00021, BP-2022-30010:

Peggy Norton, on behalf of the North Valley Coalition, appeals the Site Plan-Administrative decision to approve a Site Plan for all or a portion of LOT 1, TRACT 112-A-2 BLOCK 2, Douglas MacArthur Subdivision zoned MX-M, located at 5307 4<sup>th</sup> Street, NW containing approximately 1.4319 acre(s). (F-14)

## REQUEST

This is an appeal of the administrative approval of a Site Plan for an automatic car wash on a 1.439 acres parcel. The Site Plan is for a project less than 50,000 square-foot and less than 5 acres and, therefore, was filed in conjunction with the building permit. The site plan portion of the site plan/building permit submittal is the item under appeal.

The application would develop a car wash with a 3529 square foot building. The application was deemed complete and subject to review under the IDO Effective Date of July 2022.

The appellant made a timely appeal of the application.

An appeal of a site plan decision must show the following:

### **IDO 6-4(V)(4) Criteria for Decision**

The criteria for review of an appeal shall be whether the decision-making body or the prior appeal body made 1 of the following mistakes.

6-4(V)(4)(a) The decision-making body or the prior appeal body acted fraudulently, arbitrarily, or capriciously.

6-4(V)(4)(b) The decision being appealed is not supported by substantial

evidence.

6-4(V)(4)(c) The decision-making body or the prior appeal body erred in applying the requirements of this IDO (or a plan, policy, or regulation referenced in the review and decision-making criteria for the type of decision being appealed).

## **BACKGROUND**

### **A. Applicable Plans**

The desirable ‘street element’ features for the area at 4<sup>th</sup> Street and Douglas Macarthur are a 10-12 foot sidewalk and a 6-8 foot landscape buffer. This is based on IDO CPO-9, the Design Process Manual, and the Comprehensive Plan. Both the DPM and the Comprehensive Plan identify that choices will need to be made when determining how to fit ‘street elements’ into existing rights-of-way and when to consider seeking additional right-of-way. The Planning staff is generally tasked to work with the applicant in reviewing various competing interests of travel modes within existing right-of-way width. Staff must consider the ‘corridor’ type and the parcel location--inside or outside of a ‘center’--to determine the priorities for the ‘street element’ features adjacent to a particular parcel. In sum, Fourth Street would have a ‘high’ priority for wide sidewalks and to have a landscape/buffer zone as captured in the Planning documents below:

#### **1. North Fourth Street in the IDO**

The subject site is in Character Protection Overlay (CPO) 9 which has the following guidance on street cross sections:

##### **IDO 3-4(J)(4)(b) Street Cross Sections**

Development within the North 4th Corridor – CPO-9 shall comply with all requirements in the DPM related to transportation design standards, including but not limited to street cross sections.

Fundamentally, the CPO standard is to follow the DPM.

#### **2. The Design Process Manual (DPM)**

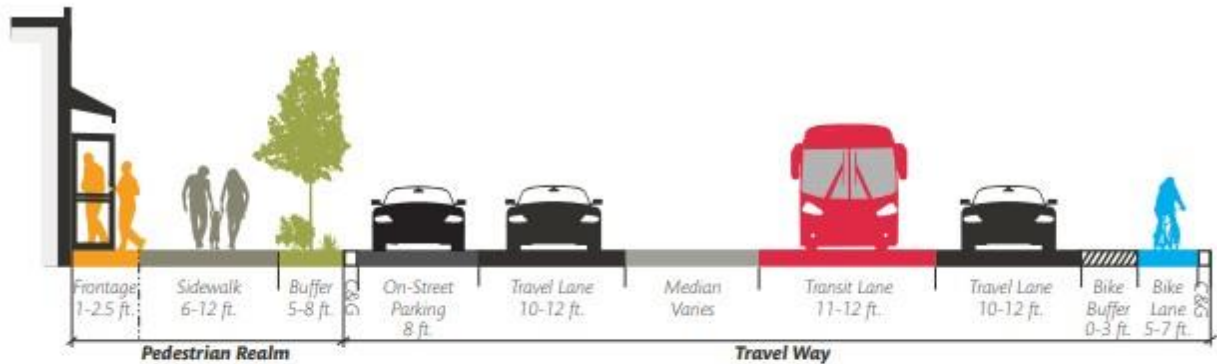
The Design Process Manual identifies that roadways should contain different features depending on the Corridor type, surrounding land use, and whether a roadway design is being developed for inside or outside of a designated Center.

‘DPM Section 7-2(D)(4) Street Element Table

TABLE 7.2.29 summarizes design standards for various street elements by location. The table does not indicate whether the street elements are required for a particular roadway and should be used in combination with the ABC Comp Plan Table 7-5: Priority Street Element Matrix, which provides guidance on roadway elements that should be included on Corridors. For example, sidewalks are required on all roadways in the City of Albuquerque, while the presence of bicycle infrastructure depends on the location and available right-of-way. TABLE 7.2.29 indicates the standard widths when street elements are included.

The following DPM figure and table excerpts from the DPM show desired street elements (note that 4<sup>th</sup> Street is a Main Street):

**FIGURE 7.2.41 Street Element Dimensions Along Major Roads**



**TABLE 7.2.29 Street Element Dimensions**

Corridor Type / Classification	Location	Design Speed (MPH)	Pedestrian Realm			Travel Way		
			Frontage Zone (ft.)	Sidewalk Width (ft.)	Landscape / Buffer Zone (ft.)	Bike Lane Width (ft.)	Bike Buffer (ft.)	Travel Lane Width (ft.)
Premium Transit	Inside Center	30-35	1-2.5	10-12	6-8	6-6.5	0-3	10-12
	Outside Center	35-40	1-2.5	8-10	6-8	6-7	1.5-3	10-12
Major Transit	Inside Center	30-35	1-2.5	10-12	6-8	5-6.5	0-3	10-12
	Outside Center	35-40	N/A	6-10	6-8	6-7	1.5-3	10-12
Multi-modal	Inside Center	30-35	1-2.5	10-12	6-8	5-6.5	0-3	10-11
	Outside Center	35-40	N/A	6-10	6-8	6-7	1.5-3	10-11
Commuter	Inside Center	30-35	1-2.5	10	6-8	5-6.5	1.5-3	10-12
	Outside Center	40-50	N/A	6	6-8	6-7	3-5	10-12
Main Street	Main Street	25-30	1-2.5	10-12	6-8	5-6.5	0-3	10-11

The DPM also outlines flexibility in achieving these desired ‘street elements’:

‘DPM 7-3(B)(4)(iv) Application to Existing Roads

Limited right-of-way on existing facilities may provide constraints on the available options and force designers to make choices and tradeoffs among street elements. Corridor designations are therefore useful in prioritizing how the available right-of-way should be allocated. Additional right-of-way may be considered but is not required for existing roadways if they are below the ranges provided in the DPM.

There are several references in the DPM that reference balancing of street elements in the right-of-way. The complete excerpts are in the appeal packet as ‘Design Process Manual and Comprehensive Plan Excerpts Related to Sidewalks and Landscape Buffers’ in the ‘Other Information’ tab of this appeal packet. A quick summary follows:

### DPM Section 7-3(C)(2) Implications for the DPM

The ABC Comp Plan contains tools and policies to encourage complementary land uses and transportation infrastructure. The link between land use and transportation in the ABC Comp Plan is built around the Centers and Corridors framework, which is summarized in the ABC Comp Plan Vision Map. The Centers and Corridors framework “prioritizes infill and growth in more urban areas and discourages growth in more rural and undeveloped areas” and asserts that “creating multi-modal corridors that connect centers within Albuquerque will be an important element of mobility in the future.” For this framework to be successful, Corridors must have the right infrastructure to enable safe travel within Centers, to connect destinations, and support the needs of a range of users. This policy guidance is expanded into design standards throughout this chapter of the DPM. In addition to design standards by Corridor type, policy matrices provide general guidance on street design elements and indicate transportation priorities by location.

### DPM Section 7-3(C)(3) ABC Comp Plan Corridors

...Land use and development patterns are also intended to vary by Corridor type. For example, land uses along Major Transit and Main Street Corridors and around Premium Transit Station Areas should include a mix of uses and pedestrian-oriented design. ... The characteristics of each Comp Plan Corridor are provided in TABLE 7.3.37.

Excerpt DPM Table 7.3.37

<b>Main Street</b>	Main Street Corridors are intended to be lively, highly walkable streets lined with local-serving businesses. Main Street Corridors are active areas with buildings usually placed right up to the sidewalk, with parking available on-street and to the sides or behind buildings. Main Street Corridors should be well-served by transit with pedestrian amenities such as street trees, landscaping, and wide sidewalks.	Central Ave, 4th St (north of Downtown), Bridge Blvd (South Valley)
--------------------	---	---

### DPM Section 7-3(C)(5) Policy Matrices

Roadways should contain different features depending on the Corridor type, surrounding land use, and whether a roadway design is being developed for inside or outside of a designated Center. The policy matrices contained in the ABC Comp Plan – described below and summarized in TABLE 7.3.39 – provide guidance on how street design and development form should vary depending on the location and context. ... As not all street elements can or should be included along a particular roadway, the matrix provides direction on how to balance and prioritize the available right-of-way with the needs of various users in different locations and contexts. ...

DPM Table 7.3.39

Street Elements Matrix	Chapter 7: Urban Design – Policies on Development Form (7.1.3 – Table 7-5)	Identifies which modes and roadway features should be accommodated within the City right-of-way given the surrounding land use context. The extent of available right-of-way may force designers to make tradeoffs and balance between needs.	Informs desired street elements and provides policy guidance for prioritizing elements within limited right-of-way. The street elements priority matrix should be used in combination with the dimensions outlined in the DPM standards.
------------------------	--	---	--

### 3. The Comprehensive Plan.

The DPM refers to the Comprehensive Plan in outlining when various street element features, such as sidewalk and landscape buffers should have high, medium and low priorities. A Main Street, also called a ‘linear center,’ would have high priority for both sidewalk width and landscape buffer. Table 7-5 below is intended to be used in conjunction with Table 7.2.29 of the DPM.

Albuquerque/Bernalillo County Comprehensive Plan Table 7-5: Priority Street Element Matrix



ELEMENTS TO CONSIDER WHEN ALLOCATING RIGHT-OF-WAY		CORRIDOR & CENTER TYPES								
		PREMIUM TRANSIT		MAIN STREET	MAJOR TRANSIT					
		Station*	Other		Downtown	Urban Center	Activity Center	Employment Center	Village Center	Other
STREET DESIGN ELEMENTS	Travel Way Realm									
	Number and Width of Travel Lanes (single-occupancy vehicle capacity)	L	M	L	L	M	M	M	M	M
	Dedicated Transit Lanes/Guideways	H	H	L/H <sup>1</sup>	M	M	M	M	L	M
	Transit Signal Priority/Queue Jump	H	H	L/H <sup>1</sup>	H	H	M	M	M	H
	Freight <sup>2</sup> (wider lanes, large turning radii)	L	M	L	L	L	M	H	M	M
	Bicycle Facilities**	L	L	M	L	M	M	L	M	L
	Medians (divide high-speed traffic, provide pedestrian refuge)	L	L	L	L	M	H	M	M	M
	Single-Occupancy Vehicle Intersection Design (turning lanes)	L	M	L	L	L	M	H	M	M
	Multi-Modal Intersection Design (reduce crossing distance, provide refuges)	H	M	H	H	H	H	M	H	M
	Pedestrian Realm									
Wide Sidewalks (i.e., wider than minimum 6' clear width)	H	M	H	H	H	M	M	M	M	
Transit Stop/Station Features	H	H	H	H	H	H	M	M	H	
Landscape/Buffer Zone (furnishings, street trees, seating, utilities <sup>11</sup> )	H	M	H	H	H	M	L	H	M	
On-Street Parking	M	L	H	H	M	M	L	M	L	
H = High Priority Element <sup>12</sup> / M = Medium Priority Element <sup>12</sup> / L = Low Priority Element <sup>12</sup>										

H = High Priority Element<sup>12</sup> / M = Medium Priority Element<sup>12</sup> / L = Low Priority Element<sup>12</sup>

Table 7-5: Priority Street Element Matrix (continued next page)

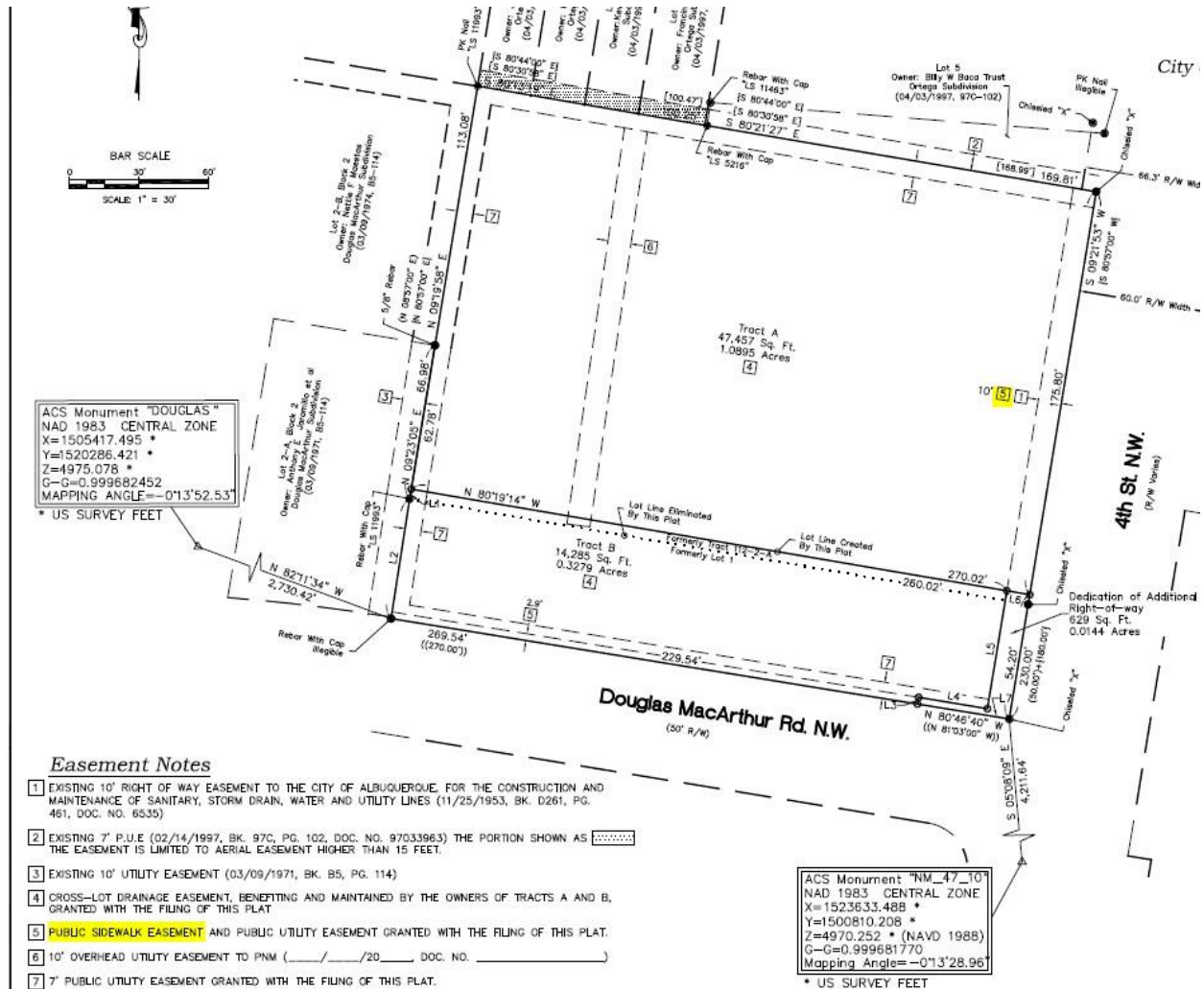
All notes corresponding to \* in the table can be found on the next page.

## B. Previous Approvals

Preliminary Final Plat. On February 16, 2022, the Development Review Board (DRB) reviewed and approved a request for a replat of the property for the car wash. Transportation comments from the January 6, 2021 Sketch Plat thru the February 16<sup>th</sup> approval were to provide a 10-foot sidewalk on 4<sup>th</sup> Street because it was a Main Street and a 5-foot sidewalk on Douglas MacArthur. There was no discussion of a landscape buffer in either Transportation or Planning Comments.



Figure 1. Excerpt of the February 2022 approved plat (yellow highlight indicated information on sidewalks). Full Plat application is in the Record of this appeal.



The Infrastructure List that was approved for the Preliminary/Final Plat include a 10-foot sidewalk on 4<sup>th</sup> Street and a 5-foot sidewalk on Douglas MacArthur Road.

Excerpt from Infrastructure List approved Feb. 16, 2022 (Complete Copy included in the Record under Preliminary Plat application):

Size	Type of Improvement	Location	From	To
230' 10' Wide	Concrete Sidewalk	East side of 4th St. N.W.	North Property Line	South Property Line
270' 5' Wide	Concrete Sidewalk	North side of Douglas MacArthur Rd. N.W.	East Property Line	West Property Line

The applicant appears to have built the sidewalks on 4<sup>th</sup> Street and Douglas MacArthur Road per the approved Infrastructure List.

### C. Site Plan-Administrative Approval Under Appeal:

The application for a Site Plan for projects less than 50,000 square feet and under 5 acres are reviewed administratively by Planning Department staff, including transportation, hydrology, and code enforcement. This occurs concurrently with the Building Safety review of the building plans. The site plan and building plan submittal combine to become a building permit approval. The full application was received July 8, 2022. The Site Plan-Administrative portion was reviewed subject to the following criteria from the IDO:

#### **IDO 6-5(G)(3) Review and Decision Criteria**

An application for Site Plan – Administrative shall be approved if it meets all of the following criteria.

6-5(G)(3)(a) The Site Plan complies with all applicable standards in this IDO, the DPM, other adopted City regulations, and any conditions specifically applied to development of the property in a prior permit or approval affecting the property.

6-5(G)(3)(b) The City's existing infrastructure and public improvements, including but not limited to its street, trail, drainage, and sidewalk systems, have adequate capacity to serve the proposed development or the applicant has agreed to install required infrastructure and public improvements pursuant to Subsection Subsection 14-16-1-7(B)(2) and 14-16-5-4(N) and/or a signed an Infrastructure Improvements Agreement (IIA) pursuant to Subsection 14-16-5-4(O) to add adequate capacity.

Neighborhood leaders requested a Post Submittal neighborhood meeting in late August 2022, and the Alternative Dispute Resolution Team conducted the meeting on September 14, 2022. Twenty-one neighborhood members attended and a meeting report was issued on September 19, 2022. The neighborhood concerns included location, noise, water usage, traffic and the



character of 4<sup>th</sup> Street. Both Stephen Miller and Peggy Norton submitted additional commentary on the area and on the project; their comments were included in the report.

The Planning Department decided to facilitate an additional meeting to address these concerns and invited the neighborhood to send representatives. A meeting was held on September 27, 2022 with neighborhood representatives, members of the applicant team, and Planning staff.

The streetscape was a subject of those meetings. Ms. Norton questioned staff regarding the Street Element Table 7.2.29 and asked why the landscape buffer between the curb and the sidewalk was not being achieved. The Planning staff indicated that the Plat or subdivision review had already determined that a 10-foot sidewalk was appropriate for that area, with the understanding that the site is not deep. The site plan had an well-designed landscape area on the 'inside' of the sidewalk next to a façade wall that was being constructed to enhance the streetscape and meet other IDO requirements. Staff indicated that the applicant had built the 10-foot sidewalk. They said that the City would not ask the applicant to remove a 10-foot sidewalk at the curb and move it back 6-8 feet for a landscape buffer as part of the site plan review.

Progress was made in the meeting to address some landscaping concerns and to understand traffic flow. Noise attenuation was also addressed with the car wash company detailing their equipment choices for noise reduction features. One of the attendees provided specific suggestions regarding plant selection. The applicant team incorporated some of those changes into the application by November 2022.

The building permit was issued on December 23, 2022. A timely appeal was filed on behalf of the North Valley Coalition on January 9<sup>th</sup>, 2023.

## REASONS FOR THE APPEAL

1. **Appellant:** The Planning staff acted arbitrarily and capriciously by not complying with the street element dimensions as stated in CPO-9 of the IDO and the Development Process Manual. Staff did not consider precedent or take prior knowledge into decision-making regarding the 4<sup>th</sup> Street element dimensions.

**Staff Response:** The Site Plan review happened after a plat had been established. In the Plat review, the Development Review Board approved a Preliminary/Final Plat that established a 10-foot sidewalk adjacent to the curb that was compliant with the DPM. The applicant built the sidewalk per the approved plat and associated infrastructure list.

The applicant designed a car wash site plan that included a façade wall along 4<sup>th</sup> Street with extensive landscaping between the wall and the sidewalk. Staff reviewers of the site plan determined that the proposed design was an acceptable balancing of the street elements from Table 7.2.29 of the DPM vis a vis the available right-of-way width and the depth of the parcel. Since the DRB had previously accepted the 10-foot sidewalk at the curb and that plat was not appealed, then the design at the site plan stage was to place the landscape buffer on the 'inside of the sidewalk.' The decision was also influenced by looking at the sidewalk

north and south of the subject parcel and noting that much of that sidewalk near the subject parcel was attached to the curb.

2. **Appellant:** The decision was not supported by substantial evidence. No policy citations were offered during the facilitated meeting to justify the sidewalk width. The appellant did not have access to the file to evaluate substantial evidence.

**Staff Response:** The sidewalks for 4<sup>th</sup> Street and Douglas MacArthur do match the desired widths outlined in DPM Table 7.2.29. The 4<sup>th</sup> Street sidewalk appears to have been built at 10 feet and Douglas MacArthur at 5 feet. The text of Table 7.2.29 states that the table does not indicate a requirement and should be used on combination with Comprehensive Plan Table 7-5. The appellant's concern seems to be more focused on the sidewalk being attached to the curb. That decision was made previously when the project was in a DRB plat process and the applicant had an infrastructure list approved.

The appellant's original request for the building permit plans was handled by Building Safety in a customary way by being told the information could be obtained through an IPRA request. This was a rare circumstance when someone was wanting building permit information to appeal the site plan portion of the building permit, so the staff corrected course and provided the appellant with the requested files on January 13, 2022. The appellant has had the opportunity since receipt of those files to supplement the appeal at their discretion.

3. **Appellant:** Staff erred in applying the requirements of the IDO. Staff ignored the purpose of CPO-9. The 4<sup>th</sup> Street Corridor Plan and the Metropolitan Redevelopment Plan should be considered in the review.

**Staff Response:** The Planning staff reviewed the site plan-administrative according to the review criteria in IDO 6-5(G)(3). The staff does not have the discretion to consider intent, policy, or historical documents. The staff is authorized to review requirements of the IDO and DPM which may or may not incorporate some of that information. Review of a Metropolitan Redevelopment Plan is not a review criterion for a Site Plan-Administrative.

## CONCLUSION

The Planning staff reviewed the application for a site plan-administrative and found that it met the requirements of the IDO and DPM. The width and location of the sidewalk were previously decided by the DRB on February 16, 2022 in its approval of the Preliminary/Final Plat. The Planning staff reviewed the site plan application according to the IDO and DPM and found that they were compliant. The staff determined that the sidewalk improvements and the landscaping plan, showing that there would be landscaping on the 'inside' of the sidewalk, met the balancing test prescribed in the DPM and Comprehensive Plan. The decision was supported by substantial evidence and was not arbitrary or capricious. The Planning staff did not err in applying the IDO and DPM to the site plan.






# PlanningMemo1.26.23

Final Audit Report

2023-02-08

Created:	2023-02-08
By:	Lucinda Montoya (lucindamontoya@cabq.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAPZgm7l8aF2gd1cN5uDPSiybLPcVaNxjd

## "PlanningMemo1.26.23" History

-  Document created by Lucinda Montoya (lucindamontoya@cabq.gov)  
2023-02-08 - 11:15:57 PM GMT- IP address: 98.249.75.65
-  Document emailed to Alan Varela (avarela@cabq.gov) for signature  
2023-02-08 - 11:16:13 PM GMT
-  Email viewed by Alan Varela (avarela@cabq.gov)  
2023-02-08 - 11:21:55 PM GMT- IP address: 172.58.139.82
-  Document e-signed by Alan Varela (avarela@cabq.gov)  
Signature Date: 2023-02-08 - 11:22:05 PM GMT - Time Source: server- IP address: 172.58.139.82
-  Agreement completed.  
2023-02-08 - 11:22:05 PM GMT