

Steven Green
Mayor

Sandra Whitehead
Mayor Pro-Tem

Kathy Clark
Commissioner



Rolf Hechler
Commissioner

Joshua Frankel
Commissioner

Juan A. Fuentes
City Manager

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THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, IS TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3RD ST., ON TUESDAY, MARCH 22, 2016; TO START AT 6:00 P.M.

A. CALL TO ORDER

B. INTRODUCTION

1. ROLL CALL

Hon. Steve Green, Mayor
Hon. Sandra Whitehead, Mayor Pro-Tem
Hon. Kathy Clark, Commissioner
Hon. Rolf Hechler, Commissioner
Hon. Joshua Frankel, Commissioner

2. SILENT MEDITATION

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

C. COMMENTS FROM THE PUBLIC (3 Minute Rule Applies)

D. RESPONSE TO PUBLIC COMMENTS

E. PRESENTATIONS

1. Presentation to Bill Slettom, CDD/Assitant City Manager

F. CONSENT CALENDAR

1. City Commission Regular Minutes, February 23, 2016
2. Golf Course Advisory Board Minutes, February 3, 2016
3. Golf Course Advisory Board Minutes, February 17, 2016

G. PUBLIC HEARINGS

1. Public Hearing: Final Adoption of Ordinance No. 670 15/16 approving amendment to JPA and GRT ordinance dedicating GRT for payment of bonds or loans for hospital purposes. Juan Fuentes, City Manager

H. UNFINISHED BUSINESS

1. Discussion/Action: Final Adoption of Ordinance No. 670 15/16 authorizing the execution and delivery of a Loan Agreement among the Sierra County Joint Powers Commission and dedicating the Pledged Revenue from its 0.1875% Municipal Gross Receipts Tax for the Term of the Loan. Juan Fuentes, City Manager
2. Discussion/Action: Resolution No. 26 15/16 Authorizing the Amendment and Restatement of Section 7 of the Joint Powers Agreement (the "JPA") adopted May 14, 1998 and revised July 15, 2009 (No. 97-059) between and among the County of Sierra, the City of Truth or Consequences, the Village of Williamsburg and the City of Elephant Butte (Collectively, The "Participants") Providing for the dedication of certain Gross Receipts Tax Revenues of the City of Truth or Consequences (the "City") to be Pledged Pursuant to an Ordinance Adopt ed by the City for the Payment of a loan from the New Mexico Finance Authority (the "Finance Authority") in an amount of up to \$36,329,129. Juan Fuentes, City Manager

I. NEW BUSINESS

1. Discussion/Action: Review and approval of the FY 2014-2015 Audit. RPC CPAs & Consultants
2. Discussion/Action: Review plans for renewal/update of the Louis Armijo Ball Fields. Greg D'Amour, Recreation Advisory Board Chairman
3. Discussion/Action: Resolution No. 27 15/16 approving the 2016/2017 Annual Juvenile Adjudication Fund (JAF) Grant Application and naming the City as the Fiscal Agent. Bobbie Sanders, Municipal Judge
4. Discussion/Action: Fire Protection Fund Application for FY 2017. Paul Tooley, Fire Chief
5. Discussion/Action: To approve submission of a Solid Waste Grant Application. Andres Alvarez, Solid Waste Director
6. Discussion/Action: To approve submission of a Recycling and Illegal Dumping (RAID) Grant Application. Andres Alvarez, Solid Waste Director
7. Discussion/Action: Approve the Proposed Amendment to the City Attorney Contract for Legal Services. Juan Fuentes, City Manager
8. Discussion/Action: Professional Services Agreement for Architect for the Animal Shelter. Bill Slettom, Assistant City Manager and Lee Alirez, Police Chief.
9. Discussion/Action: Open Meetings Act Resolution No. 28 15/16 to include possible meeting time change and agenda deadline. Renee Cantin, City Clerk
10. Discussion/Action: City Commission Rules of Procedure revision. Renee Cantin, City Clerk
11. Discussion/Action: Staff Presentations, Public Forum and Commission Retreat. Juan Fuentes, City Manager and Steve Green, Mayor

J. REPORTS

1. City Manager
2. City Attorney
3. City Commission

K. EXECUTIVE SESSION

1. Pending or Threatened Litigation (Hot Springs Land Development) *Pursuant to 10-15-1.H(7)*
2. Pending or Threatened Litigation (City vs. Kenneth Reidemann) *Pursuant to 10-15-1.H(7)*

L. ADJOURNMENT

NEXT CITY COMMISSION MEETING APRIL 12, 2016



E.1

CITY OF TRUTH OR CONSEQUENCES
COMMISSION ACTION FORM

ITEM:

Presentation to Bill Slettom, Community Development Director/Assistant City Manager

BACKGROUND:

Assistant City Manager Slettom will be retiring as of March 31st, 2016.

Name of Drafter: Renee Cantin, City Clerk

Meeting date: 3-22-2016



F.1

CITY OF TRUTH OR CONSEQUENCES
COMMISSION ACTION FORM

ITEM:

Approve the minutes of the February 23, 2016 Regular Meeting.

BACKGROUND:

None.

STAFF RECOMMENDATION:

Approve the minutes.

Name of Drafter: Renee Cantin, City Clerk

Meeting date: 3-22-2016

**CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
TUESDAY, FEBRUARY 23, 2016**

The Mayor and the City Commission of the City of Truth or Consequences in the County of Sierra, and State of New Mexico met in Regular Session in full conformity with the law and ordinances of said Commission in the Commission Chambers of said City on January 12, 2016 with the meeting starting at 6:00 P.M.

A. CALL TO ORDER

Mayor Whitehead called the meeting to order at 6:00 p.m. and requested the Clerk to call the roll.

B. INTRODUCTION

1. ROLL CALL

Upon calling the roll, the following Commissioners were reported present.

Hon. Sandra Whitehead, Mayor
Hon. Steve Green, Mayor Pro-Tem
Hon. Jeff Richter, Commissioner
Hon. Kathy Clark, Commissioner
Hon. Russ Peterson, Commissioner

Also Present: Juan Fuentes, City Manager
 Renee Cantin, City Clerk-Treasurer

There being a quorum present, the Commission proceeded with the business at hand.

2. SILENT MEDITATION

Mayor Sandra Whitehead called for fifteen seconds of Silent Meditation.

3. PLEDGE OF ALLEGIANCE

Mayor Sandra Whitehead called for Commissioner Peterson and Commissioner Richter to lead the Pledge of Allegiance.

4. APPROVAL OF AGENDA

Mayor Pro-Tem Green moved to approve the agenda. Commissioner Clark seconded the motion. Motion carried unanimously.

C. COMMENTS FROM THE PUBLIC (3 Minute Rule Applies)

Mayor Sandra Whitehead called for Public Comment, noting those wishing to comment would get three minutes, may only approach the podium once, and any material for the Commission was to be left in the black box by the podium.

Audon Trujillo, 506 W. 3rd Street commented on

- 1) NMSA 3-54-1
- 2) He talked about three IPRA's he asked for information for. One was on the land and property leased or sold to the city.
- 3) Scoring for RFP proposals. There is no score sheet that was submitted by Mr. Taylor. There was only one RFP submitted except you have got to make sure whoever the vendor is, they have met the minimum requirements for the RFP. You have got to document that stuff its good practices.
- 4) Scoring on the Legal Services RFP. There were five factors shown and the Score Sheets show three factors. There was no documentation provided when I asked for it on how it went from five criteria to three criteria. You can't do that in procurement. The selection panel does not have the right to change the criteria in the middle of an evaluation.
- 5) 3-54-1 calls for the city when they lease, sell, or transfer property to have first a written assessment by a certified appraiser. From January 12th you have two properties where this didn't happen. And you also did not publish an ordinance stating you need to be selling this. The law is clear, why do you do this. You are selling one of the properties to Mr. Charles Druce, why. Where was the RFP for that, it just doesn't make any sense.

Bruce Swingle, Sierra County Manager thanked the Commission for all of the cooperation with the County over the last year or year and a half. We have a great relationship and regardless of how the election goes, they want to continue to have a good relationship with T or C and continue to move forward and he thanked the Commission for everything they have done over the last couple of years.

Mark Felosa, 1016 Locust St. he came here to see his friend Jay Rubin receive a plaque but wanted to take this opportunity to publicly thank Commissioner Peterson and Commissioner Richter for their service. Both of these Commissioners have served this community for years. Russ has worked many jobs and worn several hats for the nearly 35 years he has lived in this community and always found time to be part of the community. Likewise, Jeff has always been willing to do whatever this community asked of him. He remembers years ago when their kids were playing basketball in the summer league in Las Cruces for T or C, our Basketball Coach had an emergency and could not be there. He doesn't know what Jeff knew about coaching basketball, but he took over for the coach and coached the game day. In my humble view these two gentlemen's actions stand in star contrast to others actions who typically do nothing but raise hell at meetings, get rested at times complaining about virtually everything this community and this Commission does. He understands we have constitutional rights to talk about virtually everything and anything we want and write letters to the Editor criticizing everything under the sun. But we also have good manners and character that our parents were supposed to teach us to monitor us from needing to complain about everything, every time, every day. He challenges these residents to do something constructive after the election to do three things which most of us contribute our time and talents to. 1) Hospital; 2) Is the Scholarship Night. The most amazing night in this community on the Thursday before the High School Graduation. This

town and the residents give in excess of \$100,000 for kids going on to college and vocational schools; and 3) Sierra County Fair. An opportunity to see hard working kids show their animals and projects in the community. Now grant you, the press isn't there to highlight and publicize your comments, there isn't a crowd there to stir up, these five people aren't sitting or often listening to your silly comments, but you get to do something constructive. Just a thought, this path incidentally, was one that was taken by Commissioner's Peterson and Richter. He encouraged them to consider it.

Carole Wheeler 603 Corbett is here to talk about square dancing. The club is hosting the SW District Meeting and Dance on April 3rd. They have reserved the Civic Center for the meeting that starts at 1:00 p.m. and the dance at 2:00 p.m. Today they received word from the Bureau of Reclamation they will have a special event dance at the Elephant Butte Dam. She added Square Dancers are a fun group of people and they have some banged snf yhry have a good time. They have 70 RSVP's to date and they were hoping for 40. But they love a challenge and they don't often get the opportunity to dance on the Elephant Butte Dam. Secondly, the club is hoping to offer the dancers the option of spending the night in Truth or Consequences. Lat last year she spoke with Mayor Pro-Tem Green about this opportunity and they were trying to get under the Fiddler's tourism money, but for now she is asking for assistance from the Tourism Group to show them a good time while they are here.

Linda DeMarino, MainStreet Truth or Consequences commented on the

- 1) She thanked the Commission for the Lodger's Tax Budget adjustment.
- 2) Membership Drive Event this Saturday at Grapes Gallery from 7:00 – 10:00 p.m. There will be music and food. You can hear about some of the things they have done in the last year.
- 3) They are reviving the Hot Springs Festival May 13-15th. They have changed the concept and have already generated excitement. We've gotten the \$3,000 grant from the state. We like to put lots of Heads in Beds.
- 4) Today we had Will Powell from the NM Mainstreet in Town, he's an Architect. And we have several people from the Arts Board, MainStreet Board, Arts Council. We took a look at the Buckhorn spot where the Art Park is going and he is going to draw us plans as to what that is going to look like.
- 5) Healing Waters Plaza Bricks are still for sale. Monday is the last day. So if you're interested let her know.
- 6) Community Development Director Position, we think it's a very important position and he has been invaluable to us and they encourage the Commission to find a way to make sure that position stays. He has brought so much into town and by not having that position, we would be losing a lot as we move forward.

Ron Fenn, 316 North Foch.

- 1) He expressed sadness that Mayor Pro-Tem Green avoided the debate he set up last Wednesday. He thinks a great deal of information could have been passed to the public.
- 2) Economic Development in this town. We have lots of money we waste in this town. One of the biggest wastes in this town is the Recycle Program. It's a total waste of our money. He provided a flyer which he read aloud. He thinks it's sad that we tell people we are trashing their plastic because it has no value. Yet they put work and effort into and take it to the Recycle bins and then City Workers drag it out of the Recycle bins and throw it into the dump. The Recycle Program is a total waste of

our money. If you have information otherwise, please get them to me. He left the flyers and asked them to be attached to the Recycle bins.

D. RESPONSE TO PUBLIC COMMENTS

Mayor Whitehead thanked everyone who made public comment.

E. PRESENTATIONS

1. Presentation of Plaques to outgoing Commissioner's and Staff

Mayor Whitehead asked the Commission to come out front to present plaques to our Outgoing Commissioners and staff. She said as many of you are aware today is the last official meeting for two of our Commissioners, she sincerely thanked Commissioner Richter and Commissioner Peterson for their service to the community and their dedication. She has enjoyed working with them and on behalf of herself and the City of T or C, we wish both of them well and if they ever want to come back, please do so. She read and presented both plaques.

2. Presentation of a Plaque to Jay Rubin.

Mayor Whitehead read the plaque in appreciation of the service of Jay Rubin who has been the City Attorney since 1989. The Commission presented the award to him. Mr. Rubin stated it was an Honor to serve you, it really was.

Mayor Whitehead announced she does have one more city employee to recognize although he's not in the audience tonight and that is Dave Cook. He has served the City of Truth or Consequences for 23 years and 10 months. She thanked Dave for his service.

F. CONSENT CALENDAR

- 1. City Commission Regular Minutes, January 26, 2016**
- 2. Public Utility Advisory Board Minutes, January 19, 2016**

Mayor Pro-Tem Green moved to approve the Consent Calendar. Commissioner Clark seconded the motion. Motion carried unanimously.

G. NEW BUSINESS

- 1. Discussion/Action: For Publication Ordinance No. 670 15/16 approving amendment to JPA and GRT ordinance dedicating GRT for payment of bonds or loans for hospital purposes. Juan Fuentes, City Manager**

City Manager Fuentes recognized Mike Zimmerman and the Chair of the Hospital Board, Warren Cross. He asked them to step forward in case there are any questions. He continued this is the ordinance we have been talking about that was brought up a few meetings ago to allow the GRT to continue to dedicate to the hospital for the purpose of the repayment of the loan for the new hospital. He said both our Attorney John Appel and the bond counsel have been working to finalize the proposed ordinance. The County has acted on it as well as the City of Elephant Butte and Williamsburg.

Mr. Zimmerman addressed the Commission. The single most common misperception of this project and the funding is that we are asking for additional funds for the JPA and the entities. This is structured in such a way that it will not be asking for additional funds. The phrase he uses is, "If you paid us a dollar last year, we would like you to pay us a dollar next year and continue it through the life of the loan." That GRT funding is about \$240,000 a year and that is one of the larger chunks of the funding mechanism, but the largest part will come from the hospital. We've hear rumors that the hospital fees will go up, and he notified them they don't set the fees, they are set by insurance companies by the Medicare Fee Schedules that are established in Washington D.C. by Congress. All we are asking the Commission for is their continued support which the city has done since 1988.

Commissioner Peterson stated before the meeting he spoke to the administrator and let him know how satisfied he has been with the Hospital. Everything has been going in the right direction. He thanked Mr. Zimmerman and it's good to know things are going well.

Commissioner Richter asked what the term is of the note. Mr. Zimmerman responded it's a 30 year note.

Commissioner Clark clarified it would be dropped when the hospital is paid off. City Manager Juan Fuentes confirmed that is correct. Mr. Zimmerman responded yes that's the way it's structured.

Commissioner Clark said her understanding is the money we have collected have been for operations and if we continue it, it will be going to pay back the loan. Mr. Zimmerman believes the funding was earmarked for General Purposes, they were not earmarked for anything specific. But he confirmed her impression is largely correct. The hospital is now running the operations in the black. And they can revert some of the previous funds into the new facility.

Mayor Pro-Tem Green said it's certainly timely and it's the right things to do. He added it will provide better health care and different services than we have now so people won't have to go down to Las Cruces. This will be a good marketing tool to help build that economic development we have lost. To have something of this quality in our own backyard is a great thing. He appreciates the staff and the Governing Board, as well as, his fellow Commissioners and the JPC with Mr. Zimmerman who has gotten us to this point in the last two years.

Mr. Zimmerman added Tri-State Care Flight was purchased by Air Methods which is the largest company in the country. They announced they will be closing their base here in T or C. Materially it will have no impact on the hospital. We are only transporting 20% of the patients we were over two or three years ago. With the new providers we were able to bring in and the more acute physicians we have now we were able to keep more patients in town, and with the new facility we will be able to keep even more.

Mayor Pro-Tem Green moved to approve for Publication Ordinance No. 670 15/16 approving amendment to JPA and GRT ordinance dedicating GRT for payment of bonds or loans for hospital purposes. Commissioner Peterson seconded the motion.

Motion carried unanimously.

2. Discussion/Action: IFB 15-16-005 Bid Award for Wastewater Treatment Plant Improvements Phase 1. Pat Wood, CPO

Central Purchasing Officer Wood presented the item. Bids were opened on February 11, 2016 at 2 PM. Smith engineering's project number 114127. We received four bids for this project. Low bid was our RMCI, Inc. for \$3,635,325.05. Recommendation by Smith Engineering is to award to RMCI pending USDA concurrence.

Commissioner Clark asked City Manager Fuentes to go through the funding for this.

City Manager Fuentes responded the bulk of the money is coming from the USDA grant/loan we received two years ago, in addition to that, we received colonias funding for phase 2. We have been able to compile all these funding sources for this project. It's important to know the funding we have available sufficient to cover the bid we received at this time. We even have a little for contingency in case something happens.

Commissioner Clark asked what this will do to our debt payment on the loan. City Manager Fuentes responded we already have part of the component of the funding did require a loan. And we are not paying on that yet, and he does not have the schedule at this time. Commissioner Clark asked if that includes the \$900,000 from colonials. City manager Fuentes confirmed.

Commissioner Clark didn't see any contingencies. And knowing what her overruns were from swimming will she is terrified this could go up to \$7 million. Are we confident on this company where there will not be overruns? City Manager Fuentes responded this is phase 1 of the project. He added the total project is close to \$8 million. He is pretty confident this phase 1B within the funding we have available. Then we would go into Phase 2a and 2b. We are currently in the process of applying for additional money for additional phases. In the meeting with the engineers there was no concern this project would go into huge overruns. He reiterated we have additional money for contingencies. All of that will be monitored by USDA as well.

Commissioner Clark said her agenda form has several years of balance sheets and they don't have the liability, they just have the net worth of this company. And one of the things she noticed is from 2013 -2014 the accounts payable doubled up to about \$7 million. That normally is a big alarm clock without seeing what the actual assets and fixed assets are. So she was wondering if that flagged anybody who was looking at this particular RFP/

City Manager Fuentes responded he can tell the Commission, our Engineers feel very comfortable with this firm, they have worked with them before they have done a good job with other communities. We were fortunate they came in at the lowest bid and we have the funding available. We do not get into the specifics of individual companies, that wasn't what we were looking at when they submit bids. Commissioner Clark asked, so we don't look at the financial strength of the company, Central Purchasing Officer Wood said they provided the bonds required.

Mayor Pro-Tem Green said on the last sheet related to Estimated Legal Bond Services Fees and Loan related costs. He was wondering who came up with this documents. They are talking about if you pay Legal Services \$200/hour and they have 225 Hours of Legal Services, and he was wondering if these are not coming from USDA, they are our dollars. In other words, we are going to borrow money for the services.

Central Purchasing Officer Wood responded the Engineers and Assistant City Manager Slettom added USDA was also responsible. He added part of this funding is also paying for bond counsel because a bond is going to be issued for the loan portion to back the loan.

Mayor Pro-Tem Green referred to the Interim Loan interest and who the city is borrowing money from.

Assistant City Manager Slettom said it's actually being borrowed through the bond, through USDA. We have to provide the surety of how we will pay back the loan. The entire package is being funded through USDA, and in the interim we have had to go through RCAC for a loan that covers the bridge fees, the construction documents, and the bidding. When we get to closing the RCAC loan will end and it all gets rolled into the closing for the whole package. We are expecting that will happen in the next couple of months.

Commissioner Peterson thanks the other Commissioners for clarifying his questions. He wanted to make sure there is no need for raising utility rates to pay for it.

City Manager Fuentes said when we initially applied for the funding, they did look at our rates and they recommended raising rates and that has already been done by the previous commission.

Commissioner Peterson asked so we would not be voting to raise the rates. City Manager Juan Fuentes confirmed that is correct.

City Manager Fuentes thank the Commission for their support and commended staff including Assistant City Manager Slettom, Tracie Burnette, and Finance Director Montgomery for their work on this project and recommended approval of the bid award as presented..

Mayor Pro-Tem Green moved to approve the award of IFB 15-16-005 Bid Award for Wastewater Treatment Plant Improvements Phase 1 to RMCI pending USDA/RD concurrence. Commissioner Richter seconded the motion. Motion carried unanimously.

- 3. Discussion/Action: To approve the resumes of the individuals that will be potentially used to perform Resident Project Representative (RPR) services for WWTP Improvements Phase 1 Project. Traci Burnette, W/WW Admin. Asst.**

W/WW Admin. Assistant Burnette notified the Commission before them they have four resume's from Employees of Smith Engineering. In July of 2014 we signed a contract with Smith Engineering Services. Within that contract it included the RPR services during construction. This is more of a formality for USDA/RD concurrence. Per their requirements,

you need to review and approve the resumes of the employees Smith would be using for onsite construction management.

Mayor Pro-Tem Green just had one question and Traci answered it. These are employees of Smith Engineering. Ms. Burnette confirmed, that is correct.

City Manager Fuentes recommended approval.

Mayor Pro-Tem Green moved to approve the resumes of the individuals that will be potentially used to perform Resident Project Representative (RPR) services for WWTP Improvements Phase 1 Project. David Zamora, Richard Gutierrez, Shawn Allen, and Shawn Boggs. Commissioner Richter seconded the motion. Motion carried unanimously.

4. Discussion/Action: Reed Rocket Art Project Redesign. Jeff Barbour, Artist

Mr. Barbour addressed the Commission. He presented photos to the Commission. The question was on the base. We went to a fiberglass base which will allow it to sway in the wind. Building Inspector Travis suggested a wall so the base will be sitting on the top of the wall. One of the drawings shows the configuration which will be bolted securely and the rod system will allow it to sway but not too much when the wind is really hard. You will not have the issue of it bending too far with the counter weights. There will be a covering over the top of it which will be flexible hoses to keep the fiberglass away from any lights. He built this awhile back and it's been swaying in his yard and the movement is quite perfect. It's a safe design and he needs the Commission to approve the redesign.

Commissioner Richter is more worried about when we get the piece in there that the site also complements the piece.

Mr. Barbour said it will be on the corner of the Art Park that will go in there. So the Architect will design everything incorporating it into the project. He will have it built in April, installed in May, and will have it ready by the Centennial in June. Commissioner Richter asked if the park will be finished at that time. Mr. Barbour responded the park will not be finished at that time.

Commissioner Peterson asked what type of liability he foresees.

Mr. Barbour explained how it will be installed and protected. There will be a double bolt system on both sides. Generally kids will not be going down there with saws and will not be able to pull them out of the cement. It would be very hard to break them.

Commissioner Peterson said he imagined every night we could grease the poles.

Commissioner Clark asked if the cost of grease is included. She asked about the cost of the walls. Is that part of this project or is the city incurring the costs.

Mr. Barbour met with Russ and they will get the concrete from Bar 2 as a donation and he will pitch in from what the city is paying him if he needs to.

Commissioner Clark added it's not a lot of money you are being paid for this

Mr. Barbour responded that's for sure. It's part of the joys of being an artist in T or C. He is just happy to be getting this thing up. He is grateful for the opportunity to actually build something like this.

Mayor Pro-Tem Green asked if it will be lit at nighttime. Mr. Barbour responded in the cement wall there is room for sinking lights in the walls to light it up at night. We are a ways away from putting power in there to put lights in the walls. Or he added we could add solar panels. The Engineers can figure all of that out but the opportunity is there to do it. Mayor Pro-Tem Green counted how many. Mr. Barbour responded there will be 14. Mayor Pro-Tem Green asked if that was the same number in the original contract. Mr. Barbour said there were more but they asked what we can for \$7,000. So the original concept is the same and there are less Reeds, but the original concept is still there.

City Manager Fuentes said the Chair of the Public Arts Advisory Board is here and Jagger is here. Assistant City Manager Slettom restated MainStreets participation with this and the state MainStreet Architect William Powell who will provide us with a site plan which we can use to make a more detailed drawing of the overall concept for the Park so we can address the issues of lighting and amenities people would like to see. We are also looking at building a site model and that will all be coming in a couple of months.

City Manager Fuentes recommended approval for the redesign.

Mayor Pro-Tem Green moved to approve the redesign of the project. Commissioner Richter seconded the motion. Motion carried by a vote of 4-0-1. Commissioner Peterson abstained.

5. Discussion/Action: Approve the Law Enforcement Protection Fund (LEPF) Application. Lee Alirez, Police Chief

Police Chief Alirez addressed the Commission stating this is the annual approval contribution given to us by the state, it's used for equipment, training and that nature. He is bringing it to the Commission for approval.

City Manager Fuentes had no comments or questions and recommended approval.

Mayor Pro-Tem Green moved to approve the Law Enforcement Protection Fund (LEPF) Application. Commissioner Peterson seconded the motion. Motion carried unanimously.

6. Discussion/Update: Animal Shelter Project. Lee Alirez, Police Chief

Police Chief Alirez gave his presentation related to the progress over the last eleven months on the Animal Shelter Project. He notified them the current contract with Sierra Veterinarian Service expires on June 30, 2017. They have advised they will not seek renewal for the current services. They currently provide services for the animal shelter and for the entire county. Part of the committee was to review the needs in the community. The committee

was comprised of community stakeholders who have a driving passion in care and humane treatment for all animals. We meet biweekly and it sometimes gets extended if there is not a whole lot of information to pass on. He traveled to Roswell, Artesia, Deming, Las Cruces, and Socorro. In looking at their animal shelters, one of the things that came up is Socorro closely matched the demographics of our community and they closely mirrored what we wanted to do here as far as building the infrastructure on our own for the adoption and transport of animals. So the based on the research she contacted Victoria Murphy who is well respected in the State of New Mexico with 30 years of experience. Director Murphy conducted a site visit here at the location which is now going to be the Lee Tafoya building. In there we had an aluminum structure of 1,360 sq. ft. which she saw and said this would work out great as in Interim Shelter. The building is there and needs some modifications. The concept of modifying an existing structure and creating a point of intake for the short term animal sheltering was proposed to the "Animal Shelter Committee." Unanimously it was agreed this would be an appropriate start, as the foundation for the animal shelter project.

He and Assistant City Manager Bill Slettom have met with Director Murphy, and the City of Socorro and the discussion points of these meetings have included; Monthly cost for sheltering and related services; Transportation of Animals to Socorro on a weekly or semi weekly basis; and Integration into their existing "transport out" infrastructure to non-profits groups. Additional discussion points included the developed a plan for implementing in phases a fully operational Truth or Consequences Police Department Animal Shelter. This plan includes; Utilize an existing structure on the newly acquired property to serve as an intake and short term animal sheltering location; Obtain engineer plans to modify this building to meet industry standards as it pertains to Animal Sheltering; Utilize current Capital Outlay Funding to obtain engineering plans; and Utilize current Capital Outlay Funding to construct / modify existing structure.

He continued with the Purchase of required equipment to facilitate Animal Sheltering. Once completed enter into an M.O.U. Agreement with the City of Socorro for the acceptance, care and services of Animal Sheltering for those animal which have remain in our shelter past seven days. As we become integrated with the City of Socorro Animal Shelter infrastructure, and while awaiting the construction of our Regional Law Enforcement complex on this same site, we will begin implementing additional Animal Sheltering Services in phases until we become fully self-sustaining. In November of 2015 the Humane Society of Southern New Mexico offered for sale, equipment needed for implementation of the 1st phase of developing the Truth or Consequences Police Department Animal Shelter. The cost of this equipment was offered at \$10,100.00. The market value of this equipment if purchased from the manufacturer exceeded \$24,000.00.

On November 13, 2015 the purchase of the listed items was made from the Humane Society of Southern New Mexico for \$10,100.00 from Capital Outlay funding Project 13-L-1783. They included: Kenmore Chest Freezer; Kenmore Refrigerator; Haier Refrigerator; Whirlpool Industrial Washer Machine; Whirlpool Industrial Steam Dryer; Weigh South Scale; and 40 various sized Kennels. All of this equipment is being stored at the Lee Tafoya Building now.

In January of 2016, City Manager Juan Fuentes, Assistant City Manager Bill Slettom, and he met with Robert Calvani, of NCA Architects. A site visit was conducted of the existing structure. We are currently awaiting the final design plans for the modifications of the existing structure to serve as our interim short term animal sheltering facility. He showed a drawing that shows the modifications for the structure.

Chief Alirez added when we started out we had \$250,000 in Capital Outlay with the help of City Manager Juan Fuentes and our County Manager Bruce Swingle, he is proud to say we are sitting on approximately \$420,000 in Capital Outlay for this project, and we are in good shape and on our path to having a fully operational animal shelter in the future.

Mayor Pro-Tem Green asked about the funding. So the City got \$100,000, then we got \$150,000, is the difference between the \$250,000 and the \$420,000 money the county got for capital outlay? Police Chief Alirez responded they did. We received \$101,000 in capital outlay and the County received \$100,000 for the funding.

Mayor Pro-Tem Green said the animals after seven days will be transported to Socorro, on whose dime? Chief Alirez responded on ours. Mayor Pro-Tem Green then asked how many vehicles Animal Control has to drive around town with? Police Chief Alirez said we have two Vehicles but we will be looking at a van to install kennels on the inside for that. Mayor Pro-Tem Green also asked how much we would charge for the service. Chief Alirez said in working with the City of Socorro, currently we are paying \$10,000 a month and based on the same volume of animals we currently have it will be \$3,000 a month. Chief Alirez added there may be additional costs associated where we would be able to make approvals for those. Mayor Pro-Tem Green said right now after seven days, we would transport them. He asked how long Socorro is going to keep them, how long we have to pay for that service, And if it is a no kill shelter. Chief Alirez responded their philosophy is no kill, however, there are dogs and animals for liability purposes cannot be adopted and only for that reason where they may have some social ability issues where they might fight or attack someone. Ideally the perfect animal is one who will socialize with other animals and human beings. But unfortunately we do have some animals who have attacked people who will not be able to be adopted. Part of the agreement gives them the ability to integrate their transport out structure which we will be able to walk right into, without having to recreate the wheel. Socorro will be able to look at what dogs we have at any time. The \$3,000 is a flat fee it's not per storage per animal.

Commissioner Clark said so we are paying \$10,000 a month and it will be changed to \$3,000 once the shelter is in place. Will \$7,000 be enough to run the shelter? Chief Alirez responded that is their goal. We have a community full of people who have a passion for the care of animals and we will utilize every resource we have to help keep those costs down. Commissioner Clark asked if they will be using CAAT and other organizations in town. Chief Alirez responded absolutely. Commissioner Clark added that was one of the hopes she had. Chief Alirez has not approached one single item without taking it to that board and he's developed extremely good relationships with them. They are very much a part of this and will be going forward.

Commissioner Clark asked City Manager Fuentes if it's possible to see a financial kind of business plan for this in the future. City Manager Fuentes responded yes that will be presented, this was just intended as an update to let the Commission know we are in line

for the project. As we move forward we will come back to the Commission, not only for the funds, but for the agreement with Socorro. Commissioner Clark thanked the Chief and there are a lot of Animal Lovers in the community who feel it is very important to take care of the animals.

Police Chief Alirez is very thankful for the community collaboration on this project. We could not have reached this point without their help.

Commissioner Peterson commended him for taking on the needs of the Police Department and filling the need of the community. He asked if it will be necessary for those who may be harmed or injured will they have to put them down. And will in include other animals. Chief Alirez responded that was brought up in one of our meetings. They will deal primarily with dogs and cats, but they do however, they take in a lot of rabbits. We do have other issues that come up including emergency situation. We will put all of our resources to work to keep the cost of running it as low as possible. Commissioner Peterson asked who will be putting the animals down that need to. Chief Alirez said the animal control officers will have the training to do that. We will take care of it in the most humane way available. He would prefer our own officers not do the euthanizing but we will use our resources the best we can and will approach everything in a responsible manner.

Mayor Pro-Tem Green asked City Manager Fuentes about the capital outlay money. Is it strictly for construction or is it for construction and operations. So if they come in under \$420,000, there might be money to pay a part-time employee. City Manager Fuentes responded the money is strictly for planning, design, and constructing the shelter. Typically it is not used for operations. Mayor Pro-Tem Green thanked the City Manager and thanked the Chief for what he is doing!

7. Discussion/Action: Review and selection of Local Government Road Fund (LGRF) Program Project. Don Armijo, Public Works Director

Public Works Director Armijo gave his presentation. It is part of the agenda packet. He added every year we do a couple of blocks. We should be finishing this year with Simpson. The Streets he presented included the following:

- 1) Golf Club Drive, off of Copra
- 2) Veater, from Iron to Arroyo
- 3) Veater, from Hyde to Arroyo
- 4) City Street Dead end to Myrtle
- 5) City Street, Myrtle to Henson
- 6) City Street, Henson to Radium
- 7) Marshal, Platinum to Tin
- 8) Marshal, Tin to Coal
- 9) River Road, Tin to Bottom of the Hill
- 10) West Riverside, Wyona to Daniels
- 11) Kruger, Third to Fifth
- 12) Kruger, Fifth to Sixth
- 13) Kruger, Sixth to Seventh
- 14) East 7th, Kruger to Tingley
- 15) Locust, Sixth to Seventh
- 16) Locust, Sixth to Fifth

17) Locust, Fifth to Fourth

Public Works Director Armijo added these are some of the streets we want to include for this year.

Mayor Whitehead said there are a couple of additional roads. One would be Gold Street from 3rd to the Hospital. And also 8th from Kruger to Tingley, when they grade it's really Rocky. There have been several times she goes on Tingley from 8th Street and she almost high centers her car on that road. Also on Kruger they come so fast everyone is sliding. They are going to take out homes for fences in the future. She would like them to look at doing those in the next couple of years.

Commissioner Peterson said he remembers receiving calls for each of those areas. He commended them for all of the work they have done. He asked if they feel they will be able to do all of those streets with the money you have. Public Works Director Armijo responded no sir, these are the streets we would like to see. We are leaving it up to the Commission to decide which streets we move forward to address. In the past we did one area and did a street, then we did the next area. But now we are letting the Commission decide what areas we take care of.

Commissioner Richter thinks you have a good idea with the stretch of road. He suggested bringing it back to show phases to get one section done so the choices could be narrowed down that way. When originally saw this, he thought was a great agenda item for the next Commission. He remembers dealing with that four years ago. If we can narrow that down in phases of where we can do sections. Some of this is chip seal which is a bandaid. He commented on the Road on Veater. He mentioned he was not sure if we were going to upgrade that water line. It has been dusty for years.

Mayor Pro-Tem Green picked up on something Commissioner Richter has said for four years. Half of our Streets are dirt streets. If you have a home on that road and it gets paved, it would increase your home value. He wondered if the new Commission might want to take this on to self-finance our road program to get them paved. If we update our infrastructure, the residents are the ones who gain. To spend \$60,000 a year to update our roads is ridiculous. Demand is great and the funding is not so great. Flooding, the amount of houses being affected, and dust should be determining factors. The biggest challenge is not which road we choose, the bigger challenge is how to we get 15 miles of roads paved. If we already started something we should continue.

Commissioner Peterson interjected where the complaints come in based on the logic gets everything mixed up.

Public Works Director Armijo said one word of caution is we have until March 15th to act on this to get it in to the state. He added Commissioner Richter brought up a good point on Veater. We don't want to tear it up because they will need to go in and out on that one so it would be a good idea to wait on that one. On the end of city street there is one person who lives on that street. The next stretch is on the end of Marshall going towards the river, eventually it would be nice to go around River Rd and make that a full street. The blocks on Kruger might be a good idea. We didn't want to do more work past Kruger because Dave Cook said they need to do work on those lines. If we got it done up to 7th it would take care

of that housing complex and those who live there. Once again you are only going to do two blocks and the next two blocks. When we did Riverside Dr. every year we did two blocks until we got out to Rodeo Arena Road and that took about four years. Foch Street also took four to five years to complete. Once they get started in an area, it will take four to six years to finish the area.

Commissioner Peterson said when we approve a certain amount of roads to be done, we have to be careful we don't have to tear it up for water or sewer lined.

Public Works Director Armijo said when before they do a project they do work with the Water Dept. to see if there are any upgrades for valve changes they need to do. They are working with them.

Commissioner Clark doesn't like the checkerboard concept. She would like to see a continuous ongoing project. She would like to see this work with the Water Study that was done. The one that shows which are the worst lines in the city. She agrees with Commissioner Richter's comments.

City Manager Fuentes said based on the comments made he asked for Public Works Director Armijo's recommendation.

Public Works Director Armijo responded he would say we should start with Kruger and head to 7th Street. Eventually we could tie in with 8th Street and those blocks there.

City Manager Juan Fuentes said with that he would make a recommendation to proceed with Kruger as recommended by Public Works Director Armijo. This way we could apply for the New Mexico Department of Transportation funds before the deadline.

Mayor Pro-Tem Green asked him to put that project back up on the board. They are looking at #11 Kruger from 3rd to 5th (\$9,900); Kruger from 5th to 6th (\$29,000); and Kruger from 6th to 7th (\$30,000).

Public Works Director Armijo said right about \$51,000 is what the state gives and we do a 25% match. We use every bit of money we get to put in to materials so we get more bang for our buck. Mayor Pro-Tem Green asked Mr. Armijo if the \$51,000 or \$53,000 is including our match. Public Works Director Armijo responded no sir, that's just the state's portion.

Commissioner Clark asked City Manager Fuentes she is still concerned about looking at water lines to do that first. City Manager Fuentes said we would definitely look at the areas Don has identified to make sure there is nothing in the near future. The study has identified which lines are more critical to replace. They will work with Traci, Jesus, and the Water Department to make sure there is nothing in the future that will tear up the road once we proceed forward. Commissioner Clark said those three are

Public Works Director Armijo made a diagram on the dry erase board for the Commission, then Kruger Street was displayed on Google Maps to show the area they are proposing. City Manager Fuentes added we would start by 3rd and go up to 7th.

Public Works Director Armijo directed them through the map.

Mayor Pro-Tem Green wonders if we could vote on this contingent upon Public Works Director Armijo and City Manager Fuentes checking with the Water & Wastewater Departments to make sure there is not anything planned for this area.

Mayor Pro-Tem Green moved to approve authorizing the Public Works Director to move forward with staff on the LGRF project on Kruger Street contingent upon checking with the Water & Wastewater for their plans for improvement. Commissioner Clark seconded the motion. Motion carried by a vote of 4-0-1. Commissioner Richter recused himself because he has family who live on Kruger.

8. Discussion/Action: Award and authorization to staff to proceed forward with the Healing Waters Plaza Project. Juan Fuentes, City Manager

City Manager Fuentes gave an update on the item. In the packet there is a quote they received from Accent Landscape Contractors. This is the company our firm has been working with. It's a contract we are going through CES Program which is a highly recommended contract company that is experienced in these kind of projects. The quote we receive is estimated at \$330,000 plus other fees for a total of about \$336,000. We still have a balance of \$174,766 from the funds we set aside. And we did receive notice of the MainStreet Grant for \$145,000. But even with those funding sources we are still a little bit short between \$11,000 - \$20,000. The goal is to be able to proceed forward with this project. However, we are still working with the state and the New Mexico MainStreet to be sure we will be receiving that grant agreement for the \$145,000. We are still working with the Architect and Engineering Firm because there are items we want to make sure address, such as the Soil on the site. Staff is working with some of the Engineers, and bill to try to keep the costs down and do some of the work ourselves. He recommended to proceed forward with this project as presented in the quote of \$336,377 with the authorization for staff to have the flexibility and find the resources to cover the funding gap. We have identified those funds in the Recreation Fund, not the Recreation fund in the General fund but a separate fund. So we have those funds available. In addition to that we have the funds that have been raised through the brick program, which will be available as well to cover any shortfall. If Commission allows staff to proceed forward with a 10% contingency because as you know there is always the unknown when you move forward with a project. The goal is to have it completed by June for the Centennial Celebration. However, he wants to stress any execution of agreements have to be contingent on making sure we receive all of the funds for this project. So we will be moving cautiously with this project and we will be keeping contact with Architect and the Contractors. Bill is in the audience to answer any questions.

Commissioner Clark said we have a time crunch here and she trusts City Manager Fuentes to make sure we have the budget and the funding lined up. She doesn't see us not going through with it, without having a party with a dirt pile.

Mayor Pro-Tem Green said lets get it on and do it. Commissioner Peterson said this project is too important to be messing around with it, he is for it.

Commissioner Richter said it seems we could do some stuff right away like the solar mediation right away. He asked at what point do we see this thing capitalize. City Manager Fuentes said if the authorization is given tonight staff plans to contact MainStreet and work

in parallel with them to get it done in a timely manner within the budget we have. In the meantime, our staff is already working to try to get some of that done in-house. We are working in two parallel roads to get it done and make sure we have the funding.

Commissioner Richter asked what the time frame is on getting the money. City Manager Fuentes let them know we already received word that we have the funding but we don't have a date as to when the agreements will be sent out. He has been in contact with the Assistant Executive Director of MainStreet, and he does not have the actual date yet. Commissioner Richter responded you getting the ok from MainStreet is not the same as you having the money in hand. City Manager Fuentes said we don't just want a verbal agreement we want to make sure we have a firm commitment. The contract will be with the city, we want to make sure we have the funding in place before we proceed forward. One of the things they will make a determination once they review the audit is if the city will need a fiscal agent or not. That is a requirement for DFA to make that determination.

Mayor Pro-Tem Green said we still have two baited hooks in the pond. One is a state agency expecting turn back money. That will be available at the end of April. The Turner Foundation is in to one of their charitable foundation Mr. Turner owns. We have a call into one of the Chairman to find out what their time frame will be. He thinks this is a sensible way City Manager Juan Fuentes and Assistant City Manager Slettom have chosen to move forward with. He believes for the shortfall, we might have some people retiring that we don't have to fill immediately.

Mayor Pro-Tem Green moved to approve to proceed with the healing Waters Plaza Award and to authorize staff to take financial precautions to make sure funding is available. Commissioner Clark seconded the motion. Motion carried unanimously.

H. REPORTS

1. City Manager

- 1) City Manager Fuentes reported the Capital Outlay projects for Sierra County. Elephant Butte Wastewater Collection Lines (\$200,000); Monticello Water System Construction Project (\$100,000); The Sierra County Animal Shelter (\$100,000) he reiterated the support the county has given us on this project, they also made it one of their priorities and we appreciate that. Other funding on the list includes; Geronimo Springs Museum HVAC System (\$5,000); T or C Animal Shelter Project (\$101,000); and the T or C Feeder Electrical Improvements Project (\$35,000). So the County is in line for \$561,000 of capital outlay if the Governor signs the bill.
- 2) The Colonias Infrastructure Board is meeting on March 9th for Phase 2b of funding for the WWTP Project. We submitted an application for \$2.4 million. Bill and Traci will attend that meeting for the funding. We hope to get this funded so we can move forward with the next phase and will hopefully have the WWTP Project done in five years.

Mayor Pro-Tem Green asked about the \$101,000 and if it came from one person or was it split between Senator Smith and Representative Hamilton. City Manager Juan Fuentes said at this time we don't know who funded the project. Mayor Pro-Tem Green wanted to write his thank you letter.

2. City Attorney

None.

3. City Commission

Commissioner Clark said it's been a real pleasure working with you guys. He likes the sense of humor on that side of the table.

Mayor Pro-Tem Green echoed Commissioner Clark's sentiments. It really has been a joy and a pleasure. Life to him is always about learning and continuing to learn and he has learned a lot from both Commissioner Richter and Commissioner Peterson. And the grace and way you have handled yourself even though we have disagreed in the last four years and one year. But we've always been able to look one another in the eye and shake hands in the beginning of the meeting and at the end. He appreciates all they have done and he's sad they are leaving.

Commissioner Peterson wanted to express his thanks to the Commission and City Manager Fuentes too. As a brand new person after you guys have been working through something for a year or two, and I come aboard and had a whole year to catch up on. And he may accuse somebody or get them in the office and wonder why it's going down the way it is. There is a million ways to do things, and my way may have been different. But I enjoyed watching this Commission with this Manager work the hardest he has ever seen on a Commission. And getting involved no matter how difficult it was. For instance, the Water System and Wastewater. Some of those traits still hang with him so he thanked all of the Commission for being responsible for the citizens of this community. One thing he thought he could deal with again getting back in as Commissioner was some of the wackos that voice opinions and chewing at the Manager or Commission knowing that we are under constraints in running a meeting efficiently and not engaging in a bunch of childish rhetoric. All he knows is not of that caliber any longer. Thank God he was only on the council for a year or you may have some altercations going down if he had to sit through very many more of the nonsensical stuff that comes across. And he commends them in doing such a great job. He admires the Commissioners for running again and he sincerely wishes them the best of luck. He can't see anyone else working as hard for the city.

Commissioner Richter asked who brought the cookies. City Manager Juan Fuentes responded City Clerk Cantin brought them.

Mayor Whitehead thanked all of the Commissioner's for their dedication to the community. But before we leave she has one item left. She had the great privilege and honor to go to Juarez to visit the Pope when he came. She was totally impressed and amazed, it was a bucket list thing for her and she was totally amazed. She showed some slides with pictures of the trip.

I. ADJOURNMENT

Mayor Pro-Tem Green moved to adjourn at 8:19 p.m. Commissioner Richter seconded the motion. Motion carried unanimously.

Passed and Approved this ____ day of _____, **2016.**

Sandra Whitehead, Mayor

ATTEST:

Reneé L. Cantin, CMC, City Clerk



F.2

CITY OF TRUTH OR CONSEQUENCES
COMMISSION ACTION FORM

ITEM:

Approve the minutes of the Golf Course Advisory Board for February 3, 2016.

BACKGROUND:

None.

STAFF RECOMMENDATION:

Approve the minutes.

Name of Drafter: Renee Cantin, City Clerk

Meeting date: 3-08-2016

**TRUTH OR CONSEQUENCES
GOLF COURSE ADVISORY BOARD
Minutes**

**Regularly Scheduled Meeting February 3rd, 2016
T or C Municipal Golf Course**

- 1. Call to Order at 5:06 PM by Mr. Dufour**
- 2. Roll Call ; Mr. Dufour, Mr. Bierner, Ms. Weaver and Ms. Hale present, Mrs. Bonner was Absent,**
- 3. Approval of the Agenda- motion made by Hale seconded by Weaver –motion passed on a unanimous vote**
- 4. Welcome guests- Manager Terry Taylor, Visitor Johnny Valdez**
- 5. Comments from the Public- none**
- 6. Response to public comments n/a**
- 7. Reading/Approval of the Minutes from the January 6th, 2016 meeting. Motion made by Mr. Bierner second by Weaver, Hale abstained because she was absent, motion passed.**
- 8. Committee reports**
 - A. Les Dufour/Vivian Bonner – status of \$1 fund- a discussion was held about the accounting reports that are received by Chair Dufour. He showed the Board that he used to get monthly reports he now only gets reports sporadically. The Board felt this made it difficult to reconcile with the manager and do a budget with the funds if we get sporadic reports. Mr. DuFour was to speak with the business manager about more timely reports.**
 - B. Les Dufour/Mary Ann – Long Range Planning Document- a discussion was held concerning the long range plan. Some grammatical and format changes were made. Ms. Hale agreed to update the document with the historical information and create a list with items that should be addressed. The board will then get feedback from membership on the priorities.**
- 9. Old Business.**
 - A. Course Condition Mr. Taylor reported on the course condition and watering plan**
 - B. Pumps Mr. Taylor reported on an issue with fish parts in the sprinklers. He is draining the pond to check the screen and pump.**
 - C. Equipment - ICIP and GCIF project – Terry Taylor – Mr. Taylor reported he is getting quotes on the equipment requested from the commission. In addition he reported he was attempting to negotiate a trade in for an aerator.**
 - D. RFP- Mr. Taylor reported he was awarded the RFP. He also reported he had completed all the paperwork necessary on his side for a liquor license.**

- E. Appointment of Secretary/Treasurer position- Ms. Hale was nominated by Mr. Dufour and 2nd by Ms. Weaver, motion passed on a unanimous vote

10. New Business

- A. Smoking in the new building- City Manager Fuentes sent an email to the Board reporting smoking in an enclosed structure was against a city ordinance. Therefore he will send signs to be posted in the building.

Mr. Taylor reported he would create a nice outdoor area for smokers.

11. Adjournment a motion was made by Ms. Hale and seconded by Mr. Bierner at 6:37 PM, the motion passed unanimously

Next Regular Scheduled Meeting: March 2, 2016 at 5:00 P.M.
At the T or C Municipal Golf Course

Approved March 2, 2016
Yes Dufour
Chairperson



F.3

CITY OF TRUTH OR CONSEQUENCES
COMMISSION ACTION FORM

ITEM:

Approve the minutes of the Golf Course Advisory Board for February 17, 2016.

BACKGROUND:

None.

STAFF RECOMMENDATION:

Approve the minutes.

Name of Drafter: Renee Cantin, City Clerk

Meeting date: 3-08-2016

TRUTH OR CONSEQUENCES GOLF COURSE ADVISORY BOARD
MEETING OF FEBRUARY 17, 2016 TIME 5:00 PM
T OR C MUNICIPAL GOLF COURSE
SPECIAL MEETING

Meeting called to order by Chairperson Les Dufour. Present were Les Dufour, Mary Ann Weaver, Leroy Bierner, Linda Hale and Vivian Bonner. Guest were Terry Vandevanter, Johnny Valdez and Carl Bonner. In attendance was Golf Course manager Terry Taylor.

Motion was made by Les Dufour to approve agenda and Mary Ann Weaver second. Motion passed.

Les Dufour opened the meeting up for public comments and discussion followed. Terry Vandevanter expressed his ideas about the golf course fees. Les Dufour assisted by showing the history of fees and current charges as per RESOLUTION NO. 34-13/14.

Golf Course Advisory Board discussed RESOLUTION NO. 34-13/14 and approved as is.

Les Dufour made a motion to adjourn the meeting and Mary Ann Weaver second. Motion passed. Vote unanimous.

Next Meeting will be Wednesday March 2nd, at 5 pm at T. or C. Municipal Golf Course..

Approved March 2, 2016

Les Dufour
Chairperson



G.1 + H.1

CITY OF TRUTH OR CONSEQUENCES

COMMISSION ACTION FORM

ITEM:

DISCUSSION/ACTION: FOR PUBLICATION ORDINANCE NO. 670 15/16 AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AMONG THE SIERRA COUNTY JOINT POWERS COMMISSION AND DEDICATING THE PLEDGED THE REVENUE FROM ITS 0.1875% MUNICIPAL GROSS RECEIPTS TAX FOR THE TERM OF THE LOAN.

BACKGROUND:

The member entities (T or C, Sierra County, Williamsburg and Elephant Butte) of the Sierra Vista Hospital (SVH) Joint Powers Commission (JPC) provide financial assistance to the hospital for operation and maintenance expenses. The City Gross Receipts Tax (GRT) Ordinance (No. 454-98), amending GRT Ordinance (No. 416-94), enacting a $\frac{1}{4}$ of 1% GRT of which $\frac{3}{4}$ of that amount ($\frac{3}{4}$ of the $\frac{1}{4}$ of 1% GRT) is dedicated to the hospital for operational and maintenance expenses—and this amount is committed in Ordinance No. 454-98 for a period of 20 years or until the hospital is paid for (whichever comes first).

Sierra Vista Hospital Joint Powers Commission (“JPC”) is considering a loan from the New Mexico Finance Authority in the maximum amount of \$36,329,129 for the construction of a new hospital on or near the site of the existing hospital. SVH is requesting member entities to continue providing the dedicated GRT for repayment of the Loan for the construction and improvement of a new hospital for the entirety of its term.

John Appel, City Attorney, and NMFA legal counsel have drafted the proposed ordinance authorizing the execution and delivery of a loan agreement among the Sierra County Joint Powers Commission and dedicating the pledged the revenue from its 0.1875% Municipal Gross Receipts Tax for the term of the loan.

STAFF RECOMMENDATION:

- Approval of Ordinance No. 670-15/16.

SUPPORT INFORMATION:

- Proposed Ordinance No. 670-15/16.

Reviewed by: Juan A. Fuentes	Department: City Manager	E-mail: jafuentes@torcnm.org
Meeting: 03-22-16		

STATE OF NEW MEXICO)
COUNTY OF SIERRA) ss.
CITY OF TRUTH OR CONSEQUENCES)

The City Commission (the "Governing Body") of the City of Truth or Consequences, New Mexico (the "City"), met in regular session in full conformity with law and the rules and regulations of the Governing Body at the City Commission Chambers, located at 405 W. 3rd Street, Truth or Consequences, New Mexico, being the meeting place of the Governing Body for the regular meeting held on March 22, 2016, beginning at 6:00 p.m. Upon roll call, the following Commission members were found to be present:

Steve Green, Mayor
Sandra Whitehead, Mayor Pro-Tem
Kathy Clark, Commissioner
Rolf Hechler, Commissioner
Joshua Frankel, Commissioner (by telephone)

Absent:

None.

Also Present:

Juan Fuentes, City Manager
Renee Cantin, City Clerk-Treasurer

Thereupon, there was officially filed with the City Clerk, the Mayor and each member of the Governing Body, a copy of a proposed Ordinance in final form. [TITLE] [NAME] thereupon introduced the following Ordinance:

CITY OF TRUTH OR CONSEQUENCES

ORDINANCE NO. 670 15/16

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AMONG THE SIERRA COUNTY JOINT POWERS COMMISSION (THE "GOVERNMENTAL UNIT"), SIERRA VISTA HOSPITAL (THE "HOSPITAL"), SIERRA COUNTY, NEW MEXICO (THE "COUNTY"), THE VILLAGE OF WILLIAMSBURG ("WILLIAMSBURG"), THE CITY OF TRUTH OR CONSEQUENCES (THE "CITY"), THE CITY OF ELEPHANT BUTTE ("ELEPHANT BUTTE"), AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), INTERCEPT AGREEMENTS AMONG THE GOVERNMENTAL UNIT, THE HOSPITAL, THE FINANCE AUTHORITY, THE COUNTY, WILLIAMSBURG, THE CITY AND ELEPHANT BUTTE EVIDENCING THE SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT, THE HOSPITAL, THE COUNTY, WILLIAMSBURG, THE CITY, AND ELEPHANT BUTTE TO PAY THE PRINCIPAL AMOUNT OF \$36,329,129 TOGETHER WITH INTEREST THEREON FOR THE PURPOSE OF PLANNING, DESIGN AND CONSTRUCTION OF A NEW HOSPITAL FOR USE BY THE GOVERNMENTAL UNIT AND THE HOSPITAL, FUNDING A LOAN AGREEMENT RESERVE ACCOUNT AND PAYING A LOAN PROCESSING FEE; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE NET SYSTEM REVENUES OF THE GOVERNMENTAL UNIT AND THE HOSPITAL AND THE DISTRIBUTIONS OF COUNTY HOSPITAL EMERGENCY GROSS RECEIPTS TAX AND COUNTY HOLD HARMLESS GROSS RECEIPTS TAX REVENUES RECEIVED BY THE COUNTY PURSUANT TO NMSA 1978, SECTIONS 7-20E-12.1 (2010) AND 7-20E-28 (2013) AND THE MUNICIPAL GROSS RECEIPTS TAX REVENUES RECEIVED BY WILLIAMSBURG, THE CITY AND ELEPHANT BUTTE PURSUANT TO NMSA 1978, SECTION 7-19D-9 (2007) AND THE MUNICIPAL INFRASTRUCTURE GROSS RECEIPTS TAX REVENUES RECEIVED BY ELEPHANT BUTTE PURSUANT TO NMSA 1978, SECTION 7-19D-11 (2003), AND DISTRIBUTED BY THE NEW MEXICO DEPARTMENT OF TAXATION AND REVENUE PURSUANT TO NMSA 1978, SECTIONS 7-1-6.1 (2007), 7-1-6.4 (2006) AND 7-1-6.15 (2015); PROVIDING FOR THE DISTRIBUTIONS OF COUNTY HOSPITAL EMERGENCY GROSS RECEIPTS TAX, COUNTY HOLD HARMLESS GROSS RECEIPTS TAX, MUNICIPAL GROSS RECEIPTS TAX AND MUNICIPAL INFRASTRUCTURE GROSS RECEIPTS TAX REVENUES FROM THE NEW MEXICO TAXATION AND REVENUE DEPARTMENT TO BE REDIRECTED TO THE FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO INTERCEPT AGREEMENTS WITH EACH PARTICIPANT (AS DEFINED IN THE RECITALS BELOW); RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENTS.

Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Ordinance unless the context requires otherwise.

RECITALS:

WHEREAS, the City of Truth or Consequences, New Mexico (the "City"), is a legally and regularly created, established, organized and existing municipality under the general laws of the State; and

WHEREAS, pursuant to NMSA 1978, Sections 3-31-1 to -12 (1965, as amended through 2007) (the "Act"), the City is authorized to issue gross receipts tax revenue bonds and loan agreements and to use the proceeds of such bonds and loan agreements to, among other things, construct, purchase, furnish, equip, rehabilitate, make additions to or make improvements to one or more public buildings or to purchase or improve any ground relating thereto, including but not necessarily limited to acquiring and improving parking lots, or any combination of the foregoing; and

WHEREAS, the Sierra County Joint Powers Commission (the "Governmental Unit") is considering a loan from the New Mexico Finance Authority in the maximum principal amount of \$36,329,129 for the construction of a new hospital on or near the site of the existing Sierra Vista Hospital (the "Loan"); and

WHEREAS, repayment of the Loan will be secured, in part, by gross receipts tax revenues imposed by the County, the Village of Williamsburg, the City and the City of Elephant Butte as participants of the Governmental Unit (collectively, the "Participants") under a Joint Powers Agreement ("JPA") amending the existing JPA No. 97-059 adopted May 14, 1998, Revised July 15, 2009 and as further revised in connection with the Loan; and

WHEREAS, repayment of the Loan will be secured, in part, by the net systems revenue ("Net Revenues") of the Governmental Unit and the Sierra Vista Hospital (the "Hospital"), a community-operated Critical Access Hospital located in the City of Truth or Consequences, New Mexico, which is overseen by the Governmental Unit; and

WHEREAS, in order to finalize the Loan, the New Mexico Finance Authority has required that the Participants pledge the revenues dedicated under the JPA, and that the Governmental Unit and Hospital pledge their Net Revenues, to the repayment of the Loan for the construction and improvement of a new hospital (the "Project") for the entirety of its term; and

WHEREAS, in order to finalize the Loan for the construction and improvement of a new hospital, the City desires to pledge the revenues from its 0.1875% Municipal Gross Receipts Tax imposed pursuant to NMSA 1978, Section 7-19D-9 and City of Truth or Consequences Ordinance No. 454-98 ("Municipal Gross Receipts Tax Revenues") for the term of the Loan; and

WHEREAS, in order to finalize the Loan for the Project, the New Mexico Finance Authority requires that the Participants each approve the loan agreement between and among

the Governmental Unit, the Hospital, the Participants and the New Mexico Finance Authority (the "Loan Agreement") and individually approve an Intercept Agreement by which each Participant will authorize the New Mexico Taxation and Revenue Department to distribute the revenues that each Participant has pledged for the repayment of the Loan to the New Mexico Finance Authority or its assigns (the "Intercept Agreement" or "Intercept Agreements"); and

WHEREAS, the Participants have determined that the Project may be financed with amounts borrowed under the Loan Agreement and the City has determined that it is in the best interest of the City and its residents that the Loan Agreement and Intercept Agreement be executed and delivered and that the financing of the Project take place by executing and delivering the Loan Agreement and the Intercept Agreement; and

WHEREAS, the City wishes to pledge the Municipal Gross Receipts Tax Revenues, and the Governmental Unit, Hospital and the other Participants have or are expected to pledge certain other revenues to the repayment of the Loan Agreement payments due under the Loan Agreement (the "Pledged Revenues"); and

WHEREAS, the Governing Body of the City has determined pursuant to the Act that it may lawfully pledge the City's portion of the Pledged Revenues for the payment of amounts due under the Loan Agreement; and

WHEREAS, other than as described in the Term Sheet, the City's portion of the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation, which is currently outstanding; and

WHEREAS, the Loan shall be a special limited obligation of the Governmental Unit, the Hospital, the City and other Participants, payable solely from the Pledged Revenues, and shall not constitute a general obligation of the Governmental Unit, the Hospital, the City or other Participants, or a debt or pledge of the full faith and credit of the Governmental Unit, the Hospital, the City or other Participants, or the State; and

WHEREAS, the City desires to provide that distributions of its portion of the Pledged Revenues be redirected to the Finance Authority or its assigns pursuant to an Intercept Agreement among the Governmental Unit, the Hospital, the City and the Finance Authority for the payment of amounts due under the Loan Agreement; and

WHEREAS, other than its portion of the Pledged Revenues, no tax revenues collected by the City shall be pledged to the Loan Agreement; and

WHEREAS, there has been presented to the Governing Body of the City and there presently are on file with the City Clerk, this Ordinance and the forms of the Loan Agreement and the Intercept Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body of the City hereby determines that the Project to be financed by the Loan is to be used for governmental purposes of the Governmental Unit, the Hospital and the Participants and will not be used for purposes which would cause the Loan Agreement to be deemed a "Private Activity Bond" as defined by the Code; and

WHEREAS, the Governing Body of the City intends by this Ordinance to authorize the execution and delivery of the Loan Agreement and Intercept Agreement in the amount and for the purposes set forth herein; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority (or its assigns) for the payment of the amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement and the Intercept Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW THEREFORE, BE IT ORDAINED by the City Commission, the Governing Body of the City of Truth or Consequences (hereinafter, "The City"):

SECTION 1. DEFINITIONS. As used in this Ordinance, the following capitalized terms shall, for all purposes, have the meanings specified below, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Act" means the general laws of the State, NMSA 1978, Sections 3-31-1 to -12 (1965, as amended through 2007), 4-62-1 to -10 (1992, as amended through 2010), 7-19D-9, 7-19D-11, 7-20E-12.1, 7-20E-28, 11-1-1 to -7 (1961, as amended through 2009) and enactments of the Governing Body relating to the Loan Agreement and Intercept Agreement, including this Ordinance.

"Aggregate Annual Debt Service Requirement" means the total principal and interest payments due and payable pursuant to the Loan Agreement and on all parity obligations, if any, secured by a pledge of the Pledged Revenues for any one Fiscal Year.

"Authorized Officers" means the Mayor, Mayor Pro-tem, City Clerk or Deputy City Clerk of the City of Truth or Consequences, New Mexico.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority and specifically related to the Loan Agreement and the Loan Agreement payments.

"City" means the City of Truth or Consequences, New Mexico.

"Closing Date" means the date of execution, delivery and funding of the Loan Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Completion Date" means the date of final payment of the cost of the Project.

"Distributing State Agency" means the department or agency of the State as described on the Term Sheet.

“Expenses” means the cost of execution of the Loan Agreement and the costs of issuance of Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority in administering the Loan Agreement, including legal fees.

“Finance Authority” means the New Mexico Finance Authority.

“Finance Authority Debt Service Account” means the debt service account in the name of the Governmental Unit and held by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

“Fiscal Year” means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit or the City as its fiscal year.

“Governing Body” means the City Commission of the City of Truth or Consequences, or any future successor governing body of the City of Truth or Consequences.

“Governmental Unit” means the Sierra County Joint Powers Commission.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to this entire Ordinance and not solely to the particular section or paragraph of this Ordinance in which such word is used.

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

“Intercept Agreement” means the Intercept Agreement dated the Closing Date, among the Governmental Unit, the Hospital, the City and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of its portion of the Pledged Revenues in amounts sufficient to pay Loan Agreement payments, and any amendments or supplements to the Intercept Agreement.

“Loan” means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

“Loan Agreement” means the Loan Agreement dated the Closing Date among the Finance Authority and the Governmental Unit, the Hospital, the City and the other Participants, which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee.

“Loan Agreement Principal Amount” means the original principal amount of the Loan Agreement as shown on Exhibit “A” to the Loan Agreement.

“Loan Agreement Reserve Account” means the loan agreement reserve account

established in the name of the Governmental Unit, funded from the proceeds of the Loan Agreement and administered by the Trustee to the Indenture.

“Loan Agreement Reserve Requirement” means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account Deposit on Exhibit “A” to the Loan Agreement, which amount does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under the Loan Agreement; or (iii) the maximum annual principal and interest requirements under the Loan Agreement.

“Municipal Gross Receipts Tax Revenues” means the revenues from the imposition of the City’s 0.1875% Municipal Gross Receipts Tax imposed pursuant to NMSA 1978, Section 7-19D-9 and City of Truth or Consequences Ordinance No. 454-98.

“Ordinance” or “this Ordinance” means this ordinance approving the Loan Agreement and the Intercept Agreement and pledging the City’s portion of the Pledged Revenues to the payment of the Loan Agreement payments as shown on the Term Sheet.

“Pledged Revenues” means the Municipal Gross Receipts Tax Revenues, together with the revenues pledged to the repayment of the Loan Agreement payments by the Governmental Unit, the Hospital and the other Participants. The pledge of the Pledged Revenues to the repayment of the Loan Agreement payments stated herein shall not exceed 30 years from the Closing Date.

“Processing Fee” means the processing fee to be paid on the Closing Date by the Governmental Unit to the Finance Authority for the costs of originating and servicing the Loan, as shown on the Term Sheet attached to the Loan Agreement as Exhibit “A”.

“State” means the State of New Mexico.

“Term Sheet” means Exhibit “A” to the Loan Agreement.

“Trustee” means BOKF, NA, Albuquerque, New Mexico, or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

SECTION 2. RATIFICATION. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the City directed toward the acquisition of the Project and the execution and delivery of the Loan Agreement and the Intercept Agreement, be, and the same hereby are, ratified, approved and confirmed.

SECTION 3. AUTHORIZATION OF THE PROJECT, THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT. The construction and improvement of the Project and the method of financing the Project through execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Governmental Unit, the Hospital, and the Participants.

SECTION 4. FINDINGS. The City hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the City and its residents, the Governmental Unit, the Hospital and other Participants and the issuance and delivery of the Loan Agreement is necessary or advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the costs of constructing the Project.

C. The City's portion of the Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

D. It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

E. The Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide partial funding for the financing of the Project are necessary and in the interest of the public health, safety and welfare of the residents of and the public served by the City.

F. The Governmental Unit will acquire the Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in the Term Sheet, the City does not have any outstanding obligations payable from its portion of the Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement and the Intercept Agreement.

H. The net effective interest rate on the Loan does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

I. The City is current in the accumulation of all amounts which are required to have been accumulated in both the Finance Authority Debt Service Account and Loan Agreement Reserve Account for all parity obligations, if any, listed on the Term Sheet.

SECTION 5. LOAN AGREEMENT AND INTERCEPT AGREEMENT – AUTHORIZATION AND DETAIL.

A. **AUTHORIZATION.** This Ordinance has been adopted by the affirmative vote of at least three-fourths of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the City and acquiring the Project, it is hereby declared necessary that the City, pursuant to the Act, execute and deliver the Loan Agreement, evidencing a special, limited obligation of the Governmental Unit, the Hospital and the Participants, to pay a maximum principal amount of \$36,329,129, and the execution and delivery of the Loan Agreement is hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the construction of the Project; (ii) fund the Loan Agreement Reserve Account; (iii) pay the Processing Fee; and (iv) to make a deposit to the Finance Authority Debt Service Account. The Project will be owned by the Governmental Unit, subject to the terms of the JPA.

B. **DETAIL.** The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an original maximum aggregate principal amount of up to \$36,329,129, shall be payable in installments of principal due on May 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on May 1 and November 1 of each year, beginning on November 1, 2016 at the rates designated in Exhibit "B" to the Loan Agreement.

SECTION 6. APPROVAL OF LOAN AGREEMENT AND INTERCEPT AGREEMENT. The forms of the Loan Agreement and the Intercept Agreement, as presented at the meeting of the Governing Body at which this Ordinance was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and the Intercept Agreement, with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the City Clerk is hereby authorized to affix the seal of the City on the Loan Agreement and the Intercept Agreement and attest the same. The execution of the Loan Agreement and the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

SECTION 7. SPECIAL LIMITED OBLIGATION. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with the other obligations of the City thereunder, shall be a special, limited obligation of the Governmental Unit, the Hospital and each of the Participants, payable solely from the Pledged Revenues as provided in this Ordinance, the Participant ordinances, and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit, the Hospital, the Participants or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit, the Hospital, or the Participants for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the City (except with respect to the application of its portion of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the City or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the City within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing power. Nothing herein shall prevent the City from applying other funds of the City legally available therefore to payments required by the Loan Agreement, in its sole and absolute discretion.

SECTION 8. DEPOSIT OF PLEDGED REVENUES, DISTRIBUTIONS OF THE PLEDGED REVENUES AND FLOW OF FUNDS.

A. **DEPOSIT OF PLEDGED REVENUES.** Pursuant to the Intercept Agreement, the Municipal Gross Receipts Tax Revenues shall be paid directly by the Distributing State Agency to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest, premium, if any, and other amounts due under the Loan Agreement, including

sufficient Pledged Revenues in the Loan Agreement Reserve Account to maintain the Loan Agreement Reserve Requirement.

B. **TERMINATION ON DEPOSITS TO MATURITY.** No payment shall be made into the Finance Authority Debt Service Account if the amounts in the Finance Authority Debt Service Account and Loan Agreement Reserve Account total a sum at least equal to the entire aggregate amount to become due as to principal, interest on, and any other amounts due under, the Loan Agreement in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

C. **USE OF SURPLUS REVENUES.** After making all the payments hereinabove required to be made by this Section and any payments required by outstanding parity obligations, if any, any moneys remaining in the Finance Authority Debt Service Account shall be transferred to the Governmental Unit, for use by the Hospital, on a timely basis and shall be applied to any other lawful purpose consistent with the JPA.

SECTION 9. LIEN ON PLEDGED REVENUES. Pursuant to the Loan Agreement and the Intercept Agreement, the Municipal Gross Receipts Tax Revenues are hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement, subject to the uses hereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the City's Municipal Gross Receipts Tax Revenues as set forth herein and therein and the City shall not create a lien on the City's Municipal Gross Receipts Tax Revenues superior to that of the Loan Agreement.

SECTION 10. WITHDRAWAL FROM JPA. The City hereby acknowledges that the term of the JPA is at least until the Loan is paid at maturity or retired prior to its maturity, and that any withdrawal from the JPA by the City shall be made in compliance with the terms of the JPA. The City further acknowledges that any withdrawal from the JPA by the City or termination of the JPA by the City shall not affect the obligations, financial or otherwise, previously incurred by the City pursuant to the JPA.

SECTION 11. AUTHORIZED OFFICERS. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Loan Agreement and the Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary).

SECTION 12. AMENDMENT OF ORDINANCE. Prior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Ordinance may be supplemented or amended by ordinance or by resolution of sale adopted by the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance or which reflect the marketing of the Bonds. This Ordinance may be amended without receipt by the City of additional consideration, but only with the prior written consent of the Finance Authority.

SECTION 13. ORDINANCE IRREPEALABLE. After the Loan Agreement and the Intercept Agreement have been executed and delivered, this Ordinance shall be and remain irrevocable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as herein provided.

SECTION 14. SEVERABILITY CLAUSE. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 15. REPEALER CLAUSE. All bylaws, orders, resolutions, and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

SECTION 16. EFFECTIVE DATE. Upon due adoption of this Ordinance, it shall be recorded in the book of the City kept for that purpose, authenticated by the signatures of the Mayor and the City Clerk, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the City, or posted in accordance with law, and said Ordinance shall be in full force and effect thereafter, in accordance with law.

SECTION 17. GENERAL SUMMARY FOR PUBLICATION. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 670 15/16 duly adopted and approved by the Governing Body of the City of Truth or Consequences, on March 22, 2016. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the City Clerk, 505 Sims, Truth or Consequences, New Mexico.

The title of the Ordinance is:

CITY OF TRUTH OR CONSEQUENCES

ORDINANCE NO. 670 15/16

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF

A LOAN AGREEMENT AMONG THE SIERRA COUNTY JOINT POWERS COMMISSION (THE "GOVERNMENTAL UNIT"), SIERRA VISTA HOSPITAL (THE "HOSPITAL"), SIERRA COUNTY, NEW MEXICO (THE "COUNTY"), THE VILLAGE OF WILLIAMSBURG ("WILLIAMSBURG"), THE CITY OF TRUTH OR CONSEQUENCES (THE "CITY"), THE CITY OF ELEPHANT BUTTE ("ELEPHANT BUTTE"), AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), INTERCEPT AGREEMENTS AMONG THE GOVERNMENTAL UNIT, THE HOSPITAL, THE FINANCE AUTHORITY, THE COUNTY, WILLIAMSBURG, THE CITY AND ELEPHANT BUTTE EVIDENCING THE SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT, THE HOSPITAL, THE COUNTY, WILLIAMSBURG, THE CITY, AND ELEPHANT BUTTE TO PAY THE PRINCIPAL AMOUNT OF \$36,329,129 TOGETHER WITH INTEREST THEREON FOR THE PURPOSE OF PLANNING, DESIGN AND CONSTRUCTION OF A NEW HOSPITAL FOR USE BY THE GOVERNMENTAL UNIT AND THE HOSPITAL, FUNDING A LOAN AGREEMENT RESERVE ACCOUNT AND PAYING A LOAN PROCESSING FEE; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE NET SYSTEM REVENUES OF THE GOVERNMENTAL UNIT AND THE HOSPITAL AND THE DISTRIBUTIONS OF COUNTY HOSPITAL EMERGENCY GROSS RECEIPTS TAX AND COUNTY HOLD HARMLESS GROSS RECEIPTS TAX REVENUES RECEIVED BY THE COUNTY PURSUANT TO NMSA 1978, SECTIONS 7-20E-12.1 (2010) AND 7-20E-28 (2013) AND THE MUNICIPAL GROSS RECEIPTS TAX REVENUES RECEIVED BY WILLIAMSBURG, THE CITY AND ELEPHANT BUTTE PURSUANT TO NMSA 1978, SECTION 7-19D-9 (2007) AND THE MUNICIPAL INFRASTRUCTURE GROSS RECEIPTS TAX REVENUES RECEIVED BY ELEPHANT BUTTE PURSUANT TO NMSA 1978, SECTION 7-19D-11 (2003), AND DISTRIBUTED BY THE NEW MEXICO DEPARTMENT OF TAXATION AND REVENUE PURSUANT TO NMSA 1978, SECTIONS 7-1-6.1 (2007), 7-1-6.4 (2006) AND 7-1-6.15 (2015); PROVIDING FOR THE DISTRIBUTIONS OF COUNTY HOSPITAL EMERGENCY GROSS RECEIPTS TAX, COUNTY HOLD HARMLESS GROSS RECEIPTS TAX, MUNICIPAL GROSS RECEIPTS TAX AND MUNICIPAL INFRASTRUCTURE GROSS RECEIPTS TAX REVENUES FROM THE NEW MEXICO TAXATION AND REVENUE DEPARTMENT TO BE REDIRECTED TO THE FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO INTERCEPT AGREEMENTS WITH EACH PARTICIPANT (AS DEFINED IN THE RECITALS BELOW); RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENTS.

A general summary of the subject matter of the Ordinance is contained in its title. This notice constitutes compliance with NMSA 1978, Sections 3-17-5(A) (1965) and 6-14-6 (1975).

(End of Form of Summary of Ordinance for Publication)

PASSED, APPROVED AND ADOPTED by the Governing Body this 22nd day of March, 2016.

Steven Green, Mayor

ATTEST:

Renee Cantin, City Clerk

[TITLE] [NAME] then moved adoption of the foregoing ordinance, duly seconded by [TITLE] [NAME].

The motion to adopt the ordinance upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye:

[INSERT NAMES OF THOSE GOVERNING BODY MEMBERS VOTING AYE]

Those Voting Nay:

[INSERT NAMES OF THOSE GOVERNING BODY MEMBERS VOTING NAY]

Those Absent:

[INSERT NAMES OF THOSE GOVERNING BODY MEMBERS ABSENT]

[NUMBER VOTING IN FAVOR] Governing Body members having voted in favor of the motion, the [TITLE] declared said motion carried and the ordinance adopted, whereupon the Mayor and City Clerk signed the ordinance upon the records of the minutes of the City.

After consideration of the matters not relating to the ordinance, the meeting, on motion duly made, seconded and unanimously carried, was adjourned.

Steven Green, Mayor

ATTEST:

Renee Cantin, City Clerk

\$36,329,129

LOAN AGREEMENT

dated

May 11, 2016

among the

NEW MEXICO FINANCE AUTHORITY

and

**SIERRA VISTA HOSPITAL
SIERRA COUNTY JOINT POWERS COMMISSION
SIERRA COUNTY, NEW MEXICO
VILLAGE OF WILLIAMSBURG, NEW MEXICO
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY OF ELEPHANT BUTTE, NEW MEXICO**

Certain interests of the New Mexico Finance Authority under this Loan Agreement may be assigned to BOKF, NA as trustee under an Indenture, as defined in Article I of this Loan Agreement.

LOAN AGREEMENT

THIS LOAN AGREEMENT dated May 11, 2016 is entered among NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), SIERRA VISTA HOSPITAL and the SIERRA COUNTY JOINT POWERS COMMISSION (together, the "Governmental Unit"), SIERRA COUNTY, NEW MEXICO ("Sierra County"), the VILLAGE OF WILLIAMSBURG, NEW MEXICO ("Williamsburg"), the CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO ("Truth or Consequences") and the CITY OF ELEPHANT BUTTE, NEW MEXICO ("Elephant Butte"). The Governmental Unit is a joint powers authority duly organized and existing pursuant to the Joint Powers Agreements Act, Sections 11-1-1 through 11-1-7, NMSA 1978, as amended, and Sierra County, Williamsburg, Truth or Consequences and Elephant Butte are political subdivisions duly organized and existing under the laws of the State of New Mexico (the "State").

WITNESSETH:

WHEREAS, the Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized and created under and pursuant to the laws of the State, particularly Section 6-21-1 et seq., NMSA 1978, as amended (the "Finance Authority Act"); and

WHEREAS, one of the purposes of the Finance Authority Act is to implement a program to permit qualified entities, such as the Governmental Unit, to enter into agreements with the Finance Authority to facilitate financing of public projects; and

WHEREAS, the Governmental Unit is a joint powers authority duly organized and existing under and pursuant to the Joint Powers Agreements Act, Sections 11-1-1 through 11-1-7, NMSA 1978, as amended, presently consisting of Sierra County, Williamsburg, Truth or Consequences and Elephant Butte (the "Participants"), and is a qualified entity under the Finance Authority Act; and

WHEREAS, Sierra County, Williamsburg, Truth or Consequences and Elephant Butte are political subdivisions duly organized and existing under and pursuant to the laws of the State, are authorized to incur debt pursuant to Sections 4-62-1 through 4-62-10 or Sections 3-31-1 through 3-31-12, NMSA 1978, and are qualified entities under the Finance Authority Act; and

WHEREAS, pursuant to a Joint Powers Agreement No. 97-059 dated May 14, 1998, as revised July 15, 2009 and _____, 2016, duly authorized and executed by the Governmental Unit and the Participants prior to the adoption hereof and designated as the "Joint Powers Agreement" (the "Joint Powers Agreement"), all entered into pursuant to Sections 11-1-1 through 11-1-7, NMSA 1978 and approved by the New Mexico Department of Finance and Administration, the Participants have determined to jointly exercise common powers relating to a hospital and have created the Sierra Vista Hospital; and

WHEREAS, the Governing Bodies of the Governmental Unit and the Participants have determined that it is in the best interests of the Governmental Unit and the residents of the Participants that the Governmental Unit and the Participants enter into this Loan Agreement with the Finance Authority and that the Governmental Unit accept a loan from the Finance Authority to finance the costs of planning, designing and constructing a new hospital for use by the Governmental Unit, as more fully described on the Term Sheet; and

WHEREAS, Sierra County, Williamsburg, Truth or Consequences and Elephant Butte, are authorized by the Act to impose by ordinance a County Hospital Emergency Gross Receipts Tax pursuant to Section 7-20E-12.1, NMSA 1978, a County Hold Harmless Gross Receipts Tax pursuant to Section 7-20E-28, NMSA 1978, and a Municipal Gross Receipts Tax pursuant to Section 7-19D-9, NMSA 1978, respectively; and

WHEREAS, pursuant to the Act, Sierra County has by Ordinance No. 94-003, as amended by Ordinance Nos. 96-001, 97-005 and 11-013, imposed the Sierra County Hospital Emergency Gross Receipts Tax of 0.25% on the gross receipts of all persons engaging in business within Sierra County which provides for a portion of the Pledged Revenues; and

WHEREAS, pursuant to the Act, Sierra County has by Ordinance No. 14-009 imposed the Sierra County Hold Harmless Gross Receipts Tax of 0.25% on the gross receipts of all persons engaging in business within Sierra County which provides for a portion of the Pledged Revenues; and

WHEREAS, pursuant to the Act, Williamsburg has by Ordinance No. 101 adopted July 14, 1994 imposed a Municipal Gross Receipts Tax of 0.25% on the gross receipts of all persons engaging in business within the municipality, which provides for a portion of the Pledged Revenues; and

WHEREAS, pursuant to the Act, Truth or Consequences has by Ordinance No. 454-98 adopted January 26, 1998 imposed a Municipal Gross Receipts Tax of 0.1875% on the gross receipts of all persons engaging in business within the municipality, which provides for a portion of the Pledged Revenues; and

WHEREAS, pursuant to the Act, Elephant Butte has by Ordinance No. 75 adopted September 1, 2004 and Ordinance No. 121 adopted August 19, 2009, imposed a Municipal Gross Receipts Tax of 0.1875% on the gross receipts of all persons engaging in business within the municipality, which provides for a portion of the Pledged Revenues; and

WHEREAS, pursuant to the Sierra County Ordinance, the Williamsburg Ordinance, the Truth or Consequences Ordinance and the Elephant Butte Ordinance, the Participants have pledged their gross receipts tax revenues to the repayment of the Loan Agreement Payments due under this Loan Agreement; and

WHEREAS, the Act authorizes the Governmental Unit and the Participants to use the Pledged Revenues to finance the Project and to enter into this Loan Agreement; and

WHEREAS, for purposes of financing the Project, the Finance Authority has determined that it is in the best interests of the Governmental Unit and the Participants and the residents of the Participants that the Finance Authority lend the Loan Agreement Principal Amount (as hereinafter defined) to the Governmental Unit; and

WHEREAS, the Governmental Unit and each of the Participants have entered into four separate Intercept Agreements whereby the Pledged Revenues due to the Participants from the Distributing State Agency may be intercepted by the Finance Authority or the Trustee, as its assignee, to make payments due under this Loan Agreement; and

WHEREAS, the Finance Authority may assign and transfer this Loan Agreement to the Trustee pursuant to the Indenture; and

WHEREAS, except as described on the Term Sheet, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose at the time of the execution and delivery of this Loan Agreement, and the Participants desire to pledge the Pledged Revenues toward the payment of this Loan Agreement; and

WHEREAS, the obligation of the Governmental Unit and the Participants hereunder shall constitute special, limited obligations of the Governmental Unit and each Participant limited to the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of the Governmental Unit or the Participants or a charge against the general credit or ad valorem taxing power of the Governmental Unit, the Participants or the State; and

WHEREAS, the execution, performance and delivery of this Loan Agreement and the Intercept Agreements have been authorized, approved and directed by all necessary and appropriate action of the Governing Body of the Governmental Unit and the Participants, each pursuant to their respective Ordinances; and

WHEREAS, the execution and performance of this Loan Agreement and the Intercept Agreements have been authorized, approved and directed by all necessary and appropriate action of the Finance Authority.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the parties hereto agree:

ARTICLE I DEFINITIONS

Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Loan Agreement unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Loan Agreement including the foregoing recitals, unless the context clearly requires otherwise.

“Act” means the general laws of the State, Sections 3-31-1 through 3-31-12, Sections 4-62-1 through 4-62-10, Sections 7-1-6.1, 7-1-6.4, 7-1-6.15, Section 7-19D-9, Section 7-20E-12.1, Section 7-20E-28, and Sections 11-1-1 through 11-1-7 NMSA 1978, as amended and enactments of the Governing Bodies of the Governmental Unit, Sierra County, Williamsburg, Truth or Consequences and Elephant Butte relating to this Loan Agreement and the Intercept Agreements, including their respective Ordinances.

“Additional Payment Obligations” mean payments in addition to Loan Agreement Payments required by this Loan Agreement, including, without limitation, payments required to replenish the Loan Agreement Reserve Account and payments required pursuant to the provisions of Article IX and Article X hereof.

“Aggregate Annual Debt Service Requirement” means the total principal and interest payments due and payable pursuant to this Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

“Authorized Officers” means, in the case of the Governmental Unit, the Chairman or Vice-Chairman, the Chief Executive Officer and the Secretary; in the case of Sierra County, the Chairman or Vice-Chairman of the Board of County Commissioners and the County Clerk; in the case of Williamsburg, the Mayor or Mayor Pro Tem and the Village Clerk; in the case of Truth or Consequences, the Mayor or Mayor Pro Tem and the City Clerk; in the case of Elephant Butte, the Mayor or Mayor Pro Tem and the City Clerk; and, in the case of the Finance Authority, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

“Blended Interest Rate” means the rate of interest on this Loan Agreement as shown on the Term Sheet.

“Bond Counsel” means nationally recognized bond counsel experienced in matters of municipal law, satisfactory to the Trustee and listed in the list of municipal bond attorneys, as published semiannually by The Bond Buyer’s Municipal Marketplace, or any successor publication, acting as loan counsel.

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority and specifically related to the Loan Agreement and the Loan Agreement Payments.

“Closing Date” means the date of execution, delivery and funding of this Loan Agreement as shown on the Term Sheet.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

“Completion Date” means the date of final payment of the cost of the Project.

“Distributing State Agency” means the department or agency of the State, as described on the Term Sheet.

“Elephant Butte Intercept Agreement” means the Intercept Agreement dated May 11, 2016, among the Governmental Unit, Elephant Butte and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of the Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, and any amendments or supplements to the Elephant Butte Intercept Agreement.

“Elephant Butte Ordinance” means Ordinance No. _____, adopted by the Governing Body of Elephant Butte on _____, 2016, approving the Loan Agreement and the Elephant Butte Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

“Event of Default” means one or more events of default as defined in Section 10.1 of this Loan Agreement.

“Expenses” means the costs of issuance of this Loan Agreement and the Bonds, if any, and periodic and regular fees and expenses incurred by the Finance Authority in administering this Loan Agreement, including legal fees.

“Finance Authority Debt Service Account” means the debt service account established in the name of the Governmental Unit within the Debt Service Fund, as defined in the Indenture, held and administered by the Finance Authority to pay principal and interest, if any, on this Loan Agreement as the same become due.

“Fiscal Year” means the period beginning on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit or the Participants as its fiscal year.

“Governing Body” or “Governing Bodies” means, in the case of the Governmental Unit, the duly organized Board of Directors; in the case of Sierra County, the duly organized Board of County Commissioners; in the case of Williamsburg, the duly organized Village Trustees; in the case of Truth or Consequences, the duly organized City Commission; in the case of Elephant Butte, the duly organized City Council; and any successor governing body of the Governmental Unit and the Participants.

“Governmental Unit” means the Sierra Vista Hospital.

“Governmental Unit Resolution” means Resolution Nos. _____ and _____, adopted by the Governing Body on _____, 2016 and _____, 2016 approving the Loan Agreement and the Intercept Agreements as amended from time to time.

“Gross Receipts Tax Revenues” means the revenues of the Sierra County Hospital Emergency Gross Receipts Tax imposed pursuant to Section 7-20E-12.1, NMSA 1978, the Sierra County Hold Harmless Gross Receipts Tax imposed pursuant to Section 7-20E-28, NMSA 1978, as amended, or the Williamsburg, Truth or Consequences or Elephant Butte Municipal Gross Receipts Taxes imposed pursuant to Section 7-19D-9, NMSA 1978.

“Gross Revenues” means all income and revenues directly or indirectly derived by the Governmental Unit from the operation and use of the Hospital, or any part of the Hospital, including the Gross Receipts Tax Revenues, and includes, without limitation, all revenues received by the Governmental Unit, or any municipal corporation or agency succeeding to the rights of the Governmental Unit, from the Hospital and from the delivery of hospital services, or any other service, commodity or facility or any combination thereof furnished to the inhabitants of the geographic area serviced by the Governmental Unit.

Gross Revenues do not include:

(a) Any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefore or other capital contributions from any source which are restricted as to use;

(b) Gross receipts taxes, other taxes and/or fees collected by the Governmental Unit and required to be remitted to other governmental agencies; and

(c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption, and except as provided in Section 2.1(ee) of this Loan Agreement.

“Hospital” means the Governmental Unit’s hospital in Truth or Consequences, New Mexico, consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the Governmental Unit through purchase, condemnation, construction or otherwise, including all expansions, extensions, enlargements and improvements of or to the hospital, and used in connection therewith or relating thereto, and any other related activity or enterprise of the Governmental Unit designated by the Governing Body as part of the hospital, whether situated within or without the limits of the Governmental Unit.

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, or successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, or successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

“Independent Accountant” means: (i) an accountant employed by the State and under the supervision of the State Auditor; or (ii) any certified public accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the Governmental Unit or a Participant, who: (a) is, in fact, independent and not under the domination of the Governmental Unit or the Participant; (b) does not have any substantial interest, direct or indirect, with the Governmental Unit or the Participant; and (c) is not connected with the Governmental Unit or the Participant as an officer or employee of the Governmental Unit or the Participant, but who may be regularly retained to make annual or similar audits of the books or records of the Governmental Unit or the Participant.

“Intercept Agreements” means, collectively, the Sierra County Intercept Agreement, the Williamsburg Intercept Agreement, the Truth or Consequences Intercept Agreement and the Elephant Butte Intercept Agreement.

“Interest Component” means the portion of each Loan Agreement Payment paid as interest on this Loan Agreement as shown on Exhibit “B” hereto.

“Loan” means the funds in the Loan Agreement Principal Amount to be loaned to the Governmental Unit by the Finance Authority pursuant to this Loan Agreement.

“Loan Agreement” means this loan agreement and any amendments or supplements hereto, including the exhibits attached to this loan agreement.

“Loan Agreement Balance” means, as of any date of calculation, the Loan Agreement Principal Amount less the aggregate principal amount paid or prepaid pursuant to the provisions of this Loan Agreement.

“Loan Agreement Payment” means, collectively, the Principal Component and the Interest Component, if any, to be paid by the Governmental Unit and the Participants as payment of this Loan Agreement as shown on Exhibit “B” hereto.

“Loan Agreement Payment Date” means each date a payment is due on this Loan Agreement as shown on Exhibit “B” hereto.

“Loan Agreement Principal Amount” means the original principal amount of this Loan Agreement as shown on the Term Sheet.

“Loan Agreement Reserve Account” means the loan agreement reserve account established in the name of the Governmental Unit, funded from the proceeds of this Loan Agreement and administered by the Trustee pursuant to the Indenture.

“Loan Agreement Reserve Requirement” means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account deposit on the Term Sheet which amount does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under the Loan Agreement; or (iii) the maximum annual principal and interest requirements under the Loan Agreement.

“Loan Agreement Term” means the term of this Loan Agreement as provided under Article III of this Loan Agreement.

“NMSA” means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented.

“Net System Revenues” means the Gross Revenues, including Gross Receipts Tax Revenues, after deducting Operation and Maintenance Expenses.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses of the Hospital, for any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the Hospital, including, without limiting the generality of the foregoing:

(a) Legal and overhead expenses of the various Governmental Unit departments directly related and reasonably allocable to the administration of the Hospital;

(b) Insurance premiums for the Hospital, including, without limitation, premiums for property insurance, public liability insurance and workmen’s compensation insurance, whether or not self-funded;

(c) Premiums, expenses and other costs (other than required reimbursements of insurance proceeds and other amounts advanced to pay debt service requirements on Hospital bonds) for credit facilities;

(d) Any expenses described in this definition other than expenses paid from the proceeds of Hospital bonds;

(e) The costs of audits of the books and accounts of the Hospital;

(f) Amounts required to be deposited in any rebate fund;

(g) Salaries, administrative expenses, labor costs, surety bonds and the cost of materials and supplies used for or in connection with the current operation of the Hospital; and

(h) Any fees required to be paid under any operation, maintenance and/or

management agreement with respect to the Hospital.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the Governmental Unit's general fund, liabilities incurred by the Governmental Unit as a result of its negligence or other misconduct in the operation of the Hospital, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues.

"Parity Obligations" means this Loan Agreement, and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with this Loan Agreement, including any such obligations shown on the Term Sheet.

"Permitted Investments" means securities which are at the time legal investments of the Governmental Unit for the money to be invested, as applicable, including but not limited to the following, if permitted by law: (i) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank, federal home loan banks or the student loan marketing association or that are backed by the full faith and credit of the United States government; (ii) negotiable securities of the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody's Investors Service, Inc., or Standard & Poor's Ratings Services; and (iv) the State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, as amended, and operated, maintained and invested by the office of the State Treasurer.

"Pledged Revenues" means the Net System Revenues, including each of the Participants' Gross Receipts Tax Revenues.

"Principal Component" means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement as shown on Exhibit "B" hereto.

"Processing Fee" means the processing fee to be paid on the Closing Date by the Governmental Unit to the Finance Authority for the costs of originating and servicing the Loan, as shown on the Term Sheet.

"Program Account" means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of this Loan Agreement for disbursement to the Governmental Unit for payment of the costs of the Project.

"Project" means the project described in the Term Sheet.

"Ordinances" means, collectively, the Ordinances adopted by the Governing Body of the Governmental Unit, Sierra County, Williamsburg, Truth or Consequences and Elephant Butte, , approving the Loan Agreement and the respective Intercept Agreements and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

"Sierra County Intercept Agreement" means the Intercept Agreement dated May 11, 2016, among the Governmental Unit, Sierra County and the Finance Authority providing for the direct

payment by the Distributing State Agency to the Finance Authority of the Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, and any amendments or supplements to the Sierra County Intercept Agreement.

“Sierra County Ordinance” means Ordinance No. 16-008, adopted by the Governing Body of Sierra County on March 15, 2016, approving the Loan Agreement and the Sierra County Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

“Tax Ordinances” means, collectively, the ordinances adopted by each of the Participants imposing the gross receipts taxes constituting the Gross Receipts Tax Revenues.

“Term Sheet” means Exhibit “A” attached hereto.

“Trustee” means BOKF, NA, Albuquerque, New Mexico, or any successor trust company, national or state banking association or financial institution at the time appointed the Trustee by the Finance Authority.

“Truth or Consequences Intercept Agreement” means the Intercept Agreement dated May 11, 2016, among the Governmental Unit, Truth or Consequences and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of the Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, and any amendments or supplements to the Truth or Consequences Intercept Agreement.

“Truth or Consequences Ordinance” means Ordinance No. _____, adopted by the Governing Body of Truth or Consequences on _____, 2016, approving the Loan Agreement and the Truth or Consequences Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

“Unassigned Rights” means the rights of the Finance Authority to receive payment of the Processing Fee, administrative expenses, reports and indemnity against claims pursuant to the provisions of this Loan Agreement which are withheld in the granting clauses of the Indenture from the pledge, assignment and transfer of this Loan Agreement to the Trustee.

“Williamsburg Intercept Agreement” means the Intercept Agreement dated May 11, 2016, among the Governmental Unit, Williamsburg and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of the Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, and any amendments or supplements to the Williamsburg Intercept Agreement.

“Williamsburg Ordinance” means Ordinance No. _____, adopted by the Governing Body of Williamsburg on _____, 2016, approving the Loan Agreement and the Williamsburg Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Governmental Unit and the Participants. The Governmental Unit and the Participants represent, covenant and warrant:

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit and the Participants contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit and the Participants to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit and the Participants and their successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit and the Participants by the provisions of this Loan Agreement and the Ordinances shall be exercised or performed by the Governmental Unit and the Participants or by such members, officers, or officials of the Governmental Unit and the Participants as may be required by law to exercise such powers and to perform such duties.

(b) Personal Liability. No covenant, stipulation, obligation or agreement contained in this Loan Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Governmental Unit or the Participants or member of its Governing Body in his or her individual capacity, and neither the members of any Governing Body nor any officer, agent or employee of the Governmental Unit or the Participants executing this Loan Agreement shall be liable personally on this Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

(c) Authorization of Loan Agreement and Intercept Agreements. The Governmental Unit is a joint powers authority duly organized and existing under and pursuant to the Joint Powers Agreements Act, Sections 11-1-1 through 11-1-7, NMSA 1978, as amended, and is a qualified entity under the Finance Authority Act. The Participants are political subdivisions duly organized and existing under and pursuant to the laws of the State, are authorized to incur debt pursuant to Sections 4-62-1 through 4-62-10 and Sections 3-31-1 through 3-31-12, NMSA 1978, and are qualified entities under the Finance Authority Act. Pursuant to the Act and to the Joint Powers Agreement, as amended and supplemented from time to time, the Governmental Unit and the Participants are authorized to enter into the transactions contemplated by this Loan Agreement and the Intercept Agreements and to carry out their respective obligations hereunder and thereunder. The Governmental Unit and the Participants have duly authorized and approved the execution and delivery of this Loan Agreement, the Intercept Agreements, and the other documents related to the transaction.

(d) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the proceeds of this Loan Agreement (less the deposits to the Loan Agreement Reserve Account, if any, the Finance Authority Debt Service Account and the Processing Fee) to the acquisition of the Project.

(e) Payment of Loan Agreement. The Governmental Unit and the Participants shall promptly pay Loan Agreement Payments, as specified in Exhibit "B" hereto, according to the true intent and meaning of this Loan Agreement. The Participants shall comply with all the terms and conditions of the Intercept Agreements and shall take all action necessary to ensure that the Pledged Revenues are promptly paid to the Finance Authority as provided in the Intercept

Agreements. Loan Agreement Payments are payable solely from the Pledged Revenues or from the proceeds of refunding bonds or other refunding obligations which the Governmental Unit and the Participants may hereafter issue in their sole discretion and which are payable from the Pledged Revenues; and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit and the Participants to pay Loan Agreement Payments from any general or other fund of the Governmental Unit or the Participants other than such special funds. Nothing contained in this Loan Agreement, however, shall be construed as prohibiting the Governmental Unit and the Participants in their sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Acquisition and Completion of Project. The Project will consist of planning, designing and constructing a new hospital for use by the Governmental Unit. The Project will be acquired and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the acquisition and completion of the Project and to the use of the Pledged Revenues. The Project complies with 7-19D-9, 7-20E-12.1 and 7-20E-28, NMSA 1978.

(g) Necessity of Project. The acquisition of the Project under the terms and conditions provided for in this Loan Agreement is necessary, convenient and in furtherance of the governmental purposes of the Governmental Unit and is in the best interests of the Governmental Unit and the residents of each of the Participants.

(h) Legal, Valid and Binding Special Obligation. The Governmental Unit and the Participants have taken all required action necessary to authorize the execution and delivery of this Loan Agreement and the Intercept Agreements, and this Loan Agreement and the Intercept Agreements constitute legal, valid and binding special obligations of the Governmental Unit and the Participants enforceable in accordance with their terms.

(i) Loan Agreement Term. The weighted average maturity of ____ years of this Loan Agreement does not exceed 120% of the reasonably expected life of the Project which is thirty-nine (39) years.

(j) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting the Governmental Unit and the Participants as a whole.

(k) No Private Activity. The Participants are “governmental units” within the meaning of Sections 103 and 141(b)(6) of the Code, and the Governmental Unit is a subordinate entity of the Participants. In addition, no amounts disbursed from the Program Account and used to finance the Project shall be used in the trade or business of a person who is not a “governmental unit” within the meaning of Sections 103 and 141(b)(6) of the Code.

(l) No Excess Loan Agreement Proceeds. The amount loaned to the Governmental Unit under this Loan Agreement as set forth on the Term Sheet does not exceed the sum of: (i) the cost of the Project; (ii) the Loan Agreement Reserve Requirement; and (iii) an amount necessary to pay the Processing Fee and the costs related to issuance of the Bonds, if any.

(m) No Breach or Default Caused by Loan Agreement or Intercept Agreements. Neither the execution and delivery of this Loan Agreement or the Intercept Agreements, nor the fulfillment of or compliance with the terms and conditions in this Loan Agreement or the Intercept

Agreements, nor the consummation of the transactions contemplated herein and therein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Governmental Unit or the Participants are a party or by which the Governmental Unit or the Participants are bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Governmental Unit or the Participants or their properties are subject, or constitutes a default under any of the foregoing.

(n) Irrevocable Enactments. While this Loan Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Bodies applying the Pledged Revenues for the payment of this Loan Agreement, including the Tax Ordinances and the Ordinances, shall be irrevocable until this Loan Agreement has been paid in full as to both principal and interest, and shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of Loan Agreement Payments.

(o) Outstanding Debt. Except for the Parity Obligations, if any, described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the Governmental Unit which are payable from and secured by a parity lien on the Pledged Revenues. No additional indebtedness, bonds or notes of the Governmental Unit payable on a priority ahead of the indebtedness herein authorized out of the Pledged Revenues shall be created or incurred while this Loan Agreement remains outstanding. In addition, no additional indebtedness, bonds or notes of the Governmental Unit payable on parity of the indebtedness herein authorized out of the Pledged Revenues shall be created or incurred while this Loan Agreement remains outstanding without the Finance's Authority prior written approval.

(p) No Litigation. To the knowledge of the Governmental Unit and the Participants no litigation or proceeding is pending or threatened against the Governmental Unit or the Participants or any other person affecting the right of the Governmental Unit or the Participants to execute or deliver this Loan Agreement or the Intercept Agreements or to comply with its obligations under this Loan Agreement or the Intercept Agreements. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreements by the Governmental Unit and the Participants, nor compliance by the Governmental Unit and the Participants with the obligations under such agreements, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(q) No Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Loan Agreement and the Intercept Agreements, would constitute an Event of Default on the part of the Governmental Unit or the Participants under this Loan Agreement or the Intercept Agreements.

(r) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, are not needed or budgeted to pay current or anticipated operational or other expenses of the Governmental Unit or the Participants.

(s) Expected Coverage Ratio. The Pledged Revenues (giving credit for any increase in Pledged Revenues which has received final approval of any of the Governing Bodies and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded, and, on an ongoing basis during each year of the Loan Agreement Term, are

reasonably expected to equal or exceed, one hundred thirty percent (130%) of the maximum Aggregate Annual Debt Service Requirement.

(t) No Extension of Interest Payments. The Governmental Unit and the Participants will not extend or be a party to the extension of the time for paying any interest on this Loan Agreement.

(u) Governmental Unit and the Participants' Existence. The Governmental Unit and the Participants will maintain their corporate identities and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of the Governmental Unit or one of the Participants without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.

(v) Continuing Disclosure. The Governmental Unit and the Participants covenant that they shall provide continuing disclosure to the Finance Authority, as the Finance Authority may reasonably require, that shall include, but not be limited to: annual audited financial statements of the Governmental Unit and the Participants, the amount of Gross Receipts Tax Revenues, operational data and such other information as the Finance Authority may reasonably request, including information required to update information in any disclosure documents used to assign or securitize the Loan Agreement Payments by issuance of Bonds by the Finance Authority pursuant to the Indenture, and notification of the following material events to the Finance Authority, and if applicable either to the Governmental Unit or the Participants:

(1) Delinquencies in connection with payment of other outstanding indebtedness of the Governmental Unit or the Participants.

(2) Non-payment related defaults under the Loan Agreement or in connection with other outstanding indebtedness of the Governmental Unit or the Participants.

(3) Unscheduled draws on the debt service reserves maintained in connection with other outstanding indebtedness of the Governmental Unit or the Participants reflecting financial difficulties.

(4) Unscheduled draws on credit enhancements in support of the Loan Agreements reflecting financial difficulties.

(5) Any adverse tax opinion or event adversely affecting the tax-exempt status of the Loan Agreement.

(6) Modifications to the rights of the lenders in connection with the Loan Agreement.

(7) Notice of Prepayment of all or a portion of the Loan Agreement.

(8) Defeasance of all or a portion of the Loan Agreement.

(9) Changes in the credit rating of, or the receipt of a credit rating by, the Governmental Unit or the Participants.

(w) **Tax Covenants.** The Governmental Unit and the Participants covenant that they shall restrict the use of the proceeds of this Loan Agreement in such manner and to such extent, if any, as may be necessary so that this Loan Agreement will not constitute an arbitrage bond under Section 148 of the Code and that it shall pay any applicable rebate to the Internal Revenue Service. Authorized Officers are hereby authorized and directed to execute an Arbitrage and Tax Certificate as may be required by the Finance Authority and such additional certificates as shall be necessary to establish that this Loan Agreement is not an “arbitrage bond” within the meaning of Section 148 of the Code and the Treasury Regulations promulgated or proposed with respect thereto, including Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149 and 1.150 as the same currently exist, or may from time to time hereafter be amended, supplemented or revised. The Governmental Unit and the Participants covenant to comply with the provisions of any such Arbitrage and Tax Certificate and the provisions thereof will be incorporated herein by reference to the same extent as if set forth herein. The Governmental Unit and the Participants covenant that no use will be made of the proceeds of this Loan Agreement, or any funds or accounts of the Governmental Unit and the Participants which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148-1(b)) of this Loan Agreement, which use, if it had been reasonably expected on the Closing Date, would have caused this Loan Agreement to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code. Pursuant to this covenant, the Governmental Unit and the Participants obligate themselves to comply throughout the Loan Agreement Term with the requirements of Sections 103 and 141 through 150 of the Code and the regulations proposed or promulgated with respect thereto. The Governmental Unit and the Participants further represent and covenant that no bonds or other evidence of indebtedness of the Governmental Unit and the Participants payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date.

(x) **Use Charges.** The Governmental Unit has established and will continue to charge reasonable rates for services rendered by the Hospital taking into account the cost and value of the services rendered, Operation and Maintenance Expenses, proper allowances for depreciation, and the amounts necessary to make debt services payments from Net System Revenues. There shall be charged against patients, rates and amounts which shall be increased from time to time, if necessary, and which shall produce Gross Revenues sufficient to pay the annual Operation and Maintenance Expenses and one hundred thirty percent (130%) of the Aggregate Annual Debt Service Requirement payable during the then current Fiscal Year.

(y) **Efficient Operation.** The Governmental Unit will operate the Hospital so long as this Loan Agreement is outstanding, will maintain the Hospital in efficient operating condition and make such improvements, extensions, enlargements, repairs and betterments to the Hospital as may be necessary or advisable for its economical and efficient operation at all times and sufficient to supply reasonable public demands for Hospital services.

(z) **Records.** So long as the Loan Agreement remains outstanding, proper books of record and account will be kept by the Governmental Unit, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the Hospital. Such books shall include, but not necessarily be limited to, monthly records showing: (i) the number of patients in the Hospital; (ii) the revenues separately received from charges by classes of providers, including but not necessarily limited to classification by facilities; and (iii) a detailed statement of the expenses of the Hospital.

(aa) **Right to Inspect.** The Finance Authority and the Trustee shall have the

right to inspect at all reasonable times all records, accounts and data relating to the Hospital and to inspect the Hospital and all properties comprising the Hospital.

(bb) Audits. The Governmental Unit further agrees that, except where the State Auditor of the State performs the audit or where the due date for the audit has been postponed as may otherwise be required by the State Auditor or any other State office or agency with appropriate authority, it will, within one hundred eighty (180) days following the close of each Fiscal Year, the Governmental Unit will cause an audit of the books and accounts of the Hospital to be made by an Independent Accountant. Each audit of the Hospital shall include those matters determined to be proper by the Independent Accountant. Each audit will be available for inspection by the Finance Authority. The Governmental Unit will provide the Finance Authority with a copy of each audit promptly upon the request of the Finance Authority. All expenses incurred in the making of the audits and reports required by this Section shall be regarded and paid as an Operation and Maintenance Expense.

(cc) Billing Procedure. Bills for services furnished by or through the Hospital shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by the Governmental Unit.

(dd) Charges and Liens Upon Hospital. The Governmental Unit will pay when due from Gross Revenues or other legally available funds all taxes and assessments or other municipal or governmental charges, lawfully levied or assessed upon the Hospital and will observe and comply with all valid requirements of any municipal or governmental authority relating to the Hospital. The Governmental Unit will not create or permit any lien or charge upon the Hospital or the Gross Revenues except as provided in this Loan Agreement, or it will make adequate provisions to satisfy and discharge within sixty (60) days after the same accrue, all lawful claims and demands for labor, materials, supplies or other objects, which, if unpaid, might by law become a lien upon the Hospital or the Gross Revenues. However, the Governmental Unit shall not be required to pay or cause to be discharged, or make provision for any tax assessment, lien or charge before the time when payment becomes due or so long as the validity thereof is contested in good faith by appropriate legal proceedings and there is no adverse effect on the Finance Authority or the Trustee.

(ee) Insurance. The Governmental Unit will procure and maintain or cause to be procured and maintained commercial insurance and malpractice insurance or provide Qualified Self Insurance with respect to the facilities constituting the Hospital and public liability insurance in the form of insurance or Qualified Self Insurance in such amounts and against such risks as are, in the judgment of the Governing Body, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self insured programs provided by municipalities which operate hospitals. "Qualified Self Insurance" means insurance maintained through a program of self insurance or insurance maintained with a fund, company or association in which the Governmental Unit may have a material interest and of which the Governmental Unit may have control, either singly or with others. Each plan of Qualified Self Insurance shall be established in accordance with law, shall provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the Governmental Unit determines to be reasonable to protect against risks assumed under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance. In the event of property loss or damage to the Hospital, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged and thereafter, any remainder may be used to redeem Parity Obligations or be treated as Gross Revenues.

(ff) Alienating Hospital. The Governmental Unit will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, or otherwise alienate, the Hospital, or any part thereof, including any and all extensions and additions that may be made thereto, until this Loan Agreement shall have been paid in full, including the Principal Component and the Interest Component, except that the Governmental Unit may sell any portion of said property which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient operation of the Hospital, but in no manner nor to such extent as might prejudice the security for the payment of this Loan Agreement, provided, however, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as Net System Revenues as provided herein.

(gg) Competent Management. The Governmental Unit shall employ or contract for experienced and competent personnel to manage the Hospital.

(hh) Performing Duties. The Governmental Unit will faithfully and punctually perform all duties with respect to the Hospital required by the Constitution and the laws of the State and the ordinances and resolutions of the Governmental Unit, relating to the Hospital and this Loan Agreement, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the Hospital as hereinabove provided.

(ii) Other Liens. Other than as provided in the Term Sheet, there are no liens or encumbrances of any nature, whatsoever, on or against the Hospital or the revenues derived or to be derived from the operation of the same.

(jj) Completion Bonds. In order to insure the completion of the Project, the Governmental Unit will require that the contractor to whom is given any contract for construction appertaining to the Project supply a completion bond or bonds satisfactory to the Governmental Unit, and that any sum or sums derived from said completion bond or bonds shall be used within six (6) months after such receipt for the completion of said construction, and if not so used within such period, shall be treated as Gross Revenues.

(kk) Hospital Licensing or Operations. The Governmental Unit will obtain or cause to be obtained all approvals needed to operate the Hospital under applicable state and federal law, including, but not limited to, licensure and certification, and, during the Loan Agreement Term, will cause the Hospital to operate as a provider of health care services, home health services, and durable medical equipment services and to maintain its certification for reimbursement under all federal, state, and local governmental and private programs which have accounted for or are expected to account for a significant portion of the Gross Revenues and the Hospital's licensure. The Governmental Unit or any successor thereto shall to maintain (a) in full force and effect all governmental and other authorizations, approvals, consents, permits, licenses, certifications and qualifications necessary for the conduct of its business as it is presently being conducted and the ownership and operation of the Hospital as they are presently being operated and (b) its qualification for participation in and payment under all federal, state and local governmental programs and private programs which have accounted for or are expected to account for a significant portion of the Hospital's Gross Revenues, including Medicare, Medicaid and Blue Cross, except to the extent that the governing body of the Governmental Unit shall have reasonably determined that the loss or relinquishment of any such authorization, approval, consent, permit, license, certification or qualification for participation in a program is in the best interest of the Hospital and will not have a material adverse affect on the Hospital Facility or its ability to pay all Loan Agreement Payments when due (for purposes of this 2.l(kk), a "Material Adverse Effect").

The Governmental Unit will promptly furnish to the Finance Authority all reports and correspondence relating to a loss or proposed revocation of any such authorization, approval, consent, permit, license, certification or qualification which has or could have a Material Adverse Effect.

(ll) Pledged Revenues Covenants. The Governing Bodies of each of the Participants have duly adopted the Tax Ordinances, which constitute a portion of the Pledged Revenues. The Tax Ordinances have not been repealed or superseded and are in full force and effect. Each of the Participants covenant that it will not repeal its Tax Ordinance for at least the Loan Agreement Term and that it will adopt, as necessary, any ordinances to extend the imposition of the gross receipts tax.

(mm) Amendments. The Governmental Unit and the Participants agree that neither the Loan Agreement nor the Bonds will be amended without the prior written consent of the Finance Authority, and, if the Bonds have been pledged under the Indenture (as defined herein), without the prior written consent of the Trustee (as defined herein) pursuant to the Indenture.

Section 2.2 Representations, Covenants and Warranties of the Finance Authority. The Finance Authority represents, covenants and warrants for the benefit of the Governmental Unit and the Participants as follows:

(a) Authorization of Loan Agreement and Intercept Agreements. The Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized, existing and in good standing under the laws of the State, has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Loan Agreement and the Intercept Agreements and, by proper action, has duly authorized the execution and delivery of this Loan Agreement and the Intercept Agreements based upon the Finance Authority's findings that:

(i) The Governmental Unit is a disadvantaged qualified entity in that its median household income is \$27,430, which is less than eighty percent (80%) of the State median household income of \$44,927.

(ii) The Project is important to the overall capital needs of the State and directly enhances the health and safety of the residents of each of the Participants.

(b) Assignment of Rights. The Finance Authority may not pledge or assign the Pledged Revenues, the Loan Agreement Payments or any of its other rights under this Loan Agreement and the Intercept Agreements except to the Trustee pursuant to the Indenture.

(c) No Breach or Default Caused by Loan Agreement or Intercept Agreements. Neither the execution and delivery of this Loan Agreement or the Intercept Agreements, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement or the Intercept Agreements, nor the consummation of the transactions contemplated in this Loan Agreement or the Intercept Agreements, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Finance Authority is a party or by which the Finance Authority is bound or constitutes a default under any of the foregoing and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having

jurisdiction over the Finance Authority or its property, and which conflict or violation will have a material adverse effect on the Finance Authority or the financing of the Project.

(d) No Litigation. To the knowledge of the Finance Authority, there is no litigation or proceeding pending or threatened against the Finance Authority or any other person affecting the right of the Finance Authority to execute or deliver this Loan Agreement or the Intercept Agreements, or to comply with its obligations under this Loan Agreement or the Intercept Agreements. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreements by the Finance Authority, nor compliance by the Finance Authority with its obligations under this Loan Agreement and the Intercept Agreements, requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

(e) Legal, Valid and Binding Obligations. This Loan Agreement and the Intercept Agreements constitute the legal, valid and binding obligations of the Finance Authority enforceable in accordance with their terms.

(f) Tax-Exempt Reimbursement of Amount Loaned. The Finance Authority intends to reimburse the public project revolving fund (as defined in the Finance Authority Act) for the amount of the Loan from the proceeds of tax-exempt bonds which the Finance Authority expects to issue on or about the Closing Date.

ARTICLE III LOAN AGREEMENT TERM

The Loan Agreement Term shall commence on the Closing Date and shall not terminate until this Loan Agreement has been paid in full or provision for the payment of this Loan Agreement has been made pursuant to Article VIII hereof.

ARTICLE IV LOAN; APPLICATION OF MONEYS

On the Closing Date, the Finance Authority shall transfer the Loan Agreement Principal Amount as follows:

(a) To the Trustee, the amount shown on the Term Sheet as the Program Account deposit shall be deposited into the Governmental Unit's Program Account to be maintained by the Trustee pursuant to the Indenture and disbursed pursuant to Section 6.2 hereof at the direction of the Governmental Unit as needed by the Governmental Unit for the Project; and

(b) To the Trustee, the amount shown on the Term Sheet as the Loan Agreement Reserve Account deposit shall be deposited in the Governmental Unit's account maintained in the Loan Agreement Reserve Fund by the Trustee pursuant to the Indenture; and

(c) To the Finance Authority, the amount shown on the Term Sheet as the Finance Authority Debt Service Account deposit shall be deposited into the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 hereof; and

(d) To the Finance Authority, payment in the amount shown on the Term Sheet as the Processing Fee.

ARTICLE V
LOAN TO THE GOVERNMENTAL UNIT;
PAYMENTS BY THE GOVERNMENTAL UNIT

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit, and the Governmental Unit hereby borrows from the Finance Authority an amount equal to the Loan Agreement Principal Amount. The Governmental Unit and the Participants promise to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. The Governmental Unit and the Participants do hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit and the Participants in and to: (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the Finance Authority Debt Service Account, such account being held by the Finance Authority; (iii) the Program Account and the Loan Agreement Reserve Account, such accounts being held by the Trustee; and (iv) all other rights hereinafter granted, for the securing of the Governmental Unit and the Participants' obligations under this Loan Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if the Governmental Unit or the Participants, their successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, then, upon such final payment or provision for payment by the Governmental Unit or the Participants, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Principal Component and Interest Component when due, the payment schedule of which is attached hereto as Exhibit "B."

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Governmental Unit, the Participants and the Finance Authority acknowledge and agree that the Loan Agreement Payments of the Governmental Unit and the Participants hereunder are limited to the Pledged Revenues, and that this Loan Agreement shall constitute a special, limited obligation of the Governmental Unit and the Participants. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Governmental Unit or the Participants within the meaning of any constitutional or statutory debt limitation. No provision of this Loan Agreement shall be construed to pledge or to create a lien on any class or source of Governmental Unit or the Participants moneys other than the Pledged Revenues, nor shall any provision of this Loan Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Governmental Unit or Participant moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Governmental Unit and the Participants hereunder, the Pledged Revenues may be utilized by the Governmental Unit and the Participants for any other purposes permitted by law.

Section 5.2 Payment Obligations of Governmental Unit. The Governmental Unit shall transfer to the Finance Authority from the Pledged Revenues either pursuant to the Intercept Agreements or directly from the Governmental Unit as provided by this Loan Agreement and the Intercept Agreements, the amounts provided in subsections (a)(i) and (ii) of this Section 5.2 for deposit into the Finance Authority Debt Service Account and the amount provided in subsection (c)

for deposit into the Loan Agreement Reserve Account. To the extent the Gross Receipts Tax Revenues are insufficient to make each Loan Agreement Payment, the Governmental Unit shall deposit sufficient Net System Revenues into the Finance Authority Debt Service Account. The Finance Authority Debt Service Account shall be established and held by the Finance Authority and the Loan Agreement Reserve Account shall be established and held by the Trustee, each on behalf of the Governmental Unit. All Pledged Revenues received by the Finance Authority pursuant to this Section 5.2 shall be accounted for and maintained on an ongoing basis by the Finance Authority in the Finance Authority Debt Service Account and all Loan Agreement Payments shall be remitted to the Trustee. The amounts on deposit in the Finance Authority Debt Service Account and Loan Agreement Reserve Account shall be expended and used by the Finance Authority or the Trustee, as the case may be, only in the manner and order of priority specified below.

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), either directly or pursuant to the Intercept Agreements, the Distributing State Agency shall cause to be transferred from the Pledged Revenues for deposit into the Finance Authority Debt Service Account the following, which the Finance Authority shall transfer to the Trustee in accordance with the Indenture:

(i) Interest Components. (A) Monthly, beginning on the first day of the month following the Closing Date, an amount in equal monthly installments which is necessary to pay the first maturing Interest Component coming due on this Loan Agreement (which is [November 1, 2016]), and (B) on the first day of each month thereafter, one-sixth (1/6) of the amount necessary to pay the next maturing Interest Component on this Loan Agreement as described in Exhibit "B";

(ii) Principal Payments. (A) Monthly, beginning on the first day of the month following the Closing Date, an amount in equal monthly installments which is necessary to pay the first maturing Principal Component (which is [May 1, 2017]), and (B) on the first day of each month thereafter, one-twelfth (1/12) of the amount which is necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in Exhibit "B".

The Governmental Unit shall transfer to the Finance Authority from the Pledged Revenues the amounts provided in subsections (i) and (ii) of this Section 5.2(a), and the Finance Authority shall not intercept such amounts from the Pledged Revenues pursuant to the Intercept Agreements unless the Governmental Unit fails to timely transfer each such amount, in which event the Finance Authority shall intercept such amounts from Pledged Revenues pursuant to the Intercept Agreements. Such amounts shall be intercepted in approximately equal monthly payments in the correct proportion for each Participant when distributions are made by the Distributing State Agency in accordance with a schedule prepared by the Finance Authority at the commencement of interception of payments. The monthly intercepted installments will be amounts sufficient, when combined, to meet the payments described in subparagraphs (a)(i) and (ii) above.

(b) Each Loan Agreement Payment shall be transferred by the Finance Authority from the Finance Authority Debt Service Account to the Trustee.

(c) As a second charge and lien on the Pledged Revenues received from the Distributing State Agency or the Governmental Unit after deposits in (a) and (b) have been made,

the Trustee shall transfer and deposit to the Loan Agreement Reserve Account any amounts necessary to replenish the Loan Agreement Reserve Account to the Loan Agreement Reserve Requirement. Moneys in the Loan Agreement Reserve Account shall be held and administered by the Trustee and shall be used only to prevent deficiencies in the payment of the Principal Component and Interest Component of the Loan Agreement Payments resulting from a failure to deposit into the Finance Authority Debt Service Account sufficient funds to pay debt service requirements on the Loan; provided, that the final two Interest Components and the final Principal Component on the Loan shall be payable from the Loan Agreement Reserve Account. If funds are withdrawn from the Loan Agreement Reserve Account to pay debt service on the Loan, at the direction of the Finance Authority or the Trustee, additional Pledged Revenues shall be deposited into the Loan Agreement Reserve Account in amounts in equal monthly installments sufficient to restore the amount on deposit therein to the Loan Agreement Reserve Requirement within one (1) year following such withdrawal; provided, that no additional Pledged Revenues shall be intercepted to replenish the Loan Agreement Reserve Account following the transfer of the amount in the Loan Agreement Reserve Account to the Finance Authority Debt Service Account for payment of the final two Interest Components and the final Principal Component.

Notwithstanding any other provisions hereof, the Finance Authority shall have the right to waive the requirement of the Loan Agreement Reserve Account and the Loan Agreement Reserve Requirement, and any moneys in the Loan Agreement Reserve Account may, at the written direction of the Finance Authority, be applied to the Finance Authority Debt Service Account, applied to the prepayment of the Loan pursuant to Article VIII hereof, or released to the Governmental Unit for the Project or used for any other purposes provided by law. If amounts in the Loan Agreement Reserve Account are released by the Finance Authority, the references in this Loan Agreement to the Loan Agreement Reserve Account and the Loan Agreement Reserve Requirement shall be of no further force and effect.

(d) Subject to the foregoing deposits, the Finance Authority or the Trustee shall annually use the balance of the Pledged Revenues received, if any, at the request of the Governmental Unit: (i) to credit against upcoming Loan Agreement Payments; or (ii) to distribute to the Governmental Unit for any purpose permitted by law.

Section 5.3 Manner of Payment. All payments of the Governmental Unit and the Participants hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the addresses designated in Section 11.1 herein, for remittance to the Trustee. The obligation of the Governmental Unit and the Participants to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Governmental Unit, the Participants, the Finance Authority, the Trustee, any vendor or any other person, the Governmental Unit and the Participants shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Governmental Unit and the Participants assert any right of set-off or counterclaim against their obligation to make such deposits required hereunder.

Section 5.4 Disposition of Payments by the Trustee. The Trustee shall deposit all moneys received from the Finance Authority under this Loan Agreement in accordance with the Indenture.

Section 5.5 Additional Parity Obligations. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit or any of the Participants of additional Parity Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations which refund subordinate obligations as provided in Section 5.6 hereof), the Governmental Unit shall have first secured the written approval of the Finance and Authority, and it must be determined that:

(a) The Governmental Unit and the Participants are then current in all of the accumulations required to be made into the Finance Authority Debt Service Account and the Loan Agreement Reserve Account as provided herein.

(b) No default shall exist in connection with any of the covenants or requirements of the Ordinances or this Loan Agreement.

(c) The Pledged Revenues received by or credited to the Governmental Unit and the Participants for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of the issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing one hundred thirty percent (130%) of the combined maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

(d) A written certification or opinion by each of the Governmental Unit and the applicable Participant's Treasurer or chief financial officer or by an Independent Accountant that the Pledged Revenues for the Historic Test Period are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the Governmental Unit and the Participants to authorize, issue, sell and deliver the Parity Obligations proposed to be issued.

(e) No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit or the Participants of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.6 hereof.

(f) The Governmental Unit and the Participants shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to this Loan Agreement.

Section 5.6 Refunding Obligations. The provisions of Section 5.5 hereof are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Loan Agreement, or any part thereof, is outstanding, the Governmental Unit shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Loan Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Loan Agreement or bonds to be refunded may not be compelled to surrender this Loan Agreement or

their bonds, unless this Loan Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the Governmental Unit's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (e) of Section 5.5 hereof and in subparagraphs (b) and (c) of this Section.

(b) No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on a parity with this Loan Agreement unless:

(i) The outstanding obligations so refunded are Parity Obligations and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof.

(c) The refunding bonds or other obligations so issued shall enjoy complete equality of lien on the Pledged Revenues with the portion of this Loan Agreement or any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of this Loan Agreement or the bonds or other obligations of the same issue refunded thereby. If only a part of this Loan Agreement or the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof; or

(iii) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

(d) Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the Governmental Unit and the Participants may provide by ordinance or resolution, but without any impairment of any contractual obligations imposed upon the Governmental Unit or the Participants by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, but not necessarily limited to, this Loan Agreement).

Section 5.7 Investment of Governmental Unit Funds. Money on deposit in the Finance Authority Debt Service Account established by the Finance Authority for the Governmental Unit may be invested by the Finance Authority in Permitted Investments at the discretion of the Finance Authority. Money on deposit in the Program Account and the Loan Agreement Reserve Account held by the Trustee and created hereunder may be invested by the Trustee in Permitted Investments

at the written direction of the Finance Authority or at the discretion of the Trustee. Any earnings on any of said accounts shall be held and administered in each respective account and utilized in the same manner as the other moneys on deposit therein.

Section 5.8 Governmental Unit and the Participants May Budget for Payments. The Governmental Unit and the Participants may, in their sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to defray any insufficiency of Pledged Revenues to pay Loan Agreement Payments; provided, however, the Governmental Unit and the Participants have not covenanted and cannot covenant to make such funds available and have not pledged any of such funds for such purpose.

ARTICLE VI THE PROJECT

Section 6.1 Agreement To Acquire the Project. The Governmental Unit hereby agrees that to effectuate the purposes of this Loan Agreement and to effectuate the acquisition and completion of the Project, it shall make, execute, acknowledge and transmit any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and, in general, do all things which may be requisite or proper to acquire the Project. The Governmental Unit agrees to acquire and complete the Project through the application of moneys to be disbursed from the Program Account pursuant to Section 6.2 of this Loan Agreement.

Section 6.2 Disbursements From the Program Account. So long as no Event of Default shall occur, the Trustee shall disburse moneys from the Program Account in accordance with Section 6.2 of the Indenture upon receipt by the Trustee of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of the Governmental Unit.

No disbursement shall be made from the Program Account without the approval of Bond Counsel: (i) to reimburse the Governmental Unit's own funds for expenditures made prior to the Closing Date; (ii) to refund or advance refund any tax-exempt obligations issued by or on behalf of the Governmental Unit; (iii) to be used, directly or indirectly, to finance a project used or to be used in the trade or business of a person who is not a "governmental unit," within the meaning of Section 141(b)(6) of the Code; or (iv) to expend funds after the date that is three (3) years after the execution and delivery of this Loan Agreement.

Section 6.3 Completion of the Project. Upon completion of the Project, an Authorized Officer of the Governmental Unit shall deliver a certificate to the Finance Authority and the Trustee substantially in the form of Exhibit "D" attached hereto stating that, to the best of his or her knowledge, the Project has been completed and accepted by the Governmental Unit, and all costs have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 6.4 Application of Loan Agreement Proceeds Subsequent to Completion of the Project. Upon completion of the Project as signified by delivery of the completion certificate contemplated in Section 6.3 hereof or in the event that the Finance Authority and the Trustee shall not have received a certificate of completion as required by Section 6.3 hereof by the date three (3) years from the Closing Date (or such later date as is approved in writing by Bond Counsel), the

Trustee shall transfer the amounts remaining in the Program Account (except amounts necessary for payment of amounts not then due and payable) to the Finance Authority Debt Service Account and such amounts shall be used for the payment of Loan Agreement Payments.

ARTICLE VII COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1 Further Assurances and Corrective Instruments. The Finance Authority, the Governmental Unit and the Participants agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof.

Section 7.2 Finance Authority, Governmental Unit and Participant Representatives. Whenever under the provisions hereof the approval of the Finance Authority, the Governmental Unit or a Participant is required, or the Governmental Unit, a Participant or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Governmental Unit or a Participant by an Authorized Officer of the Finance Authority, the Governmental Unit or the Participant as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 7.3 Requirements of Law. During the Loan Agreement Term, the Governmental Unit, the Participants and the Finance Authority shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties hereto, the Project or the Pledged Revenues.

Section 7.4 First Lien; Equality of Liens. The Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. The Governmental Unit and the Participants covenant that the Loan Agreement Payments and any Parity Obligations herein authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance of such obligations, it being the intention of the Governmental Unit and the Participants that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

Section 7.5 Expedition Completion. The Governmental Unit shall complete the Project with all practical dispatch.

ARTICLE VIII PREPAYMENT OF LOAN AGREEMENT PAYMENTS

Section 8.1 Prepayment. The Governmental Unit is hereby granted the option to prepay any of the Principal Components of this Loan Agreement in whole or in part on any day on or after ten (10) years following the Closing Date without penalty or prepayment premium. The Governmental Unit may designate the due dates of any Principal Components being prepaid in the

event of a partial prepayment. Notice of intent to make such prepayment shall be provided to the Finance Authority and the Trustee by the Governmental Unit no less than forty-five (45) days prior to the prepayment date. The Trustee shall recalculate the Loan Agreement Payments due under this Loan Agreement in the event of a partial prepayment in a manner which is consistent with the manner in which the Bonds, if any, are prepaid.

Section 8.2 Defeasance. Should the Governmental Unit pay or make provision for payment of the Loan such that all amounts due pursuant to this Loan Agreement shall be deemed to have been paid and defeased, then the Loan Agreement Payments hereunder shall also be deemed to have been paid, the Governmental Unit's payment obligations hereunder shall be terminated, this Loan Agreement and all obligations contained herein shall be discharged and the pledge hereof released. Such payment shall be deemed made when the Governmental Unit has deposited with an escrow agent, in trust, (i) moneys sufficient to make such payment, and/or (ii) noncallable Government Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and when all necessary and proper expenses of the Finance Authority have been paid or provided for. In the event the Governmental Unit makes provisions for defeasance of this Loan Agreement, the Governmental Unit shall cause to be delivered (1) a report of an independent nationally recognized certified public accountant verifying the sufficiency of the escrow established to pay this Loan Agreement in full when due or upon an irrevocably designated prepayment date, and (2) an opinion of Bond Counsel to the effect that this Loan Agreement is no longer outstanding, each of which shall be addressed and delivered to the Finance Authority. Government Obligations within the meaning of this Section 8.2, unless otherwise approved by the Finance Authority, shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – "SLGs"), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

ARTICLE IX INDEMNIFICATION

From and to the extent of the Pledged Revenues, to the extent permitted by law, the Governmental Unit and the Participants shall and hereby agree to indemnify and save the Finance Authority and the Trustee harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition or operation of the Project during the Loan Agreement Term, from: (i) any act of negligence or other misconduct of the Governmental Unit or the Participants or breach of any covenant or warranty by the Governmental Unit or the Participants hereunder; and (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the Project in excess of the Loan Agreement proceeds and interest on the investment thereof. The Governmental Unit and the Participants shall indemnify and save the Finance Authority and the Trustee harmless, from and to the extent of the available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority or the Trustee, shall defend the Finance Authority or the Trustee, as applicable, in any such action or proceeding.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. Any one of the following shall be an Event of Default under this Loan Agreement:

(a) Failure by the Governmental Unit or the Participants to pay any amount required to be paid under this Loan Agreement on the date on which it is due and payable;

(b) Failure by the Participants to correct any default in the payment by the Distributing State Agency of Pledged Revenues under the Intercept Agreements and such failure remains uncured for more than five (5) business days after notification thereof from the Finance Authority to the Governmental Unit and the Participants, as applicable;

(c) Failure by the Governmental Unit and the Participants to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a) and (b) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the Governmental Unit by the Finance Authority or the Trustee unless the Finance Authority and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Finance Authority or the Trustee but cannot be cured within the applicable thirty (30) day period, the Finance Authority and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Governmental Unit is unable to carry out the agreements on its part herein contained, the Governmental Unit shall not be deemed in default under this paragraph (c) during the continuance of such inability (but force majeure shall not excuse any other Event of Default);

(d) Any warranty, representation or other statement by or on behalf of the Governmental Unit and the Participants contained in this Loan Agreement, the Intercept Agreements or in any instrument furnished in compliance with or in reference to this Loan Agreement is false or misleading in any material respect;

(e) A petition is filed against the Governmental Unit or a Participant under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests;

(f) The Governmental Unit or a Participant files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(g) The Governmental Unit or a Participant admit insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Governmental Unit or a Participant for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the

Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the Finance Authority or the Trustee may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any agreement of the Governmental Unit or a Participant in this Loan Agreement or the Intercept Agreements:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the Finance Authority and the Trustee under this Loan Agreement and the Intercept Agreements against the Governmental Unit and each of the Participants and compel the Governmental Unit and the Participants to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein; or

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority or the Trustee; or

(c) Intervene in judicial proceedings that affect this Loan Agreement or the Pledged Revenues; or

(d) Cause the Governmental Unit or a Participant to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

(e) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and thereafter to become due under this Loan Agreement or to enforce any other of its rights thereunder; or

(f) Apply any amounts in the Program Account toward satisfaction of any of the obligations of the Governmental Unit under this Loan Agreement.

Section 10.3 Limitations on Remedies. A judgment requiring a payment of money entered against the Governmental Unit may reach only the available Pledged Revenues.

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 hereof, no remedy herein conferred upon or reserved to the Finance Authority or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority or the Trustee to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The Finance Authority or the Trustee may in its discretion waive by written waiver any Event of Default hereunder and the consequences of such an Event of Default provided, however, that there shall not be waived: (i) any Event of Default in the payment of the principal of this Loan Agreement at the date when due as specified herein; or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to

such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payments of principal and all expenses of the Finance Authority or the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority and the Trustee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Governmental Unit or a Participant shall default under any of the provisions hereof and the Finance Authority or the Trustee shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Governmental Unit or a Participant herein contained, the Governmental Unit and the Participants agree that they shall on demand therefor pay to the Finance Authority or the Trustee, as applicable, the fees of such attorneys and such other expenses so incurred, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Governmental Unit and the Participants under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

ARTICLE XI MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows: if to the Governmental Unit, Sierra Vista Hospital, 800 East 9th Avenue, Truth or Consequences, New Mexico 87901, Attention: Chief Executive Officer; if to Sierra County, Sierra County, New Mexico, 855 Van Patten, Truth or Consequences, New Mexico 87901, Attention: County Manager; if to Williamsburg, Village of Williamsburg, New Mexico, 309 Veater Road, Williamsburg, New Mexico 87942, Attention: Village Clerk; if to Truth or Consequences, City of Truth or Consequences, New Mexico, 505 Sims, Truth or Consequences, New Mexico 87901, Attention: City Manager; if to Elephant Butte, City of Elephant Butte, New Mexico, 103 Water Avenue, Elephant Butte, New Mexico 87935, Attention: City Manager; if to the Finance Authority, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and if to the Trustee, BOKF, NA, 100 Sun Avenue, NE, Suite 500, Albuquerque, New Mexico 87109, Attention: Trust Division. The Governmental Unit, the Participants, the Finance Authority, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, the Governmental Unit and the Participants and their respective successors and assigns, if any.

Section 11.3 Amendments. The Governmental Unit agrees that this Loan Agreement will not be amended without the prior written consent of the Finance Authority, and, if the Loan has been pledged under the Indenture (as defined herein), without the prior written consent of the Trustee (as defined herein), the Finance Authority and the Governmental Unit, pursuant to the Indenture.

Section 11.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, either directly or through the Finance Authority, or against any officer, employee, director or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director, trustee or member of the Governing Body or of the Finance Authority is hereby expressly waived and released by the Governmental Unit, the Participants and by the Finance Authority as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.5 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit and the Participants to pay hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.6 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Assignment by the Finance Authority. Pursuant to the Indenture, this Loan Agreement and the Intercept Agreements may be assigned and transferred by the Finance Authority to the Trustee, which assignment and transfer is hereby acknowledged and approved by the Governmental Unit and the Participants.

Section 11.8 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.9 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.10 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as approved by the Board of Directors of the Finance Authority on November 19, 2015, has executed this Loan Agreement in its corporate name by its duly authorized officer; and the Governmental Unit and the Participants have each caused this Loan Agreement to be executed in their respective corporate name and the seal of the Governmental Unit and the Participant are affixed and attested by their respective duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By: _____
Robert P. Coalter, Chief Executive Officer

PREPARED FOR EXECUTION BY OFFICERS
OF THE NEW MEXICO FINANCE AUTHORITY:

Sutin Thayer & Browne A Professional Corporation
As Loan Counsel

By: _____
Suzanne Wood Bruckner

APPROVED FOR EXECUTION BY OFFICERS OF
THE NEW MEXICO FINANCE AUTHORITY:

By: _____
Daniel C. Opperman
General Counsel

SIERRA VISTA HOSPITAL,
IN TRUTH OR CONSEQUENCES, NEW MEXICO

[SEAL]

By: _____
_____, Chairman of the
Board of Directors

ATTEST:

By: _____
_____, Secretary

SIERRA COUNTY JOINT POWERS COMMISSION

[SEAL]

By: _____
_____, **Chairman**

ATTEST:

By: _____

SIERRA COUNTY, NEW MEXICO

[SEAL]

By: _____
_____, Chairman of the
Board of County Commissioners

ATTEST:

By: _____
Connie Greer, County Clerk

VILLAGE OF WILLIAMSBURG, NEW MEXICO

[SEAL]

By: _____
_____, Mayor

ATTEST:

By: _____
_____, Village Clerk

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

By: _____
_____, Mayor

[SEAL]

ATTEST:

By: _____
_____, City Clerk

CITY OF ELEPHANT BUTTE, NEW MEXICO

By: _____
_____, Mayor

[SEAL]

ATTEST:

By: _____
_____, City Clerk

EXHIBIT "A"

TERM SHEET

New Mexico Finance Authority Loan No. 3416-PP

Governmental Unit:	Sierra Vista Hospital, in Truth or Consequences, NM, of which Sierra County, NM, the Village of Williamsburg, NM, the City of Truth or Consequences, NM and the City of Elephant Butte, NM, are Participants
Project Description:	Plan, design and construct a new hospital for use by the Governmental Unit
Loan Agreement Principal Amount:	\$36,329,129
Disadvantaged Funding Amount:	\$0
Pledged Revenues:	The Net System Revenues; the Sierra County Hospital Emergency Gross Receipts Tax Revenues imposed pursuant to Section 7-20E-12.1, NMSA 1978, the Sierra County Hold Harmless Gross Receipts Tax Revenues imposed pursuant to Section 7-020E-28, NMSA 1978, as amended (upon the expiration or unavailability of the Sierra County Hospital Emergency Gross Receipts Tax Revenues), and the Village of Williamsburg, the City of Truth or Consequences and the City of Elephant Butte Gross Receipts Tax Revenues, imposed pursuant to Section 7-19D-9 NMSA 1978
Coverage Ratio:	130%
Distributing State Agency:	State of New Mexico Taxation and Revenue Department
Currently Outstanding Parity Obligations:	None
Additional Parity Bonds Test:	130%
Authorizing Legislation:	Governmental Unit Resolution Nos. ____ and ____, adopted ____, 2016 and ____, 2016; Sierra County Ordinance No. 16-008, adopted March 15, 2016; Williamsburg Ordinance No. ____, adopted ____, 2016; Truth or Consequences Ordinance No. ____, adopted ____, 2016; and Elephant Butte Ordinance No. ____, adopted ____, 2016
Closing Date:	May 11, 2016
Blended Interest Rate:	____%
Governmental Unit Contribution:	\$2,000,000

Net Premium Received:	\$ _____
Program Account Deposit:	\$33,986,000
Loan Agreement Reserve Account Deposit:	\$2,185,976.46
Processing Fee:	\$157,151.95
Finance Authority Debt Service Account Deposit:	\$0.59
First Interest Payment Date:	[November 1, 2016]
First Principal Payment Date:	[May 1, 2017]
Final Payment Date:	[May 1, 2045]

**PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS UNLESS A
LATER DATE IS APPROVED IN WRITING TO THE TRUSTEE AND THE FINANCE
AUTHORITY BY BOND BOUNSEL TO THE FINANCE AUTHORITY**

EXHIBIT "B"

DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT

[SEE ATTACHED]

EXHIBIT "C"

FORM OF REQUISITION

RE: \$36,329,129 Loan Agreement by and among the Sierra Vista Hospital, Sierra County, New Mexico, the Sierra County Joint Powers Commission, the City of Truth or Consequences, New Mexico, the Village of Williamsburg, New Mexico, the City of Elephant Butte, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: BOKF, NA
c/o New Mexico Finance Authority
207 Shelby Street
Santa Fe, New Mexico 87501
Attn: Accounting

You are hereby authorized to disburse from the Program Account – Sierra Vista Hospital, in Truth or Consequences, New Mexico (2016 Hospital Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO.: 3416-PP

CLOSING DATE: May 11, 2016

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

AMOUNT OF PAYMENT: \$ _____

PURPOSE OF PAYMENT: _____

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – Sierra Vista Hospital, in Truth or Consequences, New Mexico (2016 Hospital Loan).

All representations contained in the Loan Agreement and the related closing documents remain true and correct and Sierra Vista Hospital, in Truth or Consequences, New Mexico, is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the Sierra Vista Hospital, in Truth or Consequences, New Mexico, shall, and understands its obligation to, complete the acquisition of the Project from other legally available funds.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: _____

By: _____

Authorized Officer of Borrower

Title: _____

Print Name and Title

EXHIBIT "D"

CERTIFICATE OF COMPLETION

RE: \$36,329,129 Loan Agreement by and among the Sierra Vista Hospital, Sierra County, New Mexico, the Sierra County Joint Powers Commission, the City of Truth or Consequences, New Mexico, the Village of Williamsburg, New Mexico, the City of Elephant Butte, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

**TO: New Mexico Finance Authority
207 Shelby Street
Santa Fe, New Mexico 87501
Attn: Accounting**

**Susen Ellis
Assistant Vice President, Corporate Trust
BOKF, NA
100 Sun Avenue, Suite 500
Albuquerque, New Mexico 87109**

LOAN NO.: 3416-PP

CLOSING DATE: May 11, 2016

In accordance with Section 6.3 of the Loan Agreement, the undersigned states, to the best of his or her knowledge, that the acquisition of the Project has been completed and accepted by the Governmental Unit, and all costs have been paid as of the date of this Certificate. Notwithstanding the foregoing, this certification is given without prejudice to any rights against third parties which exist at the date of this Certificate or which may subsequently come into being.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: _____

**By: _____
Authorized Officer of Governmental Unit**

**Title: _____
Print Name and Title**

INTERCEPT AGREEMENT

This INTERCEPT AGREEMENT is made and entered into May 11, 2016, by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority"), a public body politic and corporate constituting a governmental instrumentality separate and apart from the State of New Mexico (the "STATE") under the laws of the State, the SIERRA VISTA HOSPITAL and the SIERRA COUNTY JOINT POWERS COMMISSION (together, the "GOVERNMENTAL UNIT") and the CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO ("TORC"). The Governmental Unit is a joint powers authority duly organized and existing pursuant to the Joint Powers Agreements Act, Sections 11-1-1 through 11-1-7, NMSA 1978, as amended, and TorC is a political subdivision duly organized and existing under the laws of the State.

WITNESSETH:

WHEREAS, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, authorized the creation of the Finance Authority within the State to assist in financing the cost of public projects of participating qualified entities, including the Governmental Unit, such as the planning, design and construction of a new hospital for use by the Governmental Unit; and

WHEREAS, pursuant to Sections 6-21-1 through 6-21-31, Sections 3-31-1 through 3-31-12, Sections 7-1-6.1, 7-1-6.12, 7-1-6.15, 7-19D-9 and Sections 11-1-1 through 11-1-7 NMSA 1978, as amended (collectively, the "Act"), and pursuant to the Joint Powers Agreement No. 97-059 dated May 14, 1998, as revised July 15, 2009 and _____, 2016, duly authorized and executed by Sierra County, the Village of Williamsburg, TorC and the City of Elephant Butte, New Mexico (collectively, the "Participants") and designated as the "Joint Powers Agreement" (the "Joint Powers Agreement"), the Finance Authority, the Governmental Unit and TorC are authorized to enter into agreements to facilitate the financing of the Project as described in the Loan Agreement by and among the Finance Authority, the Governmental Unit and the Participants of even date herewith (the "Loan Agreement"); and

WHEREAS, the Governmental Unit desires to acquire the Project and such acquisition is permitted under the Act; and

WHEREAS, the Finance Authority has established its Loan Program (the "Program") funded by its public project revolving fund (as defined in the Act) for the financing of infrastructure and equipment projects upon the execution of the Loan Agreement and the assignment of loan agreements to a trustee (the "Trustee"); and

WHEREAS, the Governmental Unit desires to borrow \$36,329,129 from the Program for the purpose of financing the acquisition of the Project (the "Loan"), and the Participants desire to pledge their respective distributions of county hospital emergency gross receipts tax revenues or gross receipts tax revenues toward the repayment of the Loan, which Loan is to be governed by this Intercept Agreement, Intercept Agreements with each of the other Participants, and by the Loan Agreement; and

WHEREAS, the Act confers upon the Finance Authority the authority to loan funds to the Governmental Unit and the Participants to finance the Project, and Sections 7-19D-9, 7-1-6.1, 7-1-6.12 and 7-1-6.15, NMSA 1978, as amended, authorize TorC to direct that its

of municipal gross receipts tax revenues (the "TorC Pledged Revenues") from the State Taxation and Revenue Department (the "Distributing State Agency") be paid to the Finance Authority or its assignee, to secure payments under the Loan Agreement;

NOW THEREFORE, the parties hereto agree:

Unless otherwise defined in this Intercept Agreement and except where the context by clear implication otherwise requires, capitalized terms used in this Intercept Agreement shall have for all purposes of this Intercept Agreement the meanings assigned thereto in the Loan Agreement and the Indenture, as defined in the Loan Agreement.

Section 1. Authorization to the Finance Authority. TorC hereby recognizes that (i) the Finance Authority has made a Loan to the Governmental Unit in the amount of \$36,329,129 to finance the acquisition of the Project and (ii) TorC has agreed to pledge its distributions of one quarter of one percent (.25%) of municipal gross receipt tax revenues towards the repayment of the Loan. Pursuant to the Loan Agreement, this Intercept Agreement, the Intercept Agreements with each of the other Participants, the Loan and all Loan Agreement Payments on the Loan made by or on behalf of the Governmental Unit and the Participants shall be collected by the Finance Authority and remitted to the Trustee. In the event that the Governmental Unit fails to make timely payment of Loan Agreement Payments to the Finance Authority, the Governmental Unit and TorC agrees that all payments due on the Loan from the TorC Pledged Revenues shall be paid by the Distributing State Agency to the Finance Authority or its designee, on behalf of TorC, from scheduled distributions of the TorC Pledged Revenues in accordance with the Intercept Schedule attached hereto as Exhibit "A" (the "Intercept Schedule").

This Intercept Agreement shall be deemed a written certification, authorization and request by TorC to the Distributing State Agency to pay to the Finance Authority, on behalf of TorC, all monthly distributions of the TorC Pledged Revenues pursuant to Sections 7-1-6.1, 7-1-6.12 and 7-1-6.15, NMSA 1978, as amended, to ensure compliance with the Loan Agreement and repayment of the Loan. Any accumulation of the TorC Pledged Revenues in an amount in excess of the next Loan Agreement Payment and the Loan Agreement Reserve Requirement, if any, shall be redirected by the Finance Authority to the benefit of TorC on a timely basis as provided in Section 5.2 of the Loan Agreement.

To the extent that the TorC Pledged Revenues are insufficient to meet the debt service requirements due on the Loan and other Parity Obligations (as defined in the Loan Agreement) now or hereafter issued or incurred, the amounts intercepted under this Intercept Agreement shall be applied to allow partial payment on a pro-rata basis of the debt service due and owing on the Loan Agreement and other Parity Obligations.

Section 2. Term; Amendments. This Intercept Agreement will remain in full force and effect from its effective date as herein provided until such time as the Loan made pursuant to the Loan Agreement and this Intercept Agreement have been paid in full. Nothing herein shall be deemed in any way to limit or restrict the Governmental Unit or TorC from issuing its own obligations, providing its own program or participating in any other program for the financing of

public projects which the Governmental Unit or TorC may choose to finance. This Intercept Agreement may be amended only by written instrument signed by the parties hereto.

Section 3. Authorization. The execution and performance of the terms of this Intercept Agreement have been authorized and approved by Governmental Unit Resolution Nos. _____ and _____, passed and adopted on _____, 2016 and _____, 2016 by the Governing Bodies of each Governmental Unit, and by TorC Ordinance No. _____, passed and adopted on March 22, 2016 by the Governing Body of TorC, which Resolutions and Ordinance are in full force and effect on the date hereof.

Section 4. Severability of Invalid Provisions. If any one or more of the provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separable from the remaining provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 5. Counterparts. This Intercept Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6. Further Authorization. The Governmental Unit and TorC agree that the Finance Authority shall do all things necessary or convenient to the implementation of the Program to facilitate the Loan to the Governmental Unit.

Section 7. Effective Date. This Intercept Agreement shall take effect on the Closing Date of the Loan.

Section 8. Initial Intercept Date. As indicated on the Intercept Schedule, the first distribution of the TorC Pledged Revenues that is to be intercepted by the Distributing State Agency under the terms of this Intercept Agreement consists of Pledged Revenues due to TorC distributed in July, 2016.

Section 9. Final Intercept Date. Once the Loan has been fully paid off and satisfied, Finance Authority shall provide written notice to the Distributing State Agency to discontinue the interception of TorC Pledged Revenues.

[Remainder of page left intentionally blank]

[Signature page follows]

IN WITNESS WHEREOF, the parties to this Intercept Agreement have caused their names to be affixed hereto by the proper officers thereof as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By: _____
Robert P. Coalter, Chief Executive Officer

SIERRA VISTA HOSPITAL

By: _____
_____, Chairman of the
Board of Directors

(SEAL)

Attest:

By: _____
_____, Secretary

SIERRA COUNTY JOINT POWERS COMMISSION

By: _____
_____, Chairman

Attest:

By: _____

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

By: _____

[SEAL]

ATTEST:

By: _____
Renee Cantin, Clerk

Acknowledged:

By: _____
State Taxation and Revenue Department

Date: _____

EXHIBIT "A"

**INTERCEPT SCHEDULE
SIERRA VISTA HOSPITAL
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO**

Date	Pledged Revenues	Amount
Monthly, beginning in July, 2016, through April, 2045	The distribution of one quarter of one percent (.25%) of Municipal Gross Receipts Tax Revenues to the village of TorC, New Mexico, pursuant to Sections 7-19D-9, 7-1-6.1, 7-1-6.12 and 7-1-6.15, NMSA 1978, and Ordinance No. 454-98, which distributions are made monthly by the State Taxation and Revenue Department	\$*

*Except in the event that the Governmental Unit fails to make timely payments of Loan Agreement Payments, as provided in Section 5.2(a) of the Loan Agreement at which time a monthly collection schedule will be prepared by the Finance Authority and given to the Governmental Unit, TorC and the State Taxation and Revenue Department. The State Taxation and Revenue Department shall thereafter distribute TorC Pledged Revenues set forth in the collection schedule to be applied to payment of the Loan as provided in the Loan Agreement and this Intercept Agreement.



H.2

CITY OF TRUTH OR CONSEQUENCES

COMMISSION ACTION FORM

ITEM:

DISCUSSION/ACTION: RESOLUTION NO. 26 15/16 AUTHORIZING THE AMENDMENT AND RESTATEMENT OF SECTION 7 OF THE JOINT POWERS AGREEMENT (THE "JPA") ADOPTED MAY 14, 1998 AND REVISED JULY 15, 2009 (NO. 97-059) BETWEEN AND AMONG THE COUNTY OF SIERRA, THE CITY OF TRUTH OR CONSEQUENCES, THE VILLAGE OF WILLIAMSBURG AND THE CITY OF ELEPHANT BUTTE (COLLECTIVELY, THE "PARTICIPANTS") PROVIDING FOR THE DEDICATION OF CERTAIN GROSS RECEIPTS TAX REVENUES OF THE CITY OF TRUTH OR CONSEQUENCES (THE "CITY") TO BE PLEDGED PURSUANT TO AN ORDINANCE ADOPTED BY THE CITY FOR THE PAYMENT OF A LOAN FROM THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY") IN AN AMOUNT OF UP TO \$36,329,129.

BACKGROUND:

- On May 14, 1998, the County of Sierra, and the Village of Williamsburg adopted and entered into the JPA pursuant to the authority in the Joint Powers Agreements Act. On July 15, 2009, the JPA was amended to include the City of T or C and the City of Elephant Butte.
- Under the JPA, the Participants agreed to provide adequate and appropriate hospital facilities for the citizens and visitors of Sierra County and for providing flexibility in financing the acquisition, ownership, construction, operation and maintenance of necessary hospital facilities.
- Section 7 of the revised JPA contains certain limitations on the time in which the Participants' dedication of the revenues specified therein would remain in effect (i.e., for a specified number of years or until the 1997 Loan was paid in full).
- The New Mexico Finance Authority is willing to loan the JPC up to \$36,329,129 to be used for the planning, design and construction of a new hospital.
- The 2016 Loan contemplates that the JPC will pledge its net system revenues, and revenues of the Participants similar to the revenues dedicated to the repayment of the 1997 Loan, as security and repayment for the 2016 Loan.
- The resolution authorizes and approves the amendment and restatement of the JPA in the form attached to this Resolution as Exhibit A by modifying Section 7 and authorizes the Mayor to execute on behalf of the City and to submit the Amended and Restated JPA as executed and attested by the City.

STAFF RECOMMENDATION:

- Approval of Resolution No. 25-15/16.

SUPPORT INFORMATION:

- Approval of Resolution No. 25-15/16.

Reviewed by: Juan A. Fuentes	Department: City Manager	E-mail: jafuentes@torcnm.org
Meeting: 03-22-16		

CITY OF TRUTH OR CONSEQUENCES

RESOLUTION NO. 26 15/16

SIERRA VISTA HOSPITAL JOINT POWERS AGREEMENT/ SIERRA VISTA HOSPITAL LOAN AND INTERCEPT AGREEMENTS

RESOLUTION AUTHORIZING THE AMENDMENT AND RESTATEMENT OF SECTION 7 OF THE JOINT POWERS AGREEMENT (THE "JPA") ADOPTED MAY 14, 1998 AND REVISED JULY 15, 2009 (NO. 97-059) BETWEEN AND AMONG THE COUNTY OF SIERRA, THE CITY OF TRUTH OR CONSEQUENCES, THE VILLAGE OF WILLIAMSBURG AND THE CITY OF ELEPHANT BUTTE (COLLECTIVELY, THE "PARTICIPANTS") PROVIDING FOR THE DEDICATION OF CERTAIN GROSS RECEIPTS TAX REVENUES OF THE CITY OF TRUTH OR CONSEQUENCES (THE "CITY") TO BE PLEDGED PURSUANT TO AN ORDINANCE ADOPTED BY THE CITY FOR THE PAYMENT OF A LOAN FROM THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY") IN AN AMOUNT OF UP TO \$36,329,129 PURSUANT TO A LOAN AGREEMENT AND AN INTERCEPT AGREEMENT TO BE ENTERED INTO AMONG THE FINANCE AUTHORITY, THE JOINT POWERS COMMISSION (THE "GOVERNMENTAL UNIT") AS AUTHORIZED UNDER THE JPA, SIERRA VISTA HOSPITAL (THE "HOSPITAL") AND EACH OF THE PARTICIPANTS WITH THE PROCEEDS OF SUCH LOAN TO BE APPLIED FOR THE PURPOSE OF PLANNING, DESIGN AND CONSTRUCTION OF A NEW HOSPITAL FOR USE BY THE GOVERNMENTAL UNIT AND THE HOSPITAL AND PROVIDING FOR THE SUBMISSION OF THE JPA AS AMENDED AND RESTATED TO THE SECRETARY OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION FOR APPROVAL PURSUANT TO THE JOINT POWERS AGREEMENTS ACT.

RECITALS

WHEREAS, on May 14, 1998, the County of Sierra (the "County") and the Village of Williamsburg (the "Village") adopted and entered into the JPA pursuant to the authority in the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1 to -7 (1961, as amended through 1984) and the Hospital Funding Act, NMSA 1978, Sections 4-48B-1 to -29 (1981, as amended through 1993) (the "HFA"), and;

WHEREAS, on July 15, 2009, the Participants agreed to revise the JPA to include the Cities of Truth or Consequences and Elephant Butte (respectively, "T or C" and "Elephant Butte") as parties to the JPA, and;

WHEREAS, under the JPA, as revised, the Participants agreed to provide adequate and appropriate hospital facilities for the citizens and visitors of Sierra County and for providing flexibility in financing the acquisition, ownership, construction, operation and maintenance of necessary hospital facilities and to minimize the cost of constructing new hospital facilities, and maintain adequate hospital facilities and to avoid unnecessary duplication of expenditure of public funds for health care facilities and services pursuant to the HFA, and;

WHEREAS, the revised JPA vests control of the fiscal oversight of the Sierra Vista Hospital ("Hospital") in, and establishes as its appointed governing body, the Sierra Vista Hospital Joint Powers Commission (the "Governmental Unit"), comprised of certain members of the County Commission, Village Trustees, T or C Commission and Elephant Butte Council, and;

WHEREAS, the County financed the acquisition of the Hospital through a 1997 loan from the Finance Authority (the "1997 Loan"), and each of the Participants dedicated certain revenues specified therein to the Hospital for acquisition, loan for purchase, building code upgrade and operations costs, and;

WHEREAS, Section 7 of the revised JPA contains certain limitations on the time in which the Participants' dedication of the revenues specified therein would remain in effect (i.e., for a specified number of years or until the 1997 Loan was paid in full), and;

WHEREAS, the 1997 Loan was fully repaid and retired on March 16, 2012, and under certain provisions within Section 7 of the revised JPA the obligation of the Participants to continue the dedication of specified revenues to the Hospital was set to expire or imminently expire upon payment of the 1997 Loan, and;

WHEREAS, the Finance Authority is willing to loan the Governmental Unit up to \$36,329,129 to be used for the planning, design and construction of a new hospital that will be adequate to meet the needs of the citizens and visitors of Sierra County (the "2016 Loan"), and;

WHEREAS, the 2016 Loan contemplates that the Governmental Unit and Hospital will pledge their net system revenues, and the Participants will pledge certain of their revenues similar to the revenues dedicated to the repayment of the 1997 Loan, as security and repayment for the 2016 Loan, and;

WHEREAS, it is necessary to amend and restate the JPA to ensure that the Participants dedicate sufficient revenues to the Governmental Unit as security for the repayment of the 2016 Loan for the duration of its term or until its retirement prior to maturity, and;

WHEREAS, NMSA 1978, Section 11-1-3 (1983) requires that any joint powers agreement be approved by the secretary of finance and administration and reported to the state board of finance, and;

WHEREAS, the terms of the 2016 Loan require that the Participants individually, together with the Governmental Unit and Hospital, approve and execute the Loan and Intercept Agreements for the 2016 Loan in the forms to be presented to T or C, and;

WHEREAS, the Participants wish to amend and restate the JPA to make adequate provisions to secure the 2016 Loan and effectuate the financing and construction of a new hospital in Sierra County;

NOW, THEREFORE BE IT RESOLVED by the Governing Body of the City of Truth or Consequences, New Mexico (the "City"):

1. That the City hereby authorizes and approves the amendment and restatement of the JPA in the form attached to this Resolution as Exhibit A (the "Amended and Restated JPA") by modifying Section 7 to dedicate certain revenues to the Governmental Unit as security for the repayment of the 2016 Loan for its term or retirement prior to maturity, the proceeds of such loan to be applied by the Governmental Unit and used by the Hospital for the planning, design and construction of a new Hospital facility.

2. That the Mayor is hereby authorized to execute and deliver and the City Clerk is hereby authorized to attest to the Amended and Restated JPA on behalf of the City and to submit the Amended and Restated JPA as executed and attested by the City to the secretary of finance and administration for approval, and once approved, to be reported to the state board of finance.

PASSED, ADOPTED AND APPROVED this 22nd Day of March, 2016.

Steven Green, Mayor

ATTEST:

Renee Cantin
City Clerk

EXHIBIT A

Amendment and Restatement of the Joint Powers Agreement between the County of Sierra, and the City of Truth or Consequences and the Village of Williamsburg and the City of Elephant Butte Amending the Existing JPA No. 97-059 Between the County of Sierra and the Village of Williamsburg, Adopted May 14, 1998 Revised July 15, 2009 (the "Amendment")

Pursuant to Section 15 of the Joint Powers Agreement between the County of Sierra, and the City of Truth or Consequences, the Village of Williamsburg and the City of Elephant Butte (collectively, the "Participants"), the Participants hereby amend and restate Section 7 of the Existing JPA No. 97-059, adopted May 14, 1998 and Revised July 15, 2009 (the "JPA" or "Agreement"), to read as follows:

Section 7. Funding Obligations.

- 7.1 The parties to this Agreement shall participate in the funding of a new facility for Sierra Vista Hospital ("Hospital"), including but not limited to the planning, design and construction of such facility, together with financial support for the operation and maintenance of the current hospital facility, pending construction of the new facility to the extent permitted by and within the legally authorized mechanisms provided by statute.
- 7.2 To the extent permitted by law, the parties to this Agreement shall participate in any funding necessary for the new hospital facility in accordance with a loan from the New Mexico Finance Authority (the "2016 Loan" and together with the intercept agreement, the "2016 Loan Documents") to be entered into between the New Mexico Finance Authority, the Sierra Vista Hospital Joint Powers Commission ("Governmental Unit") and the Participants whereby the Governmental Unit and the Hospital will pledge the net revenues of the Hospital and the Participants shall pledge certain revenues (as identified below) pursuant to appropriate resolutions and ordinances adopted by the Governmental Unit, Hospital and Participants, as applicable, to the payment of debt service on the 2016 Loan in accordance with the 2016 Loan Documents.
- 7.3 The parties to this Agreement shall dedicate the following revenues to the planning, design and construction of a new hospital facility, including any land necessary therefor, for use by the Governmental Unit and the Hospital in accordance with the JPA, and for ongoing operations and maintenance of the new hospital facility, consistent with legal allowable limits or restrictions placed upon such revenues.
 - a. Sierra County:
 - (1) Revenue from \$2 mill levy for operations and maintenance. The term of such mill levy may not

exceed eight years without approval by public referendum.

- (2) 0.25% County Hospital Emergency Gross Receipts Tax pursuant to NMSA 1978, Section 7-20E-12.1 (2010) to be dedicated for the term of the 2016 Loan, or for the period prior to the expiration of such tax, whichever is the first to occur, for the planning, design and construction of a new hospital facility, including any land necessary therefor. The dedication stipulated herein shall not exceed 30 years from the date of the 2016 Loan.
- (3) Upon the expiration of the County Hospital Emergency Gross Receipts Tax specified in Section 7.3(a)(2) above, subject to any extensions or amendments thereto, two thirds (2/3) of the 0.375% County Hold Harmless Gross Receipts Tax pursuant to NMSA 1978, Section 7-20E-28 (2013) to be dedicated for the remainder of the term of the 2016 Loan for the planning, design and construction of a new hospital facility, including any land necessary therefor. The dedication stipulated herein shall not be in effect until the County Hospital Emergency Gross Receipts Tax specified in Section 7.3(a)(2) above has expired, subject to any extensions or amendments thereto, or is no longer available for repayment of the 2016 Loan, and such dedication shall not exceed 30 years from the date of the 2016 Loan.

b. City of Truth or Consequences:

0.1875% Municipal Gross Receipts Tax pursuant to NMSA 1978, Section 7-19D-9 (2007) to be dedicated for the term of the 2016 Loan for the planning, design and construction of a new hospital facility including any land necessary therefor. The pledge stipulated herein shall not exceed 30 years from the date of the 2016 Loan.

c. Village of Williamsburg:

0.25% Municipal Gross Receipts Tax pursuant to NMSA 1978, Section 7-19D-9 (2007) to be dedicated for the term of the 2016 Loan for the planning, design and construction of a new hospital facility including any land necessary therefor. The pledge stipulated herein shall not exceed 30 years from the date of the 2016 Loan.

d. City of Elephant Butte:

- (1) 0.125% Municipal Gross Receipts Tax pursuant to NMSA 1978, Section 7-19D-9 (2007) to be dedicated for the term of the 2016 Loan for the planning, design and construction of a new hospital facility including any land necessary therefor. The pledge stipulated herein shall not exceed 30 years from the date of the 2016 Loan.
- (2) 0.0625% Municipal Infrastructure Gross Receipts Tax pursuant to NMSA 1978, Section 7-19D-11 (2003) to be dedicated for the term of the 2016 Loan for the planning, design and construction of a new hospital facility and any land necessary therefor. The pledge stipulated herein shall not exceed 30 years from the date of the 2016 Loan.

- 7.4 When the 2016 loan from the New Mexico Finance Authority is paid in full (at maturity or retirement prior to maturity), the parties to this Agreement will, upon such payment, determine by subsequent amendment and restatement of Section 7 their respective financial obligations to use the revenues dedicated to the Governmental Unit pursuant to Section 7.3(a)(2) and (3), (b), (c) and (d) of this JPA for operation and maintenance of the new hospital facility, consistent with allowable limits or restrictions placed upon such revenues.
- 7.5 The parties to this Agreement shall not jeopardize the solvency of the Governmental Unit or the Hospital or the efficient use of funding for its intended and lawful purposes by failing to disburse timely revenue payments to the Hospital, for the account of the Governmental Unit in accordance with agreements established in this Section 7 and for financial support for the ongoing operation and maintenance of the new hospital facility.
- 7.6 The parties shall endeavor to seek other legally authorized funding sources, such as through loans, legislative appropriations, grants, donation or gifts, to supplement revenues of the Hospital and provide for continued operations of the Hospital.

IN WITNESS THEREOF

The Board of County Commissioners of the County of Sierra meeting in public session on March 15, 2016, passed, approved and adopted this Amendment.

Attest:

County Clerk

Chairperson

The City Commission of the City of Truth or Consequences, meeting in public session on March 22, 2016, passed, approved and adopted this Amendment.

Attest:

City Clerk

Mayor

The Board of Trustees of the Village of Williamsburg, meeting in public session on March 28, 2016, passed, approved and adopted this Amendment.

Attest:

Village Clerk

Mayor

The City Council of the City of Elephant Butte, meeting in public session on April 6, 2016, passed, approved and adopted this Amendment.

Attest:

City Clerk

Mayor

The members of the Joint Powers Commission, meeting in public session on March 23, 2016, passed, approved and adopted this Amendment; subject to the final approval of the Department of Finance and Administration.

Attest:

City Clerk

Chairperson, Joint Powers Commission

Approved:

Department of Finance and Administration

Date



**CITY OF TRUTH OR CONSEQUENCES
COMMISSION ACTION FORM**

ITEM: **Approval of 2015 Audit, Presented by RPC CPA's & Consultants, LLP**

AUTHORIZATION TO: Approve 2015 Audit completed by contract audit company.

BACKGROUND: **Annual audit presentation to the City Commission, along with input from auditors, as well as Q&A as needed. Audit was presented timely and approved by the Office of the State Auditor.**

Description	Amount	Recommendation
2015 Audit Report	NA	Approve 2015 Audit

SUPPORT INFORMATION:

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Name of Drafter: Lori S. Montgomery	Department:: Finance Director	Mtg: 03/22/16
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I.2

CITY OF TRUTH OR CONSEQUENCES
COMMISSION ACTION FORM

ITEM:

Review Plans for renewal/update of the Luis Armijo Ball Fields. Greg D'Amour, Recreation Advisory Board Chairman

BACKGROUND:

The application for listing on City Commission Agenda is attached. The Recreation Advisory Board Chair, Greg D'Amour will present a review of the plans for renewal/update of the Luis Armijo Ball Fields.

STAFF RECOMMENDATION:

None.

Submitted by: Renee Cantin, City Clerk

Meeting date: 3-22-2016



CITY OF TRUTH OR CONSEQUENCES

CITY CLERK'S OFFICE

505 SIMS STREET

TRUTH OR CONSEQUENCES, NEW MEXICO 87901

PHONE: (575) 894-6673 EXT#1301 FAX: (575) 894-7767

RECEIVED
MAR 16 2016

12:23 pm

APPLICATION FOR LISTING ON CITY COMMISSION AGENDA

DATE: 3-16-16

DATE OF MEETING YOU ARE REQUESTING TO BE LISTED UNDER: 3-22-16

NAME OF APPLICANT/ORGANIZATION: City of T or C Recreation Advisory Board -

ADDRESS: _____

PHONE: Greg D'Amico - 575 497 9032 E-MAIL: gdc-health@hotmail.com

REQUEST: (ATTACH WRITTEN REQUEST AND/OR DOCUMENTS IF AVAILABLE)

Review Plans for renewal - update Luis Armiijo Ball Fields -

WHAT RESOURCES DO YOU REQUIRE: Projection - Laptop -

ESTIMATED TIME FOR PRESENTATION: 10 min - SIGNATURE: [Signature]

CITY MANAGER ACTION

APPROVED FOR COMMISSION AGENDA OF: March 22, 2016

DENY - REASON FOR DENIAL: _____

IF YOUR REQUEST WAS DENIED AND YOU WISH TO APPEAL, YOU MAY:

- appear personally before the City Commission on the day of the meeting and during the "Comments from the Public" ask that the Commission place your item on the next available agenda (usually in 2 weeks); or,
- appeal directly to any one of the City Commissioner by contacting them (see reverse side for contact information). Any Commissioner may place your item on the agenda by notifying the City Clerk at least 24 hours prior to the Commission meeting.



I.3

**CITY OF TRUTH OR CONSEQUENCES
COMMISSION ACTION FORM**

ITEM: 2016-2017 Annual J.A.F Grant Application Approval/Resolution for City Fiscal Agent.

BACKGROUND: Annual Juvenile Adjudication Fund (Sierra County Teen Court)

STAFF RECOMMENDATION:

SUPPORT INFORMATION:
Copy of Budget and Resolution

Name of Presenter: Bobbie Sanders	Department: Judicial	Meeting date: 03/22/16
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CITY OF TRUTH OR CONSEQUENCES

Resolution No. 27 15/16

A RESOLUTION

AUTHORIZING THE MUNICIPALITY TO SUBMIT AN APPLICATION TO THE DEPARTMENT OF FINANCE AND ADMINISTRATION, LOCAL GOVERNMENT DIVISION TO PARTICIPATE IN THE JUVENILE ADJUDICATION PROGRAM.

WHEREAS, the Legislature enacted Section 34-16-1 NMSA 1978 establishing a juvenile adjudication fund grant program to fund programs providing alternative procedures of adjudication for juveniles charged with traffic offenses and other misdemeanors.; and

WHEREAS, the Legislature enacted Section 66-8-116.3 NMSA 1978 as amended, creating the juvenile adjudication fund by assessing fees levied and collected; and

WHEREAS, the Municipality along with participating agencies is making application to the Department of Finance and Administration, Local Government Division for supplemental program funding.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Governing Body of the City of Truth or Consequences, State of New Mexico hereby authorizes the submission of the FY17 application for the Juvenile Adjudication Fund under the regulations established by the Local Government Division.

APPROVED AND ADOPTED by the governing body at its meeting of March 22nd, 2016.

Steven Green, Mayor

SEAL

Attest:

Renee L. Cantin, City Clerk

**JUVENILE ADJUDICATION FUND PROGRAM
REVENUE/EXPENDITURE SUMMARY**

Form JAF-2

Applicant/Grantee

Total Project Funding 15,000

Grant Funding

REVENUES BY SOURCE		EXPENDITURE BY CATEGORY	GRANT EXPENDITURES	IN-KIND/MATCH FUNDS	TOTAL BUDGET
		INDIRECT ADMINISTRATIVE*			
JAF Program Grant	\$ 15,000.00	Personnel Costs (Salary and Benefits)			\$ 750.00
Program Generated Fees		Other			\$ -
		Subtotal	\$ -	\$ -	\$ 750.00
Local Match (Cash or In-Kind)					
County	\$ 500.00	PROGRAM			
City	\$ 2,200.00	Personnel Salaries, Benefits, Background Checks	\$ 10,000.00		\$ 10,000.00
Judicial/Courts	\$ 1,000.00	Travel (In-State)	\$ 1,000.00	\$ 300.00	\$ 1,300.00
Other: Volunteers	\$ 2,000.00	Supplies	\$ 1,000.00	\$ 500.00	\$ 1,500.00
		Employee and Volunteer Training	\$ 1,500.00	\$ 1,500.00	\$ 3,000.00
		Contractual Services	\$ 1,500.00		\$ 1,500.00
		Operating Costs**		\$ 2,500.00	\$ 2,500.00
		Travel (Out-of-State)**			
		Minor Equipment**		\$ 150.00	\$ 150.00
		Capital Outlay**			\$ -
		Subtotal	\$ 15,000.00	\$ 4,950.00	\$ 19,950.00
		TOTALS:	\$ 15,000.00	\$ 4,950.00	
TOTAL REVENUES	\$ 20,700.00		TOTAL EXPENDITURES \$ 20,700.00		

* Administrative is limited to 5% = \$ 750.00

** Out-of-state Travel, Operating Costs, Minor Equipment, And Capital Outlay are not eligible for grant funding, but can be counted towards match requirements



I.4

CITY OF TRUTH OR CONSEQUENCES
COMMISSION ACTION FORM

ITEM:

Approve the Fire Protection Fund Application for FY 2017.

BACKGROUND:

This is the Annual Application for FPF money.

STAFF RECOMMENDATION:

Approve the application.

Submitted by: Renee Cantin, City Clerk
and Paul Tooley, Fire Chief

Meeting date: 3-22-2016

NEW MEXICO PUBLIC REGULATION COMMISSION

COMMISSIONERS

DISTRICT 1 KAREN L. MONTROYA, VICE CHAIR
DISTRICT 2 PATRICK H. LYONS
DISTRICT 3 VALERIE ESPINOZA, CHAIR
DISTRICT 4 LYNDA LOVEJOY
DISTRICT 5 SANDY JONES



P.O. Box 1269
1120 Paseo de Peralta, Room 413
Santa Fe, NM 87504-1269

STATE FIRE MARSHAL DIVISION
John Standefer, State Fire Marshal

800-244-6702 (In state only)
(505) 476-0174
Fax: (505) 476-0100

INTERIM ACTING CHIEF OF STAFF
Andrea Delling

FISCAL YEAR 2017 FIRE PROTECTION FUND APPLICATION

Date: March 1, 2016
To: New Mexico Municipal and County Officials
From: John Standefer, State Fire Marshal
Subject: Fire Fund Distribution Pursuant to Fire Protection Fund Act, 59A-53, NMSA 1978

Please find the enclosed application for participation in the fiscal year 2017 Fire Protection Fund for the fire departments under your jurisdiction. **For initial budget preparation purposes each application indicates the guaranteed base amount to be distributed per Article 53, 59A-53-4 and 59A-53-5.**

The application provides a complete overview of your departments Insurance Service Office (ISO) classification and number of recognized stations funded through this Office. Please review this information with the Fire Chief/Fire Marshal as their signature is required along with the Mayor, Chair of the County Commission, or authorized local government designee.

The application shall be received in this Office on or before April 30, 2016.

This application does not include any additional amounts that may be calculated from growth in the fund as the financial information indicating growth or reduction in the fire fund is not yet available. When the amount available to the Fire Protection Fund, for fiscal year 2017, is known we will forward the information to you. Nor does this application reflect any funding intercepts for loans incurred by local governments through the New Mexico Finance Authority.

Completeness of the Fire Protection Fund Application is required. Please take note of the section of the application in which we are requesting contact information for the fire department's National Fire Incident Reporting System's (NFIRS) primary users. We have made huge strides towards achieving our goal of 100% reporting of all certified fire department emergency response activities to the NFIRS program.

It is critical for this Office to have the most current contact information for these efforts as we provide our states fire service with reporting status updates and any system informational updates as they occur. Accurate email information is required for each primary user of the NFIRS program.

Thank you for your assistance.

NEW MEXICO PUBLIC REGULATION COMMISSION

COMMISSIONERS

DISTRICT 1 KAREN L. MONTOKA, VICE CHAIR
DISTRICT 2 PATRICK H. LYONS
DISTRICT 3 VALERIE ESPINOZA, CHAIR
DISTRICT 4 LYNDIA LOVEJOY
DISTRICT 5 SANDY JONES



P.O. Box 1269
1120 Paseo de Peralta
Santa Fe, NM 87504-1269

STATE FIRE MARSHAL DIVISION

Room 413
800-244-6702 (In-state only)
(505) 476-0174
Fax : (505) 476-0100

INTERIM ACTING CHIEF OF STAFF

Andrea Delling

NEW MEXICO STATE FIRE MARSHAL DIVISION

FISCAL YEAR 2017 MUNICIPAL FIRE PROTECTION FUND DISTRIBUTION

This application is required to participate in the distribution of the Fire Protection Fund for the 2017 fiscal year. The application is due in the State Fire Marshal Division **on or before April 30, 2016.**

FIRE DEPARTMENT **Truth or Consequences**

FIRE DEPARTMENT ADDRESS: **310 East 9th Street, T or C, NM 87901**

ISO CLASSIFICATION: **2**

Approved number of Sub Stations is 0

0 Sub-Stations

Approved number of Main Stations is 2

Sub-Station #2	Williamsburg-Veater St.	T or C	NM	87901
Mike O. Tooley Bldg.	310 E. Ninth	T or C	NM	87901

If you contend the above ISO Class or station information is incorrect, please attach a list of your claim of main and substations and sign here: _____

The projected minimum amount for fire fund distribution, based on the above information, is **\$154,172**. This does not include any additional amounts that may be calculated from growth in the fund.

An official written request for authorization to rollover and accumulate Fire Protection Fund monies shall be submitted to this Office no later than August 31, 2016. The request shall identify the intended purpose and exact amount of money to be carried over into the FY 2017 balance.

For the purpose of this Application, list the anticipated amount and intended purpose, your department will rollover from FY'16 to FY'17. \$ 100,000 SET ASIDE FOR NEW LADDER TRUCK - \$80,000 - EQUIP + PERMITS

*Provide current balance of the fire department's total Fire Protection Fund account to date: \$ 191,150. ⁵⁵

The Fire Service Support Bureau of the State Fire Marshal Division continues to strive toward achieving 100% compliance with the monthly reporting requirements as established in Article 59A-52 the "Fire Marshal Act," Article 59A-53 "The Fire Protection Fund" and NMSA 10-25-10 "The Fire Protection Fund."

State Law, NMSA 10-25-10, requires all fire departments participating in the distribution of the Fire Protection Fund submit a detailed fire report of the departments activity on or before the 10th of each month for the previous months activity.

The Fire Service Support Bureau reviews all reporting activity on a monthly basis to determine compliance with the reporting requirement. When this Office determines that your fire department is out of compliance, the Fire Chief will be notified of the department's status, if your fire department fails to achieve compliance a letter identifying restrictions on the use of the Fire Protection Funds will be forwarded to the head of local government.

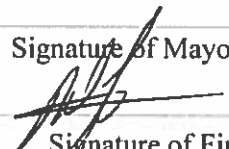
This Office will continue to offer technical support and training on the proper uses of the NFIRS program. If you are having issues with the system or require training you may submit your request via e-mail at vernon.muller@state.nm.us

Please provide updated contact information for a minimum of two primary users of the NFIRS program for your department. (Please print legible)

Name:	Email:	Phone:
1. PAUL TOOLEY	chief@lonefire.com	575-740-1640
2. BRAD SPENCER	bspencer@sierraco.org	575-740-2082

The information contained in this application is true and correct to the best of our knowledge. It may be used to verify legal requirements and is subject to audit.

Signed and submitted on this _____ day of _____ 2016.

Printed Name	and /S	Signature of Mayor
Paul Tooley	/S	
Printed Name		Signature of Fire Chief



I.5

**CITY OF TRUTH OR CONSEQUENCES
COMMISSION ACTION FORM**

ITEM: DISCUSSION/ACTION

AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED NEW MEXICO ENVIRONMENTAL DEPARTMENT SOLID WASTE FACILITY GRANT APPLICATION FOR ENGINEERING SERVICES FOR THE PURPOSE OF SOLID WASTE FACILITY UPGRADES/IMPROVEMENTS

BACKGROUND:

Grant award would be used for the purpose of engineering consulting to repair erosion areas and pave facility area. The banks along our holding ponds and recycle yard are deteriorating and additional work is required. One of these holding ponds is along the side of the scale itself. Extra support is needed before further erosion happens. Once holding ponds are repaired, paving the facility area and adding drainage diversion would help stop future erosion. Due to the scope of work, it is required to be engineered. Applications that provide a 50% cash match will receive higher scores. Estimated award amounts for the NMED Grant is \$35,000.00

If approved for the Grant, Commissioners will have the authority to review the amount offered and cash match needed, prior to acceptance of the Grant.

Completed applications are due April 8, 2016

STAFF RECOMMENDATION:

To approve submission of a completed application.

Name of Drafter Andres Alvarez	Department: Solid Waste	Meeting date: 3-22-16
E-mail: aalvarez@torcnm.org	Phone: 575-894-6939	



I.6

**CITY OF TRUTH OR CONSEQUENCES
COMMISSION ACTION FORM**

ITEM: DISCUSSION/ACTION

**AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED RECYLING AND
ILLEGAL DUMPING GRANT APPLICATION FOR FUNDING TO PURCHASE A FORKLIFT**

BACKGROUND:

Each year we apply for the RAID Grant for improvements to our Recycling Program. We have been successful with this Grant and have used it for the purpose of needed equipment and public outreach programs. This year we will be applying for a Forklift. This forklift will be used with the ramps we received from the grant last year, to load recyclables into box trailers. Previous years we have been limited to only using vendors that have flatbed trailers available. This will give us better options to seek vendors that offer the best pricing for our recyclables.

This is a 100% Reimbursable Grant with no cash match required.

Completed applications are due April 1, 2016

STAFF RECOMMENDATION:

To approve submission of a completed Application for the RAID Grant.

Name of Drafter Andres Alvarez	Department: Solid Waste	Meeting date: 3-22-16
E-mail: aalvarez@torcnm.org	Phone: 575-894-6939	



I.7

CITY OF TRUTH OR CONSEQUENCES

COMMISSION ACTION FORM

ITEM:

DISCUSSION/ACTION: APPROVE THE PROPOSED AMENDMENT TO THE CITY ATTORNEY CONTRACT FOR LEGAL SERVICES.

BACKGROUND:

The city entered into a legal services contract with Holt Mynatt Martinez P.C.. Upon further review, Commissioner Clark brought to our attention a potential conflict between the contract and the City Code. Section 1 & 2 of the contract provides for exclusive communication through the City Manager and Section 2-144 of the City Code allows any City official to request advise from the City Attorney.

The proposed amendment would allow any City official to seek advise from the City Attorney and retain the City Manager as the primary contact.

STAFF RECOMMENDATION:

- Approval of amendment to the legal services contract with Holt Mynatt Martinez P.C.

SUPPORT INFORMATION:

- First Amendment to the Professional Services Contract for Legal Services with Holt Mynatt Martinez, P.C.

Reviewed by: Juan A. Fuentes	Department: City Manager	E-mail: jafuentes@torcnm.org
Meeting: 03-22-16		

**FIRST AMENDMENT
TO
PROFESSIONAL SERVICES CONTRACT FOR LEGAL SERVICES**

HOLT MYNATT MARTÍNEZ P.C. ("Contractor") and the CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO a New Mexico municipality ("City") entered into that certain Professional Services Contract for Legal Services ("Contract") on February 1, 2016. The parties to the Contract acknowledge that a potential conflict exists between sections 1 and 2 of the Contract and section 2-144 of the City code. The parties therefore agree to amend the contract by replacing sections 1 and 2 of the Contract as follows:

1. Scope of Work

The Contractor shall provide legal representation to the City and its public employees as set forth in its Proposal submitted to the City on November 3, 2015. The Contractor has the right to designate which attorney shall principally handle any specific matter. The Proposal is hereby incorporated in this Contract to the extent its provisions are consistent with the Contract. The Contractor shall not file any action or enter any litigation on behalf of the City without first obtaining permission to do so from the City Manager or City Commission.

2. Referral of Work to Contractor

Pursuant to Section 2-144 of the City's code, Contractor shall be the legal advisor of the City and shall render advice on all legal questions affecting the City, whenever requested to do so by any City official. Upon request by the City Manager or Commission, Contractor shall reduce any such opinion to writing.

Referral of legal matters to Contractor under this Contract may be through any City official, the City Manager, or its designee. Referral of legal matters to Contractor shall be confirmed in writing, and such writing shall contain the name and description of the matter for which legal services are sought and an explanation of the scope of work. The City Manager shall be the primary contact for referral of legal matters; however, as provided in the City code, legal advice may be requested by any City official.

Subject to this amendment, all other terms and conditions of the Contract remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Professional Services Contract for Legal Services as of the date set forth below.

CITY OF TRUTH OR CONSEQUENCES

By: _____
Juan Fuentes, City Manager

Dated: _____

HOLTY MYNATT MARTÍNEZ P.C.

By: _____
_____, Director

Dated: _____

PROFESSIONAL SERVICES CONTRACT FOR LEGAL SERVICES

THIS Contract is made and entered into as of the 1st day of February, 2016 between HOLT MYNATT MARTINEZ P.C. ("Contractor") and the CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO a New Mexico municipality ("City").

The parties agree as follows:

1. Scope of Work

The Contractor shall provide legal representation to the City and its public employees as set forth in its Proposal submitted to the City on November 3, 2015. The Contractor has the right to designate which attorney shall principally handle any specific matter. The Proposal is hereby incorporated in this Contract to the extent its provisions are consistent with the Contract.

The Contractor shall not undertake any representation of the City or perform any legal services for the City at the request of any City official or employee without first obtaining specific written authorization to do so from the City Manager. Contractor shall not file any action or enter any litigation on behalf of the City without first obtaining permission to do so from the City Manager.

2. Referral of Work to Contractor

Referral of legal matters to Contractor under this Contract will only be through the City Manager, or his designee. Referral of legal matters to Contractor will be through a "Letter of Engagement" signed by the City Manager. The "Letter of Engagement" will contain the name and description of the matter for which legal services are sought and an explanation of the scope of work.

3. Staffing

Only one professional shall attend meetings, depositions, and arguments unless the attendance of more is required to accomplish the purpose of the meeting and such attendance is discussed with and approved by the City Manager in each instance where multiple attendance is requested.

Prior approval shall be obtained by the Contractor if City is to be billed for more than ten hours of any professional's time in any one day (except during days requiring court appearances). Prior approval shall be obtained from the City Manager by Contractor for any research project that will take in excess of ten hours. Intra office conferences are billable by only one of the participants.

Contractor shall investigate whether it would be more cost efficient for City personnel (employees, temporary employees, or contractors) to perform certain tasks such as collecting and reviewing information in files, interviewing witnesses, managing documents, preparing summaries, etc. Contractor shall give consideration to whether some of the work can be

Sec. 2-143. Judgments.

Sec. 2-144. Advice.

Sec. 2-145. Special assessments.

Sec. 2-146. Compensation.

Secs. 2-147—2-165. Reserved.

Sec. 2-141. Appointment.

There is hereby created the office of City Attorney, an executive office of the City. The Attorney shall be appointed by the Governing Body and shall hold office for the duration of his appointment or until such time as he may be removed by the Commission.

(Code 1962, § 1-7-1)

Sec. 2-142. Suits and actions.

The Attorney shall prosecute or defend any and all suits or actions at law or equity to which the City may be a party, or in which it may be interested, or which may be brought against, or by, any officer of the City on behalf of the City, or in the capacity of such person as an officer of the City.

(Code 1962, § 1-7-2)

Sec. 2-143. Judgments.

It shall be the duty of the City Attorney to see to the full enforcement of all judgments or decrees rendered or entered in favor of the City, and all similar interlocutory orders.

(Code 1962, § 1-7-3)

Sec. 2-144. Advice.

The Attorney shall be the legal advisor of the City and shall render advice on all legal questions affecting the City, whenever requested to do so by any City official. Upon request by the Manager or by the Commission, he shall reduce any such opinion to writing.

(Code 1962, § 1-7-4)

Sec. 2-145. Special assessments.

It shall be the duty of the Attorney to see to the completion of all special assessment proceedings and condemnation proceedings.

(Code 1962, § 1-7-5)

Sec. 2-146. Compensation.

The Attorney shall receive such compensation as shall be set from time to time by the



I.8

CITY OF TRUTH OR CONSEQUENCES
COMMISSION ACTION FORM

ITEM: DISCUSSION/ACTION.

PROFESSIONAL SERVICES AGREEMENT FOR ARCHITECT FOR THE ANIMAL SHELTER.

The City has received a proposal from NCA Architects of Albuquerque to provide professional architectural electrical and mechanical design and construction documents services for the proposed Animal Shelter building. Full services including GRT is \$41,850. The proposed construction budget for the shelter is \$375,000.

Name of Drafter: Bill Sletton	Department: Community Development	Meeting date: 3.22.16
E-mail: billsletton@torcnm.org	Phone: 575-894-6673 Ext. 353	



AIA® Document B104™ – 2007

Standard Form of Agreement Between Owner and Architect for a Project of Limited Scope

AGREEMENT made as of the 23th day of February in the year 2016
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

The City of Truth or Consequences, NM
505 Sims St.
Truth or Consequences, NM 87901
Telephone Number: 575-8946673

and the Architect:
(Name, legal status, address and other information)

NCA Architects
1306 Rio Grande Blvd. NW
Albuquerque, New Mexico 87104
Telephone Number: 505-255-6400
Fax Number: 505-268-6954

for the following Project:
(Name, location and detailed description)

T or C Animal Shelter
Truth or Consequences, New Mexico

This project includes the renovation of a pre-engineered metal building into an animal shelter.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Int.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth below:

(State below details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, and other information relevant to the Project.)

This project includes the renovation and addition to an approximate 1,200 sf metal building into an animal shelter. Site work will be limited to extending utilities to the building.

The proposed consultants on this project are Miller Engineering (Civil), ArSed Engineering (Mechanical) and AC Engineering (Electrical). We do not anticipate the need for a structural engineer on this project.

The total budget for this project is approximately \$375,000.00 including NMGR

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide the professional services set forth in this Agreement consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services.

Int.

§ 3.1.1 The Architect shall be entitled to rely on (1) the accuracy and completeness of the information furnished by the Owner and (2) the Owner's approvals. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.2 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the Project requirements.

§ 3.2.3 The Architect shall consider the relative value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner a preliminary estimate of the Cost of the Work.

§ 3.2.5 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.6 The Architect shall submit the Design Documents to the Owner, and request the Owner's approval.

§ 3.3 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.4.4.

§ 3.3.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.3.3 The Architect shall update the estimate for the Cost of the Work.

§ 3.3.4 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.3.5 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in awarding and preparing contracts for construction.

§ 3.4 CONSTRUCTION PHASE SERVICES

§ 3.4.1 GENERAL

§ 3.4.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A107™–2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. If the Owner and Contractor modify AIA Document A107–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.4.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.4.1.3 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.4.2 EVALUATIONS OF THE WORK

§ 3.4.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.1, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.4.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

§ 3.4.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.4.2.4 When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.4.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.4.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.4.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents.

§ 3.4.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to

Init.

payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.4.4 SUBMITTALS

§ 3.4.4.1 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures.

§ 3.4.4.2 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.4.4.3 The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

§ 3.4.5 CHANGES IN THE WORK

The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.2.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.4.6 PROJECT COMPLETION

The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services are not included in Basic Services but may be required for the Project. Such Additional Services may include programming, budget analysis, financial feasibility studies, site analysis and selection, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, coordination of construction or project managers, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.1, value analysis, quantity surveys, interior architectural design, planning of tenant or rental spaces, inventories of materials or equipment, preparation of record drawings, commissioning, environmentally responsible design beyond Basic Services, LEED® Certification, fast-track design services, and any other services not otherwise included in this Agreement.

(Insert a description of each Additional Service the Architect shall provide, if not further described in an exhibit attached to this document.)

Travel and Perdiem: \$1000.00 plus NMGR (billed as a percentage of completion)
Printing: Cost of printing plus NMGR

§ 4.2 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

Init.

§ 4.2.1 The Architect has included in Basic Services 6 (six) site visits over the duration of the Project during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service.

§ 4.2.2 The Architect shall review and evaluate Contractor's proposals, and if necessary, prepare Drawings, Specifications and other documentation and data, and provide any other services made necessary by Change Orders and Construction Change Directives prepared by the Architect as an Additional Service.

§ 4.2.3 If the services covered by this Agreement have not been completed within 24 (twentyfour) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, a written legal description of the site, and services of geotechnical engineers or other consultants when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.5 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

§ 5.9 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the program and scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the bidding has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's current budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering

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and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A107™-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.6.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 Mediation, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.3 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

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(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

§ 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses

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incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services as described under Article 3, the Owner shall compensate the Architect as follows:

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(Insert amount of, or basis for, compensation.)

\$33,750.00 plus NMGR (This includes Architectural, Mechanical and Electrical design services)

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Civil Engineer (Site Utility Plan) \$3,500 + NMGR
Estimating \$1,500 + NMGR

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus 15 percent (fifteen %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Design Phase	Thirty-five	percent (35	%)
Construction Documents Phase	Forty-five	percent (45	%)
Construction Phase	Twenty	percent (20	%)
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1

(Paragraphs deleted)

Fees paid for securing approval of authorities having jurisdiction over the Project;

.2 Printing, reproductions, plots, standard form documents;

Init.

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User Notes:

- .3 Postage, handling and delivery;
- .4 Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .6 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7 All taxes levied on professional services and on reimbursable expenses;
- .8 Site office expenses; and
- .9 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Fifteen percent (15 %) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

one % per month

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to off set sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

N/A

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement incorporates the following documents listed below:

(List other documents, if any, including additional scopes of service and AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, forming part of the Agreement.)

N/A

init.

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

Robert Calvani, Principal

(Printed name and title)

Init.



I.9

**CITY OF TRUTH OR CONSEQUENCES
COMMISSION ACTION FORM**

ITEM:

Open Meetings Act Resolution 28 15/16 to include possible meeting time change and agenda deadline.

BACKGROUND:

The Open Meetings Act is found in NMSA 1978, Chapter 10, Article 15, Section 10-15-1 to 10-15-4 and are known as a "sunshine law." The Open Meetings Act or "Sunshine Law" generally require that the Public business be conducted in full public view, and that the deliberations of public bodies be open to the public.

This Resolution is generally adopted as the first Resolution of each Fiscal Year at the first meeting in July. But we are coming before the Commission to request a couple of changes in the Resolution.

The first possible change would be whether the Commission would like to change the meeting time from the time on the resolution. It currently states they will be held at 6:00 p.m. We have had a couple of requests to change the meeting time to 9:00 a.m.

The second change would be under Section 3.A Regular Meetings. The proposed wording would change the distribution date of the agenda to 5 days prior to a Regular Meeting which would be on Thursday. The current regulation is the minimum of 72 hours prior to the meeting which means it should be distributed by Saturday by 6:00 p.m. Although we have been trying to distribute the agendas by Friday morning, this would make it a requirement to have the agenda posted on Thursday prior to a meeting.

If this change is approved, the Commission Rules of Procedure will also need to be changed which will be presented as the next agenda item.

STAFF RECOMMENDATION:

Discuss and approve meeting time and approve the Notice/Agenda to be posted and distributed 5 days prior to the Regular Meetings.

Submitted by: Renee Cantin, City Clerk

Meeting date: 3-22-2016

CITY OF TRUTH OR CONSEQUENCES

RESOLUTION NO. 28 15/16

A RESOLUTION DESIGNATING THE MANNER IN WHICH ALL MEETINGS OF THE CITY COMMISSION, ITS BOARDS, COMMISSION AND COMMITTEES WILL BE HELD AND THE METHOD OF PUBLIC NOTIFICATION.

WHEREAS, pursuant to the requirements of the Open Meetings Act ("Act"), Section 10-15-1 et seq. NMSA 1978, all meetings of the City Commission, its boards, commissions or committees held for the purpose of formulating public policy or for the purpose of taking any action within the authority of or the delegated authority of any board, commission, committee, or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the state constitution or the Act; and

WHEREAS, all meetings subject to the provision of the Act at which the formation of public policy, such as discussion or adoption of any proposed resolution, rule, regulation, or formal action occurs and at which a majority of quorum of the body is in attendance shall be public meetings and shall be held only after reasonable Notice/Agenda to the public; and

WHEREAS, the Act requires the City Commission to determine annually in a public meeting what Notice/Agenda for a public meeting is reasonable when applied to the City Commission, its boards, commissions and committees.

NOW THEREFORE, BE IT RESOLVED by the governing body of the City of Truth or Consequences:

1. Regular meetings of the City Commission shall be held on the second and fourth Tuesdays of each month at 6:00 p.m., or upon such times as the Commission agrees to change the meeting date or time. If said meeting falls on a holiday, the meeting shall then be held on Wednesday, immediately following. All meetings will be held at the City Commission Chambers, 405 W. 3rd Street unless due Notice/Agenda is given to the public.
2. Regular meeting of any board, commission or committee shall be established by formal action of the respective body as to date, time and location. Consideration shall be given to holding such meetings at a date, time and location, which promotes the active participation of the community.
3. Notice/Agenda requirements for all meetings shall be in accordance with the following:
 - A. **Regular Meetings** – Notice of the meetings, indicating the date, time, and location of the meetings shall be published in one or more newspapers of general circulation within the community at least once per month. The Notice/Agenda shall be given at least 72 hours 5 days prior to the meeting, and a final agenda at least 36 hours prior to the meeting. The Notice/Agenda may be amended at least 72 hours prior to the meeting, and the final Notice/Agenda shall be posted in the City Clerk's Office and posted on the City's web site.

B. **Special Meetings** – May be called only by the majority of the members of the City Commission. Notice/Agenda shall be given with no less than 72 hours' Notice/Agenda before such meeting. The Notice/Agenda shall specify the business to be conducted and shall be broadcast over the radio, or in the alternative, be posted in the following places: 1) South bulletin board at the Sierra County Courthouse, and 2.) the north bulletin board at the Sierra County Administrative Building, 3) Compass Bank, 4) Bank of the Southwest at T or C, 5) U.S. Post Office located on Main Street, and 6) City Clerk's Office and on the City's web site.

C. **Emergency Meetings** – May be called only under circumstances that, if not addressed immediately by the City Commission, will likely result in injury or damage to persons or property or substantial financial loss to the City. Emergency meetings may be called by the Mayor or a majority of the Commission by giving 24 hours' Notice/Agenda prior to meeting, and is possible and reasonable under the circumstances.

Emergency meeting Notice/Agenda shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. Except in the case of an emergency, the agenda shall be available to the public at least 72 hours prior to the meeting.

4. Pursuant to the Open Meetings Act 10-15-1 (C) NMSA if otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone, or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

PASSED, APPROVED AND ADOPTED this _____ day of March, 2016.

Steven Green, Mayor

ATTEST:

Renee L. Cantin, City Clerk



I.10

CITY OF TRUTH OR CONSEQUENCES
COMMISSION ACTION FORM

ITEM:

City Commission Rules of Procedure revision.

BACKGROUND:

The Open Meetings Act Resolution was discussed and the Rules of Procedure has some proposed changes we would like to review. Some of the proposed changes include:

Rule 2. If a change in meeting time is approved. This section would need to be amended accordingly.

Rule 9. The corrections include changing the time to post and distribute the agenda 5 days prior to the meeting instead of 72 hours prior. It also includes a new deadline to submit agenda items 7 days prior to the Regular meeting.

Rule 16. We are recommending some minor changes to the order of business including the addition of Response to Public Comments; and addition after Public Hearings to discuss all Ordinances, Resolutions, & Zoning; we removed Board & Committee Reports because it has not been necessary since I've been here and if they have a separate report it can always be added under New Business; and the removal of Public Comment and Response to public comments at the end of the meeting. The Public Comment is allowed at the Beginning of the meeting and there is no need for both.

STAFF RECOMMENDATION:

Review and approve changes to the Rules of Procedure.

Submitted by: Renee Cantin, City Clerk

Meeting date: 3-22-2016

SECTION 1 – GENERAL PROVISIONS

RULE 1. COMMISSION MEETING – LOCATION

All regular, special, and emergency meetings of the City Commission shall be held at the City Commission Chambers, 405 West 3rd Street as specified in the Open Meetings Resolution. [Resolution No. 2-94/95] [Amended – Resolution No. 24-05/06]

RULE 2. COMMISSION MEETING – TIME

The regular meetings of the City Commission shall be held on the second and fourth Tuesdays of each month at 6:00 p.m. [Resolution No. 2-94/95] [Amended – Resolution No. 24-05/06] [Amended – Resolution No. 28 15/16]

RULE 3. COMMISSION MEETINGS – OPEN TO THE PUBLIC

All meetings of the City Commission and of committees thereof held for the purpose of formulating public policy or for the purpose of taking any action within the authority of or the delegated authority are declared to be public meetings open to the public at all times, except as otherwise provided for in the state constitution or the Open Meetings Act (§10-15-1 et seq. NMSA 1978).

RULE 4. ELECTION OF OFFICERS

Procedures for electing officers are as follows:

- (a) At the first organizational meeting of the new City Commission, the members thereof select one of its members to act as Mayor for two years. The Mayor has all the powers and duties of a Commissioner as well as the right to vote on all matters that come before the City Commission. (§3-14-10 NMSA 1978).
- (b) In conjunction with the above election, a Mayor Pro Tempore shall also be elected in a like manner.
- (c) The above elections shall be by affirmative motion.

RULE 5. PRESIDING OFFICER

The Mayor shall preside at all meetings of the City Commission, and be recognized as the official head of the City for all ceremonial purposes, civil process and for military purposes (§3-14-10 NMSA 1978). The Mayor has no regular administrative or executive duties. In case of the Mayor's absence or temporary disability, the Mayor Pro Tempore shall act as Mayor during the continuance of the absence. In case of the absence or temporary disability of the Mayor and the Mayor Pro Tempore, a Mayor Pro Tempore selected by members of the City Commission shall act as Mayor during the continuance

of the absences or disabilities. The Mayor or Mayor Pro Tempore are referred to as "Presiding Officer" from time to time in these Rules of Procedures.

RULE 6. QUORUM

A quorum is necessary for the governing body to conduct business at any meeting. A quorum is a simple majority of all the commissioners including the Mayor. A majority vote of all the members of the City Commission is required to adopt an ordinance or resolution and certain other actions as required by law or ordinance. (§3-17-3 NMSA 1978). The City Commission may adjourn from time to time, provided that written notice of said adjournment be posted on the exterior Chamber door and at the City Clerk's office. City Commission meetings adjourned under the previous provision shall be considered a regular meeting for all purposes.

RULE 7. ATTENDANCE, EXCUSED ABSENCES

Members of the City Commission may be excused from attendance from a meeting by complying with this section. The member shall contact the City Manager or City Clerk prior to the meeting and state the reason for his/her inability to attend the meeting who shall convey the message to the Presiding Officer. The Presiding Officer shall inform the City Commission of the member's absence and excuse the member's absence. The Clerk will make an appropriate notation in the minutes.

RULE 8. SPECIAL AND EMERGENCY COMMISSION MEETINGS

Procedures for setting a special meeting are as follows:

- (a) A special meeting may be called only by a majority of the members of the City Commission.
- (b) Notice of the special meeting shall be given with no less than seventy-two hours' notice before such meeting. The notice shall specify the business to be conducted and shall be broadcast over the radio, or in the alternative, be posted as set forth in the Open Meetings Resolution.

Procedures for setting an emergency meeting are as follows:

- (a) An emergency meeting may be called only under circumstances that, if not addressed immediately by the City Commission, will likely result in injury or damage to persons or property or substantial financial loss to the City.
- (b) Emergency meetings may be called by the Mayor or a majority of the City Commission by giving whatever notice is possible and reasonable under the circumstances.

RULE 9. COMMISSION MEETING AGENDA

The City Clerk, under the direction of the City Manager, shall arrange a list of such matters according to the order of business and prepare an agenda for the City Commission. A copy of the agenda and supporting materials shall be prepared for the City Commission members, the City Manager, the City Clerk, and the press at least ~~seventy-two (72) hours~~ **5 days** before a regular City Commission meeting. The City Commission shall have the option of deleting any item from the agenda or deferring an item on the agenda to a subsequent meeting. The Presiding Officer or any Commission member may introduce a new item to the agenda **by Noon** ~~seventy-two (72) hours~~ **7 days** before a meeting.

Persons wishing to be placed on the agenda must submit complete written documentation to a member of the City Commission or City Manager who shall make the determination whether to forward to the City Clerk to be placed on the agenda. All requests are due by noon ~~on the Thursday~~ **7 days** prior to the meeting. Requests, which do not include detailed information on the proposed subject matter, will not be placed on the agenda.

The City Commission deals with a variety of routine items that do not require individual action or discussion. These items include accounts payable, meeting minutes, etc. These types of items shall be listed on a "Consent Calendar" where one (1) action approves all items. However, if an individual Commissioner wishes to discuss a particular item, then that item shall be removed from the said "Consent Calendar" during the "Approval of the Agenda" portion of the meeting. (See Rule 16. E-3)

RULE 10. WORKSHOPS

Special Workshops, or regular City Commission meetings that may be canceled by the Presiding Officer in accordance with law, may be designed as Workshops where no official action is contemplated. Workshops may be conducted informally so long as such informality is not in conflict with these rules. The City Clerk, under the direction of the City Manager, shall arrange a City Commission Workshop agenda for the Workshop. The Workshop agenda shall, for each item, contain the Workshop Item. After the proposed Workshop agenda has been approved by the City Manager, a copy of it along with any supporting materials shall be prepared for City Commission members, the City Manager, the City Clerk and the press at least ~~seventy-two (72) hours~~ before the City Commission Workshop. During the Workshop, the Presiding Officer may; 1) introduce the subject and give background information; 2) identify the eventual goal of the Workshop, and; 3) act as facilitator to keep the meeting discussion focused to the subject.

RULE 11. CITY MANAGER

The City Manager, as the chief administrative, and executive officer and head of the executive branch of City government or his/her designee, shall attend all meetings unless excused by the Presiding Officer or City Commission. The City Manager may take part in the City Commissioner's discussion on all matters on the agenda, and otherwise

concerning the welfare of the City. Except when clearly undesirable or unnecessary, the commission shall request the opinion of the manager on any proposed measure (§3-14-14 NMSA 1978). The City Manager has a seat at commission meetings, but does not have a vote. In the event that the City Manager is unable to attend a City Commission meeting, the City Manager shall appoint another qualified staff member to attend the meeting on behalf of city management.

RULE 12. CITY CLERK

The City Clerk shall be ex-officio Clerk of the City Commission, and shall keep minutes and shall perform such other and further duties in the meeting as may be required by the City Commission, Presiding Officer, or City Manager. In the absence of the City Clerk, the City Manager or the Clerk shall appoint another qualified staff member to act as Clerk.

RULE 13. FORMS OF ADDRESS

The Mayor shall be addressed as "Mayor", "Your Honor", or "Mr. /Madam Mayor". The Mayor Pro-Tempore, when acting for the Mayor, shall be addressed as "Mayor". Members of the City Commission shall be addressed as "Commissioner".

RULE 14. APPEARANCE OF FAIRNESS DOCTRINE

Appearance of Fairness Doctrine and its Application.

When public hearings give the public not only the right to attend, but the right to be heard as well, the hearings must not only be fair, but must appear to be so.

It is a situation where appearances are quite as important as substance. The test of whether the appearance of fairness doctrine has been violated is as follows; 1) Would a disinterested person, having been appraised of the totality of a board member's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist?

If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided.

RULE 15. RULES OF ORDER

The City Commission members shall be governed by the "City Commission Rules of Procedure".

RULE 16. ORDER OF BUSINESS

The City Commission may use the following as a guideline for the business of all regular meetings of the City Commission. However the Presiding Officer may, during a City Commission meeting, re-arrange items in the agenda to conduct the business before the city Commission more expeditiously.

(a) Call to Order by the Presiding Officer

(b) Introduction

(1) Roll Call (See Rule 7 for procedure to excuse an absence).

(2) Silent Meditation

(3) Pledge of Allegiance

(4) Approval of Agenda

(c) Comments from the Public on Agenda Items (for Items not on the agenda – see Rule 17 for procedural details.)

(d) Response to Public Comments

(d)(e) Consent Calendar

(1) The City Manager, in consultation with the Presiding Officer, shall place matters on the Consent Calendar which have been; a) previously discussed by the City Commission, or; b) based on the information delivered to members of the City Commission by administration that can be reviewed by a Commission member without further explanation or; c) are so routine or technical in nature that passage is likely, or; d) as directed by the City Commission.

(2) The Presiding Officer shall read the Consent Calendar, including the titles of any resolutions contained therein.

(3) Prior to the vote on the motion to adopt the Consent Calendar, the Presiding Officer shall inquire if any City Commission member wishes an item to be withdrawn from the Consent Calendar. If any matter is withdrawn, the Presiding Officer shall place the item at an appropriate place on the agenda for the current or a future meeting.

(e)(f) Public Hearings (see Rule 17 for procedural details).

(g) Ordinances, Resolutions, and Zoning

(g)(h) Unfinished Business

- i. ——— Ordinances
- ii. ——— Resolutions
- iii. ——— Motions
- iv. ——— Other

(h)(i) New Business

- v. ——— Ordinances
- vi. ——— Resolutions
- vii. ——— Motions
- viii. ——— Other

~~(g) Board and Committee Reports~~

~~(h)(j) Reports~~

- i. City Manager
- ii. City Attorney
- iii. City Commissioners

~~(k) Public Comment~~

~~(l) Response to Public Comments~~

(k) Executive Session (Taken action as needed)

(l) Return to regular Session (if applicable)

(m) Adjournment

RULE 17. ACTIONS FOR “COMMENTS FROM THE PUBLIC” OR A PUBLIC HEARING

The procedures for “Comments from the Public” are as follows:

Any member of the public may request time to address the City Commission. The Presiding Officer in his/her discretion may then allow the comments, subject to a time limitation of three (3) minutes. Following such comments, the City Commission may place the matter on a future agenda, or refer the matter to the City Manager for investigation and report. After the close of all public comments, the City Commissioners may immediately respond to the public comments or respond to the public comments during the “Response to Public comment” section at the next regularly scheduled City Commission Meeting.

Prior to the start of "Comments from the Public", all persons wishing to be heard shall give their names and addresses.

The following rules of conduct shall apply to all public comment:

No comments shall be made from any other location than the podium and anyone making "out of order" comments as determined by the Presiding Officer may be subject to removal from the meeting. In that regard, a police officer may be present to enforce these rules of conduct.

There will be no demonstrations during, or at the conclusion, of anyone's presentation. No extensions of time shall be given to any speaker, and no sharing or passing of time to other speakers shall be permitted.

If it appears that a group of speakers desire to speak on a particular subject, that group shall delegate a spokesperson to speak for the entire group. This will prevent repetitious comments and prevent the wasting of time.

Any person making a public comment may also supplement their comment by submitting documents. Such documents, however, must be deposited into a receptacle that is designated by the chair. The speaker may not approach the Commissioners without the express consent of a majority vote of the Commission. At the close of the open portion of the City Commission meeting, the City Clerk shall collect the deposited documents from the receptacle.

Any person who violates the rules of conduct may be subject to having their speaking privileges removed at future City Commission Meetings or may be subject to removal from that particular meeting as determined by a majority vote of the City Commission.

The Procedures for a "Public Hearing" are as Follows:

(a) Prior to the start of a public hearing all persons wishing to be heard shall give their name and address and whether they wish to speak as a proponent, opponent, or otherwise. The time limit for each speaker shall be limited to five (5) minutes. In public hearings that are not of a quasi-judicial nature, the time limit for each speaker shall be limited to five (5) minutes. The Presiding Officer, subject to concurrence of the majority of the City Commission, may extend time limits and otherwise control presentation. The Presiding Officer may change the order of speakers so that testimony is heard in the most logical groups (i.e. proponents, opponents, adjacent owners, vested interests, etc.). However, the following shall be determined a reasonable guide.

(b) The Presiding Officer introduces the agenda item, opens the public hearing, and asks for comments for or against the item at hand.

(c) At the outset of each public hearing or meeting to consider a zoning amendment or zoning reclassification the Presiding Officer will announce the legal standards for

zoning amendments and ask the parties to limit their presentations to information within the scope of the standards.

- (d) The Presiding Officer calls upon the City Manager to describe the matter under consideration.
- (e) The Presiding Officer calls for proponents.
- (f) The proponents now speak. (Note: If the City itself is the proponent, a member or members of the Administration shall be designated to give proponent and rebuttal testimony).
- (g) Opponents speak.
- (h) The Presiding Officer calls for proponents to speak in rebuttal. A proponent speaking in rebuttal shall not introduce new materials. If the proponent does, or is allowed to do so, the opponents shall also be allowed to rebut the new elements.
- (i) The Presiding Officer inquires as to whether any City Commission members have any questions to ask the proponents, opponents, or administration. If any City Commission member has questions, the appropriate individual will be recalled to the podium.
- (j) The Presiding Officer closes the public hearing.

RULE 18. VOTING

The votes during all meetings of the City Commission shall be transacted as follows:

- (a) Unless otherwise provided for by statute, a Roll call vote shall be taken for ordinances and to adjourn to Executive Session by the Clerk.
- (b) In case of a tie in votes on any proposal, any Commissioner may request the item be put on the next agenda.
- (c) Every member who was in the City Commission chambers when the question was put, shall give their vote unless the City Commission, for special reasons, shall excuse the member by motion or unless the City Commission member is excused in accordance with Rule 7. A City Commission member who "abstains" will be recorded as neither an "aye" or "nay" vote.
- (d) A majority vote of all the members of the City Commission is required to adopt an ordinance or resolution and certain other actions as required by law or ordinance. (§3-17-3 NMSA 1978).

RULE 19. COMMITTEES

The Committee structure of the City Commission and the procedures governing, all committees shall be as follows:

(a) Special ad Hoc Citizen Advisory Committees:

Special as hoc citizen advisory committees may be created by the City Commission for a particular purpose. Committee members shall be appointed by the City Commission. The Presiding Officer shall appoint the chair of the Committee. Citizen study committee shall sunset at the end of their mission, but no later than the end of each calendar year unless specifically continued by the City Commission thereafter for a specified time period. One City Commission member, and one alternate City Commission member, may be appointed as a member and liaison of a Citizen advisory committee.

RULE 20. ENACTED ORDINANCES, RESOLUTIONS AND MOTIONS

An enacted ordinance is a legislative act prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality. City Commission action shall be taken by ordinance when required by law, or to prescribe permanent rules of conduct which continue in force until repealed, or where such conduct is enforced by penalty.

An enacted resolution is an internal legislative act, which is a formal statement of policy concerning matters of special or temporary character. City Commission action shall be taken by resolution when required by law and in those instances where an expression of policy more formal than a motion is desired.

An enacted motion is a form of action taken by the City Commission to direct that a specific action be taken on behalf of the municipality. A motion, once approved and entered into the record, is the equivalent of a resolution in those instances where a resolution is not required by law.

RULE 21. RESOLUTIONS

A resolution may be put to its final passage on the same day on which it is introduced. The title of each resolution shall in all cases be read prior to its passage, provided, should a majority of the City Commission members present request that the entire resolution or certain of its sections be read, such requests shall be granted. Printed copies shall be made available to interested persons during normal and regular business hours of the City Clerk upon request and payment of a reasonable charge for reproduction.

RULE 22. ORDINANCES

The procedure for ordinances are as follows:

- (a) Notice by publication of the title and subject matter of any ordinance proposed for adoption by the City Commission must take place at least two weeks prior to consideration of final action upon the ordinance in open session. This does not apply to ordinances dealing with an emergency declared by the Mayor to be an immediate danger to the public health, safety and welfare of the City, or to ordinances, the subject matter of which is amending a city-zoning map. The title of each ordinance shall in all cases be read prior to its passage; provided, should a majority of the City Commission members present request that the entire ordinance or certain of its sections be read, such requests shall be granted. Printed copies shall be made available to interested persons during normal and regular business hours of the City Clerk upon request and payment of a reasonable charge beginning with the date of publication and continuing to the date of consideration by the City Commission.
- (b) If a Motion to pass an ordinance fails, any Commissioner may request the ordinance be put on a future agenda after six (6) months.
- (c) Any ordinance amending or repealing any portion of the City Code of Ordinances shall also amend or repeal the respective portions of any underlying ordinance(s).

RULE 23. PERMISSION REQUIRED TO ADDRESS THE COMMISSION

Persons other than City Commission members and management may be permitted to address the City Commission upon recognition and introduction by the Presiding Officer or the chair of the appropriate City Commission committee.

RULE 24. COMMISSION RELATIONS WITH BOARDS, COMMISSIONS AND ADVISORY COMMITTEES

All boards, commissions and City Commission citizen advisory bodies shall provide the City Commission with copies of any minutes taken of meetings. Communications from such boards, commissions and bodies to the City Commission shall be recorded in the minutes as follows.

Any such communication shall be officially acknowledged by the City Commission and receipt noted in the minutes.

RULE 25. PHOTOGRAPHS, MOTION PICTURES, VIDEO TAPE, TELEPHONE DEVICES – PERMISSION REQUIRED FOR ARTIFICIAL ILLUMINATION

No photographs, motion pictures, or video tapes that require the use of flash bulbs, electronic flashes, floodlights, or similar artificial illumination, or telephone devices shall be used at City Commission Meetings without the consent of the Presiding Officer or a majority of the City Commission. All cellular telephones shall be either turned off or placed on a non-audio setting. Reasonable effort shall be made to accommodate the use of audio and video recording devices.



I.11

CITY OF TRUTH OR CONSEQUENCES
COMMISSION ACTION FORM

ITEM:

Staff Presentation, Public Forum and Commission Retreat

BACKGROUND:

City Manager Fuentes and Mayor Green will present the item.

STAFF RECOMMENDATION:

None

Submitted by: Renee Cantin, City Clerk

Meeting date: 3-22-2016