

*Sandra Whitehead
Mayor*

*Kathy Clark
Mayor Pro-Tem*

*Rolf Hechler
Commissioner*



*Paul Baca
Commissioner*

*George Szigeti
Commissioner*

*Morris Madrid
City Manager*

*505 Sims St.
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REGULAR MEETING

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 WEDNESDAY, MARCH 27, 2019; TO START AT 9:00 A.M.

A. CALL TO ORDER

B. INTRODUCTION

1. ROLL CALL

Hon. Sandra Whitehead, Mayor
Hon. Kathy Clark, Mayor Pro-Tem
Hon. Rolf Hechler, Commissioner
Hon. Paul Baca, Commissioner
Hon. George Szigeti, 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. Proclamation for Hot Springs High School Tigers Day, our High School Varsity Boys Basketball 2019 State Champions. Sandy Whitehead, Mayor

F. CONSENT CALENDAR

1. City Commission Regular Minutes, February 27, 2019
2. City Commission Regular Minutes, March 13, 2019
3. Public Utilities Advisory Board Minutes, February 19, 2019
4. Golf Course Advisory Board Minutes, February 6, 2019

G. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Resolution No. 30 2018/2019 approving the acceptance of the Fiscal Year 2018 Audit. Heather Lucero, Pattillo, Brown, Brown, & Hill, LLP; and Morris Madrid, City Manager
2. Discussion/Action: Resolution No. 31 2018/2019 designating Signatory Authority for submission of applications and related documentation for USDA. Traci Burnette, Grant/Projects Coordinator & Building Official
3. Discussion/Action: Resolution No. 32 2018/2019 setting the Elected Officials compensation. Morris Madrid, City Manager & Jay Rubin, City Attorney
4. Discussion/Action: Resolution No. 33 2018/2019 adopting the Sierra County New Mexico Hazard Mitigation Plan. Paul Tooley, Police Chief/Emergency Services Coordinator

H. UNFINISHED BUSINESS

1. Discussion/Action: Approval of Tower Structure Lease Agreement with Gravity Pad Towers, LLC. Traci Burnette, Grant/Projects Coordinator & Zoning Official

I. REPORTS

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

J. EXECUTIVE SESSION

1. Sale, Acquisition or Disposal of Real Property (various city properties) *Pursuant to 10-15-1(H.8)*
2. Pending Litigation (Ashbaugh vs. City) *Pursuant to 10-15-1(H.7)*

K. ACTION ON ITEMS DISCUSSED DURING EXECUTIVE SESSION, if any.

L. ADJOURNMENT

NEXT CITY COMMISSION MEETING APRIL 10, 2019



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: March 27, 2019

Agenda Item #: **E.1**

SUBJECT: Proclamation for Hot Springs High School Tigers Day

DEPARTMENT: Clerk's Office

DATE SUBMITTED: March 20, 2019

SUBMITTED BY: Renee Cantin, Clerk-Treasurer

WHO WILL PRESENT THE ITEM: Mayor Sandy Whitehead

Summary/Background:

The HSHS Varsity Boys Basketball Team won the 2019 State Championship. Mayor Whitehead will be presenting a proclamation to the players, coaches, and managers.

Recommendation:

Presentation only.

Attachments:

- None

Fiscal Impact (Finance): No

\$0.00

Legal Review (City Attorney): No

None.

Approved For Submittal By: Department Director

Reviewed by: City Clerk Finance Legal Other: Click here to enter text.

Final Approval: City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. N/A Ordinance No. N/A

Continued To: Click here to enter a date. Referred To: Click here to enter text.

Approved Denied Other: Click here to enter text.

File Name: CC Agendas 2019/03-27-2019/AF – Tiger Champs 2019



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: March 27, 2019

Agenda Item #: **F.1**

SUBJECT: City Commission Regular Minutes, February 27, 2019

DEPARTMENT: Clerk's Office

DATE SUBMITTED: March 20, 2019

SUBMITTED BY: Angela Torres, Deputy Clerk

WHO WILL PRESENT THE ITEM: Renee Cantin, Clerk-Treasurer

Summary/Background:

None.

Recommendation:

Approve the minutes.

Attachments:

- 02-27-2019 Minutes

Fiscal Impact (Finance): No

\$0.00

Legal Review (City Attorney): No

None.

Approved For Submittal By: Department Director

Reviewed by: City Clerk Finance Legal Other: Click here to enter text.

Final Approval: City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. N/A Ordinance No. N/A

Continued To: Click here to enter a date. Referred To: Click here to enter text.

Approved Denied Other: Click here to enter text.

File Name: CC Agendas 2019/03-27-2019/AF CC Minutes 02-27-2019

CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
WEDNESDAY, FEBRUARY 27, 2019

A. CALL TO ORDER

The meeting was called to order by Mayor Sandra Whitehead at 9:00 a.m., who presided and Renee Cantin, City Clerk-Treasurer, acted as Secretary of the meeting.

B. INTRODUCTION

1. ROLL CALL

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

Hon. Sandra Whitehead, Acting Mayor
Hon. Kathy Clark, Mayor Pro-Tem
Hon. Rolf Hechler, Commissioner
Hon. Paul Baca, Commissioner
Hon. George Szigeti, Commissioner

Also Present: Morris Madrid, City Manager
Renee Cantin, City Clerk-Treasurer

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

2. SILENT MEDITATION:

Mayor Whitehead called for fifteen seconds of silent meditation.

3. PLEDGE OF ALLEGIANCE:

Mayor Whitehead called for Commissioner Hechler to lead the Pledge of Allegiance.

4. APPROVAL OF AGENDA:

Mayor Pro-Tem Clark moved to approve the agenda. Commissioner Szigeti seconded the motion. Commissioner Hechler announced Mr. Lazich may not be here due to traffic and he asked if they can be added when they arrive. Mayor Pro-Tem Clark amended her motion to include that request. Motion carried unanimously.

C. COMMENTS FROM THE PUBLIC:

Steven Rice, Executive Director of Housing Authority addressed the Commission related to:

- 1) The New Mexico Mortgage Finance Authority is in the process of doing a 5 year Community Housing Needs Survey. He just wanted to bring that to everyone's

CITY COMMISSION FEBRUARY 27, 2019 REGULAR MEETING MINUTES

attention. He also provided the Commission with flyers that had a link to complete the survey.

Ed Williams addressed the Commission related to:

- 1) He gave kudos to the city employees and any future employees we may get. They are doing a great job under the circumstances they have to work with, so he hopes that they continue to have your support and you continue to help them push forward in their endeavors.

Hans Townsend, Desert View Inn and Chamber of Commerce addressed the Commission related to:

- 1) It seems that we are always in the process of losing qualified people. He thinks that we don't recognized a lot of the qualifications we have around us. We are very lucky that qualified people retire here and offer services. All too often those services are not looked on professionally. One of the things that sticks in his throat is the Golf Course. He lives 2 blocks from the Golf Course and we had a great Golf Course but for political and personal reasons, we ignore the professionalism, and that is an offence to him. Howey Tucker has now gone to Roswell where he will be appreciated. We also lost our Airport Manager to Roswell. It's not a good thing that we don't appreciate people we have. He understands Melissa is gone, and she was very good too. We must be making mistakes somewhere. We would do a lot better if there were less personal feelings and more professionalism.
- 2) A lot of things have to be done very early in the year to make sure that you have a green Golf Course, and if things are not done this month, we will not have a Golf Course this year. He doesn't think the people running the Golf Course know what they are doing. He drives by it nearly every day, and it's just sad that we are going in that direction. We throw away our advantages all too often so he hopes we can do a better job and look at things in a different way.

Janice Gray addressed the Commission related to:

- 1) She thanked Mr. Madrid and Commissioner Hechler for the work they are doing at the Golf Course. She has applied to serve on the Golf Course Advisory Board and she hopes they will approve that. She thinks Bart who was hired at the Golf Course is trying his best to do a great job and she is hoping that the board will get behind him and help.

Michael Hogue, 516 Austin St. addressed the Commission related to:

- 1) He is here today on the behalf of Matthew 25 Food Pantry. He thanked the city for the grant of \$7,200 which helps fund the rent of the building for a full year, and allows the food pantry to allocate a larger portion of their private donations to purchase food for distribution. They manage closely to their budget, and for six months of the grant year they have a profit of \$24.51 against a budgeted projected loss of \$450. Matthew 25 is an all-volunteer organization and so far this year there are 511 households representing 912 individuals enrolled in the Matthew 25 food distribution program which includes 202 children. 70% of the households and individuals receive food stamps. Through January of this year,

CITY COMMISSION FEBRUARY 27, 2019 REGULAR MEETING MINUTES

Matthew 25 distributed food baskets to 5415 individuals, and this includes 827 individuals living in public housing. The food baskets were delivered by volunteers and this includes 292 food baskets to individuals under emergency circumstances. Since 2014 Matthew 25 has distributed food baskets to over 32,000 families representing over 64,000 individuals.

D. RESPONSE TO PUBLIC COMMENTS:

Mayor Pro-Tem Clark responded to a couple of things she thinks are extraordinary:

- She commended the Housing Authority.
- Matthew 25: She has seen those lines every Thursday morning for years and the line continues to be long every week.
- Mr. Williams if you hadn't said it, she would have repeated those exact words.

City Attorney Rubin clarified the funding from the city for Matthew 25 was pursuant to a contract and it was not donated.

Commissioner Szigeti added, it is sad that we lose people to other cities but it also says something very well about the quality of employees that we have.

E. PRESENTATIONS

1. Presentation of the business impact in New Mexico by Jason Lazich, Virgin Galactic:

Tabled until later on the agenda.

2. Presentation related to a Footbridge across the River. Merry Jo Fahl, Jornada Resource, Conservation, & Development Council:

Ms. Fahl, Executive Director mentioned she was approached by John Masterson from the Brewery and he asked if she could help them secure a footbridge over the river so they would have access to trails on the other side. They had talked collectively with the Village of Williamsburg, the City of T or C, and the City of Elephant Butte on how a bridge would enhance the entire community. The loop starts at Geronimo Springs Museum down to Rotary Park, over the footbridge and makes a loop all the way back to Geronimo Springs Museum. All of the trail is on city land and if we could develop Rotary Park and the Footbridge, we could do more with the Healing Waters Trail.

Mayor Pro-Tem Clark said several years ago she had looked at doing a bike path.

Ms. Fahl responded, if we go across at Rotary Park we would have to develop the road. They have already been in contact with Mr. Shepard who would like a road going across which would be separate. They would like the city to consider submitting an application.

Mayor Whitehead suggested Ms. Fahl get with City Manager Madrid about the application. City Manager Madrid asked her to contact Executive Assistant Tammy Gardner.

F. CONSENT CALENDAR

1. City Commission Regular Meeting Minutes, January 9, 2019
2. City Commission Regular Meeting Minutes, January 23, 2019
3. Public Utility Advisory Board Regular Minutes, October 15, 2018
4. Public Utility Advisory Board Regular Minutes, November 19, 2018
5. Lodgers Tax Advisory Board Regular Minutes, October 25, 2018
6. Golf Course Advisory Board Regular Minutes, December 12, 2018
7. Golf Course Advisory Board Regular Minutes, January 2, 2019
8. Library Advisory Board Regular Minutes, January 28, 2019
9. Accounts Payable, January 2019
10. 2nd Quarter Reports for Lodger's Tax Grant recipients
11. Re-Appointment of Daniel Mena to the Housing Authority Board
12. Appointment of John (Jack) Noel to the Library Advisory Board
13. Appointment of Claudia Raines and Janice Gray to the Golf Course Advisory Board
14. Appointment of Gina Kelley to the Lodgers Tax Advisory Board as the Tourist Services Member
15. Appointment of Don Armijo and Gil Avelar to the Public Utility Advisory Board and Impact Fee Board
16. Approve the annual Law Enforcement Protection Fund Application

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

G. ORDINANCES/RESOLUTIONS/ZONING:

1. Discussion/Action: Resolution No. 27 2018/2019 Confirming the City of Truth or Consequences to participate in the Department of Transportation Municipal Arterial Program Local Government Road Fund Program. Traci Burnette, Grant/Projects Coordinator & Zoning Official:

Grant/Projects Coordinator Burnette presented the item and announced that they would like to put in an application for a project that would include Smith Avenue, Silver St., and 9th Avenue Loop. Our ICIP includes 9th Street which is right in front of the hospital and then the project would go up Silver Street, connect into Smith Street, and back out onto Date Street. It meets all of the general criteria and the Resolution is a part of the application process.

Commissioner Hechler moved to approve Resolution No. 27 2018/2019 Confirming the City of Truth or Consequences to participate in the Department of Transportation Municipal Arterial Program Local Government Road Fund Program. Commissioner Szigeti seconded the motion. Roll call vote was taken by City Clerk Cantin. Motion carried unanimously.

2. Discussion/Action: Ordinance No. 701 for publication approving the Land Use Assumptions and Capital Improvements Plan final report. Traci Burnette, Grant/Projects Coordinator & Building Official

CITY COMMISSION FEBRUARY 27, 2019 REGULAR MEETING MINUTES

Grant/Projects Coordinator Burnette presented the item and announced that the Impact Fee Board has recommended the Impact Fee Study to go to the Commission. It has also been reviewed and approved by City Attorney Jay Rubin and City Attorney John Appel.

City Manager Madrid added that this item is for publication only, which is part of the process of amending the ordinance. This is not the final action for this item. It is only for publication so we can solicit any concerns regarding changing the ordinance.

Commissioner Szigeti moved to approve Ordinance No. 701 for publication approving the Land Use Assumptions and Capital Improvements Plan final report. Commissioner Hechler seconded the motion. Motion carried unanimously.

H. UNFINISHED BUSINESS:

1. Discussion/Action: Potential ordinance related to an increase for Elected Officials Salaries. Kathy Clark, Mayor Pro-Tem:

Mayor Pro-Tem Clark referred to City Attorney Rubin who had some additional information about this.

City Attorney Rubin presented Article IV, Section 27 related to increased compensation for officers.

Mayor Pro-Tem Clark mentioned the concern that was brought up as to whether the Commission could put it in place for the 2022 Election where all Commissioners would receive the increase at the same time.

City Manager Madrid suggested either an amount, or something they can put in the ordinance itself.

Mayor Whitehead suggested that staff process the ordinance, put in a fee, and then bring it back to the Commission for discussion and review.

I. NEW BUSINESS

1. Discussion/Action: Selection of Streets for the 2019 Local Government Road Fund (LGRF) participation. Benny Fuentes, Street Department Supervisor:

Streets Supervisor Fuentes presented the item which included the following streets for recommendation:

1. Golf Club Dr.
2. Veater, Iron to Arroyo (completed)
3. Veater, Hyde to Arroyo (already approved on this year's funding)
4. City Street, dead end to Myrtle
5. City Street, Myrtle to Henson
6. City Street, Henson to Radium

CITY COMMISSION FEBRUARY 27, 2019 REGULAR MEETING MINUTES

7. Marshal, Platinum to Tin
8. Marshal, Tin to Coal
9. River Road, Tin to bottom of Hill
10. West Riverside, Wyona to Daniels
11. Kruger, 8th to 7th
12. East 8th, Coleman to Tingley (already approved on this year's funding)
13. Locust, 6th to 7th
14. Locust 6th to 5th
15. Locust 5th to 4th
16. Glenn from Rodeo Arena Rd. to dead end (Used Millings – needs chip seal)

City Manager Madrid responded his recommendation would be to start with Kruger (*option 11*), and or depending on the funding, he would go with options:

7. Marshal, Platinum to Tin
8. Marshal, Tin to Coal
9. River Road, Tin to bottom of Hill

City Manager Madrid added, based on the level of funding and the benefit from either chip seal or asphalt, he thinks it's always better to do a permanent improvement if we can. He believes the level of the LGRF funding will go up this year. That's one of the funds that is going to benefit from the additional Capital Outlay. NMDOT will administratively be doing a lot more funding for street improvements.

Commissioner Hechler moved to approve City Manager Madrid's recommendation of Option 11, then Options 7, 8, & 9. Commissioner Szigeti seconded the motion. Motion carried unanimously.

2. Discussion/Action: Approval to proceed with final design and construction documents for Great Blocks on Mainstreet/Foch Street Project. Morris Madrid, City Manager:

City Manager Madrid reported on the public hearing process that has been done, and the recommended option they are presenting for approval includes the New Mexico MainStreet (NMMS) Great Blocks on Mainstreet Program that is designed to assist Arts and Cultural Districts with economic revitalization projects. The primary objective of the Truth or Consequences Great Blocks Project is to continue revitalizing this section of the historic district by creating a complete street design that includes best practices in pedestrian safety improvements, streetscape enhancements, creative place making opportunities, and way finding signage.

Commissioner Hechler moved to approve to proceed with Option B for the final design and construction documents for Great Blocks on Mainstreet/Foch Street Project. Commissioner Szigeti seconded the motion. Motion carried unanimously.

3. Discussion/Action: Approval to submit an application to the New Mexico Historical Preservation Department. Blair Wyman, Airport Manager:

Airport Manager Wyman presented the background on these buildings as well as their request for approval to apply for a grant to designate these buildings as Historical Buildings at the state and national level. The application is due on March 8th and they will get an answer by March 25th. The due date for the National Registry Nomination is in September. The ultimate goal would be public access to a historic site. At the moment, the relay station for the runway lights is located in the FSS Building and we have a process of building an electrical vault separate and taking those out of that building.

Commissioner Hechler mentioned that the upkeep historical buildings is really expensive and any improvements or renovations have to first go through the Historic Preservation Office and they will dictate on how you do those things, and that gets expensive real quick. He recommends that we look at this really hard before we make a decision because if we do go with it, then we have to understand that our hands are going to be tied in the way that we are going to upgrade and take care of these buildings.

Mayor Pro Tem Clark agreed with Commissioner Hechler and recommended that they look at what improvements need to be done prior to getting that designation, and without destroying our abilities to get the designation. She is curious as to why we are not also applying through the state. The national designation used to be for private businesses, and owners who got a 50% match on remodeling the buildings. She asked if it also works for Municipalities and publicly owned buildings.

Airport Manager Wyman responded that it is going through the state first, and then the national register.

Former Community Development Director Bill Slettom reported that they are requesting grant funding to continue this process and do the assessment of the building to see if that area still qualifies, as well as help pay for the submission of the form for the national nomination. We don't have the money yet and we may get tuned down for this grant application. It's only \$50,000 for the entire state and there are going to be a lot of communities applying for this money. He suggests that we continue to apply for the money and if we get the grant money, to proceed with the nomination. We don't have to accept it if you feel that the project is not worthy of going forward.

The Commission requested to postpone this item.

4. Discussion/Action: Approval of Tower Structure Lease Agreement with Gravity Pad Towers, LLC. Traci Burnette, Grant/Projects Coordinator and Zoning Official:

City Manager Madrid began with a short story about the difference in Elected Officials from up North to here.

Grant/Projects Coordinator and Zoning Official Burnette reported the Special Use permit which was approved at the City Commission Meeting on January 9, 2019 for placement of cell antennas on the T or C Water Tank located at the end of West 2nd Street.

CITY COMMISSION FEBRUARY 27, 2019 REGULAR MEETING MINUTES

City Attorney Rubin gave an overview of this item including the public hearings that were held for the Special Use Permits. He referred them to Section 4.

Mayor Pro-Tem Clark added, in relation to this issue we have a long history with Verizon. She had concerns regarding the contract stating that we wouldn't be able to change anything for 15 years. She's almost certain there will be new ways of delivering information in 15 years. The contract also says that Gravity Pad has the right to rent to three other carriers. She doesn't remember the Commission saying that's a good idea.

Commissioner Szigeti had some concerns about the 5G area network being dangerous to public safety. Communication companies are in it for the money and he feels the Commission might be pushed into something they don't want, and that worries him on this contract.

Chief Aragon said that too many systems on the tank may interfere with the radio traffic. He stated that Fire Chief Tooley is the Guru on this, but we do need to pay attention to the needs for public safety.

Mayor Whitehead responded, she would be more comfortable in postponing this so they can look at it again, because they did not agree to a lot of the stuff that is in the agreement.

City Attorney Rubin responded to some of their questions including whether we agreed to have only these two carriers or should additional carriers be allowed.

Mayor Pro-Tem Clark moved to postpone to have staff bring back at a later date. Commissioner Szigeti seconded the motion. Motion carried unanimously.

Mayor Whitehead recessed the meeting at 11:11 a.m. and reconvened at 11:20 a.m.

Return to Item G.1 Presentation.

1. Presentation of the business impact in New Mexico by Jason Lazich, Virgin Galactic:

Commissioner Hechler introduced Mr. Chris Lopez, Lori McCravey, Lead Administrator, and Jason Lazich, Director of Infrastructure & Ground Services.

Virgin Galactic representatives showed a video and reported that they have big plans for Truth or Consequences and mentioned that they have been using local restaurants and hotels quite often for their visitors that come through. They were previously working with former Mayor Green, and they are looking forward to working with the rest of the Commission as well.

Mayor Whitehead added, we want to be involved, on top of the game, and we want to let people know we do exist for Spaceport America.

Mr. Chris Lopez said that they are seeing about an 80%-20% split, 80% think they will live closer to Las Cruces, and 20% has indicated they will come and stay in Sierra County. He also mentioned Exo Aerospace is coming this Saturday and guess where they are staying.

5. Discussion/Action: Permission to use the water towers located above the football stadium for display of Student Art at Hot Springs High School for the We Are Tigers Art Contest. Jim Shiley, Requestor:

Mr. Shiley presented his letter to the City Commission asking permission use the water towers located above the football stadium at Hot Springs High School. The contest winner would have their art reproduced on a large scale, tentatively 4'x8' and affixed to the tower. They are proposing initially to use the shorter of the two towers at that location. Beneath the art they would place the names of all the students in the class of 2019 and each year they would attach a winning piece of art and the names of the graduating class of that year.

City Manager Madrid let the Commission know this is an easy decision to make and he recommends approval.

Mayor Pro-Tem Clark moved to approve Permission to use the water towers located above the football stadium for display of Student Art at Hot Springs High School for the We Are Tigers Art Contest. Commissioner Baca seconded the motion. Motion carried unanimously.

6. Discussion/Action: Approval of the Civilian Volunteer Program & related policy for the Police Department. Randall Aragon, Police Chief:

Chief Aragon presented the item and reported that the Police Department will greatly benefit by having civilian volunteers to assist with administrative and other such "non-enforcement" tasks. Additionally, this initiative will also authorize the appointment of a volunteer to serve as a Departmental Chaplain who will, as deemed necessary, provide spiritual/faith-based guidance to departmental members, provide an outreach to our citizens when we initiate community-based policing efforts, and also serve as an advisor to our top-level executives relating to community affairs. This initiative will not result in any special budgetary outlay. Serving as Chief in numerous other police agencies I have successfully implemented civilian volunteer programs (with Chaplain Positions) of which have proven highly rewarding for each municipality, my departments, and the citizens. This initiative will unquestionably prove to be a "force multiplier" that should allow our full-time staff the opportunity to devote more time to their core mission-essential tasks. The cost-benefit aspect (non-paid volunteers at "zero cost") will certainly assist our Police Department.

City Manager Madrid has seen some programs similar to this. One is a Chaplain program which can be helpful when they have cases like severe child abuse. And the other was the Explorer's program where they were used to assist and help the Officer's where they may be needed.

Commissioner Szigeti moved to approve the Civilian Volunteer Program & related policy for the Police Department. Commissioner Baca seconded the motion. Motion carried unanimously.

7. Discussion/Action: Appointments to additional External Boards & Committees to replace Steve Green. Renee Cantin, City Clerk-Treasurer:

a. Southwest Area Workforce Development Board:

Mayor Pro-Tem Clark moved to approve Mayor Whitehead to the vacancy. Commissioner Hechler seconded the motion. Motion carried unanimously.

b. Region IV, Chief Elected Officials Board:

Mayor Pro-Tem Clark moved to approve Mayor Whitehead to serve on the board and Mayor Pro-Tem Clark as the Alternate. Commissioner Szigeti seconded the motion. Motion carried unanimously.

c. South Central Regional Transit District (SCRTD):

Commissioner Szigeti moved to approve Grants Projects Coordinator Burnette to serve as the board member and Streets Supervisor Benny Fuentes as the Alternate. Commissioner Hechler seconded the motion. Motion carried unanimously.

8. Discussion/Action: Approval of the amended Guidelines as recommended by the Lodgers Tax Advisory Board. Renee Cantin, City Clerk:

City Clerk Cantin reviewed the amended changes and reported last year the City Commission directed the Lodger's Tax Board to review the guidelines so they would be stricter when deadlines such as submitting initial applications & submitting quarterly reports are not complied with.

Marilyn Pope from Geronimo Springs Museum reported that they pay the bill when they have something done, she puts together a packet which has her invoice from the company, a copy of the ad (*or whatever the service was*), and a copy of the cancelled check, and that packet gets submitted to the city for reimbursement.

Mayor Pro-Tem Clark stated that they flipped it to make it easier on the people who are volunteering and putting on events that we benefit from. She is concerned with the fact that these businesses have to borrow money in order to pay for things.

Mayor Whitehead asked that City Clerk Cantin review the minutes to see when this was previously discussed and see what changes were made and how that was handled. She also asked City Manager Madrid to look into possibly changing and updating it so

these businesses are not out on a limb, and we can make it easier for them to receive their funds.

Mayor Pro-Tem Clark moved to approve sending back to staff to review state statutes and bring back to the next meeting. Commissioner Baca seconded the motion. Motion carried unanimously.

J. REPORTS:

City Manager Madrid reported the following:

- Golf Course: New staff at the Golf Course, the need for new carts, the Sulfur Unit, and facility improvements.
- The resignation of our Finance Director.
- Possible hire for Water/Wastewater Director.
- Working on Classification for Departments with Certification levels to bring to the Commission for approval.
- He asked Chief Aragon to give an overview of the Police Department Assessment that was done.

Chief Aragon reported the following:

- Police Department employee training.
- He Gave up one position from 15 Officer's to 14 Officer's and would like one back. That would be pending funding availability.
- Risk Management should be a full time position. Jamie Sweeney currently covers the front desk and also handles these duties. It should really be a full time job on its own. He will still need an Administrative Assistant.
- Community Policing Program.
- He would like to have a group of Officer's who would be Neighborhood Response Team who would be able to go on a 3 or 4 hour mission.
- Animal Shelter.
- Police Department face lift. They did the sign and paint and are making it look great again so the building would last longer.

Commissioner Hechler wanted him to recognize sometimes people don't get a pat on the back and they haven't heard much about the Shelter lately so thank you for what you are doing.

Commissioner Szigeti would like to hear from him a little more often. We hear from him far too infrequently.

City Attorney report:

None.

City Commission reports:

Mayor Pro-Tem Clark said she would like to bring the subject of living in downtown buildings back for a discussion.

CITY COMMISSION FEBRUARY 27, 2019 REGULAR MEETING MINUTES

Commissioner Baca asked City Manager Madrid to check to into getting some sort of lighting and maybe a sidewalk between Marie and Kopra.

Commissioner Szigeti agreed.

Mayor Whitehead reported she and Traci Burnette were at the State Capitol last week for the Legislative Session on Colonias issues. Then on Tuesday she and Chief Aragon were invited to speak at the Knights of Columbus on what's happening in the city.

K. EXECUTIVE SESSION:

- 1. Purchase, Acquisition or Disposal of Real Property (450 W. Riverside) Pursuant to 10-15-1.H(8):

Commissioner Hechler moved to approve going into executive session at 1:28 p.m. to discuss Purchase, Acquisition or Disposal of Real Property (450 W. Riverside) Pursuant to 10-15-1.H(8). Commissioner Szigeti seconded the motion. Roll call vote was taken by the Clerk-Treasurer. Motion carried unanimously.

Mayor Whitehead reconvened the meeting in open session at 1:45 p.m.

Mayor Pro-Tem Clark certified that only matters pertaining to Purchase, Acquisition or Disposal of Real Property (450 W. Riverside) Pursuant to 10-15-1.H(8) was discussed in Executive Session and no action was taken.

L. ACTION ON ITEMS DISCUSSED DURING EXECUTIVE SESSION, if any. ADJOURNMENT

None.

M. ADJOURNMENT

Mayor Pro-Tem Whitehead moved to adjourn at 1:46 p.m. Commissioner Hechler seconded the motion. Motion carried unanimously.

Passed and Approved this ____ day of _____, 2019.

Sandra Whitehead, Mayor

ATTEST:

Reneé L. Cantin, CMC, City Clerk



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: March 27, 2019

Agenda Item #: **F.2**

SUBJECT: City Commission Regular Minutes, March 13, 2019

DEPARTMENT: Clerk's Office

DATE SUBMITTED: March 20, 2019

SUBMITTED BY: Angela Torres, Deputy Clerk

WHO WILL PRESENT THE ITEM: Renee Cantin, Clerk-Treasurer

Summary/Background:

None.

Recommendation:

Approve the minutes.

Attachments:

- 02-27-2019 Minutes

Fiscal Impact (Finance): No

\$0.00

Legal Review (City Attorney): No

None.

Approved For Submittal By: Department Director

Reviewed by: City Clerk Finance Legal Other: [Click here to enter text.](#)

Final Approval: City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. N/A Ordinance No. N/A

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

Approved Denied Other: [Click here to enter text.](#)

File Name: CC Agendas 2019/03-27-2019/AF CC Minutes 03-13-2019

CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
WEDNESDAY, MARCH 13, 2019

A. CALL TO ORDER

The meeting was called to order by Mayor Sandra Whitehead at 9:00 a.m., who presided and Renee Cantin, City Clerk-Treasurer, acted as Secretary of the meeting.

B. INTRODUCTION

1. ROLL CALL

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

Hon. Sandra Whitehead, Acting Mayor
Hon. Kathy Clark, Mayor Pro-Tem
Hon. Rolf Hechler, Commissioner
Hon. Paul Baca, Commissioner
Hon. George Szigeti, Commissioner

Also Present: Morris Madrid, City Manager
Renee Cantin, City Clerk-Treasurer

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

2. SILENT MEDITATION:

Mayor Whitehead called for fifteen seconds of silent meditation keeping people in Dexter, New Mexico in our thoughts.

3. PLEDGE OF ALLEGIANCE:

Mayor Whitehead called for Commissioner Baca to lead the Pledge of Allegiance.

4. APPROVAL OF AGENDA:

**Commissioner Hechler moved to approve the agenda as amended.
Mayor Pro-Tem Clark seconded the motion. Motion carried unanimously.**

C. COMMENTS FROM THE PUBLIC:

Ron Pacourek addressed the Commission related to:

- 1) There is a street across the river called Turtleback Road and on the weekends Off Road Vehicles drive up and down that road. It is a city street and he doesn't know if it is posted but a city street is 25 mph. He wonders who is supposed to be patrolling that street when these Off Road Vehicles are doing 40-60 mph.
- 2) At the last Commission meeting, you voted 7 people in to put on different boards. When he volunteered for his second term on the Public Utility Advisory Board he

was interviewed by the Commission. None of those other people who were appointed at the last meeting had to interview, so why was he singled out.

Ron Fenn addressed the Commission related to:

- 1) His Annual Report on the loss of the Solar Farm which showed a loss in the amount of \$16,055 instead of the \$31,000 that was promised to us as a savings. Added together, that is about a \$47,000 loss. So far in this 4 year of the 25 year contract, we have lost \$172,000 compared to the rate given to Deming and Silver City by the same company. This was a horrible contract that was made by Mr. Fuentes but signed by Mayor Whitehead. We are slated to lose over \$2 million dollars over the 25 years, compared to these two other cities.
- 2) Spaceport America last month had all of 30 tourists come to tour the Spaceport. He reported the city got zero dollars out of that. He attended the last meeting and he was the only member of the public.

D. RESPONSE TO PUBLIC COMMENTS:

None.

E. PRESENTATIONS:

1. **Presentation to former Mayor Steve Green and official placing of Mayor's Plaque on the wall:**

Steve Green was not present so Mayor Whitehead moved on to the next presentation.

2. **Presentation of Certificates of Appreciation from Mayor Whitehead:**

Mayor Whitehead presented a certificate of appreciation to Deputy Clerk Angela Torres for her dedication when serving as the Acting City Clerk and also to City Clerk Renee Cantin for serving as the Interim City Manager.

3. **Presentation of Certificates of Appreciation for Lt. Baker, Maribel Dalrymple & Jamie Sweeney for Shop with a Cop. Randall Aragon, Police Chief and Sandy Whitehead, Mayor:**

Chief Aragon and Mayor Whitehead presented Certificates of Appreciation to Lt. Baker, Maribel Dalrymple & Jamie Sweeney for their leadership/coordinative effort relating to the December 2018 "Shop with a Cop" initiative that raised \$8,000 to purchase Christmas gifts for approximately 70 community youth, who were paired off with 10-Officers, from three (3) law enforcement agencies.

4. **Presentation of TCPD 2018 Annual Report. Randall Aragon, Police Chief:**

Chief Aragon presented the TCPD 2018 Annual Report regarding the communicating statistics and accomplishments achieved by the Truth or Consequences Police Department during 2018.

F. CONSENT CALENDAR

1. **Accounts Payable, February 2019**

2. **Subrecipient 2nd Quarter reports**
3. **Fire Protection Fund Application**
4. **Approve an additional resume for Richard Gutierrez to be added as a potential Resident Project Representative (RPR) provided by Smith Engineering during the construction of WWTP improvements for Phase 2B, pending USDA RD concurrence.**

Commissioner Hechler moved to approve the consent calendar as noted. Commissioner Szigeti seconded the motion. Motion carried unanimously.

G. ORDINANCES/RESOLUTIONS/ZONING:

1. **Discussion/Action: Resolution No. 28 2018/2019 approving the restructure of Golf Course Fees recommended by the Golf Course Advisory Board. Bart River, Golf Course Manager:**

Les Dufour the Chairman of the Golf Advisory Board presented the restructure of Golf Course Fees recommended by the Golf Course Advisory Board.

Commissioner Hechler asked if they are happy with the progress the course has been making and how the city can help with that regard.

Mr. Dufour said it's the playability of the course that will increase those rounds. It's increased already, but the major issue is the same as in 2013 which is the quality of their water supply. Clogged sprinklers are a huge issue. In working with the city they are hoping to get the sulfur treatment system working. The water distribution is the highest priority. They are still trying to put on a Fiesta Tournament which will be the first one in four years.

Mr. Madrid gave credit to the community for their efforts.

Mayor Pro-Tem Clark moved to approve Resolution No. 28 2018/2019 including the three changes. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. **Discussion/Action: Resolution No. 29 2018/2019 declaring surplus property for the March 23, 2019 Auction. Renee Cantin, City Clerk-Treasurer:**

City Clerk Cantin asked for the approval of Resolution No. 29 18/19 declaring the listed items as surplus property and allowing the City to Auction items in Public Auction. Pursuant to Section 3-54-2 of the New Mexico State Statutes, 1978, Annotated, the City of Truth or Consequences has property that is no longer needed and the same as in the past, the City will use Willard Hall Auctions to sell various surplus properties belonging to the City. They have an auction scheduled for March 23, 2019.

Mayor Pro-Tem Clark moved to approve Resolution No. 29 2018/2019 declaring surplus property for the March 23, 2019 Auction with the donation to the museum of the piece of equipment. Commissioner Szigeti seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

H. UNFINISHED BUSINESS:

1. Discussion/Action: Drinking Water State Revolving Fund award Commitment, DW-4794. Traci Burnette, Grant/Projects Coordinator & Zoning Official:

Grant/Projects Coordinator Burnette reported the City of Truth or Consequences has applied for a DWSRLF loan to fund for replacement of high-risk water lines identified in Asset Management Plan and Design Analysis Report. The City qualifies for 50% principal forgiveness, due to the project's # 6 ranking on the FY 2019 Annual DWSRLF Fundable Priority List.

Commissioner Hechler moved to approve the Drinking Water State Revolving Fund Award Commitment, DW-4794. Commissioner Szigeti seconded the motion. Motion carried unanimously.

2. Discussion/Action: Approval of the amended Guidelines as recommended by the Lodgers Tax Advisory Board. Renee Cantin, City Clerk-Treasurer:

City Clerk Cantin reported last year the City Commission directed the Lodger's Tax Board to review the guidelines so they would be stricter when deadlines such as submitting initial application & submitting quarterly reports are not complied with. The LTAB met in January and February, 2019 and have prepared the attached revision of the guidelines for approval. This item was brought before the Commission on February 27th and was postponed to look into whether Vendors were being paid directly for some of the Non-Profits. After discussing this with Executive Assistant Tammy Gardner, we confirmed only those with Co-op Grants show the vendor as being paid directly. Additionally, the Lodger's Tax Advisory Board has scheduled a meeting for March 28th to meet with the current recipients on the changes that are approved and the deadlines for this year's applications to be submitted. They usually are sent in February, so we will need to get the process moving in order for the Advisory Board to make recommendations, and the Commission to approve allocations before July 1st.

Commissioner Hechler moved to approve the amended Guidelines as recommended by the Lodgers Tax Advisory Board. Commissioner Szigeti seconded the motion. Motion carried unanimously.

3. Discussion/Possible Action: Live/Work in Downtown Buildings. Kathy Clark, Mayor Pro-Tem:

Mayor Pro-Tem Clark really believes we should have public input.

Mrs. DeMarino wanted to say living downtown is actually a good thing. She does think it could in a good thing to have in the future.

Mayor Pro-Tem Clark believes they were thinking there should be some sort of

Mayor Whitehead asked if we could put together a Downtown Vendor's Town Hall meeting soon to make sure we get this put in place.

Mrs. DeMarino did also let them know MainStreet is also keeping a main list of those businesses that are currently open.

Mayor Whitehead asked if MainStreet would be willing to help put that meeting together. Ms. DeMarino agree they would assist the city with that.

No action was taken at this time.

I. NEW BUSINESS:

1. Discussion/Action: 2019 Wal-Mart Community Grant Program for the purchase of four (4) dash mounted Radar Units. Randall Aragon, Police Chief:

Chief Aragon said this is a grant they heard about last year. It's a \$5,000 no match grant through Wal-Mart.

City Manager Madrid recommended approval.

Mayor Pro-Tem Clark moved to approve 2019 Walmart Community Grant Program for the purchase of four (4) dash mounted Radar Units. Commissioner Hechler seconded the motion. Motion carried unanimously.

2. Discussion/Direction: Proper protocol regarding Management, Personnel, & Commission. Kathy Clark, Mayor Pro-Tem:

Mayor Pro-Tem Clark presented the need to announce the proper protocol in reporting a complaint or issue would be to go to the Supervisor first, then to the City Manager, and if need be from there to the Personnel Board which right now is the City Commission.

Commissioner Szigeti knows we have had a lot of turnover in the senior positions. He's hoping once we get people in these key positions that confusion will go away.

Commissioner Hechler added he served on the Personnel Board for five years and they heard issues only twice and while serving on the Commission, they have only heard one issue that was brought before them.

J. REPORTS:

City Manager:

City Manager Madrid reported the following:

- He updated the Commission on the Finance Department and let them know that he is serving as the Interim Finance Director and he's been doing the approvals as needed.
- He's concentrating on the budget for next year and the evaluations that have been submitted by the Department Heads.
- They will be having the Colonias' Infrastructure Board here on March 20th visiting our city. He will be offering to sponsor their afternoon break.
- He introduced Jesse Cole who has the highest level of certification.

City Attorney Report:

- City Attorney Rubin wanted to briefly respond to Mr. Pacourek's comments which seemed to be he was singled out. He let him know that he did discuss with him that his recollection is that he was interviewed because there were more than one applicant.

City Commission reports:**Mayor Pro-Tem Clark reported the following:**

- She thanked City Attorney Rubin for addressing Mr. Pacourek's concern because that was her memory as well.
- She told Jesse Cole that it is a pleasure to meet him and she is sure that Ruby was pleased to meet him also. She informed him that he has a good team with Ruby, Jesus and the rest of the crew.

Commissioner Szigeti reported the following:

- A week ago there was a man lying on the sidewalk at the Post Office and by the time we got there were three others including an Animal Control Officer, who called it in. There were also three others who came, and they were able to do CPR and get a heartbeat. Unfortunately, the man passed away at the Hospital. He feels great to know that that there were so many people who stopped to help the gentleman, and when our officers got there, they knew what to do right away without hesitation.

Mayor Whitehead reported the following:

- She thanked City Clerk and staff who put together the potluck for staff last week.

K. EXECUTIVE SESSION:

1. Acquisition or Disposal of Real Property (property near Sierra Vista Hospital) Pursuant to 10-15-1(H.8)
2. Pending Litigation (Ashbaugh vs. City) Pursuant to 10-15-1(H.7)
3. Threatened Litigation (Special Election) Pursuant to 10-15-1(H.7)
4. Limited Personnel Matters (W/WW & Electric Depts.) Pursuant to 10-15-1(H.2):

Commissioner Szigeti moved to approve going into executive session at 10:51 a.m. to discuss 1. Acquisition or Disposal of Real Property (property near Sierra Vista Hospital) Pursuant to 10-15-1(H.8); 2. Pending Litigation (Ashbaugh vs. City) Pursuant to 10-15-1(H.7); 3. Threatened Litigation (Special Election) Pursuant to 10-15-1(H.7); and 4. Limited Personnel Matters (W/WW & Electric Depts.) Pursuant to 10-15-1(H.2). Commissioner Hechler seconded the motion. Roll call vote was taken by the Clerk-Treasurer. Motion carried unanimously.

Mayor Whitehead reconvened the meeting in open session at 12:22 p.m.

Mayor Pro-tem Clark certified that only matters pertaining to Acquisition or Disposal of Real Property (property near Sierra Vista Hospital) Pursuant to 10-15-1(H.8); 2. Pending Litigation (Ashbaugh vs. City) Pursuant to 10-15-1(H.7); 3. Threatened Litigation (Special Election) Pursuant to 10-15-1(H.7); and 4. Limited

Personnel Matters (W/WW & Electric Depts.) Pursuant to 10-15-1(H.2) was discussed in Executive Session and no action was taken.

L. ACTION ON ITEMS DISCUSSED DURING EXECUTIVE SESSION, if any. ADJOURNMENT:

- 1. Acquisition or Disposal of Real Property (property near Sierra Vista Hospital) Pursuant to 10-15-1(H.8)**
- 2. Pending Litigation (Ashbaugh vs. City) Pursuant to 10-15-1(H.7)**
- 3. Threatened Litigation (Special Election) Pursuant to 10-15-1(H.7)**
- 4. Limited Personnel Matters (W/WW & Electric Depts.) Pursuant to 10-15-1(H.2):**

Note: Commissioner Baca recused himself during Executive Session for the Pending Litigation (Ashbaugh vs. City).

Commissioner Szigeti moved to approve to give City Manager Madrid the authorization for negotiations for the property near Sierra Vista Hospital. Commissioner Hechler seconded the motion. Motion carried unanimously.

M. ADJOURNMENT:

Mayor Pro-Tem Clark moved to adjourn at 1:38 p.m. Commissioner Szigeti seconded the motion. Motion carried unanimously.

Passed and Approved this ____ day of _____, 2019.

Sandra Whitehead, Mayor

ATTEST:

Reneé L. Cantin, CMC, City Clerk



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: March 27, 2019

Agenda Item #: F.3

SUBJECT: Public Utility Advisory Board Minutes, February 19, 2019.

DEPARTMENT: Clerk's Office

DATE SUBMITTED: March 20, 2019

SUBMITTED BY: Renee Cantin

Summary/Background:

None.

Recommendation:

Approve the minutes.

Attachments:

- February 19, 2019 PUAB Minutes

Fiscal Impact: *N/A*

Legal Review: *N/A*.

Approved For Submittal By: Department Director: RC City Clerk: RC City Manager: MM

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. _____ Continued To: _____ Referred To: _____
Ordinance No. _____ Approved _____ Denied _____ Other: _____
File Name: _____

**CITY OF TRUTH OR CONSEQUENCES
PUBLIC UTILITY ADVISORY BOARD
MINUTES
TUESDAY, FEBRUARY 19, 2019**

REGULAR MEETING

Regular meeting of the Public Utility Advisory Board of the City of Truth or Consequences, New Mexico held in the City Commission Chambers, 405 W. 3rd Street, at 4:30 p.m. on Tuesday, February 19, 2019.

INTRODUCTION:

ROLL CALL:

Jeff Dornbusch, Vice-Chairman
Ron Pacourek, Member
Ed Williams, Member

ALSO PRESENT:

Bo Easley, Electric Division Director
Andy Alvarez, Sanitation Director
Priscilla Fuentes, Electric Division Administrative Assistant
Kristen Weddle, Sanitation Administrative Assistant
Ruby Otero-Vallejos, Water/Wastewater Administrative Assistant
Jesus Navarro, Water/Wastewater Interim Supervisor
Traci Burnette, Grant Project/P & Z Coordinator
Angela A. Torres, Deputy City Clerk

APPROVAL OF AGENDA:

Vice Chairman Dornbusch called for approval of the agenda.

Member Williams moved to approve the agenda. Member Pacourek seconded the motion. Motion carried unanimously.

APPROVAL OF MINUTES:

Member Pacourek moved to approve the minutes of Monday, October 15, 2018 and Monday, November 19, 2018. Member Williams seconded the motion. Motion carried unanimously.

COMMENTS FROM THE PUBLIC:

None.

RESPONSE TO COMMENTS FROM THE PUBLIC:

None.

Discussion/Update: Electric Department - Bo Easley, Electric Division Director:

Bo Easley, Electric Division Director reported the following:

- They are finished with the Substation Battery Replacement project.
- Advanced Tower removed the old towers from Mud Mountain. They are now waiting BLM to do the inspection.
- A transformer has been set at First Savings Bank. The primary wires have been pulled, and all of the connections have been made.
- Marto Electric Company was here a couple of weeks ago and they replaced 4 poles. Two poles were between Whitehead Auto and the Bowling Alley, and the other two poles were by the substation.
- City Attorney Rubin is looking through the RFP for the AMI Meter Project. Once the RFP is finalized through the City Attorney and City Manager, they can start the bid process.
- Estimates have been paid for the Housing Authority Solar Project. His crew installed a pole on 3rd and Coleman, and they will be installing a pole on Riverside and Cedar.
- They are still waiting to hear from NMDOT to see whether or not the roundabouts are going to be funded.
- Two of his crew members are on their second year of the Merchants testing.
- They are currently advertising for an Apprentice Lineman.

Discussion/Update: Sanitation Department - Andy Alvarez, Sanitation Director:

Andy Alvarez, Sanitation Director and Kristen Weddle, Sanitation Administrative Assistant reported the following:

- Andy Alvarez and Kristen Weddle reviewed the annual recycling reports for aluminum, cardboard, electronic scrap, mixed newspaper, office paper, plastics, scrap metals, white goods, and metal.
- They now have two additional CDL drivers in the Sanitation Department.
- The public is doing a great job at reporting illegal dumping.
- They plan on putting money aside to order new dumpsters.
- Andy and Vice-Chairman Dornbusch briefly discussed yard waste disposal fees at the Recycling Center.

Discussion/Update: Water/Wastewater Department - Jesus Navarro, Water/Wastewater Interim Supervisor:

Jesus Navarro, Water/Wastewater Interim Supervisor reported the following:

- They received a new dump truck last week, so that will take a little stress off of the backhoe having to run back and forth.
- They are still experiencing a few issues with the Vac Station. They have some parts on back order that should be in by the end of March.

Member Williams stated that the Vac Station has been an issue for a while and it should be a #1 priority because of the chance of tort claims being filed against the city, as well as the amount of overtime and equipment being used. The city is basically wasting money and we need to get a new structure, and update the technology.

Vice-Chairman Dornbusch asked what the alternatives would be.

Jesus Navarro, Water/Wastewater Interim Supervisor responded that if worst comes to worst, they would have to suck it out with the vacuum truck.

Traci Burnette, Grant Project/P & Z Coordinator went over a few options for funding a new Vac Station. Most of the funding now requires a PER, so either the Wastewater Department would be funding the improvements themselves (*and we know that the budget is a little tight and that money is not there*), or we will have to look into applying for a grant to have a PER done on the Vac Station, and then we would have to apply for a grant to get funding for the improvements. We can maybe get a proposal on what a PER would cost for having an engineer come in and do it, and then maybe the Wastewater Plant could fund that, and then we could go in for the next grant cycle. However, there is limited funding both within the departments and also through funding sources.

Discussion/Action: Recommendation to appoint Don Armijo and Gil Avelar to fill vacancies on the Public Utility Advisory Board – Angela Torres, Deputy City Clerk:

Deputy Clerk Torres stated that we now have two vacancies on the Public Utility Board due to the resignation of George Szigeti and Randy Ashbaugh. On January 18th we advertised for the vacancies and we received two applications. One application was submitted by Gil Avelar and the other was submitted by Don Armijo. Both gentleman are here tonight should you have any questions.

Don Armijo stated that he knows it's hard to get anyone to volunteer for anything. The City of T or C was always good to him, so he wanted to apply.

Gil Avelar stated that the reason he re-applied was because as far as he's concerned, this was unfinished business. He left the last time due to communication issues and he never intended of dropping out. But now the opportunity has risen again where he can get back in, and he'll give it his best once again.

Vice Chairman Dornbusch made a motion to recommend the appointment of Gil Avelar and Don Armijo to the Public Utility Advisory Board. Member Pacourek seconded the motion. Motion carried unanimously.

COMMENTS FROM THE BOARD:

Member Pacourek stated that an inaccurate statement about solid waste is on the back of city utility bill and he asked that it be added to next month's agenda for discussion/action.

Deputy Clerk Torres recommended that he bring that issue up with the Utility Office.

Member Pacourek insisted that it be on next month's agenda.

COMMENTS FROM STAFF:

There were no additional comments from staff.

ADJOURNMENT:

There being no further business to come before the Public Utility Advisory Board, Jeff Dornbusch, Vice Chairman, declared the meeting adjourned.

PASSED AND APPROVED this 18th day of March, 2019.



Jeff Dornbusch, Vice Chairman
Public Utility Advisory Board



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: March 27, 2019

Agenda Item #: **F.4**

SUBJECT: Golf Course Advisory Board Minutes, February 6, 2019

DEPARTMENT: Clerk's Office

DATE SUBMITTED: March 20, 2019

SUBMITTED BY: Les Dufour, Chairman

WHO WILL PRESENT THE ITEM: Renee Cantin, Clerk-Treasurer

Summary/Background:

GCAB Minutes as approved by the GCAB.

Recommendation:

Approve the minutes.

Attachments:

- Minutes as approved by GCAB

Fiscal Impact (Finance): No

\$0.00

Legal Review (City Attorney): No

None.

Approved For Submittal By: Department Director

Reviewed by: City Clerk Finance Legal Other: Click here to enter text.

Final Approval: City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. N/A Ordinance No. N/A

Continued To: Click here to enter a date. Referred To: Click here to enter text.

Approved Denied Other: Click here to enter text.

File Name: CC Agendas 2019/03-27-2019/AF-GCAB Minutes 02-06-2019

TRUTH OR CONSEQUENCES GOLF COURSE ADVISORY BOARD
MEETING OF FEBRUARY 28~~th~~nd, 2019
T OR C MUNICIPAL GOLF COURSE

1. Call to order by Chairperson Les Dufour at 5:07 p.m.
 2. Members present: Les Dufour, Kay Thompson, Harv Kleinstiver and Leroy Bierner.
 3. Welcome guests: Commissioner Hechler, Golf Course Manager Bart Rivers, and Claudia Reames.
 4. Comments from public: None at this time.
 5. Approval of agenda: Les motioned to accept the agenda, seconded by Kay. Vote unanimous in favor, motion passed.
 6. Reading/ approval of minutes from January 2, 2019. Les motioned to approve as written, seconded by Leroy. Vote unanimous in favor, motion passed.
 7. Committee reports:
 - A. Status of \$1 fund: Leroy submitted reports from the City that showed \$4,331 into the GIF in FY17 and \$3,455 in FY18. No report for FY15 and FY16. Also, no report of expenditures and current balance. Another comprehensive report will be requested when City completes audit.
 - B. Long Range Plan: Les Dufour made a motion that Claudia Reames take over as Committee Chairperson, seconded by Kay. Vote unanimous in favor, motion passed.
 8. Old business: Leroy motioned to suspend and include in New Business, Kay 2nd. Vote unanimous in favor, motion passed.
 9. New business:
 - A. Board member applications received from Janice Gray and Claudia Reames. (see attached). Kay made a motion to recommend to the City that Janice Gray be approved and serve as Vice Chairperson and that Claudia Reames be approved as alternate board member. Leroy 2nd; vote was unanimous in favor, motion passed. Les made a motion that Kay serve as Secretary/Treasurer and Leroy seconded. Vote unanimous in favor, motion passed.
 - B. Fee restructure: some progress was made however a motion by Leroy to suspend until Bart gives the Board his recommended rates (within two weeks). Kay 2nd, majority of vote in favor, motion passed.
 - C. Golf Course Management: Bart presented his priority list:
 1. Water filtration, pump house filter
 2. Carts
 3. Fresh water pond reestablished
 4. Water drainage control off #1 hole
 5. Aerifying. Buying sand
 6. Advertising
 7. Fees: set fees 7 days a week \$27 , 18 holes with cart
 8. Pro Shop roof
 9. Cart paths
 10. Purchase a sprayer
- Discussion by Board felt that this was a good list for Bart to present to the City Manager. Leroy motioned to table Bart's list until Bart could meet with City Manager on Friday morning. Les 2nd, vote unanimous, motion passed.
10. Motion to adjourn seconded. Vote unanimous in favor, Meeting adjourned 6:45.

Approved: Les Dufour 3/6/19
Chairperson

Name: Claudia G. Reames

Address: P.O. Box 158

Phone: 575-744-5485

I am interested in serving as a member of the Golf Course Advisory Board.

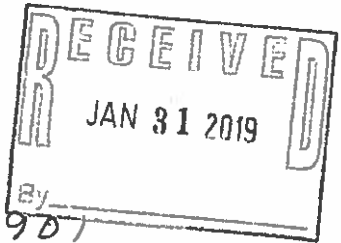
My qualifications are as follows: I am a active golfer and very interested in the T or C Municipal Golf Course. I have been an active member as a player and have served several terms on the Golf Advisory Board. I would like to serve again.

Reason why you are interested in serving on this Board?

I would like to serve to be helpful as a GAB member to keep our golf course in good playing condition and provide timely recommendations to the City.

Comments: Golf is an ageless sport and for our community visible by travelers on I-25, a valuable asset to our community.

Signature: 



Name: JANICE A. GRAY

Address: 402 Main St. T. ORC. N.M 87901

Phone: 575-740-6051 e-mail janice @adobehaciernm.com

I am interested in serving as a member of the Golf Course Advisory Board.

My qualifications are as follows:

45 years Book Keeping
2010-2011 Past President Elephant Butte Chamber of Commerce
13 years Real Estate Broker/owner Adobe Hacienda Real Estate
Served one 2yr term Lodgers Tax Board - Elephant Butte
Served two 2yr terms Lodgers Tax Board - T. ORC.

Reason why you are interested in serving on this Board?

To work with the city to improve & sustain the Golf Course

Comments:

Signature

Janice A. Gray



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: March 27, 2019

Agenda Item #: **G.1**

SUBJECT: Resolution No. 30 2018/2019 approving the acceptance of the Fiscal Year 2018 Audit.

DEPARTMENT: Clerk's Office

DATE SUBMITTED: March 20, 2019

SUBMITTED BY: Renee Cantin, Clerk-Treasurer

WHO WILL PRESENT THE ITEM: Heather Lucero, Pattillo, Brown, Brown, & Hill, LLP; and Morris Madrid, City Manager

Summary/Background:

Ms. Heather Lucero will give the overview Presentation. The State Auditor's Office has a new requirement that all audits must be approved by Resolution.

Recommendation:

Presentation & Approve Resolution 30 2018/2019 accepting the FY18 Audit.

Attachments:

- Presentation

Fiscal Impact (Finance): TBD

Unknown at this time.

Legal Review (City Attorney): Yes

Standard Resolution as distributed by State Auditor's Office.

Approved For Submittal By: Department Director

Reviewed by: City Clerk Finance Legal Other: Click here to enter text.

Final Approval: City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. N/A Ordinance No. N/A

Continued To: Click here to enter a date. Referred To: Click here to enter text.

Approved Denied Other: Click here to enter text.

File Name: CC Agendas 2019/03-27-2019/AF-FY18 Audit Approval



RESOLUTION NO. 30 18/19

A RESOLUTION APPROVING THE ACCEPTANCE OF THE FY 2018 AUDIT

WHEREAS, the Name of LPB is required by statute to contract with an independent auditor to perform the required annual audit or agreed upon procedures for Fiscal Year 2018; and,

WHEREAS, the City of Truth or Consequences City Commission has directed the accomplishment of the audit for FY 2018 be completed; and,

WHEREAS, this audit has been completed and presented to the City of Truth or Consequences City Commission per the **Month, Date, Year** Letter from the State Auditor authorizing release of the FY 2018 audit.

WHEREAS, NMAC 2.2.2.10 (M) (4) provides in pertinent part that “Once the audit report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable;” and,

NOW THEREFORE, BE IT RESOLVED that the City of Truth or Consequences City Commission does hereby accept and approve the completed audit report and findings as indicated within this document.

PASSED, ADOPTED AND APPROVED this 27th day of March, 2019.

Sandra Whitehead, Mayor

SEAL

ATTEST:

Reneé L. Cantin, City Clerk-Treasurer

MICHELLE LUJAN GRISHAM
GOVERNOR



OLIVIA PADILLA JACKSON
CABINET SECRETARY

DONNIE J. QUINTANA
DIRECTOR

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

Bataan Memorial Building ♦ 407 Gallisteo St. ♦ Suite 202 ♦ Santa Fe, NM 87501
PHONE (505) 827-4950 ♦ FAX (505) 827-4948

March 11, 2019

The Honorable Steve Green
Truth or Consequences
505 Sims St.
Truth or Consequences, NM 87901

Dear Mayor Green:

The Department of Finance and Administration (DFA), Local Government Division (LGD) has completed a preliminary review of your published audit report for Fiscal Year 2018 (FY18). Based on the review, in order for LGD to obtain the most concise financial status of your local government, the following items are required:

1. Backup documentation to substantiate the corrective action that has been completed or the status of the progress made in completing the corrective action on the following findings:
 - a. Controls Surrounding Cash Receipts: Audit Finding #2017-004
 - b. Cash Management – Federal Program Information Audit Finding #2017-005
 - c. Procurement Code: Audit Finding #2018-003
 - d. Travel and Per Diem: Audit Finding #2018-001
2. Reasons why 4 repeat findings have not been addressed and the progress made on the corrective actions to be taken to address these findings.
3. Copy of the governing body approved resolution showing acceptance and approval of the FY18 audit. For resolution requirement reference Memorandum #BFB-19-01 dated 10/3/18 found here:
http://www.nmdfa.state.nm.us/Budget_Memos_1.aspx

We ask that you submit the information requested above within the two weeks from the date of this letter.

Additionally, further information may be required upon LGD receipt and review of your entity's interim budget documentation for FY 2019-2020.

If you have any questions regarding this matter, please call Anita Medina of my staff at 505-827-4964.

Sincerely,

A handwritten signature in blue ink that reads "Brenda L. Suazo-Giles".

Brenda L. Suazo-Giles, Budget & Finance Bureau Chief
Local Government Division

xc: file



PATILLO, BROWN & HILL, L.L.P.
Certified Public Accountants & Business Consultants

City of Truth or Consequences

2018 Audit Results

March 27, 2019

Our Responsibility under U.S. and Government Auditing Standards

As stated in our engagement letter, our responsibility, as described by professional standards, is to form and **express an opinion** about whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit of the financial statements does not relieve you or management of your responsibilities.

Our audit of financial statements includes **consideration of internal control** over financial reporting as a basis for designing audit procedures **but not for the purpose of expressing an opinion** on the effectiveness of the entity's internal control over financial reporting. Accordingly, we considered the entity's internal control for the purpose of determining our audit procedures and not to provide assurance concerning such internal control.

Our responsibility is to plan and perform the audit in accordance with generally accepted auditing standards issued by the AICPA and the Comptroller General of the United States, and to design the audit to obtain **reasonable, rather than absolute, assurance** about whether the financial statements are free of material misstatement.

We are also responsible for **communicating significant matters related to the financial statement audit** that, in our professional judgment, are relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

Auditor's Report on the Financial Statements

Unmodified Opinion – “Clean Opinion”

- Financial Statements are presented *fairly* in accordance with accounting principles generally accepted in the United States of America.



Other Reports

**GAGAS Report on Internal Control
Over Financial Reporting and on
Compliance and Other Matters**

**Report on Compliance for Each Major
Federal Program and Internal
Control over Compliance Required by
the Uniform Guidance**

Unmodified ("Clean") Opinion

Communication with Governing Body

Matters to Be Communicated

Significant Audit Adjustments and Unadjusted Differences Considered by Management to be Immaterial

- The Council should be informed of all significant audit adjustments arising from the audit. Consideration should be given to whether an adjustment is indicative of a significant deficiency or a material weakness in the City's internal control over financial reporting, or in its process for reporting interim financial information, that could cause future financial statements to be materially misstated. the Council should also be informed of uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented that were determined by management to be immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

PBH's Comments

Cash to accrual adjustments

No corrected misstatements

Resolved Prior Year Findings

- **2017-002 Payroll Disbursements - Resolved**
- **2016-001 Controls Over Travel and Per Diem - Resolved**
- **2016-002 PERA Remittances and Recording - Resolved**
- **2017-003 Chief Procurement Officer - Resolved**

Core Year Filings

- 2017-001 Controls Reporting Block Filing
- 2017-005 Cash Management
- 2018-002 Retiree Health Care Remittances and Recording
- 2018-003 Procurement



PATILLO, BROWN & HILL, L.L.P.
Certified Public Accountants & Business Consultants

Thank you!



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: 03-27-2019

Agenda Item #: **G.2**

SUBJECT: Resolution No. 31 2018/2019 designating Signatory Authority for submission of Applications and related documentation for USDA.

DEPARTMENT: Community Development

DATE SUBMITTED: 3/15/19

SUBMITTED BY: Traci Burnette

Summary/Background:

USDA requests a Resolution designating Signatory Authority for submission of Applications and related documentation. Signatory Authority will be City Manager Morris Madrid with City Clerk authorized to sign in his absence.

Recommendation:

Approve Resolution designating Signatory Authorities as noted.

Attachments:

- Resolution

Fiscal Impact:

N/A – Signatory Authority Designation Only

Legal Review:

Approved For Submittal By: Department Director: MM City Clerk: RC City Manager: MM

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. _____ Continued To: _____ Referred To: _____
 Ordinance No. _____ Approved _____ Denied _____ Other: _____
 File Name: _____



RESOLUTION NO. 31 2018/2019

A RESOLUTION DESIGNATING SIGNATORY AUTHORITY FOR A USDA RURAL DEVELOPMENT FUNDING APPLICATIONS AND RELATED DOCUMENTATION AND APPROVAL OF APPLICATION SUBMISSION

WHEREAS, The City of Truth or Consequences is in need of funds for Infrastructure Improvements;

WHEREAS, The City of Truth or Consequences has previously applied for and received grant/loan funds from USDA RURAL DEVELOPMENT for Infrastructure Improvements in the past;

WHEREAS, USDA RURAL DEVELOPMENT does require a new application be submitted by the City for each project and

WHEREAS, USDA RURAL DEVELOPMENT requires the City of Truth or Consequences to appoint an individual(s) authorized to execute the USDA RURAL DEVELOPMENT application, certification and related documentation for current and future applications;

NOW, THEREFORE, BE IT RESOLVED THAT, the Governing Body of the City of Truth or Consequences, New Mexico approves submission of applications and related documentation to USDA RURAL DEVELOPMENT and;

BE IT FURTHER RESOLVED, that City Manager Morris Madrid is hereby designated as the City's representative on behalf of the application(s) and is authorized as signatory authority and has designated the City Clerk as signatory authority in his absence and shall work with staff to execute, sign and submit required funding application(s) and required documents.

PASSED, APPROVED AND ADOPTED this 27th day of March, 2019.

Sandra Whitehead, Mayor

ATTEST:

Renee Cantin, City Clerk



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: March 27, 2019

Agenda Item #: **G.3**

SUBJECT: Resolution No. 32 2018/2019 setting the Elected Officials compensation.

DEPARTMENT: City Manager's Office

DATE SUBMITTED: March 20, 2019

SUBMITTED BY: Renee Cantin, Clerk-Treasurer

WHO WILL PRESENT THE ITEM: Morris Madrid, City Manager

Summary/Background:

The Commission discussed this item at previous meetings and directed the City Manager and City Attorney to prepare the necessary documents to proceed. The attached Resolution was drafted from the sample received by the County Commission.

The Resolution will be setting the salaries for the City Commissioners with terms commencing April 1, 2020 and thereafter, with the first disbursement period for all City Commissioner's to begin with April 1, 2022.

Recommendation:

Approve Resolution 32 2018/2019 setting the salaries for the City Commissioners with terms commencing April 1, 2020 and thereafter, with the first disbursement period for all City Commissioner's to begin with April 1, 2022.

Attachments:

- Resolution No. 32 2018/2019

Fiscal Impact (Finance): TBD

Unknown at this time.

Legal Review (City Attorney): Yes

Resolution has been sent to City Attorney for review and final revised document will be distributed to the Commission.

Approved For Submittal By: Department Director

Reviewed by: City Clerk Finance Legal Other: [Click here to enter text.](#)

Final Approval: City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. N/A Ordinance No. N/A

Continued To: [Click here to enter a date.](#) **Referred To:** [Click here to enter text.](#)

Approved Denied Other: [Click here to enter text.](#)

File Name: CC Agendas 2019/03-27-2019/AF-FY18 Audit Approval



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: March 27, 2019

Agenda Item #: **G.4**

SUBJECT: Resolution No. 33 2018/2019 adopting the Sierra County, NM Hazard Mitigation Plan.

DEPARTMENT: Fire

DATE SUBMITTED: March 20, 2019

SUBMITTED BY: Paul Tooley, Fire Chief/Emergency Services Coordinator

WHO WILL PRESENT THE ITEM: Paul Tooley, Fire Chief/Emergency Services Coordinator

Summary/Background:

The email from Chief Tooley is attached. Each local entity has been requested to approve a Resolution adopting the Sierra County Hazard Mitigation Plan.

Recommendation:

Approve Resolution No. 33 2018/2019 adopting the Sierra County, NM Hazard Mitigation Plan

Attachments:

- Resolution No. 33 2018/2019
- Email from Chief Tooley

Fiscal Impact (Finance): No

\$0.00

Legal Review (City Attorney): Yes

Resolution was submitted for review.

Approved For Submittal By: Department Director

Reviewed by: City Clerk Finance Legal Other: Click here to enter text.

Final Approval: City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. 33 2018/2019 Ordinance No. N/A

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

Approved Denied Other: [Click here to enter text.](#)

File Name: CC Agendas 2019/03-27-2019/AF-Hazard Mitigation Plan

Cantin, Renee

From: TorC City Clerk
Sent: Wednesday, March 20, 2019 12:01 PM
To: Cantin, Renee
Subject: FW: Model HMP Resolution
Attachments: Model Hazard Mitigation Plan Resolution.docx

From: ptooley@sierraco.org [mailto:ptooley@sierraco.org]
Sent: Monday, March 18, 2019 9:53 AM
To: TorC City Clerk; citymanager@cityofelephantbutte.com; 'Williamsburg Clerk'
Cc: 'Bruce Swingle'
Subject: FW: Model HMP Resolution

T or C
Elephant Butte
Village of Williamsburg

Attached is a template for a Resolution to approve the Sierra County All Hazard Mitigation Plan for FEMA. This has been a long process and I want to thank each governing body for participating in the project. Please use the attached "Model Resolution" to create the proper Resolution for your governing body and place this item on your next agenda for approval.

Please let me know when that meeting will take place. I will be at those meetings to answer any questions. In the meantime if you have any questions please email or call me.

Paul Tooley,



Emergency Services Administrator

County of Sierra



State of New Mexico

Paul Tooley

Emergency Services Administrator

855 Van Patten
Truth or Consequences,
New Mexico 87901

Phone (575) 894-6215
FAX (575) 894-9548
Cell (575) 740-1640

ptooley@sierraco.org

The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this message with any third party, without a written consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such a mistake does not occur in the future.



Resolution No. 32 2018/2019

Adopting the Sierra County New Mexico Hazard Mitigation Plan

Whereas, the City of Truth or Consequences recognizes the threat that natural hazards pose to people and property within our community; and

Whereas, undertaking hazard mitigation actions will reduce the potential for harm to people and property from future hazard occurrences; and

Whereas, the U.S. Congress passed the Disaster Mitigation Act of 2000 (“Disaster Mitigation Act”) emphasizing the need for pre-disaster mitigation of potential hazards; and

Whereas, the Disaster Mitigation Act made available hazard mitigation grants to state and local governments; and

Whereas, an adopted Hazard Mitigation Plan is required as a condition of future funding for mitigation projects under multiple Federal Emergency Management Agency (FEMA) pre- and post-disaster mitigation grant programs; and

Whereas, the City of Truth or Consequences fully participated in the FEMA prescribed mitigation planning process to prepare this Hazard Mitigation Plan; and

Whereas, the New Mexico Department of Homeland Security and Emergency Management and FEMA Region VI officials have reviewed the Sierra County New Mexico Hazard Mitigation Plan and approved it contingent upon this official adoption of the participating governing body; and

Whereas, the City of Truth or Consequences desires to comply with the requirements of the Disaster Mitigation Act and to augment its emergency planning efforts by formally adopting the Sierra County New Mexico Hazard Mitigation Plan; and

Whereas, adoption by the governing body for the City of Truth or Consequences demonstrates the jurisdictions’ commitment to fulfilling the mitigation goals and objectives outlined in this plan, and

Whereas, adoption of this legitimizes the plan and authorizes responsible agencies to carry out their responsibilities under the plan.

Now, therefore, be it resolved, that the Governing Body of the City of Truth or Consequences, New Mexico adopts the Sierra County New Mexico Hazard Mitigation Plan as an official plan; and

Be it further resolved, the City of Truth or Consequences will submit this Adoption Resolution to the New Mexico Department of Homeland Security and Emergency Management and FEMA Region VI officials to enable final approval.

PASSED, APPROVED AND ADOPTED this 27th day of March, 2019.

ATTEST:

Sandra Whitehead, Mayor

Renee Cantin, City Clerk-Treasurer



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: March 27, 2019

Agenda Item #: **H.1**

SUBJECT: Gravity Pad Lease Agreement

DEPARTMENT: Community Development

DATE SUBMITTED: March 20, 2019

SUBMITTED BY: Renee Cantin, City Clerk-Treasurer

WHO WILL PRESENT THE ITEM: Traci Burnette, Grant/Projects Coordinator & Building Official

Summary/Background:

Special Use permit was approved by Commission on 1/19/19 for placement of cell antennas on the T or C Water Tank located at the end of West 2nd Street. Lease was presented to the Commission 2/27/19, Commission directed staff to meet with all parties to address concerns and revise language accordingly. Meetings have been held with requested parties, lease has been revised as noted.

Recommendation:

Approve the T or C Water Tank Lease Agreement

Attachments:

- Revised Lease Agreement

Fiscal Impact (Finance): Yes

Generated Revenue.

Legal Review (City Attorney): Yes

City Attorney Rubin worked with Ms. Burnette and provided the redlined version to be presented with their revisions.

Approved For Submittal By: Department Director

Reviewed by: City Clerk Finance Legal Other: Click here to enter text.

Final Approval: City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. Click here to enter text. **Ordinance No.** 701

Continued To: Click here to enter a date. **Referred To:** Click here to enter text.

Approved Denied Other: Click here to enter text.

File Name: CC Agendas 2019/03-27-2019/AF-Gravity Pad Tower Lease

TOWER STRUCTURE LEASE AGREEMENT

THIS TOWER STRUCTURE AGREEMENT (“**Agreement**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is entered into by City of Truth or Consequences, having a mailing address of 505 Sims, Truth or Consequences, New Mexico 87901 (“**Landlord**”) and Gravity Pad Towers, LLC, a Delaware limited liability company, having a mailing address of 237 West La Entrada, Corrales, New Mexico 87048 (“**Tenant**”).

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, improved with a water tower structure (the “**Water Tower**”), together with all rights and privileges arising in connection therewith, located at End of West 2nd Ave, Truth or Consequences, in the County of Sierra, State of New Mexico (collectively, the “**Property**”). Landlord desires to grant to Tenant the right to use and manage a portion of the Property in accordance with this Agreement.

The parties agree as follows:

1. **LEASE OF PREMISES.** Landlord hereby leases to Tenant a portion of the Property consisting of:

(a) Approximately 1,500 square feet of ground space, as described on attached **Exhibit 1**, for the placement of Tenant’s sublease equipment for the wireless carriers (the “**Ground Space**”);

(b) The portion of the Water Tower selected by Tenant and dedicated for Tenant’s use for wireless facilities only, and consisting of an envelope of contiguous horizontal and vertical feet of space within which any portion of Tenant’s sub-leased communication equipment and improvements might be located, operated or maintained (the “**Primary RAD Space**”). In its discretion, the City may add equipment to the tower for its own use, so long as such use doesn’t interfere with the FCC wireless carrier.

(c) Those certain areas where Tenant’s conduits, wires, cables, cable trays and other necessary connections (and the cables, wires, and other necessary connections and improvements of such third parties related to Tenant, such as Tenant’s utility providers) are located between the Ground Space or any Incremental Ground Space and the Primary RAD Space or any Additional RAD Space and between the electric power, telephone, fiber, and fuel sources for the Property (hereinafter collectively referred to as the “**Connection Space**”). Landlord agrees that Tenant shall have the right to install connections between Tenant’s equipment in the Ground Space and Primary RAD Space; and between Tenant’s equipment in the Ground Space and the electric power, telephone, and fuel sources for the Property, and any other improvements. Landlord further agrees that Tenant shall have the right to install, replace and maintain utility lines, wires, poles, cables, conduits, pipes and other necessary connections over or along any right-of-way extending from the aforementioned public right-of-way to the Premises. The Ground Space, Primary RAD Space, and Connection Space are hereinafter collectively referred to as the “**Premises.**”

2. **PERMITTED USE.**

(a) Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (the “**Communication Facility**” or “**Communication Facilities**”), as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future

federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the "Permitted Use").

3. TERM.

(a) The initial lease term will be fifteen (15) years (the "Initial Term"), commencing on the Effective Date. The Initial Term will terminate on the fifteenth (15th) anniversary of the Effective Date.

(b) This agreement can be renewed for eight (8) additional 5 year terms upon the same terms and conditions set forth herein (subject to the rent changes described below) upon the mutual written consent of the parties. Such written consent must be delivered to the other party at least sixty (60) days prior to the expiration of a given five (5) year term. Such mutual written consent shall not be unreasonably withheld or conditional or delayed.

(c) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the "Term."

4. RENT.

(a) By no later than July 1, 2019, Tenant will pay Landlord, a one time payment Thirty Thousand and No/100 Dollars (\$30,000.00) (the "Rent"), at the address set forth above. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date.

(b) Commencing on the first day of the month following the date that Tenant commences construction with new carrier (the "Rent Commencement Date"), Tenant will pay Landlord, a monthly rental payment of Five Hundred Dollars and No/100 Cents (\$500.00) (the "Rent"), upon the commencement of the first carrier at the address set forth above. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date. The parties agree that AT&T is the first carrier.

(c) Rent shall be increased by Five Hundred Dollars and 00/100 no Cents (\$500.00) per month upon commencement of the 2nd carrier (the "Incremental Ground Water Tank Space Rent"). The second carrier shall be Verizon.

(d) Rent shall be increased by Five Hundred Dollars and 00/100 no Cents (\$500.00) per month upon commencement of the 3rd carrier (the "Incremental Ground Water Tank Space Rent").

(e) Rent shall be increased by Five Hundred Dollars and 00/100 no Cents (\$500.00) per month upon commencement of the 4th carrier (the "Incremental Ground Water Tank Space Rent").

(e) Upon each 5th anniversary of the commencement date, the monthly Rent will increase by Seven and half percent (7.5%) over the applicable Rent in effect during the previous term.

(f) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

(g) The parties shall work diligently to maximize its cellular services to the citizens of Truth or Consequences, New Mexico.

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for the Permitted Use and Tenant's ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for the Permitted Use and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

6. **TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:
(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

7. **INSURANCE.** During the Term, Tenant will purchase and maintain in full force and effect such general liability policy as Tenant may deem necessary. Said policy of general liability insurance will at a minimum provide a combined single limit of One Million and No/100 Dollars (\$1,000,000.00). Notwithstanding the foregoing,

8. **INTERFERENCE.**

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, or other radio frequency uses that the City determines is necessary, ~~as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations, which may include additional frequencies that the City desires to add in the interests of public safety. The City also retains the right to take any necessary action to protect all frequencies and to ensure safe and efficient operations.~~

(b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property or Surrounding Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

9. **INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, invitees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord, its employees,

invitees, agents or independent contractors, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

(c) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 9 and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

10. WARRANTIES.

(a) Each of Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the Tower; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Landlord; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest in the form attached hereto as **Exhibit 2**.

(c) The Tenant shall comply with all applicable ordinances and development standard.

11. ENVIRONMENTAL. Tenant agrees to perform any necessary environmental studies at its sole cost. Landlord makes no representation or warranty regarding the environmental condition of the property.

12. ACCESS. At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("Access") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access at no additional cost to Tenant. If Tenant elects to utilize an Unmanned Aircraft System ("UAS") in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or alteration activities at the Property, Landlord hereby grants Tenant, or any UAS operator acting on Tenant's behalf, express permission to fly over the applicable Property and Premises, and consents to the use of audio and video navigation and recording in connection with the use of the UAS. ~~Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 12, such failure shall be a default under this Agreement. In connection with such default, in addition to any other rights or remedies available to Tenant under this Agreement or at law or equity, Landlord shall pay Tenant, as liquidated damages and not as a penalty, \$500.00 per day in consideration of Tenant's damages until Landlord cures such default. Landlord and Tenant agree that Tenant's damages in the event of a denial of Access are difficult, if not~~

~~impossible, to ascertain, and the liquidated damages set forth above are a reasonable approximation of such damages. Tenant agrees to comply with all FAA regulations and requirements. The City does have the right to deny access to address an emergency or public safety situation and to take discretionary action to protect the City.~~

13. **REMOVAL/RESTORATION.** At the end of the term of this Lease, or if the Lease is terminated, the tenant shall remove all of its equipment and restore the premises to their original condition, save and except reasonable wear and tear.

14. **MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted.

(b) The Tenant shall maintain the structural integrity of the water tank and tower at all times.

(c) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to sub-meter from Landlord. When sub-metering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Tenant shall reimburse Landlord for such utility usage at the same rate charged to Landlord by the utility service provider. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within thirty (30) days of receipt of the usage data and required forms. Landlord shall maintain accurate and detailed records of all utility expenses, invoices and payments applicable to Tenant's reimbursement obligations hereunder. Within fifteen (15) days after a request from Tenant, Landlord shall provide copies of such utility billing records to the Tenant in the form of copies of invoices, contracts and cancelled checks. If the utility billing records reflect an overpayment by Tenant, Tenant shall have the right to deduct the amount of such overpayment from any monies due to Landlord from Tenant.

(d) As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(e) Tenant will have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Premises. Landlord hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

15. **DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure

period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 of this Agreement within twenty-four (24) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

16. **ASSIGNMENT/SUBLEASE.** Tenant will have the right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, upon the written consent of the Landlord.

17. **NOTICES.** All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties hereto as follows:

If to Tenant: Gravity Pad Towers, LLC
Attn: Real Estate Department
Re: Cell Site #: NML06165; Cell Site Name: T or C Water Tank (NM)
237 West La Entrada
Corrales, New Mexico 87048

If to Landlord: City of Truth or Consequences
505 Sims, Truth or Consequences
New Mexico 87901

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

18. TAXES.

(a) Landlord shall be responsible for (i) all taxes and assessments levied upon the lands, improvements and other property of Landlord including any such taxes that may be calculated by a taxing authority using any method, including the income method, (ii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with this Agreement, and (iii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with a sale of the Property or assignment of Rent payments by Landlord. Tenant shall be responsible for (y) any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21 and (z) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with an assignment of this Agreement or sublease by Tenant. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant in a timely manner and Tenant's rights with respect to such taxes are prejudiced by the delay, Landlord shall reimburse Tenant for any increased costs directly resulting from the delay and Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by law. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b), provided that Tenant may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b) of this Agreement.

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17 of this Agreement.

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

19. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit 24(b)**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

(c) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("Laws") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to "Tenant" shall be deemed to include any Affiliate of Gravity Pad Towers, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord's name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys' Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including reasonable attorneys' fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) In the event of a material dispute in this agreement, the parties agree to pursue a mediation process before suit is filed, unless suit is necessary to prevent immediate or irreparable harm.

(o) **Incidental Fees.** Unless specified in this Agreement, no unilateral fees or additional costs or expenses are to be applied by either party to the other party, including review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(p) **Further Acts.** Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Tenant may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and Permitted Use contemplated by this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the Effective Date.

"LANDLORD"

City of Truth or Consequences

By: _____

Print Name: [_____]

Its: _____ [Insert Title]

Date: _____ [Insert Date]

LANDLORD ACKNOWLEDGMENT

STATE OF _____)

) ss:

COUNTY OF _____)

On the ____ day of _____, 20__ before me, personally appeared _____, who acknowledged under oath, that he/she is the person/officer named in the within instrument, and that he/she executed the same in his/her stated capacity as the voluntary act and deed of the Landlord for the purposes therein contained.

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page 1 of 2

to the Water Tower Structure Lease Agreement dated [Insert Date], 20 , by and between City of Truth or Consequences, as Landlord, and Gravity Pad Towers, LLC, a New Mexico limited liability company, as Tenant.

The Property is legally described as follows:

A parcel of land for the purposes of a telecommunication equipment lease area situate within waterworks park, block 80, townsite plat of hot springs, as the same is shown and designated on the plat, thereof filed in the office of the county clerk of Sierra County, New Mexico on February 2, 1920, in cabinet A, Folio A-1, said lease parcel of the land being more particular described as follows:

Containing an area of 1,500 square feet of land

PUBLIC RECORD PARCEL NO. 3022078190410 END OF W. 2ND ST
TRUTH OR CONSEQUENCES, NM SIERRA COUNTY EXISTING 62'-0" WATER TANK
COLOCATION COMMUNICATION SITE

Legal description – 5 ft utility easement “A”

A strip of land for the purpose of a utility easement to serve a telecommunication equipment lease area, situate within and crossing a portion of block 80, waterworks park, townsite plat of hot springs, as the same is shown and designated on the plat thereof filed in the office of the County clerk of sierra county, New Mexico on February 2, 1920, in cabinet a, folio A-1, said easement being five (5.00) feet in width and lying two and one half (2.50) feet on each side of the following centerline:

Commencing at a ¾ inch rebar found for the South East corner of the waterworks park, block 80, thence in 37' 14' 59" W a distance of 123.32 feet to the South East corner of said lease area thence S 13' 54' 42" W, A distance of 2.50 feet to the point of beginning of this utility easement centerline:

Thence, S 76' 05' 18" W A distance of 19.91 feet, Thence, S 88' 23' 41" W A distance of 81.34 feet to an existing utility pole and the terminus of this utility easement centerline

Legal description – 5 ft utility easement “B”

A strip of land for the purpose of a utility easement to serve a telecommunication equipment lease area, situate within and crossing a portion of block 80, waterworks park, townsite plat of hot springs, as the same is shown and designated on the plat thereof filed in the office of the County clerk of sierra county, New Mexico on February 2, 1920, in cabinet a, folio A-1, said easement being five (5.00) feet in width and lying two and one half (2.50) feet on each side of the following centerline:

Commencing at a ¾ inch rebar found for the South East corner of waterworks park, block 80, thence in 37' 14' 59" W a distance of 123.32 feet to the South East corner of said lease area thence S 13' 54' 42" W, A distance of 10.50 feet to the point of beginning of this utility easement centerline:

Thence N 76' 05' 18" E A distance of 41.26 feet to the terminus of this utility easement centerline

The Premises are described and/or depicted as follows:

Lease area of 1,500 square feet situate within waterworks park, Block 80, townsite plat of Hot Springs, Sierra County, New Mexico

Point# 50

Description – Center of Tank

Northing – 776,967.26'

Easting – 1,333,304.21'

Latitude – N33' 07' 54.632"

Longitude – W107' 15' 11.632"

Elevation – 4,383.5'

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page 2 of 2

to the Water Tower Structure Lease Agreement dated [Insert Date], 20, by and between City of Truth or Consequences, as Landlord, and Gravity Pad Towers, LLC, a New Mexico limited liability company, as Tenant.

