

Sandra Whitehead
Mayor

Mayor Pro-Tem

Amanda Forrister
Commissioner



Paul Baca
Commissioner

Randall Aragon
Commissioner

Morris Madrid
City Manager

505 Sims St.
Truth or Consequences, New Mexico 87901
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REGULAR MEETING

THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3RD ST., ON WEDNESDAY, SEPTEMBER 23, 2020; TO START AT 9:00 A.M.

A. CALL TO ORDER

B. INTRODUCTION

1. ROLL CALL

Hon. Sandra Whitehead, Mayor
Hon. Paul Baca, Commissioner
Hon. Randall Aragon, Commissioner
Hon. Amanda Forrister, Commissioner

2. SILENT MEDITATION

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

C. PUBLIC COMMENT (3 Minute Rule Applies)

D. RESPONSE TO PUBLIC COMMENT

E. CONSENT CALENDAR

1. City Commission Retreat Minutes, August 19, 2020
2. City Commission Regular Minutes, September 9, 2020
3. Acknowledge Regular Recreation Advisory Board Minutes, August 3, 2020

F. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Resolution No. 14 20/21 Authorizing the Execution and Delivery of a Water Project Fund Loan/Grant Agreement between the New Mexico Finance Authority ("Finance Authority") and the City of Truth or Consequences (The "Borrower/Grantee"). City Manager Madrid, and Traci Alvarez, Grant Projects Coordinator/Zoning Official

ORDINANCES/RESOLUTIONS/ZONING Continued...

2. Discussion/Action: Resolution No. 15 20/21 Authorizing and approving submission of a completed application for financial assistance and project approval to the New Mexico Finance Authority Water Trust Board for Cantrell Dam design and Rehabilitation Project. City Manager Madrid, and Traci Alvarez, Grant Projects Coordinator/Zoning Official
3. Discussion/Action: Resolution No. 16 20/21 Authorizing and approving submission of a completed application for financial assistance and project approval to the New Mexico Finance Authority Water Trust Board for planning and design services for Effluent Irrigation System Improvements Project. City Manager Madrid, and Traci Alvarez, Grant Projects Coordinator/Zoning Official
4. Discussion/Action: Resolution 17 20/21 Authorizing and approving submission of a completed application to participate in the Bureau of Reclamation WaterSMART and Energy Efficiency Grants for Fiscal Year 2021 Program . City Manager Madrid, and Traci Alvarez, Grant Projects Coordinator/Zoning Official

G. OLD BUSINESS

1. Discussion/Action: Consideration of amendments to Resolution 33 19/20 pertaining to a back to work plan for the City of Truth or Consequences. City Manager Madrid

H. NEW BUSINESS

1. Discussion/Action: Possible appointment of a qualified elector to fill the vacancy for the City Commissioner Position IV. City Manager Madrid

I. REPORTS

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

J. EXECUTIVE SESSION

1. Threatened & Pending Litigation (current & possible Litigation) *pursuant to 10-15-1(H.7).*
2. Real Property (various properties) Pursuant to 10-15-1(H.8).

K. ADJOURNMENT

There will be a limited amount of in-person attendance allowed in the Commission Chambers based on COVID safe practices.

The meeting will be broadcast live through KCHS on 101.9 FM. You may also access the meeting using the information listed below:

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If you do not wish to attend the meeting, but would like to give public input, please submit your comments to torcpubliccomment@torcnm.org, by fax at (575) 894-6690, or a hard copy can be dropped off at the City Clerk's Office, 505 Sims Street, Truth or Consequences, NM. Please submit your comments no later than Monday, September 21, 2020.

NEXT REGULAR CITY COMMISSION MEETING OCTOBER 14, 2020



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: September 23, 2020

Agenda Item #: E.1

SUBJECT: City Commission Retreat Minutes, August 19, 2020

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: September 18, 2020

SUBMITTED BY: Angela A. Torres, Clerk-Treasurer

WHO WILL PRESENT THE ITEM: City Manager Madrid

Summary/Background:

Minutes approval.

Recommendation:

Approve the minutes.

Attachments:

- CC Minutes

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): N/A

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. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 9-23-2020

CITY COMMISSION SPECIAL/WORK SESSION MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
BLACK RANGE LODGE, KINGSTON, NM
WEDNESDAY, AUGUST 19, 2020

CALL TO ORDER:

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

INTRODUCTION

ROLL CALL:

The following Commissioners were present.

Hon. Sandra Whitehead, Mayor
Hon. Brendan Tolley, Mayor Pro-Tem - Absent
Hon. Paul Baca, Commissioner
Hon. Randall Aragon, Commissioner
Hon. Amanda Forrister, Commissioner

Also Present: Morris Madrid, City Manager
Angela A. Torres, City Clerk-Treasurer

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

WORK SESSION:

- **Future Goals Planning Session:**

City Attorney Rubin and City Manager Madrid reviewed meeting procedures; the Open Meetings Act; how to address questions the Commissioners may have; how Personnel matters are handled; procedures if any Commissioner has a conflict of interest and how Commissioners should recuse themselves; procedures of Commission Reports during Commission Meetings.

Each City Commissioner also briefly commented on why they ran for Commission, and why they became a Commissioner.

Discussion and ideas of future goals included the following:

Discussion topics and ideas for the City Pool:

- Fix the leak at the pool.
- Possible joint pool with the schools.
- Location of a new pool.
- Build a year round or seasonal pool.
- Look into the cost to re-seal the current pool.
- Build a Recreation Area.
- Build a new pool and find funding to build a new pool.

Discussion topics and ideas for Branding:

- Work with MainStreet and the Chamber of Commerce.
- Support from the Commission.
- The Chamber of Commerce is non-active and that may be an issue.
- New Mexico TRUE Branding.
- A presentation from MainStreet for branding ideas.
- Quarter briefings from the Chamber of Commerce and MainStreet.

Discussion topics and ideas for Drainage:

- The County is currently doing a drainage study.
- Complete the western study (2 years ago).
- Complete the storm drain study.
- Work with the County and NMDOT.
- Work with FEMA.
- See if we qualify for state funding.
- Start a game plan for the next flood.

Discussion topics and ideas for Streets/Sidewalks

- Prepare a list of roads that need to be repaired by the Street Department.
- Address Marie Street issue with water breaks.
- Marie Street lighting, streets, and funding.
- Refer to previous ICIP for street repairs.
- Gold Street needs repairs.
- 3rd/Foch curbs & gutters.
- Re-level Main Street & Foch Street.

Discussion topics and ideas for City Buildings:

- Use of adjacent building by the Animal Shelter.
- Re-paint city buildings.
- Re-mode city buildings.
- Civic Center upkeep.
- First launch viewing with Spaceport.
- Audio system improvements at the Civic Center and Commission Chambers.
- Roof repair and new heating and cooling system at the Lee Belle Johnson Center.

- Lee Belle Johnson Center north entrance for Spaceport.
- Restore senior use at the Lee Belle Johnson Center.
- Install electric charging station by the Healing Waters Plaza.
- Replace the IT system in all buildings.
- Updates at Library and Civic Center.
- Pave the parking lot at the Library/Commission Chambers/Civic Center.
- Expansion of the Animal Shelter.

Discussion topics and ideas for Golf Course:

- Flood Control and drainage.
- Effluent and Fresh water use.
- A new Clubhouse.
- A new roof.
- Vendors to stock pro-shop.
- Par 3 Course rating.
- Liquor License.
- Maintain the Marie Dam.
- Contractor to run Golf Course bar.
- Upgrade the air system.
- Increase membership.
- Increase sales to generate Golf Course.
- Children and senior golf lesson programs.

Discussion topics and ideas for City Staffing & Salaries:

- Development Plan for Employees.
- Pay increases based on experience and skills.
- Accreditation.

Recessed at 11:58 a.m. and reconvened at 12:45 p.m.

Discussion topics and ideas for Signage:

- Post signs outside our community.
- Post signs north bound on 1-25.
- Post NMDOT signs on the North and South side of I-25.

Discussion topics and ideas for Grants:

- Infrastructure.
- A Grant Writer.
- Contact the Division of Labor for a Grants Coordinator Intern.

Discussion topics and ideas for Meter Upgrades for Water/Electric:

- Having a Public Workshop to Opt-out of AMI's.
- AMI opt-out option on future Commission agenda.

Discussion topics and ideas for Parks:

- Upgrades to the Ralph Edwards Park, and Louis Armijo Sports Complex.
- Check into the cost for Electric at the City Arena.
- City Arena light replacement.
- River Walk Trail.
- Foot Bridges at Rotary Park and Williamsburg.
- A trail assessment for the Healing Waters Trail.
- Volunteers for the Healing Waters Trail. (advertise on Facebook and Website).

ADJOURNMENT:

Mayor Whitehead moved to adjourn at 1:05 p.m. Commissioner Baca seconded the motion. Motion carried unanimously.

Passed and Approved this 23rd day of September, 2020.

Sandra Whitehead, Mayor

ATTEST:

Angela A. Torres, CMC, City Clerk



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: September 23, 2020

Agenda Item #: E.2

SUBJECT: City Commission Regular Minutes, September 9, 2020
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: September 18, 2020
SUBMITTED BY: Angela A. Torres, Clerk-Treasurer
WHO WILL PRESENT THE ITEM: City Manager Madrid

Summary/Background:

Minutes approval.

Recommendation:

Approve the minutes.

Attachments:

- CC Minutes

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): N/A

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. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 9-23-2020

**CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
WEDNESDAY, SEPTEMBER 9, 2020**

A. CALL TO ORDER:

The meeting was called to order by Mayor Sandra Whitehead at 9:00 a.m., who presided and Angela A. Torres, 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, Mayor
Hon. Paul Baca, Commissioner
Hon. Randall Aragon, Commissioner
Hon. Amanda Forrister, Commissioner

Also Present: Morris Madrid, City Manager
Angela A. Torres, 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 Aragon to lead the Pledge of Allegiance.

4. APPROVAL OF AGENDA:

**Commissioner Forrister moved to approve the agenda as submitted.
Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

C. COMMENTS FROM THE PUBLIC:

City Manager Madrid read public comment submitted by Merry Jo Fahl. (Complete copy attached hereto and made a part hereof).

Merry Jo Fahl

Good morning everyone

I know today that you, as a City Commission, must make a decision to select someone to fill the unexpired term of Brandon Tolley. I had contacted Mayor Sandy Whitehead and submitted my name as a possible candidate. Most of you know me in some fashion but I thought it would be good to give you a little better understanding of my history.

I am a lifelong resident of Sierra County and my family has been residents of this community for five generations. This community is very important to me and to my family and I have always done my utmost to make it better. I currently serve on the Board of Directors of the Jornada Resource Conservation Development Council (RC&D), a non-profit organization, as Secretary-Treasurer and have been in that position since the year 2000. I also serve as the Secretary-Treasurer of the state organization for RC&Ds for the past 12 years and currently serve as President of the non-profit organization Rio Grande Valley Court Appointed Special Advocate (CASA) which helps advocate for children within the CYD system. I was an original member of the Veteran's Memorial Park City Advisory Board and still currently serve on the non-profit board that manages the museum at this time. In the past I have served on the Sierra County Economic Development board, T or C Main Street and the T or C Fiesta Boards. I have raised four sons in this community, all graduates of Hot Springs High School; three of them have served in the military.

I have recently retired as the District Manager of the Sierra Soil and Water Conservation District, a local unit of government. During my almost 30 years there I was able to accomplish a great deal to better our natural resources and to also assist in economic development programs within the community. My position there is very similar to the City of T or C City Manager. Assisting their Board of Supervisors provided me an opportunity to become very familiar with the roles and responsibilities of elected officials; how meetings are run, the Inspection of Public Records Act, being accountable to the Department of Finance and Administration and how procurement works within local/state governments.

I have a great deal of experience working collaboratively with federal agencies such as the Forest Service, the Bureau of Land Management, Fish and Wildlife Service, Rural Development, and the Natural Resources Conservation Service. I have also worked with NM State Forestry, NM Game and Fish, NM

State Parks, NM Environment Department, Department of Finance and Administration, NM Department of Transportation, NM Veterans Home, and New Mexico State university.

I have been able to secure grants that assisted our community with funds that have exceeded \$2 million dollars; all of those grants created jobs in this community with one grant creating 25 seasonal jobs for two years. I think my knowledge of finding and securing grants would be of benefit to our community; realizing that grant administration is an integral part of the grant funding process. I was also part of the process to secure and complete the Morgan Street structure and its subsequent channels. I worked closely with the Sierra County Tourism Board and the City of T or C in the creation of the Healing Waters Trail and subsequent grant and facilitating the work in process on the proposed footbridge/pedestrian trail now in progress.

I believe that my past experiences and contacts I have made over the years will be of benefit to the City of Truth or Consequences and my community. Please give me your due consideration in your decision of an appointment Commissioner.

D. RESPONSE TO PUBLIC COMMENTS:

Mayor Whitehead thanked Ms. Fahl for submitting her letter of interest.

E. CONSENT CALENDAR:

- 1. City Commission Regular Minutes, August 26, 2020**
- 2. Accounts Payable August 2020:**

Commissioner Baca moved to approve the consent calendar as noted. Commissioner Aragon seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

F. PUBLIC HEARINGS:

- 1. Public Hearing/Discussion/Action: Final Adoption of Ordinance No. 709 amending the Code of Ordinances by adding a Section related to Sale of Real Property pursuant to §NMSA 1978 3-54-1:**

City Manager Madrid explained that this item has previously been before you for approval of publication, and now it is back for final adoption.

Traci Alvarez, Planning & Zoning Official explained that we have an offer for a purchase of city property. The property has been appraised, it has been advertised, and we had to do a release for the deed because the property was deeded as a recreational property. At this time we are asking to proceed and accept the offer to purchase for the appraised value of the property.

City Attorney Rubin further explained that we had the property appraised and it came in as twenty-six thousand dollars (\$26,000) which is very significant because under section 3-54-1, if you have an appraised value in excess of twenty-five thousand dollars (\$25,000) you have to sell the property through an ordinance procedure. If it came in one thousand dollars (\$1000) less than we wouldn't have had to go through this procedure. We received an offer for twenty-six thousand dollars (\$26,000) which is equal to the appraised value. We prepared this ordinance several months ago and when we were getting ready to close we discovered that there was a problem with the title. When the city acquired the property back in the 1960's there was a restriction that stated the property had to be used for recreational purposes only. In terms of the ordinance we didn't have to address that because the purchaser acknowledged that they were buying the property as is; the city was not making any warranties or representation regarding the real property; and the status of the title was used for development. We could have gone through with the sale at that time. However, just as a gestor of good faith, we decided to take action to file a petition in the Sierra County District Court. While going through the process we published in the newspaper, and there was a hearing during the course of proceedings where the judge approved our petition to reform the deed so the city wouldn't have to worry about the restrictions, and

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we are now free to sell the property. This ordinance basically says that we are selling this property of lots seventeen (17) through twenty-two (22) in Block twenty-seven (27), Palomas, Hot Springs Townsite, in the City of Truth or Consequences, New Mexico, Sierra County in the Northwest corner of the intersection of Wyona venue and Clancy Street. The city advertised this property before we received this offer, and he believes that is where the Depalma's found out about it.

Commissioner Forrister asked for clarification on the advertisement.

Traci Alvarez, Planning & Zoning Official stated that the Depalma's reached out to her stating that they were interested in the city property. Her procedure is anytime there is an interest in a property we move forward with an appraisal, and then we do advertisements. We don't do the legal advertisements. We actually do color ads in the paper and put the property up for sale like a real state ad. She received two other phone calls when we first advertised in 2019, and she told them both how to submit an offer to purchase through her office, but she never received anything after that.

Mayor Whitehead opened the Public Hearing.

Opponents:

City Manager Madrid read the letter submitted by Lillis Urban which read:

Greetings Mayor, Mayor Pro Tem, and Honorable Members of the Commission,

As a property owner in the Historic Hot Springs Townsite, I would like to respectfully caution the City against the Final Adoption of Ordinance No. 709, and against moving forward with the sale of city-owned parcels in the Hot Springs Townsite.

Prior to selling or disposing of any city owned parcels it would be advisable for the city to first undertake a thoughtful Open Space Plan - A plan that takes a comprehensive look at parcels that are owned by the city and how they may, or may not prove, beneficial or important as a part of a comprehensive Open Space plan for our community, and our visitors. This assessment would look at lands within the city boundary that may play a part in recreation, outdoor access, trails through town, trails that could articulate with "blue" trails on the river, trails or places that could serve as connections to BLM lands, or to State owned lands, etc.

A key driver in attracting visitors, and future residents, to Truth or Consequences is our setting and our outdoor access. Parks and trails within the boundary of our city are assets to our visitors and our residents alike.

It is easier to dispose of property then it is to acquire it; and I imagine that the city does not own many parcels in the Hot Springs Townsite. As such, these parcels are potentially rare commodities for our town and our community. A comprehensive, thoughtful assessment of city-owned properties in the context of an Open Space Plan may reveal that these particular parcels

CITY COMMISSION SEPTEMBER 9, 2020 REGULAR MEETING MINUTES

are best disposed of and sold. However, until a comprehensive assessment has been undertaken the City Commission cannot know the real potential use or potential value of the parcels.

I urge the City Commission to postpone this sale and first engage in careful planning. Now is an opportune time to embark on such an Open Space Plan. As the City Commission is aware, planning is underway for a riverside trail connecting the City of Truth Or Consequences with the Village of Williamsburg complete with two pedestrian footbridges. In addition, the recently passed Great American Outdoors Act could be a vehicle to fund an Open Space Plan for Truth or Consequences. In support of the city's potential application for funds through the Great American Outdoors Act is the New Mexico Statewide Comprehensive Outdoor Recreation Plan (acronym name: SCORP) for 2016-2020. Objective 1.1 from the NM SCORP is to: "Increase the number of communities that have prepared parks, recreation, open space and trail master plans". The attendant action for this objective is to: "Identify local government gaps and needs by preparing city and county parks, trails, open space and recreational facilities inventories, assessments, level of service and accessibility analyses." The City Commission could also engage the newly (re)formed Planning and Zoning commission as partners in the effort to develop an Open Space Plan for TorC.

Lastly, the economic benefit that the city stands to gain from the sale of these particular parcels (\$26,000) is, in my opinion, pale in comparison to the potential benefit that such open space may provide to the residents and visitors of Truth or Consequences now, and for many generations into the future.

It is an exciting time for Truth or Consequences. Our community is well positioned to become an ecotourism hub in southern NM. Let's hold onto our city's open space, and take a careful look before selling.

I think we will be glad that we did.

Thank you for your time and consideration,

Lillis Urban

Proponents:

Nate Stephens explained that their plan for this property is to develop it, and bring the concern's Ms. Urban mentioned in her letter. Right now there are one hundred twenty-three (123) places for sale in Sierra County, and all of them are under contract except for forty-six (46) properties. There are no longer any homes to sell to people who are coming into our community. Their plan for that property is to build homes that will attract new people to our community, and to have upstanding citizens who will be living in a new home on a nice property. They want to help the downtown Hotsprings move forward because right now it is stagnant, and it has been stagnant for a long time. There are a couple of new businesses coming in (which is good), but they need nice housing to attract more people. If somebody comes here and wants to live downtown, right now they have to buy a 1940 home and re-model it, and at the end of the day they are still

T or C Public Comment

From: Lillis Urban <lillisurban@gmail.com>
Sent: Sunday, August 09, 2020 3:23 PM
To: T or C Public Comment
Subject: Public Hearing-12 Aug 2020 - Opponent-comment- Final Adoption of Ordinance No. 709 amending the Code of Ordinances by adding a Section related to Sale of Real Property pursuant to §NMSA 1978 3-54-1.

Re: Public Hearing, 12 August 2020

Opponent-comment

Final Adoption of Ordinance No. 709 amending the Code of Ordinances by adding a Section related to Sale of Real Property pursuant to §NMSA 1978 3-54-1.

Greetings,

I would like to submit the following comment in opposition to the Final Adoption of Ordinance No. 709 amending the Code of Ordinances by adding a Section related to Sale of Real Property pursuant to §NMSA 1978 3-54-1, and to the potential sale of city owned property in the Hot Springs Townsite.

Submitted by:

Lillis Urban

520 N Broadway St.

Greetings Mayor, Mayor Pro Tem, and Honorable Members of the Commission,

As a property owner in the Historic Hot Springs Townsite, I would like to respectfully caution the City against the Final Adoption of Ordinance No. 709, and against moving forward with the sale of city-owned parcels in the Hot Springs Townsite

Prior to selling or disposing of any city owned parcels it would be advisable for the city to first undertake a thoughtful Open Space Plan - a plan that takes a comprehensive look at parcels that are owned by the city and how they may, or may not prove, beneficial or important as a part of a comprehensive Open Space plan for our community, and our visitors. This assessment would look at lands within the city boundary that may play a part in recreation, outdoor access, trails through town, trails that could articulate with "blue" trails on the river, trails or places that could serve as connections to BLM lands, or to State owned lands, etc.

A key driver in attracting visitors, and future residents, to Truth Or Consequences is our setting and our outdoor access. Parks and trails within the boundary of our city are assets to our visitors and our residents alike.

It is easier to dispose of property then it is to acquire it; and I imagine that the city does not own many parcels in the Hot Springs Townsite. As such, these parcels are potentially rare commodities for our town and our community. A comprehensive, thoughtful assessment of city-owned properties in the context of an Open Space Plan, may reveal that these particular parcels are best disposed of and sold. However, until a comprehensive assessment has been undertaken the City Commission cannot know the real potential use or potential value of the parcels.

I urge the City Commission to postpone this sale and first engage in careful planning. Now is an opportune time to embark on such an Open Space Plan. As the City Commission is aware, planning is underway for a riverside trail connecting the City of Truth Or Consequences with the Village of Williamsburg complete with two pedestrian footbridges. In addition, the recently passed Great American Outdoors Act could be a vehicle to fund an Open Space Plan for Truth or Consequences. In support of the city's potential application for funds through the Great American Outdoors Act is the New Mexico Statewide Comprehensive Outdoor Recreation Plan (acronym name: SCORP) for 2016-2020. Objective 1.1 from the NM SCORP is to: "Increase the number of communities that have prepared parks, recreation, open space and trail master plans". The attendant action for this objective is to: "Identify local government gaps and needs by preparing city and county parks, trails, open space and recreational facilities inventories, assessments, level of service and accessibility analyses." The City Commission could also engage the newly (re)formed Planning and Zoning commission as partners in the effort to develop an Open Space Plan for TorC.

Lastly, the economic benefit that the city stands to gain from the sale of these particular parcels (\$26,000) is, in my opinion, pale in comparison to the potential benefit that such open space may provide to the residents and visitors of Truth or Consequences now, and for many generations into the future.

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I think we will be glad that we did.

Thank you for your time and consideration,
Lillis Urban

CITY COMMISSION SEPTEMBER 9, 2020 REGULAR MEETING MINUTES

living in a 1940 home. The Depalma's want to offer people 2020-2021 homes which they feel will attract more money and people to our city.

Commissioner Forrister asked Mr. Stephens what his connection is with the Depalma's.

Nate Stephens responded that he is their contractor. When Ms. Depalma first came to him she wanted to build a house in Elephant Butte, and told her that the Hotsprings district needed help. They built a brand new home on 1714 Van Patten which is only 3 days old, meaning that there is a high interest for people wanting to live in the Hotsprings district, but they don't want to live in a tore down area. Their plan is to build that area back up.

Claudea Depalma stated that she contacted Traci over a year ago on this property. She found this lot by driving around with a friend of hers. She loves T or C and when she pulled up the property and saw that it was owned by the city she reached out to Traci to see how she would go about buying the property. Traci gave her directions and they have been in touch back and forth for about a year so they are obviously in no hurry. The piece of property sits directly across from a large recreational area and has sat vacant for many years. It is not close to the river, and it would not be part of a walking trail. It is a vacant lot, and as we all know vacant lots in T or C tend to attract a lot of trash. They also own the property diagonally across from it on Clancy and Wyona. They just bought those two lots and had them cleared. Their goal is not to just be a hit or miss. They own properties in Elephant Butte where she is at 90% of the time. They love the area and the County, and they are very proud to be part of a development down here. They are not looking at doing high end Santa Fe style kind of things. They are looking at small homes and they are very locally driven. They use a local contractor, and they try to use all local supplies and suppliers. They want to be part of the community, and they intend to be here for a while.

Commissioner Aragon asked Ms. Depalma how many homes will fit on the property, and he also asked what will be the style of the homes.

Claudea Depalma responded there are 6 lots, and they are going to have it surveyed. They are looking at about five (5) homes each with 2 to 3 bedrooms. They hope to continue in that area once this process is complete. They are building two houses on Clancy and Wyona and they hope to build 4-5 houses on the city lot, and they are still looking for additional land and they will be craftsman style homes.

City Attorney Rubin stated that the closing price will be paid by the purchaser.

Mayor Whitehead closed the Public Hearing.

Commissioner Forrister moved to approve final Adoption of Ordinance No. 709 amending the Code of Ordinances by adding a Section related to Sale of Real Property pursuant to §NMSA 1978 3-54-1. Commissioner Aragon seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

G. ORDINANCES/RESOLUTIONS/ZONING:

- 1. Discussion/Action: Resolution No. 13 20/21 in support of the ICIP for the Sierra Joint Office on Aging (SJOA):**

City Manager Madrid explained that the Resolution is in support of the ICIP that the Sierra Joint Office on Aging (SJOA) will submit to the state.

Sierra Joint Office on Aging (SJOA) Director, Crystal Walton explained that they provided the ICIP list that they are submitting for the upcoming funding season. The items on the ICIP are items that they had as of last year. They basically organized and cleaned up a few things on the list.

Commissioner Aragon moved to approve Resolution No. 13 20/21 in support of the ICIP for the Sierra Joint Office on Aging (SJOA). Commissioner Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

H. UNFINISHED BUSINESS:

- 1. Discussion/Action: Consideration of amendments to Resolution 33 19/20 pertaining to a back to work plan for the City of Truth or Consequences:**

City Manager Madrid explained that he doesn't have any recommended amendments to this Resolution. However, he will report since our last meeting, the Governor has relaxed some of the restrictions, and is now allowing in-person dining at restaurants at a 25% capacity. Places of worship can now conduct their services at a 40% capacity, and individual school districts are subject to opening with an approved plan with a green county, and with COVID safe procedures in place subject to the approval of the State Public Education Department. The state numbers continue to drop, and the 7 day rolling average continues to drop as well. We look forward to going back to normal in the near future. At this time there is no action required by the Commission.

No action was taken on this item.

I. NEW BUSINESS:

- 1. Discussion/Action: Authorize City Manager to Negotiate and Enter into Final Contractual Agreement for Engineering Services for the Clean Water State Revolving Loan Project:**

City Manager Madrid explained that this is a project for which funding has already been accepted and approved by this Commission. We are in the procurement stage of getting services for the engineering design of the project. We did an RFP and requested that firms submit a response in writing. This process is confidential until negotiations are complete. However, he can say that we received responses from Wilson & Company,

Smith Engineering, and Bohannon Huston. He appointed a committee (which he was a part of) to evaluate the responses to the request for proposals in document form. It listed their qualifications, experience, ability to perform, and their familiarity with Truth or Consequences and previous projects. There was a rating process by the committee, and that process revealed that all three firms were very close, so the committee decided to conduct in person interviews with some standard questions in relation to the project, the ability to perform, their experience, and their plan of operations should they be awarded. After that process, the committee still did not have a clear firm above the other two, so having gone through those two processes he requested that the three firms submit their standard rate sheet for the different type of services they perform. One engineering firm may charge \$250 an hour, where another firm may charge \$180 an hour for the same type of service for administration, clerical, architectural design or actually printing the documents. Based on that, and based on his personal judgement, he is requesting permission to negotiate a final agreement with Wilson & Company.

Commissioner Baca made a motion to authorize City Manager to Negotiate and Enter into Final Contractual Agreement for Engineering Services for the Clean Water State Revolving Loan Project. Commissioner Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. Discussion/Action: Consider the appointment of George Szigeti to the Public Utility Advisory Board:

City Manager Madrid stated that is a recommendation from the Public Utility Advisory Board to replace a board member who resigned.

Commissioner Forrister asked if this position was advertised.

City Clerk Torres confirmed that the position was advertised.

Commissioner Aragon made a motion to approve the appointment of George Szigeti to the Public Utility Advisory Board. Commissioner Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer.

Commissioner Aragon commented that Mr. Szigeti was a former Commissioner and a former Public Utility Advisory Board Chairman. He has a lot of knowledge, and his forte is dealing with utilities.

**Hon. Paul Baca, Commissioner voted nay
Hon. Amanda Forrister, Commissioner voted aye
Hon. Sandra Whitehead, Mayor voted nay
Hon. Randall Aragon, Commissioner voted aye**

Motion died due to a 2 to 2 vote.

3. Discussion/Action: Consider the appointment of Ron Fenn and Chris Sisney to the Planning & Zoning Commission:

City Manager Madrid stated that we received a resignation from the Chair of the Planning & Zoning Commission, so there is another vacancy on that Commission. This item was delayed before because we had some issues with a possible conflict of interest. We believe that one of those issues has been resolved, so it was okay to place this on the agenda. However, there may be another possible conflict of interest.

City Attorney Rubin stated that Mr. Fenn has filed a lawsuit against the city and the case of the lawsuit is pending. The gist of the lawsuit basically was when the City Commission approved the Smart Meter contract. Mr. Fenn and several other people signed a petition asking that an ordinance be enacted by the City Commission for a Moratorium, and the City Commission did not take any action which deemed the denial of the ordinance. Mr. Fenn then filed a lawsuit against us, and the case is pending. In fairness to Mr. Fenn he is not going to say that filing of a lawsuit is necessarily a conflict of interest because they are dealing with separate issues. The issues that would come up from him being a Planning & Zoning Commissioner is different than what is involved in the lawsuit, but nevertheless, there is always a question of public perception. Therefore, we felt we had to bring this to your attention.

City Manager Madrid explained that the Commission can also choose to wait on making a decision since we have to re-advertise again for the newly vacant position.

Commissioner Aragon made a motion to consider the appointment of Chris Sisney to the Planning & Zoning Commission. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

4. Discussion/Action: Possible appointment of a qualified elector to fill the vacancy for the City Commissioner Position IV:

Mayor Whitehead stated that she was really surprised and saddened when they received Brendan Tolley's resignation. It was with great sadness that they received the resignation letter and accepted it, but at this time she feels that they as a Commission must move forward and choose someone to serve in the position. She thinks that it is easier, and better to do it sooner than later. As you just saw here we had a split vote 2 to 2, so this would possibly continue through the rest of their term. She knows there have been a lot of questions, and she received the letter of interest from Merry Jo Fahl. She also received a text from Frances Luna who also showed interest. She then read a letter submitted by City Manager Madrid. (Complete copy attached hereto and made a part hereof).

Mayor Whitehead recommended the appointment of Rolf Hechler to fill the vacancy for the City Commissioner Position IV.

Commissioner,

After discussion with City and County election officials, City Attorney Rubin and external legal counsel, the following information is provided related to the appointment of a successor Commissioner.

The following is a summary of options, and non-options, for the Selection of a Commissioner to succeed Brendan Tolley:

1. It is NOT an option to place this on the November 2020 General Election ballot. Due to both the timing and type of (Special Municipal) election, this is not allowable.
2. It is NOT an option to discuss the selection of a Commissioner in Executive Session. The exclusion provisions of the Open Meetings Act relating to Pending/threatened litigation, limited personnel matters, or sale/exchange of real property are not applicable under the circumstances.

The specific language in the Municipal Code reads **“Vacancies in the Commission shall, by majority vote, be filled by the remaining Commissioners for the period intervening between the occurrence of the vacancy and the next regular election”**.

The method of selection is undefined in the Code. The Commission may or may not develop or implement a method of selection of a new Commissioner. The Commission may (and have previously) appointed a replacement just by nomination, second, and vote of the Commission. It seems clear that the intent of the Code is that the Commission maintains the sole right and responsibility to appoint a successor.

This circumstance may qualify for a Special Commission meeting. It does not qualify for an Emergency Commission meeting.

This item will be on the agenda for the September 9th City Commission meeting. It will be flexible enough to allow for the discussion, action, and possible appointment of a City Commissioner.

I hope this provides some guidance in preparation for that meeting. If there are any other questions or issues, please contact Jay or I and we will research.

MM

CITY COMMISSION SEPTEMBER 9, 2020 REGULAR MEETING MINUTES

Commissioner Forrister stated that she agrees that they need to do this sooner than later, but she personally does not think that they need to jump the gun. They really need to see who is interested in serving, and then they can come back as a group to figure out who they want.

Commissioner Aragon concurs with Commissioner Forrister. Obviously Rolf Hechler is a distinguished and proficient executive, so this is not to knock him at all. He spoke with City Manager Madrid as soon as he heard about this happening, and the results were the commentary he mentioned which is really good. Unquestionably, the best method would be to have the people elect our Commissioner. He put together a methodical way of selecting a new Commissioner. Step #1 would be the initial discussion. Step #2 would be for them to agree that the candidates would need go to the City Clerk's Office and turn in their resume. The 3rd step would be for them to have a Special Commission Meeting after working hours, and have the applicants answer questions in front of the public. The ones not being interviewed would stay at the Civic Center so they can't hear questions. On the completion of the interviews, the Mayor will add up the scores, and the highest scorer will receive a nomination. If there is a tie, they will draw cards. That way, those who do not get the position know that it was done in an orderly process.

Mayor Whitehead disagreed because they were elected to serve and take care of our community. She knows that they all have constituents, and they may not be liked by everybody, but they are here to do their job. They are not here to let the public do their job. Why are they sitting up here when all we want to do is let the public decide? The public decides in an election, and today they have a vacant seat. They are not applying for a job so they shouldn't have to come to us and sit over here while we question them, because we don't know anything about them, or how they would be up here. They may be better than the four of us. We were elected to do a job, and today she moves to appoint Rolf Hechler to the replacement seat left vacated by Brendan Tolley. Commission Hechler would serve for a year and four months. He was a Commissioner for the last four years and she thinks he would do a great job, and he would hit the ground running. In a year and four months in November of 2021 we can then let the voters decide who they want. If Rolf Hechler decides that he wants to run for the position, then he can, but at least we will have a full Commission. How long are we going to put this off and wait? They've done this with the boards, and they are still doing it with the boards. We advertise, and we request for people to apply, but nobody wants to apply. Again, if you want to run for a public office such as a City Commissioner then you go down to the City Clerk's Office and declare your candidacy and run for that office, but if that position becomes vacant, then we have to make a decision and decide who we are going to put in this position. All of the Commissioners hear from different people, and we are never going to make everyone happy.

Commissioner Forrister agreed that the public elected them to do their job, and it weighs heavy on them a lot of the time because they try and make all the right decisions. However, with all these boards that they appoint, they ask if that position was advertised. She has never worked with Rolf, and she doesn't even know if Rolf is

interested in the position. She knows that Merry Jo and Frances voiced their interest, so she doesn't feel comfortable electing Rolf right now because she doesn't even know if he is interested because he didn't submit anything.

Commissioner Aragon clarified that Mr. Hechler expressed to him that he was interested, but he never received anything in writing.

Mayor Whitehead stated that they don't need it in writing. The only one she received a letter from was Merry Jo Fahl. She received a text message from Frances Luna saying she was interested. She talked to Rolf, and City Manager Madrid did as well, and he said that he would be interested.

Commissioner Forrister stated that she does not feel comfortable choosing someone right off the spot today. She asked that anyone interested submit a letter in writing to City Manager Madrid so then they can at least read the letters to know who is interested.

Mayor Whitehead's motion died for a lack of a second.

Commissioner Aragon made a motion to table this item until the next meeting. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer.

Hon. Amanda Forrister, Commissioner voted aye.

Hon. Sandra Whitehead, Mayor voted nay.

Hon. Paul Baca, Commissioner voted aye.

Hon. Randall Aragon, Commissioner voted aye.

Motion carried with a 3 to 1 vote.

J. REPORTS:

City Manager Madrid reported the following:

- City Manager Madrid reported the CARES funding that was granted by the state came in two parts. The first part is assistance to local governments due to the COVID event. When they declared the health emergency, this Commission allowed the emergency appropriation of about \$200,000 in the event that it was required for the health emergency. We spent less than \$2,000 on the emergency. It was mainly for masks, gloves, and dividers that we installed in certain buildings. The city government has not had an impact from this. We have done work from home, continued services, and we've modified some procedures on how we deal with the public. We also not cutting off anyone's utilities. The only issue we may have in the future is revenue replacement. That is not an allowable claim cost under any of the CARES funding that is now in place. It may be part of the CARES funding that is coming up, but we did not submit an application for

the funding because we didn't need it. This event has not had an impact on our governmental operations. In our economy we have an older population, and a majority of people are on a fixed income which makes our economy very inelastic meaning that it doesn't fluctuate much. Our gross receipts tax actually had a small spike in it when people started hoarding. We also were helped by all of the individual assistance that was provided by the CARES Act to individuals. The gross receipts have been growing based on active projects that we have. Mainly, in the hospital. That has tapered off, so our gross receipts may go from climbing to flat. It will start growing again when our city projects start going again, and that will be a major boost within the next 18 months.

- In regards to the assistance to our small businesses, he had a discussion with Bruce Swingle from the County, and the State allows you to apply once per entity. We could apply on our own, or we could let the County include us in their application, so that's what we did. Any funding that could go to our local businesses would be eligible through the County. We are grateful that the County included us because the deadline for both of these funding's were around the same time as we had our flood disaster, and we were able to focus that instead.
- He and the Mayor were invited to meet with Congress Woman Xochitl Torres Small and her staff, as well as the State Emergency Management Group. He provided the Commission with the document that was presented to Congress Women Torres-Small. In the event that this may qualify for a Federal Disaster there is a little over 2 million dollars in claim costs, and we may be eligible to receive 75%.

City Commission Reports:

Commissioner Forrister reported the following:

- She's excited to see who is interested in working with them.

Commissioner Aragon reported the following:

- He commended City Manager Madrid on updating them on the CARES Act.
- He asked where we were with the meeting time survey.

City Manager Madrid responded that we should have the final tally by the next meeting.

Mayor Whitehead reported the following:

- She thanked Merry Jo Fahl for her letter. She also thanked Frances Luna for her text message, and she thanked Rolf Hechler for his interest as well. She again asked that those interested in serving in the vacant position please submit their letters of interest to the City Clerk so we will have time to review them by our next meeting.

M. ADJOURNMENT:

Commissioner Forrister moved to adjourn at 10:18 a.m. Commissioner Baca and Mayor Whitehead seconded the motion. Motion carried unanimously.

CITY COMMISSION SEPTEMBER 9, 2020 REGULAR MEETING MINUTES

Passed and Approved this 23rd day of September, 2020.

Sandra Whitehead, Mayor

ATTEST:

Angela A. Torres, CMC, City Clerk



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: September 23, 2020

Agenda Item #: E.3

SUBJECT: Acknowledge Regular Recreation Advisory Board Minutes for August 3, 2020.

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: September 18, 2020

SUBMITTED BY: Angela A. Torres, City Clerk-Treasurer

WHO WILL PRESENT THE ITEM: City Manager Madrid

Summary/Background:

Acknowledge Minutes

Recommendation:

Acknowledge minutes.

Attachments:

Minutes

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): N/A

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. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 9-23-2020

**City of Truth or Consequences
Recreation Advisory Board
Minutes of the regular meeting held August 3, 2020**

The meeting was called to order at 6:00 p.m. by Vice Chair/Secretary Carole Wheeler.

Those in Attendance were:

Carole Wheeler, Vice Chair/Secretary
Christie Conklin, Board Member
Jeni Neeley, Board Member

Also in attendance were O.J. Hechler, Parks & Rec. Dept. Manager, Ryan Lawler, Parks and Rec. Dept. Foreman, and Kyle Blacklock, swimming pool manager.

The Pledge of Allegiance was recited.

The agenda was approved with a motion by Christie Conklin and a second by Jeni Neeley.

The minutes of the regular meeting on July 6, 2020 were approved with a motion by Jeni Neeley and a second by Christie Conklin.

Comments from the public: None present

Board member term expirations. The positions held by Greg D'Amour, Chairman, Carole Wheeler, Vice Chair/Secretary, and Christie Conklin, Board Member are expiring. Since Mr. D'Amour was not present at this meeting, the Board agreed to table this discussion until the next regular Rec Board Meeting in September.

Recreation Department Needs Assessment Update

Swimming Pool Update - Kyle reported that a proposal for architectural planning was recently approved which will lead to comprehensive plans for the facility improvements. This will enable the City to determine a workable plan for future development. There is no definite information regarding if and/or when the pool may reopen.

Dog Park Update - Carole reported that everything is going well for the dogs and their people at the dog park.

Ball Field and Parks Update - O.J. presented an overview of the flood damage to the various city parks. Ralph Edwards Park was under multiple feet of water in places. The contractor was just setting/pouring concrete forms at the time of the storm. The park was pumped out and construction is continuing. The Louis Armijo Sports Park was not only flooded, but Field "A" was also buried under dirt, sand, and muck, as were many of the city's facilities in that area. O.J. realizes the extent of the damage will require much thought and special care in order to save the newly planted turf. Additionally, Ryan Lawler, Parks foreman has put together a plan to clean up and repair the Healing Waters Trail by utilizing volunteers. The group will meet August 11, and again August 13 to continue the restoration, which includes the walking bridge.

Other Discussion

Board Member Christie Conklin shared positive feedback with the board regarding upgrades at Rotary Park, which has become very popular since Ralph Edwards Park is closed.

Board Member Jeni Neeley reported that the Sierra County Fair Board was moving forward with plans to hold an annual Fair this fall. No specifics have been set as far as exhibits, other than the livestock shows will be held.

There being no other business the meeting was adjourned at 6:45 with a motion by Christie Conklin and seconded by Jeni Neeley.

NEXT RECREATION BOARD MEETING
Recreation Department Building
2800 S. Broadway 6:00 p.m.
September 14, 2020



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: September 23, 2020

Agenda Item #: F.1

SUBJECT: Resolution No. 14 20/21 Authorizing the Execution and Delivery of a Water Project Fund Loan/Grant Agreement between the New Mexico Finance Authority ("Finance Authority") and the City of Truth or Consequences (The "Borrower/Grantee")

DEPARTMENT: Community Development

DATE SUBMITTED: September 17, 2020

SUBMITTED BY: Traci Burnette

WHO WILL PRESENT THE ITEM: City Manager Madrid

Summary/Background:

NMFA Water Trust Board issued an award letter on June 1, 2020 approving funding in the amount of \$641,146.00 for Booster Station Improvements. Approved funding structure consists of a 40% Loan in the amount of \$256,458.00 and a 60% grant in the amount of \$384,688.00 and cash match in the amount of \$71,000.00. Commission approved Resolution 38 19/20 on June 10th, 2020 accepting the award.

Recommendation:

Approve Resolution No. 14 20/21 and execute Loan/Grant Agreement Documents

Attachments:

- Resolution 14 20/21
- NMFA Loan/Grant Agreement and Supporting Documents

Fiscal Impact (Finance): Choose an item.

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

[Click here to enter text.](#)

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. 14 20/21 Ordinance No. [Click here to enter text.](#)

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 9-23-20

\$641,146

**WATER PROJECT FUND
LOAN/GRANT AGREEMENT**

dated

October 30, 2020

by and between the

**NEW MEXICO FINANCE AUTHORITY
as Lender/Grantor,**

and

**CITY OF TRUTH OR CONSEQUENCES,
SIERRACOUNTY, NEW MEXICO,
as Borrower/Grantee.**

**WATER PROJECT FUND
LOAN/GRANT AGREEMENT**

THIS LOAN/GRANT AGREEMENT (the "Agreement") dated October 30, 2020, is entered into by and between the **NEW MEXICO FINANCE AUTHORITY** (the "Finance Authority" or "Lender/Grantor"), and the **CITY OF TRUTH OR CONSEQUENCES** in **SIERRA COUNTY, NEW MEXICO** (the "Borrower/Grantee").

WITNESSETH:

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly NMSA 1978, §§ 6-21-1 through 6-21-31, as amended (the "Finance Authority Act"); and

WHEREAS, the Finance Authority Act provides that the Finance Authority may make loans and grants from the Water Project Fund to qualifying entities for Qualifying Projects; and

WHEREAS, pursuant to the Act, the Water Trust Board has established the Board Rules governing the terms and conditions of loans and grants made from the Water Project Fund, as set out in Review and Eligibility of Proposed Water Projects, New Mexico Water Trust Board, 19.25.10 NMAC, pursuant to the Board Rules for Qualifying Projects; and

WHEREAS, pursuant to the Board Rules, except as provided in the Policies, a qualifying entity is expected to receive some portion of its funding as a loan in order to maximize the potential for the return of funds to the Water Project Fund, thereby increasing the limited financial resources expected to be available in the Water Project Fund; and

WHEREAS, the Borrower/Grantee is a legally and regularly created, established, duly organized and existing incorporated municipality under and pursuant to the laws of the State and more specifically, the Municipal Code, NMSA 1978, §§ 3-1-1 through 3-66-11, as amended, is a qualifying entity under the Water Project Finance Act and is qualified for financial assistance as determined by the Finance Authority and approved by the Water Trust Board pursuant to the Board Rules and the Policies and the Act; and

WHEREAS, the Borrower/Grantee has determined that it is in the best interests of the Borrower/Grantee and the constituent public it serves that the Borrower/Grantee enter into this Agreement with the Lender/Grantor to borrow two hundred fifty-six thousand four hundred fifty-eight dollars (\$256,458) from the Lender/Grantor and to accept a grant in the amount of three hundred eighty-four thousand six hundred eighty-eight dollars (\$384,688) from the Lender/Grantor to finance the costs of the Project, this Project being more particularly described in the Term Sheet; and

WHEREAS, the Borrower/Grantee submitted an Application dated October 3, 2019 for the Project; and

WHEREAS, pursuant to the Board Rules the Water Trust Board recommended the Project for funding as a Qualifying Project to the Legislature; and

WHEREAS, 2020 N.M. Laws Ch. 68, being Senate Bill 19 of the 2020 Regular New Mexico Legislative Session, authorized the funding of the Project from the Water Project Fund; and

WHEREAS, the Water Trust Board has recommended that the Finance Authority enter into and administer this Agreement in order to finance the Project; and

WHEREAS, the Finance Authority approved on May 28, 2020 that the Borrower/Grantee receive financial assistance in the form of the Loan/Grant; and

WHEREAS, the Borrower/Grantee is willing to pledge the Pledged Revenues to the payment of the Loan and Administrative Fee, with a lien on the Pledged Revenues subordinate to all other liens thereon present and future, except that the lien on the Pledged Revenues of any future loans from the Lender/Grantor to the Borrower/Grantee pursuant to the Water Project Finance Act or the Colonias Infrastructure Act, secured by the Pledged Revenues shall be on a parity with this Agreement; and

WHEREAS, the plans and specifications for the Project will be approved by the Finance Authority (or by the New Mexico Environment Department or other appropriate agency or entity on behalf of the Finance Authority, pursuant to an agreement between such agency or entity and the Finance Authority), prior to the commencement of construction, and the plans and specifications for the Project incorporate available technologies and operational design for water use efficiency; and

WHEREAS, the execution and performance of this Agreement have been authorized, approved and directed by all necessary and appropriate action of the Water Trust Board and the Finance Authority, and their respective officers.

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

ARTICLE I DEFINITIONS

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

“ACH Authorization” means the authorization for direct payment to the Finance Authority by ACH made by the Borrower/Grantee on the form required by the bank or other entity at which the account is held, from which the Pledged Revenues will be paid.

“Act” means the general laws of the State, particularly the Water Project Finance Act, NMSA 1978, §§ 72-4A-1 through 72-4A-11, and enactments of the Governing Body relating to this Agreement, including the Resolution, all as amended and supplemented.

“Additional Funding Amount” means the amount to be provided by the Borrower/Grantee which includes the total value of the Soft Match or Hard Match (each as defined in Section 4.2 of the Policies) which, in combination with the Loan/Grant Amount and other moneys available to the Borrower/Grantee, is sufficient to complete the Project or to provide matching funds needed to complete the Project. The Additional Funding Amount is seventy-one thousand dollars (\$71,000).

“Administrative Fee” or “Administrative Fee Component” means an amount equal to one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee pursuant to Section 5.1(a)(iii) of this Agreement.

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

“Application” means the New Mexico Water Trust Board Application for Financial Assistance dated October 3, 2019 of the Borrower/Grantee and pursuant to which the Borrower/Grantee requested funding for the Project.

“Authorized Officers” means, with respect to the Borrower/Grantee, any one or more of the Mayor, Mayor Pro Tem, City Manager and City Clerk/Treasurer thereof; with respect to the Finance Authority, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

“Board Rules” means Review and Eligibility of Proposed Water Projects, New Mexico Water Trust Board, 19.25.10 NMAC.

“Closing Date” means the date of execution and delivery of this Agreement by the Borrower/Grantee and the Finance Authority.

“Colonias Infrastructure Act” means NMSA 1978, §§ 6-30-1 through 6-30-8, as amended.

“Conditions” means the conditions to be satisfied prior to the submission of a request for payment or the disbursement of the Loan/Grant Amount, or any portion thereof, from the Water Project Fund, or which otherwise apply to the performance of this Agreement, including those set forth in the Term Sheet.

“Department of Finance and Administration” or “DFA” means the department of finance, and administration of the State.

“Eligible Fiscal Agent Fees” means fees and costs incurred by a fiscal agent for the administration of Project funds, including the collection and reporting of Project information as required by this Agreement, in an amount not exceeding five (5) percent of the Loan/Grant Amount. The total amount of the combined Eligible Fiscal Agent Fees and Eligible Legal Fees may not exceed ten (10) percent of the total Water Project Fund Financial Assistance.

“Eligible Items” means eligible Project costs for which grants and loans may be made pursuant to NMSA 1978, § 72-4A-7(C), as amended, of the Act, the Board Rules and applicable Policies, and includes, without limitation, Eligible Legal Costs and Eligible Fiscal Agent Fees.

“Eligible Legal Costs” means legal fees and costs for services rendered by legal counsel on behalf of the Borrower/Grantee for transaction of the Project, in an amount not exceeding ten (10) percent of the Loan/Grant Amount, but does not include adjudication services. The total amount of the combined Eligible Fiscal Agent Fees and Eligible Legal Fees may not exceed ten (10) percent of the total Loan/Grant Amount.

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

“Final Debt Service Schedule” means the schedule of Loan Payments due on this Agreement following the Final Requisition, as determined on the basis of the Loan Amount.

“Final Requisition” means the final requisition of moneys to be submitted by the Borrower/Grantee, which shall be submitted by the Borrower/Grantee on or before the expiration of the Interim Period as provided in Section 4.1(b) of this Agreement.

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

“Force Majeure” means acts of God and natural disasters; strikes or labor disputes; war, civil strife or other violence; an order of any kind of the Government of the United States or of the State or civil or military authority or any court of competent jurisdiction; or any other act or condition that was beyond the reasonable control of, without fault or negligence of, or not reasonably foreseeable by the party claiming the Force Majeure event; except for (i) general economic conditions; or (ii) an inability of a party claiming the Force Majeure event to pay any debts when due.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Borrower/Grantee, consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board, or other principle-setting

body acceptable to the Lender/Grantor, establishing accounting principles applicable to the Borrower/Grantee.

“Governing Body” means the duly organized City Commission of the Borrower/Grantee, or any successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to this Agreement for the purpose of funding the Project and shall not equal more than three hundred eighty-four thousand six hundred eighty-eight dollars (\$384,688).

“Gross Revenues” means all income and revenues directly or indirectly derived by the Borrower/Grantee from the operation and use of the System, or any part of the System, for any particular Fiscal Year period to which the term is applicable, and includes, without limitation, all revenues received by the Borrower/Grantee, or any municipal corporation or agency succeeding to the rights of the Borrower/Grantee, from the System and from the sale and use of water and sanitary sewer or other services or facilities, or any other service, commodity or facility or any combination thereof furnished by the System. In the event there is a conflicting description of Gross Revenues in any Ordinance or Resolution of the Borrower/Grantee, the language of such Ordinance or Resolution shall control.

Gross Revenues do not include:

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

(b) Gross receipts taxes, other taxes and/or fees collected by the Borrower/Grantee and remitted to other governmental agencies; and

(c) Condemnation proceeds or the proceeds of any insurance policy, except any insurance proceeds derived in respect of loss of use or business interruption.

“Hardship Waiver” means a determination by the finance Authority pursuant to Section 5.1(a)(iii) herein that the annual principal payment by the Borrower/Grantee should be forgiven because such payment would cause undue hardship for the Borrower/Grantee or the public it serves.

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

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

“Interim Debt Service Schedule” means the anticipated schedule of Loan Payments due on this Agreement following the Final Requisition, assuming disbursement of the entire Loan

Amount within twenty-four (24) months of the Closing Date. The Interim Debt Service Schedule is attached hereto as Exhibit "B".

"Interim Period" means the period no greater than twenty four (24) months, unless a longer period is approved by the Finance Authority as provided in Section 5.3 of this Agreement, beginning on the Closing Date, during which the Finance Authority will disburse moneys to the Borrower/Grantee to pay costs of the Project.

"Lender/Grantor" means the Finance Authority.

"Loan" or "Loan Amount" means the amount provided to the Borrower/Grantee as a loan pursuant to this Agreement for the purpose of funding the Project and shall not equal more than two hundred fifty-six thousand four hundred fifty-eight dollars (\$256,458).

"Loan/Grant" or "Loan/Grant Amount" means the combined amount partially provided to the Borrower/Grantee as the Grant Amount and partially borrowed by the Borrower/Grantee as the Loan Amount pursuant to this Agreement for the purpose of funding the Project and shall not equal more than six hundred forty-one thousand one hundred forty-six dollars (\$641,146).

"Loan Payments" means, collectively, the Principal Component and the Interest Component, if any, to be paid by the Borrower/Grantee as payment of this Agreement as shown on Exhibit "B" hereto.

"Net System Revenues" means the Gross Revenues of the System minus Operation and Maintenance Expenses, indirect charges, amounts expended for capital replacements and repairs, required set asides for debt and replacement requirements, and any other payments from the gross revenues reasonably required for operation of the water, wastewater and electric utility system.

"NMAC" means the New Mexico Administrative Code.

"NMSA 1978" means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

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

(a) Legal and overhead expenses of the Borrower/Grantee directly related and reasonably allocable to the administration of the System;

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

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

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

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

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

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

(h) Any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, franchise fees payable or other transfers to the Borrower/Grantee's general fund, liabilities incurred by the Borrower/Grantee as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance Expenses payable from moneys other than Gross Revenues. In the event there is a conflicting description of Operation and Maintenance Expenses in any Ordinance or Resolution of the Borrower/Grantee, the language of such Ordinance or Resolution shall control.

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

"Pledged Revenues" means the Net System Revenues of the Borrower/Grantee pledged to the payment of the Loan Amount and Administrative Fees pursuant to the Resolution and this Agreement and described in the Term Sheet.

"Policies" means the Water Trust Board Water Project Fund Project Management Policies approved by the Water Trust Board and the Finance Authority, as amended and supplemented from time to time.

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

"Project" means the project(s) described on the Term Sheet.

"Project Account" means the book account established by the Finance Authority in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant Amount

by the Borrower/Grantee to pay for the costs of the Project, as shown in the Term Sheet, which account shall be kept separate and apart from all other accounts of the Finance Authority.

“Qualifying Water Project” means a water project for (i) storage, conveyance or delivery of water to end-users; (ii) implementation of the federal Endangered Species Act of 1973 collaborative programs; (iii) restoration and management of watersheds; (iv) flood prevention or (v) water conservation or recycling, treatment or reuse of water as provided by law; and which has been approved by the state legislature pursuant to NMSA 1978, § 72-4A-9(B), as amended.

“Resolution” means the Borrower/Grantee Resolution No. 14 20/21 adopted by the Governing Body on September 23, 2020 authorizing the acceptance of the Loan/Grant, approving this Agreement and pledging the Pledged Revenues to the payment of the Loan Payments as shown on the Term Sheet.

“Senior Obligations” means as of May 28, 2020 the City of Truth or Consequences Water System NMFA DW loan 0442-DW maturing in 2021 in the outstanding principal amount of \$240,557; NMFA PPRF loan 2737-PP, maturing in 2033 in the outstanding principal amount of \$1,276,590; NMFA PPRF loan 2613-PP, maturing in 2032 in the outstanding principal amount of \$107,731; NMFA PPRF loan 4967-PP maturing in 2024 in the outstanding principal amount of \$519,269 and any other obligations hereafter issued with a superior lien on the Pledged Revenues as defined in the Term Sheet, and meeting the requirements of the Agreement applicable to the issuance of Senior Obligations.

“State” means the State of New Mexico.

“State Board of Finance” means the State board of finance created pursuant to NMSA 1978, §§ 6-1-1 through 6-1-13, as amended.

“System” means the joint water, wastewater and electric utility system operated pursuant Truth or Consequences Code of Ordinances, §§14-1 to 14-115, of the Borrower/Grantee, owned and operated by the Borrower/Grantee, and of which the Project, when completed, will form part. The System consists of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the Borrower/Grantee through purchase, condemnation, construction or otherwise, including all expansions, extensions, enlargements and improvements of or to the joint utility system, and used in connection therewith or relating thereto, and any other related activity or enterprise of the Borrower/Grantee designated by the Governing Body as part of the joint utility system, whether situated within or without the limits of the Borrower/Grantee.

“Term Sheet” means Exhibit “A” attached to this Agreement.

“Useful Life” means the structural and material design life of the Project including planning and design features, which shall not be less than twenty (20) years as required by the Act and the Board Rules.

“Water Project Fund” means the fund of the same name created pursuant to the Act and held and administered by the Finance Authority.

“Water Trust Board” or “WTB” means the water trust board created and established pursuant to the Act.

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Borrower/Grantee: The Borrower/Grantee represents, covenants and warrants for the benefit of the Finance Authority as follows:

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

(b) Authorization of Agreement. The Borrower/Grantee is a qualifying entity as defined in the Act and the Board Rules. Pursuant to the laws of the State and in particular, the laws governing its creation and existence, as amended and supplemented from time to time, the Borrower/Grantee is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Borrower/Grantee has duly authorized and approved its acceptance of the Loan/Grant and the execution and delivery of this Agreement and the other documents related to the transaction described in this Agreement, and this Agreement and the other documents related to the transaction to which the Borrower/Grantee is a party constitute legal, valid and binding special obligations of the Borrower/Grantee enforceable against the Borrower/Grantee in accordance with their respective terms.

(c) Nature and Use of Agreement Proceeds. The Borrower/Grantee acknowledges that the distribution of the Loan/Grant Amount shall be deemed to be a distribution to the Borrower/Grantee of proceeds representing the Loan Amount and the Grant Amount on a *pro rata* basis from the maximum Loan Amount and Grant Amount. The Borrower/Grantee shall apply the proceeds of the Loan/Grant solely to Eligible Items that will facilitate the completion of the Project, and shall not use the Loan/Grant proceeds for any other purpose. The Loan/Grant Amount, together with the Additional Funding Amount and other moneys reasonably expected to be available to the Borrower/Grantee, is sufficient to complete the Project in its entirety.

(d) Payment of Loan Amount. The Borrower/Grantee shall promptly pay the Loan Amount and Administrative Fee as provided in this Agreement, except when a Hardship

Waiver is obtained pursuant to Section 5(a)(iii) of this Agreement. The Loan and Administrative Fee shall be payable solely from Pledged Revenues and nothing in this Agreement shall be construed as obligating the Borrower/Grantee to make the Loan Payments and to pay the Administrative Fee from any general or other fund of the Borrower/Grantee other than the Pledged Revenues; however, nothing in this Agreement shall be construed as prohibiting the Borrower/Grantee, in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(e) Scope of Project; Completion of Project; Compliance with Laws. The Project is for storage, conveyance or delivery of water to end users. The Loan/Grant Amount will be used only for Eligible Items necessary to complete the Project. In particular, the Project will consist of the design and construction of two booster station improvements to include the replacement of a critical distribution line segment in order to adequately provide a reliable source of water to community residents and critical infrastructure including hospitals and schools, and shall include such other related work and revisions necessary to complete the Project. The Project is more particularly described in the Term Sheet. The Project will be completed with all practical dispatch and will be completed, operated and maintained so as to comply with all applicable federal, state and local laws, ordinances, resolutions and regulations and all current and future orders of all courts having jurisdiction over the Borrower/Grantee relating to the acquisition, operation, maintenance and completion of the Project and to the use of the Loan/Grant proceeds.

(f) Necessity of Project. The completion and operation of the Project under the terms and Conditions provided in this Agreement are necessary, convenient, and in furtherance of the governmental purposes of the Borrower/Grantee and are in the best interest of the Borrower/Grantee and the public it serves.

(g) Lien. The Loan Payments constitute an irrevocable lien on the distribution on the Pledged Revenues, the priority of which is consistent with that shown on the Term Sheet.

(h) Agreement Term Not Less than Useful Life. The Agreement Term is not less than the Useful Life of the Project, which is not less than twenty (20) years, as required by NMSA 1978, § 72-4A-7, as amended, of the Act.

(i) Amount of Agreement. The sum of the Grant Amount, the Loan Amount, and the Additional Funding Amount (and as set forth on the Term Sheet) does not exceed the cost of the Project.

(j) No Breach or Default Caused by Agreement. Neither the execution and delivery of this Agreement and the other documents related to the transaction, nor the fulfillment of or compliance with the terms and conditions in this Agreement and the other documents related to the transaction, nor the consummation of the transactions contemplated herein and therein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Borrower/Grantee is a party or by which the Borrower/Grantee is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Borrower/Grantee or its properties are subject, or constitutes a default under any of the foregoing.

(k) Irrevocable Enactments. While this Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Agreement, including the Resolution shall be irrevocable until the Project has been fully acquired and completed, and the Loan Amount, including all principal and interest has been repaid, or provision made for payment thereof, and shall not be subject to amendment or modification in any manner which would result in any use of the proceeds of this Agreement in a manner not permitted or contemplated by the terms hereof. The Borrower/Grantee shall not impair the rights of the Finance Authority or of any holders of bonds or other obligations payable from the Pledged Revenues while this Agreement is outstanding.

(l) No Litigation. To the knowledge of the Borrower/Grantee, no litigation or proceeding is pending or threatened against the Borrower/Grantee or any other person affecting the right of the Borrower/Grantee to execute or deliver this Agreement and the other documents related to the transaction or to comply with its obligations under this Agreement and the other documents related to the transaction. Neither the execution and delivery of this Agreement and the other documents related to the transaction by the Borrower/Grantee nor compliance by the Borrower/Grantee with the obligations under this Agreement and the other documents related to the transaction, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(m) No Event of Default. No event has occurred and no condition exists which, with the giving of notice or the passage of time or upon the execution and delivery of this Agreement and the other documents related to the transaction, would constitute an Event of Default on the part of the Borrower/Grantee under this Agreement and the other documents related to the transaction.

(n) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Payments, as and when due, is not needed or budgeted to pay current or anticipated Operation and Maintenance Expenses or other expenses of the Borrower/Grantee.

(o) Expected Coverage Ratio. The Pledged Revenues are reasonably expected to equal or exceed from the Fiscal Year in which the Closing Date occurs and, on an ongoing basis during each Fiscal year of the Agreement Term—one hundred percent (100%) of the maximum annual principal and interest due on all outstanding obligations of the Borrower/Grantee payable from the Pledged Revenues.

(p) Right to Inspect. The Finance Authority shall have the right to inspect at all reasonable times all records, accounts and data relating to the System and to inspect the System and all properties comprising the System, and the Borrower/Grantee shall supply such records, accounts, and data as are requested by the Finance Authority, within thirty (30) days of receipt of such request, written or oral.

(q) Financial Capability; Budgeting of Pledged Revenues. The Borrower/Grantee meets and will meet during the Agreement Term the requirements of financial capability set by the Water Trust Board and the Finance Authority. The Pledged Revenues will be sufficient to make the Loan Payments, as and when due. The Borrower/Grantee will

adequately budget for the Loan Payments and other amounts payable by the Borrower/Grantee under this Agreement.

(r) Rate Covenant. The Borrower/Grantee covenants that it will at all times fix, charge and collect such rates and charges as shall be required in order that in each Fiscal Year in which the Loan is outstanding the Gross Revenues shall at least equal the Operation and Maintenance Expenses of the System for the Fiscal year, plus one hundred percent (100%) of the maximum annual principal and interest payments due on all outstanding obligations payable from the Pledged Revenues.

(s) Borrower/Grantee's Existence. The Borrower/Grantee will maintain its legal identity and existence so long as this Agreement remains outstanding unless another political subdivision, State agency, or other entity by operation of law succeeds to the liabilities, rights and duties of the Borrower/Grantee under this Agreement without adversely affecting to any substantial degree the privileges and rights of the Lender/Grantor.

(t) Use of Project; Continuing Covenant. During the Agreement Term, the Borrower/Grantee will at all times use the Project for the benefit of the Borrower/Grantee and the public it serves. The Borrower/Grantee shall not sell, lease, mortgage, pledge, relocate or otherwise dispose of or transfer the Project or System, or any part of the Project or System so long as this Agreement is outstanding; provided, however, that if the Project is a joint project of the Borrower/Grantee and other qualifying entities (as defined by the Act), the Borrower/Grantee and the other qualifying entities may, with the express written approval of the Finance Authority and not otherwise, enter into an agreement allocating ownership and operational and maintenance responsibilities for the Project during the term of the Agreement. Any such agreement shall provide that the Lender/Grantor, or either of them, shall have the power to enforce the terms of this Agreement, without qualification, as to each and every qualifying entity (as defined by the Act) other than the Borrower/Grantee, owning or operating any portion of the Project during the term of the Agreement. The Borrower/Grantee will operate and maintain the Project, so that it will function properly over its Useful Life.

(u) Title and Rights of Way. As required by NMSA 1978, § 72-4A-7(A)(3) of the Act, as amended, and the Board Rules, the Borrower/Grantee shall provide written assurance signed by an attorney or provide a title insurance policy ensuring that the Borrower/Grantee has proper title to, easements, rights of way or use permits on the real property upon or through which the Project is being constructed, located, completed or extended, and if any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, such other qualifying entity has title to such real property, and the Borrower/Grantee shall provide written assurance signed by an attorney or provide a title insurance policy ensuring that such other qualifying entity has proper title to such real property.

(v) Additional Funding Amount. Together with the Loan/Grant Amount and other amounts available to the Borrower/Grantee, the Additional Funding Amount is now available to the Borrower/Grantee, and in combination with the Loan/Grant Amount, will be sufficient to complete the Project. If any other additional expenses are incurred, the Borrower/Grantee shall be responsible for payment of such expenses.

(w) Audit Requirement. During the Agreement Term the Borrower/Grantee shall comply with the requirements of the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14, as amended. Upon request by the Finance Authority, the Borrower/Grantee shall provide the Finance Authority a copy of any review or audit, report of agreed upon procedures, or any other document prepared pursuant to or required by the State Audit Act.

(x) Conservation Plan. The Borrower/Grantee has submitted a water conservation plan or one is on file with the State engineer, as required by NMSA 1978, § 72-4A-7, as amended.

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

(z) Records. So long as the Agreement remains outstanding, proper books of record and account will be kept by the Borrower/Grantee in accordance with Generally Accepted Accounting Principles, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System. Such books shall include, but not necessarily be limited to, monthly records showing: (i) the number of customers for the System and the sanitary sewer and electric facilities; (ii) the revenues separately received from charges by classes of customers, including but not necessarily limited to classification by facilities; and (iii) a detailed statement of the expenses of the System.

(aa) Billing Procedure. Bills for water, sanitary sewer and electric utility services or facilities, or any combination, furnished by or through the System, shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by the applicable ordinance of the Borrower/Grantee. If permitted by law, if a bill is not paid within the period of time required by such ordinance or regulation, water, sewer, and electric utility services shall be discontinued as required by such ordinance or regulation, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection. Water, sewer, and electric utility services may be billed jointly with each other, provided that each such joint bill shall show separately the water and sanitary sewer utility charges.

(bb) Competent Management. The Borrower/Grantee shall employ or contract for experienced and competent personnel to manage the System.

(cc) Readiness Requirements. The Borrower/Grantee has met the requirements of Executive Order 2013-006 and it has met or will meet prior to the first disbursement of any portion of the Loan/Grant Amount, the Conditions and the readiness to proceed requirements established for the Loan/Grant by the Finance Authority and the Water Trust Board; and

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

Section 2.2 Representations and Warranties of the Finance Authority. The Finance Authority represents as follows:

(a) Authorization of Agreement. The Finance Authority is a public body politic and corporate separate and apart from the State, constituting a governmental instrumentality, and has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Agreement and, by proper action, has duly authorized the execution and delivery of this Agreement.

(b) Legal, Valid and Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the Finance Authority enforceable in accordance with its terms.

ARTICLE III AGREEMENT TERM

The Agreement Term shall commence on the Closing Date and shall terminate at the end of the Useful Life of the Project, which in no event shall be less than twenty (20) years, as required by NMSA 1978, § 72-4A-7, as amended, of the Act.

ARTICLE IV LOAN/GRANT AGREEMENT CONDITIONS

Section 4.1 Conditions Precedent to Closing of Loan/Grant. Prior to the Closing Date, the following Conditions and readiness to proceed items shall be satisfied:

(a) The Finance Authority, on behalf of the Water Trust Board, shall have determined that the Borrower/Grantee has met the Conditions and readiness to proceed requirements established for the Loan/Grant by the Finance Authority and the Water Trust Board including any Conditions set out in the Term Sheet; and

(b) The Borrower/Grantee shall have provided written assurance addressed to the Finance Authority and signed by an attorney (or shall have provided a title insurance policy) that the Borrower/Grantee has proper title to or easements, rights of way, or permits on the real property upon or through which the Project is being constructed, located, completed or extended; and

(c) If any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee shall have provided written assurance addressed to the Finance Authority and signed by an attorney (or shall have provided a title insurance policy) that such other qualifying entity has proper title to such real property; and

(d) Prior to the disbursement of any portion of the Loan/Grant Amount for purposes of construction of the Project, the plans and specifications funded with the proceeds of this Agreement will be approved on behalf of the Finance Authority as required by NMSA 1978, § 72-4A-7(B), as amended, by the New Mexico Environment Department and the Office of the State of Engineer, and the Borrower/Grantee shall have provided written evidence of such approval to the Finance Authority; and

(e) Except as otherwise expressly provided in the Conditions, the Borrower/Grantee shall have certified to the Lender/Grantor that the Additional Funding Amount is available for the Project, and, in addition, shall have provided additional evidence reasonably acceptable to the Lender/Grantor of the availability of the Additional Funding Amount; and

(f) The Borrower/Grantee shall be in compliance with the provisions of this Agreement.

(g) Notwithstanding anything in this Agreement to the contrary, the Finance Authority shall not be obligated to execute the Agreement and may not make the Loan/Grant until the Borrower/Grantee has provided to the Finance Authority the documents listed on Exhibit "F" attached hereto, all of which must be in form and content acceptable to the Finance Authority.

Section 4.2 Determination of Eligibility Is Condition Precedent to Disbursement. No request for payment shall be made, nor shall any disbursement be made from the Water Project Fund, for any requisition of any portion of the Loan/Grant Amount, except upon a determination by the Finance Authority in its sole and absolute discretion that such disbursement is for payment of Eligible Items, and that the request for payment or disbursement does not exceed any limitation upon the amount payable for any Eligible Item pursuant to the Act, the Board Rules, and the Policies governing the Water Project Fund. The Finance Authority, as a condition precedent to submitting any request for payment to the State Board of Finance or making any requested disbursement from the Water Project Fund, may require submittal of such documentation as the Finance Authority deems necessary, in its sole and absolute discretion, for a determination whether any requested disbursement is for payment of Eligible Items and is fully consistent with the Act, the Board Rules, and the Policies, as applicable.

ARTICLE V

LOAN TO THE BORROWER/GRANTEE; GRANT TO THE BORROWER/GRANTEE; APPLICATION OF MONEYS

Section 5.1 Loan and Grant to the Borrower/Grantee.

(a) Loan to the Borrower/Grantee. The Lender/Grantor hereby lends to the Borrower/Grantee and the Borrower/Grantee hereby borrows from and agrees to pay to the order of the Lender/Grantor, without interest, an amount equal to the Loan Amount, with the principal amount of the Loan Amount being payable as provided by Article VI and Exhibit "B" of this Agreement.

(i) Subordinate Nature of Loan Amount and Administrative Fee Obligation. The obligation of the Borrower/Grantee to make the Loan Payments and to pay the Administrative Fee shall be subordinate to all other indebtedness secured by the Pledged Revenues existing on the Closing Date and, further, that may in the future be secured by the Pledged Revenues; except, however, that the obligation of the Borrower/Grantee to make the Loan Payments and to pay the Administrative Fee shall be on parity with any other obligation, present or future, of the Borrower/Grantee to repay a loan provided by the Lender/Grantor pursuant to the Act or the Colonias Infrastructure Act.

(ii) Administrative Fee. The Borrower/Grantee shall, on an annual basis beginning on the first payment date following the completion of the Project or exhaustion of all Loan/Grant Amounts as set out in Section 5.3 hereof, pay to the Lender/Grantor the Administrative Fee, taking into account both payments made by the Borrower/Grantee and Hardship Waivers granted to the Borrower/Grantee as provided by this Agreement. Any such Administrative Fee payment shall be due irrespective of whether or not a Hardship Waiver is granted to the Borrower/Grantee for the principal payment otherwise due on June 1 of the applicable year or any other year.

(iii) Hardship Waivers of Payment. Each year while any portion of the Loan Amount remains outstanding, no later than April 1 of each such year, the Borrower/Grantee may apply in writing to the Finance Authority for a determination of whether the annual principal payment on the Loan Amount otherwise due on the upcoming June 1 of such year should be forgiven because such payment would cause undue hardship for the Borrower/Grantee or the public it serves. The Borrower/Grantee shall submit such application to the Finance Authority for determination with sufficient documentation of the existence of such undue hardship as is reasonably required by the Finance Authority to make a determination, and the Borrower/Grantee shall promptly respond to additional requests for information from the Finance Authority. Such application for Hardship Waiver shall be executed by the Authorized Officers of the Borrower/Grantee. An “undue hardship” exists if the Finance Authority determines that the Borrower/Grantee is facing unforeseen events or an emergency that has caused the Borrower/Grantee to be unable to pay on a timely basis the annual principal payment on the Loan Amount. The Finance Authority may consult the Department of Finance and Administration in determining whether to grant the Hardship Waiver. The Finance Authority shall make a determination no later than May 15 of the applicable year, and the Finance Authority shall promptly communicate to the Borrower/Grantee in writing the results of its determination. Upon receipt of written notice of the determination, either the principal payment otherwise due on June 1 of such year shall be forgiven (in the event of a determination of undue hardship) or the principal payment shall remain outstanding and due and payable on June 1 (in the event no undue hardship is determined to exist).

(b) Grant to the Borrower/Grantee. The Lender/Grantor hereby grants to the Borrower/Grantee and the Borrower/Grantee hereby accepts from the Lender/Grantor an amount equal to the Grant Amount.

(c) Project Account. The Finance Authority shall establish and maintain the Project Account as a book account only, on behalf of the Borrower/Grantee, which account shall be kept separate and apart from all other accounts of the Finance Authority.

(d) Constitutional and Statutory Debt Limitations. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Water Trust Board, the Finance Authority, the State or the Borrower/Grantee within the meaning of any constitutional or statutory debt limitation.

Section 5.2 Application of Loan/Grant Amount. Following the determination by the Finance Authority in its sole and absolute discretion that the Conditions to the disbursement of the Loan/Grant Amount have been satisfied, the Finance Authority shall make an entry in its

accounts, and in particular in the Project Account, reflecting the proceeds of the Loan/Grant Amount made available for disbursement from the Water Project Fund to the Borrower/Grantee at its request, and as needed by it to acquire and complete the Project, as provided in Section 7.2 of this Agreement.

Section 5.3 Final Requisition. The Final Requisition shall be submitted by the Borrower/Grantee within the Interim Period. The Interim Period may be extended only as approved in writing by an Authorized Officer of the Finance Authority, based on the Borrower/Grantee's demonstration, to the reasonable satisfaction of the Authorized Officer of the Finance Authority, that unanticipated circumstances beyond the control of the Borrower/Grantee resulted in delaying the acquisition and completion of the Project, and submission of the Borrower/Grantee's Final Requisition.

Section 5.4 Investment of Monies. Money in the Water Project Fund, representing proceeds of this Agreement, held and administered by the Finance Authority, may be invested by the Finance Authority for the credit of the Water Project Fund.

ARTICLE VI LOAN PAYMENTS BY THE BORROWER/GRANTEE

Section 6.1 Loan to the Borrower/Grantee; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Borrower/Grantee and the Borrower/Grantee hereby borrows from the Finance Authority an amount not to exceed the Loan Amount. The Borrower/Grantee promises to pay, but solely from the sources pledged herein, the Loan Payments and the Administrative Fees and other amounts owed by the Borrower/Grantee as herein provided. Subject to any outstanding Parity Obligations and Senior Obligations, the Borrower/Grantee does hereby grant a lien on and a security interest in and does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Borrower/Grantee in and to (i) the Pledged Revenues to the extent required to pay the Loan Payments, and to pay the Administrative Fees and other amounts owed by the Borrower/Grantee as herein provided, subject to and subordinate to all other pledges of the Pledged Revenues existing on the Closing Date and, further, that may exist in the future (except only that the pledge of the Pledged Revenues herein shall be on a parity with any other pledge of the Pledged Revenues by the Borrower/Grantee to repay any obligations issued by the Lender/Grantor pursuant to the Act or the Colonias Infrastructure Act); (ii) the Loan/Grant Amount including the Project Account; and (iii) all other rights hereinafter granted, for the securing of the Borrower/Grantee's obligations under this Agreement, including payment of the Loan Payments, Administrative Fees and other amounts owed by the Borrower/Grantee as herein provided, however, that if the Borrower/Grantee, its successors or assigns, shall pay, or cause to be paid, all Loan Payments and Administrative Fees at the time and in the manner contemplated by this Agreement, or shall provide as permitted by Section 6.5 of this Agreement for the payment thereof, and shall pay all other amounts due or to become due under this Agreement in accordance with its terms and provisions then, upon such final payment, this Agreement and the rights created thereby shall terminate; otherwise, this Agreement shall remain in full force and effect.

The schedule of Loan Payments, assuming the disbursement of the entire Loan/Grant Amount within twenty-four (24) months after the Closing Date, identified as the Interim Debt Service Schedule, is attached to this Agreement as Exhibit "B". Within thirty (30) days after the Final Requisition is made, the Finance Authority shall provide a Final Debt Service Schedule, reflecting the amount of the Loan/Grant Amount actually disbursed to the Governmental Unit pursuant to this Agreement. Such Final Debt Service Schedule shall supersede the schedule attached hereto as Exhibit "B". The Finance Authority shall additionally calculate the amount of the Administrative Fee that has accumulated during that twenty-four (24) month period from the Closing Date, and shall include such amount in the first Loan Payment due from the Governmental Unit on the Final Debt Service Schedule.

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

Section 6.2 Deposit of Payments of Loan Amount to Water Project Fund. All Loan Payments made by the Borrower/Grantee to the Finance Authority to repay the Loan Amount and interest thereon, if any, shall be deposited into the Water Project Fund.

Section 6.3 Manner of Payment. The Loan Amount and Administrative Fee shall be payable by the Borrower/Grantee to the Lender/Grantor in annual installments on June 1 beginning after expiration of the Interim Period and continuing through the expiration of the last Loan Payment due as outlined in the Final Debt Service Schedule. All payments of the Borrower/Grantee hereunder shall be paid in lawful money of the United States of America to the Finance Authority by electronic debit of the account identified in the ACH Authorization. The obligation of the Borrower/Grantee to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder. Notwithstanding any dispute between the Borrower/Grantee and the Finance Authority, any vendor or any other person, the Borrower/Grantee shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Borrower/Grantee assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 6.4 Borrower/Grantee May Budget for Payments. The Borrower/Grantee may, in its sole discretion, but without obligation and subject to the Constitution of the State,

governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to make the Loan Payments and other amounts owed by the Borrower/Grantee hereunder; provided, however, the Borrower/Grantee has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

Section 6.5 No Penalty for Prepayment of the Loan Amount. The Loan Amount shall be pre-payable by the Borrower/Grantee at the conclusion of the Interim Period without penalty.

Section 6.6 Lender/Grantor's Release of Lien and Further Assurances. Upon payment in full of the Loan Amount, Administrative Fee and other amounts owed by the Borrower/Grantee as herein provided in this Agreement and upon written request from the Borrower/Grantee the Lender/Grantor agrees to execute a release of lien and to give such further assurances as are reasonably necessary to ensure that the Lender/Grantor no longer holds or maintains any lien or claim against the Pledged Revenues.

ARTICLE VII THE PROJECT

Section 7.1 Agreement to Acquire, Complete and Maintain the Project.

(a) The Borrower/Grantee hereby agrees that in order to effectuate the purposes of this Agreement and to acquire and complete the Project it shall take such steps as are necessary and appropriate to acquire, complete, and maintain the Project lawfully and efficiently. The Project shall be designed so as to incorporate the available technologies and operational design for water use efficiency. The plans and specifications shall be approved on behalf of the Finance Authority by the New Mexico Environment Department prior to the disbursement of any part of the Loan/Grant Amount for construction of the Project, and the Project shall be constructed and completed substantially in accordance with the approved plans and specifications. No Loan/Grant funds shall be used for items not constituting Eligible Items.

(b) As provided by NMSA 1978, § 72-4A-7(A)(1), as amended, of the Act, the Borrower/Grantee shall operate and maintain the Project in good operating condition and repair at all times during the Useful Life of the Project, which shall in no event be less than twenty (20) years, so that the Project will function properly over the Useful Life of the Project; provided, that if any portion of the Project will be constructed, located, completed, installed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may, prior to any use of the Loan/Grant funds for the Project on such real property, obtain the written agreement of such other qualifying entity to perform these obligations with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall be subject to approval by the Lender/Grantor and shall include an express statement by such other qualifying entity that the Lender/Grantor is a third party beneficiary of such written agreement.

Section 7.2 Accounting for Amounts Credited to the Project Account. So long as no Event of Default shall occur and provided that all Conditions to the disbursement of the Loan/Grant Amount have been satisfied (including approval of the plans and specifications),

upon receipt by the Finance Authority of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of the Borrower/Grantee, supported by certification by the Borrower/Grantee's project architect, engineer, or such other authorized representative of the Borrower/Grantee that the amount of the disbursement request represents the progress of design, construction, acquisition or other Project-related activities accomplished as of the date of the disbursement request, the Finance Authority shall, in its sole and absolute discretion: (1) submit a request for payment to the State Board of Finance for payment; and/or (2) disburse from the Water Project Fund, amounts which together are sufficient to pay the requisition in full. The Finance Authority shall make the appropriate entry in the Project Account reflecting the amount of the payment. The certification provided pursuant to this Section 7.2 in support of the requisition must be acceptable in form and substance to the Finance Authority and, at its request, the Water Trust Board. The Borrower/Grantee shall provide such records or access to the Project as the Finance Authority, and, at its request, the Water Trust Board, in the discretion of each, may request in connection with the approval of the Borrower/Grantee's requisition requests made hereunder.

Section 7.3 No Disbursement for Prior Expenditures Except upon Approval. No disbursement shall be made from the Water Project Fund of the Loan/Grant Amount, or any portion thereof, without the approval of the Finance Authority and, at its request, the Water Trust Board, to reimburse any expenditure made prior to the Closing Date.

Section 7.4 Borrower/Grantee Reporting to Lender/Grantor. During the acquisition implementation, installation and construction of the Project, the Borrower/Grantee shall provide the Lender/Grantor with a quarterly written report executed by an Authorized Officer of the Borrower/Grantee, in the form attached as Exhibit "D" hereto or in another form reasonably acceptable to the Lender/Grantor, describing the status of the Project as of the report date, uses of Loan/Grant funds during the quarterly period ending on the report date, and requests for distributions of Loan/Grant funds anticipated to occur during the quarterly period immediately following the report date. The first quarterly report shall be due on March 31, 2020, and subsequent reports shall be due on each March 31, June 30, September 30 and December 31 thereafter until the report date next following final distribution of the Loan/Grant funds. No reports shall be required after the report date next following final distribution of the Loan/Grant Funds, unless specifically required by the Finance Authority or the Water Trust Board. The description of the status of the Project in each quarterly report shall include, among other information, (a) a comparison of actual and anticipated requests for distributions of Loan/Grant funds as of the report date with those anticipated as of the Closing Date, (b) a description of actual and anticipated changes in the cost estimates for the Project as of the report date compared with those anticipated as of the Closing Date, (c) a description of the percentage of completion of the Project; and (d) a timeline of projected milestones.

Section 7.5 Completion of Disbursement of Loan/Grant Funds. Upon completion of the Project an Authorized Officer of the Borrower/Grantee shall deliver a certificate to the Finance Authority substantially in the form of Exhibit "E" attached hereto, stating that, to his or her knowledge, either (1) the Project has been completed, or (2) that the portion of the Loan/Grant Amount needed to complete the Project has been disbursed in accordance with the terms of this Agreement. No portion of the Loan/Grant Amount shall be disbursed after expiration of the Interim Period.

Section 7.6 Application of Project Account Subsequent to Disbursement of Loan/Grant Funds; Termination of Pledge.

(a) Upon the completion of the Project as signified by delivery of the completion certificate required by Section 7.5 hereof, the Finance Authority shall determine, by reference to the Project Account, whether any portion of the authorized Loan/Grant Amount remains unexpended and shall dispose of such unexpended proceeds in accordance with law;

(b) In the event that a portion of the Loan/Grant Amount remains unexpended after the expiration of the Interim Period, the Finance Authority shall dispose of such funds in accordance with law.

Upon the occurrence of either event described in (a) or (b) above, the Finance Authority shall make the appropriate entry in the Project Account and, upon such entry, the pledge of the Loan/Grant Amount established in this Agreement shall terminate.

ARTICLE VIII
COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 8.1 Further Assurances and Corrective Instruments. The Lender/Grantor and the Borrower/Grantee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues and for carrying out the intention hereof.

Section 8.2 Representatives of Lender/Grantor or of Borrower/Grantee. Whenever under the provisions hereof the approval of the Lender/Grantor or the Borrower/Grantee is required, or the Borrower/Grantee, or the Lender/Grantor is required to take some action at the request of either of them, such approval or such request shall be given for the Lender/Grantor or for the Borrower/Grantee, by an Authorized Officer of the Lender/Grantor or the Borrower/Grantee, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 8.3 Selection of Contractors. All contractors providing services or materials in connection with the Project shall be selected in accordance with applicable provisions of the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, or, if the Borrower/Grantee is not subject to the New Mexico Procurement Code, shall be selected in accordance with a documented procurement process duly authorized and established pursuant to laws and regulations applicable to the Borrower/Grantee.

Section 8.4 Non-Discrimination in Employment. Except as otherwise specifically provided in the laws, statutes, ordinances or regulations of the Borrower/Grantee, the Borrower/Grantee shall require in any contract or subcontract executed in connection with the Project to which the Borrower/Grantee is a party that there shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin.

Section 8.5 Little Miller Act. To the extent NMSA 1978, § 13-4-1 et seq., (the “Little Miller Act”) is applicable to the Project, the Borrower/Grantee shall comply with the requirements of the “Little Miller Act”. If bonding requirements of the Little Miller Act are not applicable to the Project, the Borrower/Grantee will require that the contractor to whom is given any contract for construction appertaining to the Project supply a performance bond or bonds satisfactory to the Borrower/Grantee. Any sum or sums derived from said performance bond or bonds shall be used within six (6) months after such receipt for the completion of said construction, and if not so used within such period, shall be treated as Gross Revenues.

Section 8.6 Required Contract Provisions. The Borrower/Grantee shall require the following provisions in any contract or subcontract executed in connection with the Project to which the Borrower/Grantee is a party:

(a) There shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin; and

(b) Any contractor or subcontractor providing construction services in connection with the Project shall post a performance and payment bond in accordance with the requirements of NMSA 1978, § 13-4-18, as amended.

(c) Any contractor or subcontractor providing construction services in connection with the Project shall comply with the prevailing wage laws in accordance with the requirements of NMSA 1978, § 13-4-11, as amended.

Section 8.7 Application of Act and Board Rules. While this Agreement is outstanding, the Lender/Grantor and the Borrower/Grantee expressly acknowledge that this Agreement is governed by provisions and requirements of the Act and the Board Rules, as amended and supplemented, and all applicable provisions and requirements of the Act and Board Rules are incorporated into this Agreement by reference.

Section 8.8 Continuing Disclosure. The Borrower/Grantee shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: annual audits and notification of any event deemed material by the Finance Authority, including but not limited to, any event which may or does affect the Pledged Revenues, the ability of the Borrower/Grantee to repay the loan, and the default of the Borrower/Grantee in performance or observance of any covenant, term, or condition contained in any other loan agreement.

ARTICLE IX INSURANCE; NON-LIABILITY OF LENDER/GRANTOR

Section 9.1 Insurance. The Borrower/Grantee shall carry general liability insurance or participate in the State’s risk-management program and, to the extent allowed by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30, as amended, shall and hereby agrees to name the Lender/Grantor as an additional insured with respect to all claims, by

or on behalf of any person, firm, corporation or other legal entity arising from the acquisition, completion or implementation of the Project or otherwise during the Agreement Term; provided, that if any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may obtain the written agreement of such other qualifying entity to perform these insurance/risk-management program requirements for Borrower/Grantee with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall include an express statement by such other qualifying entity that the Lender/Grantor is a third party beneficiary of such written agreement.

Section 9.2 Non-Liability of Lender/Grantor.

(a) Lender/Grantor shall not be liable in any manner for the Project, Borrower/Grantee's use of the Loan/Grant, the acquisition, implementation, construction, installation, ownership, operation or maintenance of the Project, or any failure to act properly by the Borrower/Grantee or any other owner or operator of the Project.

(b) Lender/Grantor shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the Loan/Grant Amount in its possession, custody and control to the Finance Authority for disbursement to the Borrower/Grantee, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

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

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

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

(a) Failure by the Borrower/Grantee to pay any amount required to be paid under this Agreement on the date on which it is due and payable;

(b) Failure by the Borrower/Grantee to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower/Grantee by the Lender/Grantor unless the Lender/Grantor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Lender/Grantor but cannot be cured within the applicable thirty (30) day period, the Lender/Grantor will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower/Grantee within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Borrower/Grantee is unable to carry out the agreements on its part herein contained, the Borrower/Grantee shall not be deemed in default under this paragraph 10.1(b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default); or

(c) Any warranty, representation or other statement by or on behalf of the Borrower/Grantee contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement is false or misleading in any material respect;

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

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

(f) The Borrower/Grantee admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Borrower/Grantee for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the Finance Authority shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

(g) Default by the Borrower/Grantee in performance or observance of any covenant contained in any other loan agreement, document or instrument of any type whatsoever evidencing or securing obligations of the Borrower/Grantee to the Finance Authority.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.2 hereof, the Lender/Grantor may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any obligations of the Borrower/Grantee in this Agreement:

- (a) File a mandamus proceeding or other action or proceeding or suit at law or in equity to compel the Borrower/Grantee to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein;
- (b) Terminate this Agreement;
- (c) Cease disbursing any further amounts from the Project Account;
- (d) Demand that the Borrower/Grantee immediately repay the Loan/Grant Amount or any portion thereof if such funds were not utilized in accordance with this Agreement;
- (e) File a suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Lender/Grantor;
- (f) Intervene in judicial proceedings that affect this Agreement or the Pledged Revenues; or
- (g) Cause the Borrower/Grantee to account as if it were the trustee of an express trust for all of the Pledged Revenues;
- (h) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and thereafter to become due under this Agreement or to enforce any other of its rights hereunder; or
- (i) Apply any amounts in the Project Account toward satisfaction of any and all fees and costs incurred in enforcing the terms of this Agreement.

Section 10.3 Limitations on Remedies. A judgment requiring payment of money entered against the Borrower/Grantee shall be paid from only available Pledged Revenues unless the Borrower/Grantee in its sole discretion pays the judgment from other available funds.

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

Section 10.5 Waivers of Events of Default. The Lender/Grantor may, in its sole discretion, waive any Event of Default hereunder and the consequences of any such Event of Default; provided, however, all expenses of the Lender/Grantor in connection with such Event of Default shall have been paid or provided for. Such waiver shall be effective only if made by a written statement of waiver issued by the Finance Authority. In case of any such waiver or rescission, or in case any proceeding taken by the Lender/Grantor, on account of any such Event

of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Lender/Grantor shall be restored to its former position and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

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

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

ARTICLE XI MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows:

If to the Borrower/Grantee, to:

City of Truth or Consequences
Attn.: Mayor
505 Sims Street
Truth or Consequences, New Mexico 87901-2726

If to the Finance Authority, then to:

New Mexico Finance Authority
Attn.: Chief Executive Officer
207 Shelby Street
Santa Fe, New Mexico 87501

The Borrower/Grantee or the Lender/Grantor may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Lender/Grantor and the Borrower/Grantee and their respective successors and assigns, if any.

Section 11.3 Integration. This Agreement and any other agreements, certifications and commitments entered into between the Lender/Grantor and the Borrower/Grantee on the Closing Date constitute the entire agreement of the parties regarding the Loan/Grant and the funding of the Project through the Loan/Grant as of the Closing Date, and the terms of this Agreement supersede any prior applications, discussions, understandings or agreements between or among the parties in connection with the Loan/Grant, to the extent such prior applications, discussions, understandings or agreements are inconsistent with this Agreement.

Section 11.4 Amendments. This Agreement may be amended only with the written consent of both of the parties hereto. The consent of the Finance Authority for amendments not affecting the terms of payment of the loan component of this Agreement may be given by an Authorized Officer of the Finance Authority. The execution of any such consent by an Authorized Officer of the Finance Authority shall constitute his or her determination that such amendment does not affect the terms of payment of the loan component of this Agreement.

Section 11.5 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Lender/Grantor, either directly or through the Finance Authority, or against any officer, employee, director or member of the Borrower/Grantee, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director or member of the Borrower/Grantee or of the Finance Authority is hereby expressly waived and released by the Borrower/Grantee and by the Finance Authority as a condition of and in consideration for the execution of this Agreement.

Section 11.6 Severability. In the event that any provision of this Agreement, other than the obligation of the Borrower/Grantee to make the Loan Payments and the Administrative Fee hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.7 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.9 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 11.10 Further Assurances and Corrective Instruments. The Finance Authority and the Borrower/Grantee will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof.

Section 11.11 Finance Authority and Borrower/Grantee Representatives. Whenever under the provisions hereof the approval of the Finance Authority or the Borrower/Grantee is required, or the Borrower/Grantee or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Borrower/Grantee by an Authorized Officer of the Finance Authority or the Borrower/Grantee, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 11.12 CONSENT TO JURISDICTION. THE BORROWER/GRANTEE IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE DOCUMENTS SIGNED IN CONNECTION WITH THIS TRANSACTION WILL BE LITIGATED IN THE FIRST JUDICIAL DISTRICT COURT, SANTA FE COUNTY, NEW MEXICO, PURSUANT TO SECTION 6-21-26, NMSA.

[Signature pages follow]

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, has executed this Agreement, which was approved by the Water Trust Board on May 7, 2020 and by the Finance Authority's Board of Directors on May 28, 2020, in its corporate name by its duly authorized officer; and the Borrower/Grantee has caused this Agreement to be executed in its corporate name and the seal of the Borrower/Grantee affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

LENDER/GRANTOR:

NEW MEXICO FINANCE AUTHORITY

By: _____
Marquita D. Russel, Chief Executive Officer

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

VIRTUE & NAJJAR, PC
As Loan/Grant Counsel

By: _____
Mark Chaiken

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

Daniel C. Opperman Chief Legal Officer
New Mexico Finance Authority Legal and Compliance Department

BORROWER/GRANTEE:

CITY OF TRUTH OR CONSEQUENCES,
SIERRA COUNTY, NEW MEXICO

By: _____
Sandy Whitehead, Mayor

[SEAL]

ATTEST:

By: _____
Angela A. Torres, City Clerk/Treasurer

EXHIBIT "A"

TERM SHEET

\$641,146 WATER PROJECT FUND LOAN/GRANT TO THE CITY OF TRUTH OR CONSEQUENCES, SIERRA COUNTY, NEW MEXICO

Project Description:	The Project is for storage, conveyance or delivery of water to end users. The Loan/Grant Amount will be used only for Eligible Items necessary to complete the Project. In particular, the Project will consist of the design and construction of two booster station improvements to include the replacement of a critical distribution line segment in order to adequately provide a reliable source of water to community residents and critical infrastructure including hospitals and schools, and shall include such other related work and revisions necessary to complete the Project. The Project may be further described in the Application and in the final plans and specifications for the Project approved by the Water Trust Board and the Finance Authority as provided by this Agreement. However, in the event of any inconsistency, the description of the Project as stated in this Term Sheet shall control.
Grant Amount:	\$384,688
Loan Amount:	\$256,458
Pledged Revenues:	"Pledged Revenues" means the Net System Revenues of the Borrower/Grantee pledged to the payment of the Loan Amount and Administrative Fees pursuant to the Resolution and the Agreement.
Outstanding Senior Obligations for Pledged Revenues:	2001 NMFA DW loan 0442-DW; 2012 NMFA PPRF loan 2737-PP; 2012 NMFA PPRF loan 2613-PP; 2019 NMFA PPRF loan 4967-PP
Outstanding Parity Obligations:	2014 NMFA CIF loan 3171-CIF; 2016 NMFA CIF loan 3364-CIF; 2011 NMFA WTB loan 0229-WTB; 2014 NMFA WTB loan 0292-WTB; 2019 NMFA WTB loan 4927-CIF; 2019 NMFA WTB loan 4794-DW
Authorizing Legislation:	Borrower/Grantee Resolution No. 14 20/21, adopted September 23, 2020

Additional Funding Amount:	\$71,000
Closing Date:	October 30, 2020
Project Account Amount:	\$641,146
Expense Account Deposit:	\$0
Administrative Fee:	0.25%

Conditions to be satisfied prior to first disbursement of Loan/Grant funds: Delivery to Finance Authority of (i) a copy of the agenda of the meeting of the Governing Body at which the Resolution was adopted and at which this Agreement, the Resolution and all other Loan/Grant documents were authorized by the Governing Body (the "Meeting"), certified as a true and correct copy by the City Clerk/Treasurer of the Borrower/Grantee, (ii) a copy of the minutes or record of proceedings of the Meeting, approved and signed by the Mayor and attested to by the City Clerk/Treasurer of the Borrower/Grantee, and (iii) a copy of the notice of meeting for the Meeting evidencing compliance with the Borrower/Grantee's Open Meetings standards in effect on the date of the Meeting.

Other Conditions applicable to the Loan/Grant: Approval of plans/specification by NMED-Construction Programs Bureau prior to disbursal of construction funds. All Conditions defined in the Agreement.

EXHIBIT “B”

PAYMENT PROVISIONS OF THE LOAN

The Loan Amount and Administrative Fee shall be payable by the Borrower/Grantee to the Lender/Grantor in twenty (20) annual installments of principal pursuant to the attached debt service schedule, beginning June 1, 2023 and ending June 1, 2042. The Loan Amount shall be pre-payable upon expiration of the Interim Period without penalty. The Administrative Fee shall be due and payable annually on June 1 of each year while the Loan, or any portion thereof, remains outstanding.

[ATTACH DEBT SERVICE SCHEDULE OR INTERIM DEBT SERVICE SCHEDULE]

EXHIBIT "C"

**FORM OF REQUISITION
(Water Project Fund)**

RE: \$641,146 Loan/Grant Agreement by and between the New Mexico Finance Authority, as Lender/Grantor, and the City of Truth or Consequences, Sierra County, New Mexico, as Borrower/Grantee (the "Loan/Grant Agreement")

Loan/Grant No. WPF-5089 Closing Date: October 30, 2020

TO: NEW MEXICO FINANCE AUTHORITY

You are hereby authorized to disburse from the Project Account with regard to the above-referenced Agreement, the following:

I. PAYMENT INFORMATION

REQUISITION NO. _____ PAYMENT AMOUNT: \$ _____

PAYEE'S NAME: _____

PAYEE'S ADDRESS: _____

II. REQUISITION INFORMATION (complete for all payments)

- *Attach proof of expenditures (cancelled check, wire transfer receipt, bank ledger, etc.).*
- *List all Vendors, Payment Purposes, or Eligible Item Categories below or attach separate page or spreadsheet if needed.*

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

III. WIRING INFORMATION:

BANK NAME:	
ROUTING NUMBER:	
ACCOUNT NUMBER:	

IV. MATCH INFORMATION

AMOUNT OF LOCAL MATCH EXPENDED SINCE LAST REQUISITION: \$ _____

Attach proof of expenditures for hard match (detailed invoices, cancelled checks, wire transfer receipt, bank statement, etc.) and written certification of type and value of any soft match.

AMOUNT OF LOCAL MATCH EXPENDED TO DATE: \$ _____

TOTAL REQUIRED MATCH: \$ _____

V. VERIFICATION AND AUTHORIZATION

Each obligation, item of cost or expense mentioned herein is for a loan/grant made by the Lender/Grantor pursuant to the Water Project Finance Act to the Borrower/Grantee within the State of New Mexico, is due and payable, has not been the subject of any previous requisition, and is a proper charge against the Project Account. All representations contained in the Agreement and the related closing documents remain true and correct, and the Borrower/Grantee is not in breach of any of the covenants contained therein.

The proceeds of the Loan/Grant are to be used to pay the costs of Eligible Items, as defined in the Agreement. Eligible Items include (1) planning, designing, construction, improving or expanding a qualified project; (2) developing engineering feasibility reports for Qualified Projects; (3) inspecting construction of Qualified Projects; (4) providing professional services; (5) completing environmental assessments or archeological clearances and other surveys for Qualified Projects; (6) acquiring land, water rights, easements or rights of way; (7) eligible legal costs and eligible fiscal agent fees associated with development of Qualified Projects, within limits set forth in the Loan/Grant Agreement.

All construction and all installation of equipment with proceeds of the Loan/Grant has or will be used in accordance with plans and/or specifications approved on behalf of the New Mexico Finance Authority by the New Mexico Environment Department and/or the Office of the State Engineer, has or will be acquired in compliance with applicable procurement laws and regulations, and has or will be inspected and approved in accordance with applicable laws and regulations.

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

DATE: _____

AUTHORIZED OFFICER

(As Provided in the Loan/Grant Agreement)

Print Name: _____

Print Title: _____

EXHIBIT "D"

**WATER PROJECT FUND STATUS REPORT
PREPARED FOR THE NEW MEXICO FINANCE AUTHORITY**

Fund Recipient: City of Truth or Consequences Contact Name: Title: City Manager Email Address:	Project Number: WPF-5089 Project Name: Booster Station Improvements Project Type: Water Storage, Conveyance and Delivery Project
Reporting Period: From _____ To _____ <input type="checkbox"/> Quarterly Project Report: <input type="checkbox"/> 1 st <input type="checkbox"/> 2 nd <input type="checkbox"/> 3 rd <input type="checkbox"/> 4 th <input type="checkbox"/> Final Project Report <input type="checkbox"/> Other _____	
WPF Funding Expiration: _____ Total WPF Award: \$ _____ Current Balance: \$ _____ Loan 40% Grant 60% Match \$71,000 Expected WPF Award Expenditure Next Quarter: \$ _____ Local Match Expenditure: To Date \$ _____ Next Quarter \$ _____	
Project Phase: <input type="checkbox"/> Planning <input type="checkbox"/> Design <input type="checkbox"/> Construction	
PROJECT COMPLETION: Original Date _____ Current Date _____ _____ % Complete Days Remaining to Complete _____ On Schedule? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Briefly Describe Project Progress During This Reporting Period: 	
Issues Addressed During This Reporting Period, including any current or anticipated issues that remain unresolved: 	
Goals/Milestones, With Timeline or Dates, For The Next Reporting Period: 	
Authorized Officer PRINT NAME: _____ PRINT TITLE: _____	
SIGNATURE: _____	Date: _____

****All fields must be completed.***

EXHIBIT "E"
FORM OF CERTIFICATE OF COMPLETION

RE: \$641,146 Loan/Grant Agreement by and between the Finance Authority, as Lender/Grantor, and the City of Truth or Consequences, Sierra County, New Mexico, as Borrower/Grantee (the "Loan/Grant Agreement")

Loan/Grant No. WPF-5089

Closing Date: October 30, 2020

TO: NEW MEXICO FINANCE AUTHORITY

I, _____, the _____ of the
[Name] [Title or position]

Borrower/Grantee, hereby certify as follows:

1. The project described in the Loan/Grant Agreement (the "Project"), or the applicable phase of the project if funding was for a phased Project, was completed and placed in service on _____, 20____.
2. The total cost of the Project was \$ _____.
3. Cost of the Project paid from the Loan/Grant Amount was \$ _____.
4. Cost of the Project paid from the Additional Funding Amount was \$ _____.
5. The portion of the Loan/Grant Amount unexpended for the Project is \$ _____.
6. The Project was completed and is and shall be used consistent with and subject to the covenants set forth in the Loan/Grant Agreement.

This certificate shall not be deemed to prejudice or affect any rights of or against third parties which exist at the date of this certificate or which may subsequently come into being.

CITY OF TRUTH OR CONSEQUENCES,
SIERRA COUNTY, NEW MEXICO

By: _____

Its: _____

EXHIBIT “F”

DOCUMENTS

1. Open Meetings Act Resolution No. 01 20/21 adopted by the Borrower/Grantee on July 8, 2020
2. Resolution No. 14 20/21 adopted on September 23, 2020, Notice of Meeting, Meeting Agenda, and Affidavit of Publication of Notice of Adoption of Resolution in the *Sierra County Sentinel*
3. Loan/Grant Agreement
4. General and No Litigation Certificate of the Borrower/Grantee
5. Delivery, Deposit and Cross-Receipt Certificate
6. Right of Way Certificate
7. Borrower’s Counsel Opinion
8. Approving Opinion of Virtue & Najjar, PC, Loan/Grant Counsel to the Finance Authority
9. Finance Authority Application and Project Approval (informational only)
10. ACH Authorization

STATE OF NEW MEXICO)
) ss.
COUNTY OF SIERRA)

Thereupon, there were officially filed with the City Clerk/Treasurer copies of a proposed Resolution and Water Project Fund Loan/Grant Agreement in final form, the proposed Resolution being as hereinafter set forth:

CITY OF TRUTH OR CONSEQUENCES, SIERRA COUNTY, NEW MEXICO
RESOLUTION NO. 14 20/21

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO FINANCE AUTHORITY ("FINANCE AUTHORITY") AND THE CITY OF TRUTH OR CONSEQUENCES (THE "BORROWER/GRANTEE"), IN THE TOTAL AMOUNT OF SIX HUNDRED FORTY-ONE THOUSAND ONE HUNDRED FORTY-SIX DOLLARS (\$641,146), EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF THE DESIGN AND CONSTRUCTION OF TWO BOOSTER STATION IMPROVEMENTS TO INCLUDE THE REPLACEMENT OF A CRITICAL DISTRIBUTION LINE SEGMENT IN ORDER TO ADEQUATELY PROVIDE A RELIABLE SOURCE OF WATER TO COMMUNITY RESIDENTS AND CRITICAL INFRASTRUCTURE INCLUDING HOSPITALS AND SCHOOLS, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN AMOUNT AND AN ADMINISTRATIVE FEE SOLELY FROM NET SYSTEM REVENUES OF THE JOINT UTILITY SYSTEM OF THE BORROWER/GRANTEE; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

Capitalized terms used in the following preambles have the same meaning as defined in this Resolution unless the context requires otherwise.

WHEREAS, the Borrower/Grantee is a legally and regularly created, established, duly organized and existing incorporated municipality under and pursuant to the laws of the State and more specifically, the Municipal Code, NMSA 1978, §§ 3-1-1 through 3-66-11, as amended, is a qualifying entity under the Water Project Finance Act and is qualified for financial assistance as determined by the Finance Authority and approved by the Water Trust Board pursuant to the Board Rules and the Policies and the Act; and

WHEREAS, pursuant to the Board Rules the Water Trust Board has recommended the Project for funding as a Qualifying Project to the Legislature; and

WHEREAS, 2020 N.M. Laws Ch. 68, being Senate Bill 19 of the 2020 Regular New Mexico Legislative Session, authorized the funding of the Project from the Water Project Fund; and

WHEREAS, the Water Trust Board has recommended that the Finance Authority enter into and administer the Loan/Grant Agreement in order to finance the Project; and

WHEREAS, the Finance Authority approved on May 28, 2020 that the Borrower/Grantee receive financial assistance in the form of the Loan/Grant; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts granted and loaned pursuant to the Loan/Grant Agreement, that the Loan/Grant Amount, together with the Additional Funding Amount and other moneys available to the Borrower/Grantee, is sufficient to complete the Project, and that it is in the best interest of the Borrower/Grantee and the constituent public it serves that the Loan/Grant Agreement be executed and delivered and that the funding of the Project take place by executing and delivering the Loan/Grant Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully enter into the Loan/Grant Agreement, accept the Loan/Grant Amount and be bound to the obligations and by the restrictions thereunder; and

WHEREAS, the Loan/Grant Agreement shall not constitute a general obligation of the Borrower/Grantee, the Water Trust Board or the Finance Authority or a debt or pledge of the full faith and credit of the Borrower/Grantee, the Water Trust Board, the Finance Authority or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk/Treasurer this Resolution and the form of the Loan/Grant Agreement which is incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Additional Funding Amount is now available to the Borrower/Grantee to complete the Project; and

WHEREAS, the Borrower/Grantee has met or will meet prior to the first disbursement of any portion of the Loan/Grant Amount, the Conditions and readiness to proceed requirements established for the portion of the Loan/Grant Amount disbursed or caused to be disbursed by the Finance Authority, including but not limited to the requirements of Executive Order 2013-006; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use of the Loan/Grant Amount for the purposes described, and according to the restrictions set forth, in the Loan/Grant Agreement; (ii) the availability of other moneys necessary and sufficient, together with the Loan/Grant Amount, to complete the Project; and (iii) the authorization, execution and delivery of the Loan/Grant Agreement which are required to have been obtained by the date of this Resolution, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT RESOLVED OR ORDAINED IF AN ORDINANCE BY THE GOVERNING BODY OF CITY OF TRUTH OR CONSEQUENCES, SIERRA COUNTY, NEW MEXICO:

Section 1. Definitions. As used in this Resolution, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined); and, any term not defined herein shall have the definition given it by the Loan/Grant Agreement:

“ACH Authorization” means the authorization for direct payment to the Finance Authority by ACH made by the Borrower/Grantee on the form required by the bank or other entity at which the account is held, from which the Pledged Revenues will be paid.

“Act” means the general laws of the State, particularly the Water Project Finance Act, NMSA 1978, §§ 72-4A-1 through 72-4A-11, as amended, and enactments of the Governing Body relating to the Loan/Grant Agreement, including this Resolution, all as amended and supplemented.

“Additional Funding Amount” means the amount to be provided by the Borrower/Grantee which includes the total value of hard or of the soft match, which, in combination with the Loan/Grant Amount and other amounts available to the Borrower/Grantee, is sufficient to complete the Project. The Additional Funding Amount is seventy-one thousand dollars (\$71,000).

“Administrative Fee” means an amount equal to one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee pursuant to Section 5.1(a)(iii) of the Loan/Grant Agreement.

“Authorized Officers” means any one or more of the Mayor, Mayor Pro Tem, City Manager and City Clerk/Treasurer of the Borrower/Grantee.

“Board Rules” means Review and Eligibility of Proposed Water Projects, New Mexico Water Trust Board, 19.25.10 NMAC.

“Borrower/Grantee” means the City of Truth or Consequences in Sierra County, New Mexico.

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

“Conditions” has the meaning given to that term in the Loan/Grant Agreement.

“Closing Date” means the date of execution and delivery of the Loan/Grant Agreement, by the Borrower/Grantee and the Finance Authority.

“Eligible Items” means eligible Project costs for which grants and loans may be made pursuant to NMSA 1978, § 72-4A-7(C), as amended, of the Act, the Board Rules and applicable Policies, and includes, without limitation, Eligible Legal Costs and Eligible Fiscal Agent Fees.

“Eligible Legal Cost” has the meaning given to that term in the Loan/Grant Agreement.

“Eligible Fiscal Agent Fees” has the meaning given to that term in the Loan/Grant Agreement.

“Finance Authority” means the New Mexico Finance Authority.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Borrower/Grantee consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board or other principle-setting body acceptable to the Finance Authority establishing accounting principles applicable to the Borrower/Grantee.

“Governing Body” means the duly organized The City Commission of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to the Loan/Grant Agreement for the purpose of funding the Project, and shall not equal more than three hundred eighty-four thousand six hundred eighty-eight dollars (\$384,688).

“Gross Revenues” has the meaning given to that term in the Loan/Grant Agreement.

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

“Loan” or “Loan Amount” means the amount provided to the Borrower/Grantee as a loan pursuant to the Loan/Grant Agreement for the purpose of funding the Project, in the maximum amount of two hundred fifty-six thousand four hundred fifty-eight dollars (\$256,458).

“Loan/Grant” or “Loan/Grant Amount” means the combined amount partially provided to the Borrower/Grantee as the Grant Amount and partially borrowed by the Borrower/Grantee as the Loan Amount pursuant to the Loan/Grant Agreement for the purpose of funding the Project, in the maximum amount of six hundred forty-one thousand one hundred forty-six dollars (\$641,146).

“Loan/Grant Agreement” means the Water Project Fund Loan/Grant Agreement entered into by and between the Borrower/Grantee and the Finance Authority as authorized by this Resolution.

“Net System Revenues” means the Gross Revenues of the water, wastewater and electric utility system owned and operated by the Borrower/Grantee minus Operation and Maintenance Expenses, indirect charges, amounts expended for capital replacement and repairs, required set asides for debt and replacement requirements, and any other payments from the gross revenues reasonably required for operation of the water, wastewater and electric utility system.

“NMAC” means the New Mexico Administrative Code.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

“Operation and Maintenance Expenses” has the meaning given to that term in the Loan/Grant Agreement.

“Pledged Revenues” means the Net System Revenues of the Borrower/Grantee pledged to the payment of the Loan Amount and Administrative Fee pursuant to this Resolution and the Loan/Grant Agreement and described in the Term Sheet.

“Project” means the project described in the Term Sheet.

“Project Account” means the book account established by the Finance Authority in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant Amount by the Borrower/Grantee to pay for the costs of the Project, as shown in the Term Sheet, which account shall be kept separate and apart from all other accounts of the Finance Authority.

“Qualifying Water Project” means a water project for (i) storage, conveyance or delivery of water to end-users; (ii) implementation of the federal Endangered Species Act of 1973 collaborative programs; (iii) restoration and management of watersheds; (iv) flood prevention or (v) water conservation or recycling, treatment or reuse of water as provided by law; and which has been approved by the state legislature pursuant to NMSA 1978, § 72-4A-9(B), as amended.

“Resolution” means this Resolution as it may be supplemented or amended from time to time.

“State” means the State of New Mexico.

“System” means the water, wastewater and electric utility system operated pursuant to Truth or Consequences Code of Ordinances, §§14-1 to 14-115 of the Borrower/Grantee, owned and operated by the Borrower/Grantee, and of which the Project, when completed, will form part.

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

“Useful Life” means the structural and material design life of the Project, including planning and design features, which shall not be less than twenty (20) years as required by the Act and the Board Rules.

“Water Project Fund” means the fund of the same name created pursuant to the Act and held and administered by the Finance Authority.

“Water Trust Board” or “WTB” means the water trust board created and established pursuant to the Act.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Borrower/Grantee and officers of the Borrower/Grantee

directed toward the acquisition and completion of the Project, the pledge of the Pledged Revenues to payment of amounts due under the Loan/Grant Agreement, and the execution and delivery of the Loan/Grant Agreement shall be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project and the Loan/Grant Agreement. The acquisition and completion of the Project and the method of funding the Project through execution and delivery of the Loan/Grant Agreement and the other documents related to the transaction are hereby authorized and ordered. The Project is for the benefit and use of the Borrower/Grantee and the public whom it serves.

Section 4. Findings. The Governing Body hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Borrower/Grantee and the public whom it serves.

B. Moneys available and on hand for the Project from all sources other than the Loan/Grant are not sufficient to defray the cost of acquiring and completing the Project but, together with the Loan/Grant Amount, are sufficient to complete the Project.

C. The Project and the execution and delivery of the Loan/Grant Agreement pursuant to the Act to provide funds for the financing of the Project are necessary, convenient and in furtherance of the governmental purposes of the Borrower/Grantee, and in the interest of the public health, safety, and welfare of the constituent public served by the Borrower/Grantee.

D. The Borrower/Grantee will acquire and complete the Project with the proceeds of the Loan/Grant, the Additional Funding Amount and other amounts available to the Borrower/Grantee, and except as otherwise expressly provided by the Loan/Grant Agreement, will utilize, operate and maintain the Project for the duration of its Useful Life, which is not less than twenty (20) years, as required by NMSA 1978, § 72-4A-7(A)(1), as amended.

E. Together with the Loan/Grant Amount, and other amounts available to the Borrower/Grantee, the Additional Funding Amount is now available to the Borrower/Grantee, and in combination with the Loan/Grant Amount, will be sufficient to complete the Project.

F. The Finance Authority shall maintain on behalf of the Borrower/Grantee a separate Project Account as a book account only on behalf of the Borrower/Grantee and financial records in accordance with Generally Accepted Accounting Principles during the construction or implementation of the Project.

G. The Borrower/Grantee has or will acquire title to or easements or rights of way on the real property upon which the Project is being constructed or located prior to the disbursement of any portion of the Loan/Grant Amount for use for construction.

Section 5. Loan/Grant Agreement—Authorization and Detail.

A. Authorization. This Resolution has been adopted by the affirmative vote of at least a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the constituent public served by the Borrower/Grantee and acquiring and completing the Project, it is hereby declared necessary that the Borrower/Grantee execute and deliver the Loan/Grant Agreement evidencing the Borrower/Grantee's acceptance of the Grant Amount of three hundred eighty-four thousand six hundred eighty-eight dollars (\$384,688) and borrowing the Loan Amount of two hundred fifty-six thousand four hundred fifty-eight dollars (\$256,458) to be utilized solely for Eligible Items necessary to complete the Project, and solely in the manner and according to the restrictions set forth in the Loan/Grant Agreement, the execution and delivery of which is hereby authorized. The Borrower/Grantee shall use the Loan/Grant Amount to finance the acquisition and completion of the Project.

B. Detail. The Loan/Grant Agreement shall be in substantially the form of the Loan/Grant Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Grant shall be in the amount of three hundred eighty-four thousand six hundred eighty-eight dollars (\$384,688) and the Loan shall be in the amount of two hundred fifty-six thousand four hundred fifty-eight dollars (\$256,458). Interest on the Loan Amount shall be zero percent (0%) per annum of the unpaid principal balance of the Loan Amount, and the Administrative Fee shall be one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee.

Section 6. Approval of Loan/Grant Agreement. The form of the Loan/Grant Agreement as presented at the meeting of the Governing Body at which this Resolution was adopted, is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan/Grant Agreement with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the City Clerk/Treasurer is hereby authorized to attest the Loan/Grant Agreement. The execution of the Loan/Grant Agreement shall be conclusive evidence of such approval.

Section 7. Security. The Loan Amount and Administrative Fee shall be solely secured by the pledge of the Pledged Revenues herein made and as set forth in the Loan/Grant Agreement.

Section 8. Disposition of Proceeds: Completion of the Project.

A. Project Account. The Borrower/Grantee hereby consents to creation of the Project Account by the Finance Authority. Until the Completion Date, the amount of the Loan/Grant credited to the Project Account shall be used and paid out solely for Eligible Items necessary to acquire and complete the Project in compliance with applicable law and the provisions of the Loan/Grant Agreement.

B. Completion of the Project. The Borrower/Grantee shall proceed to complete the Project with all due diligence. Upon the Completion Date, the Borrower/Grantee shall execute a certificate stating that completion of and payment for the Project has been completed. Following the Completion Date or the earlier expiration of the time allowed for disbursement of Loan/Grant funds as provided in the Loan/Grant Agreement, any balance remaining in the Project Account shall be transferred and deposited into the Water Project Fund or otherwise distributed as provided in the Loan/Grant Agreement.

C. Finance Authority Not Responsible. Borrower/Grantee shall apply the funds derived from the Loan/Grant Agreement as provided therein, and in particular Article VII of the Loan/Grant Agreement. The Finance Authority shall not in any manner be responsible for the application or disposal by the Borrower/Grantee or by its officers of the funds derived from the Loan/Grant Agreement or of any other funds held by or made available to the Borrower/Grantee in connection with the Project. Finance Authority shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the Loan/Grant Amount in its possession, custody and control to the Finance Authority for disbursement to the Borrower/Grantee, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

Section 9. Payment of Loan Amount and ACH Authorization. Pursuant to the Loan/Grant Agreement, the Borrower/Grantee shall pay the Loan Amount and Administrative Fee directly from the Pledged Revenues to the Finance Authority as provided in the Loan/Grant Agreement in an amount sufficient to pay principal and other amounts due under the Loan/Grant Agreement and to cure any deficiencies in the payment of the Loan Amount or other amounts due under the Loan/Grant Agreement. The Borrower/Grantee hereby consents to the creation of an ACH authorization agreement for the purpose of making regular electronic payments of the Loan Amount and Administrative Fee.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan/Grant Agreement, the Loan/Grant Agreement constitutes an irrevocable lien (but not an exclusive lien) upon the Pledged Revenues to the extent of the Loan Amount and the Administrative Fee, the priority of which is consistent with that shown on the Term Sheet.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the Loan/Grant Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Resolution and the Loan/Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Loan/Grant Agreement including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan/Grant Agreement.

Section 12. Amendment of Resolution. This Resolution after its adoption may be amended without receipt by the Borrower/Grantee of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Resolution Irrepealable. After the Loan/Grant Agreement has been executed and delivered, this Resolution shall be and remain irrepealable until all obligations due under the Loan/Grant Agreement shall be fully discharged, as herein provided.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

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

Section 16. Effective Date. Upon due adoption of this Resolution, it shall be recorded in the book of the Borrower/Grantee kept for that purpose, authenticated by the signatures of the Mayor and City Clerk/Treasurer of the Borrower/Grantee, and this Resolution shall be in full force and effect thereafter, in accordance with law; provided, however, that if recording is not required for the effectiveness of this Resolution, this Resolution shall be effective upon adoption of this Resolution by the Governing Body.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Resolution shall be published in substantially the following form:

[Remainder of page intentionally left blank.]

[Form of Notice of Adoption of Resolution for Publication]

CITY OF TRUTH OR CONSEQUENCES, SIERRA COUNTY, NEW MEXICO
NOTICE OF ADOPTION OF RESOLUTION

Notice is hereby given of the title and of a general summary of the subject matter contained in Resolution No. 14 20/21, duly adopted and approved by the City Commission of City of Truth or Consequences on September 23, 2020. A complete copy of the Resolution is available for public inspection during normal and regular business hours in the office of the City Clerk/Treasurer at 505 Sims, Truth or Consequences, New Mexico 87901.

The title of the Resolution is:

CITY OF TRUTH OR CONSEQUENCES, SIERRA COUNTY, NEW MEXICO
RESOLUTION NO. 14 20/21

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO FINANCE AUTHORITY ("FINANCE AUTHORITY") AND THE CITY OF TRUTH OR CONSEQUENCES (THE "BORROWER/GRANTEE"), IN THE TOTAL AMOUNT OF SIX HUNDRED FORTY-ONE THOUSAND ONE HUNDRED FORTY-SIX DOLLARS (\$641,146), EVIDENCING AN OBLIGATION OF THE BORROWER/GRANTEE TO UTILIZE THE LOAN/GRANT AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF THE DESIGN AND CONSTRUCTION OF TWO BOOSTER STATION IMPROVEMENTS TO INCLUDE THE REPLACEMENT OF A CRITICAL DISTRIBUTION LINE SEGMENT IN ORDER TO ADEQUATELY PROVIDE A RELIABLE SOURCE OF WATER TO COMMUNITY RESIDENTS AND CRITICAL INFRASTRUCTURE INCLUDING HOSPITALS AND SCHOOLS, AND SOLELY IN THE MANNER DESCRIBED IN THE LOAN/GRANT AGREEMENT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE LOAN AMOUNT AND AN ADMINISTRATIVE FEE SOLELY FROM NET SYSTEM REVENUES OF THE JOINT UTILITY SYSTEM OF THE BORROWER/GRANTEE; CERTIFYING THAT THE LOAN/GRANT AMOUNT, TOGETHER WITH OTHER FUNDS AVAILABLE TO THE BORROWER/GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE LOAN/GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN/GRANT AGREEMENT.

A general summary of the subject matter of the Resolution is contained in its title. This notice constitutes compliance with NMSA 1978, § 6-14-6, as amended.

[End of Form of Notice of Adoption for Publication]

PASSED, APPROVED AND ADOPTED THIS 23RD DAY OF SEPTEMBER, 2020.

CITY OF TRUTH OR CONSEQUENCES,
SIERRA COUNTY, NEW MEXICO

By _____
Sandy Whitehead, Mayor

ATTEST:

Angela A. Torres, City Clerk/Treasurer

[Remainder of page intentionally left blank.]

Governing Body Member _____ then moved adoption of the foregoing Resolution, duly seconded by Governing Body Member _____.

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

Those Voting Aye:

Those Voting Nay:

Those Absent:

_____ () Members of the Governing Body having voted in favor of the motion, the Mayor declared the motion carried and the Resolution adopted, whereupon the Mayor and City Clerk/Treasurer signed the Resolution upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Resolution, the meeting upon motion duly made, seconded and carried, was adjourned.

CITY OF TRUTH OR CONSEQUENCES,
SIERRA COUNTY, NEW MEXICO

By _____
Sandy Whitehead, Mayor

ATTEST:

By _____
Angela A. Torres, City Clerk/Treasurer

[Remainder of page intentionally left blank.]

STATE OF NEW MEXICO

)

) ss.

COUNTY OF SIERRA

)

I, Angela A. Torres, the duly qualified and acting City Clerk/Treasurer of the City of Truth or Consequences (the "Borrower/Grantee"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Commission of the Borrower/Grantee (the "Governing Body"), had and taken at a duly called regular meeting held at the Commission Chambers at the 405 W. 3rd Street, Truth or Consequences, New Mexico, on September 23, 2020 at the hour of 9:00 a.m., insofar as the same relate to the adoption of Resolution No. 14 20/21 and the execution and delivery of the proposed Loan/Grant Agreement, a copy of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of the meeting was given in compliance with the permitted methods of giving notice of meetings of the Governing Body as required by the State Open Meetings Act, NMSA 1978, § 10-15-1, as amended, including the Borrower/Grantee's open meetings Resolution No. 01 20/21, adopted and approved on July 8, 2020 in effect on the date of the meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of October, 2020.

CITY OF TRUTH OR CONSEQUENCES,
SIERRACOUNTY, NEW MEXICO

By _____
Angela A. Torres, City Clerk/Treasurer

EXHIBIT "A"

Notice of Meeting, Meeting Agenda, Minutes and
Affidavit of Publication of Notice of Adoption of Resolution

SOURCES AND USES OF FUNDS

**City of Truth or Consequences
WPF-5089 Booster System Improvements**

Sources:

Bond Proceeds:	
Par Amount	256,458.00
Other Sources of Funds:	
Water Trust Board Grant Funds	384,688.00
	<hr/>
	641,146.00

Uses:

Project Fund Deposits:	
Project Fund	641,146.00
	<hr/>
	641,146.00

BOND SUMMARY STATISTICS**City of Truth or Consequences
WPF-5089 Booster System Improvements**

Dated Date	10/30/2020
Delivery Date	10/30/2020
Last Maturity	06/01/2042
Arbitrage Yield	0.245657%
True Interest Cost (TIC)	0.245657%
Net Interest Cost (NIC)	0.250000%
All-In TIC	0.245657%
Average Coupon	0.250000%
Average Life (years)	12.005
Duration of Issue (years)	12.004
Par Amount	256,458.00
Bond Proceeds	256,458.00
Total Interest	7,697.22
Net Interest	7,697.22
Total Debt Service	264,155.22
Maximum Annual Debt Service	13,208.29
Average Annual Debt Service	12,237.28
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	
Total Underwriter's Discount	
Bid Price	100.000000

<i>Bond Component</i>	<i>Par Value</i>	<i>Price</i>	<i>Average Coupon</i>	<i>Average Life</i>
Loan Component	256,458.00	100.000	0.250%	12.005
	256,458.00			12.005

	<i>TIC</i>	<i>All-In TIC</i>	<i>Arbitrage Yield</i>
Par Value	256,458.00	256,458.00	256,458.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense			
- Other Amounts			
Target Value	256,458.00	256,458.00	256,458.00
Target Date	10/30/2020	10/30/2020	10/30/2020
Yield	0.245657%	0.245657%	0.245657%

DETAILED BOND DEBT SERVICE**City of Truth or Consequences
WPF-5089 Booster System Improvements****Loan Component (LOAN)**

<i>Period Ending</i>	<i>Principal</i>	<i>Coupon</i>	<i>Interest</i>	<i>Debt Service</i>
06/01/2023	13,123	0.250%	84.84	13,207.84
06/01/2024	13,090	0.250%	117.36	13,207.36
06/01/2025	13,058	0.250%	149.71	13,207.71
06/01/2026	13,026	0.250%	181.91	13,207.91
06/01/2027	12,994	0.250%	213.95	13,207.95
06/01/2028	12,962	0.250%	245.83	13,207.83
06/01/2029	12,930	0.250%	277.55	13,207.55
06/01/2030	12,899	0.250%	309.13	13,208.13
06/01/2031	12,867	0.250%	340.53	13,207.53
06/01/2032	12,836	0.250%	371.80	13,207.80
06/01/2033	12,805	0.250%	402.91	13,207.91
06/01/2034	12,774	0.250%	433.87	13,207.87
06/01/2035	12,743	0.250%	464.68	13,207.68
06/01/2036	12,712	0.250%	495.33	13,207.33
06/01/2037	12,682	0.250%	525.86	13,207.86
06/01/2038	12,652	0.250%	556.25	13,208.25
06/01/2039	12,621	0.250%	586.44	13,207.44
06/01/2040	12,591	0.250%	616.52	13,207.52
06/01/2041	12,561	0.250%	646.46	13,207.46
06/01/2042	12,532	0.250%	676.29	13,208.29
	256,458		7,697.22	264,155.22

BOND SOLUTION**City of Truth or Consequences
WPF-5089 Booster System Improvements**

<i>Period Ending</i>	<i>Proposed Principal</i>	<i>Proposed Debt Service</i>	<i>Existing Debt Service</i>	<i>Total Adj Debt Service</i>	<i>Revenue Constraints</i>	<i>Unused Revenues</i>	<i>Debt Serv Coverage</i>
06/01/2021							
06/01/2022							
06/01/2023	13,123	13,208	241,809	255,016	1,711,454	1,456,438	671.11511%
06/01/2024	13,090	13,207	241,807	255,015	1,711,454	1,456,439	671.11985%
06/01/2025	13,058	13,208	156,000	169,208	1,711,454	1,542,246	1011.45119%
06/01/2026	13,026	13,208	155,999	169,207	1,711,454	1,542,247	1011.45675%
06/01/2027	12,994	13,208	156,001	169,209	1,711,454	1,542,245	1011.44312%
06/01/2028	12,962	13,208	156,001	169,208	1,711,454	1,542,246	1011.44754%
06/01/2029	12,930	13,208	156,001	169,209	1,711,454	1,542,245	1011.44605%
06/01/2030	12,899	13,208	156,000	169,208	1,711,454	1,542,246	1011.44760%
06/01/2031	12,867	13,208	155,999	169,206	1,711,454	1,542,248	1011.46069%
06/01/2032	12,836	13,208	155,999	169,207	1,711,454	1,542,247	1011.45495%
06/01/2033	12,805	13,208	134,574	147,782	1,711,454	1,563,672	1158.09070%
06/01/2034	12,774	13,208	40,010	53,218	1,711,454	1,658,236	3215.92526%
06/01/2035	12,743	13,208	32,316	45,524	1,711,454	1,665,930	3759.47087%
06/01/2036	12,712	13,207	32,317	45,524	1,711,454	1,665,930	3759.44031%
06/01/2037	12,682	13,208	32,316	45,524	1,711,454	1,665,930	3759.43619%
06/01/2038	12,652	13,208	32,317	45,525	1,711,454	1,665,929	3759.37755%
06/01/2039	12,621	13,207	32,317	45,524	1,711,454	1,665,930	3759.43453%
06/01/2040	12,591	13,208	32,317	45,524	1,711,454	1,665,930	3759.43453%
06/01/2041	12,561	13,207	32,316	45,524	1,711,454	1,665,930	3759.46096%
06/01/2042	12,532	13,208		13,208	1,711,454	1,698,246	12957.4230%
	256,458	264,155	2,132,417	2,396,572	34,229,080	31,832,508	

\$641,146
CITY OF TRUTH OR CONSEQUENCES, SIERRA COUNTY, NEW MEXICO
WATER PROJECT FUND LOAN/GRANT
No. WPF-5089

STATE OF NEW MEXICO

)

GENERAL AND
NO LITIGATION
CERTIFICATE

) ss.

COUNTY OF SIERRA

)

IT IS HEREBY CERTIFIED by the undersigned, the duly chosen, qualified and acting Mayor and City Clerk/Treasurer for the City of Truth or Consequences (the "Borrower/Grantee") in the State of New Mexico (the "State"):

Capitalized terms used in this Certificate have the same meaning as defined in Resolution No. 14 20/21 adopted by the Governing Body of the Borrower/Grantee on September 23, 2020 (the "Resolution") unless otherwise defined in this Certificate or the context requires otherwise.

1. The Borrower/Grantee is a duly organized and existing incorporated municipality under the laws of the State of New Mexico.

2. From at least May 28, 2020 (except as noted below) to and including the date of this Certificate, the following were and now are the duly chosen, qualified and acting officers of the Borrower/Grantee:

Mayor:

Sandy Whitehead

Mayor Pro Tem:

Brendan Tolley (until _____, 2020)
[TBD]

Commissioners:

Randall Aragon
Paul Baca
Amanda Forrister

City Clerk/Treasurer:

Angela A. Torres

3. Based on data collected during the 2010 Census, the population of City of Truth or Consequences is at least 75% English speaking.

4. Notice of adoption of the Resolution was published in English in the *Sierra County Sentinel*, a newspaper qualified to publish legal notices that is of general circulation in the City of Truth or Consequences.

5. There is no reason within our knowledge and belief after due investigation, why the Borrower/Grantee may not enter into the Loan/Grant Agreement with the New Mexico Finance Authority, as authorized by the Resolution.

6. No material adverse change has occurred, nor has any development occurred involving a prospective material and adverse change in, or affecting the affairs, business, financial condition, results of operations, prospects, or properties of the Borrower/Grantee since the date of the Resolution.

7. To the best of our knowledge and belief after due investigation, none of the events of default referred to in Article X of the Loan/Grant Agreement has occurred.

8. There is no threatened action, suit, proceeding, inquiry or investigation against the Borrower/Grantee, at law or in equity, by or before any court, public board or body, nor to our knowledge is there any basis therefor, affecting the existence of the Borrower/Grantee or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the pledge of the Pledged Revenues to pay the principal, interest or administrative fees on the Loan/Grant Agreement, or in any way materially adversely affecting or questioning (a) the territorial jurisdiction of the Borrower/Grantee, (b) the use of the proceeds of the Loan/Grant Agreement for the Project and to pay certain expenses as described therein, (c) the validity or enforceability of the Loan/Grant Agreement or any proceedings of the Borrower/Grantee taken with respect to the Resolution or the Loan/Grant Agreement, (d) the execution and delivery of the Loan/Grant Agreement, or (e) the power of the Borrower/Grantee to carry out the transactions contemplated by the Resolution and the Loan/Grant Agreement.

9. The Borrower/Grantee has complied with all the covenants and satisfied all the conditions on its part to be performed or satisfied at or prior to the date hereof, and the representations and warranties of the Borrower/Grantee contained in the Loan/Grant Agreement and in the Resolution are true and correct as of the date hereof.

10. The Borrower/Grantee is not in default, and has not been in default within the ten (10) years immediately preceding the date of this Certificate, in the payment of principal of, premium, if any, or interest on any bonds, notes or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, if any, or interest.

11. To our knowledge and belief after due investigation, none of the Mayor, the City Clerk/Treasurer, any member of the Governing Body of the Borrower/Grantee, nor any other officer, employee or other agent of the Borrower/Grantee is interested (except in the performance of his or her official rights, privileges, powers and duties), directly or indirectly, in the profits of any contract, or job for work, or services to be performed and appertaining to the Project.

12. Regular meetings of the Borrower/Grantee's Governing Body and the meeting at which the Resolution was adopted have been held at 405 W. 3rd Street, Truth or Consequences, New Mexico, the principal meeting place of the Borrower/Grantee.

13. The Borrower/Grantee's Governing Body has no rules of procedure which would invalidate or make ineffective the Resolution or other action taken by the Borrower/Grantee's Governing Body in connection with the Loan/Grant Agreement. The Open Meetings Act Resolution adopted and approved by the Governing Body on July 8, 2020 establishes notice

standards for meetings of the Governing Body. The Open Meetings Act Resolution has not been amended or repealed. All action of the Governing Body with respect to the Resolution and the Loan/Grant Agreement was taken at meetings held in compliance with the Open Meetings Act Resolution No. 01 20/21 which resolution was effective on July 8, 2020 and has not been amended, repealed or rescinded.

14. The Borrower/Grantee is in compliance with the requirements of the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14, as amended.

15. The Mayor and the City Clerk/Treasurer, on the date of the signing of the Loan/Grant Agreement and on the date of this Certificate, are the duly chosen, qualified and acting officers of the Borrower/Grantee authorized to execute the Loan/Grant Agreement.

16. This Certificate is for the benefit of the Finance Authority.

17. This Certificate may be executed in counterparts.

[Signature page follows.]

WITNESS our signatures and the seal of the Borrower/Grantee this 30th day of October, 2020.

CITY OF TRUTH OR CONSEQUENCES,
SIERRA COUNTY, NEW MEXICO

(SEAL)

By _____
Sandy Whitehead, Mayor

By _____
Angela A. Torres, City Clerk/Treasurer

NEW MEXICO FINANCE AUTHORITY

FINAL OPINION OF COUNSEL

To: New Mexico Finance Authority
207 Shelby Street
Santa Fe, New Mexico 87501

Re: City of Truth or Consequences, Sierra County, New Mexico
\$641,146 Loan/Grant No. WPF-5089

Ladies and Gentlemen:

I am an attorney representing the City of Truth or Consequences, Sierra County, New Mexico (the "Borrower/Grantee") in connection with the above-referenced Loan/Grant. I am licensed to practice law and in good standing in the State of New Mexico. I provide this opinion in my role as counsel to the Borrower/Grantee, understanding that the New Mexico Finance Authority (the "Lender/Grantor") is relying on this opinion letter and but for this opinion letter, the Loan/Grant would not be approved.

Capitalized terms used in this Opinion have the same meaning as defined in Resolution No. 14 20/21 adopted by the Governing Body of the Borrower/Grantee on September 23, 2020 (the "Resolution") unless otherwise defined in this Opinion or the context requires otherwise.

I hereby certify that I have examined:

- (1) The City of Truth or Consequences Water Project Fund Application dated October 3, 2019 and the New Mexico Water Trust Board Approval dated May 7, 2020 for Loan/Grant No. WPF-5089 (the "Application" and the "Approval," respectively), relating to the Project.
- (2) The incorporation documents creating the Borrower/Grantee.
- (3) The Annual Open Meetings Act Resolution or resolutions of the Borrower/Grantee in effect on September 23, 2020 and on October 30, 2020.
- (4) The proceedings of the Governing Body (including all agendas, minutes, resolutions, ordinances and publications) which authorize the Loan/Grant application, the Project development, the budget for the Project, and the contracts with the various Project professionals including but not limited to architects, engineers, planners and contractors.
- (5) Corporate proceedings of the Borrower/Grantee from the date of the Application to the date of this Opinion, including, without limiting the generality of the foregoing, the corporate action of the Borrower/Grantee relating to (a) the selection of its

Mayor, City Commission, and City Clerk/Treasurer; (b) the adoption of the Borrower/Grantee's Annual Open Meetings Act Resolution or resolutions; (c) the adoption of ordinances or resolutions governing the operation of the Project; (d) the plans and specifications for the Project; (e) cost estimates for the Project; (f) the adoption of ordinances, resolutions and regulations for the furnishing of service to customers; (g) the proposed operating budget for services to be provided, in whole or in part, by means of the Project; (h) the proposal to finance the Project, in whole or in part, with a Loan/Grant made by the Water Trust Board, acting through the Finance Authority; (i) the Resolution authorizing the Mayor to execute necessary documents to obtain the Loan/Grant for the Project; (j) all necessary approvals for the Project from federal, State or local authorities; and (k) the execution and delivery of the Loan/Grant Agreement evidencing such Loan/Grant.

- (6) The Resolution and the Loan/Grant Agreement providing that the Lender/Grantor on behalf of the Borrower/Grantee shall maintain a book Project Account on behalf of the Borrower/Grantee and shall cause the disbursement of the Loan/Grant Amount as provided in Article IV of the Loan/Grant Agreement.
- (7) The records and files of all offices in which there might be recorded, filed, or indexed, any liens of any nature whatsoever, affecting the title to any real property to be acquired with the Loan/Grant proceeds, or on which will be located any Project property to be acquired with the Loan/Grant proceeds.

Based upon my examination of the foregoing, it is my opinion that:

- A. The Borrower/Grantee is a duly organized and existing incorporated municipality under the laws of the State of New Mexico.
- B. The ordinances, resolutions, rules and regulations governing the operation of the Project have been duly adopted and are now in full force and effect.
- C. The Authorized Officers of the Borrower/Grantee were duly and validly elected or appointed and are empowered to act for the Borrower/Grantee.
- D. The Borrower/Grantee has corporate power:
 - (1) to design, acquire, construct, install and complete the Project;
 - (2) to execute and deliver Loan/Grant documents including those identified above;
 - (3) to perform all acts required by such Loan/Grant documents to be done by it; and
 - (4) to own, operate and maintain the Project during its Useful Life.
- E. All proceedings of the Borrower/Grantee, its elected and appointed officers, and employees, required or necessary to be taken in connection with the authorization of the

actions specified above have been duly taken and all such authorizations are presently in full force and effect.

- F. The Resolution has been duly signed and adopted in accordance with all applicable laws and has not been repealed, rescinded, revoked, modified, amended or supplemented in any manner except as set forth in the Resolution. The Resolution constitutes valid and sufficient legal authority for the Borrower/Grantee to carry out and enforce the provisions of the Loan/Grant Agreement.
- G. The Resolution is a valid and binding special limited obligation of the Borrower/Grantee enforceable in accordance with its terms and creates the pledge of the Net System Revenues of the Borrower/Grantee, as described in the Loan/Grant Agreement (the "Pledged Revenues") which it purports to create.
- H. The Loan/Grant Agreement is a valid and binding special, limited obligation of the Borrower/Grantee, enforceable in accordance with its terms and provisions and the terms and provisions of the Resolution.
- I. No event will result from the execution and delivery of the Loan/Grant Agreement that constitutes a default or an event of default under either the Loan/Grant Agreement or the Resolution, and no event of default and no default under the Loan/Grant Agreement or the Resolution has occurred and is continuing on the date of this Opinion.
- J. The Borrower/Grantee has duly authorized and approved the consummation by it of all transactions, and has complied with all requirements and satisfied all conditions, which are required by the Loan/Grant Agreement to have been authorized, approved, performed or consummated by the Borrower/Grantee at or prior to the date of this Opinion. The Borrower/Grantee has full legal right, power and authority to carry out and consummate the transactions contemplated by the Resolution and the Loan/Grant Agreement.
- K. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the enforceability of the Loan/Grant Agreement or any of the actions required to be taken by the Resolution or the Loan/Grant Agreement to the date of this Opinion have been obtained and are in full force and effect.
- L. Neither the Borrower/Grantee's adoption of the Resolution nor any action contemplated by or pursuant to the Resolution or the Loan/Grant Agreement does or will conflict with, or constitutes a breach by the Borrower/Grantee of, or default by the Borrower/Grantee under any law, court decree or order, governmental regulation, rule or order, ordinance, resolution, agreement, indenture, mortgage or other instrument to which the Borrower/Grantee is subject or by which it is bound.
- M. There is no actual or threatened action, suit, proceeding, inquiry or investigation against the Borrower/Grantee, at law or in equity, by or before any court, public board or body, nor to my knowledge, is there any basis therefore, affecting the existence of the

Borrower/Grantee or the titles of its officials to their respective offices, or in any way materially adversely affecting or questioning (a) the territorial jurisdiction of the Borrower/Grantee, (b) the use of the proceeds of the Loan/Grant Agreement for the Project and to pay certain costs of the Finance Authority and the Water Trust Board associated with the administration of the Water Project Fund, (c) the validity or enforceability of the Loan/Grant Agreement or any proceedings of the Borrower/Grantee with respect to the Resolution or the Loan/Grant Agreement, (d) the execution and delivery of the Loan/Grant Agreement, (e) the authority of the Borrower/Grantee to repay the Loan Amount, or (f) the power of the Borrower/Grantee to carry out the transactions contemplated by the Resolution and the Loan/Grant Agreement.

- N. There are no recorded liens of any nature whatsoever affecting the title to any real property upon which the Project will be located.
- O. The Borrower/Grantee has proper title, easement and rights of way to the property upon or through which the Project is to be constructed.
- P. No legal proceedings have been instituted or are pending, and to my knowledge none are threatened, whether or not the Borrower/Grantee is named as a party in such proceedings, which would affect the Borrower/Grantee's interest in the real property upon which the Project will be located, and there are no judgments against the Borrower/Grantee or liens against any property of the Borrower/Grantee that would impair the Borrower/Grantee's ability to complete the Project.
- Q. The Borrower/Grantee has acquired as legally bound to acquire pursuant to the Loan/Grant Agreement all of the necessary land rights, easements and rights-of-way for the Project and the Borrower/Grantee now has sufficient, adequate and continuous rights-of-way to permit the design, construction, installation, operation and maintenance of the Project.

Dated this 30th day of October, 2020.

Jaime F. Rubin
Attorney for Borrower/Grantee,
PO Drawer 151
Truth or Consequences, NM 87901

STATE OF NEW MEXICO)
) ss. DELIVERY, DEPOSIT AND
COUNTY OF SIERRA) CROSS-RECEIPT CERTIFICATE

By Angela A. Torres, City Clerk/Treasurer

STATE OF NEW MEXICO)
) ss
COUNTY OF SANTA FE)

It is hereby certified by the undersigned, a duly qualified and acting official of the New Mexico Finance Authority, that, the undersigned has, on the date of this Certificate, received from the City of Truth or Consequences, Sierra County, New Mexico the Loan/Grant Agreement for Project No. WPF-5089.

NEW MEXICO FINANCE AUTHORITY

By _____
Marquita D. Russel, Chief Executive Officer

SEPTEMBER 2020						
M	T	W	T	F	S	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

OCTOBER 2020						
M	T	W	T	F	S	S
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26	27	28	29	30	31	

NOVEMBER 2020						
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16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

NEW MEXICO FINANCE AUTHORITY
FINANCING SCHEDULE & DISTRIBUTION LIST

\$641,146
WATER PROJECT FUND LOAN/GRANT
(\$384,688 Grant/\$256,458 Loan)
CITY OF TRUTH OR CONSEQUENCES,
SIERRA COUNTY, NEW MEXICO

Project No. WPF-5089

Prepared: August 24, 2020
Finalized: September 2, 2020

DATE	ACTION	PARTIES
Thursday, October 3, 2019	Application received by Finance Authority	Borrower/Grantee
2020 Regular Session (Ch. 68)	Legislative approval	Legislature
Thursday, May 7, 2020	Water Trust Board approval	WTB
Monday, June 1, 2020	Water Trust Board Award Letter Sent	WTB
Wednesday, September 2, 2020	Distribute Draft Financing Schedule to Finance Authority for review and comment	VN
Thursday, September 3, 2020	Distribute draft Financing Schedule, closing documents for review and comment by Finance Authority, Borrower/Grantee and Borrower/Grantee's counsel	VN
Wednesday, September 9, 2020	Comments due on draft closing documents from Finance Authority Borrower/Grantee and Borrower/Grantee's counsel	Finance Authority, Borrower/Grantee, Borrower/Grantee's counsel
Wednesday, September 9, 2020	Final Interim Debt Service Schedule Due to VN	Finance Authority

DATE	ACTION	PARTIES
Wednesday, September 16, 2020	Closing documents in final form distributed to Borrower/Grantee for signature with a copy to the Finance Authority	VN
Wednesday, September 23, 2020	Submit notice of adoption to the Sierra County Sentinel by 12:00 p.m.	VN
Wednesday, September 23, 2020	Governing Body adopts Resolution	Borrower/Grantee
Friday, September 25, 2020	Publication of notice of adoption in the <i>Sierra County Sentinel</i>	Legal newspaper for Borrower/Grantee
Wednesday, September 30, 2020	Closing documents signed by Borrower/Grantee and delivered to closing counsel	Borrower/Grantee
Monday, October 26, 2020	Delivery of closing documents forwarded to Finance Authority in paper and electronic form for signature	VN
Monday, October 26, 2020	Thirty-day limitations period ends	
Wednesday, October 28, 2020	Finance Authority signs closing documents	Finance Authority
Friday, October 30, 2020	Closing	All
Two weeks after receipts of all signed transcript documents	Transcript distributed	VN

DISTRIBUTION LIST

BORROWER/GRANTEE

Name: City of Truth or Consequences
505 Sims Street
Truth or Consequences, NM 87901

Contact(s): Traci Burnett, Grant/Projects
Coordinator- Zoning Official
Email: tburnette@torcnm.org
Phone: (575) 894-6673

Morris Madrid, City Manager
Email: mmadrid@torcnm.org
Phone: (575) 894-6681

Tammy Gardner, Executive Assistant
Email: tgardner@torcnm.org
Phone: (575) 894-6680

Carol Kirkpatrick, Finance Director

NEW MEXICO FINANCE AUTHORITY

(Finance Authority)
207 Shelby Street
Santa Fe, NM 87501
Phone: (505) 984-1454

Angela Quintana, Senior Program Administrator
Phone: (505) 992-9648
Email: WTBAdmin@nmfa.net

Bryan Otero, Legal and Compliance Counsel
Email: botero@nmfa.net

Charlotte Larragoite, Paralegal
and Compliance Assistant
Email: clarragoite@nmfa.net

Email: ckirkpatrick@torcnm.org
Phone: (575) 895-6673

Angela A. Torres, CMC City Clerk/Treasurer
Email: aatorres@torcnm.org
Phone: (575) 894-6674

BORROWER/GRANTEE'S ENGINEER

Contact: Alfredo Holguin
Wilson & Company
414 N. Main St.
Las cruces, NM 88001
Email address: alfredo.holguin@wilsonco.com
Phone: (505) 348-4158

BORROWER/GRANTEE'S COUNSEL

Contact(s): Jaime F. Rubin, Attorney
Jaime F. Rubin LLC
PO Drawer 151
Truth or Consequences, NM 87901
Phone: (575) 538-2925
Email: wjp@qwestoffice.net

LOAN/GRANT COUNSEL

Virtue & Najjar, PC (VN)
2200 Brothers Road, 2nd Floor
P.O. Box 22249
Santa Fe, New Mexico 87502-2249
Phone: (505) 983-6101
Fax: (505) 983-8304

Richard L.C. Virtue, Attorney
Email: rvirtue@virtuelaw.com
Phone: (505) 983-6101 ext. 1

Mark Chaiken, Attorney
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Cybele Carpenter, Paralegal
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Leslie J. Medina, Managing Director,
Loan Operations
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Rio Trujillo, Funding Coordinator
Email: rtrujillo@nmfa.net

Mary Finney, Funding Coordinator
Phone: (505) 992-9658
Email: mfinney@nmfa.net

NEWSPAPER

Sierra County Sentinel
Address: 217 E. 3rd Street,
Truth or Consequences, NM 87901
Contact: Rebecca Quiles
Phone: (575) 894-3088
Fax: (575) 894-3998
Email: sentinelofficemgr@gmail.com

(Publication Deadline: Wednesday's by 12:00 p.m.
Published weekly on Friday's)

PRAUTHORIZED PAYMENT (ACH DEBIT) AUTHORIZATION FORM

Complete and return to LaRain Valdez, New Mexico Finance Authority

I hereby authorize the NEW MEXICO FINANCE AUTHORITY, hereinafter called COMPANY, to initiate debit entries to the () Checking or () Savings account indicated below in the amounts shown on the attached Exhibit "A," Payment Schedule, relating to the Loan/Grant Agreement dated October 30, 2020 by and between the COMPANY and the City of Truth or Consequences, New Mexico; and the depository named below, hereinafter called DEPOSITORY, to debit the same to such account. **I am a singor on the account indicated below.**

Account Type (Checking / Saving): _____

Checking Account No. _____

Savings Account No. _____

Transit/ABA No. (found on the bottom left of your check or savings deposit slip) _____

Financial Institution Name: _____

Financial Institution Address (City, State):

This authority will remain in effect until COMPANY has received written notification from me of its termination in such time and in such manner as to afford COMPANY a reasonable opportunity to act on it.

Name on Account: _____
(Please Print)

Signature: _____
Date: _____

Attach Voided Check

EXHIBIT "A"

PAYMENT SCHEDULE

Date	Amount
06/01/2023	\$13,207.84
06/01/2024	13,207.36
06/01/2025	13,207.71
06/01/2026	13,207.91
06/01/2027	13,207.95
06/01/2028	13,207.83
06/01/2029	13,207.55
06/01/2030	13,208.13
06/01/2031	13,207.53
06/01/2032	13,207.80
06/01/2033	13,207.91
06/01/2034	13,207.87
06/01/2035	13,207.68
06/01/2036	13,207.33
06/01/2037	13,207.86
06/01/2038	13,208.25
06/01/2039	13,207.44
06/01/2040	13,207.52
06/01/2041	13,207.46
06/01/2042	13,208.29

October 30, 2020

New Mexico Finance Authority
207 Shelby Street
Santa Fe, New Mexico 87501

Re: \$641,146 Loan/Grant to City of Truth or Consequences,
Sierra County, New Mexico, WPF-5089

Ladies and Gentlemen:

We have acted as Loan/Grant Counsel to the New Mexico Finance Authority in connection with the \$641,146 loan/grant agreement dated October 30, 2020 (the "Loan/Grant Agreement") by and between the City of Truth or Consequences, Sierra County, New Mexico (the "Borrower/Grantee") and the New Mexico Finance Authority (the "Finance Authority"). The Loan/Grant Agreement is executed and delivered by the Borrower/Grantee pursuant to Sections 72-4A-1 through 72-4A-11, NMSA 1978, as amended, and the Borrower/Grantee's Resolution No. 14 20/21, adopted on September 23, 2020 (the "Resolution"). The Loan/Grant Agreement has been executed and delivered to provide funds for the design and construction of two booster station improvements to include the replacement of a critical distribution line segment in order to adequately provide a reliable source of water to community residents and critical infrastructure including hospitals and schools for the Borrower/Grantee (the "Project"), as described in the Loan/Grant Agreement.

We have examined the Resolution and such other law and certified proceedings and other documents as we deem necessary to deliver this opinion. As to questions of fact material to the opinions set forth herein, we have relied upon representations of the Borrower/Grantee contained in the Resolution and certified proceedings and other documents furnished to us, without undertaking to verify the same by independent investigation. In addition, we have relied upon statements of law made and legal opinions delivered by the Borrower/Grantee's legal counsel in the certified proceedings.

Based on our examination, we are of the opinion that, under existing laws, regulations, rulings and judicial decisions as of the date hereof, subject to the provisions of federal bankruptcy law and other laws affecting creditors' rights and further subject to the exercise of judicial discretion in accordance with general principles of equity and the assumptions, qualifications and limitations contained in this opinion:

1. The Resolution is a valid and binding special limited obligation of the Borrower/Grantee enforceable in accordance with its terms and creates the pledge of the Net System Revenues of the Borrower/Grantee, as described in the Loan/Grant Agreement (the "Pledged Revenues") which it purports to create.

2. The Loan/Grant Agreement is a valid and binding special, limited obligation of the Borrower/Grantee, enforceable in accordance with its terms and provisions and the terms and provisions of the Resolution.

3. The Loan/Grant Agreement is payable solely from, and such payment is secured by a valid and binding subordinate lien on the distribution on the Pledged Revenues subordinate to the lien thereon of outstanding senior obligations secured by the Pledged Revenues and on a parity with the lien thereon of other outstanding obligations secured by a subordinate lien on the Pledged Revenues. The Finance Authority has no right to have taxes levied by the Borrower/Grantee for the payment of principal of or interest on the Loan/Grant Agreement and the Loan/Grant Agreement does not represent or constitute a debt or a pledge of, or a charge against, the general credit of the Borrower/Grantee.

4. The Loan/Grant Agreement is a valid and binding obligation of the Finance Authority and is enforceable in accordance with its terms and provisions.

We express no opinion with respect to the provisions of the Loan/Grant Agreement and the Resolution with respect to indemnification, provisions requiring that amendments be in writing or payment of attorneys' fees.

This opinion letter is limited to matters expressly stated in this opinion letter and no opinion is inferred or may be implied beyond the matters expressly stated in this opinion letter.

We express no opinion as to, or the effect or applicability of, any laws other than the laws of the State of New Mexico. The opinions expressed herein are based only on the laws in effect as of the date hereof, and in all respects are subject to and may be limited by future legislation, as well as developing case law. We undertake no obligation to update or modify this opinion for any future events or occurrences, including, but not limited to, determining or confirming continuing compliance by the Finance Authority and the Borrower/Grantee with the terms of the Loan/Grant Agreement.

The foregoing opinion represent our legal judgment based upon a review of existing legal authorities that we deem relevant to render such opinions and are not a guarantee of results.

We understand that this opinion is being relied upon by the addressees hereof, and we consent to such reliance, but this opinion may not be delivered to or relied upon by any other person or entity without our written consent.

Very truly yours,

VIRTUE & NAJJAR, PC

\$641,146
CITY OF TRUTH OR CONSEQUENCES, SIERRA COUNTY, NEW MEXICO
WATER PROJECT FUND LOAN/GRANT
No. WPF-5089

RIGHT-OF-WAY CERTIFICATE

The undersigned on behalf of the City of Truth or Consequences (the "Borrower/Grantee"), an incorporated municipality in the County of Sierra and the State of New Mexico, hereby certifies:

1. That the Borrower/Grantee is the owner in fee simple of the lands needed for the construction, operation, design and maintenance of the facilities to be designed, installed, repaired, or enlarged with the proceeds of the above-referenced Loan/Grant made by the New Mexico Finance Authority and the New Mexico Water Trust Board (the "Project"), or that the Borrower/Grantee has acquired and presently holds continuous and adequate rights-of-way on lands owned by others that are needed for the Project, whether public or private, and such omissions, defects, or restrictions as may exist will in no substantial way or manner endanger the value or the operation of the Project.
2. That the Borrower/Grantee has acquired all necessary permits, franchises, and authorizations or other instruments by whatsoever name designated, from public utilities and public bodies, commissions, or agencies authorizing the construction, operation, and maintenance of the facilities upon, along or across streets, roads, highways, and utility corridors.
3. That the attached map shows the location of all lands and rights-of-way needed for the Project, which lands and rights-of-way the Borrower/Grantee has acquired and now holds by purchase or dedication, by right of use or adverse possession, or by legal conveyances such as right-of-way or easement deeds, permits, or other instruments or will obtain prior to disbursement of any portion of the Loan/Grant Amount for construction.

[Signature page follows.]

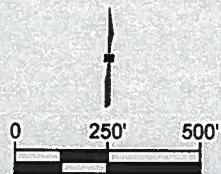
IN WITNESS WHEREOF, the undersigned has executed this Certificate on behalf of the City of Truth or Consequences as of this 30th day of October, 2020.

Jaime F. Rubin
Attorney for Borrower/Grantee,
PO Drawer 151
Truth or Consequences, New Mexico 87901



**WILSON
& COMPANY**

414 N Main St. a
Las Cruces, NM 88001
(575) 527-9257



City of Truth or Consequences, NM
Proposed Project Location Map
2020 WTB Booster Station & Austin St. Improvements

\$641,146
CITY OF TRUTH OR CONSEQUENCES, SIERRA COUNTY, NEW MEXICO
WATER PROJECT FUND LOAN/GRANT
NO. WPF-5089

Closing Date: October 30, 2020

TRANSCRIPT OF PROCEEDINGS
INDEX

1. Open Meeting Act Resolution No. 01 20/21 adopted July 8, 2020
2. Resolution No. 14 20/21, adopted September 23, 2020, Notice of Meeting, Meeting Agenda, and the Affidavit of Publication of the Notice of Adoption of Resolution in the *Sierra County Sentinel*
3. Loan/Grant Agreement
4. General and No Litigation Certificate
5. Delivery, Deposit and Cross-Receipt Certificate
6. Right of Way Certificate
7. Borrower/Grantee's Counsel Opinion
8. Approving Opinion of Virtue & Najjar, PC, Loan/Grant Counsel to the Finance Authority
9. Finance Authority Application and Project Approval (informational only)
10. ACH Authorization

TRANSCRIPT DISTRIBUTION LIST

City of Truth or Consequences, New Mexico
Jaime F. Rubin, City Attorney
New Mexico Finance Authority
Virtue & Najjar, PC



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: September 23, 2020

Agenda Item #: F.2

SUBJECT: Resolution No. 15 20/21 Authorizing and approving submission of a completed application for financial assistance and project approval to the New Mexico Finance Authority Water Trust Board for Cantrell Dam Design and Rehabilitation and designating signatory authority for related documentation

DEPARTMENT: Community Development

DATE SUBMITTED: September 17, 2020

SUBMITTED BY: Traci Burnette

WHO WILL PRESENT THE ITEM: City Manager Madrid

Summary/Background:

Project proposes the design and rehabilitation for Cantrell Dam in order to provide flood protection for the west side of the City.

Recommendation:

Approve Resolution No. 15 20/21

Attachments:

- Resolution 15 20/21
- Click here to enter text.

Fiscal Impact (Finance): Choose an item.

Click here to enter text.

Legal Review (City Attorney): Choose an item.

Click here to enter text.

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. Resolution No. 15 20/21 Ordinance No. Click here to enter text.

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 9-23-20



RESOLUTION NO. 15 20/21

**AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED
APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO
THE NEW MEXICO FINANCE AUTHORITY WATER TRUST BOARD FOR CANTRELL DAM
DESIGN AND REHABILITATION.**

WHEREAS, the City of Truth or Consequences ("City") is a qualified entity under the New Mexico Finance Authority Act, Sections 6-21-1 through 6-21-31, NMSA 1978 ("Act"), and the City Commission is authorized to borrow funds and/or issue bonds for financing of public projects for the benefit of the City; and

WHEREAS, the New Mexico Finance Authority ("Authority") has instituted a program for financing of projects from the Water Trust Board (WTB) fund created under the Act and has developed an application procedure whereby the City may submit an application ("Application") for financial assistance from the Authority; and

WHEREAS, the City intends to undertake design and construction services of the Cantrell Dam Design and Rehabilitation project for the benefit of the City and its citizens; and

WHEREAS, this resolution approving submission of the completed Application to the Authority for its consideration and review is required as part of the Application; and

WHEREAS, the City is committing the required cash match obligation for the proposed project in addition to any loan component that may be required.

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES;

That the filing of an Application to the New Mexico Water Trust Board for funding in the 2021 Water Project Fund funding cycle is hereby authorized. The project type falls under Flood Prevention and proposes the design and rehabilitation for Cantrell Dam in order to provide flood protection for the west side of the City. The financial assistance requested is in the amount of \$750,000.00.

BE IT FURTHER RESOLVED, that City Manager Morris Madrid is hereby designated as the City's representative on behalf of this application and authorized signatory authority on all related documentation.

PASSED, APPROVED AND ADOPTED this 23rd day of September, 2020.

Sandra Whitehead, Mayor

ATTEST:

Angela A. Torres, City Clerk



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: September 23, 2020

Agenda Item #: F.3

SUBJECT: Resolution No. 16 20/21 Authorizing and approving submission of a completed application for financial assistance and project approval to the New Mexico Finance Authority Water Trust Board for Effluent Irrigation System Improvements and designating signatory authority for related documentation

DEPARTMENT: Community Development

DATE SUBMITTED: September 17, 2020

SUBMITTED BY: Traci Burnette

WHO WILL PRESENT THE ITEM: City Manager Madrid

Summary/Background:

Project proposes the planning, design, and construction of Effluent Irrigation System Improvements in order to ensure consistent and efficient operation increasing the City's water conservation through reuse. The existing pumping system has to be operated manually due to issues with existing controls and typically empties the wet well with the potential for burning up motors. The project aims to rehabilitate of the existing pump system for reliability and ease of operation allowing City Staff to utilize all available effluent for irrigation and reduce operations costs.

Recommendation:

Approve Resolution No. 16 20/21

Attachments:

- Resolution 16 20/21
- Effluent Pond Picture

Fiscal Impact (Finance): Choose an item.

[Click here to enter text.](#)

Legal Review (City Attorney): Choose an item.

[Click here to enter text.](#)

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. Resolution No. 16 20/21 Ordinance No. [Click here to enter text.](#)

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 9-23-20



RESOLUTION NO. 16 20/21

**AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED
APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO
THE NEW MEXICO FINANCE AUTHORITY WATER TRUST BOARD FOR EFFLUENT
IRRIGATION SYSTEM IMPROVEMENTS.**

WHEREAS, the City of Truth or Consequences ("City") is a qualified entity under the New Mexico Finance Authority Act, Sections 6-21-1 through 6-21-31, NMSA 1978 ("Act"), and the City Commission is authorized to borrow funds and/or issue bonds for financing of public projects for the benefit of the City; and

WHEREAS, the New Mexico Finance Authority ("Authority") has instituted a program for financing of projects from the Water Trust Board (WTB) fund created under the Act and has developed an application procedure whereby the City may submit an application ("Application") for financial assistance from the Authority; and

WHEREAS, the City intends to undertake planning, design, and construction services for the Effluent Irrigation System Improvements project for the benefit of the City and its citizens; and

WHEREAS, this resolution approving submission of the completed Application to the Authority for its consideration and review is required as part of the Application; and

WHEREAS, the City is committing the required cash match obligation for the proposed project in addition to any loan component that may be required.

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES;

That the filing of an Application to the New Mexico Water Trust Board for funding in the 2021 Water Project Fund funding cycle is hereby authorized. The project type falls under Water Conservation or Treatment, Recycling or Reuse and proposes the planning, design, and construction of Effluent Irrigation System Improvements in order to ensure consistent and efficient operation increasing the City's water conservation through reuse. The financial assistance requested is in the amount of \$455,000.00.

BE IT FURTHER RESOLVED, that City Manager Morris Madrid is hereby designated as the City's representative on behalf of this application and authorized signatory authority on all related documentation.

PASSED, APPROVED AND ADOPTED this 23rd day of September, 2020.

Sandra Whitehead, Mayor

ATTEST:

Angela A. Torres, City Clerk





City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: September 23, 2020

Agenda Item #: F.4

SUBJECT: Resolution No. 17 20/21 Authorizing and approving submission of a completed application for financial assistance and project approval to the Bureau of Reclamation WaterSMART Grants for Water Meter Replacement Phase 1 and designating signatory authority for related documentation

DEPARTMENT: Community Development

DATE SUBMITTED: September 17, 2020

SUBMITTED BY: Traci Burnette

WHO WILL PRESENT THE ITEM: City Manager Madrid

Summary/Background:

Project proposes the design and construction of water meter assembly replacements to increase the City's water conservation through accurate and consistent metering.

Recommendation:

Approve Resolution No. 17 20/21

Attachments:

- Resolution 17 20/21
- .

Fiscal Impact (Finance): Choose an item.

Legal Review (City Attorney): Yes

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. Resolution No. 17 20/21 Ordinance No. Click here to enter text.

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 9-23-20



RESOLUTION NO. 17 20/21

**AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED
APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO
THE BUREAU OF RECLAMATION WATERSMART GRANTS: WATER AND ENERGY
EFFICIENCY GRANTS FOR FISCAL YEAR 2021 PROGRAM FOR WATER METER
REPLACEMENT PHASE I.**

WHEREAS, the City is committing the required cash match obligation for the proposed project as its local match as identified in the Funding Plan, to Bureau of Reclamation Funds;

WHEREAS, The City of Truth or Consequences will have available funds representing the total cost of the proposed project and will be available when the agreement becomes effective, and;

WHEREAS, The City of Truth or Consequences will work with Reclamation to meet established deadlines for entering into a grant or cooperative agreement.

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES;

That the filing of an Application to the Bureau of Reclamation for funding in the WaterSMART Grants: Water and Energy Efficiency Grants for Fiscal Year 2021 Program funding cycle is hereby authorized. The project type falls under Municipal Metering and proposes the design and construction of water meter assembly replacements to increase the City's water conservation through accurate and consistent metering. The financial assistance requested is in the amount of \$100,000.00.

BE IT FURTHER RESOLVED, that City Manager, Morris Madrid, is hereby designated as the City's representative on behalf of this application, has reviewed and supports the application, and has authorized signatory authority on all related documentation.

PASSED, APPROVED AND ADOPTED this 23rd day of September, 2020.

ATTEST:

Sandra Whitehead, Mayor

Angela A. Torres, City Clerk



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: September 23, 2020

Agenda Item #: G.1

SUBJECT: Discussion/Action: Consideration of Amendments to Resolution 33 19/20 pertaining to a back to work plan for the City of Truth or Consequences.

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: September 18, 2020

SUBMITTED BY: Angela A. Torres, City Clerk-Treasurer

WHO WILL PRESENT THE ITEM: City Manager Madrid

Summary/Background:

This is a re-occurring item that will be presented at each meeting during the COVID-19 Pandemic.

Recommendation:

Review of Resolution 33 19/20.

Attachments:

Resolution 33 19/20.

Fiscal Impact (Finance): TBD

Legal Review (City Attorney): N/A

Approved For Submittal By: ☐ Department Director

Reviewed by: ☒ City Clerk ☐ Finance ☒ Legal ☐ Other: -

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 9-23-2020



RESOLUTION NO. 33 19/20

A RESOLUTION ADOPTING A GET BACK TO WORK PLAN

WHEREAS, the City of Truth or Consequences City Commission met upon notice of meeting duly published on May 27, 2020, at 5:30 P.M. in the City Commission Chambers, 405 W. 3rd Street, Truth or Consequences, New Mexico 87901 via teleconference; and

WHEREAS, on March 11, 2020, the Governor of New Mexico issued Executive Order 2020-04, in response to an outbreak of a novel coronavirus identified as COVID-19, declaring a state of public health emergency under the Public Health Emergency Response Act and invoking powers under the All Hazards Emergency Management Act and the Emergency Licensing Act; and

WHEREAS, pursuant to the declaration of a public health emergency, the Secretary of the New Mexico Department of Health has issued several Public Health Emergency Orders, including the Order of March 23, 2020, in which the Secretary defined essential business and ordered that all "non-essential" businesses, including non-profits, reduce their in-person workforce by 100%; and

WHEREAS, on April 6, 2020 the Secretary amended the March 23, 2020, Order and ordered that all "non-essential" businesses, including non-profits, close "office spaces, retail spaces, or other public spaces" of the businesses; and

WHEREAS, on April 6, 2020, the Governor of New Mexico issued Executive Order 2020, which among other actions, extended the declaration of a public health emergency until May 1, 2020, unless rescinded or extended; and

WHEREAS, the Governor of New Mexico amended Executive Order 2020 on May 15, 2020, effective until rescinded or amended; and

WHEREAS, in rural areas, small businesses are the primary, and sometimes the sole, provider of essential goods and services; and

WHEREAS, the blanket closure of small businesses deemed "non-essential" has had a significant impact on those businesses and continues to have, and the local economy in general; and

WHEREAS, data related to COVID-19 shows that the virus has impacted different areas in New Mexico; and

WHEREAS, Sierra County currently has a low number of confirmed cases; and

WHEREAS, The City of Truth or Consequences acknowledges that the best safe health practices are a shared responsibility of all its citizens and visitors, and

WHEREAS, the City of Truth or Consequences appears to be positioned to allow businesses to re-open in progressive degrees and timing; and

WHEREAS, the City of Truth or Consequences supports maximum testing and requests maximum support from the State of New Mexico; and

WHEREAS, data related to Covid-19 shows that the virus has impacted different areas in New Mexico, and continues to be a serious health risk; and

NOW, THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, THAT IT IS HEREBY ADOPTING THE FOLLOWING AS ITS GET BACK TO WORK PLAN:

The following safe practices shall be followed as appropriate:

1. Continue social distancing of six feet while working, shopping, and all other times possible
2. Employees of business establishments shall wear masks. Businesses have the right to require customers to wear masks
3. Gatherings of 10 persons or more are prohibited
4. Sanitation supplies and/or facilities shall be available at all businesses
5. Vulnerable individuals should continue to stay at home.
6. Travel shall be reduced as much as possible

Specifically:

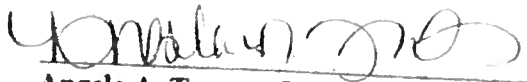
- a. Previously closed Bars, Restaurants and Lodging may operate at Fifty percent (50%) of capacity as designated by the New Mexico State Fire Marshal. Distances between tables barstools less than six feet is prohibited
- b. Previously closed Retail Stores may operate at Fifty percent (50%) of capacity as designated by the New Mexico State Fire Marshal.
- c. Medical facilities may operate at full (100%) capacity while maintaining safe distancing and sanitizing requirements
- d. Close contact businesses such as Cosmetologists, Barbers, Manicurists, etc. may service customers on a one to one basis. No waiting areas will be permitted
- e. Recreational facilities may open at 50% capacity if they are able to follow safe distancing requirements

The Civic Center May be used for essential meetings at the discretion of the City Manager. This Resolution shall go into effect commencing May 27, 2020 unless otherwise superseded by an Executive Order from State Authority.

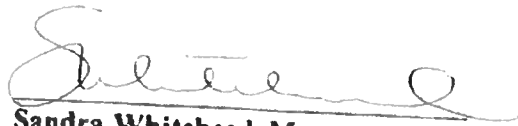
This Resolution may be amended by the City Commission in its discretion

PASSED, APPROVED, and ADOPTED this 27th day of May, 2020.

ATTEST:



Angela A. Torres, City Clerk-Treasurer



Sandra Whitehead, Mayor



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: September 23, 2020

Agenda Item #: H.1

SUBJECT: Possible appointment of a qualified elector to fill the vacancy for the City Commissioner Position IV.

DEPARTMENT: Clerk's Office

DATE SUBMITTED: September 16, 2020

SUBMITTED BY: Angela A. Torres, City Clerk

WHO WILL PRESENT THE ITEM: City Manager Madrid

Summary/Background:

Mayor Pro-Tem Brendan Tolley submitted his resignation letter on August 26, 2020. Sec. 2-29 in the Municipal Code states vacancies in the Commission shall, by a majority vote, be filled by the remaining Commissioners for the period intervening between the occurrence of the vacancy and the next regular election.

§ 3-14-9. Vacancies in commission: If a vacancy occurs in the commission, the remaining elected and appointed commissioners shall, by a majority vote, appoint a qualified elector to fill the vacancy until the next regular local election, at which time a qualified elector shall be elected to fill the remaining unexpired term, if any. Interested parties include: Merry Jo Fahl, Rick Dumiak, Ingo Hoepfner, and Frances Luna.

Recommendation:

Appoint a qualified elector to fill vacancy for the Position IV City Commissioner.

Attachments:

- Resignation Letter
- Sec. 2-29. Vacancies
- § 3-14-9. Vacancies in commission
- Letters of Interest

Fiscal Impact (Finance): N/A

Legal Review (City Attorney): Yes

--

Approved For Submittal By: ☐ Department Director

Reviewed by: ☒ City Clerk ☐ Finance ☐ Legal ☐ Other: _

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. . Ordinance No. .

Continued To: . Referred To: .

☐ Approved ☐ Denied ☐ Other: .

File Name: CC Agendas 9-23-2020

August 24, 2020

Mayor Whitehead, Commissioners Forrister, Baca and Aragon, et al.:

It is with deep regret and no small amount of embarrassment that I must resign my position as Mayor Pro-Tem and City Commissioner of Truth or Consequences. Recent unexpected health issues leave me unable to devote the full time and energy this position deserves. To continue serving would be a high honor but would be a disservice to you, my fellow commissioners, as well as the people of Truth or Consequences. In the best interests of our great city, I must, unfortunately, step aside so that someone more capable may fill this role.

Thank you all for your assistance and patience. Thank you to everyone who supported my campaign and assisted me in my efforts to serve. Best of luck to my fellow commissioners in the governance of our beloved home.

Regards,

Brendan Tolley

Mayor Pro-Tem

City of Truth or Consequences

Sec. 2-29. - Vacancies.

Vacancies in the Commission shall, by majority vote, be filled by the remaining Commissioners for the period intervening between the occurrence of the vacancy and the next regular election.

(Code 1962, § 1-5-9)

State Law reference— Vacancies in Commission, NMSA 1978, § 3-14-9.

3-14-9. Vacancies in commission.

If a vacancy occurs in the commission, the remaining elected and appointed commissioners shall, by a majority vote, appoint a qualified elector to fill the vacancy until the next regular local election, at which time a qualified elector shall be elected to fill the remaining unexpired term, if any.

History: 1953 Comp., § 14-13-9, enacted by Laws 1965, ch. 300; 1973, ch. 129, § 2; 1985, ch. 208, § 112; 2018, ch. 79, § 57.

Merry Jo Fahl

Good morning everyone

I know today that you, as a City Commission, must make a decision to select someone to fill the unexpired term of Brandon Tolley. I had contacted Mayor Sandy Whitehead and submitted my name as a possible candidate. Most of you know me in some fashion but I thought it would be good to give you a little better understanding of my history.

I am a lifelong resident of Sierra County and my family has been residents of this community for five generations. This community is very important to me and to my family and I have always done my utmost to make it better. I currently serve on the Board of Directors of the Jornada Resource Conservation Development Council (RC&D), a non-profit organization, as Secretary-Treasurer and have been in that position since the year 2000. I also serve as the Secretary-Treasurer of the state organization for RC&Ds for the past 12 years and currently serve as President of the non-profit organization Rio Grande Valley Court Appointed Special Advocate (CASA) which helps advocate for children within the CYD system. I was an original member of the Veteran's Memorial Park City Advisory Board and still currently serve on the non-profit board that manages the museum at this time. In the past I have served on the Sierra County Economic Development board, T or C Main Street and the T or C Fiesta Boards. I have raised four sons in this community, all graduates of Hot Springs High School; three of them have served in the military.

I have recently retired as the District Manager of the Sierra Soil and Water Conservation District, a local unit of government. During my almost 30 years there I was able to accomplish a great deal to better our natural resources and to also assist in economic development programs within the community. My position there is very similar to the City of T or C City Manager. Assisting their Board of Supervisors provided me an opportunity to become very familiar with the roles and responsibilities of elected officials; how meetings are run, the Inspection of Public Records Act, being accountable to the Department of Finance and Administration and how procurement works within local/state governments.

I have a great deal of experience working collaboratively with federal agencies such as the Forest Service, the Bureau of Land Management, Fish and Wildlife Service, Rural Development, and the Natural Resources Conservation Service. I have also worked with NM State Forestry, NM Game and Fish, NM

State Parks, NM Environment Department, Department of Finance and Administration, NM Department of Transportation, NM Veterans Home, and New Mexico State university.

I have been able to secure grants that assisted our community with funds that have exceeded \$2 million dollars; all of those grants created jobs in this community with one grant creating 25 seasonal jobs for two years. I think my knowledge of finding and securing grants would be of benefit to our community; realizing that grant administration is an integral part of the grant funding process. I was also part of the process to secure and complete the Morgan Street structure and its subsequent channels. I worked closely with the Sierra County Tourism Board and the City of T or C in the creation of the Healing Waters Trail and subsequent grant and facilitating the work in process on the proposed footbridge/pedestrian trail now in progress.

I believe that my past experiences and contacts I have made over the years will be of benefit to the City of Truth or Consequences and my community. Please give me your due consideration in your decision of an appointment Commissioner.

Torres, Angela

From: Rick Dumiak <rdumiak@gmail.com>
Sent: Saturday, September 12, 2020 9:38 AM
To: Torres, Angela
Subject: City Commission Vacancy

Follow Up Flag: Follow up
Flag Status: Flagged

Angela,

I am interested in serving on the City Commission, please see that my email is forwarded to the Commission.

Thanks
Rick

To who it may concern:

I would like to be considered for the vacant City Commissioner position.

I am currently serving on the Planning and Zoning Board, however I feel I could better serve our community on the City Commission.

I retired from the Director of Facilities of the Grand Canyon in Arizona. Prior to that I was the Executive Director of Facilities at Buffalo Thunder resort in Santa Fe.

In addition I was also responsible for the Pueblos numerous commercial and residential properties.

Prior to accepting the Executive Director position I was the Project Manager for the Buffalo Thunder Construction and I represented the owners group (The Pueblo of Pojoaque).

During my many years in the construction industry I interacted with many different Federal, State and City governments pertaining to NEPA, OSHA, EPA, and BIA pertaining to compliance issues.

I have experience in budgeting, capital expenditures, teamwork and solving problems.

I feel I would be a welcome addition to the City Commission.

Rick Dumiak
9-12-2020
505 603 6400
705 Charles Street
TorC, NM 87901
--
Rick

Torres, Angela

From: Ingo Hoepfner <ingo87901@gmail.com>
Sent: Wednesday, September 16, 2020 9:41 PM
To: Torres, Angela
Subject: Vacant Commission Seat

Dear Honorable Commissioners, City Manager, and City Staff,

My name is Ingo Hoepfner, and I ran for commissioner in the previous election, 2020. I would like to be considered as a fill in candidate/replacement for Mayor Pro-Tem Brendan Tolley. I am originally from Germany, but I have spent the past 20 years in New Mexico, namely with the German Air Force at Holloman Airforce Base in Alamogordo, but have relocated to TorC two years ago to open Ingo's Art Cafe at 422 Broadway. I am a current member of the City of TorC Recreation Advisory Board, and the current President of the local youth non-profit, Acknowledge, Create, Teach Corp (A.C.T.) where, under normal circumstances, we host a supplemental summer youth program for children and teens in conjunction with other youth programs. I have many great ideas, visions, and suggestions for the future of Sierra County and the City of Truth or Consequences specifically.

I have attended and/or listened to many of the commission meetings, (as they fall during my business opening hours), and I am aware of many of the problems facing the City of TorC. I have an open mind when it comes to infrastructure and improvements city-wide, though I will advocate for projects that are equal in both quality and price. I am eager to invest my time and ideas in our community, and serve the public both as an elected/appointed official and as a local downtown business owner.

My main concerns for the City of Truth or Consequences include tackling our numerous infrastructure issues. I envision a future where our utilities in the downtown could be placed underneath the sidewalks or alleyways in order to beautify our tourist driven economy. I would also like to see the City of TorC move towards a more sustainable future using green energies and technology. The rebranding of our community and marketing of our assets such as the Hot Springs are also one of my priorities. I would like to see more services for seniors and children provided by the City of TorC.

I appreciate your consideration of my application for City of TorC Commissioner. I thank you all for the tough job you do in this community.

Kindest regards,

Ingo Hoepfner
422 N. Broadway
TorC, NM 87901
575-551-8186

Frances L. Luna

1721 McKenzie Road, Truth or Consequences, NM 87901

francesfirecrackerluna@gmail.com • 575-740-1992

September 17, 2020

Dear Commissioners,

I hope this correspondence finds you well. I would like to submit my name for your consideration as an eager, hard-working, and invested applicant to serve as a member of the City Commission. By virtue of my dedicated service on both the City and County Commission, as well as my service on the County Fair Board and the numerous other volunteer positions I have held in our community, I trust that each of you know that I have a servant's heart and a strong desire to represent and serve the residents of the community we love and call home.

As with the three of you, I was born and raised in Sierra County, and have raised my family here. I am a business and property owner, and have a vested interest in our community. I would love to work alongside you to implement our shared vision for growth that will benefit our residents, our tax base and support our infrastructural needs.

I am the most qualified candidate for this Commission seat, as I have remained abreast with current events and issues that have come and will be coming before the City Commission and our jointly owned hospital. Further, I understand the process by which the City's income is generated and budgeted. Additionally, my community involvement, business contacts, knowledge of the City, and my relationships within with the City, afford me a unique opportunity to be a strong voice and advocate for our residents.


The residents, visitors and business owners within our community deserve an experienced commissioner who can hit the ground running and be an open ear, represent everyone equally and work alongside you to make our community shine.

Thank you for your consideration.



Frances Luna

CC: Attorney General's Ruling On Holding 2 Elected Seats Simultaneously

 KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Amador v. New Mexico State Bd. of Ed., N.M.,
June 16, 1969

22 N.M. 400
Supreme Court of New Mexico.
HAYMAKER

v.
STATE EX REL. MCCAIN.

No. 1899.
|
Feb. 12, 1917.

***248** *Syllabus by the Court.*

Incompatibility between offices is an inconsistency between the functions thereof, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both. *Held* that office of member of city board of education and clerk thereof are incompatible.

“Removed,” as used in section 2, art. 20, of state Constitution, *held* to contemplate statutory removals; hence trial court was without power to oust plaintiff in error from office where no successor had qualified therefor.

Synopsis

Error to District Court, Chaves County; John T. McClure, Judge.

Quo warranto by the State of New Mexico, on relation of J. H. McCain, against Mrs. O. R. Haymaker. Judgment of ouster, and defendant brings error. Reversed.

{ 1 } This proceeding was instituted in the district court of Chaves county by an information in the nature of quo warranto on the relation of J. H. McCain against Mrs. O. R. Haymaker, seeking a judgment of ouster against her as a member of the board of education of the city of Roswell. By the information it was represented to the

court that on the first Tuesday of April, 1913, the respondent, Mrs. O. R. Haymaker, was elected a member of the board of education of the city of Roswell for a term of four years, subsequently qualifying and entering upon her duties as a member of such board. Thereafter, on the first Monday of May, 1913, she was appointed clerk of the said board, qualifying as such, and, after serving for a period of two years in that capacity, was reappointed in May, 1915, since which time she has continued to hold and perform the duties of said office, receiving the fees and emoluments thereof. The information further alleged that the two offices of member of the board of education and clerk of said board were incompatible, wherefore Mrs. O. R. Haymaker, by her qualification as clerk of the said board and the assumption of the duties of that office, vacated her office as a member of the school board, and can no longer act as a member of said board, for which reason it was prayed that she be adjudged not entitled to said office, and that a judgment of ouster therefrom be pronounced against her.

{ 2 } The information was filed in September, 1915, or shortly after the second appointment of Mrs. Haymaker as clerk of the board of education. A motion to dismiss and demurrer were subsequently interposed, raising substantially the same grounds, which were that the relator had not sufficient interest in the subject-matter to maintain the action; that the state is not the real party plaintiff; that the relator failed to show any special interest in the office of member of the school board, failed to show that relator is the duly qualified successor of the respondent as a member of the said board of education; and that a judgment of judicial ouster would be in violation of section 2, art. 20, of the Constitution.

{ 3 } The motion to dismiss was denied and the demurrer was overruled, whereupon respondent answered, setting up a denial that she had usurped or intruded into the office; that the offices referred to were incompatible, or that by acceptance of her office of clerk of the board she had vacated her office as a member of the said board. Further answering, the respondent set up the facts pertaining to her election and qualification as a member of the school board, from which office she had never been removed, and that no successor to said office had been elected, appointed, or qualified, or attempted to qualify. She further alleged that her term would not expire until April, 1917, nor until her successor had qualified according to law. She further alleged that relator was estopped by laches and by acquiescence from prosecuting this action.

{ 4 } The court made findings of fact as follows: that relator had obtained the consent of the Attorney General

to institute the proceedings; that he was a citizen and taxpayer of Chaves county and of the school district in question; that respondent was duly elected as one of the members of the board of education of the city of Roswell, as alleged in the information, qualified as such member, and was duly elected by said board as the clerk thereof at the times referred to in the information, qualified as such member, and was duly elected by said board as the clerk thereof at the times referred to in the information, qualifying as such clerk and entering upon the discharge of the duties of that office; that when respondent was elected as clerk of said board in May, 1915, it *249 was necessary for respondent, in order to secure her election as such clerk, to vote for herself; that no successor to respondent as a member of the said board has ever been elected or qualified since her induction into office in May, 1913.

{ 5} The trial court concluded, as a matter of law, that the office of clerk of the board of education is incompatible under the laws of New Mexico with the office of member of the board of education, and that in accepting and undertaking to discharge the duties of clerk of said board respondent vacated her office as member of the said board of education. The court further concluded, construing section 6, art. 12, section 2, art. 20, and section 4, art. 2, of the Constitution that the Legislature did not exceed its power granted by the Constitution when it declared, in subsection 8, § 3956, Code 1915, that accepting and undertaking to discharge the duties of an incompatible office should create a vacancy ipso facto in the other office held by such person, and that said subsection 8, § 3956 is not inconsistent with any of the provisions of the Constitution, and is clearly within the power granted to the Legislature in section 6, art. 12, of the Constitution.

{ 6} As a result of the findings of fact and conclusions of law the district court held that the office of member of the board of education to which the respondent was elected became vacant when she accepted and undertook to discharge the duties of the office of clerk of said board, and that respondent should be ousted from such office. From which judgment of the trial court this writ of error was sued out.

Attorneys and Law Firms

R. D. Bowers, of Roswell, and Renahan & Wright, of Santa Fé, for plaintiff in error.

H. M. Dow, of Roswell, and A. E. James, of Santa Fé, for defendant in error.

Opinion

HANNA, C. J. (after stating the facts as above).

{ 7} The errors assigned by the plaintiff in error are numerous. The two important questions, both decisive of this case, are: First, is the office of member of the city board of education and the office of clerk thereof incompatible; and, second, if incompatible, was the trial court authorized to oust or remove the plaintiff in error from the first office, no successor having been elected, appointed, and qualified therefor?

{ 8} 1. Section 3956, Code 1915, provides that an office becomes vacant when, among other things, an officer accepts and undertakes to discharge the duties of another incompatible office. The statute does not define what is meant by "incompatible." In the brief of plaintiff in error the rule is thus stated:

"In legal contemplation, incompatibility between two offices is an inconsistency between the functions of the two. The offices must subordinate, one to the other, and they must, per se, have the right to interfere with the other before they are incompatible" (citing *People v. Green*, 58 N. Y. 295; *Stubbs v. Lee*, 64 Me. 195, 18 Am. Rep. 251; *State v. Brown*, 5 R. I. 1).

{ 9} As contended by plaintiff in error in his brief, and as well stated in the syllabus of the case of *People v. Green*, supra:

"The incompatibility between two offices, which upon the acceptance of the one by the incumbent of the other operates to vacate the latter, is not simply a physical impossibility to discharge the duties of both offices at the same time, but it is an inconsistency in the functions of the two offices, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both."

{ 10} Counsel for plaintiff in error contend that this rule does not apply to the case at bar because the board of education consists of five members, and no one member can have exclusive control over any matters coming before the board, the statute providing especially that:

"Words giving a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of them; unless it be otherwise expressed in the act giving them authority." Section 5424, Code 1915.

{ 11} It is argued that since the board of education is constituted of five members there are always four members to check any improper act of the fifth, and that the law does not presume that the four remaining members will permit or assist the fifth in furthering his own interests to the detriment of the public, without which presumption it cannot be said that the two offices in question are incompatible. We cannot agree, however, with this contention. It appears from the record before us that the deciding vote in matters pertaining to the interest of the plaintiff in error has been, on several occasions, cast by her. It also appears that she voted herself into office as clerk, fixed the amount of her salary, and approved her salary warrants.

{ 12} Our attention has not been directed to any case directly in point with the present one, but the case of Cotton v. Phillips, 56 N. H. 220, cited in brief of defendant in error, bears some analogy to the facts of the case at bar. In that case the plaintiff was elected to the school board, and was thereafter chosen as auditor, the court holding that by the acceptance of an incompatible office he had vacated his membership on the board. The court said, quoting from the opinion:

"The duties of an auditor are to examine the accounts of the prudential committee, and their vouchers, and report whether they are properly cast and supported, and whether the money has been legally expended. If the same person could hold both offices, he would in fact sit in judgment on his own acts."

{ 13} It is therefore our conclusion that the two offices in question are incompatible under the rule laid down, and which we are constrained to follow, for which reason we cannot agree that the trial court was in error in its holding upon this question.

{ 14} 2. Having determined that the two *250 offices mentioned are incompatible, one with the other, the authority of the trial court to remove or oust plaintiff in error from the first office, in the quo warranto proceedings, is the next decisive question. The proposition is ably argued by both of the parties hereto. The plaintiff in error contends that she not only had the right to the office of member of said board of education at all times, but that she could have been compelled, by mandamus, to perform the duties thereof, because no successor to the office had qualified, on account of the failure of the appointing or elective power to substitute a qualified person in her place. The argument is that under section 2, art. 20, of the state Constitution, every officer, unless removed, holds office until his successor qualifies, and that plaintiff in error has never been removed, in the sense in which that word is used in the Constitution; hence she holds over in the same manner that any officer

would hold over whose term of office had expired but whose successor had not qualified. It is further stated by plaintiff in error that section 3954 specifies the cause of removal of officers of this class, and that section 3954 prohibits the removal of such officers except in the manner specified in the article of which that section is a part. Defendant in error meets this argument by contending that if such is the law, then the "courts are powerless to right an official wrong if the proper appointing power fails or refuses to act," and quotes from and cites a number of cases which he asserts sustain his position. The trial court apparently took the position that the plaintiff in error voluntarily removed herself from the first office by the acceptance of the second. Section 3955, Code 1915, a part of an act concerning officers of the class to which plaintiff in error belongs, provides six grounds for removal; section 3956 specifies the circumstances under which an office becomes vacant. Death of the incumbent, removal as provided in the chapter, failure to qualify as provided by law, expiration of term when no successor has been chosen as provided by law, removal from county in certain cases, absence for certain time under certain conditions, resignation of the officer, and accepting and undertaking to discharge the duties of an incompatible office are the circumstances in which the act declares an office becomes vacant. The section can be said only to define vacancies in office. Since the adoption of the Constitution no public office becomes vacant, in the sense that there is no incumbent to fill it, except in the case of death, perhaps, because under section 2 of article 20 of the state Constitution, every officer holds until his successor qualifies, except when he is removed. That section was construed in *Bowman Bank & Trust Co. v. Bank*, 18 N. M. 589, 139 Pac. 148, wherein the court declared that all officers held office until their successors qualified. Nothing was said therein with reference to removals, because that question was not involved. In *State v. Brinkerhoff*, 66 Tex. 45, 17 S. W. 109, cited by the defendant in error, the court held that the qualification of the person to the second incompatible office operated, ipso facto, as a resignation of the first office, and that the appointment by the proper power to the second office constituted an acceptance of the resignation of the person to the first office. Under the provisions of the Texas Constitution at that time all officers continued to perform the duties of their offices until their successors duly qualified. The Constitution made no exception as to officers removed. Our search has not disclosed any constitutional provision in any state on this proposition identical with ours. If the view be taken that the acceptance of the clerkship by plaintiff in error constituted the tender of her resignation of the office of member of the city board of education, and that the appointment thereof by the said board constituted an

acceptance of the resignation of plaintiff in error to the first office, the defendant in error obtains no benefit thereby. Current authority firmly established the proposition that an officer holds until his successor qualifies, even though he has tendered his resignation and the same has been accepted. Thus in the note to *People v. Williams*, 36 Am. St. Rep. 514, note page 526, it is said:

"In those states having a statute which provides that a person elected to office shall serve therein until his successor is elected or appointed and qualified, an officer, although his resignation is tendered to and accepted by the proper authority, continues in office * * * as such officer until his successor has qualified. During the interval between the acceptance of his resignation and the qualification and induction of his successor into office, the resigning officer may be compelled by mandamus to perform any of the duties which pertain to the office from which he has resigned" (citing authorities).

{ 15} In *People v. Supervisor*, 100 Ill. 332, it was said that in order to make the resignation effectual it must be followed by the act of the successor in qualifying for the office. It was also said in that case that the statute providing that officers should hold office until their successors are elected and qualified was significant as denoting the policy of the state, that the "public convenience shall not suffer from a vacancy in such public offices, but that the office shall ever be full, so that there will always be some one competent to perform the duty belonging to the office." Assuming that the resignation of the plaintiff in error of the first office had been accepted, a vacancy, as defined in section 3955, Code 1915, did occur in the office of member of the board of education of the city. But in view of the constitutional provision cited supra, the vacancy, so-called, was not a corporeal vacancy; a condition simply arose thereby which gave the right to the appointing or electing power to appoint or elect some person to the said office in the place and stead of the plaintiff in error. In other words, the *251 right to fill the first office, by the proper power, was initiated thereby, but such right had no effect whatever upon the status of the plaintiff in error with respect to that office until the successor qualified for the office. All that is said in this regard equally applies to the provisions that the acceptance, etc., of an incompatible office vacates the first office. Such was the effect of the holding in *Oliver v. Mayor of Jersey City*, 63 N. J. Law, 634, 44 Atl. 709, 48 L. R. A. 412, 76 Am. St. Rep. 228, the court saying:

"It would therefore be a pure solecism to call the office vacant at that time except in the strictly legal sense of having no occupant with a de jure title. * * * It is therefore manifest that the words of the statute * * *

already quoted, declaring that when a commissioner accepts another office his former office shall become 'vacant,' cannot mean, in a situation like this, that it is corporeally vacant, for the person lawfully elected to fill it remained in possession, discharging its duties. * * * The legal meaning of the words in such circumstances is that the office has no occupant who holds by a good title in law, and that the appointing power may at once be exercised to fill it, or if it is an elective office, the people may elect, and no adjudication is required to declare the vacancy, although the newly appointed or elected officer may find it necessary afterwards to resort to quo warranto proceedings to obtain actual possession of the office."

{ 16} In no sense, then, can the office be said to be vacant, except for the purpose of supplying another person to fill it, and likewise the argument that the plaintiff in error voluntarily removed herself from the incumbency of the first office by her resignation is equally untenable. There had been no removal of plaintiff in error from the first office, in law or in fact, at the time this cause came on to be heard before the trial court.

{ 17} The removal contemplated by the word "removed" as used in the constitutional provision cited supra refers to ouster from office of an officer under the provisions of the statute authorizing removals for misconduct. It has no reference to ouster by quo warranto proceedings, which is invoked and exercised only where a person is usurping the functions of an office to which he has no legal title. The constitutional provision clearly intended to permit the immediate effective removal from office of all officers of the class mentioned in the statute who were found guilty of misconduct sufficient to oust them from office. In *State ex rel. Harvey v. Medler*, 19 N. M. 252, 142 Pac. 376, the court, speaking of section 2, art. 20, of the Constitution, made this significant remark:

"The Constitution is not attempting to define or limit the term 'removal,' but is simply recognizing that the official's term of office may be terminated by removal, leaving to the Legislature to provide therefor by specific and comprehensive legislation. The Legislature has provided fully with respect to removal of public officers and in the same act (chapter 36, Laws 1909) has provided for suspension. * * *"

{ 18} The court in that case recognized that the word "remove" was addressed to removals under statute, the aim of which is to rid the public of improper servants. Clearly under that view of the meaning of the word "removed" plaintiff in error could not be relieved of the duties of the first office by the order of ouster in this proceeding. The statute provides for a full and complete

method of removal of the class of officers to which the plaintiff in error belonged. The remedy of those aggrieved by the action of the plaintiff in error in accepting and discharging the duties of an incompatible office, or resigning the first office, was to cause an election to be called or an appointment to be made to fill the office of member of the board of education, to which plaintiff in error lost the right to continue to hold when a person with better title thereto presented himself. Mandamus, no doubt, could be employed to compel the performance of these acts. We, therefore, are constrained to hold that, notwithstanding the resignation of the plaintiff in error of the office of member of the city board of education, or the acceptance by her of the incompatible office, the court was without power, in the absence of the qualification of

a successor to her for such office, in this proceeding, to remove plaintiff in error therefrom, and the judgment of the trial court, therefore, is reversed; and it is so ordered.

PARKER and ROBERTS, JJ., concur.

All Citations

22 N.M. 400, 163 P. 248, L.R.A. 1917D,210, 1917 -NMSC- 005

N.M. A.G. Op. No. 09-02 (N.M.A.G.), 2009 WL 2401764

Office of the Attorney General

State of New Mexico
Opinion No. 09-02
July 27, 2009

*1 The Honorable Jack E. Thomas
New Mexico State Representative
200 Lisbon Avenue, SE
Rio Rancho, NM 87124

QUESTION:

If a person currently holding the elected position of Rio Rancho City Councilor is subsequently elected to the office of Sandoval County Assessor, may that person hold both positions simultaneously?

CONCLUSION:

An individual may hold the office of city councilor and county assessor simultaneously, as long as the duties of the two offices do not physically or functionally interfere with one another and are not otherwise incompatible.

ANALYSIS:

The New Mexico constitution and statutes do not prohibit a member of a city council from assuming the duties of an elected county officer, such as a county assessor. Therefore, a person seeking to serve in both capacities would only be prohibited by the physical or functional incompatibility of the separate offices.

I. Physical Incompatibility

Physical incompatibility is addressed by state statute. NMSA 1978, § 10-6-3 describes when public employment is deemed permanently abandoned, providing as follows:

Any incumbent of any public office or employment of the state of New Mexico, or of any of its departments, agencies, counties, municipalities or political subdivisions whatsoever, who shall accept any public office or employment, whether within or without the state, other than service in the armed forces of the United States of America, for which a salary or compensation is authorized, or who shall accept private employment for compensation and who by reason of such other public office or employment or private employment shall fail for a period of thirty successive days or more to devote his time to the usual and normal extent during ordinary working hours to the performance of the duties of such public office and employment, shall be deemed to have resigned from and to have permanently abandoned his public office and employment.

NMSA 1978, § 10-6-5 defines incompatibility of office in relation to the abandonment of office, providing as follows:

Any public office or service, other than service in the armed forces of the United States of America, and any private employment of the nature and extent designated in Section 10-6-3 NMSA 1978 is hereby declared to be incompatible with the tenure of public office or employment.

For physical incompatibility to exist between two public offices, NMSA 1978, § 10-6-3 requires: (1) each position to be held for compensation, and; (2) as a result of the subsequent position, the officer fails for thirty days to “devote his time to the usual and normal extent during ordinary working hours to the performance of the duties” of his public office. *See* A.G. Op. No. 90-14 (1990). The language of NMSA 1978, § 10-6-3 is constructed to require the presence of both factors for a

subsequent position to be incompatible with, or constitute an abandonment of, the first. See id.; see also AG Op. No. 64-73 (1964).

*2 Applying the statutory criteria of physical incompatibility to the circumstances here, the position of city councilor must be a paid position that causes a person holding it to fail for thirty successive days to devote his or her time to the usual and normal extent during ordinary working hours to the duties of county assessor, if elected. If a person can perform his or her duties as a city councilor before or after his or her ordinary working hours as a county assessor, then the two positions will be compatible under the statutory criteria. See A.G. Op. No. 68-111 (1968) (no physical incompatibility existed where a person served as a municipal judge after his working hours as city clerk).

2. Functional Incompatibility

The principal case in New Mexico related to incompatibility between offices is Haymaker v. State ex rel. McCain, 22 N.M. 400, 163 P. 248 (1917). The Haymaker case involved an action to remove an elected member of a city board of education who was also serving as the appointed clerk of the board. In defining the incompatibility of office doctrine, the Supreme Court held as follows:

The incompatibility between two offices ... is not simply a physical impossibility to discharge the duties of both offices at the same time, but it is an inconsistency in the functions of the two offices, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both.

Haymaker v. State, 22 N.M. at 403-04.

The Haymaker court determined that the office of board of education member and board clerk were incompatible where the member/clerk had on multiple occasions voted in matters pertaining to her own interest, including voting herself into office as clerk, fixing the amount of her salary, and approving her salary warrants. See Haymaker, 22 N.M. at 404.

As described in Haymaker, functional incompatibility occurs when there is an inconsistency between the functions of two offices:

In legal contemplation, incompatibility between two offices is an inconsistency between the functions of the two. The offices must subordinate, one to the other, and they must, per se, have the right to interfere with the other before they are incompatible.

Haymaker, 22 N.M. at 403 (citing People v. Green, 58 N.Y. 295 (1874)).

In State ex rel. Chapman v. Truder, 35 N.M. 49 (1930), the Court found that the office of the district attorney and the mayor of a city are not incompatible and may be held by the same person. The Court found that one office was not subordinate to the other, the district attorney had no power to remove city officers at his discretion, and the district attorney could only present charges based on sworn evidence presented to him. The Court further stated that since the District Court could appoint another person to present charges on behalf of the county or state in the event the district attorney refused to do so, the power to present charges against local officers did not defeat the ability of a person to hold the office of district attorney and mayor simultaneously. See State v. Truder, 35 N.M. 49; see also A.G. Op. No. 85-24. Consequently, each situation involving potential functional incompatibility between offices "must be examined carefully on its facts, with particular attention given to the specific office and responsibilities which are deemed to be in conflict." See A.G. Op. No. 85-24.

*3 Applying the criteria of functional incompatibility outlined in the Haymaker case and its progeny to the circumstances at issue, the position of city councilor and the office of county assessor must subordinate, one to the other, and they must have the right to interfere with the other, or otherwise be inconsistent to a degree that would result in antagonism by one person attempting to discharge the duties of both.

Considering the standards outlined above, there is no apparent relationship or interaction between the positions indicating a physical or functional incompatibility between the offices of city councilor and county assessor. Although this opinion is not

based on an exhaustive assessment of each and every duty of the offices addressed herein, we believe that a comprehensive application of the principles outlined in this opinion, compared with the duties of the respective offices, will aid in any future determination. The factors of whether either office is in any way subordinate, antagonistic, or inconsistent with the other will be paramount to such a review.

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N.M. A.G. Op. No. 09-02 (N.M.A.G.), 2009 WL 2401764

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State of New Mexico
Opinion No. 89-10
February 28, 1989

Thomas C. Garde
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QUESTION:

May a full-time county employee hold the position of probate judge?

CONCLUSION:

Yes, but see analysis.

ANALYSIS:

We understand that this question arises from the recent election of a Valencia County maintenance department employee to the office of probate judge. In our opinion, both positions may be held by the same person, as long as his full-time employment with the maintenance department and his duties as probate judge do not physically interfere with each other during the ordinary working hours of each position and the functions of the two positions do not otherwise conflict. In reaching this conclusion, we have examined the applicable statutory and common law standards for determining whether two public positions are compatible so that they may be held contemporaneously.

There are no statutory or constitutional provisions applying specifically to probate judges which prevent them from taking or maintaining other employment during their tenure as judges. The only relevant provisions, therefore, are those that address generally the compatibility of public offices and public employment. Section 10-6-3 NMSA 1978, which describes when public employment is deemed permanently abandoned, provides:

Any incumbent of any public office or employment of the state of New Mexico, or of any of its departments, agencies, counties, municipalities or political subdivisions whatsoever, who shall accept any public office or employment, whether within or without the state, other than service in the armed forces of the United States of America, for which a salary or compensation is authorized, or who shall accept private employment for compensation is authorized, or who shall accept private employment for compensation and who by reason of such other public office or employment or private employment shall fail for a period of thirty successive days or more to devote his time to the usual and normal extent during ordinary working hours to the performance of the duties of such public office and employment, shall be deemed to have resigned from and to have permanently abandoned his public office and employment.

(Emphasis added).

Section 10-6-5 NMSA 1978 further provides: "Any public office or service, other than service in the armed forces of the United States of America, and any private employment of the nature and extent designated in Section 10-6-3 NMSA 1978 is hereby declared to be incompatible with the tenure of public office or employment."

(Emphasis added.) The underlined language has been interpreted to modify the phrase "[a]ny public office or service." See, e.g., Att'y Gen.Op. 57-298 (1957). See also Att'y

Gen.Ops. 70-74 (1970), 65-26 (1965), 64-73 (1964). Thus, there is no violation of Section 10-6-5 unless there is a violation of Section 10-6-3.

*2 For incompatibility to exist between public office or employment and another public position, Section 10-6-3 first requires that a salary or compensation be authorized for the other public position. The second requirement is that, as a result of the subsequent position, the officer or employee fails for thirty days to "devote his time to the usual and normal extent during ordinary working hours to the performance of the duties" of his initial public office or employment. Section 10-6-3 is worded so that both these factors must be present for the second position to be incompatible with or constitute an abandonment of the first. See Att'y Gen.Op. 64-73 (1964) (both criteria must be met for sections on incompatibility and abandonment to become operative).

We assume that both the maintenance department employment and office of probate judge are paid positions and, therefore, the first statutory criterion for abandonment is present. Accordingly, in order for one individual to hold both positions under Sections 10-6-3 and 10-6-5, the second criterion must be absent. Neither position can cause the incumbent to fail for thirty successive days to devote his time to the usual and normal extent during ordinary working hours to performance of the other. As this office has stated, "a person who holds two full-time positions or even a full-time and a part-time position that must be fulfilled during normal working hours is deemed to have resigned from and to have permanently abandoned his public office and employment at the end of 30 days." Att'y Gen.Op. 70-74 (1970) (person cannot hold two salaried positions in county government that must be performed during the same hours).

The office of probate judge is a part-time position. Section 34-7-1 NMSA 1978. Probate courts are required to "be in session and open at such times as are needed for the transaction of any business matters which may properly come before the courts under the laws of the state and upon notice thereof given as required under the laws of the state. Section 34-7-8 NMSA 1978. These provisions suggest that the "ordinary working hours" of a probate judge are sufficiently flexible so that other employment may be held at the same time. In opinions involving similar situations this office has found that, in the absence of evidence that one position actually interferes with another within the meaning of Section 10-6-3, the same person may hold two positions with hours that do not overlap. For example, it was determined that no physical incompatibility existed where a person served as a municipal judge after his working hours as city clerk. Att'y Gen.Op. 68-111 (1968). See also Att'y Gen.Op. 57-298 (1957) (probate judge may be appointed to act and receive a salary as deputy district court clerk). Accordingly, if the incumbent can successfully perform his duties as probate judge to the usual and normal extent outside his working hours at the maintenance department, or vice versa, the two positions will be compatible under the statutory criteria.

*3 In addition to the factors set forth in Sections 10-6-3 and 10-6-5, it also is necessary to examine the standards for compatible offices developed under common law. These standards were set forth by the New Mexico Supreme Court in *Haymaker v. State*, 22 N.M. 400, 163 P. 248 (1917). Despite the subsequent enactment of the incompatibility and abandonment definitions in Sections 10-6-3 and 10-6-5, opinions issued by this office have applied the Haymaker definition of incompatibility as well as the statutory definitions. See, e.g., Att'y Gen.Op. 70-74 (1970) and 64-73 (1964).

But see Att'y Gen.Op. 70–74 (1970) (stating that the Haymaker decision did not apply to determination of whether two non-elective public positions were incompatible). Haymaker addressed the issue whether an elected member of a board of education could also hold the position of the board's appointed clerk. The court stated the test of incompatibility as follows:

In legal contemplation, incompatibility between two offices is an inconsistency between the functions of the two. The offices must be subordinate, one to the other, and they must, per se, have the right to interfere with the other before they are incompatible. The incompatibility between two offices, which upon the acceptance of the one by the incumbent of the other operates to vacate the latter, is not simply a physical impossibility to discharge the duties of both offices at the same time, but it is an inconsistency in the functions of the two offices, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both.

22 N.M. at 403–04, 163 P. at 249.

The court concluded that the same person could not be both a member of the board and its clerk where it was found that she had cast the deciding vote as a board member on matters pertaining to her interests as clerk, voted herself into the clerk's position, fixed her salary as clerk, and approved warrants for payment of her salary. Id. at 404, 163 P. at 249. In other words, by holding both offices, she was able to sit in judgment on her own acts. Id. at 405, 163 P. at 249 (quoting Cotton v. Phillips, 56 N.H. 220, 223 (1875)).

Cf. State ex rel. Chapman v. Truder, 35 N.M. 49, 289 P. 596 (1930) (applying Haymaker test and finding that offices of district attorney and mayor were compatible).

Under the standards enunciated in Haymaker, the positions of probate judge and maintenance department employee would be incompatible if they have conflicting functions. In the absence of contrary evidence, there is no reason to think that they do. There is no obvious relationship or interaction between the positions; one position has no administrative or other authority over the other so that the incumbent could use one position to influence his employment in the other or would be improperly motivated in carrying out his judicial responsibilities.

*4 In summary, based on the facts presented, we do not think that employment with the Valencia County maintenance department and service as probate judge are necessarily incompatible under Sections 10–6–3 and 10–6–5 or functionally incompatible under the standards stated in Haymaker.

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