Sandra Whitehead
Mayor

Amanda Forrister
Mayor Pro-Tem

Frances Luna
Commissioner

Paul Baca
Commissioner

Vacant
Commissioner

Bruce Swingle
City Manager

505 Sims St.
Truth or Consequences, New Mexico 87901
P: 575-894-6673 ♦ F: 575-894-7767
www.torcnm.org

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, OCTOBER 27, 2021; TO START AT 9:00 A.M.

A. CALL TO ORDER

B. INTRODUCTION
   1. ROLL CALL
      Hon. Sandra Whitehead, Mayor
      Hon. Amanda Forrister, Mayor Pro-Tem
      Hon. Paul Baca, Commissioner
      Hon. Frances Luna, Commissioner

   2. SILENT MEDITATION
   3. PLEDGE OF ALLEGIANCE
   4. APPROVAL OF AGENDA

C. PUBLIC COMMENT (3 Minute Rule Applies)

D. CONSENT CALENDAR
   1. City Commission Regular Minutes, October 13, 2021
   2. Acknowledge Regular Public Utility Advisory Board Minutes, August 16, 2021
   3. Subrecipient FY 21/22 1st Quarter Reports.

E. ORDINANCES/RESOLUTIONS/ZONING
   1. Discussion/Action: Amending Resolution No. 26 21/22 to include cremation lot fees for Vista Memory Gardens Cemetery. Traci Alvarez, Assistant City Manager
   2. Discussion/Action: Resolution No. 31 21/22 establishing fees for the City of T or C Municipal Golf Course. Wes Owens, Golf Course Manager and OJ Hechler, Community Services Director

E. ORDINANCES/RESOLUTIONS/ZONING **Continued…**

3. Discussion/Action: Resolution No. 32 21/22 for the participation in the Capital Outlay Program Administered by the New Mexico Department of Transportation. Traci Alvarez, Assistant City Manager
4. Discussion/Action: Resolution No. 33 21/22 Setting procedures and conditions for a Catastrophic Utility Failure Relief Program as recommended by the Public Utility Advisory Board. George Szigeti, Public Utility Advisory Board Chairman
5. Discussion/Action: Publication of Ordinance No. 722 amending the City of Truth or Consequences Municipal Code of Ordinance Section 2-248 (E) pertaining to the Library Advisory Board. Traci Alvarez, Assistant City Manager

F. NEW BUSINESS

1. Discussion/Action: Approval of Purchase Requisitions over $20,000. Carol Kirkpatrick, Finance Director
2. Discussion/Action: Approval of Contract with Wilson & Company for Multiple Engineering and Architecture Projects. Carol Kirkpatrick, Finance Director
3. Discussion/Action: Approve Professional Services Agreement with Wilson and Company for Water System Performance Improvements Phase 1. Traci Alvarez, Assistant City Manager
4. Discussion/Action: Approval of the City of Truth or Consequences Uniform Policy. City Manager Swingle
5. Discussion/Action: Review and possible amendments to the City Commission Rules of Procedure. City Manager Swingle
6. Discussion/Action: Approval of NRECA Services Agreement for the Phase I Municipal Acquisition Review Study. City Manager Swingle
7. Discussion/Action: Recruitment procedures to select a qualified elector to fill the vacancy of City Commissioner Position II. Mayor Whitehead

G. REPORTS

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

H. EXECUTIVE SESSION

1. Threatened & Pending Litigation (McCleskey vs. City of T or C) pursuant to 10-15-1(H.7).

I. ADJOURNMENT

The meeting will be broadcast live through KCHS on 101.9 FM.

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, October 25, 2021.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting please contact the City Clerk's Office, at 505 Sims Street, Truth or Consequences, New Mexico 87901, phone (575) 894-6673 at least one (1) week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the City Clerk's Office if a summary or other type of accessible format is needed.

NEXT REGULAR CITY COMMISSION MEETING NOVEMBER 17, 2021

CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 27, 2021

Agenda Item #: D.1

SUBJECT: City Commission Regular Minutes, October 13, 2021
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: October 22, 2021
SUBMITTED BY: Angela A. Torres, Clerk-Treasurer
WHO WILL PRESENT THE ITEM: City Clerk Torres

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 10-27-2021

CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
WEDNESDAY, OCTOBER 13, 2021

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. Amanda Forrister, Mayor Pro-Tem
Hon. Paul Baca, Commissioner
Hon. Frances Luna, Commissioner

Also Present: Bruce Swingle, 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 to please keep Michael Kirikos and his family in your thoughts and prayers

3. PLEDGE OF ALLEGIANCE:

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

4. APPROVAL OF AGENDA:

Commissioner Luna moved to approve the agenda with the removal of item G8 as it is being re-drafted. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

C. PRESENTATIONS (10 Minutes):

1. **Certificate of Appreciation to Code Enforcement Officer Raymond Chavez for 25 years of public service and retirement. Mayor Whitehead and Victor Rodriquez, Chief of Police:**

Mayor Whitehead read the certificate of appreciation for Code Enforcement Officer Raymond Chavez for 25 years of public service.

D. PUBLIC COMMENT (3 Minute Rule Applies):

Rick Dumiak addressed the Commission with comments related to:

(1) Thanked the Commission for pulling item G8. He recommended that the Commission mirror the County's Ordinance.
(2) He does not recommend that the city implement AMI Water Meters.
(3) He would like to be considered for the vacant seat on the Commission.
(4) He hopes the city approves item H9. Approval of MOU between the City of Truth or Consequences and Sierra Electric Cooperative, Inc.

Ariel Dougherty addressed the Commission with comments related to:

(1) Item F1 presentation regarding (Complete copy attached hereto and made a part hereof).

Ron Fenn addressed the Commission with comments related to:

(1) The Accounts Payable reports that are submitted to the Commission. (Complete copy attached hereto and made a part hereof).

Chris Sisney addressed the Commission with comments related to:

(1) He asked who wrote Ordinance No. 721 pertaining to the regulation of possession, cultivation, and consumption of recreational and medical cannabis in the City of Truth or Consequences.

Mayor Whitehead informed him that the item has been removed from the agenda.

E. CONSENT CALENDAR:

1. **City Commission Regular Minutes, September 22, 2021**
2. **Acknowledge Regular Lodgers Tax Advisory Minutes, July 26, 2021**
3. **Acknowledge Regular Planning & Zoning Minutes, August 2, 2021**
4. **Acknowledge Regular Library Advisory Board Minutes, September 27, 2021**
5. **Accounts Payable, September 2021**

Mayor Pro-Tem Forrister moved to approve the consent calendar as submitted. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

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Not Necessary

Expense Approval Report

Payable Dates: 9/1/2021 - 9/30/2021

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
Fund: 501 - Cemetary					
CITY UTILITIES	9/10/21	09/24/2021	CITY UTILITIES CYCLE A&B/OPEN..	501-1803-43780	602.24
				Fund 501 - Cemetary Total:	**602.24**
Fund: 502 - Util Office - Pool					
SILKE M. KAPELA	08/16,8/23/21	09/03/2021	REIMBURSEMENT FOR DISABILI...	502-3601-37380	392.88
SILKE M. KAPELA	08/16,8/23/21	09/03/2021	REIMBURSEMENT FOR DISABILI...	502-3601-37380	392.88
CITY UTILITIES	8/24/21	09/03/2021	CITY UTILITIES CYCLE C&D/OPE...	502-3601-43780	412.79
NM RETIREE HEALTH CARE	819016	09/03/2021	NM RETIREE HEALTH- PPE 2021...	502-3601-41226	232.27
SUN VALLEY, INC.	09102021	09/10/2021	6OZ AERO BACKWOODS	502-3601-44607	6.49
SUN VALLEY, INC.	09102021	09/10/2021	2 GAL RED POLY GAS CAN	502-3601-44607	17.72
INTERNAL SERVICE FUND	667847	09/10/2021	MAINTENANCE -GAS & OIL	502-3601-43316	15.00
INTERNAL SERVICE FUND	667847	09/10/2021	MAINTENANCE -GAS & OIL	502-3601-47420	34.50
NM RETIREE HEALTH CARE	927836	09/17/2021	RETIREE HEALTHCARE PPE 2021...	502-3601-41226	235.87
XEROX CORP.	014259820	09/24/2021	OPEN PO XEROX CORP FISCAL 2...	502-3601-43465	499.69
TESTON'S FREEWAY CHEVRON	3773	09/24/2021	GAS/OIL FISCAL YEAR 21/22 UIT...	502-3601-43316	333.60
VERIZON WIRELESS	9888486885	09/24/2021	PHONE BILLS/OPEN PO FY 21/22	502-3601-43775	192.07
				Fund 502 - Util Office - Pool Total:	**2,765.76**
Fund: 503 - Electric					
SIERRA AUTO/CARQUEST	288334	09/03/2021	6G 8FJX HYDRAULIC FITTING	503-3702-47420	17.24
SIERRA AUTO/CARQUEST	288334	09/03/2021	HYDRAULIC HOSE	503-3702-47420	33.84
SIERRA AUTO/CARQUEST	288334	09/03/2021	HYDRAULIC CRIMPS	503-3702-47420	24.00
SIERRA AUTO/CARQUEST	288334	09/03/2021	HYDRAULIC HOSE	503-3702-47420	5.74
SIERRA AUTO/CARQUEST	288334	09/03/2021	8G 10FJX HYDRAULIC FITTING	503-3702-47420	22.26
SIERRA AUTO/CARQUEST	288776	09/03/2021	12V COMMERCIAL BATTERY	503-3702-47420	250.22
SILVERSKY, INC.	438159-SI	09/03/2021	EMAIL SERVICE OPEN PO FY21/...	503-3702-43815	208.07
TDS	8/18/21	09/03/2021	TDS FIBER INTERNET OPEN PO ...	503-3702-43780	600.00
CITY UTILITIES	8/24/21	09/03/2021	CITY UTILITIES CYCLE C&D/OPE...	503-3702-43780	4,954.90
NEW MEXICO GAS COMPANY, I...	8/27/21	09/03/2021	GAS BILLS/ELECTRIC	503-3702-43780	24.80
NM RETIREE HEALTH CARE	819016	09/03/2021	NM RETIREE HEALTH- PPE 2021...	503-3702-41226	428.79
IRBY SUPPLY CO.	5012565663.001	09/03/2021	LINE HOSE 1.25"X4.5'- CLASS 2	503-3702-44615	1,038.00
WESTERN UNITED ELECTRIC	6039806	09/08/2021	REISSUE OF CHECK #146413 ON...	503-3702-44607	14,892.36
TRIPLE H SOLAR, LLC	0269	09/10/2021	ENGINEERING SERVICES- OPEN ...	503-3702-48598	4,200.00
PSI	09012021	09/10/2021	JOURNEYMAN CERTIFICATE RE...	503-3702-43770	100.00
SSA SOLAR OF NM 4, LLC	402191	09/10/2021	POWER SERVICES- OPEN PO FY ...	503-3702-50795	21,988.25
ALTEC INDUSTRIES, INC	50835143	09/10/2021	REPAIRS TO G-99900	503-3702-47420	347.67
INTERNAL SERVICE FUND	667847	09/10/2021	MAINTENANCE -GAS & OIL	503-3702-47420	30.07
SIERRA ELECTRIC CO-OP, INC.	09022021,09082021	09/17/2021	MIMS CITY LIGHTS- OPEN PO FY...	503-3702-43780	560.74
SIERRA ELECTRIC CO-OP, INC.	09022021,09082021	09/17/2021	POWER SERVICES- OPEN PO FY-...	503-3702-50795	266,621.04
SHPIGLER CONSULTING, INC.	09152021	09/17/2021	UTILITY PLANNING & OPERATI...	503-3702-48599	4,800.00
WESTERN UNITED ELECTRIC	6042757,6041872	09/17/2021	15KVA 1PHASE CONVENTIONAL...	503-3702-44607	4,327.26
WESTERN UNITED ELECTRIC	6042757,6041872	09/17/2021	10KVA 1 PHASE CONVENTIONAL..	503-3702-44607	2,160.00
CITY UTILITIES	9/15/21	09/17/2021	CITY LANDFILL BILLS/OPEN PO F...	503-3702-43780	101.54
NM RETIREE HEALTH CARE	927836	09/17/2021	RETIREE HEALTHCARE PPE 2021...	503-3702-41226	428.02
VERIZON WIRELESS	9887626581	09/17/2021	PHONE BILLS/OPEN PO FY 21/22	503-3702-43775	50.08
WESTERN AREA POWER ADMIN	JJPB1798A0821	09/17/2021	BASE DEMAND & BASE ENERGY...	503-3702-50795	48,903.11
IRBY SUPPLY CO.	012561712.001	09/24/2021	CLASS 2- 40' WOOD POLE	503-3702-44607	7,350.00
IRBY SUPPLY CO.	012561712.001	09/24/2021	CLASS 4- 35' WOOD POLE	503-3702-44607	9,600.00
IRBY SUPPLY CO.	012561712.001	09/24/2021	CLASS 4- 40' WOOD POLE	503-3702-44607	5,200.00
XEROX CORP.	014259837	09/24/2021	BASE CHARGE & METER USAGE-...	503-3702-43465	104.24
XEROX CORP.	014367729	09/24/2021	BASE CHARGE & METER USAGE-...	503-3702-43465	33.81
QUILL CORPORATION	19360673/19333726/19430251	09/24/2021	AVERY BIG TAG DIVIDERS	503-3702-44606	16.14
QUILL CORPORATION	19360673/19333726/19430251	09/24/2021	DYMO LABEL MAKER TAPE	503-3702-44606	42.46
QUILL CORPORATION	19360673/19333726/19430251	09/24/2021	DISPOSABLE FACE MASKS	503-3702-44606	39.98
QUILL CORPORATION	19360673/19333726/19430251	09/24/2021	CLOROX DISINFECTING WIPES	503-3702-44606	33.99
QUILL CORPORATION	19360673/19333726/19430251	09/24/2021	BUSINESS CARDS- BO EASLEY	503-3702-44606	16.18
TRI-STATE GENERATION & TRA...	303222	09/24/2021	POWER SERVICES- OPEN PO FY-...	503-3702-50795	39,401.37
TESTON'S FREEWAY CHEVRON	3737	09/24/2021	GAS/DIESEL FUEL PURCHASES- ...	503-3702-43316	1,826.55
WESTERN UNITED ELECTRIC	6041871/6043710	09/24/2021	TIE WRAPLOCK 4/0 C-NECK	503-3702-44607	1,526.00
WESTERN UNITED ELECTRIC	6041871/6043710	09/24/2021	BRACE XARM WOOD	503-3702-44607	243.75
WESTERN UNITED ELECTRIC	6041871/6043710	09/24/2021	BOLT MACHINE 5/8X12	503-3702-44607	207.00

Report Summary

Fund Summary

Fund	Payment Amount
101 - General	111,416.60
201 - Corrections	171.00
209 - Fire	2,618.17
214 - Lodgers Tax	3,848.68
216 - Muni Street	26,599.73
294 - State Library	890.08
295 - Muni Pool	6,639.90
296 - PD GRT	828.00
303 - Vet Wall	143.73
312 - R&R Airport	45,555.38
320 - USDA WATER SYSTEM IMPROVEMENTS	146,681.70
360 - NMFA PROJECTS	3,705.75
403 - Pledge State	18,834.93
501 - Cemetary	602.24
502 - Util Office - Pool	2,765.76
503 - Electric	446,115.00
504 - Water	31,928.66
505 - Solid Waste	88,379.11
506 - WWTP	20,154.00
508 - Golf Course	4,223.34
509 - Muni Airport	6,330.61
600 - Internal Serv	4,515.61
Grand Total:	972,947.98

Account Summary

Account Number	Account Name	Payment Amount
101-1000-43597	ATTORNEY FEES-GOVERN...	7,036.95
101-1001-41226	RETIREE INSURANCE	302.40
101-1001-43465	RENT OF EQUIPMENT	496.64
101-1001-43740	PRINTING/PUBLISHING	202.41
101-1001-43775	TELEPHONE	278.80
101-1002-41226	RETIREE INSURANCE	162.14
101-1002-42720	EMPLOYEE TRAINING-M...	164.47
101-1002-43770	SUBSCRIPTION & DUES	345.00
101-1002-43775	TELEPHONE	172.56
101-1002-44606	OFFICE SUPPLIES	290.20
101-1003-41226	RETIREE INSURANCE	443.32
101-1003-43316	GAS & OIL	43.93
101-1003-43465	RENT OF EQUIPMENT	260.15
101-1003-43775	TELEPHONE	392.07
101-1004-41226	RETIREE INSURANCE	391.06
101-1004-43465	RENT OF EQUIPMENT	549.12
101-1004-43740	PRINTING/PUBLISHING	385.07
101-1004-43775	TELEPHONE	251.12
101-1004-48599	OTHER CONTRACTUAL SE...	397.00
101-1006-41226	RETIREE INSURANCE	213.60
101-1006-43775	TELEPHONE	109.98
101-1006-44607	FIELD SUPPLIES	933.48
101-1006-48598	PROFESSIONAL SERVICES	1,068.48
101-1006-48599	OTHER CONTRACTUAL SE...	895.70
101-1007-41226	RETIREE INSURANCE	1,467.14
101-1007-43316	GAS & OIL	3,667.06
101-1007-43465	RENT OF EQUIPMENT	303.80
101-1007-43740	PRINTING/PUBLISHING	327.50
101-1007-43775	TELEPHONE	1,400.53
101-1007-43815	SOFTWARE	9,865.00
101-1007-44606	OFFICE SUPPLIES	15.29

Post Date	Description	Vendor	Project Account	Amount	Running Balance
09/15/2017	BASE CHARGE/METER USGE	0284 - XEROX CORP.		45.52	126.37
503-3702-4579	GROSS RECEIPTS TAXES-ELECTRIC		80517.21	44783.6	125300.81

Post Date	Description	Vendor	Project Account	Amount	Running Balance
09/15/2017	MONTHLY GRT/GGRT AUG 2017 JT UTIL			44783.6	125300.81

UM QTY

52 COLUMNS

12 USED

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Detail Report

Date Range: 09/01/2017 - 09/30/2017

Account	Name	ginning Balance	Total Activity	Ending Balance
503-3702-4741	MAINTENANCE/GROUNDS-ELECTR DIVISION	8440.4	39772.95	48213.35

Post Date	Description	Vendor	Project Account	Amount	Running Balance
09/08/2017	3/4" Bushing	7333 - SUN VALLEY, INC.		9.48	8449.88
09/08/2017	3/4 xclose galv nipple	7333 - SUN VALLEY, INC.		27.48	8477.36
09/08/2017	3/4" Locknut	7333 - SUN VALLEY, INC.		9.44	8486.8
09/15/2017	750 KVA Three Phase Padmount Transformer	8208 - SOLOMON CORPORATION		10150	18636.8
09/15/2017	Locknut MF Type 5/8	7498 - WESTERN UNITED ELECTRIC		210	18846.8
09/15/2017	Bracket Ins (3-10)	7498 - WESTERN UNITED ELECTRIC		129	18975.8
09/15/2017	Fuse Link type K 10 amp	7498 - WESTERN UNITED ELECTRIC		94.5	19070.3
09/15/2017	Washer Square 5/8	7498 - WESTERN UNITED ELECTRIC		62.5	19132.8
09/15/2017	Tape 33+ 3/4 x 66' vinyl	7498 - WESTERN UNITED ELECTRIC		72	19204.8
09/15/2017	Fuse Link K 40 amp blk hills, F/C-100	7498 - WESTERN UNITED ELECTRIC		97.5	19302.3
09/15/2017	Ins Spool 3 Graypwr Lien P-532	7498 - WESTERN UNITED ELECTRIC		59.4	19361.7
09/15/2017	Insul Dead End Polymer 15KV HPS	7498 - WESTERN UNITED ELECTRIC		261	19622.7
09/15/2017	Insul Pinseves 261-S VI605R	7498 - WESTERN UNITED ELECTRIC		143.1	19765.8
09/15/2017	Lamp HPS 70w	7498 - WESTERN UNITED ELECTRIC		273.6	20039.4
09/15/2017	Brace xarm wood #PSCRA6018	7498 - WESTERN UNITED ELECTRIC		272	20311.4
09/15/2017	Mount Disconnect	7498 - WESTERN UNITED ELECTRIC		538.5	20849.9
09/15/2017	Conn Comp PG #2-#2 Bur YHO100 CPS	7498 - WESTERN UNITED ELECTRIC		29.25	20879.15
09/15/2017	70w HPS Fixture with multi tap	7498 - WESTERN UNITED ELECTRIC		1492.5	22371.65
09/15/2017	Insul Pinseves 366-S VI606RGAMMA	7498 - WESTERN UNITED ELECTRIC		111.6	22483.25
09/15/2017	Rod Gnd CU 5/8x8 P588 REA spec 13	7498 - WESTERN UNITED ELECTRIC		370	22853.25
09/15/2017	Bolt M 5/8x12	7498 - WESTERN UNITED ELECTRIC		153	23006.25
09/15/2017	15 KV 100MP with crossarm bracket and sm eyebolt	7498 - WESTERN UNITED ELECTRIC		3125	26131.25
09/15/2017	Elbow w/TP 15KV 200A 1/0 OLD	7498 - WESTERN UNITED ELECTRIC		360	26491.25
09/15/2017	Anchor 8-way expdgblack mps	7498 - WESTERN UNITED ELECTRIC		132.6	26623.85
09/15/2017	2 Triplex conch 1800' reel	7498 - WESTERN UNITED ELECTRIC		4032	30655.85

Comments at Public Hearing "AUTOMATED WATER METER PROJECT" - Oct 13, 2021
Ariel Dougherty, water user

The title of this presentation, "IMPROVED WATER INFRASTRUCTURE" is insulting.

This selling of so-called smart water meters as a solution to what is an entirely different matter is difficult to understand in its egregiousness.

Replacing meters to the tune of $1000 a customer, a ridiculously high cost, will not solve the dire problem of the 20 to 25 water leaks this City springs every week.

Please address the leaks. Create a ten year plan to completely refurbish the entire water pipe delivery system of the City, section by section. Maybe then when the entire system is repaired and updated, and leaks are no longer a daily and weekly occurance, the City can consider some kind of improved water meters.

But AMI meters? The Federal Communciations Commission has not re-examined its radio frequency emissions (RF) guidelines in 25 years. A U.S. Court of Appeals in August ordered the FCC to condcut such a review. They have been warned to establish guidlelines that adequately protect public health.

I remind you Commissioners that a citizen's petition – our First Amendment Rights – for an Ordinance to have a ten year moratorium on smart meter installations here in TorC was signed by some 260 citizens. You obfuscated your responsibility and neither accepted it nor sent it to public vote in violation of state law. That issue is now before the court.

The holding of a Public Hearing should not be considered a burden. In fact your own Commision rules, Rule 17 (f) states if the City is a proponent – you need to have your own designated speaker. In addition to your own current view, it is a formal opportunity to hear what we in the public think. Your opportunity to listen and engage with concerned citizens. Ask a question. Learn a differenet view point. Understand things may have more steps and be more complicated than your first thought. It is an occasion to broaden the City's perspective and response. And it may also be an occasion to seek a new direction entirely.

AMI water meters at this time are unwarrented given our city finances, the more prressing need of water lines replacements and the still unclear health effects of too much constant RF emissions, most of which is unneccessary 98% of the time.

Public Comments before City Commission of Truth or Consequences – October 13, 2021
Ariel Dougherty Caballo Road

Good morning Commissioners.

Under your own City Rules, Rule 17: ACTIONS FOR "COMMENTS FROM THE PUBLIC" OR A PUBLIC HEARING states:

> *Following such comments, the City Commission may place the matter on a future agenda, or refer the matter to the City Manager for investigation and report.*

I would like to encourage greater attention and action to this phrase in your own rules in your response to Public Comment.

Repeatedly through IPRA and before this body many of us have been seeking clarification of what the $8 fee that we each pay every month on our electric bills. Annually this is something along the lines of $365,0000. City Code 14-45 (d) 2. identifies a monthly $8 charge for "availability of service". What does this mean? What does this cover? Please do not report back that it pays for toilet paper. It is common sense that it would pay for matters in administrating the utilities and its billing.

Especially now that you have placed a hefty expensive new smart water meter issue on your agenda, citizens need a wider and open community discussion about analysis and understanding of all costs we PRESENTLY pay. There are other utility fees from other departments. What are they for? Most of all, we need to know what is the real meter reading problem? It can not just be barking dogs or that a supposed technology is envisioned as the crowning solution?

Instead of a public hearing presenting the viewpoint of a commercial vendor, maybe a more appropriate public hearing would be obtaining public input on what we citizens are experiencing in our meter readings and the billing process. Please, start with those who you serve. Maybe the best solution is already right here.

Constant major expenses for items that do not specifically address the failing infrastructure problems are a threat to the solvency and well being of our community.

I recommend a broader approach than this MOU with Sierra Electric Coop. Aztec has a model worth looking at. Please do not lock us to what is easy at hand. At the very least this MOU provides no involvement of the public, who actually own this electric system. Please ad this: "Whereas, the Consultant will hold three public hearings with TorC citizen rate payers, at the beginning, middle and end of the process in making any recommendations regarding the most efficient and reliable electric system."

Thank you.

F. PUBLIC HEARINGS:

1. Public Hearing/Public Input: Presentation and Public input regarding the Automated Water Meter Project. Alex Montano, YearOut Energy Services:

Alex Montano, YearOut Energy Services gave a presentation regarding an Automated Water Meter Project. (Complete presentation attached hereto and made a part hereof).

Commissioner Luna: If we move forward with this, what is the cost to us today?

Alex Montano, YearOut Energy Services: Nothing today. Today is just for information purposes only. The study would be somewhere in the low 20's. $22,000 or $24,000. That would be for engineering time to request all of the information from the City over the last several years, and go back and re-price all the work that would need to be done. Back then, the Water Department may have said, hey, we want this meter, but 3 years fast forward, they may want to go with something different.

Assistant City Manager Alvarez: With the investment grade audit, if the City were to move forward, that cost would be incurred in the overall project, and there would be no out of pocket fee if were to proceed forward.

Commissioner Luna: Was the amount for the study budgeted?

City Manager Swingle: No.

Commissioner Luna: So we don't have $25,000 sitting around to pay for this if we do this and decide not to go forward.

City Manager Swingle: That is correct. The reason why this was placed on the agenda is because he recently read the report, and he is probably the only one in the room who wasn't here when this was going down the first time. This is an opportunity to hear the presentation for ourselves. We are currently in the process of validating the electric meters, and if we are seeing a return on our investment or not. He would like to finish that process before moving forward with this. However, we have a number of issues with the water system, from billing, meters, and human factors. A few meters that have been pulled since he has been here have all been in the 80% accuracy rate, and he has to admit that those errors in the system are always in favor of the consumer because it is not picking up a lot of the low flow. We do have a lot of water leaks, and we have had some heavy flow losses, but nothing to account for the type of loss that we are experiencing. Every system has a percentage of loss that you want to stay within the norm of that loss, and we are above that. The loss that we are experiencing is pretty significant and that is related to the meters.

YEAROUT ENERGY

Improved Water Infrastructure

October 13, 2021

TRUTH OR CONSEQUENCES NEW MEXICO

Objectives

- Background
- Project Scope and Cost
- Next Steps

Background

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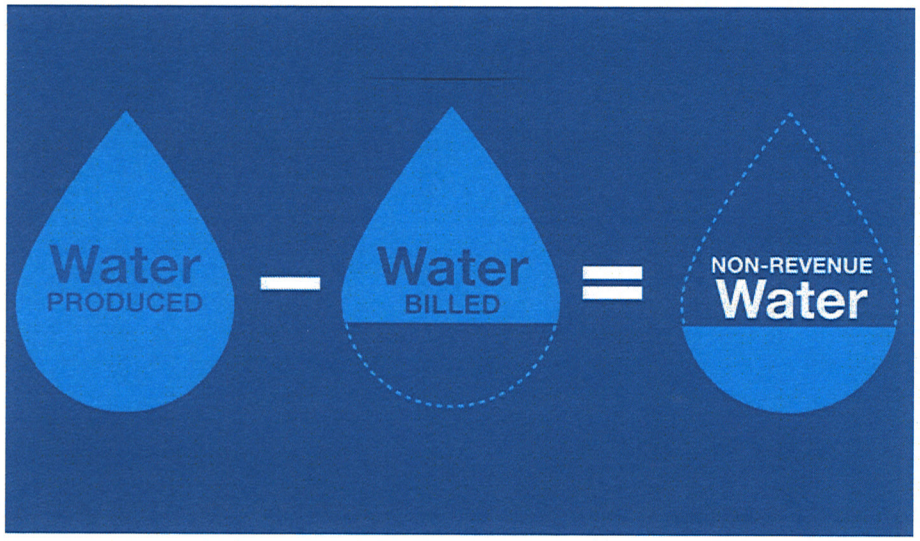
ENERGY

Background – 2016

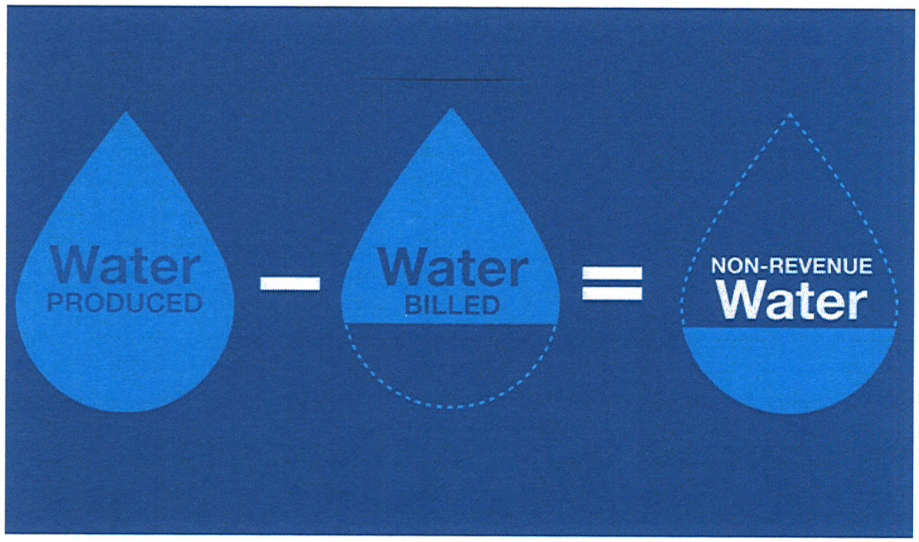
- City of Truth or Consequences engaged with Yearout Energy to perform an Investment Grade Audit (IGA) of the City's water and electrical metering infrastructure.

- During the IGA a project scope with **Guaranteed Costs and Savings** is developed.



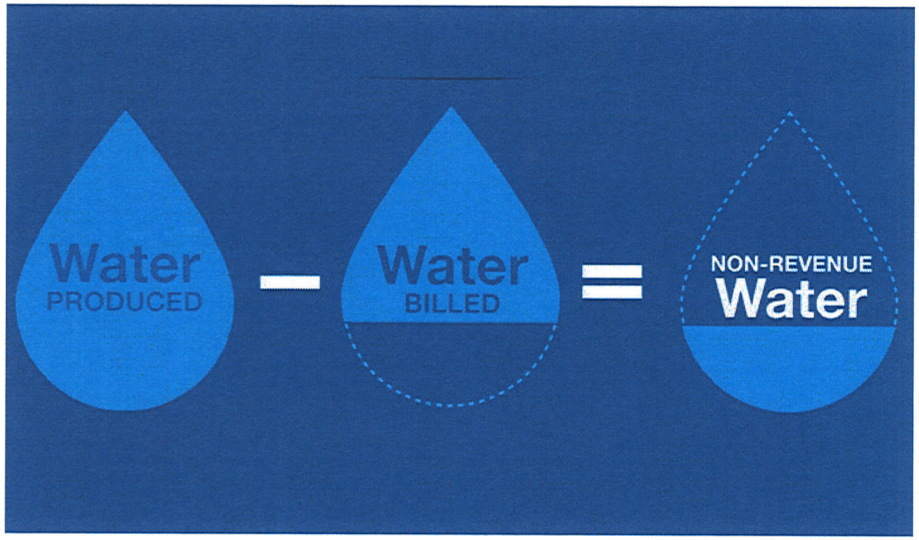
Background – 2017

- Yearout Energy analyzed data for 3,511 existing water meters and tested meter accuracy in accordance with AWWA guidelines.
- Yearout Energy presented findings from Water and Electric meter audit along with project financials.
- City of T or C decided not to proceed with project at the time due to the extended payback of the project (burden of electric meters).



Background – 2018 to Current

- Electric meters with AMI self-performed by City of T or C.
- Continued non-revenue water losses of approximately **115,000,000 gallons per year**



Background – Existing Meter Accuracy

- The most common meter sizes represent over **99.4% of installed meters** and **96.6% of billable gallons**.
- These meters show poor accuracy at all flow rates, specifically low flow.
- The performance of these meters will have likely degraded since the initial study in 2017.

Water Meter Accuracy

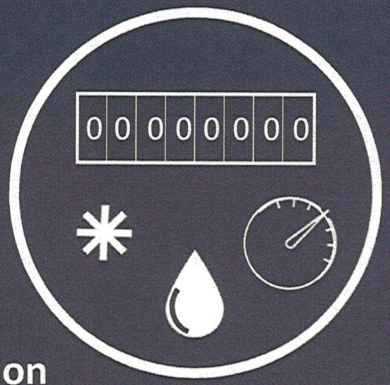
Flow Rate \ Meter Size	¾"	1"	2"
Low	51.7%	60.0%	78.2%
Medium	95.7%	89.2%	91.2%
High	94.1%	91.9%	92.3%

For comparison, new meters are 97.5% accurate

Background – Key Findings

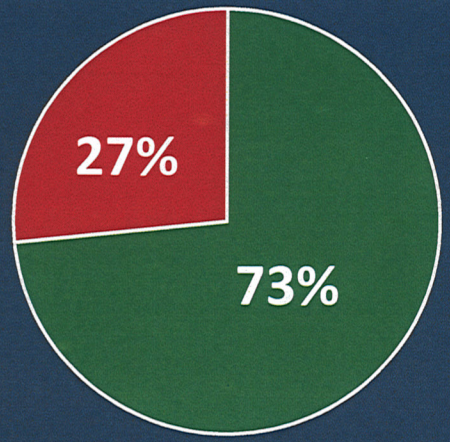
24.7 Years

Average Age of Existing Meter Population

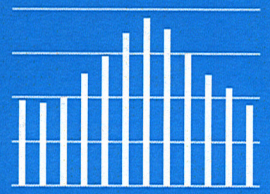


54,930 kgal

Improved Access to Billable Gallons



Non-Revenue Water 115,000 kgal/year



97%

of Baseline Based on ¾", 1", and 2" meters

Savings based on those meters only

Advanced Metering Infrastructure (AMI)

BENEFITS

- Reliable Technology
- Timely Water Usage Data
- Water Leak Detection
- Accurate Billing
- Water Revenue Optimization
- Reduced O&M Costs
- Lead-Free

WIDELY ACCEPTED

- Implemented in hundreds of municipalities across the country
- In New Mexico
  - Albuquerque
  - Roswell
  - Santa Fe
  - Los Alamos
  - Las Cruces
  - Espanola
  - …

Project Scope and Costs

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Water Meter Only Scope (2017)

Retrofit Description	Quantity
¾" Meter Install with SET Valve	100
¾" Meter Install	3,294
1" Meter Install	56
1.5" Meter Install	6
2" Meter Install	35
3" Meter Install	7
4" Meter Install	7
8" Meter Install	1
Total	3,506

Project Financials

	2017 Electric and Water Meters	2021 Water Meters Only*
Turnkey Project Cost	$5,144,302	$3,500,000
Upfront Capital Contribution	$0	$0
Increased Water & Sewer Revenue	$200,481	$250,000
Increased Electricity Revenue	$0	NA
Year 1 Water and Sewer O&M Savings	$46,000	$40,000
Year 1 Electric O&M Savings	$46,000	NA
Finance Period	20 years	13 years

*2021 scenario values are estimated at this time

Next Steps

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Next Steps

- IGA Updates (3 months)
  - Changes since last revision:
    - Electric AMI meters and AMI backbone in place, remove from scope and costs
    - Small changes to quantities of meters (some replaced)
- IGA Certification by NM-OSE (1 month)
- Project Implementation (9 months)

Thank you!

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Public Input:

Rick Dumiak: The math is not adding up on the cost. Also, how do they make the guarantee of the revenue? How does that work. How are these meters transmitted if they are under ground? What if the homeowner wants to do maintenance on his meter? If this will be automated, will the owner still be able to do that?

Ariel Dougherty: She was insulted by the title of the presentation because the real issue here in town is the water leaks. The infrastructure needs to be fixed, and the water meters can wait. She feels that these meters will cost each customer $1,000 for each water meter or that will be the cost over time. Once the infrastructure and leaks are addressed and repaired, then maybe the City can then look into getting some sort of improved water meters. She feels that the AMI meters are not safe.

Ron Fenn: These people walk away with money whether or not it comes from savings. It comes from our pockets. Three and a half million dollars will come from our pockets one way or another. If the system saves some of that money, they're going to get it. It's not going to come back to the people. The number one requirement under the Constitution for government is to take care of the people. That's not them. We are the people, and we own the utility. The things that are being done here should be done for our benefit. No one has ever said, your customers will benefit. The same scenario played out with the electric. Hey said, you as a customer can look online and see your electric use 24 hours a day. Well guess what, that was never implemented. Nobody has ever been able to do any of that because it wasn't part of the program. They walked away with a million dollars for the smart meters, and now we're going to talk about three and a half million. It's going to be a lot more than that.

Klaus Wittern: He has heard a lot of nonsense from the individuals who have spoken before him, because they may be bias, or they may not understand what the water system means. The water system is different from the electric side and in comparable water can be accomplished to be reduced quickly by putting in a water system that is adequately good. He would recommend that the city get a group of volunteers to research this. He'd be happy to volunteer and give an unbiased regard to the water meters. This can be done in house, and it could be done adequately.

Chris Sisney: The maintenance of the existing meters now from his understanding is that there is an impeller inside of these meters. Technology has been around forever. How do they communicate if they don't have electricity, because water meters don't have electricity? There's going to be a power supply that's going to be maintained, and you will also have to replace the power source. He doesn't think these things are going to work underground, so they're probably going to be exposed above ground.

Art Burger: He is not in favor or against this, but one of the key areas he has worked in is on cost benefit on returning investment particularly in the area of infrastructure, and technology. In this study he has found some potential flaws in the characterization of the analysis, and he thinks we should be careful about going forward. The first time savings

over the prior study result is not from any new equipment. It resulted purely from the fact that you'd raised rates over that period of time. So 1/3 of your projected savings actually came out to increase fees. The remaining potential savings was presented and worked out to about 2/3, and it looks like it is fairly unknown, and we don't know what the distinction is between losses related to meters, and losses related to the infrastructure. The infrastructure strikes him as particularly disturbing. The infrastructure continues to leak, and likely worsen. History tells us a lesson. You'll increase the fees again, and you have to because you don't have any source otherwise. That's a general idea of some of the weaknesses. Achieving return on investments in a very small populations is very difficult.

Susan Crow: She feels that it is irresponsible to spend money on meters when we have such dramatic problems with broken pipes. We don't want to increase radiation levels in this community. These meters are hundreds of times above the levels that cause DNA damage called electric sensitive activity rapid aging syndrome.

Jim Davidson: There's talk of the interface with these new water meters to the consumer that requires an upgrade to the AMI system which we could also get for our electrical, but it would require money from the city to upgrade the Electrical Department. Also in the 9 months he's lived at the corner of 5th and Gold, he has called the city five times for water breaks, and they came out and fixed them, and that was wonderful, but the first one he noticed was on the City's side of his water meter. He called the city about the meter, and they came out a couple months later and replaced it, but in the six months he has lived there, the meter had never turned over, so obviously there was a lot of water used that probably didn't get measured. Also in his house, his water pressure is 95 (psi) per square inch, and the maximum for residential by code is 80 (psi) per square inch, so if there's questions of water loss, and you said loss on the person side of the water meter, it probably has a lot to do with extreme water pressure coming from the City. Also, that can certainly have a large effect on the mains breaking all over the City. These issues could be taken care of with a lot less money than installing the new meters, and then perhaps in the future the meters could be considered.

Bonnie Lovell: The city doesn't even know where all the water lines run. They need to go in and get that fixed, and they need to fix the piping before you put a bottle cap on top of something.

Mayor Whitehead closed the public hearing.

G. ORDINANCES/RESOLUTIONS/ZONING:

1. Discussion/Action: Resolution No. 25 20/21 Budget Adjustment Request:

Carol Kirkpatrick, Finance Director reviewed the Budget Adjustments that were included in the packet.

Commissioner Baca moved to approve Resolution No. 25 20/21 Budget Adjustment Request. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. **Discussion/Action: Resolution No. 26 21/22 amending fees for Vista Memory Gardens Cemetery and Hot Springs Cemetery:**

OJ Hechler, Community Services Director noted that they reached out to other Municipalities to get comparable rates for the cemetery and swimming pool fees. The fees for the cemetery have not been increased since 2006.

Ryan Lawler, Parks Manager reviewed the proposed fees for Vista Memory Gardens Cemetery and Hot Springs Cemetery. He also noted that there was a change to the baby lot open and closing fee. It needs to be corrected from $100 to $50.

Mayor Pro-Tem Forrister moved to approve Resolution No. 26 21/22 amending fees for Vista Memory Gardens Cemetery and Hot Springs Cemetery. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. **Discussion/Action: Resolution No. 27 21/22 establishing swimming pool user fees for the J.A. Hodges Municipal Pool:**

Kyle Blacklock, Pool Manager reviewed the proposed swimming pool user fees for the J.A. Hodges Municipal Pool.

City Attorney Rubin stated that both this resolution, and the resolution that was just passed for the cemetery fees repeals and replaces all other resolutions related to these topics.

Commissioner Baca moved to approve Resolution No. 27 21/22 establishing swimming pool user fees for the J.A. Hodges Municipal Pool. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

4. **Discussion/Action: Resolution No 28 21/22 A resolution requesting a change to the Public Employees Retirement Association of New Mexico (PERA) Return to Work Provisions:**

City Manager Swingle explained that this is a resolution that is circulating around the state in both cities and counties. The state has imposed a number of restrictions on hiring former employees around the state who have been in the PERA system. The restriction prevents them from returning to work in a timely fashion, and it is not equitable for them to return under most circumstances. This resolution is asking the

New Mexico Legislature and Governor Michelle Lujan Grisham consider the adoption of a statute, rule or regulation that addresses PERA restrictions and/or implements a five (5) year moratorium on the enforcement of the same to allow qualified and willing retirees to assist governmental entities in providing these necessary services to citizens of New Mexico because during the Pandemic it is very difficult to get employees anywhere in New Mexico, as well as state wide.

Mayor Pro-Tem Forrister moved to approve Resolution No 28 21/22 requesting a change to the Public Employees Retirement Association of New Mexico (PERA) Return to Work Provisions. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

5. **Discussion/Action: Resolution No 29 21/22 establishing fuel fees at the T or C Municipal Airport:**

Traci Alvarez, Assistant City Manager explained in 2019 the City Commission approved a resolution establishing fuel fees that were based on the cost of the fuel that we purchase. However, with the fluctuation in fuel prices, we need to be able to charge fees due to the current rate.

Mayor Pro-Tem Forrister asked if we have to visit this item every time we see a fluctuation in fuel prices.

Traci Alvarez, Assistant City Manager responded by saying that this is a temporary establishment. We are looking at going back out to RFP for our fuel contract. Once we get that completed, we can establish something more permanent.

Mayor Pro-Tem Forrister moved to approve Resolution No 29 21/22 establishing fuel fees at the T or C Municipal Airport. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

6. **Discussion/Action: Resolution No 30 21/22 Truth or Consequences Multimodal Transportation Safety Plan:**

City Manager Swingle explained that a couple of months we had a presentation from the New Mexico State Department of Transportation on the Safety Plan. They gave you the conclusions and findings of the transportation study, and they have asked the City to adopt a Multimodal Transportation Safety Plan. The corridor they mostly looked at was the downtown area of Truth or Consequences which is Smith Street Avenue, East of Date Street, and Silver Street between Smith Avenue to North Silver Street, and Silver Street between Marie Street to East 9th Avenue. It was an excellent plan, and it is for the most part do-able by the City. We can implement a number of changes. Some will be at virtually no cost to us, but there are some other projects that we will have to plan out

and fund. It is staff's recommendation that you approve the resolution adopting the Multimodal Transportation Safety Plan.

Commissioner Baca moved to approve Resolution No 30 21/22 Truth or Consequences Multimodal Transportation Safety Plan. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

7. **Discussion/Action: Publication of Ordinance No. 720 amending the City of Truth or Consequences Municipal Code of Ordinances, by amending Section 7-201 (G) of the Code pertaining to Lodgers Tax Exemptions:**

City Manager Swingle explained that the Lodgers Tax Advisory Board has requested that we revise the Ordinance to include to remove Section (G) which states*: if the taxable premises does not have at least three rooms or three other units of accommodation for lodging.* The law was changed a few years ago, and the City has not revised our ordinance to capture the Airbnb's.

Commissioner Baca moved to approve the publication of Ordinance No. 720 amending the City of Truth or Consequences Municipal Code of Ordinances, by amending Section 7-201 (G) of the Code pertaining to Lodgers Tax Exemptions. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

8. **Discussion/Action: Publication of Ordinance No. 721 pertaining to the regulation of possession, cultivation, and consumption of recreational and medical cannabis in the City of Truth or Consequences:**

Item was removed from the agenda.

H. NEW BUSINESS:

1. **Discussion/Action: Approval of Lodger's Tax Funding Guidelines:**

City Manager Swingle explained that the Lodger's Tax Funding Guidelines were approved a couple of months ago. However, the Lodgers Tax Advisory Board wanted to change page 21, which changes the section of when the reports need to be submitted. They would like the reports to be submitted within 60 days of completion of the organizations marketing project or event.

Mayor Pro-Tem Forrister moved to approve the Lodger's Tax Funding Guidelines. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. **Discussion/Action: Approve recommendation from the Planning and Zoning Commission for Summary Plat Amendment at 905-907 Palo Verde, Truth or Consequences, NM:**

Traci Alvarez, Assistant City Manager explained that the applicants request is to combine the 2 lots. A Public Hearing was held on October 4, 2021, and there were no opponents. The Planning and Zoning Commission approved the amendment, and all required documents and fees have been submitted. The lots also meet minimum standards required for the district, and this amendment does not have the effect to significantly alter the impacts on utilities, drainage, or traffic.

Mayor Pro-Tem Forrister moved to approve the recommendation from the Planning and Zoning Commission for a Summary Plat Amendment at 905-907 Palo Verde, Truth or Consequences, NM. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. **Discussion/Action: Approve recommendation from the Airport Advisory Board for the installation of the Tetrahedron provided by the EAA (Experimental Aircraft Association):**

Traci Alvarez, Assistant City Manager explained that the local EAA Chapter converted a Beech 18 Aircraft into a Tetrahedron to be installed at the Truth or Consequences Municipal Airport. We have received approval by the FAA, and the site plan has been submitted to Planning and Zoning. The CID application may need to be submitted for State permitting, and the Airport Advisory Board has reviewed this item, and they recommend approval to install Tetrahedron.

City Manager Swingle also explained that this Tetrahedron is an airplane that has been stripped to be used as a wind sock. He thanked Larry Mullenax and Chuck VanGelder for their hard work on this project. It works very well, and it will be a very nice addition to the Airport.

Larry Mullenax, Airport Advisory Board Member suggested that they hold a dedication ceremony once it is installed.

Commissioner Baca moved to approve the recommendation from the Airport Advisory Board for the installation of the Tetrahedron provided by the EAA (Experimental Aircraft Association). Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

4. Discussion/Action: Award Recommendation for Invitation to Bid (ITB) #21-22-00 3 to Bartoo Sand and Gravel, Inc. for Road Materials and Equipment Rental:

Carol Kirkpatrick, Finance Director explained that this was for an Invitation to Bid, price only, so there was not an evaluation performed. We only received one Bid and it was from Bartoo Sand and Gravel, Inc.

Mayor Pro-Tem Forrister moved to approve the award recommendation for Invitation to Bid (ITB) #21-22-00 3 to Bartoo Sand and Gravel, Inc. for Road Materials and Equipment Rental. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

5. Discussion/Action: Approval of Contract with Bartoo Sand and Gravel, Inc.:

Carol Kirkpatrick, Finance Director stated that this is a follow up to item H4. It is to extend a contract with Bartoo Sand and Gravel, Inc. The contract will be for 1 year with the option to renew for 3 years.

Commissioner Baca moved to approve the Contract with Bartoo Sand and Gravel, Inc. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

6. Discussion/Action: Approval of Purchase Requisitions over $20,000:

Carol Kirkpatrick, Finance Director reviewed the Purchase Requisitions over $20,000 that were included in the packet.

Mayor Pro-Tem Forrister moved to approve the Purchase Requisitions over $20,000. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

7. Discussion/Action: Approval of Agency Agreement between Leads Online and the Truth or Consequences Police Department:

Victor Rodriquez, Chief of Police explained that the Leads Online is a program that gives law enforcement the opportunity to search items that have been stolen in pawn shops and second hand stores throughout the nation. It also allows them to cross reference with eBay, Offer up, and other online second hand type of places. It also has a system called "report it" which allows the community to create a profile, and they can enter up to 100 items in the system in case a burglary were to happen.

Mayor Pro-Tem Forrister moved to approve the Agency Agreement between Leads Online and the Truth or Consequences Police Department. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

8. **Discussion/Action: Recruitment procedure or possible appointment of a qualified elector to fill the vacancy of City Commissioner Position II:**

City Manager Swingle stated that Commissioner Aragon resigned at the last meeting, and we received his resignation letter prior to the meeting. State Statute basically says that 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. Therefore, it is the Commissioners statutory responsibility to appoint Commissioner Aragon's replacement so what you would need to decide is how you would like to handle that.

Mayor Pro-Tem Forrister would like for them to wait until after the Election to choose a candidate to fill the vacancy that way they can choose from the candidates who ran for City Commission because those people have shown interest in wanting to sit on the Commission, and they have done their due diligence with signing up to run, and campaigning.

Commissioner Luna 100% agreed with Mayor Pro-Tem Forrister. She also feels that their best decision would be to wait until after the Election to choose a candidate to fill the vacant position.

Commissioner Baca also agreed.

Mayor Whitehead announced that Rick Dumiak submitted a letter of interest. However, at this time they feel that it would be best to wait until after the November 2, 2021 Election to choose a qualified elector to fill the vacancy of City Commissioner Position II.

City Manager Swingle stated that Art Burger also submitted a letter of interest for the vacant position.

No action was taken.

9. **Discussion/Action: Approval of MOU between the City of Truth or Consequences and Sierra Electric Cooperative, Inc.:**

City Manager Swingle explained that this is a MOU between the City of Truth or Consequences and Sierra Electric Cooperative, Inc. for the sole purpose of exploring the feasibility of selling the electric infrastructure from the City to Sierra Electric Cooperative, Inc. There were lots of comments of what should be included in the MOU.

However, this document is only to ensure that there is cooperation between both entities so we can work together to determine the feasibility of selling the electric infrastructure. At the end of the day, all the feasibility study will tell us is whether or not this is in the best interest of the City and Sierra Electric Cooperative, Inc.

Commissioner Baca moved to approve the MOU between The City of Truth or Consequences and Sierra Electric Cooperative, Inc. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

10. Discussion/Action: Approval to hold one meeting in November on November 17th and one meeting in December on December 15th in lieu of regular scheduled meetings for November and December 2021:

City Clerk Torres explained, due to the upcoming holidays, every year the City Commission votes to have one meeting in November, and one meeting in December. If approved, the meeting dates will be one meeting in November, on November 17th, and one meeting in December, on December 15th.

Mayor Pro-Tem Forrister made a motion to hold one meeting in November on November 17th and one meeting in December on December 15th in lieu of regular scheduled meetings for November and December 2021. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

11. Discussion/Action: Consider appointment of Susanne Carlstedt to serve as a member on the Public Arts Advisory Board:

City Clerk Torres explained, on September 14, 2021 the Public Arts Advisory Board recommended the appointment of Susanne Carlstedt to become the 5th member on their board. The term is for two years, and will expire on June 30, 2023. The position has also been advertised in the local newspaper.

Commissioner Baca moved to appoint Susanne Carlstedt to serve as a member on the Public Arts Advisory Board. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

I. REPORTS:

City Manager Swingle reported the following:

- He gave kudos to all of the city staff. Everyone is working really hard, and they are doing outstanding work. The Streets Department is doing a great job with the work they are doing on Corbett Street. We continue to have 15-20 water leaks per week, and the Water Department is working 111-125 hours per pay period right now to get those water leaks fixed.

- Jamie Sweeney in Code enforcement has about 80 cases that she is working on right now. The focus has been on weeds, and the high priority cases which are public safety issues. She is doing a great job. The Parks Department along with the Recreation Advisory Board had a public meeting after their regular scheduled meeting to talk about a new gazebo for the Ralph Edwards Park. Ultimately, what was decided was to go out for RFP for the project. We have about $45,000 to construct the gazebo, so we will put out an RFP for quotes or bids, or we can put a design build out as well. There is a lot of uncertainty with prices of material right now, and they seem to continue to go up daily so the design build will lock the contractor into a fee.
- The Sanitation Department was closed half a day this week due to the high winds. When we have high winds, we cannot process trash because it becomes air born.
- He wants to possibly discuss changing the reporting portion of the agenda because this is our time to get our message out to the community, and people usually leave during the middle of the meeting, and they are not hearing our comments. He would like to move it after public comment or presentations so the reports are heard early on in the meeting. The Commissioners can always comment at the end of the meeting if there is something that comes up during the meeting that they would like to address.
- He is just about finished with a property tax increase evaluation, and what that would look like, and how that will affect each property owner on a cost per $1,000 on a home. He may have that available for the next meeting.

City Attorney Rubin reported the following:

- He suggested that the Commission review the entire City Commission Rules of Procedure if they decide to move the reports portion on the agenda. We may also want to schedule a workshop to go over it.

City Commission Reports:

Commissioner Baca reported the following:

- Early voting has started, and don't forget to vote on November 2nd.

Mayor Pro-Tem Forrister reported the following:

- She also gave kudos to our employees because they are working many, many hours.
- She would also like for the reports to be moved to the beginning of the agenda because it would be nice for these people to hear some of the comments that City Manger Swingle made.
- We had our County Fair this past week, and we had a great turnout. The sale night was $18,000 more than record. It's really nice to sit back and watch the community come together and show support for the things in our community.

Commissioner Luna reported the following:

- She read a wonderful post from Facebook about the Solid Waste Department. Donna Catterick commented "On this windy day she just saw a Solid Waste driver get out of the truck and put my neighbors overturned Polly Cart back into their yard after dumping it into the truck. She does not know if that is normal practice, but it was a nice thing to do. It just goes to show how much the employees care about their job, and how dedicated they are."
- She also gave kudos to all of the employees for all of their hard work and dedication.

Mayor Whitehead reported the following:

- She too gave kudos to the city employees, because without them we wouldn't have the things that we have today. We know that there is a lot of infrastructure that needs to be repaired, but we can't just snap our fingers, and have it done. It takes time and money. Nobody wants to spend money, but everyone wants something done for nothing.

J. ADJOURNMENT:

Mayor Pro-Tem Forrister moved to adjourn at 11:31 a.m. Commissioner Baca seconded the motion. Motion carried unanimously.

Passed and **Approved** this **27th** day of **October, 2021**.

_____
Sandra Whitehead, Mayor

ATTEST:

_____
Angela A. Torres, CMC, City Clerk

CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 27, 2021

Agenda Item #: D.2

SUBJECT: Acknowledge Regular Public Utility Advisory Board Minutes for August 16, 2021.
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: October 22, 2021
SUBMITTED BY: Angela A. Torres, City Clerk-Treasurer
WHO WILL PRESENT THE ITEM: City Clerk Torres

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 10-27-2021

CITY OF TRUTH OR CONSEQUENCES
PUBLIC UTILITY ADVISORY BOARD
MONDAY, AUGUST 16, 2021

MINUTES

REGULAR MEETING

Regular meeting of the Public Utility Advisory Board of the City of Truth or Consequences, New Mexico to be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, on Monday, August 16, 2021 at 5:30 pm.

CALL TO ORDER

ROLL CALL:

George Szigeti, Chairman
Jeff Dornbusch, Vice-Chairman - Absent
Ron Pacourek, Member
Gil Avelar, Member
Don Armijo, Member

ALSO PRESENT:

Bruce Swingle, City Manager
Traci Alvarez, Assistant City Manager
Angela A. Torres, City Clerk
Dawn C. Barclay, Deputy City Clerk

1. **APPROVAL OF AGENDA:**

Member Pacourek made a motion to approve the agenda. Member Armijo seconded the motion. Motion carried unanimously.

2. **APPROVAL OF MINUTES:**
   a. **Regular meeting of July 19, 2021.**

Chairman Szigeti made a motion to approve the minutes. Member Armijo seconded the motion. Motion carried unanimously.

3. **COMMENTS FROM THE PUBLIC:**

Ron Fenn – Addressed the board with concerns regarding how the solar billing tax was calculated. He also had some concerns about AMI Metering.

Diana Yandell – Expressed her concern that there is no interaction time with the board. Chairman Szigeti advised Ms. Yandell how she can take the proper steps to interact on a one on one basis with the staff and/or board member. He also explained by submitting an "Agenda Request Action Form" she will be able to interact during a regular scheduled board meeting.

4. **NEW BUSINESS:**
   a. **Discussion/Action: Gray Water Systems. George Szigeti, Chairman.**

Chairman Szigeti began by explaining there are two kinds of waste water systems, black and gray. Gray water can be captured and reused for several applications. He proposed a collection storage/distribution container with a filtration system for existing and new construction homes. Member Avelar had a concerns that if there were any sanitation issues by using gray water? Member Pacourek had some concerns about the proposed system being cost effective. He also pointed out the gray water for new construction should go through the Impact Fee Advisory Board. Chairman Szigeti agreed with Member Pacourek and further added that there could be a possible reduction on the impact fee. He also proposed an idea that retro fitting existing homes might lead to a possible reduction on their water and wastewater bill.

Board agreed to table Gray Water Systems until next meeting.

   b. **Discussion/Action: Seasonal Trash Pickup. Jeff Dornbusch, Vice-Chairman.**

Chairman Szigeti presented a handout for discussion on behalf of Vice-Chairman Dornbusch who was absent. It was noted the Vice-Chairman Dornbusch had spoken to Andy Alvarez, Department Head of Sanitation & Recycling regarding trash service suspension regarding homeowner's that are temporarily not occupying the property. There are seasonal residents that do not reside in their home for periods up to 6 months. Under the current ordinance, if the customer continues with electric and water service they must continue trash service pickup. This proposal will allow the customer to suspend trash pickup for up to a six month period. Some concerns the board presented were; written requests, homes that were for sale, homes that are sitting empty. City Manager Swingle had some concerns with; the verification process of home owner if out of state and local, the cost involved in the transportation of the poly cart to and from property, bookkeeping time to process requests, facility cost in the cleaning and storage of the poly cart, and possible revenue impact on current grant funding and just how many people will utilize this program, additional work on employee's, and the over-all practicality of the program. The board agreed Mr. Swingle had many valid points that still needed to be addressed. The board agreed to do some more research starting with Sonya William, Utility Manager to see how many (-0-) balance account exist and their circumstance's.

Board agreed to table Seasonal Trash Pickup until next meeting.

c. **Discussion/Action: Utility Forgiveness Program. Jeff Dornbusch, Vice-Chairman.**

Chairman Szigeti presented the discussion on behalf of Vice-Chairman Dornbusch who was absent. He began opening discussions by explaining this program was discussed approximately two years ago. This program would be designed to come up with guidelines to help limit the charge back to the customer when there is a water leak on the customer's side of the meter. Angela A. Torres, City Clerk advised the board to put their recommendation into a Resolution before going they present to it to the City Commission. Bruce Swingle, City Manager reminded the board the Anti-Donation clause may need to be addressed.

Board agreed to table Utility Forgiveness Program until next meeting.

5. **REPORTS FROM THE BOARD:**

No reports from the board.

6. **REPORTS FROM STAFF:**

City Manager Swingle asked Chairman Szigeti for a copy of his last month's department head report request. Chairman Szigeti confirmed he will provide a new copy and then gave a brief description of the request. It was a trimmed down version of prior years' Monthly reports now converted to Quarterly reporting. City Manager Swingle went on to discuss the multiplier on AMI meters may need to be audited or evaluated. The board suggested asking Bo Easley, Electric Department Head for his advice but was open to the fact it could be software issue.

7. **ADJOURNMENT:**

There being no further business to come before the Public Utility Advisory Board, Member Armijo made a motion to adjourn the meeting. Chairman Szigeti seconded the motion. Motion carried unanimously. Meeting was adjourned.

PASSED AND APPROVED ON THIS 18th DAY OF OCTOBER 2021.

George Szigeti, Chairman
Public Utility Advisory Board

Application for suspension of trash service program

1). Open to home owners.

2) for a time period of no less than three(3) months.
And no longer than six (6) months.

3) applicant must agree that no one shall reside at the
Resident during the application time period (ATP).

4). Any waste generated during the ATP must be removed and properly disposed of by the person (s)/ contractor (s) generating the waste.

5) any violation of the agreement will result in removal from the program and applicant will pay for normal trash service during the ATP at the current rate plus fees.

6) applicant will pay a fee for for the removal and return of the roll out. $15?

CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 27, 2021

Agenda Item #: D3.

SUBJECT: Subrecipient FY 21/22 1st Quarter Reports
DEPARTMENT: City Manager's Office
DATE SUBMITTED: October 18, 2021
SUBMITTED BY: Tammy Gardner, Executive Assistant
WHO WILL PRESENT THE ITEM: Consent Calendar Item

Summary/Background:

Contract requires that recipients of Subrecipient funding submit a quarterly report to the City by the 15th of the month following the quarter.

Recommendation:

Accept the 1ST Quarter Reports

Attachments:

- Checklist
- Reports

.

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. Click here to enter text. 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 10-27-2021

SUBRECIPIENT QUARTERLY REPORTS **FISCAL YEAR:** 2021-22 Updated: 10/18/21

Reports are due by the 15th of the month following the quarter.
Exception: 4Q report due 06/03/2022

NAME OF ORGANIZATION	ALLOTMENT	1ST QTR. REPORT YES	NO	2ND QTR. REPORT YES	NO	3RD QTR. REPORT YES	NO	4TH QTR. REPORT YES	NO
(SUBRECIPIENT FUNDS)									
Companion Animal Action Team/CAAT Majie Powey 740-0421	$1,500.00	X	10/13						
Domestic Abuse Intervention Center Blanca Chavez 894-3557	$2,500.00	X	10/07						
Matthew 25 Food Pantry Dawn Jensen 847-785-9498	$5,000.00	X	10/15						
SJOA / Sierra Joint Office on Aging Lisa Mattingly 894-6641	$47,000.00	X	10/14						
The Club of Sierra County Rebecca Dow 575-571-1056	$10,000.00	X	10/14						
(OTHER FUNDS)									
Geronimo Springs Museum Marilyn Pope 894-6600	$7,500.00	X	9/17						
Geronimo Trail Scenic Byway LaRena Miller 894-2255	$5,000.00	X	10/08						
MainStreet Truth or Consequences Linda DeMarino 740-6180	$45,000.00	X	10/15						

1st Quarter:	JUL, AUG, SEP	Copies to City Mgr. & Commission
2nd Quarter:	OCT, NOV, DEC	Copies to City Mgr. & Commission
3rd Quarter:	JAN, FEB, MAR	Copies to City Mgr. & Commission
4th Quarter:	APR, MAY, JUN	Copies to City Mgr. & Commission

4

1ST QUARTER REPORT

SUB-RECIPIENT QUARTERLY REPORT

FY: *2021/2022*

ORGANIZATION: *COMPANION ANIMAL ACTION TEAM CAAT*

ALLOCATION: *$1,500.00*
(FY Allotment, Not Qtr. Draw)

QUARTER: *1ST*
(1st/2nd/3rd/4th)

(Please confine your report to a one-page "narrative" for each quarter.)

We held three clinics during the first quarter. Clinics were held on July 15, July 29 and August 23. We did not hold a clinic in September as Amy was out of state on Family Leave. On July 15, 15 female cats were spayed, 3 male cats were neutered, 4 female dogs were spayed and 3 male dogs neutered.

On July 29, 2021 6 female cats were spayed, 6 male cats neutered, 5 female dogs spayed and 6 male dogs neutered.

On August 23, we spayed 6 female cats and neutered 5 male cats, we spayed 7 female dogs and neutered 5 male dogs.

We insure that all dogs and cats are vaccinated for rabies as well as FVRCP (Cats) and DHPP (dogs) even if the people cannot pay for vaccinations this insures the well being of animals as well as following state laws regarding rabies. Our grants an donations allow us to do this.

Client fees cover 40 to 50% of the clinics . The rest comes from grants and donations and fund raising which has been difficult during COVID. I have included an invoice for the August clinic. The building, utilities and maintenance are all donated. Staff are all volunteers.

Thank you for assisting us to try and reduce the numbers of unwanted animals in Sierra County.

SUBMITTED BY: *Majorie E Powey* / Majorie E Powey
TYPED NAME / SIGNATURE

DATED: *10/12/21*

Rev. 5/2013

INVOICE

PNH Mobile 2

3233 N. Mesa St Suite 210
El Paso, TX 79902
915-584-4491

"A Healthy Pet is a Happy Pet"

FOR: T or C CAAT
PO BOX 204
Williamsburg, NM

Printed: 08-23-21 at 4:50p
Date: 08-23-21
Account: 15892
Invoice: (open)

Date	For	Qty	Description	Price	Discount	Net Price	
Services by Amy Starr, DVM PS							
08-23-21	2021/08/23	224	PNH-M Milleage (S/N Clinic) per mil			712.32	
08-23-21		1	S/N Clinic Day			1500.00	
08-23-21		23	PNH-M Presurgery Intake Exam	345.00	345.00	0.00	**
08-23-21		5	Feline Castration	275.00	275.00	0.00	**
08-23-21		6	Feline Ovariohistorectomy	450.00	450.00	0.00	**
08-23-21		5	Canine Castration	500.00	500.00	0.00	**
08-23-21		7	Canine Ovariohistorectomy	770.00	770.00	0.00	**
08-23-21		1.90	PNH-M2 Metacam/Loxi Inj 5mg/m (	28.50	1.00	27.50	**
08-23-21		108	PNH-M2 Tramadol Tablet 50mg (1			0.00	
08-23-21		23.70	PNH2 Ketamine-Xylazine Comb Inj			0.00	
08-23-21		8	PNH2 Feline FVRCP Vaccine (1ml)			72.00	
08-23-21		6	PNH2 K9 DAPP Inventory (1ml)			54.00	
08-23-21		20	PNH2 Rabies 3yr Vaccine (10ml)			280.00	
08-23-21		0.17	PNH-M Convenia Injection 80mg/m			25.00	
Services by Amy Starr, DVM RX							
08-23-21		1	PNH-M FrontlinePlus Feline each	17.00	4.00	13.00	**
Services by							
08-23-21	#1457		Check payment			-2683.82	

Old balance	Charges	Payments	Discount	New balance
0.00	2683.82	2683.82	2345.00 **	0.00

Your invoice total reflects our **Client Class 1** discount.

Reminders for: **2021/08/23**		Last done
08-23-22	MVC Exam W/Vaccines	08-23-21

Thank you for letting us care for your pet(s)! Refer a new client and get $20 off your next visit.

We will not process any type of credit card transaction without proper form of card holder's I.D. present.
We do not give refunds or reimbursements for professional services rendered, deposits on surgeries/major procedures or inventory items that have left the facility. Further charges such as lab tests, radiology, hospitalization, anesthesia and pharmacy items not posted at the time of discharge may be billed later. We do require a 24 hour advanced notice on all/any cancellations. $25 cancellation fee will be charged on all No show less than 24 hours notice and surgery deposits will be forfeited.
We appreciate your understanding.

Also, check out our website (www.paws-n-hoovesvetclinic.com), online pharmacy, Facebook, YouTube, Pinterest, SnapChat and LinkedIn!

Do you have additional questions? Call us at Paws N' Hooves Mobile Veterinary Services (915) 490-4849 or Mesa Veterinary Clinic (915) 584-4491.

TG

COMPANION ANIMAL ACTION TEAM
PO BOX 512
WILLIAMSBURG, NM 87942

RECEIVED
OCT 13 2021
By

SUBRECIPIENT GRANT
FY 2021/22
(1ST) QUARTER INVOICE

Date of Invoice: 10/9/2021

Invoice Amount: *$ 375.00*

Submit To: *City of Truth or Consequences*
ATTN: City Clerk's Office
505 Sims Street
Truth or Consequences, NM 87901

Allocation Amount: *$1500*
Quarter Draw: *$375*

Please send payment to: *COMPANION ANIMAL ACTION TEAM*
PO BOX 512
WILLIAMSBURG, NM 87942

Thank you,

Majorie E Powey
Signature of Authorized Representative
MAJORIE E POWEY
575-740-0421

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TG

SUB-RECIPIENT QUARTERLY REPORT

FY: 2021/22

ORGANIZATION: Domestic Abuse Intervention Center

ALLOCATION: $2,500.00
(FY Allotment, Not Qtr. Draw)

QUARTER: 1st
(1st/2nd/3rd/4th)

(Please confine your report to a one-page "narrative" for each quarter.)

Statistical Information:		Years	Victimization	Referral	
Female- 18	Anglo- 11	18-21- 4	Emotional -25	Police- 4	Sherriff-
Male-8	Hispanic- 8	22-40- 12	Physical -13	Hospital-	Self-Referral-8
	Other- 7	41-59- 5	Sexual- 3	Courts- 7	Friends-
		60-74-	Stalking-	Family- 1	Other- 6
		Unknown - 5		CYFD-	

Type of Contact:	Volunteer Hours: Total- 1515
Orders of Protection- 5	Cell Phone- 1510
Individual Support Sessions- 62.5	Adminstrate- 0
Group -94	Crisis -5
Victim Advocacy -24.75	Office-
Crisis Intervention - 4	Direct Client Contact (crisis)-5
Shelter -6 Transportation- 0	
Food - 3	
Legal Advocacy -3	
Case Management - 55	
DVOTI Individual Sessions -	

July-	August-	September-
	Dues- $125.00	Audit-$500.00
		Total $625.00

SUBMITTED BY: Blanca Chavez
TYPED NAME

Blanca Chavez
SIGNATURE

DATED: 10/05/21

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Domestic Abuse Intervention Center
ORGANIZATION/RECIPIENT'S NAME

ADDRESS

CITY, STATE and ZIP

RECEIVED OCT 07 2021

TG

SUBRECIPIENT GRANT
FY 2021/2022
(1st) QUARTER INVOICE

Date of Invoice: *October 5, 2021*

Invoice Amount: *$625.00*

Submit To: *City of Truth or Consequences*
ATTN: City Clerk's Office
505 Sims Street
Truth or Consequences, NM 87901

Allocation Amount: *$2500.00*
Quarter Draw: *$625.00*

Please send payment to: *Domestic Abuse Intervention Center*
P.O. Box
Truth or Consequences, NM 87901

Thank you,

Blanca Chavez

Blanca Chavez
575-894-3557

SUB-RECIPIENT QUARTERLY REPORT **FY:** *2021-22*

ORGANIZATION: *Matthew 25 Food Pantry, Inc.*

ALLOCATION: *$5,000.00* **QUARTER:** *1st Qtr*

(FY Allotment, Not Qtr. Draw) (1st/2nd/3rd/4th)

(Please confine your report to a one-page "narrative" for each quarter.)

Primary Purpose

Matthew 25 Food Pantry's mission is to serve the community's impoverished and underprivileged. Food distribution is our paramount objective. This assistance is available to those who qualify without discrimination based on age, race, color, sex, religion, national origin, disability, or sexual orientation.

COVID-19 Procedures

Matthew 25 restructured its procedure for distributing food baskets to walk-ins due to the coronavirus. There is no face-to-face interaction less than 6 feet apart between Matthew 25 volunteers and the food pantry clients. The Matthew 25 volunteers always wear face masks.

Food Distribution Performance

In the 1st quarter, food baskets were delivered to 683 households consisting of 1,332 individuals. Food basket delivery to Public Housing has not been resumed.

With the COVID-19 vaccine roll-out, Matthew 25's food distribution volume should start returning to normal historical averages. If Public Housing resumes their food basket delivery, it will add quarterly approximately 410 households with 440 individuals, 67% of which are seniors.

Appendix 1 - Household Food Basket Distribution

Financial Performance

Matthew 25's budget is based on all financial items being evenly averaged on a monthly basis, regardless of seasonality or one time annual financial activity.

In the 1st quarter 2022 financial performance, Matthew 25 had a loss of $2,768.87. This is predominately due to the annual insurance payment, higher TorC utility expenses, and the final 2020 / 2021 grant year payment in June of 2021. Matthew 25's rent has been increased by $100 a month, rent expense does not include two outstanding payments. While food expense remains lower than budgeted, it may become an issue in the remining 9 months of the budgeted year. Overall, Matthew 25 remains in a good financial position.

Appendix 2 provides an overview of Matthew 25's 1st quarter financial performance and the 2021/2022 full grant year budget.

Volunteer Contribution

Matthew 25 is an all volunteer organization, approximately 16 individuals volunteer each week. Some for as much as 20 to 25 hours a week, many for 2 to 3 hours a week. Volunteers pay their own out-of- pocket expenses.

SUBMITTED BY: *Michael Hogg* / *Michael Hogg*

TYPED NAME SIGNATURE

DATED: *October 14, 2021*

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By TY

Appendix 1: Matthew 25 - 1st Quarter HH Food Basket Distribution

Date	Households	Seniors	Adults	Children	Ind Totals
July					
07/01/21					0
07/08/21	64	42	60	38	140
07/15/21	46	40	33	20	93
07/22/21					0
Walk-ins	57	44	39	18	101
Senior Housing		Closed Due to Coronavirus			
07/29/21	47	28	44	26	98
Total	**214**	**154**	**176**	**102**	**432**
August					
08/05/21	60	54	39	26	119
08/12/21	50	35	37	19	91
08/19/21	56	43	35	14	92
08/26/21					0
Walk-ins	57	48	40	14	102
Senior Housing		Closed Due to Coronavirus			0
Total	**223**	**180**	**151**	**73**	**404**
September					
09/02/21	46	27	45	35	107
09/09/21	63	56	38	26	120
09/16/21	76	59	53	33	145
09/23/21					
Walk-ins	61	46	48	30	124
Senior Housing		Closed Due to Coronavirus			0
09/30/21					0
Total	**246**	**188**	**184**	**124**	**496**
2010 / 2022 Year Totals					
1st Qtr Totals	**683**	**522**	**511**	**299**	**1332**
2nd Qtr Totals					**0**
3rd Qtr Totals					**0**
4th Qtr Totals					**0**
YTD Totals	**683**	**522**	**511**	**299**	**1,332**

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Appendix 2: Matthew 25 - 1st Quarter Financial Performance

	July	August	September	1st Qtr
Revenue				
Contributions	$265.00	$445.00	$1,968.80	$2,678.80
Grant Income	$0.00	$0.00	$0.00	$0.00
Bullock's Receipt Reimbursement	$0.00	$0.00	$0.00	$0.00
Miscellaneous	$0.00	$7.58	$0.00	$7.58
Total	$265.00	$452.58	$1,968.80	$2,686.38
Expense				
Food	$343.01	$308.58	$301.66	$953.25
Rent	$700.00	$0.00	$0.00	$700.00
Utilities	$786.21	$835.82	$846.46	$2,468.49
Insurance	$1,235.00	$0.00	$0.00	$1,235.00
Professional Service:	$0.00	$39.06	$0.00	$39.06
Miscellaneous	$48.67	$5.39	$5.39	$59.45
Total	$3,112.89	$1,188.85	$1,153.51	$5,455.25
Net Income	**-$2,847.89**	**-$736.27**	**$815.29**	**-$2,768.87**

	YTD	YTD Variance (based on 3 Mths)	2021/2022 Budget Annual	2021/2022 Budget Monthly Avg
Revenue				
Contributions	$2,678.80	-53.00%	$22,800	$1,900
Grant Income	$0.00	-100.00%	$7,500	$625
Bullock's Receipt Reimbursement	$0.00	-100.00%	$800	$67
Miscellaneous	$7.58	-92.42%	$400	$33
Total	$2,686.38	-65.89%	**$31,500**	**$2,625**
Expense				
Food	$953.25	-76.46%	$16,200	$1,350
Rent	$700.00	-66.67%	$8,400	$700
Utilities	$2,468.49	59.26%	$6,200	$517
Professional Service:	$39.06	-88.84%	$1,400	$117
Insurance	$1,235.00	888.00%	$500	$42
Miscellaneous	$59.45	58.53%	$150	$13
Total	$5,455.25	-33.57%	**$32,850**	**$2,738**
Net Income	-$2,768.87	820.41%	**-$1,350.00**	**-$112.50**

Matthew 25 Food Pantry Uses Cash Basis Accounting

RECEIVED
OCT 15 2021
By

Matthew 25 Food Pantry, Inc.
405 Austin Street
Truth or Consequences, NM 87901

SUBRECIPIENT GRANT
FY 2021/2022
First QUARTER INVOICE

Date of Invoice: ***October 14, 2021***

Invoice Amount: **$1,250.00**

Submit To: *City of Truth or Consequences*
ATTN: City Clerk's Office
505 Sims Street
Truth or Consequences, NM 87901

Allocation Amount: ***$5,000.00***
Quarter Draw: ***$1,250.00***

Please send payment to: **Matthew 25 Food Pantry**
P.O. Box 3722
Truth or Consequences, NM 87901

Thank you,

Michael Hogg, Financial Officer
Phone No. **575-740-2223**

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OCT 15 2021
By TM

SUB-RECIPIENT QUARTERLY REPORT FY: *2021/22* TG

ORGANIZATION: *Sierra Joint Office on Aging*

ALLOCATION: *$47,000.00* **QUARTER:** *1st*
(FY Allotment, Not Qtr. Draw) (1st/2nd/3rd/4th)

(Please confine your report to a one-page "narrative" for each quarter.)

12,229 Meals served in the drive-thru for the months of July through September
4,625 Meals delivered to Homebound seniors
2099 Transportation (Rides)/local. Las Cruces rides have resumed as of September
38 rides for Assisted Transportation
1,166 hrs. Homemaking services provided
96.25 hours provided for Respite.

We are serving increasing numbers of meals during this time. Not only because of COVID-19 but also due to snowbirds returning to the area.
Transportation services have been opened up to other destinations besides doctors and grocery shopping. We have also resumed the Las Cruces run.
Homemakers have resumed in home services with additional precautions put in place.

We still continue with well-check calls to seniors to check in on them and make sure they have what they need and assisst where possible.

We are also assisting seniors who might be having trouble signing up for the COVID-19 vaccinations on the NMDOH website.

RECEIVED OCT 14 2021 By

SUBMITTED BY: *Lisa L. Mattingly* / Lisa L. Mattingly
TYPED NAME SIGNATURE

DATED: *10/12/21*

Rev. 5/2013

T9

Sierra Joint Office on Aging
406 W. 4th Ave
Truth or Consequences, NM 87901

SUBRECIPIENT GRANT
FY 2021/2022
1st QUARTER INVOICE

Date of Invoice: *10/12/2021*

Invoice Amount: *$11,750.00*

Submit To: *City of Truth or Consequences*
ATTN: City Clerk's Office
505 Sims Street
Truth or Consequences, NM 87901

Allocation Amount: *$47,000.00*
Quarter Draw: *$11,750.00*

Please send payment to: *Sierra Joint Office on Aging*
406 W. 4th Ave
Truth or Consequences, NM 87901

Thank you,

Lisa L Mattingly

Lisa L. Mattingly
Finance Director
575-894-6641
575-740-2066

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OCT 14 2021
By

TG

SUB-RECIPIENT QUARTERLY REPORT **FY:** *2021/22*

ORGANIZATION: *The Club*

ALLOCATION: *$10,000.00* **QUARTER:** *1st*
(FY Allotment, Not Qtr. Draw) (1st/2nd/3rd/4th)

(Please confine your report to a one-page "narrative" for each quarter.)

The Club provided free Dinners to all youth who attended our programming. We provided transportation to and from the schools as wel as sports and club practices and meetings along with games. We started a free clothing exchange for youth to turn in clothes they no longer wanted for other youth to have access to. We started a business class where youth make and market their own items and sell them to the community. Youth receive 100% of the proceeds. We provided high qualtiy trained mentors for youth to connect with as well as out of school time programming at no cost.We have provided a multitude of free classes based on youth interest. The Club has also worked with the school district to create a work study program with Arrey Elementary and The Club.The Club served a total of 61 youth during this quarter.

SUBMITTED BY: *Charis Baxter* / [signature]
TYPED NAME SIGNATURE

DATED: *10/11/21*

Rev. 5/2013

The Club
122 N. Broadway St.
T or C, NM 87901

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By

2 pages

SUBRECIPIENT GRANT
FY 2021/2022
1st QUARTER INVOICE

Date of Invoice: *10/11/2021*

Invoice Amount: *$2,500*

Submit To: *City of Truth or Consequences*
ATTN: City Clerk's Office
505 Sims Street
Truth or Consequences, NM 87901

Allocation Amount: *$10,000*
Quarter Draw: *$2,500*

Please send payment to: *The Club*
1300 S. Broadway St.
T or C, NM

Thank you,

Charis Baxter
505-446-0030

SUB-RECIPIENT QUARTERLY REPORT **FY: 2021022** TB

ORGANIZATION: GERONIMO SPRINGS MUSEUM

ALLOCATION: $7,500.00 **QUARTER: $1,875.00**

TURTLEBACK PEST CONTROL	7/15/21	#1026	$52.63
	8/12/21	1043	52.63
	9/16/21	1065	52.63
NEW MEXICO GAS	7/26/21	1036	52.79
	8/24/21	1050	52.97
CITY OF T OR C	7/26/21	1037	421.76
	9/2/21	1058	428.06
WINDSTREAM	7/26/21	1038	232.84
	8/24/21	1032	235.53
LIBERTY MUTUAL-INS	7/19/21	1034	57.40
	8/24/21	1051	57.40
LIGHTENING MECH-COOLERS	7/26/21	1035	168.33
TOTAL	$1,979.74		

MP

We are currently updating the El Camino Real , looking forward to a grand opening at some Time soon. You will all be invited. Thank you for all you do .

Marily Pope
Administrator

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SEP 17 2021
By

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GERONIMO SPRINGS MUSEUM

211 MAIN

TRUTH OR CONSEQUENCES, NEW MEXICO 87901

SUBRICIPIENT GRANT

FY 2021-22

1ST QUARTER INVOICE

09/16/2021

INVOICE AMOUNT $1,875.00

SUBMIT TO: CITY OF TRUTH OR CONSEQUENCES

ATTN: CITY CLERK'S OFFICE

505 SIMS

TRUTH OR CONSEQUENCES, NM 87901

ALLOCATION AMOUNT: $7,500.00

QUARTER DRAW: $1, 875.00

PLEASE SEND PAYMENT TO: GERONIMO SPRINGS MUSEUM

211 MAIN

TRUTH OR CONSEQUENCES, NM 87901

THANK YOU,

Marilyn Pope

575-740-0724 OR 575-894-6600

T4

SUBRECIPIENT QUARTERLY REPORT (Report is due by the 15th of the month following the quarter.) **FY:** *2021-2022*

ORGANIZATION: *Geronimo Trail Scenic Byay*

ALLOCATION: *$5,000.00* (FY Allotment, Not Qtr. Draw) **QTR DRAW:** *$1,250.00* **QUARTER:** *1st* (1st/2nd/3rd/4th)

(Please detail the progress made in providing the services each quarter.)

July, August and September we were open 7 days a week, Monday - Thursday 10 - 3, Friday and Saturday 9 - 4:30 and Sunday 9 - 2:30. We had 1572 visitors sign in, responded to 118 telephone calls for information, responded to 483 emails, mailed out 9 packets of visitor information and delivered 3 cases of brochures to Visit Albuquerque for their visitor center in Old Town and for the Sunport. Carl and LaRena Miller made the delivery.

Total expenses for the period:

Telephone	*$ 585.61*
Insurance	*$ 188.49*
Postage	*$ 80.32*
Supplies	*$ 670.20*
Total expenses for the qtr	*$ 1526.62*

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Overage in expenses is paid by donations, Cash for Clubs receipts from Bullocks, sale of souvenir items for both Truth or Consequences and Spaceport America on which we pay GRT. Any other expenses and supplies are covered by the Director and Board donations. We have been open 7 days a week with 6 volunteers. Our visitation has increased since the Spaceport Tours are again originating out of their visitor center. We continue to open and close the Spaceport room and turn their equipment on and off. We still do not have air conditioning in that room, and will not have heat until the new units are installed. Temporarily LaRena has provided two large box fans to circulate air in the Spaceport room.

We purchase our Spaceport souvenirs from their agent for re-sale, and purchase our Truth or Consequences souvenirs with money from donations, sale of souvenirs, and unrestricted income that does not come out of the City funding.

We contribute aproximately 43 1/2 volunteer hours per week in the visitors center. The director spends approximately 12 hours per month on administrative duties above and beyond her volunteer hours. We are closed Thanksgiving, Christmas Day and New Year's Day. We contribute nearly $33,000.00 to the City with our volunteer duties.

SUBMITTED BY: *LaRena Miller* / LaRena Miller
TYPED NAME SIGNATURE

DATED: *10/06/21*

Rev. 5/2014

Geronimo Trail Scenic Byway, Inc.

P O Box 1072 • 301 S Foch • Phone (575) 894-1968

Truth or Consequences, New Mexico 87901

INVOICE ***subrecipient grant***

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AUG 05 2021
By_____

Date 8-4-2021

To City of Truth or Consequences

For Operating expenses July 2021

Telephone	$	195.15
Renters Insurance	$	62.83
Postage	$	
Supplies & printing	$	651.00
Actual total	$	908.98

Amount due $ 416.66 per contract

Thank you

LaRena Miller

Geronimo Trail Scenic Byway, Inc.

P O Box 1072 • 301 S Foch • Phone (575) 894-1968
Truth or Consequences, New Mexico 87901

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SEP 03 2021
By

INVOICE subrecipient grant

Date 9-3-2021

To City of Truth or Consequences

For Operating expenses August 2021

Telephone	$	195.23
Renters Insurance	$	62.83
Postage	$	75.60
Supplies & printing	$	9.60
Actual total	$	343.26

Amount due $ 416.66 per contract

Thank you

L Miller

Geronimo Trail Scenic Byway, Inc.

P O Box 1072 • 301 S Foch • Phone (575) 894-1968
Truth or Consequences, New Mexico 87901

INVOICE subrecipient grant

TG

Date 10-1-2021

To City of Truth or Consequences

For Operating expenses September 2021

Telephone	$	195.23
Renters Insurance	$	62.83
Postage	$	6.72
Supplies & printing	$	9.60
Actual total	$	274.38

Amount due $ 416.66 per contract

Thank you

L Miller

RECEIVED
OCT 08 2021

TM

SUBRECIPIENT QUARTERLY REPORT
FY: 2021/2022

ORGANIZATION: *MainStreet Truth or Consequences*

ALLOCATION: *$45,000* (FY Allotment) *$11,250.00* (Quarterly Draw)

QUARTER: *1st* (1st/2nd/3rd/4th)

SUBMITTED BY: *Blanch Almquist* (Print Name) (Signature)

Please see attached

Rev. 5/2014

SUBRECIPIENT QUARTERLY REPORT **FY 2021-2022**
ORGANIZATION: MainStreet Truth or Consequences
ALLOCATION: $45,000 **QUARTERLY DRAW:** $11,250 **QTR:** 1st (July 1 - September 30)

(Please detail the progress made in providing the services each quarter.)

MainStreet Truth or Consequences continues to provide community economic growth revitalization services to the property and business owners and residents of the district through the Main Street Four-Point Approach®, and in alignment with the guidelines of the NMSC. Our work with the local government partners ensures that appropriate financial revitalization tools, created through state statute for economic development (inclusive of any statutory changes), are adopted by the local government partner for the MainStreet District. These tools may include the Local Economic Development Act (LEDA), a Metropolitan Redevelopment Area (MRA), District Master Plan, and/or Cultural Economic Development Plan, and related finance mechanisms, such as Tax Increment Finance District (TIF), a Tax Increment Development District (TIDD) and/or a Business Improvement District (BID).

Economic Transformation Strategy Progress - Enhance economic opportunities in the district and increase foot traffic by area residents and visitors.

- Developing a Relocation Package for new businesses and residents considering our community; currently with the designers and editors
- E-Commerce Training grant awarded through USDA Rural Business Development Grant Program; currently planning courses and training calendar which will be begin January 2022
- Planning for Harvest Fest and Trick or Treat Downtown; promotional ads are currently scheduled; candy sponsors and volunteers have been secured
- Planning for Old-Fashioned Christmas event
- Developing a walking tour app
- On-going
    - Providing information to help businesses stay up-to-date on Covid-related restrictions and requirements, as needed
    - Relaying information to help businesses access funding and assistance opportunities
    - Updating/maintaining a "minimally viable" vacancy list of downtown buildings
    - Providing information and assistance with startups, including support with licensing/permitting
    - Assisting partners in marketing of Small Business Saturday
    - Second Saturday Art Hop brochure and promotions
    - Promote Healing Waters Plaza as a place for events.

SUBMITTED BY:

Blanch Almquist, Treasurer **DATED: 10/15/2021**

MainStreetTorC Budget Draft 2021-2022 attached
MAINSTREET TRUTH OR CONSEQUENCES DRAFT BUDGET 2021-2022

Income	
City of T or C Subrecipient Grant	$45,000.00
Lodger's Tax	$11,000.00
Board Contributions	$3,500.00
Donations/Fundraising Goal-Gross	$10, 000.00
Sponsorships	$5,000.00
USDA RBDG	$10,150.00
NMMS LEADS Grant	$7,400.00
Total Income	**$92,050.00**
Personnel (list each position)	
Executive Director @ 0.21 FTE	$9,156.00
Executive Director @ 0.83 FTE	$29,880.00
Benefits & Taxes 7.65% of salaries	$2,285.82
Total Personnel and Benefits/Taxes	**$41,321.82**
Administration Expense	
Rent	$3,600.00
Utilities	$1,300.00
Telecommunications	$1,260.00
Office Supplies & Materials	$1,000.00
Postage and Mailing	$150.00
Printing/Copying	$500.00
Travel (mileage, transportation, per diem)	$3,450.00
Memberships & Subscriptions	$819.00
Liability Insurance	$1,712.00
Contractors: Bookkeeping/CPA	$2,350.00
Training/Professional Development Registration Fees	$300.00
Total Administration Expenses	**$16,441.00**
Program Expense	
Marketing/Outreach/Promotion	$11,750.00
Awards & Recognitions	$200.00
Dog Park	$2,889.34
Other Projects	$500.00
Total Program Expense	**$15,339.34**
Total Operating Expenses	**$74,002.16**
Total Income	$92,050.00
Misc./ Carryover 2022-23	$18,047.84

MainStreet Truth or Consequences
PO Box 1602
Truth or Consequences, NM 87901

TG

SUBRECIPIENT GRANT
FY 2021/2022
(1st) QUARTER INVOICE

Date of Invoice: 10/15/2021

Invoice Amount: *$ 11,250.00*

Submit To: *City of Truth or Consequences*
ATTN: City Clerk's Office
505 Sims Street
Truth or Consequences, NM 87901

Allocation Amount: *$45,000*
Quarter Draw: *$ 11,250.00*

Please send payment to: *MainStreetTorC attn: Treasurer*
PO Box 1602
Truth or Consequences, NM 87901

Thank you,

Blanch Almquist
Treasurer
(572) 543-8182

CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 27, 2021

Agenda Item #: E.1

SUBJECT: Amending Resolution No. 26 21/22 to include cremation lot fees for Vista Memory Gardens Cemetery.
DEPARTMENT: Assistant City Manager
DATE SUBMITTED: October 21, 2021
SUBMITTED BY: Traci Alvarez
WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:
Resolution 26 21/22 was passed and approved at the Commission Meeting on 10-13-2021. Staff is requesting to amend the resolution to add in fees for the cremation lots.

Recommendation:
Approve Resolution 26 21/22 as amended

Attachments:
Resolution 26 21/22
-

Fiscal Impact (Finance): **N/A**

Legal Review (City Attorney): **N/A**

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 10-27-2021

RESOLUTION NO. 26 21/22

A RESOLUTION OF THE CITY OF TRUTH OR CONSEQUENCES CITY COMMISSION ESTABLISHING APPROPRIATE FEES FOR CEMETERY SERVICES

WHEREAS, the collection of fees is needed in order to recover some of the costs related to the provision of services by the City related to the City Cemeteries;

NOW THEREFORE, be it resolved by the City Commission of the City of Truth or Consequences that the following fees are to be collected by the City in relation to the provision of the below listed services:

HOT SPRINGS CEMETERY AND VISTA MEMORY GARDENS CEMETERY
(No lots available for purchase at Hot Springs Cemetery)

Standard Lots: *(No Charge for Veterans)*	$500.00
Standard Lot Opening and Closing:	$450.00
Baby Land Lots: *(Infants Only 0-12 months)*	$50.00
Baby Land Lot Opening and Closing:	$50.00
Cremation Lots: *(No Charge for Veterans)*	$75.00
Cremation Opening and Closing:	$100.00
Headstone settings:	
Single or double size:	$60.00
Bronze/Vet headstone*	$110.00
** Bronze Headstone requires forming, and pouring of concrete*	
Transfer of Title:	$20.00
Weekend and holiday Rate**	$100.00

***This fee is for any weekend or City/State/Federal Recognized holiday.*

VETERANS PARK CEMETERY/COLUMBARIUM

Sale of Column Burial Niche *(The City allows a non-refundable deposit of $125.00 with full payment due in 6 months)*	$775.00
Setting of Headstones-Single	$50.00
Opening and Closing (Ashes)	$60.00

This resolution repeals and replaces all previous Resolutions and fees for Cemetery Services.

PASSED, APPROVED AND ADOPTED this 27th day of October 2021.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

_____
Sandra Whitehead, Mayor

ATTEST:

_____
Angela Torres, City Clerk

CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 27, 2021

Agenda Item #: E.2

SUBJECT: Resolution No. 31 21/22 establishing fees for the Truth or Consequences Municipal Golf Course
DEPARTMENT: Golf Course
DATE SUBMITTED: October 19, 2021
SUBMITTED BY: O.J. Hechler
WHO WILL PRESENT THE ITEM: Wesley Owens and O.J. Hechler

Summary/Background:
Establishing Golf Course fees to recover some of the cost of operating and maintaining a golf course.

Recommendation:
Approve Resolution 31 21/22

Attachments: Resolution 28 18/19
Resolution 31 21/22

Fiscal Impact (Finance): **N/A**

$0.00

Legal Review (City Attorney): **N/A**

.

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 10-27-2021

RESOLUTION NO. 28 2018/2019

A RESOLUTION OF THE CITY OF TRUTH OR CONSEQUENCES CITY COMMISSION ESTABLISHING APPROPRIATE FEES FOR THE MUNICIPAL GOLF COURSE.

Whereas, the collection of fees are needed in order to recover some of the costs related to the provision of services by the City related to the management and maintenance of the Municipal Golf Course; and

Whereas, the City recognizes that the fees for use of the golf course are kept artificially low to make the golf course affordable to the residents; and

Whereas, the Golf Advisory Board recommends the adoption of the fees set forth in this resolution.

NOW THEREFORE, be it resolved by the City Commission of the City of Truth or Consequences that the following fees are to be collected for the use of the Municipal Golf Course:

T or C Golf Course Fees

Daily Green Fees

9 Holes Walking	$10.45 + Appropriate Tax + GIF*= $12.00
18 Holes Walking	$14.63 + Appropriate Tax + GIF = $17.00
9 Holes with Cart	$15.67 + Appropriate Tax + GIF = $18.00
18 Holes with Cart	$23.96 + Appropriate Tax + GIF = $27.00

* Appropriate current tax is .085%

*GIF = Golf Improvement Fund (includes Gross Receipt Tax) is $1.00 per 9/18 holes per day

Twilight (1:00 P.M. non daylight saving time and 3:00 P.M. during daylight savings time).

9 or 18 holes -Walking	$ 8.29 + Appropriate Tax + GIF = $10.00
9 or 18 holes -W/cart	$12.90 + Appropriate Tax + GIF = $15.00

Juniors 13 yrs. & under, fees include 9 or 18 holes

Free

Juniors 14-18 yrs., 9 or 18 Holes

Walk - $ 8.29 + Appropriate Tax + GIF = $10.00
Ride - $12.90 + Appropriate Tax + GIF = $15.00

High School Golf Team

Free

Men's and Women's Golf Leagues of Sierra County

9 Holes Walking	$ 5.53 + Appropriate Tax + GIF = $ 7.00
18 Holes Walking	$10.14 + Appropriate Tax + GIF = $12.00
9 Holes Riding	$11.06 + Appropriate Tax + GIF = $13.00
18 Holes Riding	$18.43 + Appropriate Tax + GIF = $21.00

Range Balls

Small bucket range balls	$2.76 + Appropriate Tax = $3.00
Large bucket range balls	$5.53 + Appropriate Tax = $6.00

Golf Club Rental

9 Holes	$4.61 + Appropriate Tax = $5.00
18 Holes	$9.22 + Appropriate Tax = $10.00

Golf Cart/Seat Rentals

9 Holes (1 seat)	$5.35 + Appropriate Tax = $6.00
18 Holes (1 seat)	$7.85 + Appropriate Tax = $9.00

Golf Cart Lease

1 Month Single	$ 53.50 + Appropriate Tax = $58.00
1 Month Family (2)	$104.39 + Appropriate Tax = $113.00
3 Month Single	$139.10 + Appropriate Tax = $151.00
3 Month Family (2)	$277.40 + Appropriate Tax = $301.00
6 Month Single	$246.10 + Appropriate Tax = $267.00
6 Month Family (2)	$480.23 + Appropriate Tax = $521.00
Annual Single	$428.00 + Appropriate Tax = $464.00
Annual Family (2)	$835.00 + Appropriate Tax = $906.00

Cart Trail Fee (Private Carts)

3 Months	$ 85.60 + Appropriate Tax = $93.00
6 Months	$149.80 + Appropriate Tax = $163.00
Annual	$256.80 + Appropriate Tax = $279.00

Annual Cart Storage (Private Carts)

Electric	$428.00 + Appropriate Tax = $464.00
Gas	$374.50 + Appropriate Tax = $406.00

Membership Fees (Must pay $1 GIF per 9/18 holes per day of play)

1 Month Single	$107.00 + Appropriate Tax = $116.00
Senior (62)	$ 90.95 + Appropriate Tax = $ 99.00
Family (2)	$197.95 + Appropriate Tax = $215.00
Senior Family (2)	$171.20 + Appropriate Tax = $186.00
3 Months Single	$235.40 + Appropriate Tax = $255.00
Senior (62)	$203.30 + Appropriate Tax = $221.00
Family (2)	$353.10 + Appropriate Tax = $383.00
Senior Family (2)	$299.60 + Appropriate Tax = $325.00
6 Months Single	$321.00 + Appropriate Tax = $348.00
Senior (62)	$272.85 + Appropriate Tax = $296.00
Family (2)	$465.45 + Appropriate Tax = $505.00
Senior Family (2)	$395.90 + Appropriate Tax = $430.00
Annual Single	$545.70 + Appropriate Tax = $592.00
Senior (62)	$460.10 + Appropriate Tax = $499.00
Family (2)	$813.20 + Appropriate Tax = $882.00
Senior Family (2)	$695.50 + Appropriate Tax = $755.00

Debit and credit card transactions will be charged a $1.00 processing fee for transactions over $25.

The one ($1) dollar sign-in fee (GIF) will be assessed to all players on a daily basis (except free fees). A player returning on the same day will not have to pay the one dollar fee more than once. The fee is to be used exclusively for capital improvements/expansion to the T or C Municipal Golf Course with recommendation from the Golf Advisory Board.

This resolution repeals and replaces all previous Resolutions for golf course fees.

PASSED, APPROVED AND **ADOPTED** this **13th** day of **March**, 2019.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

Sandra Whitehead, Mayor

ATTEST:

Renee L. Cantin, City Clerk

RESOLUTION NO. 31 21/22

A RESOLUTION OF THE CITY OF TRUTH OR CONSEQUENCES CITY COMMISSION ESTABLISHING APPROPRIATE FEES FOR THE MUNICIPAL GOLF COURSE

WHEREAS, the City of Truth or Consequences owns and operates the City of Truth or Consequences Municipal Golf Course and is responsible for establishing rates and fees;

WHEREAS, the collection of fees is needed in order to recover some of the costs related to the provision of services by the City related to the management and maintenance of the Municipal Golf Course; and

WHEREAS, the City Commission has determined that the following rates and fees are reasonable; and

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSIONERS OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO THAT:

1. The Golf Course Rates as set forth in Exhibit "A", attached hereto and incorporated herein by this reference will be effective immediately upon adoption.
2. The City Commission may review the Golf Course Rates set forth in Exhibit "A" annually.
3. This resolution repeals and replaces all previous Resolutions and Golf Course rates/fees for the City of Truth or Consequences Municipal Golf Course

PASSED, APPROVED AND ADOPTED this **27th** day of **October**, **2021**.

_____
Sandra Whitehead, Mayor

ATTEST:

_____
Angela Torres, City Clerk

EXHIBIT A

TRUTH OR CONSQUENCES MUNICIPAL GOLF COURSE RATES

DAILY GREEN FEES

Monday - Friday	Walking	W/Cart
9 Holes	$14.00	$21.00
18 Holes	$20.00	$31.00
*Twilight	$12.00	$20.00

*Weekends & Holidays	Walking	W/Cart
9 Holes	$16.00	$23.00
18 Holes	$22.00	$33.00
**Twilight	$14.00	$22.00

**Weekend rates are applied on Saturday and Sunday*
*** Twilight (2:00pm non daylight savings time and 4:00pm during daylight savings time)*

***Juniors 14-18 yrs.**

Walk 9 or 18 Holes = $10.00	Ride 9 or 18 Holes = $15.00/must have valid Driver's License

**Juniors 13 yrs. and under are free for 9 or 18 holes*

ANNUAL MEMBERSHIP PASSES

Annual

Single	Single W/Cart	Family	*Family W/Cart
$1,040	$1,612	$1,872	$3,224

Semi-Annual

Single	Single W/Cart	Family	*Family W/Cart
$600	$900	$1,000	$1,700

**Family Membership Passes include 2 total family members living in the same household*

Seniors 62 and older receive a 10% discount on Daily Green Fees and Membership Passes

All debit and credit card transactions will be charged applicable processing fees

EXHIBIT A

TRUTH OR CONSQUENCES MUNICIPAL GOLF COURSE RATES (continued)

Range Balls	Small Bucket = $3.00	Large Bucket = $6.00
Golf Club Rental	9 Holes = $10.00	18 Holes = $15.00
Golf Cart Seat Rental	9 Holes (1 Seat) = $6.00	18 Holes (1 Seat) = $9.00

Cart Trail Fee

Semi-Annual	Annual
$200	$300

Annual Cart Storage

Electric	Gas
$525	$425

All debit and credit card transactions will be charged applicable processing fees

CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 27, 2021

Agenda Item #: E3.

SUBJECT: Resolution No. 32 21/22 Participation in Capital Outlay Program Administered By New Mexico Department of Transportation.
DEPARTMENT: Assistant City Manager
DATE SUBMITTED: October 21, 2021
SUBMITTED BY: Traci Alvarez
WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

City of T or C has been awarded Capital Outlay in the amount of $100,000 to use towards plan, design, construct and improve drainage within the control of the City of Truth or Consequences. This funding will be used specifically towards the planning. If Resolution is approved, grant agreement will be executed and submitted to DFA

Recommendation:

Approve Resolution No. 32 21/22

Attachments:

- Resolution 32 21/22
- Grant Agreement

-

Fiscal Impact (Finance): **Yes**

100% Reimbursable up to $100,000

Legal Review (City Attorney): **N/A**

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 10-27-2021

RESOLUTION NO. 32 21/22

PARTICIPATION IN CAPITAL OUTLAY PROGRAM ADMINISTERED
BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, the ***City of Truth or Consequences*** and the New Mexico Department of Transportation enter into a Cooperative Agreement.

WHEREAS, the total cost of the project will be ***$100,000.00*** to be funded by the parties hereto as follows:

a. New Mexico Department of Transportation's share shall be 100% or ***$100,000.00***

and

b. ***City of Truth or Consequenc*** proportional matching share shall be 0% or ***$0.00***

TOTAL PROJECT COST IS ***$100,000.00***

City of Truth or Consequences shall pay all costs, which exceed the total amount of ***$100,000.00***.

Now therefore, be it resolved in official session that ***City of Truth or Consequences*** determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on **June 30, 2025 (for Laws of 2021)** and the ***City of Truth or Consequences*** incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

NOW therefore, be it resolved by the ***City of Truth or Consequences*** to enter into Cooperative Agreement Control Number ***C1213061*** with the New Mexico Department of Transportation for Capital Outlay **(Laws of 2021)** to ***plan, design, construct and improve drainage*** within the control of the ***City of Truth or Consequences*** in ***Truth or Consequences, Sierra County***, New Mexico.

PASSED, APPROVED AND ADOPTED this ____day of_____2021.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

_____
Sandra Whitehead, Mayor

ATTEST:

_____
Angela Torres, City Clerk

Contract Number: _____
Vendor Number: 0000054340
Control Number: C1213061

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 20 __, by and between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Truth or Consequences, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2021, Chapter 138, Section 33, Subsection 102, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID F3061 NMDOT Control Number C1213061 **$100,000**
APPROPRIATION REVERSION DATE: 6/30/2025
Laws of 2021, Chapter 138, Section 33, Subsection 102, One Hundred Thousand Dollars and No Cents ($100,000), to plan, design, construct and improve drainage in Truth or Consequences in Sierra county; .

The Grantee's total reimbursements shall not exceed One Hundred Thousand Dollars and No Cents $100,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable,

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

Zero Dollars and Zero Cents ($ 0.00), which equals One Hundred Thousand Dollars and No Cents (**$100,000**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or
b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

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[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Truth or Consequences

Name: Renee Cantin
Title: Clerk/Treasurer
Address: 505 Sims Street, Truth or Consequences, New Mexico 87901
Email: Rcantin@torcnm.org
Telephone: 575-894-6673

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 1 Office
Name: Andreas Linnan
Title: Acting Local Government Road Fund Coordinator
Address: 2912 East Pine Street, Deming, NM 88030
Email: Andreas.Linnan@state.nm.us
Telephone: 575-640-7077

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **6/30/2025** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date

particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (http://cpms.dfa.state.nm.us). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or

(iii) Twenty (20) days from date of Early Termination; or

(iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement,

including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Truth or Consequences may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Truth or Consequences's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Truth or Consequences or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Truth or Consequences or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Truth or Consequences may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Truth or Consequences only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the

SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

_____
Signature of Official with Authority to Bind Grantee

_____
Entity Name

By: _____
(Type or Print Name)

Its: _____
(Type or Print Title)

_____
Date

DEPARTMENT OF TRANSPORTATION

_____
By:

Its: Cabinet Secretary or Designee

_____
Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

Craig C Kling
Craig C Kling (Sep 8, 2021 11:57 MDT)
_____
By: Craig Kling

Its: Assistant General Counsel

_____
Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Printed Name

Date: _____

Grantee Representative

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____,_____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Attachment A

The City of Truth or Consequences shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Truth or Consequences shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.

10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

C1213061 Draft

Final Audit Report 2021-09-08

Created:	2021-09-08
By:	Desiree Sanchez (Desiree.Sanchez3@state.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAwo1OKqL_-fNpOlpZpK83y6oaWY8Dy8IE

"C1213061 Draft" History

Document created by Desiree Sanchez (Desiree.Sanchez3@state.nm.us)
2021-09-08 - 5:47:27 PM GMT- IP address: 68.84.153.66

Document emailed to Craig C Kling (craig.kling1@state.nm.us) for signature
2021-09-08 - 5:48:25 PM GMT

Email viewed by Craig C Kling (craig.kling1@state.nm.us)
2021-09-08 - 5:54:51 PM GMT- IP address: 104.47.64.254

Document e-signed by Craig C Kling (craig.kling1@state.nm.us)
Signature Date: 2021-09-08 - 5:57:13 PM GMT - Time Source: server- IP address: 164.64.74.20

Agreement completed.
2021-09-08 - 5:57:13 PM GMT

Adobe Sign

CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 27, 2021

Agenda Item #: E.4

SUBJECT: Resolution No. 33 21/22 Setting procedures and conditions for a Catastrophic Utility Failure Relief Program as recommended by the Public Utility Advisory Board.
DEPARTMENT: Public Utility Advisory Board
DATE SUBMITTED: October 22, 2021
SUBMITTED BY: George Szigeti, PUAB Chairman
WHO WILL PRESENT THE ITEM: George Szigeti, PUAB Chairman

Summary/Background:

The Public Utility Advisory Board is recommending the approval of a Resolution setting procedures and conditions for a Catastrophic Utility Failure Relief Program.

Recommendation:

.

Attachments:

- PUAB Request Form
- Resolution No. 33 21-22

-

Fiscal Impact (Finance): **Yes**

$0.00

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. 33 21-22 Ordinance No. .
Continued To: - Referred To: -
☐ Approved ☐ Denied ☐Other: -
File Name: CC Agendas 10-27-2021

CITY OF TRUTH OR CONSEQUENCES
CITY CLERK'S OFFICE
505 SIMS STREET
TRUTH OR CONSEQUENCES, NEW MEXICO 87901
PHONE: (575) 894-6673 EXT#1301 FAX: (575) 894-7767

APPLICATION FOR LISTING ON CITY COMMISSION AGENDA

DATE: 16 Aug 2021

DATE OF MEETING YOU ARE REQUESTING TO BE LISTED UNDER: next available

NAME OF APPLICANT/ORGANIZATION: Jeff Dornbusch PUAB

ADDRESS: _____

PHONE: 575-740-2144 E-MAIL: jd5cats@gmail.com

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

Present PUAB recommendations for a Catastrophic Utility Failure Forgiveness (CUFF) program. Currently, large charges for water because of line failures are handled by City Mgr. CUFF standardizes procedure and monetary adjustments

WHAT RESOURCES DO YOU REQUIRE: none

ESTIMATED TIME FOR PRESENTATION: 10 minutes SIGNATURE: [signature]

CITY MANAGER ACTION

APPROVED FOR COMMISSION AGENDA OF: _____

DENY – REASON FOR DENIAL: _____

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

- appear personally before the City Commission on the day of the meeting and during the "Comments from the Public" ask that the Commission place your item on the next available agenda (usually in 2 weeks); or,
- appeal directly to any one of the City Commissioner by contacting them (see reverse side for contact information). Any Commissioner may place your item on the agenda by notifying the City Clerk at least 7 days prior to the Commission meeting.

CITY OF TRUTH OR CONSEQUENCES

RESOLUTION NO. 33 21/22

A RESOLUTION SETTING PROCEDURES AND CONDITIONS FOR A CATASTROPHIC UTILITY FAILURE RELIEF PROGRAM

WHEREAS, the City of Truth or Consequences owns and operates the Water, Wastewater, Electric and Solid Waste Utilities and is responsible for setting their rates and charges; and

WHEREAS, there occasionally occur catastrophic failures of a utility customers systems, particularly the water system, in which large volumes of water are lost, causing the customer to be charged a utility bill far in excess of their normal bill; and

WHEREAS, this large utility bill can place a financial hardship on the utility customer.

NOW THEREFORE, BE IT RESOLVED by the governing body of the City of Truth or Consequences:

1. A portion of this greater-than-normal utility bill can be forgiven by the Utility Office if the following conditions are met:

A. The utility failure was not the result of an action or activity of the utility customer, nor by their failure to properly maintain the system.
B. The utility customer promptly took action to shut off the utility and repair the break.
C. The utility fault is documented.
D. Repairs are made by a licensed contractor, normally a plumber, or if the repair is made by the homeowner, the repair must be inspected and approved by the appropriate utility department.
E. The resulting total utility charge is more than 200% of the customer's average monthly bill.
F. The utility customer asks the utility office, in writing, for the utility relief within 30 calendar days of receipt of the utility bill showing the overage, and the person making the request is the same as the name on the utility bill.
G. The utility customer cannot request such utility relief more than once in a calendar year or more than twice in 5 years.

2. The amount of the bill to be forgiven is 75% of the difference between the charge for that utility and the average monthly charge.

3. If the failure is in the water system and occurs during the months when the water usage is used to calculate the sewer bill, the monthly bills showing the excessive water usage will not be used in that calculation.

PASSED, ADOPTED and **APPROVED** this **27th day of October, 2021**.

_____

Sandra Whitehead, Mayor

ATTEST:

_____

Angela A. Torres, City Clerk-Treasurer

CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 27, 2021

Agenda Item #: E.5

SUBJECT: Publication of Ordinance No. 722 amending the City of Truth or Consequences Municipal Code of Ordinance Section 2-248 (E) pertaining to the Library Advisory Board.
DEPARTMENT: Assistant City Manager
DATE SUBMITTED: October 21, 2021
SUBMITTED BY: Traci Alvarez
WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:
Per the current municipal code, Library board holds their meetings monthly or no less than 10 timers per year. Staff are anticipating recommendation of Ordinance No. 722 at the Library Board meeting to be held on Monday October 25th.

Recommendation:
Approve Ordinance No. 722 for Publication

Attachments:
- Ordinance No. 722

-

Fiscal Impact (Finance): **N/A**

Legal Review (City Attorney): **N/A**

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 10-27-2021

CITY OF TRUTH OR CONSEQUENCES

ORDINANCE 722

AN ORDINANCE AMENDING THE CITY OF TRUTH OR CONSEQUENCES MUNICIPAL CODE OF ORDINANCES, BY AMENDING SECTION 2-248 (e) OF THE CODE PERTAINING TO LIBRARY BOARD MEETINGS

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS, CITY COMMISSIONERS OF THE CITY OF TRUTH OR CONSEQUENCES:

Section 1. That **SECTION 2-248 (e)** of the Code of Ordinances of the City of Truth or Consequences, be amended so that such section shall read as follows:

~~The Board shall meet no fewer than ten times per year on a regular date to be designated by the Board;~~ the Board shall hold meetings at least quarterly provided, however; that a special meeting may be called at any time by written request to the Chair of the Board by three members and personally served to the Library Director or on call by the Chair of the Board with the written consent of all members of the Board. All meetings whether regular or special shall be open to the public as provided by the laws of the state and subject to the requirements of the Open Meetings Resolution of the City. Three members shall constitute a quorum, and no action can be taken in the absence of a quorum present.

Section 2. All other provisions of 2-248 [specifically 2-248 (a) – (d) and (f) – (h)] not specifically amended by this ordinance, shall remain unchanged and in full force and effect as written.

Section 3. Effective date. The provisions of this Amended Ordinance shall become effective five (5) days upon the publishing of its adoption.

PASSED, APPROVED, and ADOPTED by the GOVERNING BODY of the CITY OF TRUTH OR CONSEQUNCES this ___day of _____, 2021.

_____

SANDRA WHITEHEAD – Mayor

ATTEST:

_____

ANGELA TORRES – City Clerk

City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: October 27, 2021

Agenda Item #: **F.1**

SUBJECT: Approval of Purchase Requisitions Over $20,000
DEPARTMENT: Finance
DATE SUBMITTED: October 19, 2021
SUBMITTED BY: Donna R Gardner, Chief Procurement Officer
WHO WILL PRESENT THE ITEM: Carol Kirkpatrick, Finance Director

Summary/Background:

Per Resolution No 46 20/21 Execution of Contracts; Grant Agreements; Memoranda of Understanding; Joint Powers Agreements; Settlement Agreements; Purchases (Contract and Purchases More Than $20,000)

Recommendation:

Approval Recommended by Chief Procurement Officer /Finance Director

Attachments:

- Listing of Purchase Requisitions $20,000 or More
- Purchase Requisitions, Procurement Documentation

Fiscal Impact (Finance): **Yes**

As Per Total on Listing of Purchase Requisitions $38,099.92 Pending

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. Click here to enter text. 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 10-27-2021

REQUISITION

Requisition #: 86338

Date: 10/12/2021

Vendor #: 0572

ISSUED TO: CHAMBER OF COMMERCE
207 SOUTH FORCH STREET
T OR C, NM 87901

SHIP TO: City of Truth or Consequences
505 Sims St.
Truth or Consequences, NM 87901

ITEM	UNITS	DESCRIPTION	PROJECT #	PRICE	GL ACCOUNT NUMBER	AMOUNT
1	0	OPEN PO FOR LODGERS TAX AD & PROM		0.00	214-2503-47406	38,099.92

PO Description: hold OPEN PO FOR LODGERS TAX AD & PROMO CONTRACT

Detailed Description:

FY 21-22 ALLOCATION
APPLICATION 1 & 2

HOLD FOR COMMISSION APPROVAL 10/27/2021

Authorized By: _____

SUBTOTAL:	38,099.92
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	38,099.92

ADVERTISING & PROMOTION CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Truth or Consequences, New Mexico, herein referred to as "City" and **CHAMBER OF COMMERCE OF T OR C / SIERRA COUNTY**, herein referred to as "Contractor".

WHEREAS the City and Contractor desire to enter into a Contract to provide Lodger's Tax funds to the Contractor to aid the Contractor's promotion and advertising of the City as a tourist attraction which will aid in the economic growth of the City.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises of the parties; it is hereby covenanted and agreed by and between the parties:

1. **The City shall** provide up to the sum of **$38,099.92** to the Contractor beginning on August 11, 2021 through May 27, 2022.

2. **The Contractor shall:**
   a. Advertise, publicize and promote the City and its facilities as a tourism attraction. Such publicizing and promoting shall include but not be limited to the advertising of the fairgrounds, civic center, museums, convention center and other City and area resources and attractions.
   b. Said promotion and advertising shall specifically consist of the plan as presented (and approved by the Lodger's Tax Board) in the Contractor's application for Lodger's Tax Funds. The Scope of Work is set forth within the application.
   c. All print media, television ads, billboards and radio ads of the Contractor which are reimbursed for from Lodger's Tax monies, shall include the wording **"PAID IN PART BY TRUTH OR CONSEQUENCES LODGER'S TAX"** and include the City of Truth or Consequences logo. In the case of radio advertising, the verbiage "Paid in part by Truth or Consequences Lodgers" must be included.

3. **Fund Expenditures:** Funding under this contract is from Lodger's Tax. Such funds may be spent for promotion and advertising only.

4. **Procurement by Contractor:** The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for violation of this statute. Any property purchased by Contractor, the cost of which is to be paid under this agreement, shall be purchased in compliance with the Procurement Code.
   a. The City and the Lodger's Tax Advisory Board shall determine which of these expenditures are allowable and are in compliance with the purpose of this contract.

b. If determined to be an eligible purchase, the City will pay the Contractor for reimbursement.
c. Since the purpose of the Tax is to bring visitors to town, the Contractor must use seventy-five percent (75%) of the funds outside the County. This will serve to increase the use of hotels, motels, and RV parks which will in turn yield more Lodger's Tax.
d. All invoices must be turned into the City Manager's Office no later than May 27, 2022. The City Manager's Office will review and consider all submitted invoices before June 30, 2022.
e. Invoices submitted after that date WILL NOT BE PAID! All unspent funds will revert to the City's Lodger's Tax Fund to be used for any purpose the City may deem eligible.
f. All invoices submitted for advertising must be accompanied by a copy of the advertisement that clearly shows the City of Truth or Consequences logo and "Paid in part by Truth or Consequences Lodgers Tax".

5. **Termination:** Either party shall have the right to terminate this Contract without cause by giving thirty (30) days written notice to the other party.

6. **Records:** The Contractor agrees to keep accurate records of all time and expenses allocated to the performance of the agreed upon work. Such records shall be kept in the office of the Contractor and shall be made available to the City or its authorized representatives for inspection and copying upon reasonable request.

7. **Ownership of Documents:** All reports, maps, ads, logos, or documents prepared as a part of this Agreement, including original drawings, estimates, specifications, field notes, and data are the property of the City. The Contractor may retain reproducible copies of drawings and other documents.

8. **Claims:** The Contractor shall save and hold the City free from claims that might arise in connection with work the Contractor will perform under this Agreement. The Contractor also agrees to pay for staff time, at standard hourly billing rates, plus expenses at cost that might be required for expert testimony or any other court appearances, together with preparation time and legal costs that might arise because of Contractor's involvement in this assignment, whether subpoenaed by the City or any other group.

9. **Personnel**:
   a. The Contractor represents that they have, or will secure at their own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any Agreement relationship with the City.
   b. All of the services required hereunder will be performed by the Contractor or under his/her supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City and Lodger's Tax Advisory Board. Any work or services subcontracted hereunder be specified by written Subcontract and shall be subject to each provision of this Agreement.

10. **Assignability:** The Contractor shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without the prior written consent of the Lodger's Tax Advisory Board and City thereto: Provided, however, that claims for money by the Contractor from the City under the Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

11. **Authority:** Contractor agrees not to purport to bind the City to an obligation not herein assumed, unless Contractor has expressed written authority to do so, and then only within the strict limits of that authority.

12. **Reports and Information**: The Contractor, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

13. **Copyright**: No report, maps, ads, logos, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

14. **Compliance with Local Laws**: The Contractor shall comply with all applicable laws, ordinances and codes of the State and the City and the Contractor shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.

15. **Equal Employment Opportunity**: During the performance of this Agreement, the Contractor agrees as follows:
    a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in

conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitation or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.
c. The Contractor will cause the foregoing provisions to be inserted in all Subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to Agreements or Subcontracts for standard commercial supplies or raw materials.
d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records and accounts by the City's representative, the funding agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
f. In the event of the Contractor's noncompliance with the equal opportunity clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government Agreements in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
g. The Contractor will include the provisions of paragraphs (a) through (g) in every Subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any Subcontract or purchase order as the City's representative may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

16. **Civil Rights Act of 1964**: Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded

from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

17. **Access to Records**:
    a. The State Auditor, the City's auditor, the City, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific Agreement, for the purpose of audits, examinations, and making excerpts and transcriptions.
    b. All records connected with this Agreement will be maintained in a central location by the City and will be maintained for a period of three (3) years from the official date of closeout of the contract.

18. **Third Party Rights:** The provisions of this agreement are for the sole benefit of the parties and shall not be construed as conferring rights on any other person or entity.

19. **Captions and Headings:** The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

20. **Severability:** If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement, and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

21. **Venue:** All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Sierra County, New Mexico.

22. **Attorney Fees:** In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

23. **Authority to Sign Agreement:** The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

24. **Interest of Members of the City:** No member of the governing body of the City and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Agreement; and the Contractor shall take appropriate steps to assure compliance.

25. **Interest of other Local Public Officials** - No member of the governing body of the City and no other public official of the City, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Agreement; and the Contractor shall take appropriate steps to assure compliance.

26. **Bribes, Gratuities and Kickbacks**: It is illegal in this state for any public employee to solicit or accept anything of value in connection with award of this Agreement and for any person to offer or pay anything of value to any such public employee (§30-24-1 through §30-24-2 NMSA 1978). Pursuant to §13-1-191 NMSA 1978 reference is made to the criminal laws of this state (including §30-41-1 through §30-41-3 NMSA 1978) which prohibit bribes, kickbacks, and gratuities and violation of which constitutes a felony. Further, the Procurement Code (§13-1-28 through §13-1-199 NMSA 1978) imposes civil and criminal penalties for its violation.

CITY OF TRUTH OR CONSEQUENCES

Bruce Swingle, City Manager — Date: 08/11/21

Carol Kirkpatrick, Finance Officer, Reviewed for Budgetary Sufficiency — Date: 8·11·21

Jaime Rubin, City Attorney, Reviewed for Legal Sufficiency — Date:

CONTRACTOR

Authorized Representative (Signature & Printed Name) — Date: 10/11/2021

Jocelyn Reeves — 10/11/2021

For a recipient of Lodger's Tax to be eligible for the City, acting as the fiscal agent, to reimburse their incurred financial obligations using Lodger's Tax, the following must be strictly adhered to:

Please initial each requirement:

NIU / YR PAID invoices must be presented to the City Manager's Office for reimbursement with a copy of the cancelled check (front & back) and a copy of the tear sheets or script within a timely manner so that we can maintain a good working relationship with the vendors. The tear sheets, scripts, and invoices are the responsibility of the Contractor. Please review invoices for accuracy. Do not assume that they are correct.

NIU / YR No bill will be reimbursed unless it has the "Paid in part by Truth or Consequences Lodger's Tax" and the City of Truth or Consequences logo in print or "Paid in part by Truth or Consequences Lodger's Tax" spoken in a radio ad. Radio ad invoice shall include the ad/message.

NIU / YR No bill will be reimbursed if it differs from the services agreed upon in the application and signed contract unless the change is requested in writing, recommended by the Lodger's Tax Advisory Board and approved by the City Manager.

NIU / YR It is the responsibility of the Contractor to keep a running total of their unused and available Lodger's Tax award.

NIU / YR It is the responsibility of the Contractor to notify the City as to who are the two (2) eligible people to turn in bills for reimbursement. (Please print names below.)

Designee No. 1: Msikale Udoh Phone No. (512) 766-8184

Designee No. 2: Yocelyn Riojas Phone No. (830) 513-7077

NIU / YR No bill will be reimbursed by the City unless it bears the signature of the City Manager or designee approving payment.

NIU / YR **By your signature on this contract, you have agreed to follow and implement all conditions within the time frame set forth and if you deviate without prior approval from the Lodger's Tax Advisory Board and the City Manager, then the City has no further fiscal responsibility per this contract.**

Dated this 11 day of October, 2021

CONTRACTOR:

BY: Msikale Isaac Udoh

Printed Name of Authorized Representative

Signature of Authorized Representative

PURCHASE REQUISITION APPROVAL **2021-22 FISCAL YEAR**

COMMISSION MEETING 10/27/21

Number	Vendor Name	Description	Requested By	Department	Total Amount	Procurement Type
86338	CHAMBER OF COMMERCE	OPEN PO FOR LODGERS TAX & PROMO CONTRACT	TAMMY GARDNER	LODGERS TAX	$ 38,099.92	ADVERTISING AND PROMOTION CONTRACT
					$ 38,099.92	

ATTEST:

Angela Torres, Clerk-Treasurer Date

Sandra Whitehead, Mayor Date

CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 27, 2021

Agenda Item #: F.2

SUBJECT: Approval of Contract with Wilson & Company for Multiple Engineering and Architecture Projects
DEPARTMENT: Finance Department
DATE SUBMITTED: October 20, 2021
SUBMITTED BY: Donna Gardner, Chief Procurement Officer
WHO WILL PRESENT THE ITEM: Carol Kirkpatrick, Finance Director

Summary/Background:
Award recommendation presented to the Commission on 4/20/21for RFP #20-21-11 Multiple Engineering and Architecture Projects Under a Single Contract.

Staff Recommendation: Approval of Contract.

Attachments:

- Agenda Item of 4/20/21 for Award Recommendation
- Contract with Wilson and Company, Scope of Work, and RFP 20-21-011

-

Fiscal Impact (Finance): **N/A**

Contract services per task order, varying costs.

Legal Review (City Attorney): **Yes**

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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 10-27-2021

CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

Agenda Item #:

MEETING DATE: April 28, 2021

SUBJECT: Discussion/Action: Award RFP #20-21-11 Multiple Engineering and Architecture Projects Under a Single Contract
DEPARTMENT: Finance Department
DATE SUBMITTED: April 20, 2021
SUBMITTED BY: Kristin Saavedra
WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

Proposals for Multiple Engineering and Architecture Projects Under a Single Contract were received until February 16, 2021 at 2:00 pm. We received 12 proposals for Multiple Engineering and Architecture Projects:

1. Parkhill
2. Delta Airport Consultants
3. Wilson & Company
4. Bohannan Huston
5. WHPacific, Inc.
6. ASA Architects
7. AKS Architecture, P.C.
8. Desert Peak Architects
9. Spears Horn Architects
10. MOLZENCORBIN
11. Huitt-Zollars, Inc.
12. LSA, LLC

Staff Recommendation:

Selection Committee: Traci Alvarez – Acting City Manager, Orrin Hechler – Director of Community Services, and Andy Alvarez – Department Head Sanitation/Fleet-Service Center have made recommendations to award the contract to the following proposers:

1. ***Wilson & Company***
2. ***AKS Architecture, P.C.***
3. ***Delta Airport Consultants***
4. ***WHPacific, Inc.***
5. ***Desert Peak Architects***
6. ***Parkhill***

Click here to enter text.

Attachments:

- Letter of Recommendation
- Evaluation Scoring Totals
- RFP #20-21-011

-

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

CITY OF TRUTH OR CONSEQUENCES
PROFESSIONAL SERVICES CONTRACT
FOR
ARCHITECTURAL, SURVEYING, PLANNING, ENGINEERING AND LANDSCAPE ARCHITECTURAL SERVICES

THIS PROFESSIONAL SERVICES CONTRACT (the "Contract") is made and entered into this 27th day of October 2021 ("Effective Date") by and between the City of Truth or Consequences ("City"), a political subdivision in the State of New Mexico, whose address is 505 Sims Street, Truth or Consequences, New Mexico 87901, and Wilson and Company, Inc. ("Contractor"), with its principal place of business at 414 N Main Street, Suite A, Las Cruces, NM 88001, (herein referred to individually as "Party" or collectively as "Parties").

WHEREAS, the City requires certain Architectural, Surveying, Planning, Engineering, and Landscape Architectural Services as set forth in its Request for Proposals (RFP) #20-21-011 on an as needed basis only per individual TASK ORDERS; and

WHEREAS, Contractor submitted a proposal to provide such Engineering, Architectural, Surveying and Environmental Services and Contractor represents that it has the experience, licenses, qualifications, staff and expertise to perform said services in a professional and competent manner;

NOW, THEREFORE, it is mutually agreed by the City and Contractor that for the considerations set forth herein, Contractor shall provide said services to the City as set forth below and in RFP #20-21-011.

Once the specific scope of services of a Project is agreed upon between the City and the Contractor, the contractor shall provide the services described in an individual TASK ORDER. The TASK ORDER can only be initiated and approved by the City.

The City and the Contractor in consideration of their mutual covenants herein agree in respect to the performance of normal professional consulting services by the Contractor and the payment for those services by City as set forth in the Scope of Work **(EXHIBIT A)**.

1. TERM

The Term of this Contract commences on **October 27, 2021** and ends on **October 26, 2022**. Renewal, if applicable, can only be initiated by the City after approval of the City Commission.

2. INCORPORATION

The Parties agree that this Contract is in reference to and incorporates the City of Truth or Consequences' RFP #20-21-011 and all documents included therein and attachments and appendices thereto, and Contractor's responsive proposal and all documents included therein and attachments thereto.

3. CONTRACT DOCUMENTS

The Contract Documents shall include this Contract and all attachments and appendices thereto, the City of Truth or Consequences' RFP # 20-21-011 and all documents included therein and attachments and appendices thereto, and Contractor's responsive proposal and all documents included therein and attachments thereto. In the event of any discrepancy among the documents, this Contract shall prevail.

The documents included in the contract are intended to be complementary and to describe a complete work. If the City determines a conflict exists between the contract documents, the City shall decide which document will be applied and the Contractor shall then complete the work according to the interpretation made by the City.

4. SCOPE OF WORK

Contractor agrees to perform any and all consultation, services, activities, construction, tasks set forth or described in the City's RFP #20-21-011 and as called for by this Contract and approved Purchase Orders (the "Work"). All Work called for by individual Purchase Orders shall be performed in strict accordance with this Contract.

Unless otherwise specifically called for by the Contract or by individual Purchase Orders, Contractor shall provide/furnish at no extra cost or charge to the City, all materials necessary to efficiently and effectively perform the Work.

The awarded contractor shall provide the services as listed in the Scope of Work (**EXHIBIT A**).

5. CONTRACTOR'S REPRESENTATIONS

5.1 Contractor represents to the City that it: (a) is an organization of professionals experienced in the type of services the City is engaging the Contractor to perform; (b) is authorized, licensed and registered to do business in the State of New Mexico; (c) is qualified, willing and able to perform professional services for the City; and, (d) has the expertise, training and ability to provide professional services which will meet the City's objectives and requirements. Furthermore, Contractor represents that Contractor will perform the Work in a manner consistent with the professional skill and care ordinarily provided by firms practicing in the same or similar locality under the same or similar circumstances (hereinafter the "Standard of Care").

5.2 Contractor represents that each and every Contractor's employee engaged in the services provided under this Contract is fully qualified, able, and has the expertise and training to provide such services to the City.

5.3 Contractor represents that it has sufficient resources and personnel to perform the obligations set forth in this Contract, including, without limitation, performing the services, and procuring alternative capability in the event that Contractor's primary resources in performing the services change in such a manner that such primary resources would reasonably be unable to fulfill Contractor's obligations pursuant to

this Contract.

5.4 Contractor represents that it will exercise a professional Standard of Care in performing the Work in a manner that does not violate any applicable law, rules or regulation. Contractor further represents that Contractor shall comply and shall cause each and every of its employees who perform services under this Contract to comply with all laws of all applicable governmental authorities in the conduct of Contractor's activities pursuant to, and arising from, this Contract.

5.5 Contractor represents that it will exercise a professional Standard of Care in performing the Work in a manner that and holds and maintains all permits, licenses, and/or other regulatory requirements necessary to provide the services.

5.6 To the extent that the City is held financially responsible for any deficiencies in the services performed by the Contractor, Contractor agrees to cure such deficiencies at the sole cost to the Contractor.

5.7 Contractor represents that each individual signing this Contract on behalf of Contractor represents that he or she has the power and authority to bind the Contractor and that no further action, resolution, or approval is necessary to enter into this binding Contract. Contractor further represents that this Contract has been duly executed and delivered by the Contractor and constitutes a legal, valid and binding agreement of the Contractor enforceable against the Contractor in accordance with its terms.

5.8 Contractor covenants, represents that Contractor is duly registered as an employer under the New Mexico Workers' Compensation Act and is in good standing with respect to all filings and the payment of assessments or contributions required to be made under that Act.

5.9 Contractor represents that Contractor is financially solvent and able to pay its debts as they mature.

6. SITE INVESTIGATION

Contractor acknowledges that it has satisfied itself as to the nature and location of the Work, the general and local conditions and physical conditions and all other matters which can in any way affect the Work or the cost thereof under this Contract. Any failure by Contractor to acquaint itself with all the available information concerning these conditions will not relieve it from the responsibility for estimating properly the difficulty or cost of successfully performing the Work. The City assumes no responsibility for any understanding or representations made by any of its employees or agents during or prior to the negotiations and execution of the Contract, unless such understanding or representations are expressly stated herein and this Contract expressly provides that responsibility therefor is assumed by the City.

7. CHANGED CONDITIONS

Contractor shall, as soon as practicable and before such physical conditions are disturbed, notify the City in writing of subsurface or latent physical conditions at the City facilities or premises of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The City will promptly investigate the conditions, and if it is found that such conditions materially differ and cause an increase or decrease in the cost of, or the time require for, performance of this Contract, an equitable adjustment shall be made and this Contract shall be modified accordingly in writing. Any claim by Contractor for adjustment hereunder shall be denied unless it has given notice as required above, provided that the City, if it determines the facts justify, may consider and adjust any such claim asserted before the date of final settlement and payment of this Contract.

8. WORKMANSHIP

Although Contractor has the authority to control and direct the performance of the details of the Work, the Work contemplated herein must meet the City's standards and approval and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The City shall have the right to reject defective Work or require its correction. If Contractor fails to correct rejected Work within the time allowed by the City, the City may, by contract or otherwise, correct such workmanship and charge the cost thereof to Contractor, or the City may terminate the right of Contractor to proceed with the Work as provided in the Termination clause of this Contract. The City, at its option, may deduct an equitable amount from the contract price/compensation for uncorrected Work if it deems it inexpedient to correct the Work not performed in accordance with this Contract. Contractor agrees to comply with all federal, state, and local laws, rules and regulations that are now or hereafter applicable to the Work, Contractor or Contractor's business. The City will designate a representative who shall be authorized to act for the City in all matters related to Contractor's performance of the Services.

9. COMPENSATION

For the CONTRACTOR's Services described in this Agreement, the CITY shall compensate the CONTRACTOR as follows:

9.1 Compensation for the Services shall be negotiated between the CITY and CONTRACTOR prior to initiating the Services and shall be specified in the applicable TASK ORDER.

9.2 Monthly progress payments shall be made in proportion to services rendered and as indicated within this Agreement and shall be due and owing within thirty (30) days of the CONTRACTOR's submittal of its monthly statement. Past due amounts owed shall include a charge at 1.5 percent per month.

9.3 Contractor will mail all monthly invoices to: The City of Truth or Consequences, Attention: **Accounts Payable, 505 Sims Street, Truth or Consequences, NM 87901**. After approval of the Contractor's monthly invoice, and provided there are no disputes regarding the invoice, the City will pay the Contractor for satisfactorily performed Work within thirty

(30) working days of receipt of the monthly invoice from the Contractor.

9.4 If the CITY fails to make monthly payments due the CONTRACTOR, the CONTRACTOR may, after giving seven (7) days written notice to the CITY, suspend services under this Agreement.

9.5 No deductions shall be made from the CONTRACTOR's compensation on account of penalty, liquidated damages, or other items withheld from payments to CONTRACTORs.

9.6 If the Project is delayed or if the CONTRACTOR's services for the Project are delayed or suspended for more than six (6) months for reasons beyond the CONTRACTOR's control, the CONTRACTOR may, after giving seven (7) days written notice to the CITY, terminate this Agreement and the CITY shall compensate the CONTRACTOR in accordance with the termination provision contained in this Agreement.

9.7 In the event that the City terminates this Contract for Contractor's breach, the City will pay Contractor for work performed before the termination date less any setoff to which the City is entitled if and only if Contractor performed such Work in accordance with this Contract and to the City's satisfaction.

9.8 The City shall have a right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the City to recover excessive and/or illegal payments.

9.9 The Contractor's acceptance of final payment of the amount due under this Contract shall operate as a full release of the City, its board of education, employees and agents from all liabilities, claims and obligations whatsoever arising from or under this Contract.

10. CONTRACTOR'S PERSONNEL

The City retains the right to prior and continuing approval of any and all personnel, including subcontractor employees, if any, providing services under this Contract.

11. PROTECTION OF WORK AND PROPERTY

Contractor shall continuously maintain adequate protection of Work from damage and shall protect the City's property at all times from injury or loss arising in connection with the Contract. Contractor shall make good at its own expense any such damage, injury or loss that may result from its effort in connection with the Work. Contractor shall provide all facilities for protection required by public authority or local conditions.

12. LICENSES, PERMITS, AND REGULATIONS

Contractor shall, without additional expense to the City, obtain all licenses and permits required of the prosecution of the Work. Contractor shall conduct its operations in compliance with all laws, rules, regulations and ordinances of the federal, state, and local governments and their

authorized agencies. Contractor shall indemnify and save harmless the City from and against any claims, damage, and expense arising from the violation by Contract of any such law, rule regulation or ordinance.

13. RECORDS

Contractor shall maintain records as required in compliance with applicable federal, state, or local laws, ordinances, codes, and City policies, but in no case for a period of less than four (4) years after the date of termination of this Contract. At any time during normal business hours and as the City may deem necessary, there shall be made available to the City for examinations of all Contractor's records with respect to all matters covered by this Contract and any subsequent agreements. The City may audit, examine and/or make excerpts or transcripts from such records including but not limited to invoices, materials, payrolls, records of personnel, conditions of employment, or any other data as may be pertinent.

14. INSURANCE

14.1. Commercial General Liability and Professional Liability/Errors and Omissions Insurance

Without limiting any of the other obligations or liabilities of Contractor, Contractor shall, at its own sole cost and expense, during the term of and at all time while providing Work and services under this Contract, procure and maintain in force, or cause to be procured and maintained in force, Commercial General Liability and Professional Liability/Errors & Omissions Insurance in the broadest coverage commonly available, with a minimum limit of two million dollars ($2,000,000.00) per occurrence for each such policy. The Professional Liability/Error & Omissions policy shall provide extended reporting period coverage for claims made within two (2) years after this Contract is completed or otherwise terminated.

14.2. Automobile Liability Insurance

For contractors providing a vehicle for staff, employees, or subcontractors Commercial General Liability must be a minimum of five hundred thousand dollars ($500,000) combined single limit.

14.3. Automobile Liability Insurance

For sole contractors/subcontractors that provide their own vehicle must be a minimum of one hundred thousand dollars ($100,000) each person with a three hundred thousand dollar ($300,000) limit each occurrence.

14.4. Additional Insureds

The City of Truth or Consequences, its Commissioners, and employees and must be named as Additional Insureds with respect to all of the coverages except Professional Liability/Errors & Omissions Insurance . The Additional Insured Endorsement must provide coverage for losses "arising out of" the Contractor's work or operations in

connection with this Contract. Contractor' policies must be Primary and Non-Contributing as to any other valid and collectible insurance. Coverages and limits are to be considered as minimum requirements and in no way limit the liability of Contractor. Contractor is responsible for any deductible or self-insured retention contained within the insurance program. The Contractor's insurance shall apply separately to each insured and additional insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

14.5 Certificates of insurance and complete policies, acceptable to the City, with the coverage as cited above and listing the City of Truth or Consequences, its Commissioners, and employees as the certificate holders, must be submitted **not less than ten (10) working days prior to the execution of this Contract and before work begins or products are delivered by Contractor under this Contract.** Coverages represented on the certificates of insurance must show policy numbers, effective dates and limits. All policies shall evidence insurance written by a carrier licensed in the State of New Mexico and rated at least "A" in A.M. Best's Key Rating Guide. Renewal certificates of insurance shall be provided annually until the work is completed and for three years following the completion of work. The Certificates of Insurance shall provide for not less than thirty (30) days advance notice to the City of cancellation or material change, which shall be mailed or delivered to:

The City of Truth or Consequences
Attention: Chief Procurement Officer
505 Sims Street
Truth or Consequences, NM 87901

14.6 Contractor shall carry Workers' Compensation insurance as required by law.

15. INDENMIFICATION/HOLD HARMLESS

15.1 Contractor shall defend, indemnify, and hold harmless the City, its Commissioners, employees, and agents from any liability for injury, death, loss, accident, or damage to any persons, or to property, and from any claims, actions, proceedings, and costs in connection therewith, including reasonable attorney fees, arising or alleged to have arisen out of any negligent act or omission of Contractor or of anyone directly or indirectly employed by Contractor, or arising in any way from the activities of or services provided by Contractor under this Contract. Contractor shall defend all such claims and litigation, including the payment of the City's attorney's fees and costs, whether such claims and litigation are frivolous or not. The City shall have the right to choose its own legal counsel. Contractor hereby waives all rights of subrogation against the City.

15.2 Contractor expressly and specifically assumes potential liability and agrees to indemnify, defend (including reasonable attorneys' fees) and hold harmless the City for claims or actions brought by the Contractor's own employees against the City, its Commissioners, employees or agents. Solely for the purpose of this indemnification and defense, Contractor expressly and specifically waives any immunity under the New Mexico

Statutes Annotated, Chapter 52, Workers' Compensation.

15.3 These indemnifications shall survive the termination of this Contract.

15.4 The parties do not intend, and this provision should not be construed, to waive, alter or modify any immunities or protections afforded by the New Mexico Tort Claims Act.

16. PROFESSIONAL RESPONSIBILITY

In connection with the Work hereunder, Contractor agrees that it shall meet or exceed the standard of care, skill, and diligence normally provided by a contractor in the performance of similar work and that the performance of all such Work shall meet or exceed sound and accepted industry standards and practices.

If Contractor fails to meet such standards of care, skill, diligence and/or industry standards and practices, Contractor shall be liable for all damages of whatever kind caused thereby.

17. BONDS

If required by the City, Contractor agrees to furnish in connection with the performance of the Work under this Contract, a payment bond for the protection of persons furnishing material and labor and a performance bond for the protection of the City and in a form acceptable to the City. The penal sum of each bond shall be one hundred percent (100%) of the Contract price. Bonds required hereunder shall be dated as of the effective date of this Contract and shall be furnished promptly by Contractor to the City, accompanied by a certified copy of the "Power of Attorney" document issued by the Surety Company.

18. RELEASE

Contractor hereby accepts the City premises and adjoining areas as is and releases and discharges the City, its board of education, agents, employees, representatives and insurers from any and all liability, claims, judgments or demands, including reasonable attorneys' fees and costs, which may arise from any and all bodily injuries, deaths and damage to property arising directly or indirectly out of this Contract, including but not limited to Contractor' use of the premises and the adjoining areas, including parking areas. Contractor shall be solely and exclusively liable for all damages caused by Contractor's performance of or the failure to perform under this Contract.

The City assumes no responsibility whatsoever for any property placed on any City premises by Contractor or its officers, agents, employees, or servants and Contractor hereby releases and discharges the City, its board of education, agents, employees, representatives and insurers from any and all liability, claims, judgments or demands, including reasonable attorneys' fees and costs, which may arise from all liability, claims, judgments or demands, including reasonable attorneys' fees and costs, which may arise from Contractor's placement of property upon City premises.

19. CONTRACTOR STATUS

The City and Contractor intend that the relationship between them shall be that of client and independent contractor. It is the intention of the parties hereto that Contractor be and remain an independent contractor and nothing contained herein shall be construed as inconsistent with that status. The City is interested only in the results obtained under this Contract. The manner, method and means of conducting the work are under the sole control of the Contractor. Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees and subcontractors during the performance of this Contract. The work performed under this Contract will be performed entirely at the Contractor's risk. The Contractor agrees to indemnify and hold harmless the City for any and all liability or loss arising in any way out of the performance of this Contract. Contractor shall employ and direct all persons performing any Work hereunder and such person shall be and remain the sole employees of and subject to the control and direction of Contractor. No agent or employee of Contractor shall be or shall be deemed to be an employee or agent of the City. None of the benefits provided by the City to its employees, including, but not limited to, worker's compensation insurance and unemployment insurance, is available from the City to the Contractor, or the employees, or agents of Contractor.

Whenever this Contract uses the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or words and phrases of like meaning, it shall be understood that the use is intended only to the extent of judging compliance with the terms of this Contract and none of these words and phrases shall imply that the City has any authority or responsibility for supervision of Contractor's forces or operations, such supervision and the sole responsibility being strictly reserved for Contractor.

20. SUBCONTRACTORS

Contractor shall not subcontract any of Contractor's duties, obligations, or interests under this Contract unless, and no such subcontract shall be effective until, Contractor obtains the prior written consent of the City. Any attempt by Contractor to subcontract without the prior consent of the City may be deemed a material breach of this Contract. Subcontracts made without the City's prior written consent may be declared null and void.

If the Contractor contemplates a subcontract, the Contractor shall provide the following information promptly at the City's request: (1) a description of the work to be performed by the subcontractor; (2) a draft copy of the proposed subcontract; and (3) other information and/or certifications requested by the City.

The issuance of subcontracts shall not relieve Contractor of any of its obligations under this Contract, including, without limitation, the obligation to properly supervise and coordinate the work of subcontractors. Such subcontracts shall be in such form and contact such provisions as are required by this Contract or as the City may otherwise prescribe; provided, however, that nothing contained herein shall create any contractual relationship between any subcontractor and the City.

Contractor shall remain fully responsible for all performances required of it under this Contract,

including those that the Contractor has determined to subcontract, notwithstanding the City's approval of the Contractor's proposed subcontract.

The City's consent to subcontract shall not waive the City's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Contract. Contractor is responsible to notify its subcontractors of this City right.

Contractor shall indemnify and hold the City harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were Contractor employees.

Contractor shall be solely and exclusively liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the City's consent to subcontract.

Contractor intentionally, voluntarily, and knowingly assumes the sole and entire liability to the Contractor's employees and agents, and to any individual or entity not a party to this Contract, for all loss, damage, or injury caused by the Contractor or the Contractor's employees and agents in the course of their employment.

Contractor shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the City from each approved subcontractor. Before any subcontractor employee may perform any work hereunder, Contractor shall ensure delivery of all such documents to:

City of Truth or Consequences
Attention: Chief Procurement Officer
505 Sims Street
Truth or Consequences, NM 87901

21. USE OF PREMISES

Contractor shall confine the storage of materials and equipment in locations acceptable to the City and in accordance with all applicable laws, rules, regulations and ordinances. Contractor shall provide adequate safety barriers, signs, lanterns, and other warning devices and services to properly restrict access and properly protect any person having access to or near the Work site.

22. CLEANING UP

Contractor shall, at all times, keep the Work areas, including storage areas used by it, in a clean and orderly condition and free from combustible debris and waste materials. Upon completion of the Work, Contractor shall remove all rubbish from and about the Work areas.

23. TRESPASS

Contractor shall be solely responsible and liable for any act of trespass or any injury to adjacent

property, resulting from or in connection with the operations under this Contract. Contractor shall be liable for any claims that arise from the deposit of any debris of any kind upon adjacent property.

24. LIENS

Contractor shall at all times promptly pay for all materials, equipment, and labor used in the performance of this Contract and shall maintain all materials, equipment, structures, premises and other subject matter free and clear from all laborer, materialmen, and mechanic liens; provided that all payments due to Contractor have been paid by the City. Contractor shall indemnify and save the City harmless form all such liens arising out of the Work. Contractor shall provide to the City, upon its request, reasonable evidence showing that all materials, equipment, labor and subcontractors have been paid in full, except for any outstanding claims relating thereto; which claims may, at the City's option, be assigned to the City.

25. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization. If sufficient appropriations and authorization do not exist, this Agreement shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

26. CONFLICT OF INTEREST

Contractor represents that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Contractor agrees to comply with the requirements of the New Mexico Financial Disclosure Act (Section l0l6Al, et seq., NMSA l978) and the Governmental Conduct Act (Section 10161 et seq. NMSA 1978) as applicable. Contractor represents and warrants that the services to be performed under this Contract shall not result in a conflict of interest prohibited by state or federal laws, rules or regulations.

27. NONDISCRIMINATION

The Contractor warrants that during its performance of this Contract, Contractor, or any of its employees, agents, or subcontractors, will not violate any of the discrimination laws of the United States, including, but not limited to, on the basis of age, sex, sexual orientation, race, color, religious belief, national origin, marital status, status as a qualified individual with a disability or handicap or as a disabled veteran.

28. FOREIGN CORRUPT PRACTICES ACT

Contractor represents and warrants to the City that it is aware of the requirements of the United States Foreign Corrupt Practices Act (the "FCPA") and will not take any action that could

violate the FCPA or expose the City to liability under the FCPA. Specifically, Contractor represents and warrants that, in connection with this Contract, Contractor and its Citys, officers, directors, employees, representatives or agents have not provided and will not provide, offer or promise to provide, or authorize the provision directly or indirectly of, any money, gift, loan, service or anything of value to any government official (or any agent, employee or family member thereof), any political party or candidate for political office, or any third party, for the purpose of influencing or inducing any act, omission or decision of such government official or candidate, or of the government to obtain or retain business, or direct business to any person, or to secure any improper advantage.

29. NOTICE OF PENALTIES

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

30. FORCE MAJEURE

The City and the Contractor shall be mutually relieved from any liability as a result of the onset of a force majeure condition. For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a party and which makes a party's performance of its obligations under the Contract impossible or so impractical as reasonably to be considered impossible under the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the party invoking Force Majeure to prevent), confiscation or any other action by government agencies.

31. TERMINATION

This Contract will remain in effect unless terminated by either party in accordance with this provision. The parties may mutually agree to terminate this Contract any time by written agreement signed by both parties.

Notwithstanding anything in the paragraph immediately above or anything in this Contract to the contrary, the City in its sole discretion shall have the right, at any time and for any reason whatsoever, including its own convenience, upon thirty (30) calendar days written notice, to suspend or terminate Contractor's services, or any portion thereof, and to terminate this Contract, in whole or in part, without regard to whether Contractor has defaulted or failed to comply with the provisions of this Contract.

Either party may terminate this Contract in the event of a breach by the other party. To be effective, the non-breaching party must give written notice to the other party of its intent to terminate. If the breaching party does not entirely cure the breach within fifteen (15) calendar days of the date of the notice, then the non-breaching party may terminate this Contract at any time thereafter by giving a written notice of termination as provided in the preceding paragraph of this Contract.

Notwithstanding any of the above provisions of this Termination section of this Contract, the

City may terminate this Contract immediately by written notice to the Contractor upon cancellation, denial, suspension, revocation or non-renewal of any license, permit or certificate, including, without limitation, insurance policy or Certificate of Insurance, that Contractor must hold to provide services under this Contract.

32. DISPUTE RESOLUTION

Disputes on any matter relating to this Contract shall be discussed and resolved by authorized representatives of each Party who have the authority to bind the Party that they represent. The Parties shall use their best efforts to amicably and promptly resolve the dispute. If the Parties are unable to resolve the dispute within a reasonable time period as determined by the representatives, the Parties may pursue any other legal, mediation, or arbitration means for resolving disputes which may arise from or under this Contract.

33. NOTICES

Any notice required to be given to either party by this Contract shall be in writing and shall be delivered in person, by courier service or by U.S. mail, certified, return receipt requested, postage prepaid, as follows:

To City:

City of Truth or Consequences
Attention: Chief Procurement Officer 505 Sims Street
Truth or Consequences, NM 87901

To Contractor:

Wilson and Company, Inc.
Addr414 N Main Street, Suite A
Las Cruces, NM 88001

34. INVALID TERM OR CONDITION AND SEVERABILITY

If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable. Should any part of this Contract be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or portion of this Contract should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

35. NO WAIVER

The failure of the City to insist upon Contractor's compliance with its obligations under this Contract in any one or more instances shall not operate to relieve Contractor from its duty to

comply with such obligations in all other instances.

36. APPLICABLE LAW

The laws of the State of New Mexico shall govern this Contract, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Contract, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Contract.

37. IMMUNITIES AND DEFENSES

The City does not waive or relinquish any immunity, defense or protection on behalf of itself, its officers, board of education members, employees and agents as a result of the execution of this Contract and the performance of the provisions contained herein.

38. NO ASSIGNMENT

Contractor shall not assign any interest, transfer any interest, or assign any claims for money due or to become due in this Contract or any appendices, addenda, or amendments thereto.

39. NO THIRD PARTY BENEFICIARIES

City and Contractor are the only parties to this Contract. Nothing in this Contract provides any benefit or right, directly or indirectly, to third parties. The Parties shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release, or other consideration under this Contract.

40. OTHER CONTRACTORS

The City reserves the right to enter into other agreements for work additional or related to the subject matter of this Contract, and Contractor agrees to cooperate fully with these other contractors and with the City. When requested by the City, Contractor shall coordinate its performance under this Contract with such additional or related work. Contractor must not interfere with the work performance of any other contractor or City employees.

41. ENTIRE AGREEMENT

This Contract and all provisions hereof shall inure to and be binding upon the respective Parties hereto, their successors, and assigns. When signed by both Parties, this Contract (and any attachments or appendices thereto) is the final and entire Contract and supersedes any prior understanding or written or oral Contract relative to the subject matter hereof. This Contract may not be altered, changed or amended, except by written instrument signed by both Parties.

42. ATTACHMENTS

EXHIBIT A: SCOPE OF WORK
EXHIBIT B: REQUEST FOR PROPOSAL #20-21-011 MULTIPLE ENGINEERING AND ARCHITECTURE PROJECTS UNDER A SINGLE CONTRACT

The City and the Contractor have entered into this Contract as of the Effective Date. Services will not be provided and products will not be received or delivered until all required documents and insurance requirements in this contract have been provided.

The contract shall not become effective until it has been approved by the City Manager and/or the City Commission and an approved purchase order has been issued to the Contractor.

Approved by the City of Truth or Consequences City Commission on October 27, 2021.

CITY:	**CONTRACTOR:**
City of Truth or Consequences	Wilson and Company, Inc.
By: _____ Signature	By: _____ Signature
_____ Print Name	_____ Print Name
_____ Title	_____ Title
_____ Date	_____ Date

EXHIBIT A
SCOPE OF WORK

RFP#20-21-011 ARCHITECTURAL, SURVEYING, PLANNING, ENGINEERING AND LANDSCAPE ARCHITECTURAL SERVICES

As used herein, the term "Project" shall refer only to such items of work listed in the agreement or approved TASK ORDER as issued by the City of Truth or Consequences.

The following services shall be performed based on an individual TASK ORDER initiated and approved by the City:

ARTICLE 1: BASIC SERVICES

The CONTRACTOR agrees to perform normal professional consulting services in connection with the Project as set forth below and contained within this Article 1.

1.1 SCHEMATIC DESIGN

The CONTRACTOR shall review information provided by the CITY and the CITY's program, review laws, codes, and regulations applicable to the Project Scope of Services, communicate with local authorities, conduct field investigations, and review the ALP, in order to prepare a preliminary evaluation of the Project, and to identify and evaluate alternative approaches and solutions to the design and construction of the Project. Schematic Design Phase Activities shall be outlined in each respective TASK ORDER.

1.2 DESIGN DEVELOPMENT

Based on the CITY's approval of the plan identified during the Schematic Design phase, CONTRACTOR shall proceed to provide Design Development Phase Services, which may consist of preliminary layouts, geometry, grading, drainage, electrical, and phasing, as more explicitly identified in individual TASK ORDERS.

1.3 CONSTRUCTION DOCUMENTS

In the Construction Documents Phase, the CONTRACTOR is to provide construction requirements, to provide a basis for competitive construction bids and to complete the final construction contract documents for the Project. Final design is to be completed in accordance with the latest Advisory Circulars, as well as State and Local requirements. The CONTRACTOR's tasks during the Construction Documents Phase will be identified in individual TASK ORDERS.

1.4 BIDDING PHASE

Upon receipt of the CITY's approval of the Contract Documents and latest Opinion of the Construction Cost, the CONTRACTOR shall assist the CITY in soliciting and selecting bids for

the construction of the Project. The CONTRACTOR's Bidding Phase tasks, as will be more explicitly identified in each individual TASK ORDER, and may include pre-bid meetings, addenda, and bid tabulations.

1.5 CONSTRUCTION ADMINISTRATION

During the construction phase of the project, the CONTRACTOR shall assist the CITY to monitor and document progress of construction and shall act as initial interpreter of the requirements of the contract documents. Specific tasks shall be outlined in each individual TASK ORDER. Review payment requests, provide necessary quality control testing, establish necessary survey control, continually inform the CITY on project progress and problems, conduct the final project inspection, and provide the associated certification.

1.5.1 Construction Administration – If included in the TASK ORDER, the CONTRACTOR shall provide general consultation and advice to the CITY during the construction phase of the project. The CONTRACTOR shall facilitate general coordination between the CITY, the State, and the FAA, if needed, during the construction phase of the project. The CONTRACTOR will assist the CITY with the preparation and issuance of change orders, change order/supplemental agreement price/cost analysis, recommend construction specification waivers, and report to the CITY on the Contractor's performance. The CONTRACTOR shall review and process the Contractor's payment requests, review daily progress reports, and monthly construction progress reports.

The CONTRACTOR is to communicate and coordinate with the CITY on a regular basis throughout the construction phase of the project.

1.5.2 Shop Drawing Review – If included in the TASK ORDER, and in accordance with the submittal schedule, the CONTRACTOR shall review the shop drawings and materials submittals that are submitted by the Contractor as required by the construction contract documents, but only for the purpose of checking for conformance with information given and the design intent expressed on the Construction Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The CONTRACTOR's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by CONTRACTOR, of any construction means, methods, techniques, sequences, or procedures. The CONTRACTOR will prepare and maintain a submittal register identifying the submittal number, description, specification section, specification paragraph, received date, action date, and action taken. The CONTRACTOR shall distribute copies of the submittals and the updated submittal register to the CITY.

1.5.3 Site Visits – If included in the TASK ORDER, the CONTRACTOR shall visit the construction site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the construction, and to determine, in general, if construction is being performed in accordance with the Contract Documents. However, the CONTRACTOR shall not be required to make exhaustive or continuous on-site

inspections to check the quality or quantity of construction. The CONTRACTOR will coordinate the site visits with the CITY. The CONTRACTOR's representatives are to meet with the representatives of the CITY to discuss the project's progress and to identify known deviations from the Contract Documents, or defects and deficiencies observed in the construction. The CONTRACTOR will prepare and distribute notes from the visit.

1.5.4 Progress Payment Review – If included in the TASK ORDER, the CONTRACTOR shall review the CONTRACTOR's request for progressive payment, and based upon said on-site observation, advise the CITY as to the CONTRACTOR's opinion of the extent of the work completed in accordance with the terms of the Construction Contract as of the date of the Contractor's payment request and issue, for processing by the CITY, a Recommendation for Payment in the amount owed the Contractor. The issuance of Recommendation for Payment shall constitute a declaration by the CONTRACTOR to the CITY, based upon said on-site observations, review, and data accompanying the request for payment, that the Contractor's work had progressed to the point indicated; that to the best of the CONTRACTOR's knowledge, information, and belief, the quality of the Contractor's work is in accordance with the Construction Contract Documents (subject to subsequent tests and review required by the Construction Contract Documents, to correction of the minor deviations from the Construction Contract Documents, and to qualifications stated in the Certificate for Payment); and that the Contractor is entitled to the amount stated. The issuing of the Recommendation for Payment by the CONTRACTOR shall not represent that it has made any investigation to determine the uses made by the Contractor of sums paid to the Contractor.

1.5.5 The CONTRACTOR shall not be responsible for the defects or omissions in the work as a result of the Contractor's, or any Subcontractor's, or any of the Contractors' or Subcontractors' employees, or that of any other persons or entities responsible for performing any of the work result as contained in the Construction Contract. The CONTRACTOR shall not be responsible for the Contractors' failure to comply with the project schedule.

ARTICLE 2: SPECIAL SERVICES

If authorized by the CITY, the CONTRACTOR agrees to furnish, or obtain from others, additional professional services above the previously described Basic Services, which may include items such as:

a. Funding applications
b. Reimbursement requests for funding
c. Disadvantaged Business Enterprise (DBE) Plan assistance
d. Airport Layout Plan (ALP) revisions
e. Property Map revisions
f. Environmental Overview or Statements
g. Preparation of Record Drawings
h. Assistance with funding and coordination of other contracts
i. Bid Alternates

j. Planning Services
k. Environmental Services
l. Land Acquisition Services

Unanticipated services, which will be treated as "Special Services", may also include:

a. Providing other services not otherwise provided for in this Agreement, including services normally furnished by the CITY as described in Article 3, "CITY'S RESPONSIBILITIES".
b. Services due to changes in the project scope or design, including but not limited to, changes in size, complexity, schedule or character of construction.
c. Revisions to studies, reports, design documents, drawings or specifications which have previously been approved by the CITY, or when such revisions are due to causes beyond the control of the CONTRACTOR.
d. Preparation of additional design documents for alternate bids or for out-of-sequence work requested by the CITY when not listed or described in the project scope of work.
e. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or incomplete work of the CONTRACTOR(s), (3) acceleration of the work schedule involving services beyond normal working hours, (4) failure of the CONTRACTOR(s) to complete the work within the contract period, and (5) the CONTRACTOR(s)' default under Construction Contract.
f. Providing services as an expert witness for the CITY in connection with litigation or other proceedings involving the Project.
g. Evaluating unreasonable or frivolous claim(s) submitted by CONTRACTOR(s) or others in connection with the project which require extensive services by the CONTRACTOR to preclude or prepare for possible litigation, which claim(s) are beyond the CONTRACTOR's control.

If included, the items above may be outlined and priced in individual TASK ORDERS.

ARTICLE 3: ENGINEERING SERVICES

The CONTRACTOR shall:

3.1 Discuss and explain the purpose, need and financial requirements of the project, review available data and help the City to achieve supplementary data; Analyze government regulations and make sure the design is meeting conditions of all government agencies.

3.2 Establish the general size, scope and location of the project. Revise preliminary report and available data and discuss general scheduling; Prepare documents of preliminary design such as final design requirements, initial drawing and the whole project report.

3.3 Assist in preparing contract plan drawings and specifications, present an idea of project construction cost, review construction practicality to specify possible problems. Prepare essential documents for review and acceptance by the City.

3.4 Help the City in bidding achievement, receiving and processing deposits for bidding documents, explaining, expanding and changing bidding documents as necessary. Help the City to specify qualifications and acceptability of potential contractor, subcontractor and material testing and equipment providers. Propose alternative materials and testing equipment suggested by perspective contractors and assist the City in evaluating proposals.

3.5 Act as a representative for the City. Visit construction regularly to monitor both executed work progression and quality, make sure that the construction is conducted in accordance with drawings and specifications. Explain and clarify contract documents, conduct specific inspection and testing, offer instruction to tackle field issues. Monitor performance tests and initial operation of the project. Carry out final inspection and generate a report on the completion of the project and provide recommendation regarding the acceptance of the final product.

All Engineering services shall be conducted under the direct supervision of a New Mexico Registered Professional Engineer.

ARTICLE 4: ARCHITECTURAL SERVICES

The CONTRACTOR shall provide:

4.1 Architectural design, including design development phase, construction documents, phase bidding and negotiations.

4.2 Generation of architectural drawings and other documents required by the general contractor, based on agreed upon design.

4.3 Phase construction administration and post construction phase.

4.4 Interior Design.

4.5 Engineering Services- mechanical, electrical, civil and structural engineering.

4.6 Construction project management, administration and oversight.

4.7 Provide Landscape Architectural Services.

All architectural services shall be conducted under the direct supervision of a New Mexico Registered Professional Architect.

ARTICLE 5: SURVEYING SERVICES

The CONTRACTOR shall perform or provide:

5.1 Control surveys, which will be the basis for all future design and construction surveying services.

5.2 Topographic surveys of proposed and existing roadway corridors to include the location of all natural and physical features of the roadway.

5.3 Right-of-way surveys to establish the limits of the existing documented and/or occupied right-of-way to include the determination of a centerline survey.

5.4 Property surveys to determine the location of adjacent property lines relative to the existing and/or proposed property.

5.5 Preparation of right-of way design plans and legal descriptions for acquisition parcels pursuant to current NMDOT standards and specifications.

5.6 Final documentation and preparation of documentation maps for final construction pursuant to current relevant standards and specifications.

5.7 Provide construction staking services to include the layout of horizontal and vertical alignments grade stakes, and other roadway features, drainage systems, utility and building construction as necessary.

All surveying services shall be conducted under the direct supervision of a New Mexico Registered Professional Surveyor and shall be conducted in conformance with the Minimum Standards for Surveying in New Mexico.

ARTICLE 6: PLANNING STUDIES

The CONTRACTOR shall perform or provide:

6.1 Help the City to develop a Comprehensive Plan for all projects that are proposed.

6.2 Make a Strategic plan (issue specific) for all projects that are proposed.

6.3 Any other Planning tasks that are deemed necessary by the City for all proposed projects.

ARTICLE 7: SCHEDULE FOR DELIVERY OF WORK BY CONTRACTOR

The CONTRACTOR shall perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project, and as follows:

7.1 It is understood that the CONTRACTOR is to proceed on the project after a Notice-to-

Proceed from the CITY. The schedule is to be outlined in each TASK ORDER once the scope of the project(s) has been clearly defined.

7.2 Construction progress is to be monitored by the CONTRACTOR in an effort to keep the construction on schedule. The CONTRACTOR is to be notified in writing when its progress falls behind its progress schedule.

7.3 The CONTRACTOR is to endeavor to complete the work in accordance with the schedule; however, it will not be penalized for delays beyond its control such as CITY's requirements, review periods, testing, adverse weather, surveying, war, Acts of God, etc.

ARTICLE 8: CITY'S RESPONSIBILITIES

The CITY shall:

8.1 Provide to the CONTRACTOR all criteria, design, and construction standards and full information as to the CITY's requirements for the Project. The CONTRACTOR shall be entitled to rely on the accuracy and completeness of information furnished by the CITY.

8.2 Designate in writing a person authorized to act as the CITY's representative. The CITY or its representative shall receive and examine documents submitted by the CONTRACTOR, interpret and define CITY's policies, and render decisions and authorization in writing promptly to prevent unreasonable delay in progress of the CONTRACTOR's services.

8.3 Furnish to the CONTRACTOR all existing drainage, survey, layout data, and prior reports available for the Project.

8.4 Furnish laboratory tests, air and water pollution tests, reports and inspections of samples, materials, or other items required by law or by the governmental authorities having jurisdiction over the Project.

8.5 Provide legal, accounting, and insurance counseling services necessary for the Project, legal review of the Contract Documents, and such auditing services as the CITY may require to account for expenditures of sums paid to the CONTRACTOR(s) and others.

8.6 Furnish permits and approvals from all governmental authorities having jurisdiction over this Project and from others as may be necessary for completion of the Project.

8.7 Provide surveys, subsurface and materials testing, printing, and/or administrative services necessary for the project shall be contracted by the CITY unless designated to be provided by the CONTRACTOR in individual TASK ORDERS.

8.8 Furnish the services described in Sections 3.1 through 3.7 at the CITY's expense and in such manner that the CONTRACTOR may rely upon them in the performance of its services under this Agreement.

8.9 Obtain bids or proposals from contractors for work relating to this Project and bear all costs relating thereto.

8.10 Protect and preserve all survey stakes and markers placed at the Project site prior to the assumption of this responsibility by the CONTRACTOR(s) and bear all the costs of replacing stakes or markers damaged or removed during said time interval.

8.11 Arrange full and free access for the CONTRACTOR to enter upon all property required for the performance of the CONTRACTOR's services under this Agreement.

8.12 Give prompt written notice to the CONTRACTOR whenever the CITY observes or otherwise becomes aware of any defect in the Project or other event which may substantially affect the CONTRACTOR's performance of services under this Agreement.

8.13 Compensate the CONTRACTOR for services rendered under this Agreement.

EXHIBIT B

REQUEST FOR PROPOSALS (RFP)
FOR
PROFESSIONAL DESIGN SERVICES

RFP No. 20-21-011

Packet No. _____

Project Name:	Multiple Engineering and Architecture Projects under a Single Contract
Contracting Agency:	City of Truth or Consequences
Address:	505 Sims Street
	Truth or Consequences, NM 87901
Telephone:	575-894-6673
Date:	January 25, 2021
Funding Type:	Federal, State, Local

This form was prepared by City of Truth or Consequences and is endorsed by the Professional Technical Advisory Board (PTAB), which is comprised of the American Council of Engineering Companies (ACEC) New Mexico, New Mexico Society of Professional Engineers (NMSPE), American Institute of Architects (AIA) New Mexico Chapter, New Mexico Professional Surveyors (NMPS), and American Society of Landscape Architects (ASLA) New Mexico Chapter; Local Government Division, Department of Finance and Administration; Rural Utilities Service, US Department of Agriculture; New Mexico Environmental Department; and New Mexico Finance Authority.

For information and suggestions on how to fill out this RFP, please refer to the "OWNER'S MANUAL FOR QUALIFICATIONS-BASED SELECTION (QBS)" at www.ptabnm.org.

NOTICE OF REQUEST FOR PROPOSALS (RFP)

Qualifications-based competitive sealed proposals for professional design services will be received by the Contracting Agency, City of Truth or Consequences for RFP No.20-21-011

The Contracting Agency is requesting proposals for professional

☒ architectural services ☒ engineering services

☒ surveying services ☒ landscape architectural services

☒ planning services

for: Multiple Engineering and Architecture Contract

Project No. _____

Proposals will be received at 505 Sims Street, Truth or Consequences, NM 87901 until Tuesday, February 16, 2021, no later than 2:00 pm. Due to the current COVID-19 restrictions, please contact Chief Procurement Officer/Administrative Assistant, Kristin Saavedra by phone: (575) 894-6672 ext. 309 or by email: Kristins@torcnm.org, to schedule a specific date and time to submit Proposals or proposals can be submitted electronically by email to Kristins@torcnm.org or mailed to the Chief Procurement Officer. Please limit the file size to 5 MB.

Copies of the Request for Proposals (RFPs) can be obtained in person at the office of Kristin Saavedra Chief Procurement Officer/Administrative Assistant at 505 Sims Street, Truth or Consequences, NM 87901 or will be mailed or emailed upon request to Kristin Saavedra at 575-894-6672 ext. 309 or Kristins@torcnm.org.

A ☐ mandatory ☒ non-mandatory pre-proposal meeting ☐ will ☒ will not be held ___.

Interviews ☒ may be held ☐ will not be held for this project after the evaluation of proposals is completed.

PURCHASING AGENT:

Kristin Saavedra Date: January 25, 2021

(for Contracting Agency's Use Only)

Newspaper: Sierra County Sentinel Publish: 01/29/21-02/16/21 P.O. No. _____

Newspaper:	Albuquerque Journal	Publish:	01/28/21-02/16/21	P.O. No.	
Newspaper:	Las Cruces Sun	Publish:	01/26/21-02/16/21	P.O. No.	

[Note: This Notice is issued pursuant to the requirements of § 13-1-104 NMSA 1978 and must be published not less that 10 calendar days prior to the date set for the receipt of proposals (§ 13-1-113) and published in a newspaper of general circulation in the area.]

1. PROJECT DESCRIPTION

The City of Truth or Consequences is solicitating proposals from qualified Engineering and Architecture firms to provide full on-call as-needed planning, design, and construction phase services of multiple projects under a single contract. Services may include, but are not limited to, planning, environmental services, landscape and irrigation, architecture, surveying, and engineering including civil, electrical, mechanical, and structural.

2. SCOPE OF WORK

The Offeror shall perform the following professional services:

2.1 Provide standard **Basic Design Services**, consisting of:

Architects/Landscape Architects

- ☒ Programming Phase
- ☒ Schematic Phase
- ☒ Design Development Phase
- ☒ Construction Documents Phase
- ☒ Bidding and Negotiations Phase
- ☒ Construction Administration Phase
- ☒ Post-Construction Phase

Engineers

- ☒ Study and Report Phase (PER)
- ☒ Preliminary Design Phase
- ☒ Final Design Phase
- ☒ Bidding and Negotiations Phase
- ☒ Construction Administration Phase
- ☒ Operational Phase

Surveyors

- ☒ Property Boundary Survey
- ☒ Topographic Survey
- ☒ Easement Survey
- ☒ Right-of-Way Survey
- ☒ Inspection Report

Planning Studies

- ☒ Comprehensive Plan
- ☒ Strategic (i.e. issue specific) Plan
- ☒ Mapping and/or Zoning
- ☒ Other Planning Tasks

Additional Services

- ☒ Environmental Documentation
- ☒ Permitting
- ☒ Grant Administration
- ☒ Right-of-Way Acquisition

2.2 ☒ **Periodic** or ☒ **Full-time** observation during construction.

2.3 Other (list):

- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

INSTRUCTIONS TO OFFERORS

1. DEFINITIONS AND TERMS

1.1. **Addendum**: a written or graphic instrument issued prior to the opening of proposals, which clarifies, corrects, or changes the Request for Proposals. Plural: addenda.

1.2. **Consultant**: means the Successful Offeror awarded the Agreement/Contract.

1.3. **Determination**: means the written documentation of a decision of the procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (§ 13-1-52 NMSA 1978).

1.4. **Offeror**: any person, corporation, or partnership legally licensed to provide professional design services in this state who chooses to submit a proposal in response to this Request for Proposals.

1.5. **Procurement Manager**: means the person or designee authorized by the Contracting Agency to manage or administer a procurement requiring the evaluation of proposals.

1.6. **Request for Proposals**: or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals (§ 13-1-81 NMSA 1978).

1.7. **Responsible Offeror of Proposer**: means an offeror or proposer who submits a responsive proposal and who has furnished, when required, information and data to prove that the proposer's financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal (§ 13-1-83 NMSA 1978).

1.8. **Responsive Offer or Proposal**: means an offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements (§ 13-1-85 NMSA 1978).

1.9. The terms **must, shall, will, is required, or are required**, identify a mandatory item or factor that will result in the rejection of the offeror's proposal.

1.10. The terms can, may, should, preferably, or prefers identify a desirable or discretionary item or factor.

2. REQUEST FOR PROPOSAL DOCUMENTS

2.1. COPIES OF REQUEST FOR PROPOSALS (RFP)

A. A complete set of the RFP may be obtained from the Contracting Agent.

B. A complete set of the RFP shall be used in preparing proposals; the Contracting Agency assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of the RFP.

C. The Contracting Agency in making copies of RFP available on the above terms, does so only for the purpose of obtaining proposals on the Project and does not confer a license or grant for any other use.

D. A copy of the RFP shall be made available for public inspection and shall be posted at the Administration Building of the Contracting Agency.

2.2. INTERPRETATIONS

A. All questions about the meaning or intent of the RFP shall be submitted to the Procurement Manager of the Contracting Agency in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the Contracting Agency as having received the RFP. Questions received less than five days prior to the date for opening of proposals will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

B. Offerors should promptly notify the Contracting Agency of any ambiguity, inconsistency, or error, which they may discover upon examination of the RFP.

2.3. ADDENDA

A. Addenda will be emailed, mailed, faxed,or hand delivered to all who are known by the Contracting Agency to have received a complete copy of the RFP.

B. Copies of Addenda will be made available for inspection wherever RFPs are on file for that purpose.

C. No Addenda will be issued later than five days prior to the date for receipt of proposals, except an Addendum withdrawing the RFP or one which includes postponement of the date for receipt of proposals.

D. Each Offeror shall ascertain, prior to submitting the Proposal, that the Offeror has received all Addenda issued and shall

acknowledge their receipt in the Proposal Cover Letter.

3. PROPOSAL SUBMITTAL PROCEDURES

3.1. NUMBER, FORM AND STYLE OF PROPOSALS

A. Offerors shall provide **5** copies of their proposal to the location specified on Page 2 on or before the closing date and time for receipt of proposals.

B. All proposals must be typewritten on standard 8-1/2" x 11" paper and bound on the left-hand margin.

C. A maximum of **25** pages, not including front and back covers, cover letter, table of contents, Resident Business or Resident Veteran Business Certificates/Certification Form, and Campaign Contribution Disclosure Form.

D. The proposal must be organized in the following format and must contain, as a minimum, all listed items in the sequence indicated:

1) Cover Letter

2) Response to Evaluation Criteria included in this RFP.

3) Other supporting or resource material

E. Any proposal that does not adhere to this format, and which does not address each specification and requirement within the RFP, may be deemed non-responsive and rejected on that basis.

F. Offerors may request in writing nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. A request stating the entire proposal is confidential will not be acceptable. Only matters, which clearly are of a confidential nature, will be considered.

G. Any cost incurred by the Offeror in preparation, transmittal, and presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

3.2. SUBCONSULTANTS

A. The Offeror shall list and state the qualifications for each subconsultant the Offeror proposes to use for all subcontracted work.

B. The Offeror is specifically advised that any person or other party to whom it is proposed to award a subcontract under this proposal, must be acceptable to the Contracting Agency after verification by the Contracting Agency of the current eligibility status, including, but not limited, to suspension or debarment by the Contracting Agency.

3.3. PREQUALIFICATION PROCESS

A business may be pre-qualified by the Purchasing Agent as an Offeror for particular types of service. Mailing lists of potential Offerors shall include but shall not be limited to such pre-qualified businesses (§ 13-1-134 NMSA 1978). For purposes of this RFP, if pre-qualification is utilized, special instructions will be attached as an exhibit to this RFP.

3.4. DEBARRED OR SUSPENDED CONTRACTORS

A business (contractor, subcontractor or supplier) that has either been debarred or suspended pursuant to the requirements of § 13-1-177 through § 13-1-180, and § 13-3-11 through § 13-4-17 NMSA 1978 as amended, shall not be permitted to do business with the Contracting Agency and shall not be considered for award of the contract during the period for which it is debarred or suspended with the Contracting Agency.

3.5. SUBMITTAL OF PROPOSALS

A. Proposals shall be submitted at the time and place indicated in the Notice of Request for Proposals and shall be included in an opaque sealed envelope marked with the Project title and name and address of the Offeror and accompanied by the documents listed in the Request for Proposal.

B. The envelope shall be addressed to the Purchasing Agent/Procurement Officer of the Contracting Agency. The following information shall be provided on the front lower left corner of the envelope: project title, project number, RFP number, date of opening, and time of opening. If the proposal is sent by mail, the sealed envelope shall have the notation "SEALED PROPOSAL ENCLOSED" on the face thereof.

C. Proposals received after the date and time for receipt of proposals will be returned unopened.

D. The Offeror shall assume full responsibility for timely delivery of proposals at the Purchasing Agent's office, including those proposals submitted by mail. Hand-delivered proposals shall be submitted to the Purchasing Agent or the Purchasing Agent's designee and will be clocked

in/time stamped at the time received, which must be prior to the time specified.

E. After the date established for receipt of proposals, a register of proposals will be prepared which includes the name of each Offeror, a description sufficient to identify the service, the names and addresses of the required witnesses, and such other information as may be specified by the Purchasing Agent.

F. Oral, telephonic, or telegraphic proposals are invalid and will not receive consideration.

3.6. CORRECTION OR WITHDRAWAL OF PROPOSALS

A. A proposal containing a mistake discovered before proposal opening may be modified or withdrawn by an Offeror prior to the time set for proposal opening by delivering written or telegraphic notice to the location designated in the RFP as the place where proposals are to be received.

B. Withdrawn proposals may be resubmitted up to the time and date designated for the receipt of proposals, provided they are then fully in conformance with the RFP.

3.7. NOTICE OF CONTRACT REQUIREMENTS BINDING ON OFFEROR

A. In submitting this proposal, the Offeror represents that the Offeror has familiarized itself with the nature and extent of the RFP dealing with federal, state, and local requirements, which are a part of these RFP.

B. Laws and Regulations: The Offeror's attention is directed to all applicable federal and state laws, local ordinances and regulations, and the rules and regulations of all authorities having jurisdiction over the services of the project.

3.8. REJECTION OR CANCELLATION OF PROPOSALS

This RFP may be canceled, or any or all proposals may be rejected in whole or in part, when it is in the best interest of the Contracting Agency. A determination containing the reasons therefore shall be made part of the project file (§13-1-131 NMSA 1978).

4. CONSIDERATION OF PROPOSALS

4.1. RECEIPT, OPENING AND RECORDING

A. Proposals received on time will be opened publicly or in the presence of one or more witnesses and the name of the Offeror and address will be read aloud.

B. The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, final ranking and evaluation scores for all proposals shall become public information. (§13-1-120 NMSA 1978). The contents of any proposal shall not be disclosed so as to be available to competing Offerors during the negotiation process (§ 13-1-116 NMSA 1978).

4.2. PROPOSAL EVALUATION

A. Proposals shall be evaluated on the basis of demonstrated competence and qualifications for the type of service required and shall be based on the evaluation factors set forth in this RFP. Price, including costs or fees, cannot be considered in the evaluation of proposals for professional services (architecture, engineering, surveying, and landscape architecture, §13-1-120 NMSA 1978). For the purpose of conducting discussions, proposals may initially be classified as:

1) Acceptable,

2) Potentially acceptable, that is, reasonably assured of being made acceptable, or

3) Unacceptable (Offerors whose proposals are unacceptable shall be notified promptly).

B. The Contracting Agency shall have the right to waive technical irregularities in the form of the proposal of the Offeror, which do not alter the quality or quantity of the services (§ 13-1-132 NMSA 1978).

C. If an Offeror who otherwise would have been awarded a contract is found not to be a responsible Offeror, a Determination that the Offeror is not a responsible Offeror, setting forth the basis of the finding, shall be prepared by the Purchasing Agent/Procurement Manager. The unreasonable failure of the Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a responsible Offeror (§ 13-1-133 NMSA 1978). Businesses, which have not been selected, shall be so notified in writing within twenty-one days after an award is made (§ 13-1-120 NMSA 1978).

D. Selection Process: (§ 13-1-120 NMSA 1978).

1) An evaluation committee composed of representatives selected by the Contracting Agency will perform an evaluation of proposals. The committee shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project, and their ability to provide the required services.

2) If fewer than three businesses have submitted a statement of qualifications for a particular project, the committee may:

   a) Rank in order of qualifications and submit to the local governing body for award those businesses which have submitted a statement of qualifications; or

   b) Recommend termination of the selection process and sending out of new notices of the proposed procurement pursuant to § 13-1-104 NMSA 1978.

4.3. NEGOTIATIONS (§13-1-122 NMSA 1978)

A. The Contracting Agency's designee shall negotiate a contract with the highest qualified business for the services contemplated under this RFP at compensation determined in writing to be fair and reasonable. In making this decision, the designee shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services.

B. Should the designee be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The designee shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee shall formally terminate negotiations with that business.

C. The designee shall then undertake negotiations with the third most qualified business.

D. Should the designee be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications, and the designee shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new RFP is initiated.

E. The Contracting Agency shall publicly announce the business selected for award.

4.4. NOTICE OF AWARD

After award by the local governing body, a written notice of award shall be issued by the Contracting Agency after review and approval of the proposal and related documents by the Contracting Agency with reasonable promptness (§ 13-1-100 and § 13-1-108 NMSA 1978).

5. POST-PROPOSAL INFORMATION

5.1. PROTESTS

A. Any Offeror who is aggrieved in connection with a solicitation or award of a Agreement may protest to the Contracting Agency's Purchasing Agent and the Chief Administrator/Clerk in accordance with the requirements of the Contracting Agency's Procurement Regulations and the state Procurement Code. The protest should be made in writing within 24 hours after the facts or occurrences giving rise thereto, but in no case later than 15 calendar days after the facts or occurrences giving rise thereto (§ 13-1-172 NMSA 1978).

B. In the event of a timely protest under this section, the Purchasing Agent and the Contracting Agency shall not proceed further with the procurement unless the Purchasing Agent makes a determination that the award of Agreement is necessary to protect substantial interests of the Contracting Agency (§ 13-1-173 NMSA 1978).

C. The Purchasing Agent or the Purchasing Agent's designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (§ 13-1-174 NMSA 1978).

D. The Purchasing Agent or the Purchasing Agent's designee shall promptly issue a determination relating to the protest. The determination shall:

1) State the reasons for the action taken; and

2) Inform the protestant of the right to judicial review of the determination pursuant to § 13-1-183 NMSA 1978.

E. A copy of the determination issued under § 13-1-175 NMSA 1978 shall immediately be mailed to the protestant and other Offerors involved in the procurement (§ 13-1-176 NMSA 1979).

5.2. EXECUTION AND APPROVAL OF AGREEMENT

The Agreement shall be signed by the Successful Offeror and returned within an agreed time frame after the date of the Notice of Award. No Agreement shall be effective until it has been fully executed by all of the parties thereto.

5.3. NOTICE TO PROCEED

The Contracting Agency will issue a written Notice to Proceed to the Consultant.

5.4. OFFEROR'S QUALIFICATION STATEMENT

Offeror to whom award of an Agreement is under consideration shall submit, upon request, information and data to prove that their financial resources, production or service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services described in the Request for Proposals (§ 13-1-82 NMSA 1978).

6. OTHER INSTRUCTIONS TO OFFERORS

Resident Business Preference or Resident Veteran Business Preference (required by House Bill 93, 2016):

Points will be awarded based on Offeror's ability to provide a copy of a current Resident Business certificate or Resident Veteran Business certificate.

6.1 Resident Business Preference

For the Offeror to receive a Resident Business Preference, the business shall submit, with this proposal, a copy of a valid Resident Business certificate issued by the New Mexico Taxation & Revenue Department. The application for preference may be downloaded at the following website: http://www.tax.newmexico.gov/forms-and-publications/pages/recently-updated.aspx.

An Offeror who qualifies as a Resident Business shall receive a 5% preference added to the total possible points of the selection process.

6.2 Resident Veteran Business Preference

For the Offeror to receive a Resident Veteran Business Preference, the business shall complete, sign, and include with the proposal the attached certification form, along with a copy of a valid Resident Veteran Business Preference certificate issued by the New Mexico Taxation & Revenue Department. The application for preference may be downloaded at the following website: http://www.tax.newmexico.gov/forms-and-publications/pages/recently-updated.aspx.

Offerors seeking a Resident Veteran Business Preference will be evaluated as follows:

A. Resident Veteran Businesses with annual gross revenues of up to $3M shall receive a 10% preference added to the total possible points of the selection process.

Preference points are added only once to the total possible points of the overall selection process.

Example: A selection process has total possible points of 1,000 points. Five proposals are received: one from a Resident Business, one from a Resident Veteran Business, and three non-resident businesses. The Resident Business would receive 50 points (5% of 1,000 possible points) and the Resident Veteran Business would receive 100 points (10% of 1,000 possible points) which would be added to the total of their evaluated scores, thereby making it possible for the highest possible total points to be 1,100.

An additional example of the scoring process is attached to this RFP.

Note: Neither the Resident Business Preference nor the Resident Veteran Business Preference can be awarded for any project/contract if it includes federal funds.

6.3 Campaign Contribution Disclosure Form

The Offeror shall submit, with its proposal, the signed Campaign Contribution Disclosure Form with the name(s) of applicable public official(s) filled in on the form.

GENERAL TERMS AND CONDITIONS

1. GOVERNING LAW

The Agreement shall be governed exclusively by the laws of the State of New Mexico as the same from time to time exists.

2. INDEPENDENT CONTRACTORS

The Consultant (design professionals) and the Consultant's agents and employees are independent Contractors and are not employees of the Contracting Agency. The Consultant and Consultant's agents and employees shall not accrue leave, retirement, insurance, bonding, use of Contracting Agency vehicles, or any other benefits afforded to employees of the Contracting Agency as a result of the Agreement.

3. BRIBES, GRATUITIES AND KICK-BACKS

Pursuant to §13-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico (including § 30-14-1, § 30-24-2, and § 30-41-1 through § 30-41-3 NMSA 1978) which prohibits bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (§ 13-1-28 through § 13-1-199 NMSA 1978) imposes civil and criminal penalties for its violation.

4. STANDARD FORM OF AGREEMENT BETWEEN CONTRACTING AGENCY AND CONSULTANT (Design Professional)

The form of agreement required by the funding agency or issued by the Contracting Agency will be used for this project. Copies are available and may be reviewed upon request.

5. FEES

A lump sum fixed fee for Basic Services will be negotiated with the Offeror selected.

Additional Services may also be negotiated with the Offeror selected.

6. FUNDING

This solicitation is subject to the availability of funds to accomplish the work.

7. DESIGN PROFESSIONAL REGISTRATION

All work shall be under the direction of the applicable design professional legally licensed and registered by the State.

8. PROFESSIONAL LIABILITY INSURANCE

The Offeror ☒ **will** ☐ **will not** be required to carry professional liability (errors and omissions) insurance. If required to carry such insurance, the amount of coverage will be $1,000,000.00.

Note to Owner Regarding Evaluation Criteria

The Request for Proposal must include each of the following Evaluation Criteria* as required by statute (§ 13-1-120.B NMSA 1978). Each proposal submitted must address the required Evaluation Criteria. Based on the complexity of the project, the Owner may add additional items to be evaluated. The Owner must assign a weight factor to each of the Evaluation Criteria to communicate to Offerors the relative importance of each.

EVALUATION CRITERIA:

1. **Specialized Design and Technical Competence***

   Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required.

2. **Capacity and Capability***

   Capacity and capability of the business, including any consultants, their representatives, qualifications, and locations, to perform the work, including any specialized services, within the time limitations.

3. **Past Record of Performance***

   Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules.

4. **Familiarity with the Contracting Agency***

   Proximity to or familiarity with the area in which the project is located.

5. **Work to be Done in New Mexico***

   The amount of design work that will be produced by a New Mexico business within this state. ***Note: Not allowed for federally funded projects.***

6. **Current Volume of Work with the Contracting Agency Not 75% Complete***

   The volume of work previously done for the entity requesting proposals which is not seventy-five percent complete with respect to basic professional design services [through bidding phase], with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring the interest of the public in having available a substantial number of qualified businesses is protected; however, that the principal of selection of the most highly qualified business is not violated.

   Indicate the volume of work currently underway with the Contracting Agency that is less than seventy-five percent complete. An example of how points can be assigned is provided below:

Value of work not yet completed on projects that are not 75% Complete	(Example) Points to be allowed for this item
None	5
$1 to $ 25,000	4
25,001 to 50,000	3
50,001 to 75,000	2
75,001 to 100,000	1
100,001 or more	0

7. **Other Contracting Agency Criteria**

   The Owner may add additional elements to be evaluated, such as Public Involvement Experience, and assign points according to their importance. ***Note: Price cannot be a factor (§ 13-1-120.B NMSA 1978).*** *Price of any type, i.e. fees, fee schedule, etc.,* ***cannot*** *be included with the proposal. This includes a separate sealed envelope, which also is not allowed.*

RFP EVALUATION CRITERIA

EVALUATION CRITERIA AND POINT VALUES

OFFERORS:
Proposal must address each of the following criteria. Each proposal may be awarded points up to the amount listed.

RATING SHEET FOR: **Applicant** _____		
ITEM	**POSSIBLE POINTS**	**SCORE**
PLANNING & DESIGN SERVICES		
1. **Specialized Design and Technical Competence***	_____ (30)	
2. **Capacity and Capability***	_____ (25)	
3. **Past Record of Performance***	_____ (25)	
4. **Familiarity with the Contracting Agency ***	_____ (10)	
5. **Work to be Done in New Mexico*** *Note: Not allowed for federally funded projects. Assign Possible Points of 0 if federal funds are involved.*	_____ (0)	
6. **Current Volume of Work with the Contracting Agency Not 75% Complete***	_____ (5)	
7. **Other Contracting Agent Criteria** (if desired)	_____ (0)	
SUBTOTAL (total possible points for PLANNING & DESIGN SERVICES)	_____ (95)	

Items required by statute (§ 13-1-120.B NMSA 1978).

RATING SHEET (CONTINUED) FOR: Applicant _____		
ITEM	**POSSIBLE POINTS**	**SCORE**
CONSTRUCTION OBSERVATION SERVICES		
1. Construction observation experience.	_____ (5)	
2. Experience with start up assistance to the Owner of new facilities, if applicable.	_____ (5)	
3. Capacity and capability of the consultant to provide strategies to assist in meeting the Owner's construction timeframe.	_____ (5)	
4. History of past performance, including the record of bid amount versus final close out contract amount.	_____ (5)	
5. History of legal claims, if applicable, on similar construction projects and their resolution. The consultant should detail their claims avoidance approach and construction observation philosophy.	_____ (5)	
6. Other	_____ (0)	
7. Other	_____ (0)	
SUBTOTAL (total possible points for CONSTRUCTION OBSERVATION SERVICES)	_____ (25)	
TOTAL SCORE (total possible points for PLANNING & DESIGN SERVICES **and** CONSTRUCTION OBSERVATION SERVICES)	_____ (120)	

Interviews ☒ may be held ☐ will not be held for this project, _____.

INTERVIEW EVALUATION CRITERIA

INTERVIEW RATING SHEET FOR: Applicant _____		
ITEM	**POSSIBLE POINTS**	**SCORE**
1. Describe your project manager's and project team's experience specifically relevant to this project.	_____ (10)	
2. What unique experience does your project team have that can be applied to the successful completion of this project?	_____ (15)	
3. Describe the approach your project team will take to successfully complete this project.	_____ (20)	
4. What are the project's critical issues, and how will your project team approach and address them?	_____ (15)	
5. What challenges do you foresee for this project, and how will your project team address and overcome them?	_____ (15)	
6. What innovative ideas or concepts will your project team apply to this project?	_____ (15)	
7. Describe the strengths and weaknesses of your project team?	_____ (10)	
6. Other	_____ (0)	
7. Other	_____ (0)	
TOTAL SCORE	_____ (100)	

The above are suggested EVALUATION CRITERIA and POSSIBLE POINTS for interviews.

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars ($250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"**Applicable public official**" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"**Campaign Contribution**" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"**Family member**" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

"**Pendency of the procurement process**" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"**Prospective contractor**" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

"**Representative of a prospective contractor**" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any:
Mayor Sandra Whitehead, Mayor Pro-tem Amanda Forrister, Commissioner Paul Baca, Commissioner Francis Luna, Commissioner Randall Aragon

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

_____ _____
Signature Date

_____
Title (position)

--OR—

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

_____ _____
Signature Date

_____
Title (Position)

Veterans Preference Certification

_____ (Name of Business) hereby certifies the following in regard to application of the resident veteran preference to this formal request for proposals process:

Please check one box only:

☐ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than $3M allowing me the 10% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

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

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

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

_____ _____

(signature of Business Representative)* (Date)

*Must be an authorized signatory for the Business.

The representation made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or unaward of the procurement involved if the statements are proven incorrect.

EXAMPLE OF SCORING

	Total Possible Points	**Consultant Firm A (Resident Veteran Business)**	**Consultant Firm B (Resident Business)**	**Consultant Firm C**
Score from **PLANNING & DESIGN SERVICES** Section	100	90	85	80
Score from **CONSTRUCTION OBSERVATION SERVICES** Section (N/A if Section not included)	25	20	25	20
Score from **INTERVIEW** Section (N/A if Section not included)	100	90	85	80
Subtotal Score		200	195	180
Total Possible Points (of all Sections included)	225			
Total Preference Points Applied, **if applicable** (total preference points for Resident Business is equal to 5% of the Total Possible Points **or** Resident Veteran Business is equal to 10% of the total possible points); **only one can apply**		22.5 Because Consultant Firm A is a Resident Veteran Business, 22.5 points (10% of the Total Possible Points of 225) are added to the firm's Subtotal	11.25 Because Consultant Firm B is a Resident Business, 11.25 points (5% of the Total Possible Points of 225) are added to the firm's Subtotal	0 Because Consultant Firm C is neither a Veteran Resident Business nor a Resident Business, 0 points are added to the firm's Subtotal
Total Score		222.5	206.25	180

Notes:

*Neither the Resident Business Preference nor the Resident Veteran Business Preference can be awarded for any project/contract if it includes **federal funds**.*

*Either the Resident Business Preference **or** the Resident Veteran Business Preference is applied. Both cannot be applied to the score of an individual Consultant Firm.*

City of Truth or Consequences
505 Sims Street
Truth or Consequences, New Mexico 87901
City (575) 894-6673 ▪ Fax (575) 894-7767

Multiple Engineering and Architecture Projects under a Single Contract
RFP #20-21-011

ADDENDUM NO 1.

This addendum No. 1 shall be incorporated into the above Request for Proposals documents the same as if originally contained therein.

Each proposer shall acknowledge receipt of this Addendum No. 1. Failure to do so could render the proposer non-responsive.

INSERT THE FOLLOWING TO FUNDING TYPE:

1. Federal Aviation Administration

All other provisions of the Request for Proposals shall remain unchanged. This Addendum No. 1 is hereby made a part of the Request for Proposals Documents to the same extent as those provisions contained in the original documents and listing thereof.

City of Truth or Consequences

Kristin Saavedra 02/09/2021

Kristin Saavedra, Chief Procurement Officer Date

CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 27, 2021

Agenda Item #: F.3

SUBJECT: Approve Professional Services Agreement with Wilson and Company for Water System Performance Improvements Phase 1.
DEPARTMENT: Assistant City Manager
DATE SUBMITTED: October 21, 2021
SUBMITTED BY: Traci Alvarez
WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:
Refer to Scope of Work - Water System Improvements Phase 1 summary in separate attachment.
(PER 1 in its entirety available on request – 456 pages)

Recommendation:
Approve and enter into professional services agreement with Wilson and Co.

Attachments:
- Scope of Work - Water System Performance Improvements 1 – Summary
- T or C WSI Phase1 - WCI Engineering Agreement USDA-RD E-500_rev3

-

Fiscal Impact (Finance): **Yes**

USDA Letter of Conditions attached

Legal Review (City Attorney): **N/A**

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 10-27-2021

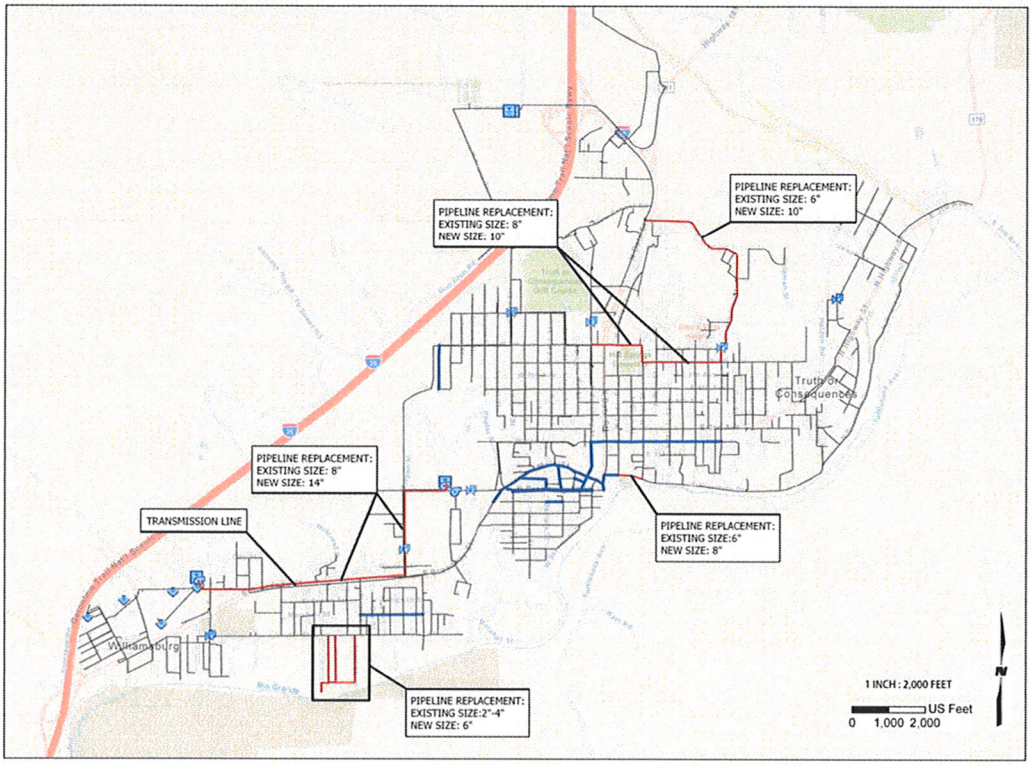
Water System Performance Improvements 1
City of Truth or Consequences, New Mexico

Summary:

This $7,531,000.00 project funded by USDA addresses the high-pressure issues in the "West" and "Williamsburg" areas by replacing the Cook St. to Morgan St. main transmission line and installing main lines PRV to eliminate high pressures issues within the City's water system. This project replaces 6.2 percent of the existing waterlines within the city that are 6 inches or less diameter, with new pipeline PVC C-900 DR -18 pipelines 6 inches or greater. This project will replace 26.7 percent of pipe over 30 years old, this replacement also upgrades around 16.9 percent of the Asbestos Cement (AC), Cast iron (CI), and Ductile Iron (DI) material in the existing system. All waterlines will be replaced via open trench by placing the new line parallel to the existing and abandoning the existing waterline in place. The new water line is assumed to be installed in the shoulder of the road, with 6-12' of pavement removal, and removal of any sidewalks and, curb and gutters. Areas of the City of Truth or Consequences were evaluated based on current GIS information, upsizing the existing water line to a 6, 8, 10, and 12, inch will significantly adjust available pressure in the City as well as provide for better fire flow capacity including important areas such as the City's hospital and a City's high school. This alternative significantly regulates the pressure throughout the City and provide for better fire flow capacity. All water meters along these line replacements will be replaced.

Details:

1) Six Additional Pressure Reducing Valves (PRV) are recommended to be installed within system on the northern and south part of the city. This is to avoid high pressure peaks which results in water breaks within the city's neighborhoods.
2) Four particular waterlines will be replaced are also known as the main transmission lines, with their primary purpose is to ensure that water is efficiently distributed throughout the city.
   a) A new transmission line will be installed that runs from Cook Street Booster station to Morgan Street Booster station to finally provide water flow to multiple areas of the city. Installation of this line will reduce the 30-psi pressure fluctuation in the system, mostly in the "Williamsburg" and "East" areas.
   b) The existing 6" waterline will be replaced with 10" PVC waterline which is located on the "North" area feeding the City's high school and hospital. This will provide adequate fire flow to these facilities and increase the water distribution to the "East" area of the city.
   c) Upsizing a main cast iron waterline to 10" PVC, located on portions of East 8th and East 9th Streets in the "East" side of the city, will increase the water quality that is currently reduced by the aging cast iron pipe, along with increasing the water distribution to the "West" area of the city.
   d) Replacing and looping an area in the "Williamsburg" area will also prevent pressure fluctuation in the "Williamsburg" area and will ensure its water quality.
3) Water meters will be replaced along the section of the waterline replacements. The new meters shall be automatic radio read meters integrated into the city's electrical billing system. This will reduce the manpower needed to read the meters, which will reduce the labor cost on the system.



WILSON & COMPANY
HIGHER RELATIONSHIPS

PRELIMINARY
ENGINEERING REPORT

WATER SYSTEM IMPROVEMENTS

TRUTH OR CONSEQUENCES

Legend
- Proposed PRV
- Well
- Booster Station
- Tank
- Existing Waterline
- Funded Upgrades
- Recommended

III-A, SYSTEM HIGH PRESSURE SOLUTIONS

FIGURE 13

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of October 27, 2021 ("Effective Date") between

City of Truth or Consequences ("Owner") and

Wilson & Company, Inc., Engineers & Architects ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
Water System Performance Improvements – Phase 1

("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:
Completion of a Preliminary Engineering Report, Categorical Exclusion with Report, Engineering Design, Construction Contract Package, and Construction Oversight to meet USDA funding requirements as described in Exhibit A.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

A. Owner shall have the responsibilities set forth herein and in Exhibit B.

B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.

C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:

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1. any development that affects the scope or time of performance of Engineer's services;

2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Invoices will include a breakdown of services provided. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

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4.02 *Payments*

A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.

B. *Failure to Pay*: If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.

D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate. Opinions of Probable Cost and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

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5.02 *Designing to Construction Cost Limit*

A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs. Opinions of Total Project Costs and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. Engineer and Owner shall comply with applicable Laws and Regulations.

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2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:

   a. changes after the Effective Date to Laws and Regulations;

   b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;

   c. changes after the Effective Date to Owner-provided written policies or procedures.

F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.

H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.

J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.

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K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

L. Engineer's services do not include providing legal advice or representation.

M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.

B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.

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C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer may jointly develop such protocols.

C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

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B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.

C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.

D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

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1. *By Owner*: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.

2. *By Engineer*: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination*: The obligation to provide further services under this Agreement may be terminated:

1. For cause,

   a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

   b. by Engineer:

      1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

      2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.

      3) Engineer shall have no liability to Owner on account of such termination.

   c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose

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value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

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2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.

B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.

B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.

D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.

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F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**

B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**

C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.

E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and

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in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

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ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.

5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.

7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901

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et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.

10. *Construction Contract Documents*—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.

11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.

13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.

16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.

17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables,

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whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

20. *Engineer*—The individual or entity named as such in this Agreement.

21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.

22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.

24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.

25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.

27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

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28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and

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is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

38. *Agency* – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.

B. *Day*:

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

A. Exhibit A, Engineer's Services.

B. Exhibit B, Owner's Responsibilities.

C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.

D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.

E. Exhibit E, Notice of Acceptability of Work.

F. Exhibit F, Construction Cost Limit.

G. Exhibit G, Insurance.

H. Exhibit H, Dispute Resolution.

I. Exhibit I, Limitations of Liability.

J. Exhibit J, Special Provisions. **[Not Used]**

K. Exhibit K, Amendment to Owner-Engineer Agreement. **[Not Used]**

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8.02 *Total Agreement*

A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *Federal Requirements*

A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 (2014) hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.

B. Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents,

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papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

C. Restrictions on Lobbying. Engineer and each Consultant shall comply with *"Byrd anti-lobbying amendment (31 U.S.C. 1352)"* if they are recipients of engineering services contracts and subcontracts that exceed $100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

D. Suspension and Debarment. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Truth or Consequences

By: _____
Print name: _____
Title: _____
Date Signed: _____

Address for Owner's receipt of notices:

_____
_____
City of Truth or Consequences, NM 87901
Designated Representative (Paragraph 8.03.A):

_____
Title: _____
Phone Number: _____
E-Mail Address: _____

Engineer: Wilson & Company, Inc., Engineers & Architects

By: _____
Print name: Daniel S. Aguirre
Title: Sr. Vice President
Date Signed: 10/20/2021

Engineer License or Firm's Certificate No. (if required):

State of: _____

Address for Engineer's receipt of notices:
Wilson & Company Inc., Engineers & Architects
44401 Masthead St., NE, Suite 150
Albuquerque, NM 87109
Designated Representative (Paragraph 8.03.A):
Daniel S. Aguirre
Title: Sr Vice President
Phone Number: 505 948 5118
E-Mail Address: Daniel.Aguirre@wilsonco.com

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This is **EXHIBIT A**, consisting of **21** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 27, 2021**.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 *Study and Report Phase*

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.

   a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: *N/A*

   b. In addition, Engineer must identify, study and evaluate multiple potential alternative solutions potentially available to the Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.

2. Identify potential solution(s) to meet Owner's Project requirements, as needed.

3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.

4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.

5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.

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6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.

7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.

8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs. The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency.

9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.

10. When mutually agreed and approved by the Agency, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."

11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.

12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.

13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.

14. Perform or provide the following other Study and Report Phase tasks or deliverables:

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a. Environmental Documentation: It is expected that the level of environmental documentation for this project includes the preparation of an Environmental Report in support of a Categorical Exclusion (CE). The Environmental Report will be prepared in accordance with RD Instruction 1970-B Section 1970.54. The Environmental Report must be concurred in by the Agency.

b. Hazardous Materials: Wilson & Company has not been made aware of any hazardous materials or conditions within the project area. If any hazardous conditions/materials are identified within the project area that require any clearances, permits, assessments or mitigation measures beyond the environmental report scope as defined by RD Instruction 1970-B Section 1970.54, additional fees would be required.

c. Other Environmental Resource Analysis to Support CE: Hours are included for additional environmental resource analysis necessary to support the CE, as may be required by the USDA. Resources may include, but are not limited to noise, air quality, trails and park/recreation facilities.

d. Agency Consultation, Letters and Meetings: Wilson & Company will contact and submit correspondence to all applicable Tribes, State Historical Preservation Office and other applicable Federal, State, and Local Agencies as required to complete an environmental report.

e. Environmental Report Preparation: Wilson will develop a draft copy of the Environmental Report required to support the CE and forward to the Village to review. Once finalized, Wilson will submit the document to the USDA. All documentation, including figures, tables and Appendices required for completion of the Environmental Report will be completed consistent with USDA standards.

f. CE Documentation: Wilson will develop a draft copy of the CE and forward to the Village to review. Once finalized, Wilson will submit the document to the USDA. All documentation, including figures, tables and Appendices required for completion of the CE will be completed consistent with USDA standards.

g. If any public involvement, "formal consultations" or additional meetings are required beyond the scope of an environmental report to complete an environmental assessment (EA) or Environmental Information Document (EIS), additional scope and fees will be negotiated.

15. Furnish **Two (2)** review copies of the Report and any other Study and Report Phase deliverables to Owner within **187** days of the Effective Date and review it with Owner. Within **7** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and

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one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within **90** days of receipt of Owner's and Agency's comments.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 *Preliminary Design Phase*

A. After acceptance by Owner and concurrence by Agency of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner and Agency during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.

3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.

4. Visit the Site as needed to prepare the Preliminary Design Phase documents.

5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.

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6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.

7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.

8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable. Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.

9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:

   NA

10. Furnish **[2]** review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within **[210]** days of authorization to proceed with this phase, and review them with Owner. Within **[14]** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner **[2]** copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within **[14]** days after receipt of Owner's comments.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

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A1.03 *Final Design Phase*

A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.

2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.

3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.

4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.

5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.

6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.

7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.

8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.

9. Perform or provide the following other Final Design Phase tasks or deliverables:

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The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards.

10. Furnish for review by Owner, its legal counsel and Agency, and other advisors, **[1]** copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within **[365]** days of authorization to proceed with the Final Design Phase, and review them with Owner. Within **[7]** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.

11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit **[4]** final copies of such documents to Owner within **[14]** days after receipt of Owner's comments and instructions.

12. Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer's Certifications (Exhibit A, Attachment 6) for this purpose.

13. Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products referenced in engineering analysis, the Plans, Specifications, and Bidding Documents requiring design revisions are either produced in the United States or are the subject of an approved waiver; and services required to determine to the best of the engineer's knowledge and belief that approved substitutes, equals, and all iron and steel products proposed in the Plans, Specifications, and Bidding Documents are either produced in the United States or are the subject of an approved waiver under AIS.

B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables and all final design phase deliverables have been accepted by Owner.

C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for

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performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is **[1]**. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.

2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.

3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.

4. Consult with Owner as to the qualifications of prospective contractors.

5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.

6.

a. The Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved "or equals" and substitutes. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and

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applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

b. Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products referenced in Bid Addenda requiring design revisions are either produced in the United States or are the subject of an approved waiver.

7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.

8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.

9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:

   Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.

10. Provide copies of Manufacturers' Certification letters to the Bidders on any brand name iron and steel products along with the Plans, Specifications and Bidding Documents. Manufacturers' Certification Letters are to be included in the Bidding Documents and must be kept in the engineer's project file and on site during construction.

11. Provide copies of Manufacturers' Certification letters to the Contractor on any brand name iron and steel products along with the Plans, Specifications, Bidding Documents including any Bid Addenda and Change Orders. Manufacturers' Certification Letters must be kept in the engineer's project file and on site during construction.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 *Construction Phase*

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions

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specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.

3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.

4. *Pre-Construction Conference:* Participate in and chair a pre-construction conference prior to commencement of Work at the Site.

5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.

6. *Original Documents:* Maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.

8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.

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9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:

   a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

   b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

   c. The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.

10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction

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Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.

11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.

12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.

14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.

15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.

16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.

17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, including Applications for Payment, to ensure compliance with AIS. Any iron and steel products included in any submittal by the General Contractor, must include a Manufacturers' Certification letter to verify the products were produced in the United States. Copies of Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction. In the event the Engineer requires an item to

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be sole-source, the Engineer must furnish the Manufacturers Certification to the Contractor for said item. Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Contract and applicable Agency regulations. Prior to approval of any substitute "or equal" review Manufacturers' Certifications provided by the Contractor to verify the product(s) meet AIS requirements. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction to ensure compliance with AIS.

19. *Inspections and Tests:*

    a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

    b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.

    c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.

    d. Receive and review all Manufacturers' Certifications for materials required to comply with AIS. Manufacturers' Certifications must be kept in the Engineer's project file and on-site during construction.

20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the

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design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims. (c) Review Change Proposals to ensure compliance with AIS.

21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

    a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

    b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

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22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. ~~Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.~~ Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner

23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:

    a. Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.

25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.

    a. Obtain the Contractors' Certification letter and copies of Manufacturers' Certifications from the Contractor for all American Iron and Steel products used in the project. Upon Substantial Completion, provide copies of Contractors' and Manufacturers' Certifications to the Owner and a copy of Contractor's Certification to the Agency.

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26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

    a. Obtain the Contractors' Certification letter and copies of Manufacturers' Certification letters for all American Iron and Steel products used in the project. Upon Substantial Completion, provide copies of Engineer's, Contractors', and Manufacturers' Certification letters to the Owner and a copy of Contractor's Certification letter to the Agency. Provide a list of manufacturers of American Iron and Steel products used in the project and include manufacturer's name and location, and product(s) to the Agency.

B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:

1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.

2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.

3. Perform or provide the following other Post-Construction Phase tasks or deliverables:

NA

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B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements not including preparation of the Environmental Report defined under Basic Services; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.

3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.

4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2, but only if the Owner's request is made after completion of the Study and Report Phase.

5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.

7. Undertaking investigations and studies including, but not limited to:

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a. detailed consideration of operations, maintenance, and overhead expenses;

b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;

c. preparation of appraisals;

d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;

e. detailed quantity surveys of materials, equipment, and labor; and

f. audits or inventories required in connection with construction performed or furnished by Owner.

8. Furnishing services of Consultants for other than Basic Services.

9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.

10. Providing the following services:

    a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.

    b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.

11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).

12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.

13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.

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14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.

15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.

16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.

17. **[Deleted].**

18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.

19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.

20. Preparation of operation, maintenance, and staffing manuals.

21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).

22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.

23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.

24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.

25. Overtime work requiring higher than regular rates.

26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

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27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.

28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).

29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.

2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.

3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.

6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.

7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.

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8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

B. Owners are ultimately responsible for compliance with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference and will be responsible for the following:

A. Sign loan resolutions, grant agreements and letters of intent to meet conditions which include American Iron and Steel language, accepting American Iron and Steel requirements in those documents and in the letter of conditions.

B. Sign change orders (i.e. C-941 of EJCDC) and partial payment estimates (i.e. C-620 of EJCDC) and thereby acknowledge responsibility for compliance with American Iron and Steel requirements.

C. Obtain the certification letters from the Engineer upon Substantial Completion of the project and maintain this documentation for the life of the loan.

D. Where the Owner directly procures American Iron and Steel products,

1. Include American Iron and Steel clauses in the procurement contracts;

2. Obtain Manufacturers' Certifications; and

3. Provide copies to Engineers and Contractors.

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This is **EXHIBIT B**, consisting of **4** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 27, 2021**.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.

B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.

C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.

D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

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1. Property descriptions.

2. Zoning, deed, and other land use restrictions.

3. Utility and topographic mapping and surveys.

4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.

5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.

6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.

7. Data or consultations as required for the Project but not otherwise identified in this Agreement.

E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:

1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.

2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.

3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.

G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their

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incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.

J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.

O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.

P. Place and pay for advertisement for Bids in appropriate publications.

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Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.

R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

B2.02 Owners are ultimately responsible for compliance with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference and will be responsible for the following:

A. ***Signing*** loan resolutions, grant agreements and letters of intent to meet conditions which include American Iron and Steel language, accepting American Iron and Steel requirements in those documents and in the letter of conditions.

B. ***Signing*** change orders (i.e. C-941 of EJCDC) and partial payment estimates (i.e. C-620 of EJCDC) and thereby ***acknowledging*** responsibility for compliance with American Iron and Steel requirements.

C. ***Obtaining*** the certification letters from the consulting engineer upon substantial completion of the project and ***maintaining*** this documentation for the life of the loan.

D. Where the owner provides their own engineering and/or construction services, ***providing*** copies of engineers', contractors', and manufacturers' certification letters (as applicable) to the Agency. All certification letters must be kept in the engineer's project file and on site during construction. For Owner Construction (Force Account), all clauses from Section 17 of RUS Bulletin 1780-35 must be included in the Agreement for Engineering Services.

E. Where the owner directly procures American Iron and Steel products, ***including*** American Iron and Steel clauses in the procurement contracts and ***obtaining*** manufacturers' certification letters and ***providing*** copies to consulting engineers and contractors.

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This is **EXHIBIT C**, consisting of **5** pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated **October 27, 2021**.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 *Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer's Resident Project Representative, if any, as follows:

1. A Lump Sum amount of **$846,258.00**, excluding gross receipt tax as shown on Appendix 3 to Exhibit C and based on the following estimated distribution of compensation:

a.	Predevelopment Work (PER/ER)	$[47,000.00]
b.	Design	$[554,850.00]
c.	Additional Services (Stated in PER)	$[168,475.00]
d.	Construction Management	$[75,933.00]

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner and Agency.

3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.

4. Reimbursable expenses for Basic Services will be itemized in Appendix 1 of Exhibit C, with rates and charges listed, and with a not to exceed value for each reimbursable expense. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges):

   a. Vehicle Mileage

5. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the

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billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding **thirty (30)** months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted with concurrence of the Owner and Agency .

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COMPENSATION PACKET RPR-1:
Resident Project Representative – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 *Compensation for Resident Project Representative Basic Services – Lump Sum Method of Payment*

C. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. *Resident Project Representative Services*: For services of Engineer's Resident Project Representative, if any, under Paragraph A1.05 of Exhibit A, the Lump Sum amount of **$235,270.00.** The Lump Sum includes compensation for the Resident Project Representative's services. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, and expenses (other than any expressly allowed Reimbursable Expenses) related to the Resident Project Representative's Services.

2. *Reimbursable Expenses:* In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following RPR Reimbursable Expenses (see Appendix 1 for rates or charges):

   a. Vehicle Mileage

3. *Resident Project Representative Schedule:* The Lump Sum amount set forth in Paragraph C2.04.A.1 above is based on full-time RPR services on an eight-hour workday Monday through Friday for a **250 day** construction schedule. Modifications to the schedule shall entitle Engineer to an equitable adjustment of compensation for RPR services. Changes will not be effective unless and until concurred by the Owner and Agency.

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COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General*: For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.

2. Additional Services will be completed on a Time & Materials basis in accordance with the rate schedule provided in Appendix 2 of Exhibit C. Cost proposals for all work will be provided prior to starting Additional Service.

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.

2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.

3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of **1.1**.

4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer. Changes will not be effective unless and until concurred in by the Owner and Agency.

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C. *Other Provisions Concerning Payment for Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of **1.1**.

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at no cost.

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This is **Appendix 1 to EXHIBIT C**, consisting of **1** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 27, 2021**.

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

DIRECT EXPENSES			BILLING RATE
Reproduction	per B&W 8.5x11 copy	Unit Rate=	$0.06
	per B&W 11x17 copy	Unit Rate=	$0.12
	per Color 8.5x11 copy	Unit Rate=	$0.24
	per Color 11x17 copy	Unit Rate=	$0.47
	Foam Core Board	Unit Rate=	$13.95
Mileage (CM)	per mile	Unit Rate=	$0.58
Mileage (Eng)	per mile	Unit Rate=	$0.58
Meals and Lodging		Unit Rate=	At Cost

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This is **Appendix 2 to EXHIBIT C**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 27, 2021.**

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

2. The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

1. Hourly rates for services performed on or after the date of the Agreement are as shown on below:

Rate Schedule - 2020/2021 - Modified			
Employee/Class/Activity Type, Code & Name		*Reg. Rate*	*O/T Rate*
A1	INTERN ARCHITECT/JOB CPTN(UNLIC)	74.00	111.00
A2	INTERN ARCHITECT/JOB CPTN(UNLIC)	90.00	134.00
A3	INTERN ARCHITECT/JOB CPTN(UNLIC)	111.00	166.00
A4	ARCHITECT/(LICENSED)	123.00	184.00
A5	ARCHITECT (LICENSED)	138.00	138.00
A6	ARCHITECT (LICENSED)	157.00	157.00
A7	ARCHITECT (LICENSED)	192.00	192.00
AD1	RECEPTIONIST/FILECLERK/MAINT I	51.00	76.00
AD2	ADMIN ASST II/ RECEPT/MAINT II	61.00	91.00
AD3	ADMIN ASST III/ RECEPT/MAINTIII	70.00	105.00
AD4	ADMIN ASST IV/EXEC ASST IV	80.00	120.00
AD5	SR ADMIN V/EXEX ASST V/ ADM MGR	90.00	134.00
FC1	CONSTRUCTION OBSERVER	56.00	83.00
FC2	CONSTRUCTION OBSERVER	65.00	98.00
FC3	CONSTRUCTION OBSERVER	75.00	112.00
FC4	CONSTRUCTION OBSERVER	91.00	136.00
FC5	CONSTRUCTION OBSERVER	115.00	172.00
FC6	CONSTRUCTION OBSERVER	120.00	120.00
FC7	CONSTRUCTION OBSERVER	134.00	134.00
FS1	CHAINMAN	53.00	79.00
FS2	RODMAN	62.00	93.00
FS3	INSTRUMENTMAN	72.00	108.00
FS4	PARTY CHIEF	82.00	123.00
FS5	CHIEF SURVEYOR, FIELD SUPERVISOR	109.00	105.00

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Rate Schedule - 2020/2021 – Modified (cont.)			
Employee/Class/Activity Type, Code & Name		*Reg. Rate*	*O/T Rate*
FS6	DEPARTMENT HEAD	150.00	134.00
FS7	SR DEPARTMENT MANAGER	192.00	173.00
IA1	INTERN	47.00	70.00
IA2	COLLEGE STUDENT	53.00	79.00
IA3	GRAD STUDENT/COLLEGE GRAD	57.00	85.00
MK1	MRK ASST/GRAPHICS ARTIST	53.00	53.00
MK2	MRK ASST/GRAPHICS ARTIST	66.00	99.00
MK3	MRK CORD III/GRAPIC ART III	86.00	128.00
MK4	MRK MGR IV/ GRAPHDESIGN IV/ JR BD	105.00	157.00
OD1	APPRENTICE DRAFTER	53.00	79.00
OD2	DRAFTER, TRACER, PLOTTER OPERAT	62.00	93.00
OD3	DRAFTER, DETAILER	76.00	114.00
OD4	SR DRAFT, DETAIL, CAD OPERATOR	95.00	143.00
OD5	SR DRAFT, DETAIL, SQUAD LEADER	108.00	162.00
OD6	CHIEF DRAFTER	109.00	163.00
OF6	ASSOCIATE VICE PRESIDENT	221.00	221.00
OF7	VICE PRESIDENT	250.00	250.00
OF8	SR VICE PRESIDENT	279.00	279.00
OP1	APPRENTICE STEREO OPERATOR	53.00	79.00
OP2	STEREO OPERATOR	62.00	93.00
OP3	STEREO OPERATOR	72.00	108.00
OP4	SR STEREO OPER, SQUAD LEADER	82.00	123.00
OP5	PHOTOGRAMMETRIST, SUPERVISOR	95.00	95.00
OP6	CHIEF PHOTOGRAM, DEPARTMENT HEAD	124.00	124.00
OP7	CHIEF PHOTOGRAM	154.00	154.00
P1	GRAD ENG/ARCH IN RES (UNLIC)	86.00	129.00
P2	GRAD ENG/ARCH IN RES (UNLIC)	97.00	145.50
P3	STAFF DETAIL DESIGNER (UNLIC)	113.00	169.50
P4	STAFF DETAIL DESIGNER (LICENSED)	142.00	142.00
P5	PROJECT DESIGNER (LICENSED)	184.00	184.00
P6	PROJECT DESIGNER (LICENSED)	212.00	212.00
P7	DEPT HEAD, PRINCIPALS, (LIC)	250.00	277.00
P8	PRINCIPALS (LICENSED)	279.00	277.00
PD1	DETAIL DESIGNER (UNLICENSED)	72.00	108.00
PD2	SR DETAIL DESIGNER (UNLICENSED)	82.00	123.00
PD3	SENIOR DESIGNER II	109.00	163.00
PD4	SENIOR DESIGNER III	121.00	181.00
SP1	RE SPEC/PLNNR/SR ROW/PM/OTHR	90.00	134.00
SP3	SR RE SPEC/PLNNR/SR ROW/PM/OTHR	109.00	163.00
SP4	SR RE SPEC/PLNNR/SR ROW/PM/OTHR	144.00	216.00
SP6	SR RE SPEC/PLNNR/SR ROW/PM/OTHR	250.00	245.00

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This is **EXHIBIT D**, consisting of 6 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 27, 2021**.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 *Resident Project Representative*

A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.

B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.

C. The duties and responsibilities of the RPR are as follows:

1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

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2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

5. *Liaison:*

    a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.

    b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

    c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,

7. *Shop Drawings and Samples:*

    a. Record date of receipt of Samples and Contractor-approved Shop Drawings.

    b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

    c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.

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8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.

9. *Review of Work; Defective Work:*

   a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.

   b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and

   c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

    a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.

    b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

    c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

    d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.

    e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records*:

    a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field

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Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.

b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.

d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

e. Maintain records for use in preparing Project documentation.

f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

g. Maintain all Manufacturers' Certification letters in the project file and on site during construction to ensure compliance with American and Iron Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference, a applicable.

12. *Reports:*

a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

b. [Deleted]

c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.

d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage

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to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion*:

    a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

    b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

    c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in this Agreement.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.

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5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

8. Authorize Owner to occupy the Project in whole or in part.

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This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 27, 2021**.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT: **Water System Performance Improvements – Phase 1**

OWNER: **City of Truth or Consequences**

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER: **Wilson & Company, Inc., Engineers & Architects**

NOTICE DATE:

To: _____
Owner

And To: _____
Contractor

From: _____
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated **September 20, 2021**, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

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1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

2. This Notice reflects and is an expression of the Engineer's professional opinion.

3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.

4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.

5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.

6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

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This is **EXHIBIT F**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 27, 2021**.

Construction Cost Limit

Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

F5.02 *Designing to Construction Cost Limit*

A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of **$4,930,683.00**.

B. A bidding or negotiating contingency of **10** percent will be added to any Construction Cost limit established.

C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then-established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.

D. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit. Engineer's determinations on types and quality of materials, equipment, and component systems to be included in the Drawings and Specifications are subject to approval by Agency in accordance with requirements of 7 CFR 1780, including open and free competition.

E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.

F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The

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providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

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This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 27, 2021**.

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

a. Workers' Compensation: Statutory

b. Employer's Liability --

1) Bodily injury, each accident: $1,000,000
2) Bodily injury by disease, each employee: $1,000,000
3) Bodily injury/disease, aggregate: $1,000,000

c. General Liability --

1) Each Occurrence (Bodily Injury and Property Damage): $1,000,000
2) General Aggregate: $1,000,000

d. Excess or Umbrella Liability --

1) Per Occurrence: $1,000,000
2) General Aggregate: $1,000,000

e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):

$1,000,000

f. Professional Liability –

1) Each Claim Made $1,000,000
2) Annual Aggregate $1,000,000

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2. By Owner:

   a. Workers' Compensation: Statutory

   b. Employer's Liability --

      1) Bodily injury, Each Accident $1,000,000
      2) Bodily injury by Disease, Each Employee $1,000,000
      3) Bodily injury/Disease, Aggregate $1,000,000

   c. General Liability --

      1) General Aggregate: $4,000,000
      2) Each Occurrence (Bodily Injury and Property Damage): $2,000,000

   d. Excess Umbrella Liability

      1) Per Occurrence: $5,000,000
      2) General Aggregate: $5,000,000

   e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

      $5,000,000

B. *Additional Insureds:*

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

   a. Wilson & Company, Inc., Engineers & Architects
      Engineer

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.

3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

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This is **EXHIBIT H**, consisting of **1** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 27, 2021**.

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

C. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a professional mediator agreed to by both parties. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

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This is **EXHIBIT I**, consisting of **1** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **October 27, 2021**.

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

D. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted byLaws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.

Indemnification by Owner: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

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This is **EXHIBIT K**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [ ].

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

____ Additional Services to be performed by Engineer

____ Modifications to services of Engineer

____ Modifications to responsibilities of Owner

____ Modifications of payment to Engineer

____ Modifications to time(s) for rendering services

____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	$_____
Net change for prior amendments:	$_____
This amendment amount:	$_____
Adjusted Agreement amount:	$_____

Change in time for services (days or date, as applicable): _____

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The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:	ENGINEER:
_____	_____
By: _____	By: _____
Print name: _____	Print name: _____
Title: _____	Title: _____
Date Signed: _____	Date Signed: _____

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This form is available electronically.

Form Approved – OMB No. 0505-0027
Expiration Date: 12/31/2018

USDA

United States Department of Agriculture

AD 1048

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552(a), as amended). This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 C.F.R. §§ 180.300, 180.355, Participants' responsibilities. The regulations were amended and published on August 31, 2005, in 70 Fed. Reg. 51865-51880. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

According to the Paperwork Reduction Act of 1995 an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0027. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal and civil fraud privacy, and other statutes may be applicable to the information provided.

(Read Instructions On Page Two Before Completing Certification)

A. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;

B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ORGANIZATION NAME	PR/AWARD NUMBER OR PROJECT NAME
Wilson & Company, Inc.	
NAME(S) AND TITLE(S) OF AUTHORIZED REPRESENTATIVE(S)	
Daniel S. Aguirre, PE, CFM, Senior Vice President	
SIGNATURE(S)	DATE 10/20/2021

The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

Instructions for Certification

(1) By signing and submitting this form, the prospective lower tier participant is providing the certification set out on page 1 in accordance with these instructions.

(2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

(3) The prospective lower tier participant shall provide immediate written notice to the person(s) to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, at 2 C.F.R. Parts 180 and 417. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

(5) The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

(6) The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

(7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management (SAM) database.

(8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(9) Except for transactions authorized under paragraph (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

RUS CERTIFICATION PAGE

PROJECT NAME: **City of Truth or Consequences, Water System Performance Improvements - Phase1**

The Engineer and Owner hereby concur in the Funding Agency required revisions to E-500 (2014). In addition, Engineer certifies to the following:

All modifications required by RUS Bulletin 1780-26 have been made in accordance with the terms of the license agreement, which states in part that the Engineer "must plainly show all changes to the Standard EJCDC Text, using 'Track Changes' (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions." Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

SUMMARY OF ENGINEERING FEES

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown in will not be exceeded without the concurrence of the Agency.

Basic Services		$ 667,783.00
Resident Project Observation		$ 235,270.00
Additional Services		$ 168,475.00
	TOTAL:	$ 1,081,528.00

Any adjustments to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.

10/20/2021

Engineer Date

Daniel S. Aguirre, PE, CFM, Senior Vice President

Name and Title

Owner Date

Name and Title

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

Agency Representative Date

Name and Title

USDA
United States Department of Agriculture

Rural Development

New Mexico
State Office

One Sun Plaza
100 Sun Ave NE
Suite 130
Albuquerque, NM
87109

Voice (505) 761-4950
Fax (855) 543-9499

August 24. 2021

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

SUBJECT:	Recipient Name:	Truth or Consequences, City of
	Project Name:	Water System Improvements – Phase 1 Water Application
	CFDA NUMBER	10.760 - Water and Waste Disposal Systems for Rural Communities

Loan:	$ 4,811,000
Grant:	$ 2,720,000

Dear Mayor Whitehead:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA Rural Development, both of which are referred to throughout this letter as the Agency. Any changes in project cost, source of funds, scope of project, or any other significant changes in the project or applicant must be reported to and concurred with by the Agency by written amendment to this letter. If significant changes are made without obtaining such concurrence, the Agency may discontinue processing of the application.

All conditions set forth under Section III – Requirements Prior to Advertising for Bids must be met within 365 days of the date of this letter. If you have not met these conditions, the Agency reserves the right to discontinue the processing of your application.

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following forms within 3 days:

Form RD 1942-46, "Letter of Intent to Meet Conditions"
Form RD 1940-1, "Request for Obligation of Funds"

The loan and grant will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds," is signed by the approving official. Thus, this letter in itself does not constitute loan and/or grant approval, nor does it ensure that funds are or will be available for the project. When funds are available, the Form 1940-1 will be

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provided to you for your signature. After you sign and return the form to the Agency, the request will be processed, and loan and grant funds will be approved and obligated.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. All parties may access information and regulations referenced in this letter at our website located at www.rd.usda.gov.

The conditions are as follows:

SECTION I - PROJECT DETAIL

1. **Project Description** – Funds will be used to install water meters and waterline replacements which entails the water transmission lines including pressure relief valves (PRVs) throughout the city in order to address the System High Pressure issues. This project will replace approximately 4.9 miles of failing water lines due to age and condition of current infrastructure.

Facilities will be designed and constructed in accordance with sound engineering practices and must meet the requirements of Federal, State, and local agencies. The proposed facility design must be based on the Preliminary Engineering Report (PER) as concurred with by the Agency.

2. **Project Funding** – The Agency is offering the following funding for your project:

Agency Loan -	$ 4,811,000
Agency Grant -	$ 2,720,000
TOTAL PROJECT COST -	$ 7,531,000.00

Funding is offered based on the amounts stated above. Prior to loan closing, any increase in non-Agency funding will be applied first as a reduction to Agency grant funds, up to the total amount of the grant, and then as a reduction to Agency loan funds.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. Prior to advertisement for construction bids, you must provide evidence of applicant contributions and other funding sources.

This evidence should include a copy of the commitment letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

3. **Project Budget** – Funding from all sources has been budgeted for the estimated expenditures as follows:

Project Costs:	**Total Budgeted:**
Construction	$4,930,683
NMGRT	$461,019
Contingency	$493,738
Engineering Fees	$1,171,179
Includes:	
Predevelopment Work (PER/ER)	$47,000
Design	$554,850
Construction Administration	$75,933
Resident Project Representation (Inspection)	$235,270
Additional Services	$168,475
NMGRT	$89,651
Interest/Fees- Interim/Bridge	$440,746
Legal Fees - Local Attorney	$10,000
Legal Fees - Bond Counsel	$21,000
Legal Fees - NMGRT	$2,635
TOTAL	$7,351,000

Obligated loan or grant funds not needed to complete the proposed project will be deobligated prior to start of construction. Any reduction will be applied to grant funds first. An amended letter of conditions will be issued for any changes to the total project budget or scope.

SECTION II – LOAN AND GRANT TERMS

4 **Repayment** – The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing unless you request otherwise. Should the interest rate be reduced, the payment will be recalculated to the lower amount.

Your loan will be scheduled for repayment over a period of 40 years. Payments will be equal annual amortized installments, beginning one year after closing. For planning purposes, use a 1.375% interest rate and an amortization factor of 32.67, which provides for an annual payment of $ 1,57,176.00. The precise payment amount will be based on the interest rate at which the loan is closed and may be different than the one above.

The payment due date will be established as the day that the loan closes. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided.

5 **Security** – The loan will be secured by a Revenue bond with parity lien position in the amount of $4,811,000.00. The bond will be fully registered as to both principal and interest in the name of the United States of America, Acting through the United States Department of Agriculture.

The bond and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or its authorizing law. There must be no defeasance or refinancing clause in conflict with the graduation requirements of 7 U.S.C. 1983.

Additional security requirements are contained in RUS Bulletin 1780-12, "Water and Waste System Grant Agreement," and RUS Bulletin 1780-27, "Loan Resolution." A draft of all security instruments, including draft bond resolution, must be reviewed, and concurred in by the Agency prior to advertising for bids. The bond resolution and Loan Resolution must be duly adopted and executed prior to loan closing. The Grant Agreement must be fully executed prior to the first disbursement of grant funds.

6. **Electronic Payments** – Payments will be made on the day your payment is due through an electronic preauthorized debit system. You will be required to complete Form RD 3550-28, "Authorization Agreement for Preauthorized Payments," for all new and existing indebtedness to the Agency prior to loan closing.

7. **Construction Completion Timeframe** - All projects must be completed, and all funds disbursed within five years of obligation. If funds are not disbursed within five years of obligation, you must submit to the Agency a written request for extension of time with adequate justification of circumstances beyond your control. Requests for waivers beyond the initial extension will be submitted to the Assistant Administrator for concurrence decision.

8. **Disbursement of Agency Funds** - Agency funds will be disbursed into the borrower's depository account through an electronic transfer system. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to advertising for bids.

Any applicant contribution will be the first funds expended, followed by other funding sources. Interim financing or Agency loan funds will be expended after all other funding sources unless a written agreement is reached with all other funding sources on how funds are to be disbursed prior to start of construction or loan closing, whichever occurs first. Interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds. The Grant Agreement must not be executed, and funds must not be disbursed prior to loan funds except as specified in RUS Instruction 1780.45(d). In the unlikely event the Agency mistakenly disburses funds, the funds will be remitted back to the Agency electronically.

Grant funds are to be deposited in an interest-bearing account (exception provided below) in accordance with 2 CFR Part 200 and interest in excess of $500 per year remitted to the Agency. The funds should be disbursed by the recipient immediately upon receipt and there should be little interest accrual on the Federal funds. Recipients shall maintain advances of Federal funds in interest-bearing accounts, unless:

a. The recipient receives less than $120,000 in Federal awards per year.

b. The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on Federal cash balances.

c. The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

d. A foreign government or banking system prohibits or precludes interest-bearing accounts.]

9. **Reserves** – Reserves must be properly budgeted to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency maintenance and repairs and assist with debt service should the need arise. The following reserves are required to be established as a condition of this loan:

a. **Debt Service Reserve** – As a part of this Agency loan proposal, you must establish a debt service reserve fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment per year for ten years or until the balance is equal to one annual loan payment. Ten percent of the proposed loan installment would equal $1,310 per month; this amount should be deposited monthly until a total of $15,718 has accumulated. Prior written concurrence from the Agency must be obtained before funds may be withdrawn from this account during the life of the loan. When funds are withdrawn during the life of the loan, deposits will continue as designated above until the fully funded amount is reached.

b. **Short-Lived Asset Reserve** – In addition to the debt service reserve fund, you must establish a short-lived asset reserve fund. Based on the preliminary engineering report, you must deposit at least $182,347 into the short-lived asset reserve fund annually for the life of the loan to pay for repairs and/or replacement of major system assets. It is your responsibility to assess your facility's short-lived asset needs on a regular basis and adjust the amount deposited to meet those needs.

Current assets can also be used to establish and maintain reserves for expected expenses, including but not limited to operation and maintenance, deferred interest during the construction period, and an asset management program.

SECTION III –REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

10. **Environmental Requirements** – The project as proposed has been evaluated to be consistent with the National Environmental Policy Act. Other Federal, State, tribal, and local laws, regulations and/or permits may apply or be required. If the project or any project element deviates from or is modified from the originally approved project, additional environmental review may be required.

11. **Engineering Services** – You have been required to complete an Agreement for Engineering Services, which should consist of the Engineers Joint Contract Documents

Committee (EJCDC) documents as indicated in RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance," or other approved form of agreement. The Agency will provide concurrence prior to advertising for bids and must approve any modifications to this agreement.

12. <u>Contract Documents, Final Plans, and Specifications</u>

a. The contract documents must consist of the EJCDC construction contract documents as indicated in RUS Bulletin 1780-26 or other Agency-approved forms of agreement.

b. The contract documents, final plans, and specifications must comply with RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Constructing and Inspections, and must be submitted to the Agency for concurrence prior to advertising for bids along with an updated cost estimate. The Agency may require another updated cost estimate if a significant amount of time elapses between the original submission and advertising for bids.

c. The use of any procurement method other than competitive sealed bids must be requested in writing and approved by the Agency.

d. **American Iron and Steel Requirements.** Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference applies a new American Iron and Steel (AIS) requirement to obligations made after May 5, 2017:

(1) No Federal funds made available for this fiscal year for the rural water, wastewater, waste disposal, and solid waste management programs authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 et seq.) shall be used for a project for the construction, alteration, maintenance, or repair of a public water or wastewater system unless all of the iron and steel products used in the project are produced in the United States.

(2) The term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(3) The requirement shall not apply in any case or category of cases in which the Secretary of Agriculture (in this section referred to as the "Secretary") or the designee of the Secretary finds that—

(a) applying the requirement would be inconsistent with the public interest.

(b) iron and steel products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or

(c) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(4) Owners are ultimately responsible for compliance with AIS requirements and will be responsible for the following:

(a) ***Signing*** loan resolutions, grant agreements and letters of intent to meet conditions which include AIS language, accepting AIS requirements in those documents and in the letter of conditions.
(b) ***Signing*** change orders (i.e. C-941 of EJCDC) and partial payment estimates (i.e. C-620 of EJCDC) and thereby ***acknowledging*** responsibility for compliance with American and Iron Steel requirements.
(c) ***Obtaining*** the certification letters from the consulting engineer upon substantial completion of the project and ***maintaining*** this documentation for the life of the loan.
(d) Where the owner provides their own engineering and/or construction services, ***providing*** copies of engineers', contractors', and manufacturers' certification letters (*as applicable*) to the Agency to insert into the Agency file. All certification letters must be kept in the engineer's project file and on-site during construction. For Owner Construction (Force Account), all clauses from Section 17 must be included in the Agreement for Engineering Services.
(e) Where the owner directly procures AIS products, ***including*** AIS clauses in the procurement contracts and ***obtaining*** manufacturers' certification letters and ***providing*** copies to consulting engineers and contractors.

13. **Legal Services** – You have been required to execute a legal services agreement with your attorney and bond counsel, if applicable, for any legal work needed in connection with this project. The agreement should stipulate an hourly rate for the work, with a "not to exceed" amount for the services, including reimbursable expenses. RUS Bulletin 1780-7, "Legal Services Agreement," or similar format may be used. The Agency will provide concurrence prior to advertising for bids. Any changes to the fees or services spelled out in the original agreement must be reflected in an amendment to the agreement and have prior Agency concurrence.

14. **Property Rights** - Prior to advertising for bids, you and your legal counsel must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights-of-way needed for the project. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Such control over the lands and rights will be evidenced by the following:

a. **Right-of-Way Map** – Your engineer will provide a map clearly showing the location of all lands and rights-of-way needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
b. **Form RD 442-20, "Right-of-Way Easement"** – This form, or similar format, may be used to obtain any necessary easements for the proposed project.
c. **Form RD 442-21, "Right-of-Way Certificate"** – You will provide a certification on this form that all right-of-way requirements have been obtained for the proposed project.
d. **Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way"** – Your attorney will provide a certification and legal opinion on this form addressing rights-of-way, easements, and title.

e. **Preliminary Title Work (Title Opinion)** – When applicable, your attorney will provide a preliminary title opinion for any property related to the facility, currently owned and to be acquired, along with copies of deeds, contracts or options for purchasing said property. Form RD 1927-9, "Preliminary Title Opinion," may be used.

The approving official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. Any such waivers must be provided by the approving official in writing prior to closing or the start of construction, whichever occurs first.

You are responsible for the acquisition of all property rights necessary for the project and for determining that prices paid are reasonable and fair. The Agency may require an appraisal by an independent appraiser or Agency employee in order to validate the price to be paid.

15. **System Policies, Procedures, Contracts, and Agreements** – The facility must be operated on a sound business plan which involves adopting policies, procedures, and/or ordinances outlining the conditions of service and use of the proposed system. Mandatory connection policies should be used where enforceable. The policies, procedures, and/or ordinances must contain an effective collection policy for accounts not paid in full within a specified number of days after the date of billing. They should include appropriate late fees, specified timeframes for disconnection of service, and reconnection fees. A draft of these policies, procedures, and/or ordinances must be submitted for Agency review and concurrence, along with the documents below, before closing instructions may be issued unless otherwise stated.

a. **Conflict of Interest Policy** – Prior to obligation of funds, you must certify in writing that your organization has in place an up-to-date written policy on conflict of interest. The policy will include, at a minimum: (1) a requirement for those with a conflict or potential conflict to disclose the conflict/potential conflict; (2) a clause that prohibits interested members of the applicant's governing body from voting on any matter in which there is a conflict, and (3) a description of the specific process by which the governing body will manage identified or potential conflicts.

   You must also submit a disclosure of planned or potential transactions related to the use of Federal funds that may constitute or present the appearance of personal or organizational conflict of interest. Disclosure must be in the form of a written letter signed and dated by the applicant's official. A negative disclosure in the same format is required if no conflicts are anticipated.

   Sample conflict of interest policies may be found at the National Council of Nonprofits website, https://www.councilofnonprofits.org/tools-resources/conflict-of-interest, or in Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy," at http://www.irs.gov/pub/irs-pdf/i1023.pdf. Though these examples reference non-profit corporations, the requirement applies to all types of Agency borrowers.

Assistance in developing a conflict of interest policy is available through Agency-contracted technical assistance providers if desired.

a. **Contracts for Other Services/Lease Agreement** – Drafts of any contracts or other forms of agreements for other services, including audit, management, operation, and maintenance, or lease agreements covering real property essential to the successful operation of the facility, must be submitted to the Agency for review and concurrence prior to advertising for bids.
b. **Parity/Intercreditor Agreement** – Projects with parity liens must have in place a written agreement between the parity lenders. The draft agreement must receive Agency concurrence prior to advertising for bids.
c. **Other agreements** with governments or other entities regarding joint operation of facilities, granting authority to Agency borrower for providing service within another entity's service area, etc. – Village of Williamsburg Water System Service Agreement – The draft agreement must receive Agency concurrence prior to advertising for bids.

Fully executed copies of any policies, procedures, ordinances, contracts, or agreements must be submitted prior to loan closing, with the exception of the conflict of interest policy, which must be in place prior to obligation of funds.

16. **Closing Instructions** – The Agency will prepare closing instructions as soon as the requirements of the previous paragraphs are complete, as well as a draft of the security instrument(s). Closing instructions must be obtained prior to advertising for bids.

17. **Interim Financing** – For all loans exceeding $500,000, where loan funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be used to preclude the necessity for multiple advances of Agency loan funds. You must provide the Agency with a copy of the interim loan financing agreement for review prior to advertising for bids. The Agency approving official may make an exception when interim financing is cost prohibitive or unavailable. Grant funds from the Agency will be disbursed by multiple advances through electronic transfer of funds after interim financing or Agency loan funds are expended, in accordance with RUS Instruction 1780.45.

18. **Construction Account** – You must establish a construction account for all funds related to the project. Construction funds will be deposited with an acceptable financial institution or depository that meets the requirements of 31 CFR Part 202. A separate account will not be required for Federal funds and other funds; however, the recipient must be able to separately identify, report, and account for all Federal funds, including the receipt, obligation and expenditure of funds. Financial institutions or depositaries accepting deposits of public funds and providing other financial agency services to the Federal Government are required to pledge adequate, acceptable securities as collateral, in accordance with 31 CFR Part 202. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the construction account at any one time. Your financial institution can provide additional guidance on collateral pledge requirements.

Agency funds will be disbursed into the borrower's depository account through an electronic transfer system. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to advertising for bids.

19. **System Users** – This letter of conditions is based upon your indication at application that there will be at least 2,741 residential users and 540 non-residential users on the existing system when construction is completed.

Before the Agency can agree to the project being advertised for construction bids, you must certify that the number of users indicated at application are currently using the system or signed up to use the system once it is operational.

If the actual number of existing and/or proposed users that have signed up for service is less than the number indicated at the time of application, you must provide the Agency with a written plan on how you will obtain the necessary revenue to adequately cash flow the expected operation, maintenance, debt service, and reserve requirements of the proposed project (e.g., increase user rates, sign up an adequate number of other users, reduce project scope, etc.). Similar action is required if there is cause to modify the anticipated flows or volumes presented following approval.

If you are relying on mandatory connection requirements, you must provide evidence of the authorizing ordinance or statute along with your user certification.

20. **Other Funding** – Prior to advertising for bids, you must provide evidence of applicant contributions and other funding sources. This evidence should include a copy of the commitment letter from each source.

21. **Proposed Operating Budget** – You must establish and/or maintain a rate schedule that provides adequate income to meet the minimum requirements for operation and maintenance (O&M), debt service, and reserves. Prior to advertising for bids, you must submit a proposed annual operating budget to the Agency which supports the operation, maintenance, debt service, and reserves, as well as your proposed rate schedule. The operating budget should be based on a typical year cash flow after completion of the construction phase and should be signed by the appropriate official of your organization. Form RD 442-7, "Operating Budget," or similar format may be utilized for this purpose. It is expected that O&M will change over each successive year and user rates will need to be adjusted on a regular basis.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system. This assistance is available free to your organization. If you are interested, please contact our office for information.

22. **Permits** –The owner or responsible party will be required to obtain all applicable permits for the project, prior to advertising for bids. The consulting engineer must submit written evidence that all applicable permits required prior to construction have been obtained with submission to the Agency of the final plans, specifications, and bid documents.

23. **Vulnerability Assessment/Emergency Response Plan (VA/ERP)** – The Agency requires all financed water and wastewater systems to have a VA/ERP in place. Borrowers with existing systems must provide a certification that a VA/ERP has been completed prior to advertising for bids. The VA/ERP documents themselves are not submitted to the Agency. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

For new systems, see Section V of this letter of conditions. For VA/ERP requirements throughout the life of the loan, see Section VII. Technical assistance at no cost is available in preparing these documents.

24. **Bid Authorization** - Once all the conditions outlined in Section III of this letter have been met, the Agency will authorize you to advertise the project for construction bids. Such advertisement must be in accordance with applicable State statutes.

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

25. **Bid Tabulation** – Immediately after bid opening, you must provide the Agency with the bid tabulation and your engineer's evaluation of bids and recommendations for contract awards. If the Agency agrees that the construction bids received are acceptable, adequate funds are available to cover the total project costs, and all the requirements of Section III of this letter have been satisfied, the Agency will authorize you to issue the Notice of Award.

a. Cost Overruns. If bids are higher than expected, or if unexpected construction problems are encountered, you must utilize all options to reduce cost overruns. Negotiations, redesign, use of bidding alternatives, rebidding or other means will be considered prior to commitment of subsequent funding by the Agency. Any requests for subsequent funding to cover cost overruns will be contingent on the availability of funds. Cost overruns exceeding 20% of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.

b. Excess Funds. If bids are lower than anticipated at time of obligation, excess funds must be deobligated prior to start of construction except in the cases addressed in this paragraph. In cases where the original PER for the project included items that were not bid, or were bid as an alternate, the State Office official may modify the project to fully utilize obligated funds for those items. Amendments to the PER, ER, and letter of conditions may be needed for any work not included in the original project scope. In all cases, prior to start of construction, excess funds will be deobligated, with grant funds being deobligated first. Excess funds do not include contingency funds as described in this letter.

26. **Contract Review** – Your attorney will certify that the executed contract documents, including performance and payment, if required, are adequate and that the persons executing

these documents have been properly authorized to do so in accordance with RUS Instruction 1780.61(b).

Once your attorney has certified that they are acceptable, the contract documents will be submitted to the Agency for its concurrence. The Notice to Proceed cannot be issued until the Agency has concurred with the construction contracts.

27. **Final Rights-of-Way** – If any of the rights-of-way forms listed previously in this letter contain exceptions that do not adversely affect the suitability, successful operation, security value, or transferability of the facility, the approving official must provide a written waiver prior to the issuance of the Notice to Proceed. For projects involving the acquisition of land, you must provide evidence that you have clear title to the land prior to the issuance of the Notice to Proceed.

a. Final Title Work - Your attorney must furnish a separate final title opinion on all existing real property related to the facility, now owned and to be acquired for this project, as of the day of loan closing or start of construction, whichever occurs first. Form RD 1927-10, "Final Title Opinion" may be used.

28. **Insurance and Bonding Requirements** - Prior to the start of construction or loan closing, whichever occurs first, you must acquire and submit to the Agency proof of the types of insurance and bond coverage for the borrower shown below. The use of deductibles may be allowed, providing you have the financial resources to cover potential claims requiring payment of the deductible. The Agency strongly recommends that you have your engineer, attorney, and insurance provider(s) review proposed types and amounts of coverage, including any exclusions and deductible provisions. It is your responsibility and not that of the Agency to assure that adequate insurance and fidelity or employee dishonesty bond coverage is maintained.

a. **General Liability Insurance** – Include vehicular coverage.
b. **Workers' Compensation** – In accordance with appropriate State laws.
c. **Fidelity or Employee Dishonesty Bonds** – Include coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through blanket coverage providing protection for all appropriate workers. During construction, each position should be bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The coverage may be increased during construction based on the anticipated monthly advances. After construction and throughout the life of the loan, the amount of coverage must be for at least the total annual debt service of all outstanding Agency loans. The Agency will be identified in the fidelity bond for receipt of notices. Form RD 440-24, "Position Fidelity Schedule Bond," or similar format may be used.
d. **National Flood Insurance** - If the project involves acquisition or construction in designated special flood or mudslide prone areas, you must purchase a flood insurance policy at the time of loan closing.
e. **Real Property Insurance** – Fire and extended coverage will normally be maintained on all structures except reservoirs, pipelines and other structures if such structures are not

normally insured, and subsurface lift stations except for the value of electrical and pumping equipment. The Agency will be listed as mortgagee on the policy when the Agency has a lien on the property. Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all facilities identified above.

Insurance types described above are required to be continued throughout the life of the loan. See Section VII.

29. **Initial Compliance Review** – The Agency will conduct an initial compliance review of the borrower prior to loan closing or start of construction, whichever occurs first, in accordance with 7 CFR 1901, Subpart E.

SECTION V – REQUIREMENTS PRIOR TO LOAN CLOSING

30. **Interim Financing** - Interim financing is being used. Loan closing will occur near the end of construction when interim funds are about to be completely disbursed. Documents detailed above from Sections II and III regarding security, electronic payments (Form 3550-28), and system policies, procedures, contracts, and agreements must be adopted and/or executed and submitted to the Agency prior to loan closing. In addition, the following items are required prior to closing:

31. **Vulnerability Assessment/Emergency Response Plan (VA/ERP)** – The Agency requires all financed water and wastewater systems to have a VA/ERP in place. New water or wastewater systems must provide a certification that an ERP is complete prior to the start of operation, and a certification that a VA is complete must be submitted within one year of the start of operation. Borrowers with existing systems must provide a certification that a VA and ERP are completed prior to authorization to advertise for bids. The VA/ERP documents are not submitted to the Agency. Technical assistance is available in preparing these documents at no cost to you. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

32. **Other Requirements** – All requirements contained in the Agency's closing instructions, as well as any requirements of your bond counsel and/or attorney, must be met prior to loan closing.

a. **System for Award Management**. You will be required to maintain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain an active registration in the System for Award Management (SAM) database. Renewal can be done on-line at: http://sam.gov. This registration must be renewed and revalidated every twelve (12) months for as long as there are Agency funds to be expended. See Appendix A.

   To ensure the information is current, accurate and complete, and to prevent the SAM account expiration, the review and updates must be performed within 365 days of the

activation date, commonly referred to as the expiration date. The registration process may take up to 10 business days. (See 2 CFR Part 25 and the "Help" section at http://sam.gov).

b. **Litigation.** You are required to notify the Agency within 30 days of receiving notification of being involved in any type of litigation prior to loan closing or start of construction, whichever occurs first. Additional documentation regarding the situation and litigation may be requested by the Agency.

c. **Certified Operator**. Evidence must be provided that your system has or will have, as defined by applicable State or Federal requirements, a certified operator available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

33. **Resident Inspector(s)** – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must concur with the request. Inspection services are to be provided by the consulting engineer unless other arrangements are requested in writing and concurred with by the Agency. A resume of qualifications of any resident inspector(s) will be submitted to the owner and Agency for review and concurrence prior to the pre-construction conference. The resident inspector(s) must attend the pre-construction conference.

34. **Preconstruction Conference** – A preconstruction conference will be held prior to the issuance of the Notice to Proceed. The consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, other funders, and other interested parties, and will provide minutes of this meeting to the owner and Agency.

35. **Inspections** - The Agency requires a pre-construction conference, pre-final and final inspections, and a warranty inspection. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the one-year warranty period to address and/or resolve any warranty issues. The Agency will conduct an inspection with you of your records management system at the same time and will continue to inspect the facility and your records system every three years for the life of the loan. See Section VII of this letter.

36. **Change Orders** – Prior Agency concurrence is required for all Change Orders.

37 **Payments** – Prior Agency concurrence is required for all invoices and requests for payment before Agency funds will be released. Requests for payment related to a contract or service agreement will be signed by the owner, project engineer, and contractor or service provider prior to Agency concurrence. Invoices not related to a construction contract or service agreement will include the owner's written concurrence.

38. **Use of Remaining Funds** – Applicant contribution and connection or tap fees will be the first funds expended in the project, followed by non-Agency sources of funds. Remaining funds may be considered in direct proportion to the amounts obtained from each source and handled as follows:

a. Remaining funds may be used for eligible loan and grant purposes, provided the use will not result in major changes to the original scope of work and the purpose of the loan and grant remains the same.
b. Grant funds not expended for authorized purposes will be cancelled (de-obligated) within 45 days of final completion of project. Prior to actual cancellation, you and your attorney and engineer will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.
c. Loan funds that are not needed will be cancelled (de-obligated) prior to loan closing.

39. **Technical, Managerial and Financial Capacity** - It is required that members of the Board of Directors, City Council members, trustees, commissioners and other governing members possess the necessary technical, managerial, and financial capacity skills to consistently comply with pertinent Federal and State laws and requirements. It is recommended members receive training within one year of appointment or election to the governing board, and a refresher training for all governing members on a routine basis. The content and amount of training should be tailored to the needs of the particular individual and the utility system. Technical assistance providers are available to provide this training for your organization, often at no cost. Contact the Agency for information.

40. **Reporting Requirements Related to Expenditure of Funds**

a. **Financial Audit**– An annual audit under the Single Audit Act is required if you expend $750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

   All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law and must be submitted within 9 months of your fiscal year end.

   If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit to be completed, the time frame in which the audit will be completed, and how irregularities will be reported.

b. **Reporting Subawards and Executive Compensation** – You as a recipient of Federal funds and your first-tier contractors are required by 2 CFR Part 170 to report

disbursements to subrecipients in accordance with Appendix B of this letter and www.fsrs.gov. Your Agency processing office can provide more information.

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

41. Prepayment and Extra Payments - Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower, with no penalty.

Security instruments, including bonding documents, must contain the following language regarding extra payments, unless prohibited by State statute:

> *Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of borrower to pay the remaining installments as scheduled in your security instruments.*

42. Graduation - By accepting this loan, you are also agreeing to refinance (graduate) the unpaid loan balance in whole, or in part, upon request of the Government. If at any time the Agency determines you are able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms, you will be requested to refinance. Your ability to refinance will be assessed every other year for those loans that are five years old or older.

43. Security/Operational Inspections – The Agency will inspect the facility and conduct a review of your operations and records management system and conflict of interest policy every three years for the life of the loan. You must participate in these inspections and provide the required information.

44. Annual Financial Reporting/Audit Requirements – You are required to submit an annual financial report at the end of each of your fiscal years. The annual report will be certified by the appropriate organization official, and will consist of financial information, and a current rate schedule and listing of board members and their terms. Financial statements must be prepared on the accrual basis of accounting in accordance with generally accepted accounting principles (GAAP) and must include at a minimum a balance sheet and income and expense statement. The annual report will include separate reporting for each water and waste disposal facility, and itemize cash accounts by type (debt service, short-lived assets, etc.) under each facility. All records, books and supporting material are to be retained for three years after the issuance of the annual report. Technical assistance is available at no cost with preparing financial reports.

The type of financial information that must be submitted is specified below:

a. **Audits** – An annual audit under the Single Audit Act is required if you expend $750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended

from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. The audit must be prepared by an independent auditor meeting the requirements of generally accepted government auditing standards (GAGAS) and must be submitted within 9 months of your fiscal year end. With the submission of the audit report, you will be required to provide a current rate schedule and listing of board members and their terms.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit or financial statements to be completed, the time frame in which the audit or financial statements will be completed, what type of reports will be generated from the services provided, and how irregularities will be reported.

b. **Financial Statements** – If you expend less than $750,000 in Federal financial assistance per fiscal year, you may submit financial statements in lieu of an audit which include at a minimum a balance sheet and an income and expense statement. You may use Form RD 442-2, "Statement of Budget, Income and Equity," and 442-3, "Balance Sheet," or similar format to provide the financial information. The financial statements must be signed by the appropriate borrower official and submitted within 60 days of your fiscal year end. With the submission of the year-end report, you will be required to provide a current rate schedule and listing of board members and their terms.

c. **Quarterly Reports** – Quarterly Income and Expense Statements will be required until the processing office waives this requirement. You may use Form RD 442-2 or similar format to provide this information, and the reports are to be signed by the appropriate borrower official and submitted within 30 days of each quarter's end. The Agency will notify you in writing when the quarterly reports are no longer required.

45. **Annual Budget and Projected Cash Flow** - Thirty days prior to the beginning of each fiscal year, you will be required to submit an annual budget and projected cash flow to this office. The budget must be signed by the appropriate borrower official. Form RD 442-2 or similar format may be used.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system, as well as completing the annual budget. If you are interested, please contact our office for information.

46. **Vulnerability Assessment/Emergency Response Plan (VA/ERP)** – You will be required to submit a certification to the servicing office every three years that the VA/ERP is current and covers all sites related to the facility. The documents themselves are not submitted to the Agency. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

47. **Insurance**. You will be required to maintain insurance on the facility and employees as previously described in this letter for the life of the loan.

48. **Statutory and National Policy Requirements** – As a recipient of Federal funding, you are required to comply with U.S. statutory and public policy requirements, including but not limited to:

a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.

b. **Civil Rights Act of 1964** – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.

c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.

d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, "Improving

Access to Services by Persons with Limited English Proficiency" and further affirmed in the USDA Departmental Regulation 4330-005, "Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA."

Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. You must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor your compliance with these requirements during regular compliance reviews.

49. **Compliance Reviews and Data Collection** – The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36
CFR 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the security inspections described in this letter. If beneficiaries (users) are required to complete an application or screening for the use of the facility or service that you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

SECTION VIII – REMEDIES FOR NON-COMPLIANCE

Non-compliance with the conditions in this letter or requirements of your security documents will be addressed under the provisions of 7 CFR 1782 and other applicable regulations, statutes, and policies.

We look forward to working with you to complete this project. If you have any questions, please contact Elizabeth Ybarra at (505) 761-4963 or by e-mail at Elizabeth.ybarra@usda.gov

Sincerely,

CHRISTINE GRIEGO

Digitally signed by CHRISTINE GRIEGO
Date: 2021.08.24 15:56:13 -06'00'

Christine Griego
Acting Community Program Director

Attachments

cc: Community Programs Director
Accountant
Attorney
Bond Counsel
Engineer

ACRONYMS:

ABA - Architectural Barriers Act
ACH – Automated Clearing House
AD – Agriculture Department
ADA – Age Discrimination Act
AIS – American Iron and Steel
CFDA – Catalog of Federal Domestic Assistance
CFR – Code of Federal Regulations
CPAP – Commercial Programs Application Processing
DUNS – Dun and Bradstreet Data Universal Numbering System
EJCDC – Engineers Joint Contract Documents Committee
ERP – Emergency Response Plan
GAAP – Generally Accepted Accounting Principles
GAGAS – Generally Accepted Government Auditing Standards
LEP – Limited English Proficiency
NPA – Nationwide Programmatic Agreement
OC – Owner Construction
OPS – Owner-Performed Services
O&M – Operation and Maintenance
PER – Preliminary Engineering Report
RD – Rural Development
RUS – Rural Utilities Service
SAM – System for Award Management
SF – Standard Form
UCC – Uniform Commercial Code
USC – United States Code
USDA – United States Department of Agriculture
VA – Vulnerability Assessment

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Form RD 1940-1, "Request for Obligation of Funds" – Pages 1 and 2
Form RD 1942-8, "Resolution of Members or Stockholders" – Item 5
Form RD 1942-46, "Letter of Intent to Meet Conditions" – Page 1
Form RD 3550-28, "Authorization Agreement for Preauthorized Payments" – Items 6 and 30
Form UCC-1, "Financing Statement" – Item 5
Form UCC-1Ad, "UCC Financing Statement Addendum" – Item 5
SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form" – Items 8 and 18
RUS Bulletin 1780-7, "Legal Services Agreement" – Item 13
RUS Bulletin 1780-9, "Water Users Agreement" - Items 15 and 19
RUS Bulletin 1780-12, "Water and Waste System Grant Agreement" – Page 1 and Item 5
RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance" – Items 11 and 12
RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)" – Item 5
RUS Bulletin 1780-28, "Loan Resolution Security Agreement" – Item 5

Appendix A
2 CFR Part 25

SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another appendix.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this appendix) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

C. Definitions

For purposes of this appendix:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at http://www.sam.gov).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
3. Entity, as it is used in this appendix, means all of the following, as defined at 2 CFR part 25, subpart C:

    a. A Governmental organization, which is a State, local government, or Indian Tribe;
    b. A foreign public entity;
    c. A domestic or foreign nonprofit organization;
    d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

   a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
   b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).
   c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

   a. Receives a subaward from you under this award; and
   b. Is accountable to you for the use of the Federal funds provided by the subaward.

[75 FR 55673, Sept. 14, 2010, as amended at 79 FR 75879, Dec. 19, 2014; 80 FR 54407, Sept. 10, 2015]

Appendix B
2 CFR Part 170

Reporting Subawards and Executive Compensation

a. Reporting of first tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this appendix, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this appendix).

2. Where and when to report.

   i. You must report each obligating action described in paragraph a.1. of this appendix to http://www.fsrs.gov.

   ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action listed in the submission instructions posted at http://www.fsrs.gov.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

   i. the total Federal funding authorized to date under this award is $25,000 or more;

   ii. in the preceding fiscal year, you received—

      (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

      (B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this appendix:

   i. As part of your registration profile at https://www.sam.gov.

   ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this appendix, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

   i. in the subrecipient's preceding fiscal year, the subrecipient received—

      (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

      (B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

   ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this appendix:

   i. To the recipient.

   ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month

of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this appendix:

1. Entity means all of the following, as defined in 2 CFR part 25:

   i. A Governmental organization, which is a State, local government, or Indian tribe;

   ii. A foreign public entity;

   iii. A domestic or foreign nonprofit organization;

   iv. A domestic or foreign for-profit organization;

   v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

   i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

   ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __ .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

   iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

   i. Receives a subaward from you (the recipient) under this award; and

   ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

   i. Salary and bonus.

   ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

   iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization, or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.

   iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

   v. Above-market earnings on deferred compensation which is not tax-qualified.

   vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

[75 FR 55669, Sept. 14, 2010, as amended at 79 FR 75879, Dec. 19, 2014]

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Sincerely,

Elizabeth Ybarra
Loan Specialist – Water and Environmental Programs

Enclosure (if applicable)

CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

Agenda Item #: F.4

MEETING DATE: October 27, 2021

SUBJECT: Approval of the City of Truth or Consequences Uniform Policy.
DEPARTMENT: City Manager's Office
DATE SUBMITTED: October 7, 2021
SUBMITTED BY: Tammy Gardner
WHO WILL PRESENT THE ITEM: Bruce Swingle, City Manager

Summary/Background:

This item is to establish a uniform policy for the City of Truth or Consequences.

Recommendation:

Approve Policy

Attachments:

- Uniform Policy
- .

Fiscal Impact (Finance): Choose an item.

N/A

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. Click here to enter text. 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 10-27-2021

UNIFORM POLICY

1.0 PURPOSE

To provide City of Truth or Consequences employees uniforms for the performance of duties when engaged in specific functions, and to identify uniform types and the frequency of replacement.

Due to varying uniform needs of law enforcement services, this policy doesn't apply to the Police Department. The Police Department will develop a separate policy, specific to department needs.

2.0 POLICY

The City shall provide uniforms for employees/positions meeting specific criteria and worn on duty:

A. Employees exposed to dirty, unsanitary or energized environments; or
B. Employees working in the field so the public will immediately recognize staff as City employees.

2.1 The City will provide uniforms to employees in the following departments:

A. Airport, Animal Shelter, Electric, Facilities Maintenance, Fleet, Parks, Pool, Sanitation, Street, Water, and Waste Water.
B. Field employees, including: Meter Readers.

2.2 The City shall purchase and provide the following uniform items:

A. Six (6) pairs of standard denim jeans or equivalent per year.
B. Six (6) work shirts (long or short sleeve) per year.
C. One (1) jacket for positions working outdoors only, every two (2) years.
D. One (1) pair coveralls, (insulated or non-insulated) for positions working outdoors only, every Two (2) years.
E. Safety footwear and other safety PPE shall be provided as identified in the Risk Control Policy.

1) The city shall pay up to $200.00 per pair of safety boots.

2.3 Pool staff will receive:

A. Male

1) Two (2) pair lifeguard swimming shorts
2) Four (4) lifeguard tee shirts
3) One (1) lifeguard hat

B. Female

1) Two (2) pair lifeguard swimsuits
2) Two (2) pair lifeguard shorts
3) Four (4) lifeguard tee shirts
4) One (1) lifeguard hat

2.4 Affected employees are required to wear assigned uniforms when on duty or as assigned by the respective department director.

2.5 Uniforms are not to be worn off duty.

2.6 Finance, in consultation with department directors, will determine any changes or deviations to this policy, including changes in insignias and markings.

2.7 Upon issue, uniforms become the responsibility of the employee for maintenance and care. In the event a uniform needs repair or replacement, employees will be required to return the uniform in exchange for a replacement. While normal wear and tear is expected, excessive damage or loss of company uniforms may result in disciplinary action.

2.8 Uniforms purchased by the City are City property and must be returned to the City upon separation of employment. If all issued uniforms are not returned, the City will deduct the cost of the uniforms from the employee's final paycheck (except where such deductions are prohibited by state law).

2.9 New hires will not receive uniforms for the first three (3) months, other than safety related items. The three month rule shall not apply to inter- and intra- departmental transfers.

2.10 Only one (1) issuance of clothing per calendar year for each eligible employee will be allowed. In other words, if clothing was issued in May, the next clothing allowance would not be issued until the following May. This one-year rule may be waived, if the City Manager determines that the condition of the clothing is a safety issue.

3.0 TAX LIABILITY

When an employer provides uniforms or pays uniform allowances, Federal tax laws, rulings and regulations stipulate and court decisions uphold that, in order to be considered non-taxable to the employee, the following conditions must be met:

A. Uniforms must be required by the employer;
B. Uniforms cannot be adaptable for general use.

1) If the cost of uniforms is determined to be adaptable for general use, the uniform will be considered taxable wages to the employee.

CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

Agenda Item #: F.5

MEETING DATE: October 27, 2021

SUBJECT: Review and possible amendments to the City Commission Rules of Procedure.
DEPARTMENT: City Manager's Office
DATE SUBMITTED: October 7, 2021
SUBMITTED BY: Tammy Gardner
WHO WILL PRESENT THE ITEM: Bruce Swingle, City Manager

Summary/Background:

This item is to discuss possible revisions to the City Commission Rules of Procedure.

Recommendation:

.

Attachments:

- City Commission Rules of Procedure
- .

Fiscal Impact (Finance): Choose an item.

N/A

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. Click here to enter text. 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 10-27-2021

City of Truth or Consequences Commission RULES OF PROCEDURE

ADOPTED OCTOBER 24, 1994 – RESOLUTION NO. 10-94/95
AMENDED MAY 9, 2006 – RESOLUTION NO. 24-06/07
AMENDED JANUARY 26, 2010 – RESOLUTION NO. 19-09/10
AMENDED MAY 8, 2012 – RESOLUTION NO. 33-11/12
AMENDED SEPTEMBER 25, 2012 – RESOLUTION NO. 14-12/13
AMENDED MARCH 22, 2016
AMENDED APRIL 25, 2017
AMENDED AUGUST 23, 2017
AMENDED MARCH 14, 2018
AMENDED SEPTEMBER 26, 2018
AMENDED JANUARY 23, 2019
AMENDED AUGUST 14, 2019 – RESOLUTION NO. 14 19/20

CITY OF TRUTH OR CONSEQUENCES
COMMISSION RULES OF PROCEDURE

SECTION 1 – GENERAL PROVISIONS

RULE 1. COMMISSION MEETING – LOCATION

All regular, special, and emergency meetings of the City Commission shall be held at the City Commission Chambers, 405 West 3rd Street as specified in the Open Meetings Resolution. [Resolution No. 2-94/95] [Amended – Resolution No. 24-05/06]

RULE 2. COMMISSION MEETING – TIME

The regular meetings of the City Commission shall be held Pursuant to the Open Meetings Act Resolution adopted annually. [Resolution No. 2-94/95] [Amended – Resolution No. 24-05/06] [Amended – Resolution No. 28 15/16]

RULE 3. COMMISSION MEETINGS – OPEN TO THE PUBLIC

All meetings of the City Commission and of committees thereof held for the purpose of formulating public policy or for the purpose of taking any action within the authority of or the delegated authority are declared to be public meetings open to the public at all times, except as otherwise provided for in the state constitution or the Open Meetings Act (§10-15-1 et seq. NMSA 1978).

RULE 4. ELECTION OF OFFICERS

Procedures for electing officers are as follows:

(a) At the first organizational meeting of the new City Commission, the members thereof select one of its members to act as Mayor for two years. The Mayor has all the powers and duties of a Commissioner as well as the right to vote on all matters that come before the City Commission. (§3-14-10 NMSA 1978).

(b) In conjunction with the above election, a Mayor Pro Tempore shall also be elected in a like manner.

(c) The above elections shall be by affirmative motion.

RULE 5. PRESIDING OFFICER

The Mayor shall preside at all meetings of the City Commission, and be recognized as the official head of the City for all ceremonial purposes, civil process and for military purposes (§3-14-10 NMSA 1978). The Mayor has no regular administrative or executive duties. In case of the Mayor's absence or temporary disability, the Mayor Pro Tempore shall act as Mayor during the continuance of the absence. In case of the absence or

temporary disability of the Mayor and the Mayor Pro Tempore, a Mayor Pro Tempore selected by members of the City Commission shall act as Mayor during the continuance of the absences or disabilities. The Mayor or Mayor Pro Tempore are referred to as "Presiding Officer" from time to time in these Rules of Procedures. The Presiding Officer shall preserve order and decorum and have general direction of the meetings; Announce the business before the Body in the order in which it is to be acted upon; and Recognize the speakers entitled to the floor and guide and direct the proceedings of the body.

RULE 6. QUORUM

A quorum is necessary for the governing body to conduct business at any meeting. A quorum is a simple majority of all the commissioners including the Mayor. A majority vote of all the members of the City Commission is required to adopt an ordinance or resolution and certain other actions as required by law or ordinance. (§3-17-3 NMSA 1978). The City Commission may adjourn from time to time, provided that written notice of said adjournment be posted on the exterior Chamber door and at the City Clerk's office. City Commission meetings adjourned under the previous provision shall be considered a regular meeting for all purposes.

RULE 7. ATTENDANCE, EXCUSED ABSENCES

Members of the City Commission may be excused from attendance from a meeting by complying with this section. The member shall contact the City Manager or City Clerk prior to the meeting and state the reason for his/her inability to attend the meeting who shall covey the message to the Presiding Officer. The Presiding Officer shall inform the City Commission of the member's absence and excuse the member's absence. The Clerk will make an appropriate notation in the minutes.

RULE 8. SPECIAL AND EMERGENCY COMMISSION MEETINGS

Procedures for setting a special meeting are as follows:

(a) A special meeting may be called only by a majority of the members of the City Commission.

(b) Notice of the special meeting shall be given with no less than seventy-two hours' notice before such meeting. The notice shall specify the business to be conducted and shall be broadcast over the radio, or in the alternative, be posted as set forth in the Open Meetings Resolution.

Procedures for setting an emergency meeting are as follows:

(a) An emergency meeting may be called only under circumstances that , if not addressed immediately by the City Commission, will likely result in injury or damage to persons or property or substantial financial loss to the City.

(b) Emergency meetings may be called by the Mayor or a majority of the City Commission by giving whatever notice is possible and reasonable under the circumstances.

RULE 9. COMMISSION MEETING AGENDA

The City Clerk, under the direction of the City Manager, shall arrange a list of such matters according to the order of business and prepare an agenda for the City Commission. An electronic copy of the agenda and supporting materials shall be prepared for the City Commission members, the City Manager, the City Clerk, and the press at least five (5) days before a regular City Commission meeting. The City Commission shall have the option of deleting any item from the agenda or deferring an item on the agenda to a subsequent meeting. The Presiding Officer or any Commission member may introduce a new item to the agenda by Noon *seven (7) days* before a meeting.

Persons wishing to be placed on the agenda must submit an Agenda Request Form with complete written documentation to the City Clerk, a member of the City Commission or City Manager. The City Manager shall make the determination whether to forward to the City Clerk to be place on the agenda. All requests are due by noon, seven (7) days prior to the meeting. Requests, which do not include detailed information on the proposed subject matter, will not be placed on the agenda.

The City Commission deals with a variety of routine items that do not require individual action or discussion. These items include accounts payable, meeting minutes, etc. These types of items shall be listed on a "Consent Calendar" where one (1) action approves all items. However, if an individual Commissioner wishes to discuss a particular item, then that item shall be removed from the said "Consent Calendar" during the "Approval of the Agenda" portion of the meeting. (See Rule 16. E-3)

RULE 10. WORKSHOPS

Special Workshops, or regular City Commission meetings that may be canceled by the Presiding Officer in accordance with law, may be designed as Workshops where no official action is contemplated. Workshops may be conducted informally so long as such informality is not in conflict with these rules. The City Clerk, under the direction of the City Manager, shall arrange a City Commission Workshop agenda for the Workshop. The Workshop agenda shall, for each item, contain the Workshop Item. After the proposed Workshop agenda has been approved by the City Manager, an electronic copy of it along with any supporting materials shall be prepared for City Commission members, the City Manager, the City Clerk and the press at least *seventy-two (72)* hours

before the City Commission Workshop. During the Workshop, the Presiding Officer may; 1) introduce the subject and give background information; 2) identify the eventual goal of the Workshop, and; 3) act as facilitator to keep the meeting discussion focused to the subject.

RULE 11. CITY MANAGER

The City Manager, as the chief administrative, and executive officer and head of the executive branch of City government or his/her designee, shall attend all meetings unless excused by the Presiding Officer or City Commission. The City Manager may take part in the City Commissioner's discussion on all matters on the agenda, and otherwise concerning the welfare of the City. Except when clearly undesirable or unnecessary, the commission shall request the opinion of the manager on any proposed measure (§3-14-14 NMSA 1978). The City Manager has a seat at commission meetings, but does not have a vote. In the event that the City Manager is unable to attend a City Commission meeting, the City Manager shall appoint another qualified staff member to attend the meeting on behalf of city management.

RULE 12. CITY CLERK

The City Clerk shall be ex-officio Clerk of the City Commission, and shall keep minutes and shall perform such other and further duties in the meeting as may be required by the City Commission, Presiding Officer, or City Manager. In the absence of the City Clerk, the Clerk or the City Manager shall appoint another qualified staff member to act as Clerk.

RULE 13. FORMS OF ADDRESS

The Mayor shall be addressed as "Mayor", "Your Honor", or "Mr. /Madam Mayor". The Mayor Pro-Tempore, when acting for the Mayor, shall be addressed as "Mayor". Members of the City Commission shall be addressed as "Commissioner".

RULE 14. APPEARANCE OF FAIRNESS DOCTRINE

Appearance of Fairness Doctrine and its Application.

When public hearings give the public not only the right to attend, but the right to be heard as well, the hearings must not only be fair, but must appear to be so.

It is a situation where appearances are quite as important as substance. The test of whether the appearance of fairness doctrine has been violated is as follows; 1) Would a disinterested person, having been appraised of the totality of a board member's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist?

If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided.

RULE 15. RULES OF ORDER

The City Commission members shall be governed by the "City Commission Rules of Procedure".

RULE 16. ORDER OF BUSINESS

The second Regular City Commission meeting of each month will not include Public Comment other than any required Public Hearings that are scheduled on the agenda for the meetings held on the fourth Wednesday of every month.

On those meeting days or within the same week, the City Manager or his designee will hold a Town Hall Meeting in the evening at the Commission Chambers for those who wish to make Public Comments and bring up any city related issues they may have. The City Manager will report to the Commission on the discussion and any items he feels may need to go to the Commission will be added to a future agenda.

The City Commission may use the following as a guideline for the business of all regular meetings of the City Commission. However the Presiding Officer may, during a City Commission meeting, re-arrange items in the agenda to conduct the business before the City Commission more expeditiously.

A. **Call to Order** by the Presiding Officer

B. **Introduction**

1. **Roll Call (See Rule 7 for procedure to excuse an absence).**
2. **Silent Meditation**
3. **Pledge of Allegiance**
4. **Approval of Agenda**

C. **Presentations (10 Minutes)**

D. **Comments from the Public (1st Regular Meeting of the month only)** (for Items not on the agenda – see Rule 17 for procedural details.)

E. **Response to Public Comments**

F. **Consent Calendar**

1. The City Manager, in consultation with the Presiding Officer, shall place matters on the Consent Calendar which have been;

a. previously discussed by the City Commission, or;
b. based on the information delivered to members of the City Commission by administration that can be reviewed by a Commission member without further explanation or;
c. are so routine or technical in nature that passage is likely, or;
d. as directed by the City Commission.

2. The Presiding Officer shall read the Consent Calendar, including the titles of any resolutions contained therein.
3. Prior to the vote on the motion to adopt the Consent Calendar, the Presiding Officer shall inquire if any City Commission member wishes an item to be withdrawn from the Consent Calendar. If any matter is withdrawn, the Presiding Officer shall place the item at an appropriate place on the agenda for the current or a future meeting.

G. Public Hearings (see Rule 17 for procedural details)

H. Ordinances, Resolutions, and Zoning (see Rule 17 for Public Hearing procedural details).

I. Unfinished Business

J. New Business

K. Reports

1. City Manager
2. City Attorney
3. City Commissioners

(k) Executive Session (Taken action as needed)

(l) Return to regular Session (if applicable) – **Take action on Executive Session items as needed.**

(m) Adjournment

RULE 17. ACTIONS FOR "COMMENTS FROM THE PUBLIC" OR A PUBLIC HEARING

The procedures for "Comments from the Public" are as follows:

During the first Regular Meeting of each month any member of the public may sign up with the City Clerk to request time to address the City Commission. The Presiding

Officer in his/her discretion may then allow the comments, subject to a time limitation of three (3) minutes. Following such comments, the City Commission may place the matter on a future agenda, or refer the matter to the City Manager for investigation and report. After the close of all public comments, the City Commissioners may immediately respond to the public comments or respond to the public comments during the "Response to Public comment" section at the next regularly scheduled City Commission Meeting.

Prior to the start of "Comments from the Public", all persons wishing to be heard shall give their names and addresses.

The following rules of conduct shall apply to all public comment:

Decorum is mandatory. No derogatory or degrading comments directed at staff or the City Commission will be tolerated during public comment.

No comments shall be made from any other location than the podium and anyone making "out of order" comments as determined by the Presiding Officer may be subject to removal from the meeting. In that regard, a police officer may be present to enforce these rules of conduct.

There will be no demonstrations during, or at the conclusion, of anyone's presentation. No extensions of time shall be given to any speaker, and no sharing or passing of time to other speakers shall be permitted.

If it appears that a group of speakers desire to speak on a particular subject, that group shall delegate a spokesperson to speak for the entire group. This will prevent repetitious comments and prevent the wasting of time.

Any person making a public comment may also supplement their comment by submitting documents. Such documents, however, must be deposited into a receptacle that is designated by the chair. The speaker may not approach the Commissioners without the express consent of a majority vote of the Commission. At the close of the open portion of the City Commission meeting, the City Clerk shall collect the deposited documents from the receptacle.

Any person who violates the rules of conduct may be subject to having their speaking privileges removed at future City Commission Meetings or may be subject to removal from that particular meeting as determined by a majority vote of the City Commission.

The Procedures for a "Public Hearing" are as Follows:

(a) Prior to the start of a public hearing all persons wishing to be heard shall give their name and address and whether they wish to speak as a proponent, opponent, or otherwise. The time limit for each speaker shall be limited to five (5) minutes. In public hearings that are not of a quasi-judicial nature, the time limit for each speaker shall be limited to

five (5) minutes. The Presiding Officer, subject to concurrence of the majority of the City Commission, may extend time limits and otherwise control presentation, The Presiding Officer may change the order of speakers so that testimony is heard in the most logical groups (i.e. proponents, opponents, adjacent owners, vested interests, etc.). However, the following shall be determined a reasonable guide.

(b) The Presiding Officer introduces the agenda item, opens the public hearing, and asks for comments for or against the item at hand.

(c) At the outset of each public hearing or meeting to consider a zoning amendment or zoning reclassification the Presiding Officer will announce the legal standards for zoning amendments and ask the parties to limit their presentations to information within the scope of the standards.

(d) The Presiding Officer calls upon the City Manager to describe the matter under consideration.

(e) The Presiding Officer calls for proponents.

(f) The proponents now speak. (Note: If the City itself is the proponent, a member or members of the Administration shall be designated to give proponent and rebuttal testimony).

(g) Opponents speak.

(h) The Presiding Officer calls for proponents to speak in rebuttal. A proponent speaking in rebuttal shall not introduce new materials. If the proponent does, or is allowed to do so, the opponents shall also be allowed to rebut the new elements.

(i) The Presiding Officer inquires as to whether any City Commission members have any questions to ask the proponents, opponents, or administration. If any City Commission member has questions, the appropriate individual will be recalled to the podium.

(j) The Presiding Officer closes the public hearing.

RULE 18. VOTING

The votes during all meetings of the City Commission shall be transacted as follows:

(a) Each Commissioner in attendance must vote for or against all measures before the Governing Body, unless there is a conflict of interest, for which abstention is recognized. (See 18.f)

(b) Unless otherwise provided for by statute, a Roll call vote shall be taken for final adoption of ordinances, resolutions, and to adjourn into Executive Session by the Clerk.

(c) In case of a tie in votes on any proposal, any Commissioner may request the item be put on the next agenda.

(d) Every member who was in the City Commission chambers when the question was put, shall give their vote unless the City Commission, for special reasons, shall excuse the member by motion or unless the City Commission member is excused in accordance with Rule 7. A City Commission member who "abstains" will be recorded as neither an "aye" or "nay" vote.

(e) A majority vote of all the members of the City Commission is required to adopt an ordinance or resolution and certain other actions as required by law or ordinance. (§3-17-3 NMSA 1978).

(f) A member of the City Commission shall recuse himself/herself from participating in a particular item on the agenda when such member 1) has a conflict of interest as described in the Government Conduct Act, 10-16-1, et seq., or 2) the totality of circumstances would create a reasonable public perception that such member cannot participate in that particular item in a fair and impartial manner. In such event, the member shall explain his/her reasoning prior to the item being discussed by the City Commission. The recusing member shall then remove himself/herself from the City Commission chambers prior to the commencement of any discussion of that particular agenda item, and shall not vote on such item.

RULE 19. DECORUM

(a) Members of the City Commission shall confine their remarks to the question under discussion or debate, avoiding personal references or attacks on fellow members, staff members or members of the public. No member of the City Commission shall engage in private discourse or commit any other act tending to distract the attention of the Governing body from the business before it.

(b) A member who resorts to persistent irrelevance or persistent repetition may be directed to discontinue his speech by the presiding officer.

(c) Point of Order. A Commissioner may call attention to the violation of the rules or a mistake in procedure by raising a point of order. The presiding officer may permit a full explanation before ruling on the claim and may submit the question to the Governing Body for decision by a majority vote.

RULE 20. COMMITTEES

The Committee structure of the City Commission and the procedures governing, all committees shall be as follows:

(a) Special ad Hoc Citizen Advisory Committees:

Special as hoc citizen advisory committees may be created by the City Commission for a particular purpose. Committee members shall be appointed by the City Commission. The Presiding Officer shall appoint the chair of the Committee. Citizen study committee shall sunset at the end of their mission, but no later than the end of each calendar year unless specifically continued by the City Commission thereafter for a specified time period. One City Commission member, and one alternate City Commission member, may be appointed as a member and liaison of a Citizen advisory committee.

RULE 21. ENACTED ORDINANCES, RESOLUTIONS AND MOTIONS

An enacted ordinance is a legislative act prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality. City Commission action shall be taken by ordinance when required by law, or to prescribe permanent rules of conduct which continue in force until repealed, or where such conduct is enforced by penalty.

An enacted resolution is an internal legislative act, which is a formal statement of policy concerning matters of special or temporary character. City Commission action shall be taken by resolution when required by law and in those instances where an expression of policy more formal than a motion is desired.

An enacted motion is a form of action taken by the City Commission to direct that a specific action be taken on behalf of the municipality. A motion, once approved and entered into the record, is the equivalent of a resolution in those instances where a resolution is not required by law.

RULE 22. RESOLUTIONS

A resolution may be put to its final passage on the same day on which it is introduced. The title of each resolution shall in all cases be read prior to its passage, provided, should a majority of the City Commission members present request that the entire resolution or certain of its sections be read, such requests shall be granted. Printed copies shall be made available to interested persons during normal and regular business hours of the City Clerk upon request and payment of a reasonable charge for reproduction.

RULE 23. ORDINANCES

The procedure for ordinances are as follows:

(a) Notice by publication of the title and subject matter of any ordinance

proposed for adoption by the City Commission must take place at least two weeks prior to consideration of final action upon the ordinance in open session. This does not apply to ordinances dealing with an emergency declared by the Mayor to be an immediate danger to the public health, safety and welfare of the City, or to ordinances, the subject matter of which is amending a city-zoning map. The title of each ordinance shall in all cases be read prior to its passage; provided, should a majority of the City Commission members present request that the entire ordinance or certain of its sections be read, such requests shall be granted. Printed copies shall be made available to interested persons during normal and regular business hours of the City Clerk upon request and payment of a reasonable charge beginning with the date of publication and continuing to the date of consideration by the City Commission.

(b) If a Motion to pass an ordinance fails, any Commissioner may request the ordinance be put on a future agenda after six (6) months.

(c) Any ordinance amending or repealing any portion of the City Code of Ordinances shall also amend or repeal the respective portions of any underlying ordinance(s).

RULE 24. PERMISSION REQUIRED TO ADDRESS THE COMMISSION

Persons other than City Commission members and management may be permitted to address the City Commission upon recognition and introduction by the Presiding Officer or the chair of the appropriate City Commission committee.

RULE 25. COMMISSION RELATIONS WITH BOARDS, COMMISSIONS AND ADVISORY COMMITTEES

All boards, commissions and City Commission citizen advisory bodies shall provide the City Commission with copies of any minutes taken of meetings. Communications from such boards, commissions and bodies to the City Commission shall be recorded in the minutes as follows.

Any such communication shall be officially acknowledged by the City Commission and receipt noted in the minutes.

RULE 26. PHOTOGRAPHS, MOTION PICTURES, VIDEO TAPE, TELEPHONE DEVICES – PERMISSION REQUIRED FOR ARTIFICIAL ILLUMINATION

No photographs, motion pictures, or video tapes that require the use of flash bulbs, electronic flashes, floodlights, or similar artificial illumination, or telephone devices shall be used at City Commission Meetings without the consent of the Presiding Officer or a majority of the City Commission. All cellular telephones shall be either turned off or

placed on a non-audio setting. Reasonable effort shall be made to accommodate the use of audio and video recording devices.

CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

Agenda Item #: F.6

MEETING DATE: October 27, 2021

SUBJECT: Approval of NRECA Services Agreement for the Phase I Municipal Acquisition Review Study.
DEPARTMENT: City Manager's Office
DATE SUBMITTED: October 7, 2021
SUBMITTED BY: Tammy Gardner
WHO WILL PRESENT THE ITEM: Bruce Swingle, City Manager

Summary/Background:

This is in conjunction with the Sierra Electric Coop and the City of Truth or Consequences MOU to explore the feasibility of selling the City's electric infrastructure to the Coop.

Recommendation:

Approve Agreement

Attachments:

- NRECA Services Agreement
- .

Fiscal Impact (Finance): **No**

None at this time.

Legal Review (City Attorney): **Yes**

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Approved For Submittal By: ☒ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. Click here to enter text. Ordinance No. 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 10-27-2021

NRECA
America's Electric Cooperatives

Confidential

Proposal

Preliminary
Municipal Acquisition Review Study: Phase 1

For the benefit of

Sierra Electric Cooperative, Inc.
610 Highway 195
Elephant Butte, NM 87935

City of Truth or Consequences
505 Sims
Truth or Consequences NM, 87901

Submitted via electronic mail to:
Denise Barrera,
CEO/GM
deniseb@secpower.com

September 16, 2021

Presented by:
Kim Christiansen
Managing Director, Governance, Business and Product Strategy, NRECA
Kim.christiansen@nreca.coop
2031 Whitney Bay Drive
Rockwall, Texas 75087
571-424-4068

Proposal: Municipal Acquisition Preliminary Review Study

Background

This proposal is crafted at the joint request of the City of Truth or Consequences, New Mexico (hereinafter "City" or "Truth or Consequences") and Sierra Electric Cooperative, Inc, (hereinafter "Sierra" or "Cooperative") headquartered in Elephant Butte, New Mexico.

Sierra and Truth or Consequences are jointly interested exploring the possibility of Sierra acquiring the electric distribution assets and providing electricity services currently provided by the City.

The parties jointly request this Proposal for Services from NRECA for NRECA to assist the Cooperative and City by performing a phase one review of the proposed acquisition, business case analysis and outline possible next stages towards the acquisition of the municipal electric utility.

About NRECA's Consulting Services

This document is the result of a joint request by the City and the Cooperative for a service proposal from NRECA Consulting Services, a department with Business Strategies and Technology division of the National Rural Electric Association("NRECA") , Arlington, Virginia, for a study related to the proposed acquisition of services. The proposal is to conduct a preliminary acquisition study and resultant plan for evaluating the scenario in which Sierra Electric Cooperative acquires the City of Truth or Consequences' electric infrastructure. This acquisition review and initial planning activities shall be deemed confidential and any interactions with personnel will be directed by the CEO of Sierra Electric Cooperative and the City Manager of Truth or Consequences.

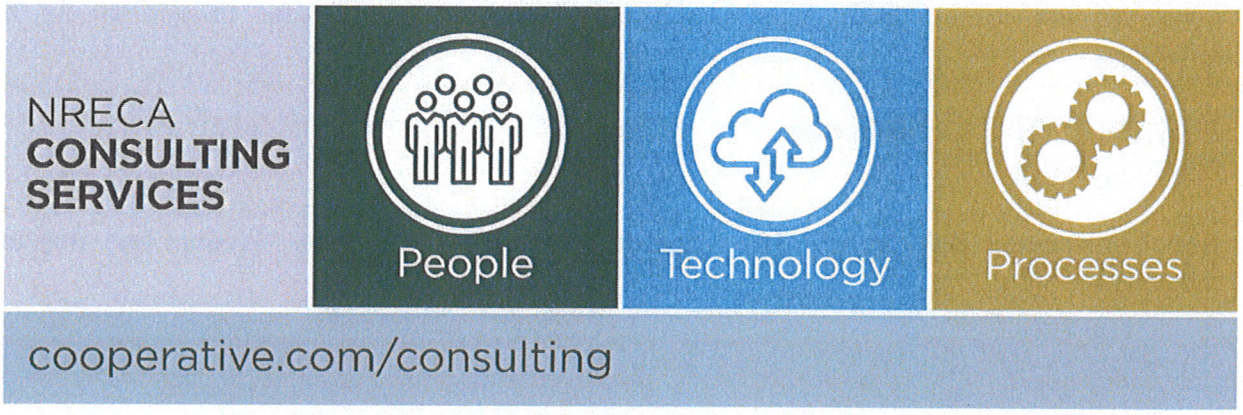
NRECA Consulting Services provides resources and services to America's electric cooperatives, supporting them as they plan, optimize, and transform their systems and relationships with their consumer-members. We work exclusively with electric distribution and G&T cooperatives across the country providing specialized consulting services to apply advanced strategies and best practices to better enable our clients to achieve higher performing results. As part of NRECA Business and Technology Strategies (BTS), we have access to a portfolio of projects; technical reports; resource guides and supporting services to help cooperatives navigate the emerging technologies and industry shifts to realize long-term value.

A few of NRECA Consulting Services and the enhanced benefit provided include:

- Enterprise Tsk Management implantation and review
- High-quality Governance assessments
- Assistance with Board and Governance practices
- Enhanced risk management processes
- Improved management oversight
- Improved internal process and control
- Assistance in examining potential consolidations and mergers
- Enriched employee satisfaction and performance
- Value-added third-party partner and provider relationships

- Succession planning
- Improved cooperative culture
- Emerging technology and DER planning

Our services can provide peace of mind to Boards and Management that their efforts will maximize benefits to both the cooperative and their members. NRECA prides itself on providing high-quality, responsive services to our membership. We also take pride in providing options from which the member seeking services may select to meet each member's needs.



Summary of the Review Process: Municipal Acquisition

Attachment 1 shows an overall municipal acquisition evaluation process approach. The approach outlines four phases with key decision points within the municipal acquisition evaluation process. The scope for this proposed study is limited to and involves the related activities under Phase 1. In each stage of the process, deliverables are completed that outline the necessary information for proper due diligence and decision points going forward between and among the City and the Cooperative. The entire review process builds on the analysis at each stage and to assure that each party understands the level of commitment and buy-in required for the acquisition.

Phase 1 starts the evaluation process with identification of the possible strategic advantages and overall rationale for pursing the acquisition. The conclusions for basing the rationale is verified from preliminary review of the targeted system, preliminary financial forecast and an assessment of the risks, including the political environment to achieve support for the acquisition.

With a positive or favorable decision at the end of Phase 1, the analysis process should proceed to *Phase 2* for detailed analysis and evaluation. This involves conducting a formal engineering study on the targeted infrastructure to assess the condition, future investments and overall value. The factors from the engineering study are included as part of a detailed financial analysis and economic evaluation. During Phase 2 operational details including the staffing resources, system operations and technology system implications from the acquisition are assessed. The outcome from this phase should be a detailed analysis report including the expected investment costs, benefits and return on investment; business change factors; and the related conclusions and recommendations. Phase 2

ends with an evaluation review and decision to continue with the acquisition process by Sierra Electric Cooperative Board and the City of Truth or Consequences' decision makers.

Phase 3 involves the development of the integrated acquisition and business plans. The plans should cover all aspects of the acquisition and implementation, including rates, governance, and legal business areas. During this phase careful considerations should be given to how the proposed acquisition will be communicated to achieve final necessary approvals.

Finally, *Phase 4* includes the execution of the communication plans to stakeholders, member-consumes and community at large, clearly articulating the overall value proposition for the acquisition.

NRECA BTS-C Consultants:

Lead Consultant:

Kim Christiansen, B.A. M.Ed. J.D., Managing Director, Governance, Product and Business Strategy, NRECA

Kim has extensive background over the past 30+ years in management, organizational development, strategic planning, evaluation, governance, assessment, analysis, training, and teaching.

- Kim has spent much of her career working with Boards of a variety of types and sizes.
- Kim has extensive experience in the review, application, drafting, defense of governance, by-laws, and other governance issues.
- Kim has worked with and assisted in the creation of strategic plans, goals, and objectives. She has also developed strategies to assist with meeting those goals and objectives.
- Kim has worked with cooperatives, non-profit organizations, governmental, quasi-governmental boards and businesses of various sizes and disciplines.
- Kim also training and experience in crisis management and mediation. She has mediated with both private and governmental entities, including several utility-centered issues.
- Kim has a background in human capital and labor relations and has served as a negotiator in several contract negotiations over the years. She has worked with both at-will and union developments.
- Kim has a business background, including management, business assessment and analysis, employee evaluation, education, and training. She has worked with several groups and businesses to develop evaluation for CEOs and for employees that are simple and meaningful
- Kim has been a national speaker and trainer in subjects related to governance, business assessment, business management, and leadership, among others.
- Kim has training and experience in leadership and has written, trained worked with a number of organizations on leadership.
- As an educator, Kim has both education and experience in developing content, assessment and analysis of processes and issues.

Kim has significant utility background, knowledge and understanding. Kim joins NRECA after serving as the Chief Executive Officer of the Nebraska Rural Electric Association and serving as Director of Government Relations and Legal Counsel for Kansas Electric Cooperatives.

Kim has several affiliations and has held offices in several organizations and groups of interest. Kim holds a Bachelor of Arts with several minors from Fort Hays State University, a Master's in Education Administration and Supervision from Wichita State University, and Juris Doctorate from the University of Kansas School of Law.

Henry Cano, Sr. Principal – NRECA Consulting Services

As a Sr. Principal Consultant with NRECA's Consulting Services, Henry oversees the utility management practice area with emphasis on organizational analysis, process redesign and technology improvement projects for rural electric cooperatives. Henry has over 25 years of direct experience working with the electric utility industry in the fields of distribution operations, technology, metering, billing, and customer services. Henry has successfully worked with utilities and cooperatives to analyze operations and improve business processes through team-based facilitated guided methods.

His areas of strengths include organization analysis, process improvement, operational assessments, economic analysis of technology deployments, and strategic planning. He is recognized for his leadership skills and reaching consensus-based decisions using facilitated and collaborative techniques across all employee levels of an organization. Prior to NRECA, Henry served as senior consultant of an engineering and design firm serving both gas and electric distribution systems and as a manager for SRP, the nation's third largest public power utility serving the Phoenix metropolitan area. He holds a Bachelor of Science in Industrial Engineering at Arizona State University.

Robert Harris, P.E. - Principal Engineer NRECA Business and Technology Strategies

Robert Harris is a registered professional engineer with 29 years' supervision, management and practical experience in the electric utility and cooperative industry. He has been involved in all aspects of engineering, operations and maintenance of transmission, substations and distribution. He has dealt with a number of significant challenges which are beyond the scope of many electric cooperative engineers. In September 2013 he began working for NRECA in the Energy & Power Division, now part of Business & Technologies Strategies. In his position at NRECA he is involved in the development of standards and to working directly with co-op employees on many aspects of design and construction of new facilities and maintenance of existing facilities.

Other consultants may be assigned or provide services for this project. They are unknown at the outset and will be contractors or employees of NRECA for these services.

Proposed Scope of Work

1. This proposal is to perform a majority of the work through virtual means. The proposal does include one 2-day in-person visit by NRECA Consultants. Additional requests for in-person visits will be billed in addition to the pricing in this proposal.

2. This proposal is to complete the work discussed on page 3 of this proposal as PHASE ONE the section entitled *Summary of the Review Process: Municipal Acquisition.*

3. The work of Phase One is to clarify potential strategic advantages, targeted benefits, opportunities and overall risks for the municipal acquisition.

4. Review Sierra Electric Cooperative's organization details including organization structure, financials and operating statistics.

5. Confirm data sources on the City of Truth or Consequences' municipal electrical system financials and operating statistics. Confirm other data sources to validate related assumptions on future growth, operating demands, demographics, investments and costs.

6. Conduct a drive-through engineering "initial assessment" of the targeted service area to review key aspects of the municipal's electrical system infrastructure. Summarize preliminary observations on the targeted infrastructure.

7. With identified initial assumptions, develop a high-level financial forecast with the integrated acquisition related financials.

8. Develop a related project plan and timeline outlining the details through the next phases of an acquisition approach. This includes the related communication plans and personnel and other stakeholder involvement.

9. Summarize the results and recommendations of the initial study review, including the preliminary acquisition rationale, acquisition scope and related project plan.

10. Present results, conclusions and finalize related project plan.

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AGREEMENT
TERMS AND CONDITIONS

A. Parties

The parties to this agreement are:

1) Sierra Electric Cooperative, Inc.,610 Highway 195, Elephant Butte, NM 87935

2) The City of Truth or Consequences, 505 Sims, Truth or Consequences NM, 87901

3) The National Rural Electric Cooperative Association (NRECA) by and through eh Business and Technology Strategies-Consulting ("BTS-C" or "BTS-Consulting,") 4301 Wilson Boulevard in Arlington, VA 22203.

4) Correspondence about this Agreement to NRECA should be directed to
   Kim Christiansen
   Managing Director
   NRECA
   2031 Whitney Bay Drive
   Rockwall, TX 75087
   571-424-44068
   kim.christiansen@nreca.coop

B. Pricing

1) This engagement is priced on a not-to-exceed basis for $24,900 inclusive of the project objectives and proposed scope of work.

2) This agreement includes 2 days of in-person work for two consultants. All other services are provided virtually.

3) Travel anticipated to be necessary to provide the deliverables outlined in this project is included in the project pricing, above. If project travel is required, normal business expenses for travel such as airfare, car rental transportation to Sierra and City, as applicable, hotel accommodations, meals, and incidentals will be billed to Sierra and City (in addition to the above-proposed price) at cost per NRECA travel guidelines.

4) A daily rate of $3,600.00 per consultant would apply to on-site work outside the scope of this proposal. Should the scope of work associated with the project expand beyond what is outlined in this proposal, a separate amendment will be added to this proposal for signoff by both parties.

C. Confidential Information

NRECA shall receive and hold any Sierra Electric Cooperative or City of Truth or Consequences Confidential/Privileged Information in strict confidence and trust. NRECA shall not disclose the Confidential/Privileged Information to any person or entity without the prior written consent of the Company. If NRECA is requested to disclose any of the Confidential Information by process of law, NRECA shall notify the Cooperative and/or City of the request in advance of any disclosure as soon as is reasonably possible.

D. Access to information

The City and Cooperative each agree to provide information and access to employees necessary for the purposes of the proposed study in a timely manner to effectuate the purposes of BTS-C's work in completing the study.

E. Timeline of proposed activities

The study, as proposed, normally takes 12 to 16 weeks for completion. The BTS-C consultant will work with Sierra and City to determine the best dates available to undertake and complete this project. Upon receiving the signed agreement, a timeline and deliverable schedule will be developed based upon Sierra and City's needs and BTS-C's team availability.

F. Governing Law and Jurisdiction

This engagement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia. The Courts of Virginia shall have exclusive jurisdiction in relation to any claim, dispute, or difference concerning the engagement letter and any matter arising from it.

G. Billing

1) NRECA will bill the entire costs of the project upon delivery of project components ad deliverables. An invoice will be sent from NRECA to Sierra at the address above.

2) Any division of the billing between Sierra Electric Cooperative and City of Truth or Consequences is the responsibility of those two parities. Any division or "split" of the fees stated that are a part of this Agreement should be made by the City and Cooperative before executing this Agreement.

H. Cancellation

Any party may cancel this agreement upon timely written notice to the non-canceling party(ies). In the event Sierra and/or City may desire to cancel, a fee of Three Thousand and No/100 dollars ($3,000.00) or the hourly billing for the time and effort expended by NRECA in furtherance of this Agreement to the date of cancellation, whichever is greater, will be due and payable to recompense NRECA's efforts in proving this service up to cancellation.

I. Limitation of Liability

The Cooperative and City agree to indemnify, hold harmless and defend NRECA against any and all losses, claims, damages, liabilities, penalties, judgments, awards, amounts paid in settlement, reasonable out-of-pocket costs, fees, expenses, and disbursements including, without limitation, the reasonable out-of-pocket costs, fees, expenses and disbursements, as and when incurred, of investigating, preparing or defending any action, suit, proceeding or investigation (whether or not in connection with proceedings or litigation in which NRECA is a party), directly or indirectly caused by, relating to, based upon, arising out of or in connection with this engagement letter between NRECA and the Cooperatives or any services rendered pursuant to such engagement letter.

1. Agreement Contents

The Proposed Scope of Work, pages 5 and 6, and Pages 7 through 9 of this Proposal documents constitute the Agreement between the parties. Only page 9 must be executed and returned.

Agreement for NRECA Services

By signing herein, Sierra Electric Cooperative, Inc. and the City of Truth or Consequences agree to the terms and conditions as laid out in the service proposal and as follows:

1. The scope for this study involves the related activities under the section Summary of the Review Process: Municipal Acquisition, described as phase one (1) on page three of this proposal.

2. This engagement is priced at $24,900 inclusive of the project objectives and proposed scope of work.

3. This agreement includes by reference the Scope of Work, outlined on pages 5-6 and the Terms and Conditions discussed on pages 7-8 of this service proposal.

4. Normal business expenses for travel such as airfare, car rental transportation to Sierra Electric Cooperative's headquarters, hotel accommodations, meals, and incidentals will be billed to the Cooper4ative (in addition to the above proposed price) at cost following NRECA travel guidelines. Copies, mailing and other expenses related to the project will also be billed.

5. Added service(s), beyond the described scope of work, will incur additional charges.

By signing below, we agree to the terms and conditions outlined in this Agreement and indicate our authorization to enter into this Agreement.

Signed this 15th day of October, 2021, as follows:

For Sierra Electric Cooperative, Inc.:

_____
Signature

John C. Bokich
_____
Printed Name

President
_____
Office

For the City of Truth or Consequences, New Mexico:

_____
Signature

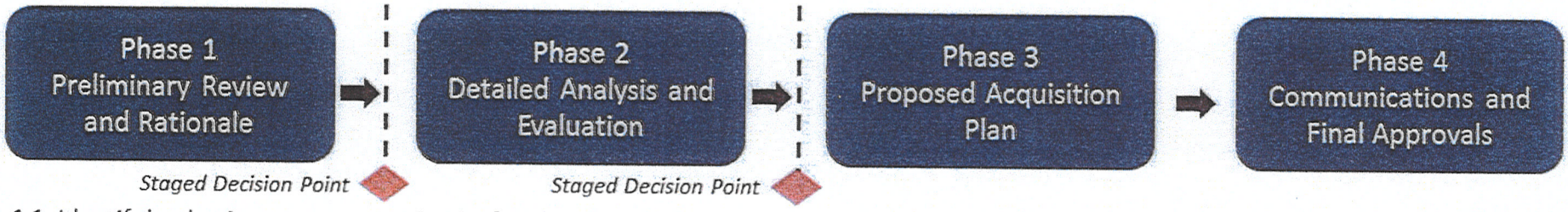
_____
Printed Name

_____
Office

(Please execute and return this page of this document.)

Attachment 1

Municipal Acquisition Evaluation Process Approach



1.1 Identify key business assumptions

1.2 Outline potential strategic advantages

1.3 Conduct a preliminary infrastructure review

1.4 Contrast / compare key utility business factors

1.5 Complete a high level acquisition integrated financial forecast

1.6 Assess the business risks, barriers and political environment for support

1.7 Summarize "strategic fit", success factors and overall rationale

1.8 Develop a related project budget, action plan, timeline and stakeholder involvement

2.1 Define the operating structure framework and scope

2.2 Analyze shared financial and operating data

2.3 Conduct a formal engineering assessment and value study on the targeted distribution infrastructure

2.4 Complete an analysis assessment on the physical assets, technology systems and staffing resource requirements

2.5 Validate forecast assumptions

2.6 Develop a detailed financial forecast and complete economic analysis

2.7 Assess governance and legal implications

2.8 Detail conclusions, value proposition and related recommendations

3.1 Detail the acquisition and business integration plans:

- Infrastructure assets acquisition plan
- Staffing transitional plan
- Operational transitional plan
- Technology systems integration plan
- Rates and service programs transitional plans
- Communication plan (internal and external)
- Legal, governance and compliance plans
- Implementation timelines

3.2 Detail communications (internal and external) and approval process plans and timelines

4.1 Develop communication briefs on acquisition plan and overall value proposition

4.2 Pursue plans to seek understanding on the value proposition, buy-in and support

4.3 Complete the related approval process.

City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: October 27, 2021

Agenda Item #: F.7

SUBJECT: Recruitment procedures to select a qualified elector to fill the vacancy of City Commissioner Position II.
DEPARTMENT: Clerk's Office
DATE SUBMITTED: October 22, 2021
SUBMITTED BY: Angela A. Torres, City Clerk
WHO WILL PRESENT THE ITEM: Mayor Whitehead

Summary/Background:

During the October 13, 2021 City Commission Meeting, the Governing Body discussed different options for filling vacancy of City Commissioner Position II. The Commission agreed to wait until after the November 2nd Election to fill the vacancy.

This item is to establish a recruitment procedure for the vacancy of Position II.

Recommendation:
N/A

Attachments:

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-

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Fiscal Impact (Finance): **N/A**

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Legal Review (City Attorney): **N/A**
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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 10-27-2021