

Amanda Forrister
Mayor

Rolf Hechler
Mayor Pro-Tem

Merry Jo Fahl
Commissioner



Destiny Mitchell
Commissioner

Shelly Harrelson
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, JULY 13, 2022; TO START AT 9:00 A.M.

A. CALL TO ORDER

B. INTRODUCTION

1. ROLL CALL

Hon. Amanda Forrister, Mayor
Hon. Rolf Hechler, Mayor Pro-Tem
Hon. Destiny Mitchell, Commissioner
Hon. Merry Jo Fahl, Commissioner
Hon. Shelly Harrelson, Commissioner

2. SILENT MEDITATION

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

C. PRESENTATIONS

1. Presentation of City of Truth or Consequences Employee Service Anniversary Awards. City Manager Swingle and Department Supervisors

D. PUBLIC COMMENT (3 Minute Rule Applies)

E. REPORTS

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

F. CONSENT CALENDAR

1. City Commission Workshop Minutes, June 22, 2022
2. City Commission Regular Minutes, June 22, 2022
3. Subrecipient FY 21/22 3rd & 4th Quarter Reports for Matthew 25
4. Take Home Vehicle Forms

G. PUBLIC HEARINGS (5 Minute Rule Applies)

1. Public Hearing/Discussion/Action: Final Adoption of Ordinance No. 734 to amend Ordinance No. 723 that was adopted on January 12, 2022 for the authorization of the execution and delivery of loan No. PPRF-5652, between the City of Truth or Consequences and the New Mexico Finance Authority for the purpose of purchasing a new electrical transformer. City Manager Swingle

H. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Resolution No. 01 22/23 Open Meetings Act and reasonable notice of meetings. Angela A. Torres, City Clerk
2. Discussion/Action: Resolution No. 02 22/23 Infrastructure Capital Improvement (ICIP) Plan. Traci Alvarez, Assistant City Manager
3. Discussion/Action: Resolution No. 03 22/23 to amend Animal Shelter Fees. OJ Hechler, Community Services Director
4. Discussion/Action: Resolution No. 04 22/23 South Central Council of Governments Annual Dues. City Manager Swingle
5. Discussion/Action: Publication of Ordinance No. 731 amending the City of Truth or Consequences Municipal Code of Ordinances, by amending Sections 11-10-4 and 11-10-5 and adding Section 11-10-6 to the Planning & Zoning Code Pertaining to Storage Units/Shipping Containers. Traci Alvarez, Assistant City Manager
6. Discussion/Action: Publication of Ordinance No. 735 Amending Section 14-48 pertaining to the Customer Generated Renewable Energy Program. City Manager Swingle
7. Discussion/Action: Publication of Ordinance No. 736 repealing Ordinance No. 677 pertaining to the Truth or Consequences Brewing Company Local Economic Development Project. City Manager Swingle

I. NEW BUSINESS

1. Discussion/Action: Notice of Termination Truth or Consequences Brewing Company Local Economic Development Project. City Manager Swingle
2. Discussion/Action: Approval of the Biennial Memorandum of Understanding (MOU) between MainStreet and the City of T or C. City Manager Swingle
3. Discussion/Action: Approval of contract for Steven Sage as the appointed Public Defender Attorney for the Municipal Court. City Manager Swingle
4. Discussion/Action: Accept and Approve Bridge Loan Funding Offer from Bank of the Southwest. Traci Alvarez, Assistant City Manager
5. Discussion/Action: Approve Roadway Hazard Identification Beacon Maintenance Agreement between the City of T or C and NMDOT. Traci Alvarez, Assistant City Manager
6. Discussion/Action: Award Recommendation for RFP #21-22-009 Engineering Services for the T or C Airport Improvements. Carol Kirkpatrick, Finance Director
7. Discussion/Action: Review and Approval of the Memorandum of Understanding (MOU) between the Truth or Consequences Police Department and the NM Attorney General's Office for an Internet Crimes Against Children Taskforce. Victor Rodriguez, Chief of Police
8. Discussion/Action: Review and Approval of the Memorandum of Understanding (MOU) between the Truth or Consequences Police Department and the NM Attorney General's Office for a Human Trafficking Taskforce. Victor Rodriguez, Chief of Police

I. NEW BUSINESS Continued...

9. Discussion/Action: Selection of appointees to serve on the Magistrate Court Designation Committee. City Manager Swingle
10. Discussion: Interview of applicants for the Planning & Zoning Commission. Angela A. Torres, City Clerk
 - Esther Luchini (3 minute presentation)
 - Robert Carey (3 minute presentation)
11. Discussion/Action: Selection of board members to fill the vacancies on the Planning & Zoning Commission. Angela A. Torres, City Clerk
12. Discussion/Action: Consideration of the re-appointment of Mark Shipley to the Airport Advisory Board. Angela Torres, City Clerk
13. Discussion/Action: Consideration of the re-appointment of Larry Mullenax to the Airport Advisory Board. Angela Torres, City Clerk

J. EXECUTIVE SESSION

1. Threatened & Pending Litigation (Chuck VanGelder vs. the City of Truth or Consequences) pursuant to 10-15-1(H.7).
2. Threatened & Pending Litigation (Ron Hoskin vs. the City of Truth or Consequences) pursuant to 10-15-1(H.7).

K. RETURN TO REGULAR SESSION; ACTION (if any)

1. Threatened & Pending Litigation (Chuck VanGelder vs. the City of Truth or Consequences) pursuant to 10-15-1(H.7).
2. Threatened & Pending Litigation (Ron Hoskin vs. the City of Truth or Consequences) pursuant to 10-15-1(H.7).

L. ADJOURNMENT

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

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 JULY 27, 2022



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: C.1

SUBJECT: Presentation of Service Anniversary Awards.
DEPARTMENT: Finance
DATE SUBMITTED: July 5, 2022
SUBMITTED BY: Alona Niebergall
WHO WILL PRESENT THE ITEM: City Manager Swingle and department supervisor

Summary/Background:

Employee Anniversary: Clanton, Margaret – 11 YEARS
Employee Anniversary: Digiacomio, Mary Anne – 2 YEARS
Employee Anniversary: Rodriguez, Victor – 1 YEAR
Employee Anniversary: Kirkpatrick, Carol – 3 YEARS
Employee Anniversary: Lovell, Patrick – 4 YEARS
Employee Anniversary: Hopkins, Mark – 2 YEARS

Recommendation:

None. Presentation Only.

Attachments:

Printed certificates to be signed by city manager and mayor

• -

Fiscal Impact (Finance): No

Legal Review (City Attorney): No

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: Click here to enter text.

File Name: CC Agendas 7-13-2022



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: F.1

SUBJECT: City Commission Workshop Minutes, June 22, 2022
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: July 8, 2022
SUBMITTED BY: Angela A. Torres, Clerk-Treasurer
WHO WILL PRESENT THE ITEM: Consent Calendar

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 7-13-2022

**CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
WEDNESDAY, JUNE 22, 2022**

A. CALL TO ORDER:

The meeting was called to order by Mayor Amanda Forrister 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. Amanda Forrister, Mayor
Hon. Rolf Hechler, Mayor Pro-Tem
Hon. Destiny Mitchell, Commissioner via telephone
Hon. Merry Jo Fahl, Commissioner
Hon. Shelly Harrelson, Commissioner

Also Present: Bruce Swingle, City Manager
Traci Alvarez, Assistant City Manager
Angela A. Torres, City Clerk-Treasurer

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

1. APPROVAL OF AGENDA:

Mayor Pro-Tem Hechler moved to approve the agenda as submitted. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

C. WORKSHOP:

1. Wildfire Safety Presentation and Workshop:

Ryan Williams, Sierra County Emergency Services gave a presentation of Wildfire Safety and preparedness. (Complete copy attached hereto and made a part hereof).

D. ADJOURNMENT:

Mayor Forrister adjourned the meeting at 10:03 a.m.

Table of Contents

| | |
|--|-----------|
| 1. INTRODUCTION | 4 |
| 1.1. Healthy Forest Restoration Act (HFRA) of 2003 | 7 |
| 1.2. Sierra County CWPP Team | 8 |
| 1.2.1. Core Team | 8 |
| 1.2.2. Supporting Members | 8 |
| 2. WILDLAND-URBAN INTERFACE (WUI) FIRE SETTING | 9 |
| 3. FIRE OCCURRENCE | 13 |
| 4. WILDLAND-URBAN INTERFACE (WUI) DEFINITION | 15 |
| 5. WUI RISK ASSESSMENT AND RANKING | 16 |
| 5.1. WUI Community Hazard Rating | 16 |
| 5.2. WUI Area Ranking | 17 |
| 5.3. WUI Area Treatment Priorities | 17 |
| 6. CATEGORIES FOR IMPLEMENTATION AND ACTION ITEMS | 18 |
| 6.1. Infrastructure Protection | 22 |
| 6.1.1. Communications | 22 |
| 6.1.1.1. Communication Sites | 22 |
| 6.1.1.2. Communication Needs | 23 |
| 6.1.2. Utilities | 24 |
| 6.1.2.1. Electric Transmission Lines | 24 |
| 6.1.2.2. Telephone Lines | 25 |
| 6.1.2.3. Large Propane Storage | 25 |
| 6.1.2.4. Petroleum Pipelines | 25 |
| 6.1.2.5. Above Ground Fuel Storage Tanks | 25 |
| 6.1.3. Highway Right-of-Ways | 26 |
| 6.1.4. Aviation Facilities | 28 |
| 6.1.5. Accomplishments and Actions Needed | 28 |
| 6.2. WUI Focus Projects | 29 |
| 6.2.1. Building Fire Department Capacity | 29 |
| 6.2.1.1. Wildland Firefighter Training | 29 |
| 6.2.1.2. Wildland Firefighting Equipment | 31 |
| 6.2.2. Local Community Water Supplies | 31 |
| 6.2.3. Wildfire Evacuation Responsibilities and Procedures | 32 |
| 6.2.3.1. Authority | 32 |
| 6.2.3.2. Evacuation Stages | 33 |
| 6.2.3.3. Perimeter Roadblocks and Patrols | 33 |

| | | |
|-------------|--|-----------|
| 6.2.3.4. | Return of Residents to Their Homes | 33 |
| 6.2.3.5. | Implementation Procedures | 33 |
| 6.2.3.6. | Anticipated Resources | 34 |
| 6.2.4. | Treatment of Structure Ignitability | 35 |
| 6.2.5. | Accomplishments and Actions Needed | 38 |
| 6.3. | Industry, Utilization, and Employment | 40 |
| 6.4. | Public Information and Education | 41 |
| 6.7. | Grants and Finance | 43 |
| 6.8. | Watershed Restoration | 45 |

TABLES

| | | |
|----------|---|----|
| Table 1 | Causes of Wildland Fires in Sierra County | 15 |
| Table 2 | Sizes of Wildland Fires in Sierra County | 15 |
| Table 3 | Sierra County Wildland Urban-Interface Hazard Assessment & Rating | 19 |
| Table 4 | Communications Sites | 23 |
| Table 5 | Highway Treatment Priorities..... | 47 |
| Table 6 | Infrastructure Protection-Action Items Completed..... | 50 |
| Table 7 | Infrastructure Protection-Items Needing Attention | 52 |
| Table 8 | Wildland Urban-Interface Projects-Action Items Completed | 55 |
| Table 9 | Wildland Urban-Interface Projects-Items Needing Attention..... | 59 |
| Table 10 | Information & Education-Action Items Completed | 59 |
| Table 11 | Public Information & Education-Items Needing Attention | 60 |

APPENDIX

| | | |
|---|--|-----|
| A | Wildland Urban-Interface Rating Sheets | 62 |
| B | Wildland Fire Communications Plan..... | 91 |
| C | Highway Right-of-Way Treatment Prescription..... | 94 |
| D | Sierra County Incident Qualifications (Red) Card Program | 97 |
| E | Standard Operating Guidelines Response to Wildland Fires..... | 99 |
| F | Minimum Equipment for Wildland Fire Response | 101 |
| G | Gila National Forest Listed Species..... | 107 |
| H | Training Accomplishments..... | 110 |



1. INTRODUCTION

This Community Wildfire Protection Plan (CWPP) has been prepared in an effort to reduce the threat of wildfire to homes, structures, improvements and the general population of Sierra County. While its inception can be traced to the 20 Communities Initiative as agreed upon by the United States Forest Service and the New Mexico Energy, Minerals, and Natural Resources Department, Forestry Division, many of the actions were initiated by resource professionals well before the 20 Communities initiative was officially started. In accordance with the requirements and guidelines set forth in the Healthy Forest Restoration Act (HFRA) of 2003, the land management agencies and entities in Sierra County have agreed to address the challenges of forest health and wildfire hazard risk reduction within the jurisdiction of the Sierra County CWPP Team.

EXECUTIVE SUMMARY

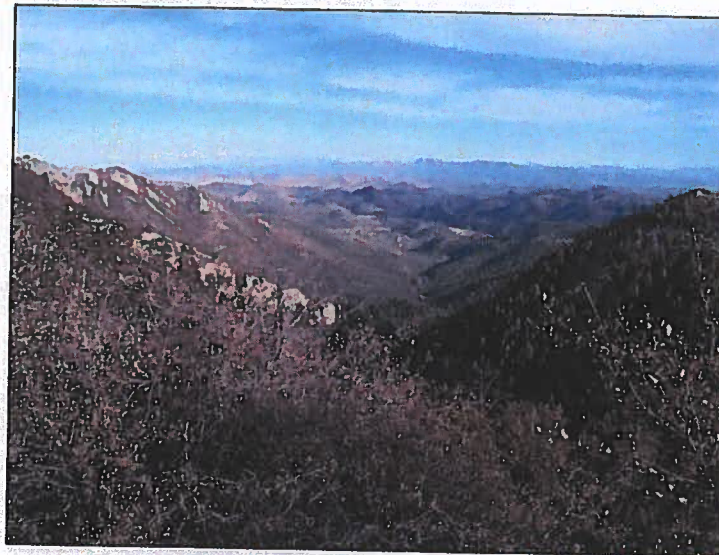
The Sierra County Community Wildfire Protection Plan Core Team was originally formed in 2003, two years after the May 2000 Cerro Grande Fire near Los Alamos, NM. NM State Forestry realized that there were a large number of communities in New Mexico that were currently at risk for a similar catastrophic wildfire. Each State Forestry District office began meeting with leaders within each of their jurisdictional boundaries to begin the process of preparing those communities for a possible wildfire. The initial meeting was held with just a few entities in attendance: Las Cruces BLM office, Black Range Ranger District Gila National Forestry, Sierra County and the Sierra Soil and Water Conservation District. From that initial group Sierra SWCD took the lead in facilitating getting folks together and served as the lead for this group for more than 12 years. Jornada Resource Conservation & Development (RC&D), a non-profit organization, has since taken over the role as lead agency.

The Sierra County CWPP team has been meeting consistently every month since 2003 with great support from our federal and state partners. In the sixteen years since our first meeting, the CWPP Core Team contributes some of their success to the facilitation of the team leader, who has been the same person since its inception. The BLM fire staff from Las Cruces, NM State Forestry from Socorro and the Gila National Forest Black Range staff have been very active as members of the Core Team and have provided leadership, training input and fire experience to members of the Sierra County Volunteer Fire Departments. There are seven (7) Volunteer Fire Departments involved with this effort, three (3) substations and two (2) municipal fire departments, along with representation from Sierra County Administration and Sheriff's Office. Other key members of the team include representation from the local electric cooperative along with inter-state electric transmission companies. This diverse group of members has provided the Core team with discussions that cover a large variety of wildfire concerns.

This team has accomplished a great deal since its inception to prepare community leaders and citizens for wildfires. Some of those projects include:

- Completed a community assessment in the community of Kingston, the most at-risk community in 2009. Input from that meeting called for improvements on roads from the county and the reduction of hazardous fuels. A second assessment was completed in 2018.
- Sierra SWCD applied for and received three grants from NM State Forestry for hazardous fuel reduction projects for the Kingston and poverty Creek communities, totaling more than \$300,000
- Sierra SWCD received two Collaborative Forest Restoration Program grants to reduce heavy fuel loads-one along the Continental divide in the Black Range Mountains and one along the Bosque area of the Rio Grande

- Sierra SWCD received more than \$400,000 in funds from the New Mexico Association of Counties for hazardous fuel reduction projects along the Rio Grande
- Working with the County in the utilization of Secure Rural Schools, Title III funding, the team was able to secure funds to purchase complete Wildland gear and water truck and brush tender truck equipment for all VFDs and members who had acquired their 130/190 classes
- Working with the County in the utilization of Secure Rural Schools, Title III funding, the County secured the services of a Wildland Coordinator for a period of one year. During that time the County adopted the 310-1 Program
- Sierra County CWPP Core Team developed their own Red Card program to provide certification for VFD members working towards their NM State Forestry red card program
- Developed a Wildland Fire Response Operating Guideline
- Developed a Wildland Fire Response flow chart of communication
- Developed a Sierra County CWPP Wildland fire communication plan
- Sierra SWCD received two grants from NM Association of Counties to purchase a display that is used at community events and fairs, along with a Wildland fire home simulator
- Provided a FIREWISE workshop to City of Truth or Consequences Commissioners and their Planning and Zoning Board, along with Sierra County Commissioners and their Planning and Zoning Board
- Have completed Community assessments for five communities within Sierra County, with assistance from State Forestry and USFS staff. All assessments had good attendance and letters of follow up were provided to Sierra County
- Provided outreach materials to VFDs and community groups, with materials provided by the BLM.



Black Range Vista

The Sierra County CWPP Core Team intends to conduct Community Assessments on a regular basis-one pre fire season and one post fire season. The Core Team will work with each VFD to determine location and dates of these bi-annual assessments.

5.2. WUI Area Ranking

The WUI community hazard ratings were prepared by the VFDs and partner agencies using the following categories:

- Flammable hazards
- Population density
- Mobile Water Available
- Fire Department Response Time
- Fuel types
- Topographic hazard rating
- Ingress/Egress issues

The CWPP team prepared a WUI hazard assessment and ranking for Sierra County. Table 3 summarizes the overall WUI hazard assessment and provides a hazard ranking of WUI areas within Sierra County.

5.3. WUI Area Treatment Priorities

Sierra County CWPP Team has identified the following communities as their Five Year (5) WUI treatment priority list:

1. Poverty Creek Fuel break
2. Kingston Fuel break
3. Arrey Bosque Area (BOR tree farm)
4. Animas Creek flood debris
5. Forest Service inholdings
6. River Corridor including Mims Pond
7. Lake Valley area subdivisions
8. Percha watershed from Highway 152 south and east of the Black Range Crest

Team members are committed to working together to accomplish projects in an interagency manner on "both sides of the fence".

TABLE 3 – SIERRA COUNTY WUI HAZARD ASSESSMENT AND RANKING

| WUI Area | Flammable Hazards: Natural gas=1; propane=2; both=3 | Population Density > 50% = 1 concentrated < 50% = 2 scattered | Mobile Water Available < 4500 gal = 1 > 4500 gal = 0 | Fire Department Response Time >15 min = 1 <15 min = 0 | Fuel Types Grass = 1 PJ = 2 PIPo = 3 Riparian fuels = 4 Bosque = 5 | Topographical Rating flat = 1 hills = 2 steep = 3 | Ingress/Egress for response >2 entries = 1 2 entries = 2 1 entry = 3 | Total Score High ≥ 11 8 ≤ Med ≤ 10 Low ≤ 7 |
|-------------------------------|--|--|---|--|---|--|--|---|
| Animas Creek | 3 | 2 | 0 | 0 | 4 | 2 | 3 | 14 |
| Arrey/Derry | 3 | 1 | 0 | 0 | 1 | 1 | 3 | 9 |
| Arrey/Derry Bosque | 3 | 2 | 1 | 0 | 5 | 1 | 3 | 15 |
| Caballo | 3 | 2 | 0 | 0 | 1 | 1 | 3 | 10 |
| Caballo Lake Lease Lots | 3 | 1 | 0 | 0 | 1 | 1 | 3 | 9 |
| Chiz | 2 | 2 | 1 | 1 | 2 | 1 | 3 | 12 |
| Chloride | 2 | 2 | 1 | 0 | 2 | 2 | 3 | 12 |
| Cuchillo | 2 | 1 | 1 | 1 | 1 | 2 | 1 | 9 |
| Elephant Butte | 3 | 1 | 0 | 0 | 1 | 2 | 1 | 8 |
| Hermosa | 2 | 2 | 0 | 1 | 3 | 3 | 3 | 14 |
| Hillsboro | 2 | 1 | 0 | 0 | 1 | 2 | 1 | 7 |
| King Canyon | 3 | 1 | 0 | 0 | 1 | 1 | 3 | 9 |
| Kingston | 2 | 1 | 0 | 0 | 4 | 3 | 3 | 13 |
| Lake Valley | 2 | 2 | 0 | 1 | 1 | 2 | 3 | 11 |
| Lake Valley Historic District | 2 | 2 | 1 | 1 | 1 | 2 | 3 | 12 |
| Mims Pond | 2 | 2 | 1 | 0 | 5 | 1 | 3 | 14 |

| WUI Area | Flammable Hazards: Natural gas=1; propane=2; both=3 | Population Density > 50% = 1 concentrated < 50% = 2 scattered | Mobile Water Available < 4500 gal = 1 > 4500 gal = 0 | Fire Department Response Time >15 min = 1 <15 min = 0 | Fuel Types Grass = 1 PJ = 2 PiPo = 3 Riparian fuels = 4 Bosque = 5 | Topographical Rating flat = 1 hills = 2 steep = 3 | Ingress/Egress for response >2 entries = 1 2 entries = 2 1 entry = 3 | Total Score High ≥ 11 8 \leq Med \leq 10 Low ≤ 7 |
|-----------------------------|--|--|---|--|---|--|--|---|
| Monticello | 2 | 1 | 1 | 1 | 4 | 3 | 2 | 14 |
| Oasis | 3 | 1 | 0 | 0 | 1 | 1 | 3 | 9 |
| Palomas | 2 | 2 | 1 | 0 | 1 | 2 | 2 | 10 |
| Placitas | 2 | 1 | 1 | 1 | 1 | 2 | 3 | 12 |
| Poverty Creek | 2 | 2 | 1 | 0 | 3 | 3 | 3 | 14 |
| Rio Grande Corridor-Palomas | 3 | 2 | 1 | 0 | 5 | 2 | 2 | 15 |
| Seco Subdivision | 3 | 1 | 0 | 0 | 4 | 1 | 3 | 12 |
| Truth or Consequences | 3 | 1 | 0 | 0 | 1 | 2 | 1 | 8 |
| Winston | 2 | 1 | 1 | 0 | 1 | 1 | 3 | 9 |
| | | | | | | | | |

SIERRA COUNTY
WUI COMMUNITY HAZARD RATING SHEET
ELEPHANT BUTTE/CITY OF T OR C FIRE DISTRICT

Community Name: Mims Pond

Legal: 33° 09'06.60" N by 107° 13'02.22" W

Descriptive Location: Corner of State Highways 51 and 179

Vegetation Fuels (i.e.-salt cedar, P-J, grass): Riparian, wetlands

Estimated Density (population per sq. mile): 10

Number of lots: < 10

Total acres: 120

Construction materials: fiberglass, steel, aluminum, *[boat storage, fuel storage, propane tanks, hazmat issues, low water table hazards for heavy vehicles]

Roofing: Steel, tin, shingles

Terrain: flat, wet

Predominate slope: zero

Aspect: N/A

Access: one way

Roads: dirt

Bridges: (how many and location): One w/o a weight limit

Driveway construction material: dirt

Water Availability – rolling water available

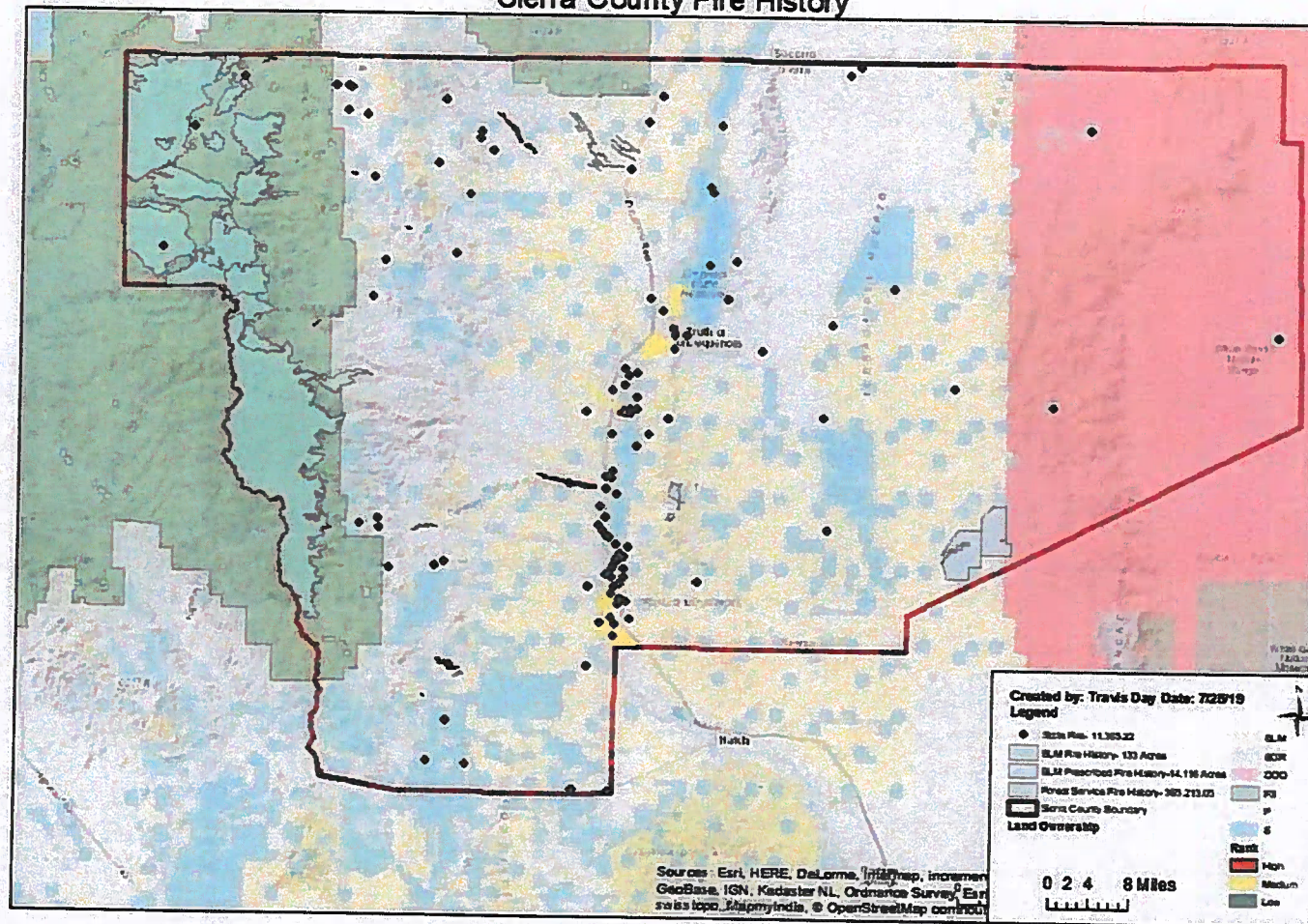
Closest Fire Department (in miles) Greater than 5 miles

Average Fire Hazard Rating- high

Low Water Crossings: 0

Added concerns: Mims Pond is an old oxbow of the Rio Grande, with most of the surrounding area loaded with Salt Cedar, Salt Grass and cattails. Adjacent to the Pond is a boat storage area, with unknown quantities of fuel. Also adjacent is a mobile home park, one residence surrounded by Bosque fuels and two small home businesses. A major concern if a wildfire occurred would be the impact of the fuels and fiberglass into the Rio Grande system.

Sierra County Fire History



CITY COMMISSION JUNE 22, 2022 WORKSHOP MEETING MINUTES

Passed and Approved this 13th day of July, 2022.

Amanda Forrister, Mayor

ATTEST:

Angela A. Torres, CMC, City Clerk



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: F.2

SUBJECT: City Commission Regular Minutes, June 22, 2022
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: July 8, 2022
SUBMITTED BY: Angela A. Torres, Clerk-Treasurer
WHO WILL PRESENT THE ITEM: Consent Calendar

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 7-13-2022

**CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
WEDNESDAY, JUNE 22, 2022**

A. CALL TO ORDER:

The meeting was called to order by Mayor Amanda Forrister at 10:04 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. Amanda Forrister, Mayor
Hon. Rolf Hechler, Mayor Pro-Tem
Hon. Merry Jo Fahl, Commissioner
Hon. Shelly Harrelson, Commissioner
Hon. Destiny Mitchell, Commissioner via telephone

Also Present: Bruce Swingle, City Manager
Angela A. Torres, City Clerk-Treasurer
Traci Alvarez, Assistant City Manager
Jay Rubin, City Attorney
Victor Rodriguez, Chief of Police
Carol Kirkpatrick, Finance Director
OJ Hechler, Community Services Director

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

2. SILENT MEDITATION:

Mayor Forrister called for fifteen seconds of silent meditation.

3. PLEDGE OF ALLEGIANCE:

Mayor Forrister called for Commissioner Harrelson to lead the Pledge of Allegiance.

4. APPROVAL OF AGENDA:

Mayor Pro-Tem Hechler moved to approve the agenda as submitted. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

C. PRESENTATIONS:

1. Presentation of possible advertising and marketing projects for the city:

Joanie Griffin, Sunny 505 reviewed the New Mexico True Cooperative Advertising package with the Commission. (Complete copy attached hereto and made a part hereof).

2. Concerns related to the Municipal Court:

Judge Beatrice Sanders presented her concerns regarding matters of the Municipal Court.

D. PUBLIC COMMENT (3 Minute Rule Applies):

Claudia Jeffery addressed the Commission with comments related to:

- (1) She is with the Farmers Market, and she asked questions about the proposed park fees, mainly about the Business License and State CRS number that will now be required.

Rick Dumiak addressed the Commission with comments related to the Rotary Park debris box. (Complete copy attached hereto and made a part hereof).

Diane Gunning addressed the Commission with various comments. (Complete copy attached hereto and made a part hereof).

E. REPORTS:

City Manager Swingle reported the following:

- The mobile library museum was at our Library last week. They had a special exhibit on music in New Mexico. We had 135 visitors who visited the mobile museum. This is something that hadn't occurred in the past few years due to COVID.
- We submitted an application for \$54 million dollars in congressional direct spending, and we recently received word from Senator Heinrich's Office regarding that. He is sponsoring a minimum of two of our projects. One of them is \$2.6 million dollars for Electric Department Improvements which will most likely be for the southern transformer, and the underground feeder lines that Electric Department Director Easley has been concerned about for some time now. The other one is for \$1.6 million dollars for the replacement of waterlines, and improvements to the water system. There is one category that we could not access on the Federal site which was for the water resources. We did put in for some of our funding from that block, and until we have access to it, we won't know if we got it. A minimum of two will be going to the Senate Appropriations Committee for consideration.

31 2

COMMENTS for the 22 June 2022 Truth or Consequences City Commission Meeting

REGARDING: 1) Municipal Court Clerk position cut FY 2023
2) Bias against Rick Dumiak serving on Planning and Zoning Commission

By Diane Gunning, 709 Wyona Street, Truth or Consequences, NM 87901

Good Morning Madam Mayor and Distinguished City Representatives,

At a recent Commission Meeting the City Lawyer made the valid point that Public Perception is a very important matter. It was also noted that misunderstandings and lack of information frequently fuel public perceptions.

So forgive me if I lack an understanding of all the behind the scene issues that have led to the loss of a Municipal Court Clerk for the Fiscal Year 2023. *= my only contact w/ municipal court is my husband & I were married there.*

Judge Sanders gave a very convincing plea before the Commission recently for retaining her clerk at the court. *since* The City plans to turn over the function of the Municipal Court to the County Magistrate Court anyway, and this *will* be done at the end of Judge Sander's current term which I believe from what has been said will be in about a year and a half.

Why would it present the City any problem to continue the clerk position until the end of Judge Sander's term? It seems little to ask. The judge has served the city for 31 years. She deserves some respect.

I have listened over the last few Commission meetings about how strapped for funds the City is. We were treated to a twenty minute debate on whether to allow the high school swim team free use of the Public Pool, since we are so low on funds. So it would seem logical that the City would try to cut expenses wherever they can.

Yet later this morning you will hear how the City plans to increase the salaries of over 80% of the City employees for Fiscal Year 2023. This will cost the City over a half a million dollars!

In this room alone, right now, for just the employees that are named on the Addendum for Resulting Salary Range per Position, the salary increases will amount to **\$44,917**. The midpoint range of pay for a Court Clerk is \$35,961. The remaining Court Clerk, if I am reading the Addendum correctly, is taking a pay cut of \$2,061. The Judge is getting no salary increase and makes far less than I would have ever thought a judge makes as it is.

What kind of **Public Perception** does this give? What appreciation is shown for someone who has given their life's work to this City? Money is coming from someone's pocket and is going into the pocket of others.

The issue that was being discussed at the previous Commission meeting when the City Lawyer brought up Public Perception had to do with the suitability of Rick Dumiak to serve on the Planning and Zoning Commission. The reason given for this was that Rick had signed a survey that I had written and given to George Henson in order for George to get signatures of neighbors saying that they are not opposed to his found object art structures on his private property.

George mistakenly turned this survey in as an attachment to an injunction he filed against the City when it had given him just a few days to clear items off the City *owned* dirt berm at the end of our dead end street.

The City Lawyer used the fact that Rick signed this survey to indicate that Rick would be against the City in this litigation. In reality, this is a pretense, and nothing is further from the truth.

Rick is 100% for the City and it is really the fact that he stood up at a Planning and Zoning meeting and pointed out that a request by a developer for a Summary Plat Amendment was against the City Ordinance Code. The Planning and Zoning Commission at this point had to postpone its decision while the developer moved to request a variance to the code at a later date.

There are four out of five open positions on the Planning and Zoning Commission at this time, yet the City is suggesting that of the five applicants only three should be selected at this time.

No offence to the other four applicants, but *Judging from their application forms,* none of them can compare in qualifications to Rick. We have an art gallery owner, someone who is a good

listener, someone who is a property owner and lifelong Sierra County resident, someone who has remodeled their home. Rick is thoroughly familiar with the City Ordinance Codes and is dedicated to upholding them.

You can assume that if you are picked for Planning and Zoning and Rick is not, it is because **you are not familiar** with the codes. You stand to be easily swayed to the will of others. Since this is the likely outcome of today's proceedings, I adjure all of you selected to serve on the Commission to go online and read the City Ordinance Codes relating to Planning and Zoning and become an expert in them. Do your part to make sure the City stays on course.

Thank you,



Diane Gunning

Salary increases FY 2023 of those City employees at City Commission Meeting 22 June 2022 who are named on: **Addendum – Resulting Salary Range per Position** (City Manager salary not mentioned)

\$27,892

\$ 5,583

\$ 6,852

\$ 4,590

TOTAL: \$44,917

Court clerk position cut midpoint pay= \$35,961

Pay cut for Court Administration Aide= \$2,061

Judge pay salary increase: \$0.00 , is paid \$41,995 after 31 years on the job

TOTAL: \$38,022 savings to City

The salary increases in this room alone would more than pay for the clerk who is losing her job due to no funding for the coming Fiscal Year, and to prevent the remaining clerk from taking a pay cut.

CITY COMMISSION JUNE 22, 2022 REGULAR MEETING MINUTES

- We are still trying to solicit board members for our Airport Advisory Board, Golf Course Advisory Board, Lodgers Tax Advisory Board, Impact Fee Advisory Board, and we are working on appointments for the Planning & Zoning Board.

City Attorney Rubin had no reports.

City Commission Reports:

Commissioner Fahl reported the following:

- She gave kudos to City Manager Swingle and his staff for their efforts regarding the congressional direct spending. That's great news.
- She is excited that we are bringing a bond issue forward. That is going to be good for us to do things to support our infrastructure.
- She thanked the Subrecipients for getting all of their stuff turned in, and for all of their good work.
- She was impressed by the fuel sales we made out at the Airport.
- She asked City Manager Swingle to explain how the Solar Farm works, and what the benefit is.

City Manager Swingle explained that we purchase Solar Electricity from them. We can set up a presentation in the future to discuss that.

Commissioner Harrelson had no reports.

Mayor Pro-Tem Hechler reported the following:

- He has an open invitation from Spaceport America for the Mayor and Commissioners to attend the Spaceport America Cup today or tomorrow. It's a pretty exciting event.

Commissioner Mitchell had no reports.

Mayor Forrister had no reports.

F. CONSENT CALENDAR:

1. City Commission Regular Minutes, June 8, 2022
2. Subrecipient FY 21/22 4th Quarter Reports

Mayor Pro-Tem Hechler moved to approve the Consent Calendar as submitted. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

G. PUBLIC HEARINGS:

- 1. Public Hearing/Discussion/Action: Final Adoption of Ordinance No. 733 amending the code of ordinances of the City of Truth or Consequences by amending Sections 7-136 calling for an increase in the Municipal Gross Receipts Tax of one-eighth of one percent (0.125%):**

City Manager Swingle explained that we talked about the city growing revenues during the Commission Retreat. We haven't increased taxes or grown revenues in a very long time. The City's current tax rate is 1.6875% overall, and it is 8.5% including the State, and County's tax rate. The State is decreasing the tax rate by 0.125%, or one-eighth, effective July 1, 2022. The Commission has the authority to impose up to 2.05%. We need the revenue, so if the State is decreasing theirs by 0.125% then we need to increase our tax rate by 0.125% that way our taxes will remain flat. The caveat to that is the State's decrease takes effect on July 1, 2022, and that tax rate is going to go to 8.375%. If approved, our tax increase would not take effect until January 1, 2023. Taxation and Revenue and the Department of Finance have time requirements as far as when something can be imposed. We consider ourselves to be a tourism community, yet our tax rate is fairly low compared to most tourism communities. We are at 1.6875% right now, and Ruidoso is at 2.9375%, Cimarron is at 2.0675%, Taos Ski Valley is at 1.9% and some change, Red River is 1.9% and some change, Eagle Nest, Silver City and Los Lunas are all 1.8%. This increase would move us up to 1.8125% with a quarter percent increase. We need another number of mechanisms in place to grow more revenue. We are millions of dollars behind the curve as far as our infrastructure. The study was performed on our Water System, and at the time of the study it was approximately \$102 million we needed in improvements to that system. It is probably looking more like \$150 million with today's dollars. We are also trying to get the study coordinated for Wastewater. We need millions of dollars to address infrastructure needs overall. The bottom line is that we have not invested for many decades. Our General Fund revenue is about \$4.2 million dollars which is a very slim. A flat budget is typically \$6.2 million dollars which is not fluff, increased services, or being used for improvements to roads. That is literally maintenance on all of our properties, and our assets. We can't maintain it. We have to improve it and replace infrastructure, and we can't do that without building our revenue. This is a nice trade off that we are able to increase when the state is reducing their rate.

Commissioner Fahl stated that she thinks this is a good move for us to do. We are going to have to be very creative in finding revenues, and this is an easy step.

Mayor Forrister agreed.

City Attorney Rubin stated that we are still going to be below the statutory threshold with this proposed increase.

Mayor Forrister opened the public hearing.

Proponents:

Rick Dumiak: He is definitely not in favor of a tax increase, but this is a no brainer, and we've got to do it. It is a wash, and it isn't really going to impact anyone. We are a tourist destination, and he would like to see the tourist part of that go off of our taxes with heads in beds. He lived in Florida Keys for years, and he was on the Tourist Development Council down there. That is where all of their money came from so he thinks this is a great idea.

Opponents:

Ariel Dougherty submitted comments of her opposition of Ordinance No. 733 to the Commission. (Complete copy attached hereto and made a part hereof).

Mayor Forrister closed the public hearing.

Commissioner Fahl made a motion to approve adoption of Ordinance No. 733 amending the code of ordinances of the City of Truth or Consequences by amending Sections 7-136 calling for an increase in the Municipal Gross Receipts Tax of one-eighth of one percent (0.125%). Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. Public Hearing/Public Input: Public input for the City of Truth or Consequences and Senior Center Infrastructure Capital Improvement Plan (ICIP):

Assistant City Manager Alvarez explained that the purpose of the public hearing is to receive suggestions from the public and the Commission on projects you would like to see listed on the City's and the SJOA's ICIP. Included in your packet you have last year's ICIP list that was submitted, and this is considered a draft for this year because they are not in any particular order for this year. She crossed out the ones that have either been funded in house, or the ones we received funding for on the city's list. SJOA also received funding for a couple of their projects, and SJOA Executive Director Crystal Walton made note of that on the bottom of her list. Also included in the packet is a list from each department of their priority projects, and what they would like to have on the ICIP. The red color coding is for items that either need to be combined with another departments because they both address the same thing, or ones that are already listed on the ICIP from last year. Once all of the suggestions are received from both the public and the Commission, she will make a list of the suggestions and take it to City Manager Swingle to determine which ones actually qualify as a potential ICIP projects, and which ones maybe need to be broken up into planning only, or planned design construct because we are looking for shovel ready type projects for our ICIP list. Once that is

G1: Opponent : Ariel Dougherty

Public Hearing on Final Adoption of Ordinance No 733
at Truth or Consequences City Commission Meeting June 22, 2022
from Ariel Dougherty, Caballo Road, T/C, NM

In OPPOSITION to passage of Ordinance No 773.

Greetings, Mayor and Commissioners I thank you for this opportunity to provide you written comments for this hearing.

As Commissioners you and those you have replaced over the past decade have balloned the city's annual budget from \$15 million to \$45 million dollars. This constantly escalating budget is your central problem.

For the following reasons I object to placing additional municipal gross receipt taxes on Truth or Consequences residents and, in particular, me. I oppose ordinance No 733 and urge you to reject it.

Foremost, this Commission and prior Commissions have entirely failed to take their fiscal responsibilities seriously and keep proper tabs on your budgets and allocations. Never once have I seen anyone of you question any of the above \$20,000 purchases. On today's agenda, Item I 3. you are blanketly asked to approve \$7,500,000 in contacts and estimated other annual expenses. If you were actually familiar with these items, I daresay you could easily trim \$180,000 out of this total.

What your unquestioning approvals of such requests above \$20,000 says to me that you have no regard for us in the public who you now turn to to pay for your excesses and inability to be fiscally responsible.

Two, your hired adviser on this matter compared our City to the tourist communities of Taos and Ruidoso that have higher municipal gross receipts tax rates above ours. The implication therefore was that TorC can "afford" to raise its rate. I say no. The median household income in Ruidoso is over twice that of residents of Truth or Consequences. In Taos the median income is almost one-third higher than TorC. So really what you want is your City residents to pay 1/3 more to twice as much of their modest incomes into the City for services. As Commissioners any tax rate hike shows your insensitivity of the hardship on the pocketbooks of your constituency.

Such hires, as this advisor, did they offer you other options? No, they were set on justifying the very outcome that you now propose by this Ordinance. How self-serving. You used tax-payer funds to get advice in one direction, with one objective. The advice was neither comprehensive nor wholistic. And surely obfuscates the public welfare.

As such, I contend you overstepped your oaths of office. In case you are not familiar with it I suggest you read the preamble to the Constitution. Right there it states, "promote the general Welfare". "Welfare" is actually capitalized. It is important, the central objective in your service.

I suggest you pay attention to citizen's welfare. I urge you vote no on this Ordinance.

Thank you.

done we will put them in a draft order and bring those back to the Commission at the next meeting to review the order, rank the top 5, and ultimately approve them.

Crystal Walton, SJOA Executive Director explained that the number one item on the list is the replacement of the Senior Center front entrance. The secondary item is the remodeling of the Senior Center Restroom, and both of those may already potentially be funded because in the last Capital they were allotted a renovation amount. She is working with Traci right now to see what all of the expenses are going to cost for those items. They are working in priority by safety items, and then moving forward to the lesser of the ones. They are really focusing on getting the safety issues addressed with the renovation funding that they have coming up. The senior vans, and most of the vehicles they have are quite old, and they have had quite a few that have had breakdown after breakdown. Those vehicles are on the list to be replaced for the ones they currently have. The resurfacing of the parking lot is going to be something that they are definitely going to keep on the list. They have been trying to work on that for quite some time. They are still trying to get information on who actually owns the property so they can get permission to do so. The parking lot that is currently listed is owned by the city. It would not only benefit the SJOA, but also the Commission Chambers, Library, and Civic Center. They are currently working on getting that project funded. They have a wheelchair accessible vehicle listed because the ones they have right now are failing. They are working on getting funding for those as well. They have quotes for new windows, and she is hoping they will be able to get those with some of the renovation funds they currently have, but if not they will still have it on the list. Some of things they recently ran into is that we are looking at 3 years out on these projects before receiving the funds. The issue they ran into on the last billing cycle is that the quotes they had for the vehicles and some of the other items were underfunded. With the cost of vehicles right now, she's sure everyone could agree that there is a huge increase on vehicles alone, not including specialty vehicles that are specifically made to the standards that they need. They made end up having to place those items back in right now to ask for the additional funds to fund those projects.

Mayor Forrister opened the public hearing.

No public input was given.

Mayor Forrister closed the public hearing.

Commissioner Fahl asked that a pedestrian foot bridge over the Rio Grande be added to our ICIP list. That would be moving forward their trail development with no cost to the city.

Mayor Pro-Tem Hechler stated that the ICIP list doesn't identify any outside funding sources for the improvements listed. He feels like that would be helpful to kind of understand where we are going to try and get this money.

CITY COMMISSION JUNE 22, 2022 REGULAR MEETING MINUTES

City Manager Swingle stated that it is not part of the criteria when we enter projects into the ICIP. The most important thing is that it is listed in our ICIP to get funding. Even grants are looking to make sure that it is listed on our ICIP, and if it is not on the list you are likely to be rejected for not having it listed. There are endless funding sources for the items on this list.

Assistant City Manager Alvarez explained when she goes in to do the entry, each project that you see on here is probably a 3-5 page summary that she can actually print out. One of things they have to do for the entries is identify who the owner is, who is going to maintain the project, and who is overseeing the procurement. They also have to list what has been funded, who has funded it, and how much has been funded. They then break down potential funding sources. An example would be, for one project that is potentially \$1 million dollars, she can enter \$1 million for NMDOT, and \$1 million dollars through CDBG. That helps send it out to the different areas and the different funding sources.

No action was taken.

City Attorney Rubin suggested that item H4 and item I1 be presented next because he has to leave soon.

Mayor Pro-Tem Hechler made a motion to immediately hear items H4 and I1 as the City Attorney has other commitments. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

ORDINANCES/RESOLUTIONS/ZONING:

H4. Discussion/Action: Resolution No. 69 21/22 Expressing the Commission's intent to designate the Sierra County Magistrate Court to have jurisdiction over the City's Code of Ordinances:

City Manager Swingle stated that this item is on the agenda because they have had discussions about designating the Sierra County Magistrate Court to have jurisdiction over the City's Code of Ordinances. There have been a number of issues with our Municipal Court that is a concern. There is a process in place that is established with the state statute 35-14-1. The process is to basically abolish a court, move your cases, and have the court of record be the Magistrate Court. The first step of the process is this resolution specifying that we are going to do that, and then following the statute of setting the committee. There were some comments from the Judge about us doing this awfully early, but we don't know what the timeline of this is going to be. This may be a 6 month project, or a 12 month project. A lot of it is going to depend on the Supreme Court. This is the first step in moving toward designating the Sierra County Magistrate Court to have jurisdiction over the Code of Ordinances for the City of Truth or Consequences. The Police Department is already moving their cases to the Magistrate Court. Everything but Animal Control and Code Enforcement have moved at this time.

Mayor Pro-Tem Hechler moved to approve Resolution No. 69 21/22 Expressing the Commission's intent to designate the Sierra County Magistrate Court to have jurisdiction over the City's Code of Ordinances with the effective date of July 1, 2022. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

New Business:

11: Discussion/Action: Interview and Selection of board members to fill the 4 vacancies on the Planning & Zoning Commission.

The City Commission interviewed Rick Dumiak for the position of an appointed board member to serve on the Planning & Zoning Commission.

The City Commission interviewed Eduardo Alicea for the position of an appointed board member to serve on the Planning & Zoning Commission.

The City Commission interviewed Susan Buhler for the position of an appointed board member to serve on the Planning & Zoning Commission.

Applicants Esther Luchini and Robert Carey were not able to attend the meeting.

Mayor Pro-Tem Hechler made a motion to wait on making a decision on the Planning & Zoning Board until they interview Esther Luchini and Robert Carey. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

H. ORDINANCES/RESOLUTIONS/ZONING:

1. Discussion/Action: Resolution No. 61 21/22 to submit a bond and question for Street, Water, and Wastewater Infrastructure:

City Manager Swingle explained that the resolution was reviewed at the last meeting. We inserted the dollar values that we will be requesting in a referendum. It would be \$1 million for the Street Department, and \$2 million for Water and Wastewater. You have the capacity to go up to \$4.2 million. This is a \$3 million dollar request. He thinks it's important for us not to go for the \$4.2 million at this time. \$3 million is important for the Street Department as well as Water and Wastewater to take care of some of their infrastructure issues. For example, the impact this will have on residents for a \$100,000 home we would be a \$100 a year increase in property taxes, and a \$150,000 home will have a \$150 increase in property taxes. We've got to start putting some real money into the infrastructure. We will continue to go out for grants, but our debt capacity for water and waste water is zero. In time with increases in our rates we can look at it again, but at least for the next year it is just not possible, so hopefully the property tax referendum and grants will be successful with our congressional direct spending. It is a combination

of all mechanisms that are available to us that we need to a ploy, and this is one of them. Should this be approved today by the Commission, it will go to referendum to the public in November.

Mayor Forrister stated that she hopes that the public will understand what that money is going to, and understand the need for it.

Commissioner Fahl moved to approve Resolution No. 61 21/22 to submit a bond and question for Street, Water, and Wastewater Infrastructure. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. Discussion/Action: Resolution No. 67 21/22 Budget Adjustment Resolution:

Carol Kirkpatrick, Finance Director reviewed the Budget Adjustments provided in the packet.

Mayor Pro-Tem Hechler moved to approve Resolution No. 67 21/22 Budget Adjustment Resolution. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. Discussion/Action: Resolution No. 68 21/22 Approval of City Park Rental Fees:

OJ Hechler, Community Services Director thanked City Clerk Torres for her assistance with this resolution. She got us started with this, and then we fine-tuned it together. We put a lot of thought into this, and we did some research of what other Municipalities in New Mexico are charging. Our old rental agreement is so vague that it is open to interpretation. We've had turnover with the Park's Department, as well as in the Clerk's Office, and Lisa is doing a great job, but there is always questions on what we should be charging, so we tried to get it as specific as possible. He clarified if someone wants to go and use the park they do not have to pay any fees. This is for the purpose of reserving a shelter, certain uses of the parks, or the use electricity. He then reviewed the new changes to the park fee resolution. (*Resolution with said fees attached hereto and made a part hereof*). He further explained that we added additional items that people can rent such as bleachers, tables, and folding chairs. Commercial Event applications are for events that are going to create a lot of people and who will have vendors and things of that nature. For those types of events, the City Manager needs to be aware of when we are going to have a big commercial event so those applications will ultimately go through the Park's Director, and eventually go to the City Manager for approval.

RESOLUTION NO. 68 21/22

A RESOLUTION OF THE CITY OF TRUTH OR CONSEQUENCES CITY COMMISSION ADOPTING A RESOLUTION FOR FEES, DEPOSITS AND REGULATIONS FOR USE OF THE CITY PARKS.

WHEREAS, the City of Truth or Consequences operates and maintains various City Parks, Rodeo Arena, Sports Complex, Tennis Courts, etc., and;

WHEREAS, the City of Truth or Consequences operates and maintains the City Parks for the enjoyment of the public, and;

WHEREAS, the City Parks are sometimes used by the public for commercial or private purposes, and;

WHEREAS, the City of Truth or Consequences finds it necessary to collect fees, and deposits in order to cover operational costs, and to provide on-going maintenance of the City Parks:

The following are the fees and deposits the City will charge for use of the City Parks:

Those who wish to use a park on a first come, first serve basis are not required to pay a user fee. However, private and commercial events that are expected to bring in a large number of people will be required to pay user fees.

RALPH EDWARDS PARK:

Reserving a Park Shelter:
(Utilities Not included)

Small Shelter - up to 2 hours: \$20.00
2 hours to 4 hours: \$30.00
4 hours to all day \$40.00
(Refundable Deposit) per rental: \$25.00

Large Shelter: up to 2 hours: \$25.00
2 hours to 4 hours: \$35.00
4 hours to all day: \$45.00
(Refundable Deposit) per rental: \$25.00

Reserving Gazebo:
(Utilities not included)

Up to 4 hours: \$30.00
4 hours to 8 hours: \$50.00
(Refundable Deposit) per rental: \$25.00

Use of Utilities:

Electricity: \$7 per outlet per day
\$50 per day south pedestals
Water Fees: \$10 single hose bib per day
\$25 per event (Multiple hose bibs)

Commercial Event Application: Event Reservation: \$50.00
Electricity: \$50.00 per event
Water Fees: \$10.00 per hose bib per day
(Refundable Deposit) per reservation: \$100.00
Does not include group shelters or Gazebo

- Set-up and tear-down will be the responsibility of the renter.
- **JUMPING BALLOONS ARE NOT PERMITTED AT RALPH EDWARDS PARK.**

FAMILY PARK:

Reserving a Park Shelter: Small Shelter - up to 2 hours: \$20.00
(Utilities not included) 2 hours to 4 hours: \$30.00
4 hours to all day \$40.00
(Refundable Deposit) per rental: \$25.00

Large Shelter - up to 2 hours: \$25.00
2 hours to 4 hours: \$35.00
4 hours to all day \$45.00
(Refundable Deposit) per rental: \$25.00

Use of Utilities: Electricity: \$7 per outlet per day

Commercial Event Application: Event Reservation: \$50.00
Electricity: \$35.00 per event
(Refundable Deposit) per reservation: \$100.00
Does not include group shelters

- Set-up and tear-down will be the responsibility of the renter.
- Jumping balloons for commercial use require a Commercial Event Application, Business License, and proof of Liability Insurance.

HEALING WATERS PLAZA:

Reserving the Pergola: Up to 2 hours: \$25.00
(Utilities not included) 2 hours to 4 hours: \$35.00
4 hours to all day: \$45.00

Use of Utilities: Electricity: \$7 per outlet per day

Commercial Event Application: Event Reservation: \$50.00 (**Does not include pergola**)
Electricity: \$50.00 per event
(Refundable Deposit) per reservation: \$100.00

- Set-up and tear-down will be the responsibility of the renter.

EVELYN RENFRO PARK:

USE OF UTILITIES: Electricity: \$7 per outlet per day
 Water Fees: \$10 single hose bib per day

LOUIS ARMIJO SPORTS COMPLEX :

Use of Field Lights: \$25.00 per day

Men/Women Sports Leagues: \$150.00 per team per season (includes Field Lights)

Youth League Teams: \$100.00 per team per season (includes Field Lights)

Guest Tournaments (Men/Women): \$200.00 (Up to 3 consecutive days)

Refundable Deposit: \$50.00 per event

Use of Conference Room: \$15.00 per hour up to 3 hours
 \$50.00 over 3 hours
 (Refundable Deposit) per rental \$25.00

- Adult Sports Leagues must submit By-Laws with application for season use.
- A season being: spring, summer, fall, winter (3-4 Months).
- All leagues must provide a season schedule at the time event is booked.
- Set-up and tear-down will be the responsibility of the renter.

ROTARY PARK:

Reserving a Park Shelter: Small Shelter - up to 2 hours: \$20.00
 2 hours to 4 hours: \$30.00
 4 hours to all day \$40.00
 (Refundable Deposit) per rental: \$25.00

 Large Shelter - up to 2 hours: \$25.00
 2 hours to 4 hours: \$35.00
 4 hours to all day \$45.00
 (Refundable Deposit) per rental: \$25.00

Use of Utilities: Electricity: \$7 per outlet per day

Commercial Event Application: Event Reservation: \$50.00
Electricity: \$35.00 per event
(Refundable Deposit) per reservation: \$100.00
Does not include group shelters

- Set-up and tear-down will be the responsibility of the renter.

TENNIS COURTS:

Use of tennis court lights: \$10.00 per use (no later than 11 PM)
Reserving the tennis courts: two court enclosure- \$20.00 per day
(Refundable Deposit) per rental: \$25.00

RODEO ARENA:

Use of Arena Lights: \$25.00 per day

Use of Arena: \$100 per event
\$40 Local Youth Group

Refundable Deposit \$100.00 per event

PA System: \$25.00 per day (if available)

Additional Tractor Work: \$100.00 per day

Overnight use of stalls: \$10 per stall per night + \$25 single fee deposit

RV Hookup: \$20 per RV Hookup per day (electricity and water)

Liability Insurance Certificate: Renters may be required to submit a Certificate of Liability Insurance naming the City of Truth or Consequences as additional insured for a minimum of \$1,000,000 Per Occurrence. A Hold Harmless Agreement is required to be signed by all applicants.

Additional Items:

Bleachers: \$50.00 per set (includes delivery)

Folding Chairs: \$1.00 per chair

Tables: \$5.00 per table
(Refundable Deposit) per rental \$50.00

A Commercial Event Application: is for the use of a portion of a park for events that are expected to draw a large number of people due to their nature, interest, location, promotion, or any combination of similar influences that are to be held in a City Park. This includes but not necessarily limited to vendors, festivals, solicitations, or performances. Vendors selling goods on public property must have a City business license. **All Commercial Event Applications must be approved by the City Manager.**

The cleaning/damage deposit will be deposited in a City account, and will be refunded if the facility is cleaned after the event and the facility has been returned to prior condition to the satisfaction of the City. If the amount of deposit is greater than the cost of cleaning or damage, the difference will be refunded. If the cost of cleaning or damage is greater than the amount of deposit the renter will be charged accordingly.

Note: The City Manager or his/her designee may impose other use regulations as he/she may deem necessary as long as those regulations do not subvert the intent of this policy. Any complaints for public affray may affect your ability to use City Parks.

NOW THEREFORE, BE IT RESOLVED by the City of Truth or Consequences Governing Body, that the fees, deposits and regulations described herein are hereby enacted.

BE IT FURTHER RESOLVED that nothing in the Resolution shall prohibit the use or access of City Parks by the public at large for free.

PASSED, APPROVED AND ADOPTED this 22nd day of June, 2022.

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO

By: _____
Amanda Forrister, Mayor

ATTEST:

Angela A. Torres, City Clerk-Treasurer

Mayor Forrister asked Community Services Director Hechler to address Claudia Jeffery's question on how much it will now cost the Farmers Market.

OJ Hechler, Community Services Director explained that the Farmers Market will do a Commercial Events Application, and it will cost \$50 (*per week. They use it one day out of the week on a weekly basis*) for the reservation, and then there is the refundable deposit of \$100 which already have on file. If they are not going to have all of the electricity turned on then it would be \$7 per outlet. We have to look at it this way. We are taking that park away from anyone else who wants to reserve that park during the Farmers Market Season, and no one else can rent that park for a commercial event during that time. The Farmers Market usually shows up 7:30 a.m. to 8:00 a.m. If we don't have those shelters reserved to somebody else, the Farmers Market is welcome to use those shelters, but if they want to make sure that no one else uses the shelters during their event then they can rent the shelters.

Mayor Pro-Tem Hechler moved to approve Resolution No. 68 21/22, approval of City Park Rental Fees to take effect July 1, 2022. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

4. H4 was addressed prior to item H1.

5. Discussion/Action: Publication of Ordinance No. 734 to amend Ordinance No. 723 that was adopted on January 12, 2022 for the authorization of the execution and delivery of loan no. PPRF-5652, between the City of Truth or Consequences and the New Mexico Finance Authority for the purpose of purchasing a new electrical transformer:

City Manager Swingle explained that we had gone through the process of the approval for the loan for the north transformer and the substation. Everything had been approved and at some point in the discussion NMFA and USDA got into a bit of a dispute over which loan would be subordinate. They were trying to figure out if USDA would have first dibs at eating the money if we were to go bankrupt or if it would be NMFA, and it has taken 5 months to hash that out. We bought a transformer, and it is up and running. It is staff's recommendation to approve this amendment, and let's get the money for our transformer.

Mayor Pro-Tem Hechler moved to approve Publication of Ordinance No. 734 to amend Ordinance No. 723 that was adopted on January 12, 2022 for the authorization of the execution and delivery of loan no. PPRF-5652, between the City of Truth or Consequences and the New Mexico Finance Authority for the purpose of purchasing a new electrical transformer. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

I. NEW BUSINESS:

1. Item I1 was moved after item H2.

2. Discussion/Action: Approval of the Employee Salary Plan and Schedule:

City Manager Swingle stated that he thinks we have all had conversations with community members on the salary plan, and whether it is appropriate or not. The timing is not great. We are increasing GRT and we are asking for a bond. However, the timing is never great. We've kind of done the same thing with our employees as we have done with our infrastructure. We had a salary study done to determine what fair market value was for our employees and basically it is southern New Mexico. The analysis is in and you have a number of sheets in front of you which specify what that is. It will probably be \$560,000 in the General Fund and Enterprise Funds combined. We budgeted this amount in the preliminary budget. It is not revenue that we don't have. It was budgeted. We just took a ballpark guess of roughly 10% for the General Fund and for the Enterprise Funds to come up with the number. We had to put a place holder in the budget and 10% seemed like a reasonable number. However, the study could have come in with 40%. He reviewed the provided salary study with the Commission. He explained that the dollar value for the range has a starting step. Step one is the minimum. That is what someone would typically come in at. Then you have step increases for the first 5 years that are at 2%, and then from 6 years to 10 years it is at 2.5%. 11 years to 20 years is at 3%. This salary plan should never last more than probably 7 years. Within 5 to 7 years this needs to be revisited because the market is changing every day. All of the employees were plugged into where they were at in steps. The steps equate to years. We plugged everyone in up to step 9. Nobody went beyond step 9. You can have 30 years with the city and you never exceeded step 9. The step increase could be next year. This would be for July 1st if approved, and next year in July we would come and ask to go to step 2. You may have the funding to do that or you may not. That's why we don't want to use years, we want to use steps. The steps will be increased on a Commission approval basis. 89 employees will receive a salary increase which is almost 81% of the employees. 21% of the employees are currently at where they should be or above, and they did not see an increase, and they will not receive an increase until their years of service equates to the appropriate step. We are going to have to draft a policy that goes with this, and we will address some of these nuances in that policy. Some things like transfers will be added to the policy. For example, if you have 5 years on as a step 1 and that pays you \$28,000, and you take a position that is a step 2 at a starting point again, you are actually taking a salary loss to take that promotion. Those are the things that will be addressed in the policy.

Commissioner Fahl moved to approve the Employee Salary Plan and Schedule. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

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

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

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

4. Discussion/Action: Approval of Award and Contract with Energy 1, LLC for Ken James Senior Center HVAC Units:

Carol Kirkpatrick, Finance Director explained that an Invitation to bid was issued on April 22, 2022 for the HVAC Units at the Ken James Senior Center. The bids were due on June 1, 2022, and the city received one bid from Energy 1, LLC. The bid received is within the budgeted amount for this project.

Commissioner Fahl moved to approve the Award and Contract with Energy 1, LLC for Ken James Senior Center HVAC Units. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

5. Discussion/Action: Approval of Manana Contract Extension #1:

City Manager Swingle explained that this is a contract with Manana which is Paul Bustamante. Paul does the maintenance and grounds work at the Veterans Memorial Park. The contract is for \$900 a month. Paul has served in that capacity for quite a while. It is staff's recommendation that the Commission approve the 1 year extension.

Mayor Pro-Tem Hechler moved to approve the Manana Contract Extension #1. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

6. Discussion/Action: Approval of extension on Contract with Tech 45 Enterprises:

Carol Kirkpatrick, Finance Director explained that we are seeking a 6 month extension on the contract with Tech 45 Enterprises for the management services at the Airport. We are still in the process to try and get a request for proposal or request for information together so we can put this out for RFP.

Commissioner Fahl moved to approve the extension on Contract with Tech 45 Enterprises. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

7. Discussion/Action: Approval of Contract Amendment #6 Extension with Integrated Technologies Group:

Carol Kirkpatrick, Finance Director explained that we are seeking a 3 month extension on the contract with Integrated Technologies Group so we can continue having services. We have put an RFP out and we are evaluating that at this time, and hopefully we'll come back to award a recommendation, but we still need them to transition. They did not submit a proposal for RFP.

Mayor Pro-Tem Hechler moved to approve the Contract Amendment #6 Extension with Integrated Technologies Group. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

8. Discussion/Action: USDA Water System Improvements-Phase 1 Project-Legal Service Agreement:

Traci Alvarez, Assistant City Manager explained that this is a next step procedure in our Water System Improvements Phase 1 Project. A Bond Council Legal Services agreement is required for the USDA Water System Improvements-Phase 1 as defined on page 7 of the attached Letter of Conditions. 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. Legal Services Fees are included in the funded amount for the project.

Commissioner Fahl moved to approve the USDA Water System Improvements-Phase 1 Project-Legal Service Agreement. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

9. Discussion/Action: Approval of MOU Agreement with the Truth or Consequences School District for a School Resource Officer:

Victor Rodriguez, Chief of Police explained that he had the pleasure of attending the school board meeting last Monday. They approved to solicit the City Police Department to provide the School Resource Officer services for them. They will assign somebody from the Police Department to serve as the School Resource Officer. Maybe if they are fully staffed next fiscal year they can come to the Commission to solicit for an actual position of the School Resource Officer.

Mayor Pro-Tem Hechler moved to approve the Truth or Consequences School District for a School Resource Officer. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

CITY COMMISSION JUNE 22, 2022 REGULAR MEETING MINUTES

J. ADJOURNMENT:

Mayor Forrister adjourned the meeting at 2:06 p.m.

Passed and Approved this 13th day of July, 2022.

Amanda Forrister, Mayor

ATTEST:

Angela A. Torres, CMC, City Clerk



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: F.3

SUBJECT: Subrecipient FY 21/22 3rd & 4th Quarter Reports for Matthew 25
DEPARTMENT: City Manager's Office
DATE SUBMITTED: June 21, 2022
SUBMITTED BY: Tammy Gardner, Executive Assistant
WHO WILL PRESENT THE ITEM: Consent Calendar

Summary/Background:

Contract requires that recipients of Subrecipient funding submit a quarterly report to the City.

Recommendation:

Accept the 3rd & 4th 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 7-13-2022

SUBRECIPIENT QUARTERLY REPORTS**FISCAL YEAR: 2021-22**

Updated: 04/20/22

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

Exception: 4Q report due 06/03/2022

| NAME OF ORGANIZATION | ALLOTMENT | 1ST QTR. REPORT | | 2ND QTR. REPORT | | 3RD QTR. REPORT | | 4TH QTR. REPORT | |
|--|-------------|-----------------|-------|-----------------|------|-----------------|------|-----------------|------|
| | | YES | NO | YES | NO | YES | NO | YES | NO |
| (SUBRECIPIENT FUNDS) | | | | | | | | | |
| Companion Animal Action Team/CAAT Majie Powey 740-0421 | \$1,500.00 | X | 10/13 | X | 1/12 | X | 4/8 | X | 6/7 |
| Domestic Abuse Intervention Center Blanca Chavez 894-3557 | \$2,500.00 | X | 10/07 | X | 1/10 | X | 4/5 | X | 6/6 |
| Matthew 25 Food Pantry Dawn Jensen 847-785-9498 | \$5,000.00 | X | 10/15 | X | 1/18 | X | 6/17 | X | 6/17 |
| SJOA / Sierra Joint Office on Aging Lisa Mattingly 894-6641 | \$47,000.00 | X | 10/14 | X | 1/13 | X | 4/6 | X | 6/10 |
| The Club of Sierra County Rebecca Dow 575-571-1056 | \$10,000.00 | X | 10/14 | X | 1/5 | X | 4/5 | X | 6/6 |
| | | | | | | | | | |
| (OTHER FUNDS) | | | | | | | | | |
| Geronimo Springs Museum Marilyn Pope 894-6600 | \$7,500.00 | X | 9/17 | X | 1/4 | X | 4/1 | X | 5/26 |
| Geronimo Trail Scenic Byway LaRena Miller 894-2255 | \$5,000.00 | X | 10/08 | X | 1/7 | X | 4/5 | X | 6/15 |
| MainStreet Truth or Consequences Linda DeMarino 740-6180 | \$45,000.00 | X | 10/15 | X | 1/14 | X | 4/11 | X | 6/2 |

1st Quarter: JUL, AUG, SEP

2nd Quarter: OCT, NOV, DEC

3rd Quarter: JAN, FEB, MAR

4th Quarter: APR, MAY, JUN

Copies to City Mgr. & Commission

Copies to City Mgr. & Commission

Copies to City Mgr. & Commission

Copies to City Mgr. & Commission

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

RECEIVED JUN 21 2022

Tk

SUBRECIPIENT GRANT
FY 2021/2022
3rd QUARTER INVOICE

Date of Invoice: *June 17, 2022*

Invoice Amount: \$ 1,250.00

Submit To: *City of Truth or Consequences*
ATTN: City Manager'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,

Signature of Authorized Representative

Ernie Rodger's

Phone No. (575)894-3292

SUBRECIPIENT QUARTERLY REPORT
FY: 2021/2022

RECEIVED JUN 21 2022

R

(Report is due by the
15th of the month
following the QTR.)

ORGANIZATION: Matthew 25 Food Pantry, Inc.

ALLOCATION: \$ 5,00.00
(FY Allotment)

\$ 1,250.00
(Quarterly Draw)

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

SUBMITTED BY: Ernest Rodgers
Print Name

Ernest E. Rodgers
Signature

(Please detail the progress made in providing the services 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

The lifting of the mask restrictions has us still doing a drive-through distribution. This seems to please our clients, as they are in the comfort of their cars. The lines move much faster, and clients seem to appreciate not having to stand in long lines. Matthew 25 volunteers still try to maintain a safe distance from the clients and avoid close contact.

FOOD DISTRIBUTION PERFORMANCE

In the 3rd quarter, 791 food baskets were delivered to 1,498 individuals. This is almost a 16% increase in households and an 11% increase in individuals being served. Food basket delivery to public housing is presently still on hold.

Appendix I – Household Food Basket Distribution

FINANCIAL PERFORMANCE

Matthew 25 Pantry'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 3rd quarter of 2022 financial performance, Matthew 25 had a gain of \$2072.08. This increase was caused by an increase in contributions, lower utility costs, and the decrease in the availability of food to order.

Appendix 2 provides an overview of Matthew 25's 3rd quarter financial performance.

VOLUNTEER CONTRIBUTION

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

ATTACHMENT 1: MATTHEW 25 - 3 QUARTER 2020 FOOD BASKET DISTRIBUTION

| DATE | HOUSEHOLDS | SENIORS | ADULTS | CHILDREN | IND. TOTALS |
|---|------------|---------|--------|----------|-------------|
| JANUARY | | | | | |
| 01/06/22 | 65 | 51 | 52 | 24 | 127 |
| 01/13/22 | 66 | 47 | 52 | 32 | 131 |
| 01/20/22 | 62 | 40 | 60 | 22 | 122 |
| 01/28/22 | 64 | 50 | 40 | 8 | 98 |
| WALK-INS ONLY ON 01/28/22.... NO SENIOR HOUSING DISTRIBUTION DUE TO CORONOVIRUS | | | | | |
| TOTALS: | 257 | 188 | 204 | 86 | 478 |
| FEBRUARY | | | | | |
| 02/03/22 (WEATHER) | 29 | 23 | 14 | 7 | 44 |
| 02/10/22 | 82 | 61 | 65 | 51 | 177 |
| 02/17/22 | 50 | 37 | 42 | 25 | 104 |
| 02/24/22 | 75 | 60 | 53 | 15 | 128 |
| WALK-INS ONLY ON 02/24/22.... NO SENIOR HOUSING DISTRIBUTION DUE TO CORONOVIRUS | | | | | |
| TOTALS: | 236 | 181 | 174 | 98 | 453 |
| MARCH | | | | | |
| 03/03/22 | 49 | 38 | 34 | 16 | 88 |
| 03/10/22 | 72 | 53 | 64 | 41 | 158 |
| 03/17/22 | 53 | 33 | 45 | 16 | 94 |
| 03/24/22 | 77 | 66 | 52 | 19 | 137 |
| WALK-INS ONLY ON 03/24/22....NO SENIOR HOUSING DISTRIBUTION DUE TO CORONOVIRUS | | | | | |
| 03/31/22 | 47 | 36 | 35 | 19 | 90 |
| TOTALS: | 298 | 226 | 230 | 111 | 567 |

APPENDIX 1: MATTHEW 25 3rd QUARTER HH FOOD BASKET DISTRIBUTION

2021/2022 YEAR TOTALS

| | HOUSEHOLDS | SENIORS | ADULTS | CHILDREN | IND. TOTALS |
|-----------------------------|------------|---------|--------|----------|-------------|
| 1 ST QTR. TOTALS | 683 | 522 | 511 | 299 | 1,332 |
| 2 ND QTR.TOTALS | 682 | 549 | 520 | 280 | 1,349 |
| 3 RD QTR.TOTALS | 791 | 595 | 608 | 295 | 1,498 |
| YTD. TOTALS | 2156 | 1666 | 1639 | 874 | 4,169 |

Appendix 2: Matthew 25 3rd Quarter Financial Performance

| | January | February | March | 3 rd Qtr. |
|-----------------------|-------------|-------------|-------------|----------------------|
| Revenue | | | | |
| Contributions | \$ 580.00 | \$ 1,349.00 | \$ 2,744.00 | \$ 4,673.40 |
| Grant Income | \$ 1,250.00 | | | \$ 1,250.00 |
| Bullock's Receipt | | \$ 45.68 | | \$ 45.68 |
| Reimbursement | | | | |
| Miscellaneous | | | | |
| Total | \$ 1,830.00 | \$ 1394.68 | \$ 2,744.00 | \$ 5,969.08 |
| Expense | | | | |
| Food | \$ 521.15 | \$ 74.25 | | \$ 595.40 |
| Rent | \$ 700.00 | \$ 700.00 | \$ 700.00 | \$ 2,100.00 |
| Utilities | \$ 386.31 | \$ 386.23 | \$ 428.98 | \$ 1,201.52 |
| Insurance | | \$ 39.06 | | \$ 39.06 |
| Professional Services | | | | |
| Miscellaneous | | | | |
| Total | \$ 1,607.46 | \$ 1,199.54 | \$ 1,128.98 | \$ 3,935.98 |
| Net Income | + \$ 222.54 | \$ 195.14 | \$ 1,615.42 | \$ 2033.10 |

Revenue

Contributions \$ 4,673.40
Grant Income \$ 1,250.00
Bullock's Receipt \$ 45.68
Reimbursement
Miscellaneous

Total \$ 5,969.08

Expense

Food \$ 595.40
Rent \$ 2100.00
Utilities \$ 1201.52
Professional Service \$ 39.06
Insurance
Miscellaneous

Total \$ 3,935.98

Net Income \$ 2,033.10

Matthew 25 Food Pantry Uses Cash Basis Accounting

RECEIVED JUN 21 2022

TQ

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

SUBRECIPIENT GRANT
FY 2021/2022
4th QUARTER INVOICE

Date of Invoice: *June 17, 2022*

Invoice Amount: \$ 1,250.00

Submit To: *City of Truth or Consequences*
ATTN: City Manager'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,

Signature of Authorized Representative

Ernie Rodger's

Phone No. (575)894-3292

74

SUBRECIPIENT QUARTERLY REPORT
FY: 2021/2022

RECEIVED JUN 21 2022

ORGANIZATION: Matthew 25 Food Pantry, Inc. (Report is due by the 15th of the month following the QTR.)

ALLOCATION: \$ 5,000.00 \$ 2150.00 **QUARTER:** 4th
(FY Allotment) (Quarterly Draw) (1st/2nd/3rd/4th)

SUBMITTED BY: Ernest e Rodgers Ernest E. Rodgers
Print Name Signature

PRIMARY PURPOSE

Matthew 225 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 continues to have a drive-through distribution in keeping with Covid-19 cautions. We recently received good news that when we recertify our clients in July, we will be able to use last year's forms if the information is current. This will help us to avoid as much close contact as possible.

FOOD DISTRIBUTION PERFORMANCE

In the 4th quarter, 812 food baskets were delivered to 1613 individuals. This is up 21 households from the previous quarter, or a 2.6% increase. However, this is up 129 households from the 1st quarter, or an 18.89% increase. Also, the 4th quarter showed an increase of 115 individuals served, or a 7.67% increase from the 3rd quarter. However, when comparing these figures to the 1st quarter, the number of individuals increased 281, or up 21%. Food basket delivery to public housing still has not resumed.

Appendix 1-Household Food Basket Distribution

FINANCIAL PERFORMANCE

In the 4th quarter of 2022 financial performance, Matthew 25 had a loss of \$3,177.58. This decrease was caused by a decrease in contributions, higher utility costs, and the temporary loss of grant money due to the reports missing the deadline. However, the local USPS Food Drive in May assisted us greatly in providing us with food products that we did not have to purchase. The reinstatement of the grant monies (\$2,500.00) and the net gain in the 3rd quarter of \$2072.08 will more than make up for this recent deficit.

Appendix 2 provides an overview of Matthew 25's 4th quarter financial performance.

VOLUNTEER CONTRIBUTION

Matthew 25 is an all-volunteer organization with approximately 16 individuals volunteering each week. Some serve as much as 20 to 25 hours weekly, with many helping out for 3 to 5 hours a week. Volunteers continue to pay for their own out-of-pocket expenses.

APPENDIX 1: MATTHEW 25 4TH QUARTER HH FOOD BASKET DISTRIBUTION

| DATE | HOUSEHOLDS | SENIORS | ADULTS | CHILDREN | IND. TOTALS |
|------|------------|---------|--------|----------|-------------|
|------|------------|---------|--------|----------|-------------|

APRIL

| | | | | | |
|----------|----|----|----|----|-----|
| 04/07/22 | 76 | 56 | 59 | 35 | 150 |
| 04/14/22 | 63 | 59 | 34 | 21 | 114 |
| 04/21/22 | 63 | 52 | 44 | 26 | 122 |
| 04/28/22 | 61 | 41 | 46 | 25 | 112 |

WALK-INS ONLY ON 04/28/22....SENIOR HOUSING NOT RECEIVING FOOD DUE TO CORONOVIRUS

| | | | | | |
|---------|-----|-----|-----|-----|-----|
| TOTALS: | 263 | 208 | 183 | 107 | 498 |
|---------|-----|-----|-----|-----|-----|

MAY

| | | | | | |
|----------|----|----|----|----|-----|
| 05/05/22 | 76 | 56 | 64 | 38 | 158 |
| 05/12/22 | 50 | 34 | 38 | 27 | 99 |
| 05/19/22 | 59 | 42 | 50 | 25 | 117 |
| 05/26/22 | 73 | 55 | 54 | 29 | 138 |

WALK-INS ONLY ON 05/26/22....SENIOR HOUSING NOT RECEIVING FOOD DUE TO CORONOVIRUS

| | | | | | |
|---------|-----|-----|-----|-----|-----|
| TOTALS: | 258 | 187 | 206 | 119 | 512 |
|---------|-----|-----|-----|-----|-----|

APPENDIX 1: MATTHEW 25 – 4TH QUARTER HH FOOD BASKET DISTRIBUTION

| DATE | HOUSEHOLDS | SENIORS | ADULTS | CHILDREN | IND. TOTALS |
|------|------------|---------|--------|----------|-------------|
|------|------------|---------|--------|----------|-------------|

JUNE

| | | | | | |
|----------|----|----|----|----|-----|
| 06/02/22 | 60 | 39 | 62 | 40 | 141 |
|----------|----|----|----|----|-----|

| | | | | | |
|----------|----|----|----|----|-----|
| 06/09/22 | 57 | 40 | 45 | 33 | 118 |
|----------|----|----|----|----|-----|

| | | | | | |
|----------|----|----|----|----|-----|
| 06/16/22 | 52 | 36 | 49 | 26 | 111 |
|----------|----|----|----|----|-----|

| | | | | | |
|------------|----|----|----|----|-----|
| 06/23/22** | 75 | 60 | 54 | 29 | 143 |
|------------|----|----|----|----|-----|

WALK-INS ONLY ON 06/23/22....NO SENIOR HOUSING DISTRIBUTION DUE TO CORONOVIRUS

| | | | | | |
|------------|----|----|----|----|----|
| 06/30/22** | 47 | 36 | 35 | 19 | 90 |
|------------|----|----|----|----|----|

| | | | | | |
|------------|-----|-----|-----|-----|-----|
| TOTALS: ** | 291 | 211 | 245 | 147 | 603 |
|------------|-----|-----|-----|-----|-----|

**ESTIMATES FOR THE LAST TWO WEEKS OF JUNE

2021-2022 YEAR TOTALS

| | HOUSEHOLDS | SENIORS | ADULTS | CHILDREN | IND. TOTALS |
|-----------------------------|------------|---------|--------|----------|-------------|
| 1 st Qtr.Totals | 683 | 522 | 511 | 299 | 1332 |
| 2 nd Qtr.Totals | 682 | 549 | 520 | 280 | 1349 |
| 3 rd Qtr.Totals | 791 | 595 | 608 | 295 | 1498 |
| 4 th Qtr. Totals | 812 | 606 | 634 | 373 | 1613 |
| YTD. Totals: | 2968 | 2272 | 2273 | 1247 | 5792 |

Appendix 2: Matthew 25 4th Quarter Financial Performance

| Revenue | APRIL | MAY | JUNE | |
|---------------------------------|--------------------|----------------------|--------------------|----------------------|
| Contributions | \$ 399.00 | \$ 775.00 | \$ 685.00 | \$ 1859.00 |
| Grant Income | | | \$ 194.65 | \$ 194.65 |
| Bullock's Receipt Reimbursement | | | | |
| Miscellaneous | | | | |
| Total | \$ 399.00 | \$ 775.00 | \$ 879.65 | \$ 2053.65 |
| Expense | | | | |
| Food | | \$ 759.91 | \$ 312.00 | \$ 1071.91 |
| Rent | \$ 700.00 | \$ 700.00 | \$ 700.00 | \$ 2100.00 |
| Utilities | \$ 356.59 | \$ 698.77 | \$ 728.36 | \$ 1783.72 |
| Insurance | | | | |
| Professional Services | | \$ 39.06 | | |
| Miscellaneous | | | \$ 41.89 | \$ 41.89 |
| Total | \$ 1,056.59 | \$ 2,197.74 | \$ 1782.25 | \$ 5036.58 |
| Net Income | - \$ 657.59 | - \$ 1,422.74 | - \$ 902.60 | - \$ 3,177.53 |

| | |
|---------------------------------|----------------------|
| Revenue | |
| Contributions | \$ 1859.00 |
| Grant Income | |
| Bullock's Receipt Reimbursement | \$ 194.65 |
| Miscellaneous | |
| Total | \$ 2,053.65 |
| Expense | |
| Food | \$ 1,071.91 |
| Rent | \$ 2,100.00 |
| Utilities | \$ 1,783.72 |
| Professional Service | \$ 39.06 |
| Insurance | |
| Miscellaneous | \$ 41.89 |
| Total | \$ 5036.58 |
| Net Income | - \$ 3,177.58 |

Matthew 25 Food Pantry Uses Cash Basis Accounting



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: F.4

SUBJECT: Take Home Vehicle Request Forms
DEPARTMENT: Various
DATE SUBMITTED: June 30, 2022
SUBMITTED BY: Angela A. Torres
WHO WILL PRESENT THE ITEM: Consent Calendar

Summary/Background:

The Parks Department has two employees that will assist in locking and unlocking of park facilities in the evenings and mornings. The employee assigned to this task for that day will take the City vehicle home. This employee will also serve for on-call status. In accordance with Resolution No.12 21/22, all take-home vehicle requests must be approved by the City Commission. The take-home vehicle is for Zor Robinson and Jacob Bachicha.

Joseph Henry from the Airport will also have a take home vehicle as well as Tyler Knull from Animal Control.

Recommendation:

Approve take home vehicle forms.

Attachments:

- Take-home vehicle forms for Parks, Airport and Animal Control

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 7-13-2022



Take Home Vehicle Authorization Request

Employee: ZOR ROBINSON Department: PARKS

Position Title: PARKS MAINTENANCE WORKER 1 Commute Miles/Day: 5.7 MILES

Employee Address: 103 SPRINGLAND BLVD, TRUTH OR CONSEQUENCES NM 87901

Pursuant to the Take-Home Vehicle Policy, requests to authorize take-home vehicles must demonstrate an official need for a City vehicle beyond normal working hours. Identify which, if any, of the following reflect the official need for the city vehicle beyond normal working hours.

☐ **Emergency Response:** Employee has primary responsibility for responding to emergency situations which require immediate response to protect life or property.

☒ **On-call Status:** Employee is on-call and responds to public safety or health emergencies occurring after normal work hours and on weekends.

☒ **Other:** explain OPENING AND CLOSING FACILITIES DURING THE WEEK AND ON WEEKENDS.

Note: A city owned take-home vehicle is a fringe benefit that may generate a tax liability.

By signing below, I acknowledge that I have read and understand the City policy governing proper use of a take-home vehicle and prohibitions. By voluntarily participating in the take-home vehicle program, I consent to complying with the policy, and I certify that this request meets the requirements of the City's Take-Home Vehicle Policy.

Employee's Signature

June 21, 2022

Date

Department Director Signature

☒ Approved ☐ Denied

Commission

☐ Approved

☐ Denied

Amanda Forrister, Mayor Signature

Date



Take Home Vehicle Authorization Request

Employee: JACOB BACHICHA Department: PARKS

Position Title: PARKS MAINTENANCE WORKER 1 Commute Miles/Day: 3 MILES

Employee Address: 661 WARM SPRINGS BLVD, ELEPHANT BUTTE 87935

Pursuant to the Take-Home Vehicle Policy, requests to authorize take-home vehicles must demonstrate an official need for a City vehicle beyond normal working hours. Identify which, if any, of the following reflect the official need for the city vehicle beyond normal working hours.

☐ **Emergency Response:** Employee has primary responsibility for responding to emergency situations which require immediate response to protect life or property.

☒ **On-call Status:** Employee is on-call and responds to public safety or health emergencies occurring after normal work hours and on weekends.

☒ **Other:** explain OPENING AND CLOSING FACILITIES DURING THE WEEK AND ON WEEKENDS.

Note: A city owned take-home vehicle is a fringe benefit that may generate a tax liability.

By signing below, I acknowledge that I have read and understand the City policy governing proper use of a take-home vehicle and prohibitions. By voluntarily participating in the take-home vehicle program, I consent to complying with the policy, and I certify that this request meets the requirements of the City's Take-Home Vehicle Policy.

Jacob Bachicha
Employee's Signature

June 21, 2022
Date

[Signature]
Department Director Signature

☒ Approved ☐ Denied

Commission

☐ Approved

☐ Denied

Amanda Forrister, Mayor Signature

Date



Take Home Vehicle Authorization Request

Employee: Joseph Henry Department: Airport
Position Title: Attendant Commute Miles/Day: 16
Employee Address: 618 Marf St TorC NM 87901

Pursuant to the Take-Home Vehicle Policy, requests to authorize take-home vehicles must demonstrate an official need for a City vehicle beyond normal working hours. Identify which, if any, of the following reflect the official need for the city vehicle beyond normal working hours.

- ☐ **Emergency Response:** Employee has primary responsibility for responding to emergency situations which require immediate response to protect life or property.
- ☒ **On-call Status:** Employee is on-call and responds to public safety or health emergencies occurring after normal work hours and on weekends.
- ☐ **Other:** explain _____

Note: A city owned take-home vehicle is a fringe benefit that may generate a tax liability.

By signing below, I acknowledge that I have read and understand the City policy governing proper use of a take-home vehicle and prohibitions. By voluntarily participating in the take-home vehicle program, I consent to complying with the policy, and I certify that this request meets the requirements of the City's Take-Home Vehicle Policy.

Employee's Signature

Date

7/7/22

Department Director Signature

☒ Approved ☐ Denied

Commission

☐ Approved

☐ Denied

Sandy Whitehead, Mayor Signature

Date



Take Home Vehicle Authorization Request

Employee: TYLER KNUCK Department: TCPD

Position Title: ANIMAL CONTROL Commute Miles/Day: 2.4

Employee Address: 1205 ZINC STREET

Pursuant to the Take-Home Vehicle Policy, requests to authorize take-home vehicles must demonstrate an official need for a City vehicle beyond normal working hours. Identify which, if any, of the following reflect the official need for the city vehicle beyond normal working hours.

☐ **Emergency Response:** Employee has primary responsibility for responding to emergency situations which require immediate response to protect life or property.

☒ **On-call Status:** Employee is on-call and responds to public safety or health emergencies occurring after normal work hours and on weekends.


☐ **Other:** explain _____

Note: A city owned take-home vehicle is a fringe benefit that may generate a tax liability.

By signing below, I acknowledge that I have read and understand the City policy governing proper use of a take-home vehicle and prohibitions. By voluntarily participating in the take-home vehicle program, I consent to complying with the policy, and I certify that this request meets the requirements of the City's Take-Home Vehicle Policy.


Employee's Signature

07/07/22
Date


Department Director Signature

☒ Approved ☐ Denied

Commission

☐ Approved

☐ Denied

Amanda Forrister, Mayor Signature

Date



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: G.1

SUBJECT: Final Adoption of Ordinance No. 734 to amend Ordinance No. 723 that was adopted on January 12, 2022 for the authorization of the execution and delivery of loan No. PPRF-5652, between the City of Truth or Consequences and the New Mexico Finance Authority for the purpose of purchasing a new electrical transformer

DEPARTMENT: City Manager's Office

DATE SUBMITTED: July 8, 2022

SUBMITTED BY: Angela Torres

WHO WILL PRESENT THE ITEM: Bruce Swingle, City Manager

Summary/Background:

Final Adoption of Ordinance No. 734 for the execution and delivery of loan No. PPRF-5652, between the City of Truth or Consequences and the New Mexico Finance Authority for the purpose of purchasing a new electrical transformer

Recommendation:

Final Adoption of Ord. No. 734

Attachments:

- Proposed Ord No. 734
- .

Fiscal Impact (Finance): 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 7-13-22

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

The City Commission (the “Governing Body”) of the City of Truth or Consequences, New Mexico, met in regular session in full conformity with the law and the rules and regulations of the Governing Body at the City Commission Chambers at 405 W. 3rd Street, Truth or Consequences, New Mexico 87901, being the meeting place of the Governing Body for the regular meeting held on July 13, 2022, at the hour of 9:00 a.m. Upon roll call, the following members were found to be present:

Present: _____

Absent: _____

Also Present: _____

Thereupon, there was officially filed with the City Clerk a copy of a proposed Ordinance in final form.

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
ORDINANCE NO. 734

AN ORDINANCE AMENDING ORDINANCE NO. 723 ADOPTED JANUARY 12, 2022; DEFINING SENIOR OBLIGATIONS; SPECIFYING THE DATE OF THE FIRST INTEREST PAYMENT ON THE LOAN AGREEMENT; CLARIFYING THAT THE LIEN ON PLEDGED REVENUES IS AN IRREVOCABLE LIEN BUT NOT NECESSARILY AN EXCLUSIVE LIEN ON THE PLEDGED REVENUES THE PRIORITY OF WHICH IS SET FORTH IN THE TERM SHEET; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS NOT INCONSISTENT WITH THIS ORDINANCE.

Capitalized terms used in the following recitals have the same meaning as defined in Article 1 of the Loan Agreement unless otherwise defined in the preambles or Section 1 of this Ordinance, or unless the context requires a different meaning.

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

WHEREAS, on January 12, 2022, Governmental Unit adopted Ordinance No. 723 (the “Original Ordinance”) authorizing the execution and delivery of a loan agreement by and between the Governmental Unit and the New Mexico Finance Authority (the “Finance Authority”) evidencing a special limited obligation to the Governmental Unit to pay a principal amount of up to \$1,320,907, plus interest thereon; and

WHEREAS, Section 12 of the Original Ordinance provides that “[p]rior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this [Original] Ordinance may be supplemented or amended by Ordinance of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this [Original] Ordinance. This [Original] Ordinance may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority[;]” and

WHEREAS, the Loan Agreement has not yet been delivered to the Finance Authority; and

WHEREAS, the Governmental Unit desires to amend the Original Ordinance to include a definition of Senior Obligations, to specify the date of the first interest payment on the Loan Agreement, and to clarify that the lien on Pledged Revenues is an irrevocable lien but not necessarily an exclusive lien on the Pledged Revenues the priority of which is set forth in the Term Sheet attached as Exhibit A to the Loan Agreement; and

WHEREAS, the amendment of the Original Ordinance as described in this Ordinance is not inconsistent with the substantive provisions of the Original Ordinance and the Finance Authority has consented to such amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO:

Section 1. Ordinance Amendment. Pursuant to Section 12 of the Original Ordinance, the Original Ordinance shall be amended as follows.

A. Amendment of Recitals. The seventh recital of the Original Ordinance shall be amended to read as follows:

WHEREAS, the Loan Agreement shall be executed and delivered pursuant to Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, and with an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged Revenues except as described in the Term Sheet; and.

B. Amendment of Section 1, Definitions. Section 1 of the Original Ordinance shall be amended to add the following definition:

“Senior Obligations” means the obligations described on the Term Sheet with a superior lien on a portion of the Pledged Revenues but only to the extent described in the Term Sheet.

C. Amendment of Section 5.B., Loan Agreement – Detail. Section 5.B., Detail, shall be amended to read as follows:

Detail. The Loan Agreement shall be in substantially the form of the Loan Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an original aggregate principal amount of up to \$1,320,907, shall be payable in installments of principal due on May 1 of the years designated in Exhibit “B” to the Loan Agreement and bear interest payable on May 1 and November 1 of each year, beginning on November 1, 2022, at the rates designated in Exhibit “B” to the Loan Agreement.

D. Amendment of Section 10, Lien on Pledged Revenues. Section 10, Lien on Pledged Revenues, shall be amended to read as follows:

Lien on Pledged Revenues. Pursuant to the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged to, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement, subject to the uses hereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable lien, but not necessarily an exclusive lien, on the Pledged Revenues the priority of which is consistent with that shown on the Term Sheet. The Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 2. Ratification. All actions not inconsistent with the provisions of the Original Ordinance and this Ordinance previously taken by the Governmental Unit for the purpose of entering into the Loan Agreement with the Finance Authority hereby are ratified, approved and confirmed.

Section 3. Repeal. All orders, resolutions, and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any order, resolution or ordinance, or part thereof, heretofore repealed.

Section 4. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 5 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and said Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 5. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

[Form of Summary of Ordinance for Publication.]

City of Truth or Consequences, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 734, duly adopted and approved by the Governing Body of the City of Truth or Consequences, New Mexico, on July 13, 2022. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the City Clerk, 401 McAdoo Street, Truth or Consequences, New Mexico 87901.

The title of the Ordinance is:

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
ORDINANCE NO. 734

AN ORDINANCE AMENDING ORDINANCE NO. 723 ADOPTED JANUARY 12, 2022; DEFINING SENIOR OBLIGATIONS; SPECIFYING THE DATE OF THE FIRST INTEREST PAYMENT ON THE LOAN AGREEMENT; CLARIFYING THAT THE LIEN ON PLEDGED REVENUES IS AN IRREVOCABLE LIEN BUT NOT NECESSARILY AN EXCLUSIVE LIEN ON THE PLEDGED REVENUES THE PRIORITY OF WHICH IS SET FORTH IN THE TERM SHEET; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS NOT INCONSISTENT WITH THIS ORDINANCE.

The title sets forth a general summary of the subject matter contained in the Ordinance.
This notice constitutes compliance with NMSA 1978, § 6-14-6.

[End of Form of Summary for Publication.]

Section 6. Execution of Agreements. The Governmental Unit through its Governing Body agrees to authorize and execute all such agreements with the Finance Authority as are necessary to consummate the Loan contemplated herein and consistent with the terms and conditions of the Loan Agreement, the Original Ordinance and this Ordinance.

PASSED, APPROVED AND ADOPTED THIS 13TH DAY OF JULY, 2022.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

By _____
Amanda Forrister, Mayor

ATTEST:

By _____
Angela Torres, City Clerk

Commissioner _____ then moved adoption of the foregoing Ordinance, duly seconded by Commissioner _____.

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

Those Voting Aye: _____

Those Voting Nay: _____

Those Absent: _____

_____ () members of the Governing Body having voted in favor of said motion, the Mayor declared said motion carried and said Ordinance adopted, whereupon the Mayor and the City Clerk signed the Ordinance upon the records of the minutes of the Governing Body.

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

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

By _____
Amanda Forrister, Mayor

ATTEST:

By _____
Angela Torres, City Clerk

6323761.docx

EXHIBIT "A"

Meeting Agenda
of the July 13, 2022
City Commission Meeting

(See attached)

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

I, Angela Torres, the duly acting and qualified City Clerk of the City of Truth or Consequences, New Mexico (the "Governmental Unit"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Commission of the Governmental Unit (the "Governing Body"), constituting the governing body of the Governmental Unit, had and taken at a duly called regular meeting held at the City Commission Chambers, at 405 W. 3rd Street, Truth or Consequences, New Mexico 87901, on July 13, 2022, at the hour of 9:00 a.m., insofar as the same relate to the adoption of the Ordinance amending Ordinance No. 723, copies of which are set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

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

3. Notice of said meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the Governmental Unit's open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 22nd day of July, 2022.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

(SEAL)

By Angela Torres, City Clerk

\$1,320,907

LOAN AGREEMENT

dated

July 22, 2022

by and between

NEW MEXICO FINANCE AUTHORITY

and the

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO

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

LOAN AGREEMENT

THIS LOAN AGREEMENT dated July 22, 2022, is entered into by and between the NEW MEXICO FINANCE AUTHORITY (“Finance Authority”), and the CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO (the “Governmental Unit”), a political subdivision duly organized and existing under the laws of the State of New Mexico (the “State”).

WITNESSETH:

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

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

WHEREAS, the Governmental Unit is a political subdivision duly organized and existing under and pursuant to the laws of the State and is a qualified entity under the Finance Authority Act; and

WHEREAS, the Governing Body of the Governmental Unit has determined that it is in the best interests of the Governmental Unit and its residents that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan from the Finance Authority to finance the costs of purchasing an electrical transformer, as more fully described on the Term Sheet attached hereto as Exhibit “A”; and

WHEREAS, the Governmental Unit is permitted and authorized to pay the Loan Agreement Payments through the Net Revenues of the System (the “Pledged Revenues”); and

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

WHEREAS, the Governmental Unit is a disadvantaged qualified entity within the meaning of Section 8(B)(4)(b) of the Finance Authority’s Amended Rules and Regulations Governing the Public Project Revolving Fund Program.

WHEREAS, the Finance Authority has determined that the Project is important to the overall capital needs of the residents of the State and that the Project will directly enhance the health and safety of the residents of the Governmental Unit; and

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

WHEREAS, except as described on the Term Sheet, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose at the time of the execution and delivery

of this Loan Agreement, and the Governmental Unit desires to pledge the Pledged Revenues toward the payment of this Loan Agreement; and

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

WHEREAS, the execution, performance and delivery of this Loan Agreement have been authorized, approved and directed by all necessary and appropriate action of the Governing Body pursuant to the Ordinance; and

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

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

ARTICLE I DEFINITIONS

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

“Act” means the general laws of the State, Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, and enactments of the Governing Body relating to this Loan Agreement, including the Ordinance.

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

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

“Authorized Officers” means, in the case of the Governmental Unit, Mayor, Mayor Pro Tem, Finance Director, City Manager and City Clerk, and, in the case of the Finance Authority, the Chair, Vice-Chair and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

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

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

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse this Loan Agreement.

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

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

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

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

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

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

“Governing Body” means the duly organized City Commission of the Governmental Unit and any successor governing body of the Governmental Unit.

“Gross Revenues” means all income and revenues directly or indirectly derived by the Governmental Unit from the operation and use of the System, or any part of the System, and includes, without limitation, all revenues received by the Governmental Unit, or any municipal corporation or agency succeeding to the rights of the Governmental Unit, from the System and from the sale and use of water and sanitary sewer services or facilities, or any other service, commodity or facility or any combination thereof furnished to the inhabitants in the Service Area.

Gross Revenues do not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Net Revenues” means the Gross Revenues after deducting Operation and Maintenance Expenses.

“Ordinance” means the Governmental Unit Ordinance No. 723 adopted on January 12, 2022, as amended by Ordinance No. 734 adopted on July 13, 2022 by the Governing Body approving this Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

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

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

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

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

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

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

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

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

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

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

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

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

"Pledged Revenues" means the Net Revenues of the Governmental Unit pledged to payment of the Loan Agreement Payments pursuant to the Ordinance and described on the Term Sheet.

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

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

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

"Senior Obligations" means the obligations described in the Term Sheet with a superior lien on a portion of the Pledged Revenues but only to the extent described in the Term Sheet.

"Service Area" means the area served by the System, whether situated within or without the limits of the Governmental Unit.

“System” means the municipally owned public utility designated as the Governmental Unit’s joint water, electric and sewer utility system consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the Governmental Unit through purchase, condemnation, construction or otherwise, including all expansions, extensions, enlargements and improvements of or to the joint water, electric and sewer utility system, and used in connection therewith or relating thereto, and any other related activity or enterprise of the Governmental Unit designated by the Governing Body as part of the joint water, electric and sewer utility system, whether situated within or without the limits of the Governmental Unit.

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

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

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

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Governmental Unit. The Governmental Unit represents, covenants and warrants:

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

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

(c) Authorization of Loan Agreement. The Governmental Unit is a political subdivision of the State and is duly organized and existing under the statutes and laws of the State.

Pursuant to the Act, as amended and supplemented from time to time, the Governmental Unit is authorized to enter into the transactions contemplated by this Loan Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement and the other documents related to the transaction.

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

(e) Payment of Loan Agreement. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in Exhibit "B" hereto, according to the true intent and meaning of this Loan Agreement. Loan Agreement Payments are payable solely from the Pledged Revenues or from the proceeds of refunding bonds or other refunding obligations which the Governmental Unit may hereafter issue in its sole discretion and which are payable from the Pledged Revenues; and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit to pay Loan Agreement Payments from any general or other fund of the Governmental Unit other than such special funds. Nothing contained in this Loan Agreement, however, shall be construed as prohibiting the Governmental Unit in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Acquisition and Completion of Project. The Project will consist of acquiring a new electrical transformer. The Project will be acquired and completed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the acquisition and completion of the Project and to the use of the Pledged Revenues.

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

(h) Legal, Valid and Binding Special Obligation. The Governmental Unit has taken all required action necessary to authorize the execution and delivery of this Loan Agreement and this Loan Agreement constitutes a legal, valid and binding special obligation of the Governmental Unit enforceable in accordance with its terms.

(i) Loan Agreement Term. The weighted average maturity of 5.288 years of the Loan Agreement does not exceed 120% of the reasonably expected life of the Project which is fifty (50) years.

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

(k) No Private Activity. The Governmental Unit is a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code. In addition, no amounts disbursed from the Program Account and used to finance the Project shall be used in the trade or business of

a person who is not a “governmental unit” within the meaning of Sections 103 and 141(b)(6) of the Code.

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

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

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

(o) Outstanding Debt. Except for the Parity Obligations, if any, described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the Governmental Unit which are payable from and secured by a parity lien on the Pledged Revenues. No additional indebtedness, bonds or notes of the Governmental Unit payable on a priority ahead of the indebtedness herein authorized out of the Pledged Revenues shall be created or incurred while this Loan Agreement remains outstanding. Prior to entering into additional indebtedness to be secured by a parity lien on the Pledged Revenues, the Governmental Unit shall comply with the terms of Section 5.5 hereof and shall seek the written consent of the Finance Authority, such consent shall not be unreasonably withheld. During the term of this Loan Agreement, prior to entering into any indebtedness secured by a subordinate lien on the Pledged Revenues or a lien on any revenues of the Governmental Unit other than the Pledged Revenues, the Governmental Unit shall notify the Finance Authority in writing of such indebtedness.

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

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

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

(s) Expected Coverage Ratio. The Pledged Revenues (giving credit for any increase in Pledged Revenues which has received final approval of the Governing Body and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed, one hundred thirty percent (130%) of the maximum Aggregate Annual Debt Service Requirement.

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

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

(v) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: annual audits, operational data required to update information in any disclosure documents used to assign or securitize the Loan Agreement Payments by issuance of Bonds by the Finance Authority pursuant to the Indenture, and notification of any event deemed material by the Finance Authority.

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

represents and covenants that no bonds or other evidence of indebtedness of the Governmental Unit payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date.

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

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

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

(aa) Right to Inspect. The Finance Authority and the Trustee shall have the right to inspect at all reasonable times all records, accounts and data relating to the System and to inspect the System and all properties comprising the System.

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

(cc) Billing Procedure. Bills for joint water, electric and sewer utility services or facilities, or any combination, furnished by or through the System, shall be rendered to customers on a regular basis each month following the month in which the service was rendered

and shall be due as required by the applicable ordinance of the Governmental Unit. If permitted by law, if a bill is not paid within the period of time required by such ordinance, joint water, electric and sewer utility services shall be discontinued as required by such ordinance, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection. Joint water, electric and sewer utility services may be billed jointly with each other, provided that each such joint bill shall show separately the joint water, electric and sewer utility charges.

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

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

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

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

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

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

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

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

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

(i) The Governmental Unit is a disadvantaged qualified entity in that its median household income is \$23,988, which is less than eighty percent (80%) of the State median household income of \$51,243; and

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

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

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

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

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

(f) Tax-Exempt Reimbursement of Amount Loaned. The Finance Authority intends to reimburse the public project revolving fund (as defined in the Finance Authority Act) for the amount of the Loan from the proceeds of tax-exempt bonds which the Finance Authority expects to issue within eighteen (18) months of the Closing Date.

ARTICLE III LOAN AGREEMENT TERM

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

ARTICLE IV
LOAN; APPLICATION OF MONEYS

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

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

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

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

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

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount equal to the Loan Agreement Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. The Governmental Unit does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to: (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the Finance Authority Debt Service Account, such account being held by the Finance Authority; (iii) the Program Account and the Loan Agreement Reserve Account, such accounts being held by the Trustee; and (iv) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if the Governmental Unit, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, or shall provide as permitted by Article VIII of this Loan Agreement for the payment thereof and shall pay all other amounts due or to become due under this Loan Agreement in accordance with its terms and provisions, then, upon such final payment or provision for payment by the Governmental Unit, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the

aggregate, be sufficient to pay the Principal Component and the Interest Component when due, the payment schedule of which is attached hereto as Exhibit "B."

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

Section 5.2 Payment Obligations of Governmental Unit. The Governmental Unit shall transfer to the Finance Authority from the Pledged Revenues the amounts provided in subsections (a)(i) and (ii) of this Section 5.2 for deposit into the Finance Authority Debt Service Account and the amounts provided in subsection (c) for deposit into the Loan Agreement Reserve Account. The Finance Authority Debt Service Account shall be established and held by the Finance Authority and the Loan Agreement Reserve Account shall be established and held by the Trustee, each on behalf of the Governmental Unit. All Pledged Revenues received by the Finance Authority pursuant to this Section 5.2 shall be accounted for and maintained on an ongoing basis by the Finance Authority in the Finance Authority Debt Service Account and all Loan Agreement Payments shall be remitted to the Trustee. The amounts on deposit in the Finance Authority Debt Service Account and Loan Agreement Reserve Account shall be expended and used by the Finance Authority or the Trustee, as the case may be, only in the manner and order of priority specified below.

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues except as described on the Term Sheet (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Governmental Unit shall remit to the Finance Authority, and the Finance Authority shall transfer and deposit into the Finance Authority Debt Service Account the following from the Pledged Revenues received from the Governmental Unit, which the Finance Authority shall transfer to the Trustee in accordance with the Indenture:

(i) Interest Components. Monthly, (A) beginning on the first day of the month following the Closing Date, an amount in equal monthly installments which is necessary to pay the first maturing Interest Component coming due on this Loan Agreement (which is November 1, 2022), and (B) on the first day of each month thereafter, one-sixth ($1/6^{\text{th}}$) of the amount necessary to pay the next maturing Interest Component on this Loan Agreement as described in Exhibit "B";

(ii) Principal Payments. Monthly, (A) beginning on the first day of the month following the Closing Date, an amount in equal monthly installments which is necessary to

pay the first maturing Principal Component (which is May 1, 2023), and (B) on the first day of each month thereafter, one-twelfth (1/12th) of the amount which is necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in Exhibit "B".

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

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

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

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

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address designated in Section 11.1 herein, for remittance to the Trustee. The obligation of the Governmental Unit to make payments hereunder, from and to the extent of the available Pledged

Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Governmental Unit, the Finance Authority, the Trustee, any vendor or any other person, the Governmental Unit shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

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

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

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

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

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

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

(e) With prior written notice to the Finance Authority, no provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to

prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.6 hereof.

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

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

(a) If at any time after the Closing Date, while this Loan Agreement, or any part thereof, is outstanding, the Governmental Unit shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Loan Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Loan Agreement or bonds to be refunded may not be compelled to surrender this Loan Agreement or their bonds, unless this Loan Agreement, the bonds or other obligations, at the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the Governmental Unit's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (e) of Section 5.5 hereof and in subparagraphs (b) and (c) of this Section.

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

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

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

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

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

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

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

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

Section 5.7 Investment of Governmental Unit Funds. Money on deposit in the Finance Authority Debt Service Account established by the Finance Authority may be invested by the Finance Authority in Permitted Investments at the discretion of the Finance Authority. Money on deposit in the Program Account and Loan Agreement Reserve Account held by the Trustee and created hereunder may be invested by the Trustee in Permitted Investments at the written direction of the Finance Authority or at the discretion of the Trustee. Any earnings on any of said accounts shall be held and administered in the each respective account and utilized in the same manner as the other moneys on deposit therein.

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

ARTICLE VI THE PROJECT

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

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

No disbursement shall be made from the Program Account without the approval of Bond Counsel: (i) to reimburse the Governmental Unit's own funds for expenditures made prior to the Closing Date; (ii) to refund or advance refund any tax-exempt obligations issued by or on behalf of the Governmental Unit; (iii) to be used, directly or indirectly, to finance a project used or to be used in the trade or business of a person who is not a "governmental unit," within the meaning of

Section 141(b)(6) of the Code; or (iv) to expend funds after the date that is three (3) years after the execution and delivery of this Loan Agreement.

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

Section 6.4 Application of Loan Agreement Proceeds Subsequent to Completion of the Project. Upon completion of the Project as signified by delivery of the completion certificate contemplated in Section 6.3 hereof, or in the event that the Finance Authority and the Trustee shall not have received a certificate of completion as required by Section 6.3 hereof by the date three (3) years from the Closing Date (or such later date as is approved in writing by Bond Counsel), the Trustee shall transfer the amounts remaining in the Program Account (except amounts necessary for payment of amounts not then due and payable) to the Finance Authority Debt Service Account and such amounts shall be used for the payment of Loan Agreement Payments.

ARTICLE VII COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

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

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

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

Section 7.4 First Lien; Equality of Liens. Except as described in the Term Sheet, the Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. The Governmental Unit covenants that except as described in the Term Sheet the Loan Agreement Payments and any Parity Obligations herein authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien

on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance of such obligations, it being the intention of the Governmental Unit that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

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

ARTICLE VIII PREPAYMENT OF LOAN AGREEMENT PAYMENTS

Section 8.1 Prepayment. There is no option to prepay this Loan Agreement in whole or in part.

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

ARTICLE IX INDEMNIFICATION

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

shall indemnify and save the Finance Authority and the Trustee harmless, from and to the extent of available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority or the Trustee, shall defend the Finance Authority or the Trustee, as applicable, in any such action or proceeding.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

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

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

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

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

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

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

(f) The Governmental Unit admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or

becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Governmental Unit for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

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

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

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

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

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

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

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

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

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

Section 10.5 Waivers of Events of Default. The Finance Authority or the Trustee may in its discretion waive by written waiver any Event of Default hereunder and the consequences of such an Event of Default provided, however, that there shall not be waived: (i) any Event of Default in the payment of the principal of this Loan Agreement at the date when due as specified herein; or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payments of principal and all expenses of the Finance Authority or the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority and the Trustee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

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

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

ARTICLE XI MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows: if to the Governmental Unit, 401 McAdoo Street, Truth or Consequences, New Mexico 87901, Attention: City Manager; if to the Finance Authority, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and if to the Trustee, BOKF, NA, 100 Sun Avenue NE, Suite 500, Albuquerque, New Mexico 87109, Attention: Trust Division. The Governmental Unit, the Finance Authority, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

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

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

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

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

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

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

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

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

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

[Signature pages follow]

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as approved by the Board of Directors of the Finance Authority on October 28, 2021, has executed this Loan Agreement, in its corporate name by its duly authorized officer; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By _____
Marquita D. Russel, Chief Executive Officer

PREPARED FOR EXECUTION BY OFFICERS OF THE
NEW MEXICO FINANCE AUTHORITY:
Sutin, Thayer & Browne A Professional Corporation
As Loan Counsel

By _____
Suzanne Wood Bruckner

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

By _____
Daniel C. Opperman, Chief Legal Officer

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

[SEAL]

By _____
Amanda Forrister, Mayor Pro Tem

ATTEST:

By _____
Angela Torres, City Clerk

6123757.docx

EXHIBIT "A"

TERM SHEET

New Mexico Finance Authority Loan No. PPRF-5652

| | |
|--|--|
| Governmental Unit: | City of Truth or Consequences, New Mexico |
| Project Description: | Purchase a new electrical transformer for the Governmental Unit's substation |
| Loan Agreement Principal Amount: | \$1,320,907 |
| Disadvantaged Funding Amount: | \$150,000 |
| Pledged Revenues: | The Net Revenues of the System |
| Coverage Ratio: | 130% |
| Currently Outstanding Parity Obligations: | NMFA Loan No. PPRF-2737, maturing 2033; NMFA Loan No. PPRF-2613, maturing 2032; NMFA Loan No. DW-4794, maturing 2041; NMFA Loan No. PPRF-4967, maturing 2024; NMED Loan No. CWSRF 098, maturing 2041 |
| Currently Outstanding Senior Obligations: | USDA Loan No. 0985-CTC-003, maturing 2059 (senior lien on that portion of the System that constitutes water and sewer revenues only) USDA CPAP Loan in the principal amount of \$5,487,000, maturing 2059 (senior lien on that portion of the System that constitutes sewer revenues only) USDA Loan No. WWTP 92-12, maturing 2059 (senior lien on that portion of the System that constitutes sewer revenues only) USDA Loan No. WWTP 92-19, maturing 2059 senior lien on that portion of the System that constitutes sewer revenues only) |
| Additional Parity Bonds Test: | 130% |

| | |
|---|--|
| Authorizing Legislation: | Ordinance No. 723 adopted on January 12, 2022 as amended by Ordinance No. 734 adopted on July 13, 2022 |
| Closing Date: | July 22, 2022 |
| Blended Interest Rate: | 2.003808% |
| Program Account Deposit: | \$1,188,816.00 |
| Loan Agreement Reserve Account Deposit: | \$132,090.70 |
| Finance Authority Debt Service Account Deposit: | \$0.30 |

First Interest Payment Date: November 1, 2022

First Principal Payment Date: May 1, 2023

Final Payment Date: May 1, 2031

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

EXHIBIT “B”

DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT

[SEE ATTACHED]

EXHIBIT "C"

FORM OF REQUISITION

RE: \$1,320,907 Loan Agreement by and between the City of Truth or Consequences, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: BOKF, NA
c/o New Mexico Finance Authority
PPRF@nmfa.net

You are hereby authorized to disburse from the Program Account – City of Truth or Consequences, New Mexico (2022 Electrical Transformer Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO. PPRF-5652

CLOSING DATE: July 22, 2022

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

AMOUNT OF PAYMENT: \$ _____

PURPOSE OF PAYMENT: _____

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – City of Truth or Consequences, New Mexico (2022 Electrical Transformer Loan).

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

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

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

DATED: _____

By _____

Authorized Officer

Title _____

(Print Name and Title)

C-1

EXHIBIT "D"

CERTIFICATE OF COMPLETION

RE: \$1,320,907 Loan Agreement by and between the City of Truth or Consequences, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: New Mexico Finance Authority
PPRF@nmfa.net

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

LOAN NO.: PPRF-5652

CLOSING DATE: July 22, 2022

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

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

DATED: _____

By _____

Authorized Officer of Governmental Unit

Title _____

Print Name and Title

Bond Debt Service
City of Truth or Consequences
2022 Equipment Loan (PPRF-5652)

| Year | Month | Monthly Principal | Monthly Interest | Monthly Admin | Monthly Debt Service | Outstanding Principal |
|------|-------|-------------------|------------------|---------------|----------------------|-----------------------|
| | | | | | | \$ 1,320,907.00 |
| 2022 | Aug | \$ 8,336.00 | \$ 2,368.12 | \$ - | \$ 10,704.12 | \$ 1,312,571.00 |
| | Sep | \$ 8,336.00 | \$ 2,368.12 | \$ - | \$ 10,704.12 | \$ 1,304,235.00 |
| | Oct | \$ 8,336.00 | \$ 2,368.12 | \$ - | \$ 10,704.12 | \$ 1,295,899.00 |
| | Nov | \$ 8,336.00 | \$ 2,368.12 | \$ - | \$ 10,704.12 | \$ 1,287,563.00 |
| | Dec | \$ 8,336.00 | \$ 2,368.12 | \$ - | \$ 10,704.12 | \$ 1,279,227.00 |
| 2023 | Jan | \$ 8,336.00 | \$ 2,368.12 | \$ - | \$ 10,704.12 | \$ 1,270,891.00 |
| | Feb | \$ 8,336.00 | \$ 2,368.12 | \$ - | \$ 10,704.12 | \$ 1,262,555.00 |
| | Mar | \$ 8,336.00 | \$ 2,368.12 | \$ - | \$ 10,704.12 | \$ 1,254,219.00 |
| | Apr | \$ 8,336.00 | \$ 2,368.12 | \$ - | \$ 10,704.12 | \$ 1,245,883.00 |
| | May | \$ 6,426.08 | \$ 2,186.07 | \$ - | \$ 8,612.15 | \$ 1,239,456.92 |
| | Jun | \$ 6,426.08 | \$ 2,186.07 | \$ - | \$ 8,612.15 | \$ 1,233,030.83 |
| | Jul | \$ 6,426.08 | \$ 2,186.07 | \$ - | \$ 8,612.15 | \$ 1,226,604.75 |
| | Aug | \$ 6,426.08 | \$ 2,186.07 | \$ - | \$ 8,612.15 | \$ 1,220,178.67 |
| | Sep | \$ 6,426.08 | \$ 2,186.07 | \$ - | \$ 8,612.15 | \$ 1,213,752.58 |
| | Oct | \$ 6,426.08 | \$ 2,186.07 | \$ - | \$ 8,612.15 | \$ 1,207,326.50 |
| | Nov | \$ 6,426.08 | \$ 2,186.07 | \$ - | \$ 8,612.15 | \$ 1,200,900.42 |
| | Dec | \$ 6,426.08 | \$ 2,186.07 | \$ - | \$ 8,612.15 | \$ 1,194,474.33 |
| 2024 | Jan | \$ 6,426.08 | \$ 2,186.07 | \$ - | \$ 8,612.15 | \$ 1,188,048.25 |
| | Feb | \$ 6,426.08 | \$ 2,186.07 | \$ - | \$ 8,612.15 | \$ 1,181,622.17 |
| | Mar | \$ 6,426.08 | \$ 2,186.07 | \$ - | \$ 8,612.15 | \$ 1,175,196.08 |
| | Apr | \$ 6,426.08 | \$ 2,186.07 | \$ - | \$ 8,612.15 | \$ 1,168,770.00 |
| | May | \$ 13,602.42 | \$ 2,056.91 | \$ - | \$ 15,659.32 | \$ 1,155,167.58 |
| | Jun | \$ 13,602.42 | \$ 2,056.91 | \$ - | \$ 15,659.32 | \$ 1,141,565.17 |
| | Jul | \$ 13,602.42 | \$ 2,056.91 | \$ - | \$ 15,659.32 | \$ 1,127,962.75 |
| | Aug | \$ 13,602.42 | \$ 2,056.91 | \$ - | \$ 15,659.32 | \$ 1,114,360.33 |
| | Sep | \$ 13,602.42 | \$ 2,056.91 | \$ - | \$ 15,659.32 | \$ 1,100,757.92 |
| | Oct | \$ 13,602.42 | \$ 2,056.91 | \$ - | \$ 15,659.32 | \$ 1,087,155.50 |
| | Nov | \$ 13,602.42 | \$ 2,056.91 | \$ - | \$ 15,659.32 | \$ 1,073,553.08 |
| | Dec | \$ 13,602.42 | \$ 2,056.91 | \$ - | \$ 15,659.32 | \$ 1,059,950.67 |
| 2025 | Jan | \$ 13,602.42 | \$ 2,056.91 | \$ - | \$ 15,659.32 | \$ 1,046,348.25 |
| | Feb | \$ 13,602.42 | \$ 2,056.91 | \$ - | \$ 15,659.32 | \$ 1,032,745.83 |
| | Mar | \$ 13,602.42 | \$ 2,056.91 | \$ - | \$ 15,659.32 | \$ 1,019,143.42 |
| | Apr | \$ 13,602.42 | \$ 2,056.91 | \$ - | \$ 15,659.32 | \$ 1,005,541.00 |

Bond Debt Service
City of Truth or Consequences
2022 Equipment Loan (PPRF-5652)

| Year | Month | Monthly Principal | Monthly Interest | Monthly Admin | Monthly Debt Service | Outstanding Principal |
|------|-------|-------------------|------------------|---------------|----------------------|-----------------------|
| 2026 | May | \$ 13,674.50 | \$ 1,764.45 | \$ - | \$ 15,438.95 | \$ 991,866.50 |
| | Jun | \$ 13,674.50 | \$ 1,764.45 | \$ - | \$ 15,438.95 | \$ 978,192.00 |
| | Jul | \$ 13,674.50 | \$ 1,764.45 | \$ - | \$ 15,438.95 | \$ 964,517.50 |
| | Aug | \$ 13,674.50 | \$ 1,764.45 | \$ - | \$ 15,438.95 | \$ 950,843.00 |
| | Sep | \$ 13,674.50 | \$ 1,764.45 | \$ - | \$ 15,438.95 | \$ 937,168.50 |
| | Oct | \$ 13,674.50 | \$ 1,764.45 | \$ - | \$ 15,438.95 | \$ 923,494.00 |
| | Nov | \$ 13,674.50 | \$ 1,764.45 | \$ - | \$ 15,438.95 | \$ 909,819.50 |
| | Dec | \$ 13,674.50 | \$ 1,764.45 | \$ - | \$ 15,438.95 | \$ 896,145.00 |
| | Jan | \$ 13,674.50 | \$ 1,764.45 | \$ - | \$ 15,438.95 | \$ 882,470.50 |
| | Feb | \$ 13,674.50 | \$ 1,764.45 | \$ - | \$ 15,438.95 | \$ 868,796.00 |
| | Mar | \$ 13,674.50 | \$ 1,764.45 | \$ - | \$ 15,438.95 | \$ 855,121.50 |
| | Apr | \$ 13,674.50 | \$ 1,764.45 | \$ - | \$ 15,438.95 | \$ 841,447.00 |
| 2027 | May | \$ 13,764.75 | \$ 1,458.14 | \$ - | \$ 15,222.89 | \$ 827,682.25 |
| | Jun | \$ 13,764.75 | \$ 1,458.14 | \$ - | \$ 15,222.89 | \$ 813,917.50 |
| | Jul | \$ 13,764.75 | \$ 1,458.14 | \$ - | \$ 15,222.89 | \$ 800,152.75 |
| | Aug | \$ 13,764.75 | \$ 1,458.14 | \$ - | \$ 15,222.89 | \$ 786,388.00 |
| | Sep | \$ 13,764.75 | \$ 1,458.14 | \$ - | \$ 15,222.89 | \$ 772,623.25 |
| | Oct | \$ 13,764.75 | \$ 1,458.14 | \$ - | \$ 15,222.89 | \$ 758,858.50 |
| | Nov | \$ 13,764.75 | \$ 1,458.14 | \$ - | \$ 15,222.89 | \$ 745,093.75 |
| | Dec | \$ 13,764.75 | \$ 1,458.14 | \$ - | \$ 15,222.89 | \$ 731,329.00 |
| | Jan | \$ 13,764.75 | \$ 1,458.14 | \$ - | \$ 15,222.89 | \$ 717,564.25 |
| | Feb | \$ 13,764.75 | \$ 1,458.14 | \$ - | \$ 15,222.89 | \$ 703,799.50 |
| | Mar | \$ 13,764.75 | \$ 1,458.14 | \$ - | \$ 15,222.89 | \$ 690,034.75 |
| | Apr | \$ 13,764.75 | \$ 1,458.14 | \$ - | \$ 15,222.89 | \$ 676,270.00 |
| 2028 | May | \$ 13,877.58 | \$ 1,138.80 | \$ - | \$ 15,016.39 | \$ 662,392.42 |
| | Jun | \$ 13,877.58 | \$ 1,138.80 | \$ - | \$ 15,016.39 | \$ 648,514.83 |
| | Jul | \$ 13,877.58 | \$ 1,138.80 | \$ - | \$ 15,016.39 | \$ 634,637.25 |
| | Aug | \$ 13,877.58 | \$ 1,138.80 | \$ - | \$ 15,016.39 | \$ 620,759.67 |
| | Sep | \$ 13,877.58 | \$ 1,138.80 | \$ - | \$ 15,016.39 | \$ 606,882.08 |
| | Oct | \$ 13,877.58 | \$ 1,138.80 | \$ - | \$ 15,016.39 | \$ 593,004.50 |
| | Nov | \$ 13,877.58 | \$ 1,138.80 | \$ - | \$ 15,016.39 | \$ 579,126.92 |
| | Dec | \$ 13,877.58 | \$ 1,138.80 | \$ - | \$ 15,016.39 | \$ 565,249.33 |
| | Jan | \$ 13,877.58 | \$ 1,138.80 | \$ - | \$ 15,016.39 | \$ 551,371.75 |
| | Feb | \$ 13,877.58 | \$ 1,138.80 | \$ - | \$ 15,016.39 | \$ 537,494.17 |
| | Mar | \$ 13,877.58 | \$ 1,138.80 | \$ - | \$ 15,016.39 | \$ 523,616.58 |
| | Apr | \$ 13,877.58 | \$ 1,138.80 | \$ - | \$ 15,016.39 | \$ 509,739.00 |
| 2029 | May | \$ 14,009.42 | \$ 797.41 | \$ - | \$ 14,806.83 | \$ 495,729.58 |
| | Jun | \$ 14,009.42 | \$ 797.41 | \$ - | \$ 14,806.83 | \$ 481,720.17 |
| | Jul | \$ 14,009.42 | \$ 797.41 | \$ - | \$ 14,806.83 | \$ 467,710.75 |
| | Aug | \$ 14,009.42 | \$ 797.41 | \$ - | \$ 14,806.83 | \$ 453,701.33 |
| | Sep | \$ 14,009.42 | \$ 797.41 | \$ - | \$ 14,806.83 | \$ 439,691.92 |
| | Oct | \$ 14,009.42 | \$ 797.41 | \$ - | \$ 14,806.83 | \$ 425,682.50 |
| | Nov | \$ 14,009.42 | \$ 797.41 | \$ - | \$ 14,806.83 | \$ 411,673.08 |
| | Dec | \$ 14,009.42 | \$ 797.41 | \$ - | \$ 14,806.83 | \$ 397,663.67 |
| | Jan | \$ 14,009.42 | \$ 797.41 | \$ - | \$ 14,806.83 | \$ 383,654.25 |
| | Feb | \$ 14,009.42 | \$ 797.41 | \$ - | \$ 14,806.83 | \$ 369,644.83 |
| | Mar | \$ 14,009.42 | \$ 797.41 | \$ - | \$ 14,806.83 | \$ 355,635.42 |
| | Apr | \$ 14,009.42 | \$ 797.41 | \$ - | \$ 14,806.83 | \$ 341,626.00 |

Bond Debt Service
City of Truth or Consequences
2022 Equipment Loan (PPRF-5652)

| Year | Month | Monthly Principal | Monthly Interest | Monthly Admin | Monthly Debt Service | Outstanding Principal |
|------|-------|-------------------|------------------|---------------|----------------------|-----------------------|
| 2030 | May | \$ 14,155.17 | \$ 434.57 | \$ 0.00 | \$ 14,589.74 | \$ 327,470.83 |
| | Jun | \$ 14,155.17 | \$ 434.57 | \$ 0.00 | \$ 14,589.74 | \$ 313,315.67 |
| | Jul | \$ 14,155.17 | \$ 434.57 | \$ 0.00 | \$ 14,589.74 | \$ 299,160.50 |
| | Aug | \$ 14,155.17 | \$ 434.57 | \$ 0.00 | \$ 14,589.74 | \$ 285,005.33 |
| | Sep | \$ 14,155.17 | \$ 434.57 | \$ 0.00 | \$ 14,589.74 | \$ 270,850.17 |
| | Oct | \$ 14,155.17 | \$ 434.57 | \$ 0.00 | \$ 14,589.74 | \$ 256,695.00 |
| | Nov | \$ 14,155.17 | \$ 434.57 | \$ 0.00 | \$ 14,589.74 | \$ 242,539.83 |
| | Dec | \$ 14,155.17 | \$ 434.57 | \$ 0.00 | \$ 14,589.74 | \$ 228,384.67 |
| | Jan | \$ 14,155.17 | \$ 434.57 | \$ 0.00 | \$ 14,589.74 | \$ 214,229.50 |
| | Feb | \$ 14,155.17 | \$ 434.57 | \$ 0.00 | \$ 14,589.74 | \$ 200,074.33 |
| | Mar | \$ 14,155.17 | \$ 434.57 | \$ 0.00 | \$ 14,589.74 | \$ 185,919.17 |
| | Apr | \$ 14,155.17 | \$ 434.57 | \$ 0.00 | \$ 14,589.74 | \$ 171,764.00 |
| 2031 | May | \$ 14,313.67 | \$ 50.96 | \$ (0.00) | \$ 14,364.63 | \$ 157,450.33 |
| | Jun | \$ 14,313.67 | \$ 50.96 | \$ (0.00) | \$ 14,364.63 | \$ 143,136.67 |
| | Jul | \$ 14,313.67 | \$ 50.96 | \$ (0.00) | \$ 14,364.63 | \$ 128,823.00 |
| | Aug | \$ 14,313.67 | \$ 50.96 | \$ (0.00) | \$ 14,364.63 | \$ 114,509.33 |
| | Sep | \$ 14,313.67 | \$ 50.96 | \$ (0.00) | \$ 14,364.63 | \$ 100,195.67 |
| | Oct | \$ 14,313.67 | \$ 50.96 | \$ (0.00) | \$ 14,364.63 | \$ 85,882.00 |
| | Nov | \$ 14,313.67 | \$ 50.96 | \$ (0.00) | \$ 14,364.63 | \$ 71,568.33 |
| | Dec | \$ 14,313.67 | \$ 50.96 | \$ (0.00) | \$ 14,364.63 | \$ 57,254.67 |
| | Jan | \$ 14,313.67 | \$ 50.96 | \$ (0.00) | \$ 14,364.63 | \$ 42,941.00 |
| | Feb | \$ 14,313.67 | \$ 50.96 | \$ (0.00) | \$ 14,364.63 | \$ 28,627.33 |
| | Mar | \$ 14,313.67 | \$ 50.96 | \$ (0.00) | \$ 14,364.63 | \$ 14,313.67 |
| | Apr | \$ 14,313.67 | \$ 50.96 | \$ (0.00) | \$ 14,364.63 | \$ (0.00) |
| | | \$ 1,320,907.00 | \$ 139,960.85 | \$ 0.00 | \$ 1,460,867.85 | |

EXHIBIT “A”

TERM SHEET

New Mexico Finance Authority Loan No. PPRF-5652

| | |
|--|--|
| Governmental Unit: | City of Truth or Consequences, New Mexico |
| Project Description: | Purchase a new electrical transformer for the Governmental Unit's substation |
| Loan Agreement Principal Amount: | \$1,320,907 |
| Disadvantaged Funding Amount: | \$150,000 |
| Pledged Revenues: | The Net Revenues of the System |
| Coverage Ratio: | 130% |
| Currently Outstanding Parity Obligations: | NMFA Loan No. PPRF-2737, maturing 2033; NMFA Loan No. PPRF-2613, maturing 2032; NMFA Loan No. DW-4794, maturing 2041; NMFA Loan No. PPRF-4967, maturing 2024; NMED Loan No. CWSRF 098, maturing 2041 |
| Currently Outstanding Senior Obligations: | USDA Loan No. 0985-CTC-003, maturing 2059 (senior lien on that portion of the System that constitutes water and sewer revenues only) USDA CPAP Loan in the principal amount of \$5,487,000, maturing 2059 (senior lien on that portion of the System that constitutes sewer revenues only) USDA Loan No. WWTP 92-12, maturing 2059 (senior lien on that portion of the System that constitutes sewer revenues only) USDA Loan No. WWTP 92-19, maturing 2059 senior lien on that portion of the System that constitutes sewer revenues only) |
| Additional Parity Bonds Test: | 130% |

| | |
|---|--|
| Authorizing Legislation: | Ordinance No. 723 adopted on January 12, 2022 as amended by Ordinance No. 734 adopted on July 13, 2022 |
| Closing Date: | July 22, 2022 |
| Blended Interest Rate: | 2.003808% |
| Program Account Deposit: | \$1,188,816.00 |
| Loan Agreement Reserve Account Deposit: | \$132,090.70 |
| Finance Authority Debt Service Account Deposit: | \$0.30 |

First Interest Payment Date: November 1, 2022

First Principal Payment Date: May 1, 2023

Final Payment Date: May 1, 2031

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

EXHIBIT “B”

DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT

[SEE ATTACHED]

EXHIBIT "C"

FORM OF REQUISITION

RE: \$1,320,907 Loan Agreement by and between the City of Truth or Consequences, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: BOKF, NA
c/o New Mexico Finance Authority
PPRF@nmfa.net

You are hereby authorized to disburse from the Program Account – City of Truth or Consequences, New Mexico (2022 Electrical Transformer Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO. PPRF-5652

CLOSING DATE: July 22, 2022

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

AMOUNT OF PAYMENT: \$ _____

PURPOSE OF PAYMENT: _____

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – City of Truth or Consequences, New Mexico (2022 Electrical Transformer Loan).

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

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

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

DATED: _____

By _____

Authorized Officer

Title _____

(Print Name and Title)

EXHIBIT "D"

CERTIFICATE OF COMPLETION

RE: \$1,320,907 Loan Agreement by and between the City of Truth or Consequences, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: New Mexico Finance Authority
PPRF@nmfa.net

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

LOAN NO.: PPRF-5652

CLOSING DATE: July 22, 2022

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

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

DATED: _____

By _____
Authorized Officer of Governmental Unit

Title _____
Print Name and Title

SOURCES AND USES OF FUNDS**City of Truth or Consequences
2022 Equipment Loan**

Dated Date 07/22/2022
 Delivery Date 07/22/2022

| Sources: | Market Loan Component (PPRF-5652A) | Disadvantaged Loan Component (PPRF-5652B) | Total |
|---------------------------|---|--|--------------|
| Bond Proceeds: | | | |
| Par Amount | 1,170,907.00 | 150,000.00 | 1,320,907.00 |
| | 1,170,907.00 | 150,000.00 | 1,320,907.00 |
| <hr/> | | | |
| Uses: | Market Loan Component (PPRF-5652A) | Disadvantaged Loan Component (PPRF-5652B) | Total |
| Project Fund Deposits: | | | |
| Project Fund | 1,053,816.00 | 135,000.00 | 1,188,816.00 |
| Other Fund Deposits: | | | |
| Debt Service Reserve Fund | 117,090.70 | 15,000.00 | 132,090.70 |
| Other Uses of Funds: | | | |
| Additional Proceeds | 0.30 | | 0.30 |
| | 1,170,907.00 | 150,000.00 | 1,320,907.00 |

BOND SUMMARY STATISTICS**City of Truth or Consequences
2022 Equipment Loan**

| | Market Loan Component (PPRF-5652A) | Disadvantaged Loan Component (PPRF-5652B) | Aggregate |
|---------------------------------|---|--|------------------|
| Dated Date | 07/22/2022 | 07/22/2022 | 07/22/2022 |
| Delivery Date | 07/22/2022 | 07/22/2022 | 07/22/2022 |
| First Coupon | 11/01/2022 | 11/01/2022 | 11/01/2022 |
| Last Maturity | 05/01/2031 | 05/01/2031 | 05/01/2031 |
| Arbitrage Yield | 2.011783% | 2.011783% | 2.011783% |
| True Interest Cost (TIC) | 2.464643% | | 2.011783% |
| Net Interest Cost (NIC) | 2.469102% | | 2.003808% |
| All-In TIC | 2.464643% | | 2.011783% |
| Average Coupon | 2.469102% | | 2.003808% |
| Average Life (years) | 4.841 | 8.775 | 5.288 |
| Duration of Issue (years) | 4.550 | 8.775 | 4.972 |
| Par Amount | 1,170,907.00 | 150,000.00 | 1,320,907.00 |
| Bond Proceeds | 1,170,907.00 | 150,000.00 | 1,320,907.00 |
| Total Interest | 139,960.85 | | 139,960.85 |
| Net Interest | 139,960.85 | | 139,960.85 |
| Total Debt Service | 1,310,867.85 | 150,000.00 | 1,460,867.85 |
| Maximum Annual Debt Service | 187,911.86 | 150,000.00 | 187,911.86 |
| Average Annual Debt Service | 149,386.65 | 17,094.02 | 166,480.67 |
| Underwriter's Fees (per \$1000) | | | |
| Average Takedown | | | |
| Other Fee | | | |
| Total Underwriter's Discount | | | |
| Bid Price | 100.000000 | 100.000000 | 100.000000 |

| Bond Component | Par Value | Price | Average Coupon | Average Life |
|-----------------------|----------------------|--------------|---------------------------|-------------------------|
| Loan Component | 1,170,907.00 | 100.000 | 2.469% | 4.841 |
| Loan Component | 150,000.00 | 100.000 | | 8.775 |
| | 1,320,907.00 | | | 5.288 |

| | TIC | All-In TIC | Arbitrage Yield |
|----------------------------|--------------|-----------------------|----------------------------|
| Par Value | 1,320,907.00 | 1,320,907.00 | 1,320,907.00 |
| + Accrued Interest | | | |
| + Premium (Discount) | | | |
| - Underwriter's Discount | | | |
| - Cost of Issuance Expense | | | |
| - Other Amounts | | | |
| Target Value | 1,320,907.00 | 1,320,907.00 | 1,320,907.00 |
| Target Date | 07/22/2022 | 07/22/2022 | 07/22/2022 |
| Yield | 2.011783% | 2.011783% | 2.011783% |

BOND DEBT SERVICE**City of Truth or Consequences
2022 Equipment Loan**

| <i>Period Ending</i> | <i>Principal</i> | <i>Coupon</i> | <i>Interest</i> | <i>Debt Service</i> |
|---------------------------------|-------------------------|----------------------|------------------------|----------------------------|
| 05/01/2023 | 75,024 | 1.690% | 21,313.07 | 96,337.07 |
| 05/01/2024 | 77,113 | 2.010% | 26,232.82 | 103,345.82 |
| 05/01/2025 | 163,229 | 2.150% | 24,682.86 | 187,911.86 |
| 05/01/2026 | 164,094 | 2.240% | 21,173.42 | 185,267.42 |
| 05/01/2027 | 165,177 | 2.320% | 17,497.72 | 182,674.72 |
| 05/01/2028 | 166,531 | 2.460% | 13,665.62 | 180,196.62 |
| 05/01/2029 | 168,113 | 2.590% | 9,568.96 | 177,681.96 |
| 05/01/2030 | 169,862 | 2.710% | 5,214.82 | 175,076.82 |
| 05/01/2031 | 171,764 | ** % | 611.56 | 172,375.56 |
| | 1,320,907 | | 139,960.85 | 1,460,867.85 |

BOND DEBT SERVICE**City of Truth or Consequences
2022 Equipment Loan**

| <i>Period Ending</i> | <i>Principal</i> | <i>Coupon</i> | <i>Interest</i> | <i>Debt Service</i> | <i>Annual Debt Service</i> |
|---------------------------------|-------------------------|----------------------|------------------------|----------------------------|---------------------------------------|
| 11/01/2022 | | | 7,562.70 | 7,562.70 | |
| 05/01/2023 | 75,024 | 1.690% | 13,750.37 | 88,774.37 | 96,337.07 |
| 11/01/2023 | | | 13,116.41 | 13,116.41 | |
| 05/01/2024 | 77,113 | 2.010% | 13,116.41 | 90,229.41 | 103,345.82 |
| 11/01/2024 | | | 12,341.43 | 12,341.43 | |
| 05/01/2025 | 163,229 | 2.150% | 12,341.43 | 175,570.43 | 187,911.86 |
| 11/01/2025 | | | 10,586.71 | 10,586.71 | |
| 05/01/2026 | 164,094 | 2.240% | 10,586.71 | 174,680.71 | 185,267.42 |
| 11/01/2026 | | | 8,748.86 | 8,748.86 | |
| 05/01/2027 | 165,177 | 2.320% | 8,748.86 | 173,925.86 | 182,674.72 |
| 11/01/2027 | | | 6,832.81 | 6,832.81 | |
| 05/01/2028 | 166,531 | 2.460% | 6,832.81 | 173,363.81 | 180,196.62 |
| 11/01/2028 | | | 4,784.48 | 4,784.48 | |
| 05/01/2029 | 168,113 | 2.590% | 4,784.48 | 172,897.48 | 177,681.96 |
| 11/01/2029 | | | 2,607.41 | 2,607.41 | |
| 05/01/2030 | 169,862 | 2.710% | 2,607.41 | 172,469.41 | 175,076.82 |
| 11/01/2030 | | | 305.78 | 305.78 | |
| 05/01/2031 | 171,764 | ** % | 305.78 | 172,069.78 | 172,375.56 |
| | 1,320,907 | | 139,960.85 | 1,460,867.85 | 1,460,867.85 |

DETAILED BOND DEBT SERVICE**City of Truth or Consequences
Market Loan Component (PPRF-5652A)****Loan Component (BOND)**

| <i>Period Ending</i> | <i>Principal</i> | <i>Coupon</i> | <i>Interest</i> | <i>Debt Service</i> | <i>Annual Debt Service</i> |
|---------------------------------|-------------------------|----------------------|------------------------|----------------------------|---------------------------------------|
| 11/01/2022 | | | 7,562.70 | 7,562.70 | |
| 05/01/2023 | 75,024 | 1.690% | 13,750.37 | 88,774.37 | 96,337.07 |
| 11/01/2023 | | | 13,116.41 | 13,116.41 | |
| 05/01/2024 | 77,113 | 2.010% | 13,116.41 | 90,229.41 | 103,345.82 |
| 11/01/2024 | | | 12,341.43 | 12,341.43 | |
| 05/01/2025 | 163,229 | 2.150% | 12,341.43 | 175,570.43 | 187,911.86 |
| 11/01/2025 | | | 10,586.71 | 10,586.71 | |
| 05/01/2026 | 164,094 | 2.240% | 10,586.71 | 174,680.71 | 185,267.42 |
| 11/01/2026 | | | 8,748.86 | 8,748.86 | |
| 05/01/2027 | 165,177 | 2.320% | 8,748.86 | 173,925.86 | 182,674.72 |
| 11/01/2027 | | | 6,832.81 | 6,832.81 | |
| 05/01/2028 | 166,531 | 2.460% | 6,832.81 | 173,363.81 | 180,196.62 |
| 11/01/2028 | | | 4,784.48 | 4,784.48 | |
| 05/01/2029 | 168,113 | 2.590% | 4,784.48 | 172,897.48 | 177,681.96 |
| 11/01/2029 | | | 2,607.41 | 2,607.41 | |
| 05/01/2030 | 169,862 | 2.710% | 2,607.41 | 172,469.41 | 175,076.82 |
| 11/01/2030 | | | 305.78 | 305.78 | |
| 05/01/2031 | 21,764 | 2.810% | 305.78 | 22,069.78 | 22,375.56 |
| | 1,170,907 | | 139,960.85 | 1,310,867.85 | 1,310,867.85 |

DETAILED BOND DEBT SERVICE**City of Truth or Consequences
Disadvantaged Loan Component (PPRF-5652B)****Loan Component (LOAN)**

| <i>Period Ending</i> | <i>Principal</i> | <i>Interest</i> | <i>Debt Service</i> | <i>Annual Debt Service</i> |
|---------------------------------|-------------------------|------------------------|--------------------------------|---|
| 05/01/2031 | 150,000 | | 150,000 | 150,000 |
| | 150,000 | 0 | 150,000 | 150,000 |

Note: The City's MHI of \$23,988 constitutes 48.21% of the State's MHI

UNIVERSAL BOND SOLUTION**City of Truth or Consequences****2022 Equipment Loan****Universal Bond Solution Component**

| Period Ending | Proposed Principal | Proposed Debt Service | Existing Debt Service | Total Adj Debt Service | Revenue Constraints | Unused Revenues | Debt Serv Coverage |
|--------------------------|-------------------------------|----------------------------------|----------------------------------|-----------------------------------|--------------------------------|----------------------------|-------------------------------|
| 05/01/2023 | 75,024 | 96,337 | 493,696 | 590,033 | 1,152,319 | 562,286 | 195.29733% |
| 05/01/2024 | 77,113 | 103,346 | 493,195 | 596,541 | 1,152,319 | 555,778 | 193.16680% |
| 05/01/2025 | 163,229 | 187,912 | 404,066 | 591,978 | 1,152,319 | 560,341 | 194.65566% |
| 05/01/2026 | 164,094 | 185,267 | 401,643 | 586,910 | 1,152,319 | 565,409 | 196.33653% |
| 05/01/2027 | 165,177 | 182,675 | 408,175 | 590,849 | 1,152,319 | 561,470 | 195.02756% |
| 05/01/2028 | 166,531 | 180,197 | 409,490 | 589,686 | 1,152,319 | 562,633 | 195.41219% |
| 05/01/2029 | 168,113 | 177,682 | 407,790 | 585,472 | 1,152,319 | 566,847 | 196.81879% |
| 05/01/2030 | 169,862 | 175,077 | 405,068 | 580,145 | 1,152,319 | 572,174 | 198.62603% |
| 05/01/2031 | 171,764 | 172,376 | 402,346 | 574,721 | 1,152,319 | 577,598 | 200.50051% |
| | 1,320,907 | 1,460,868 | 3,825,468 | 5,286,336 | 10,370,871 | 5,084,535 | |

\$1,320,907
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
NEW MEXICO FINANCE AUTHORITY LOAN

STATE OF NEW MEXICO)
) ss. ARBITRAGE AND TAX
SIERRA COUNTY) CERTIFICATE

On behalf of the City of Truth or Consequences, New Mexico (the “Governmental Unit”), and in connection with the Loan Agreement dated July 22, 2022 (the “Loan Agreement”), relating to the financing the cost of purchasing a new electrical transformer for use by the Governmental Unit (the “Project”) as described in the Loan Agreement, and evidencing the Governmental Unit’s obligation in the aggregate principal amount of \$1,320,907, the Governmental Unit hereby certifies as follows:

Capitalized terms used in this Certificate have the same meanings as defined in Ordinance No. 723 adopted on January 12, 2022, as amended by Ordinance No. 734 adopted on July 13, 2022 (the “Ordinance”), unless otherwise defined in this Certificate or the context requires otherwise.

1. The Project. The Governmental Unit is entering into the Loan Agreement simultaneously with delivery of this Certificate. The Loan Agreement evidences the loan (the “Loan”) made by the New Mexico Finance Authority (the “Finance Authority”) to provide funds to pay the costs of acquiring the Project described in Exhibit “A” attached to the Loan Agreement and to pay certain costs incurred in connection with the execution and delivery of the Loan Agreement.

2. Security for the Loan Agreement. Debt service on the Loan Agreement will be secured by the pledged revenues described in Exhibit “A” attached to the Loan Agreement (the “Pledged Revenues”) sufficient to pay debt service due in connection with the Loan, which Pledged Revenues have been pledged to the Finance Authority pursuant to the Loan Agreement.

3. Finance Authority Public Project Revolving Fund Program. The Governmental Unit acknowledges that the Finance Authority may assign and transfer the Loan Agreement to the BOKF, NA, as successor trustee (the “Trustee”) pursuant to the Indenture, as defined in the Loan Agreement, and all Supplemental Indentures thereto, between the Finance Authority and the Trustee (collectively, the “Indenture”). Pursuant to the Indenture, the Loan Agreement may be pledged as an Additional Pledged Loan to the Trustee as additional security for the payment of amounts due on the Finance Authority’s Public Project Revolving Fund Revenue Bonds outstanding at the time of such pledge.

4. Sources and Uses of Loan Funds. The Governmental Unit has received Loan proceeds from the public project revolving fund, as defined in the New Mexico Finance Authority Act, Sections 6-21-1, *et seq.*, NMSA 1978, as amended and supplemented, in the amount of \$1,320,907 from the Finance Authority (the “Proceeds”). The Proceeds do not exceed the amount reasonably necessary for the purposes for which the Loan Agreement was entered into.

5. Expenditure Expectations. The Governmental Unit expects to incur a substantial binding obligation within six (6) months of the date hereof with regard to the Project, which obligation involves the expenditure of no less than five percent (5%) of the Proceeds. The Governmental Unit reasonably expects that the \$1,188,816 of Proceeds deposited into the Governmental Unit's Program Account in the Program Fund together with other legally available funds and anticipated earnings from the investment of such Proceeds until they are spent, are expected to be expended within three (3) years of the date hereof.

The estimated total costs of the Project will not be less than \$1,188,816 plus investment earnings thereon during the acquisition period.

Proceeds in the amount of \$0.30 will be deposited into the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 of the Loan Agreement.

6. Investment of Proceeds. Except for the investment of the Proceeds (i) in the Program Account established under the Indenture with respect to the Loan Agreement pending the payment of the costs of the Project, (ii) in the Loan Agreement Reserve Account established under the Indenture with respect to the Loan Agreement to be applied to prevent deficiencies in the payment of principal and interest on the Loan Agreement, and (iii) in the Finance Authority Debt Service Account established and administered by the Finance Authority pending the payment of debt service on the Loan Agreement, there will be no investment of the Proceeds.

7. Bona Fide Debt Service Fund. Debt service payments on the Loan Agreement will be paid from the Pledged Revenues of the Governmental Unit deposited to the Finance Authority Debt Service Account created with respect to the Loan Agreement. Because the Pledged Revenues of the Governmental Unit for any year will exceed debt service on the Loan Agreement, it is assumed that current debt service paid by the Governmental Unit for deposit in the Finance Authority Debt Service Account will be derived entirely from the current Pledged Revenues. The Finance Authority Debt Service Account will be depleted at least once a year except for an amount not to exceed the greater of the earnings on the Finance Authority Debt Service Account for the immediately preceding bond year or one-twelfth (1/12th) of debt service on the Loan for the immediately preceding bond year. The Governmental Unit has not created or established, nor does it expect to create or establish, any debt service fund, redemption fund, replacement fund, sinking fund or other similar fund which is reasonably expected to be used to pay principal or interest on the Loan Agreement or pledged therefor, except for the Finance Authority Debt Service Account and the Loan Agreement Reserve Account.

8. Reserve Account. Proceeds in the amount of \$132,090.70 will be deposited in the Governmental Unit's Loan Agreement Reserve Account in the Agreement Reserve Fund held by the Trustee under the Indenture, which amount does not exceed the least of (i) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under the Loan Agreement; (ii) the maximum annual principal and interest requirements under the Loan Agreement, or (iii) ten percent (10%) of the Loan Agreement Principal Amount. Amounts held in the Governmental Unit's Loan Agreement Reserve Account may be applied to prevent deficiencies in the payment of principal and interest on the Loan Agreement resulting from a failure by the Governmental Unit to deposit into the Finance Authority Debt Service Account sufficient funds to

pay debt service on the Loan Agreement. After examination of the purposes for which the Loan Agreement Reserve Account has been established, which are based on discussions with the Finance Authority that the Loan Agreement Reserve Account is required as a condition to enter into the Loan Agreement with the Finance Authority, the Governmental Unit is of the opinion that the amount deposited to the Loan Agreement Reserve Account is reasonably required.

9. No Disposition of Project. The undersigned reasonably expect that no part of the Project acquired with the Proceeds will be sold or otherwise disposed of, in whole or in part, during the term of the Loan Agreement.

10. General Tax Covenant. The Governmental Unit has covenanted in the Loan Agreement that no use will be made of the Proceeds, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148(b)) of the Loan Agreement, which use, if it had been reasonably expected on the date hereof, would have caused the Loan Agreement to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code. The Governmental Unit has further obligated itself in the Loan Agreement to comply throughout the term of the Loan Agreement with the requirements of Sections 103 and 141 through 150 of the Code and regulations proposed or promulgated with respect thereto.

11. Private Business Use Limitations. None of the Proceeds will be used by a private business or any entity other than a governmental unit or secured by payments from or property of a private business or any entity other than a governmental unit except pursuant to a management contract which conforms with Revenue Procedure 2017-13 of the United States Treasury. For purposes of the preceding sentence a governmental unit does not include the United States Government or any agency or instrumentality thereof.

12. No Common Plan of Financing. There are no other obligations which are being issued or sold at substantially the same time as the Loan Agreement pursuant to a common plan of financing with the Loan Agreement and that will be paid out of the Pledged Revenues or will have substantially the same claim to be paid out of the Pledged Revenues as the Loan Agreement.

13. No Federal Guarantees. The Loan is not federally guaranteed within the meaning of Section 149(b) of the Code.

14. Information Filing. Loan Counsel for the Finance Authority, on behalf of the Governmental Unit, will timely file the Form 8038-G with respect to the Loan Agreement attached hereto as Exhibit “A” with the Internal Revenue Service. The Finance Authority has verified certain information necessary to complete the Form 8038-G as shown on the Finance Authority Certificate attached hereto as Exhibit “B”.

15. Hedge Bonds. The Loan is not a hedge bond as defined in Section 149 of the Code.

16. No Reimbursement. None of the Proceeds will be used to reimburse the Governmental Unit for costs paid for the Project more than sixty (60) days prior to the date hereof.

17. No Refunding. Proceeds of the Loan are not being used to refund any other obligation of the Governmental Unit.

18. Economic Life of Project. The weighted average maturity of 5.288 years of the Loan Agreement does not exceed 120% of the reasonably expected economic life of the Project, which is fifty (50) years.

19. Record Retention. The Governmental Unit will manage and retain records related to the Loan as follows:

A. Records will be retained for the life of the Loan, including any refunding loans related thereto, plus three (3) years. Records may be in the form of documents or electronic copies of documents, appropriately indexed to the Loan and compliance functions;

B. Basic records relating to the Loan transaction, including transcript documents executed in connection with the issuance of the Loan (i.e., the authorizing documents, Form 8038-G, the tax certificate, and any elections made with respect to the Loan, if applicable), any amendments, and copies of rebate calculations and records of payments, including Forms 8038-T;

C. Records pertaining to the use of Loan-financed facilities by public and private sources including copies of management agreements and research agreements;

D. Records pertaining to expenditures of Loan proceeds including requisitions, appraisal and property purchase contracts, account statements, invoices, payment vouchers, and the final allocation of proceeds to expenditures;

E. Records pertaining to all sources of payment or security for the Loan; and

F. Records pertaining to investments including guaranteed investment contract documents under the Treasury Regulations, records of purchase and sale of other investments, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.

[Signature page follows]

This certificate is being executed and delivered to establish the reasonable expectations of the Governmental Unit for purposes of Sections 103 and 141 through 148 of the Code, and the undersigned officers of the Governmental Unit are the officers of the Governmental Unit charged with the responsibility of entering into the Loan Agreement. The foregoing is based upon the reasonable expectations of the undersigned on the date hereof, and to the best of our knowledge, information and belief, the above expectations are reasonable.

Dated: July 22, 2022.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

[SEAL]

By _____
Amanda Forrister, Mayor

By _____
Bruce Swingle, City Manager

By _____
Carol Kirkpatrick, Finance Director

6124305_2

EXHIBIT "B"

NEW MEXICO FINANCE AUTHORITY TAX REPRESENTATIONS CERTIFICATE

The undersigned hereby certifies as follows with respect to the \$1,320,907 Loan Agreement dated July 22, 2022 (the "Loan") from the New Mexico Finance Authority (the "Finance Authority") to the City of Truth or Consequences, New Mexico (the "Governmental Unit");

1. The Finance Authority is making the Loan for its own account (and not on behalf of another) in the principal amount of \$1,320,907, without accrued interest. The Finance Authority is not acting as an Underwriter with respect to the Loan. The Finance Authority has no present intention to sell, reoffer, or otherwise dispose of the Loan (or any portion of the Loan or any interest in the Loan). The Finance Authority has not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Loan and the Finance Authority has not agreed with the Governmental Unit pursuant to a written agreement to sell the Loan to persons other than the Finance Authority, therefore the "issue price" of the Loan is \$1,320,907.

2. The Arbitrage Yield on the Loan, calculated in accordance with the applicable U.S. Treasury Regulations from interest to be paid on the Loan, is 2.011783%.

3. Funding the Loan Agreement Reserve Account with proceeds of the Loan in the amount of \$132,090.70 was required by the Finance Authority as a condition of making the Loan, and is, in the best judgment of the undersigned, reasonably required to provide the Loan at a reasonable interest rate for the Governmental Unit and is, in the best judgment of the undersigned, established at a level of funding comparable to that found for obligations of similar credit quality as the Loan which were issued or originated within the past year.

4. The Weighted Average Maturity of the Loan, calculated in accordance with the applicable U.S. Treasury Regulations, is 5.288 years.

5. The undersigned understands that the statements made herein will be relied upon by the Governmental Unit in its effort to complete the Information Return for Tax-Exempt Governmental Obligations (Form 8038-G), required to be filed for the Loan pursuant to the Internal Revenue Code of 1986, as amended, and with regard to establishing facts and circumstances relied on by the Governmental Unit and bond counsel in connection with the execution and delivery of the Loan and the exclusion of interest on the Loan from gross income for federal income tax purposes. Such reliance is hereby authorized and approved.

Dated this July 22, 2022.

NEW MEXICO FINANCE AUTHORITY

By _____
Marquita D. Russel, Chief Executive Officer

6124305_2

\$1,320,907
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
NEW MEXICO FINANCE AUTHORITY LOAN

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

IT IS HEREBY CERTIFIED by the undersigned, the duly chosen, qualified and acting Mayor Pro Tem, City Manager and Finance Director of the City of Truth or Consequences, New Mexico (the "Governmental Unit"):

1. On the date of this Certificate, the Governmental Unit executed and delivered, or caused to be executed and delivered, a Loan Agreement between the Governmental Unit and the New Mexico Finance Authority (the "Finance Authority"), in the aggregate principal amount of \$1,320,907, to the Finance Authority (the "Loan Agreement"), as authorized by Governmental Unit Ordinance No. 723 adopted on January 12, 2022, as amended by Ordinance No. 734 adopted on July 13, 2022 (the "Ordinance"), relating to the execution and delivery of the Loan Agreement. The undersigned have received \$1,320,907 as proceeds from the Loan Agreement, being the full purchase price therefore.

2. The proceeds of the Loan Agreement will be placed in the funds and accounts created for the deposit of such moneys under the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, each by and between the Finance Authority and BOKF, NA, as Trustee and its successors and assigns, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture, as follows:

| | |
|-----------------------------------|----------------|
| Governmental Unit's | |
| Account in the Program Fund: | \$1,188,816.00 |
| Deposit to Loan Agreement | |
| Reserve Account: | \$ 132,090.70 |
| Deposit to Finance Authority Debt | |
| Service Account: | \$ _____ .30 |
| Total: | \$1,320,907.00 |

3. The proceeds of the Loan Agreement will be available to the Governmental Unit upon submittal of a Requisition Form to the Finance Authority in the form attached to the Loan Agreement as Exhibit "C" and will be used as set forth in the Ordinance and the Loan Agreement.

WITNESS our hands this July 22, 2022.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

[SEAL]

By _____
Amanda Forrister, Mayor

By _____
Bruce Swingle, City Manager

By _____
Carol Kirkpatrick, Finance Director

It is hereby certified by the undersigned, a duly qualified and acting official of the New Mexico Finance Authority, that, the undersigned has, on the date of this Certificate, received from the City of Truth or Consequences, New Mexico the Loan Agreement.

NEW MEXICO FINANCE AUTHORITY

By _____
Marquita D. Russel, Chief Executive Officer

6123998_2

Information Return for Tax-Exempt Governmental Bonds

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.
► Go to www.irs.gov/F8038G for instructions and the latest information.

OMB No. 1545-0047

| | | | |
|---|--|---|--|
| Part I Reporting Authority | | Check box if Amended Return <input type="checkbox"/> | |
| 1 Issuer's name | | 2 Issuer's employer identification number (EIN) | |
| Truth or Consequences, New Mexico | | 85-6000144 | |
| 3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions) | | 3b Telephone number of other person shown on 3a | |
| 4 Number and street (or P.O. box if mail is not delivered to street address) | | 5 Report number (For IRS Use Only) | |
| 401 McAdoo Street | | 3 | |
| 6 City, town, or post office, state, and ZIP code | | 7 Date of issue | |
| Truth or Consequences, New Mexico 87901 | | 07/22/2022 | |
| 8 Name of issue | | 9 CUSIP number | |
| New Mexico Finance Authority 2022 Equipment Loan | | | |
| 10a Name and title of officer or other employee of the issuer whom the IRS may call for more information | | 10b Telephone number of officer or other employee shown on 10a | |
| Bruce Swingle, City Manager | | 575-894-6673 | |

Part II Type of Issue (Enter the issue price.) See the instructions and attach schedule.

| | | |
|--|--------------------------|--------------|
| 11 Education | 11 | |
| 12 Health and hospital | 12 | |
| 13 Transportation | 13 | |
| 14 Public safety | 14 | |
| 15 Environment (including sewage bonds) | 15 | |
| 16 Housing | 16 | |
| 17 Utilities | 17 | 1,320,907.00 |
| 18 Other. Describe ► | 18 | |
| 19a If bonds are TANs or RANs, check only box 19a | <input type="checkbox"/> | |
| b If bonds are BANs, check only box 19b | <input type="checkbox"/> | |
| 20 If bonds are in the form of a lease or installment sale, check box | <input type="checkbox"/> | |

Part III Description of Bonds. Complete for the entire issue for which this form is being filed.

| | (a) Final maturity date | (b) Issue price | (c) Stated redemption price at maturity | (d) Weighted average maturity | (e) Yield |
|-----------|-------------------------|-----------------|---|-------------------------------|------------|
| 21 | 05/01/2031 | \$ 1,320,907 | \$ 1,320,907 | 5.288 years | 2.011783 % |

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

| | | |
|--|-----------|--------------|
| 22 Proceeds used for accrued interest | 22 | |
| 23 Issue price of entire issue (enter amount from line 21, column (b)) | 23 | 1,320,907.00 |
| 24 Proceeds used for bond issuance costs (including underwriters' discount) | 24 | |
| 25 Proceeds used for credit enhancement | 25 | |
| 26 Proceeds allocated to reasonably required reserve or replacement fund | 26 | 132,090.70 |
| 27 Proceeds used to refund prior tax-exempt bonds. Complete Part V | 27 | |
| 28 Proceeds used to refund prior taxable bonds. Complete Part V | 28 | |
| 29 Total (add lines 24 through 28) | 29 | 132,090.70 |
| 30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) | 30 | 1,188,816.30 |

Part V Description of Refunded Bonds. Complete this part only for refunding bonds.

| | |
|--|-------|
| 31 Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded | years |
| 32 Enter the remaining weighted average maturity of the taxable bonds to be refunded | years |
| 33 Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY) | |
| 34 Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY) | |

Part VI Miscellaneous

- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) **35**
- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC). See instructions **36a**
- b** Enter the final maturity date of the GIC ► (MM/DD/YYYY) _____
- c** Enter the name of the GIC provider ► _____
- 37** Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units **37**
- 38a** If this issue is a loan made from the proceeds of another tax-exempt issue, check box ► ☐ and enter the following information:
- b** Enter the date of the master pool bond ► (MM/DD/YYYY) _____
- c** Enter the EIN of the issuer of the master pool bond ► _____
- d** Enter the name of the issuer of the master pool bond ► _____
- 39** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ► ☐
- 40** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ► ☐
- 41a** If the issuer has identified a hedge, check here ► ☐ and enter the following information:
- b** Name of hedge provider ► _____
- c** Type of hedge ► _____
- d** Term of hedge ► _____
- 42** If the issuer has superintegrated the hedge, check box ► ☐
- 43** If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box ► ☐
- 44** If the issuer has established written procedures to monitor the requirements of section 148, check box ► ☐
- 45a** If some portion of the proceeds was used to reimburse expenditures, check here ► ☐ and enter the amount of reimbursement ► _____
- b** Enter the date the official intent was adopted ► (MM/DD/YYYY) _____

Signature and Consent

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

Signature of issuer's authorized representative _____ Date _____ **Amanda Forrister, Mayor**
Type or print name and title

Paid Preparer Use Only

| | | | | |
|---|-------------------------------|---------------|---|--------------------------|
| Print/Type preparer's name Suzanne Wood Bruckner | Preparer's signature _____ | Date _____ | Check <input type="checkbox"/> if self-employed | PTIN PO1629036 |
| Firm's name ► Sutin Thayer & Browne A Professional Corporation | | | Firm's EIN ► 85-0225124 | |
| Firm's address ► 6100 Uptown Blvd. NE #400, Albuquerque, NM 87110 | | | Phone no. 505-883-2500 | |

STATE OF NEW MEXICO)
SIERRA COUNTY) ss. GENERAL AND NO LITIGATION
CITY OF TRUTH OR CONSEQUENCES) CERTIFICATE

City Clerk-Treasurer: Angela Torres

4. The population of the Governmental Unit's jurisdictional and service area is not less than seventy-five percent (75%) English speaking and is less than twenty-five percent (25%) Spanish speaking.

5. There is no reason within our knowledge, after due inquiry with respect thereto, why the Governmental Unit may not enter into the Loan Agreement with the New Mexico Finance Authority (the "Finance Authority"), as authorized by the Ordinance.

6. The Governmental Unit has duly authorized the execution, delivery and performance of its obligations under the Loan Agreement. The Loan Agreement have been duly authorized, executed and delivered by the Governmental Unit.

7. The Ordinance has been duly signed and adopted in accordance with all applicable laws and has not been repealed, rescinded, revoked, modified, amended or supplemented in any manner except as set forth in the Ordinance. The Ordinance constitutes valid and sufficient legal authority for the Governmental Unit to carry out and enforce the provisions of the Loan Agreement. No referendum petition has been filed with respect to the Ordinance under the provisions of the laws, bylaws or regulations or charter of the Governmental Unit and the laws of the Governmental Unit or the State.

8. No event will result from the execution and delivery of the Loan Agreement that constitutes a default or an event of default under either the Loan Agreement or the Ordinance, and no event of default and no default under the Loan Agreement or the Ordinance has occurred and is continuing on the date of this Certificate.

9. The Governmental Unit has duly authorized and approved the consummation by it of all transactions and has complied with all requirements and satisfied all conditions, which are required by the Loan Agreement to have been authorized, approved, performed or consummated by the Governmental Unit at or prior to the date of this Certificate. The Governmental Unit has full legal right, power and authority to carry out and consummate the transactions contemplated by the Ordinance, the Loan Agreement.

10. A. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the enforceability of the Loan Agreement or to any of the actions required to be taken by the Ordinance, the Loan Agreement on or prior to the date of this Certificate have been obtained and are in full force and effect; and

B. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the financing of the Project have been obtained and are in full force and effect.

11. None of the following does or will conflict with, or constitute a breach by the Governmental Unit of, or default by the Governmental Unit under any law, court decree or order, governmental regulation, rule or order, resolution, agreement, indenture, mortgage or other instrument to which the Governmental Unit is subject or by which it is bound:

A. The Governmental Unit's adoption of the Ordinance; or

B. Any action contemplated by or pursuant to the Ordinance, the Loan Agreement.

12. No material adverse change has occurred, nor has any development occurred involving a prospective material and adverse change in, or affecting the affairs, business, financial condition, results of operations, prospects, or properties of the Governmental Unit or the Pledged Revenues since the date of the Ordinance.

13. To the best of our knowledge and belief, after due inquiry with respect thereto, none of the events of default referred to in Article X of the Loan Agreement has occurred.

14. Subsequent to the adoption of the Ordinance, the Governmental Unit has not pledged or otherwise encumbered the Pledged Revenues. On the date of this Certificate there are no other outstanding obligations with a lien or encumbrance against the Pledged Revenues senior to or on a parity with the lien of the Loan Agreement except as set forth in the Term Sheet attached as Exhibit "A" to the Loan Agreement.

15. The Loan Agreement prohibits the Governmental Unit from issuing any bonds or other obligations with a lien on Pledged Revenues senior to the lien thereon of the Loan Agreement on the Pledged Revenues. The Loan Agreement permits the Governmental Unit to issue additional bonds or other obligations with a lien on the Pledged Revenues on a parity with or subordinate to the lien of the Loan Agreement on the Pledged Revenues upon satisfaction of the conditions set forth in the Loan Agreement.

16. There is no threatened action, suit, proceeding, inquiry or investigation against the Governmental Unit, at law or in equity, by or before any court, public board or body, nor to the Governmental Unit's knowledge is there any basis therefor, affecting the existence of the Governmental Unit or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the pledge of revenues or assets of the Governmental Unit pledged or to be pledged to pay the principal, premium, if any, and interest on the Loan Agreement, or in any way materially adversely affecting or questioning: (a) the territorial jurisdiction of the Governmental Unit; (b) the use of the proceeds of the Loan Agreement for the Project and to pay certain costs of the Finance Authority associated with the administration of its public projects revolving fund loan program; (c) the validity or enforceability of the Loan Agreement, or any proceedings of the Governmental Unit taken with respect to the Loan Agreement or the Ordinance; (d) the execution and delivery of the Loan Agreement; or (e) the power of the Governmental Unit to carry out the transactions contemplated by the Loan Agreement or the Ordinance.

17. The Governmental Unit has complied with all the covenants and satisfied all the conditions on its part to be performed or satisfied at or prior to the date hereof, and the representations and warranties of the Governmental Unit contained in the Loan Agreement and in the Ordinance are true and correct as of the date hereof.

18. The Governmental Unit is not in default, and has not been in default within the ten (10) years immediately preceding the date of this Certificate, in the payment of principal of, premium, if any, or interest on any bonds, notes or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, if any, or interest except that no representation

is made with respect to industrial revenue bonds or conduit bonds payable solely from installment sale or lease payments, loan repayments or other amounts received by the Governmental Unit from private entities.

19. To the best of our knowledge and belief, neither the Mayor Pro Tem, Finance Director, City Manager, any member of the Governing Body, nor any other officer, employee or other agent of the Governmental Unit is interested (except in the performance of his or her official rights, privileges, powers and duties), directly or indirectly, in the profits of any contract, or job for work, or services to be performed and appertaining to the Project.

20. Regular meetings of the Governing Body have been held in the City Commission Chambers at 405 W. 3rd Street, Truth or Consequences, New Mexico 87901, the principal meeting place of the Governing Body.

21. The Governing Body has no rules of procedure which would invalidate or make ineffective the Ordinance or other action taken by the Governing Body in connection with the Loan Agreement. Open Meetings Act Resolution No. 01 21/22, as adopted and approved by the Governing Body on July 14, 2021, establishes notice standards as required by Sections 10-15-1 through 10-15-4, NMSA 1978. Open Meetings Act Resolution No. 01 21/22 has not been amended or repealed. All action of the Governing Body with respect to the Loan Agreement and the Ordinance was taken at meetings held in compliance with Open Meetings Act Resolution No. 01 21/22.

22. The *Sierra County Sentinel* is a legal newspaper which maintains an office and is of general circulation in the Governmental Unit's jurisdictional and service area.

23. The Pledged Revenues from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded, and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed one hundred thirty percent (130%) of the maximum Aggregate Annual Debt Service Requirement.

24. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

25. The Mayor Pro Tem, Finance Director and City Manager, on the date of the signing of the Loan Agreement and on the date of this Certificate, are the duly chosen, qualified and acting officers of the Governmental Unit authorized to execute such agreements.

26. The Governmental Unit understands that Sutin, Thayer & Browne A Professional Corporation represents the Finance Authority in this Loan and the Governmental Unit has had the opportunity to consult other counsel in connection with the Loan.

27. This Certificate is for the benefit of the Finance Authority.
28. This Certificate may be executed in counterparts.

[Signature page follows]

6124212.docx

WITNESS our hands and the seal of the Governmental Unit this 22nd day of July, 2022.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

[SEAL]

By _____
Amanda Forrister, Mayor

By _____
Bruce Swingle, City Manager

By _____
Carol Kirkpatrick, Finance Director

APPROVED:

Paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, 18, 20, 21, 22, 24 and 25 are approved and confirmed.

Jay F. Rubin, Attorney for the
City of Truth or Consequences, New Mexico

\$1,320,907
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
NEW MEXICO FINANCE AUTHORITY LOAN

STATE OF NEW MEXICO)
) ss. PLEDGED REVENUE CERTIFICATE
SIERRA COUNTY)

WHEREAS, the City of Truth or Consequences, New Mexico (the “Governmental Unit”) pursuant to Resolution No. 17-11/12 adopted on December 27, 2011 (the “2011 Resolution”), executed and delivered a Loan Agreement, Loan No. PPRF-2613 (the “2011 Loan Agreement”) between the Governmental Unit and the New Mexico Finance Authority (the “Finance Authority”), in the aggregate principal amount of \$165,741. The 2011 Loan Agreement is payable from a lien on the distribution of Net System Revenues of the joint water, electric and sewer utilities of the Governmental Unit (the “Pledged Revenues”).

WHEREAS, the Governmental Unit pursuant to Ordinance No. 625 adopted on July 10, 2012 (the “2012 Ordinance”), executed and delivered a Loan Agreement, Loan No. PPRF-2737 (the “2012 Loan Agreement”) between the Governmental Unit and the New Mexico Finance Authority, in the aggregate principal amount of \$1,424,865. The 2012 Loan Agreement is payable from a lien on the distribution of the Pledged Revenues.

WHEREAS, the Governmental Unit pursuant to Resolution No. 43 18/19 adopted on May 22, 2019 (the “2019 DW-4794 Resolution”), executed and delivered a Loan and Subsidy Agreement, DW-4794 (the “2019 DW-4794 Loan Agreement”) between the Governmental Unit and the New Mexico Finance Authority, in the aggregate principal amount of \$1,241,022.94. The 2019 DW-4794 Loan Agreement is payable from a lien on the distribution of the Pledged Revenues.

WHEREAS, the Governmental Unit pursuant to Resolution No. 50 18/19 adopted on June 26, 2019 (the “2019 PPRF-4967 Resolution”), executed and delivered a Loan Agreement, PPRF-4967 (the “2019 PPRF-4967 Loan Agreement”) between the Governmental Unit and the New Mexico Finance Authority, in the aggregate principal amount of \$500,318. The 2019 PPRF-4967 Loan Agreement is payable from a lien on the distribution of the Pledged Revenues.

WHEREAS the Governmental Unit, pursuant to Resolution No. 18 19/20 adopted on November 13, 2019 (the “USDA Loan Resolution”), authorizing the execution and delivery of Loan No. 0985-CTC-03 (the “USDA Loan”) is indebted to the United States Department of Agriculture in the aggregate principal amount of \$5,487,000 . The USDA Loan is payable from a lien on a portion of the distribution of the Pledged Revenues.

WHEREAS the Governmental Unit, pursuant to Ordinance No. 708 adopted on November 13, 2019 (the “NMED Loan Ordinance”), authorizing the execution and delivery of Loan No. CWSRF 098 (the “NMED Loan”) is indebted to the New Mexico Environmental Department in

the Aggregate principal amount of \$373,000. The NMED Loan is payable from a lien on a portion of the distribution of the Pledged Revenues.

WHEREAS the Governmental Unit, pursuant to Ordinance, authorizing the execution and delivery of USDA CPAP loan (the "USDA CPAP Loan"), is indebted to the United States Department of Agriculture in the aggregate principal amount of \$910,000. The USDA CPAP Loan is payable from a lien on a portion of the distribution of the Pledged Revenues.

WHEREAS the Governmental Unit, pursuant to Ordinance, authorizing the execution and delivery of USDA Loan No. WWTP 92-12 (the "USDA WWTP 92-12 Loan"), is indebted to the United States Department of Agriculture in the aggregate principal amount of \$715,000 . The USDA WWTP 92-12 Loan is payable from a lien on a portion of the distribution of the Pledged Revenues.

WHEREAS the Governmental Unit, pursuant to Ordinance, authorizing the execution and delivery of USDA Loan No. WWTP 92-19 (the "USDA WWTP 92-19 Loan"), is indebted to the United States Department of Agriculture in the aggregate principal amount of \$315,000 . The USDA WWTP 92-19 Loan is payable from a lien on a portion of the distribution of the Pledged Revenues.

WHEREAS, the Governmental Unit, pursuant to Ordinance No. 723 adopted on January 12, 2022, as amended by Ordinance No. 734 adopted on July 13, 2022 (the "2022 Ordinance"), intends to execute and deliver on the date hereof its New Mexico Finance Authority Loan Agreement, Loan No. PPRF-5652, in the aggregate principal amount of \$1,320,907 for the purpose of purchasing a new electrical transformer (the "2022 Loan Agreement") payable from the Pledged Revenues, as set forth in the 2022 Loan Agreement.

WHEREAS, Section 5.4, the "Additional Parity Obligations Payable from Pledged Revenues" of the 2019 DW-4794 Loan Agreement, provides as follows:

Section 5.4. Additional Parity Obligations Payable from Pledged Revenues. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations which refund Subordinated Obligations as provided in Section 5.5 hereof), it must be determined that:

(a) The Governmental Unit is then current in all of the accumulations required to be made into the Debt Service Account as provided in this Loan Agreement.

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

(c) The Pledged Revenues received by or credited to the Governmental Unit for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing one hundred twenty percent (120%) of the combined maximum annual principal, interest requirement and the Administrative Fee Component coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

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

(e) No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.5 hereof.

(f) The Governmental Unit shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior or superior to this Loan Agreement, without the written approval of the Finance Authority.

WHEREAS, Section 5.5, the "Additional Parity Obligations" of the 2011 Loan Agreement, the 2012 Loan Agreement and the 2019 PPRF-4967 Loan Agreement provides as follows:

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

(a) The Governmental Unit is then current in all of the accumulations required to be made into the NMFA Debt Service Account as provided herein.

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

(c) The Pledged Revenues received by or credited to the Governmental Unit for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of the issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing one hundred thirty percent (130%) of the

combined maximum Aggregate Annual Debt Service Requirements coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

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

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

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

WHEREAS, Section 7 of the USDA Loan Resolution provides as follows:

"[The Governmental Unit hereby resolves] [n]ot to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the [USDA] if such undertaking would involve the source of funds pledged to pay the bonds."

WHEREAS, Section 6(A) of the NMED Loan Ordinance provides, in pertinent part, as follows:

"The Borrower must maintain a debt service coverage ratio of no less than 1.2 and must also obtain the written consent of the NMED before issuing additional obligations secured by the Pledged Revenues."

WHEREAS, the principal and interest on the outstanding 2011 Loan Agreement coming due in each Fiscal Year to its last principal payment date is as follows:

2011 Loan Agreement Debt Service Requirements

| Fiscal Year Ending | Total Payment |
|--------------------|---------------|
| 2022 | \$8,287 |
| 2023 | 8,287 |
| 2024 | 8,287 |
| 2025 | 8,287 |
| 2026 | 8,287 |
| 2027 | 8,287 |
| 2028 | 8,287 |

| | |
|------|-------|
| 2029 | 8,287 |
| 2030 | 8,287 |
| 2031 | 8,287 |
| 2032 | 8,288 |

WHEREAS, the principal and interest on the outstanding 2012 Loan Agreement coming due in each Fiscal Year to its last principal payment date is as follows:

2012 Loan Agreement Debt Service Requirements

| Fiscal Year Ending | Total Payment |
|--------------------|---------------|
| 2022 | \$91,185.16 |
| 2023 | 91,185.10 |
| 2024 | 91,184.54 |
| 2025 | 91,184.98 |
| 2026 | 91,184.76 |
| 2027 | 91,185.18 |
| 2028 | 91,185.04 |
| 2029 | 91,185.34 |
| 2030 | 91,184.56 |
| 2031 | 91,185.34 |
| 2032 | 91,184.94 |
| 2033 | 91,184.94 |

WHEREAS, the principal and interest on the outstanding 2019 DW-4794 Loan Agreement coming due in each Fiscal Year to its last principal payment date is as follows:

2019 DW-4794 Loan Agreement Debt Service Requirements

| Fiscal Year Ending | Total Payment |
|--------------------|---------------|
| 2022 | \$31,865.86 |
| 2023 | 31,866.46 |
| 2024 | 31,866.48 |
| 2025 | 31,866.32 |
| 2026 | 31,865.96 |
| 2027 | 31,866.42 |
| 2028 | 31,866.68 |
| 2029 | 31,866.76 |
| 2030 | 31,866.64 |
| 2031 | 31,866.32 |
| 2032 | 31,866.80 |
| 2033 | 31,866.10 |
| 2034 | 31,866.22 |

| | |
|------|-----------|
| 2035 | 31,866.12 |
| 2036 | 31,866.84 |
| 2037 | 31,866.36 |
| 2038 | 31,866.68 |
| 2039 | 31,866.80 |
| 2040 | 31,866.72 |
| 2041 | 31,866.46 |

WHEREAS, the principal and interest on the outstanding 2019 PPRF-4967 Loan Agreement coming due in each Fiscal Year to its last principal payment date is as follows:

2019 PPRF-4967 Loan Agreement Debt Service Requirements

| Fiscal Year Ending | Total Payment |
|--------------------|---------------|
| 2022 | \$126,547.04 |
| 2023 | 85,807.52 |
| 2024 | 85,807.08 |

WHEREAS, the principal and interest on the outstanding USDA Loan coming due in each Fiscal Year to its last principal payment date is as follows:

USDA Loan Debt Service Requirements

| Fiscal Year Ending | Total Payment |
|--------------------|---------------|
| 2022 | \$208,813.00 |
| 2023 | 208,813.00 |
| 2024 | 208,813.00 |
| 2025 | 208,813.00 |
| 2026 | 208,813.00 |
| 2027 | 208,813.00 |
| 2028 | 208,813.00 |
| 2029 | 208,813.00 |
| 2030 | 208,813.00 |
| 2031 | 208,813.00 |
| 2032 | 208,813.00 |
| 2033 | 208,813.00 |
| 2034 | 208,813.00 |
| 2035 | 208,813.00 |
| 2036 | 208,813.00 |
| 2037 | 208,813.00 |
| 2038 | 208,813.00 |
| 2039 | 208,813.00 |
| 2040 | 208,813.00 |

| | |
|------|------------|
| 2041 | 208,813.00 |
| 2042 | 208,813.00 |
| 2043 | 208,813.00 |
| 2044 | 208,813.00 |
| 2045 | 208,813.00 |
| 2045 | 208,813.00 |
| 2047 | 208,813.00 |
| 2048 | 208,813.00 |
| 2049 | 208,813.00 |
| 2050 | 208,813.00 |
| 2051 | 208,813.00 |
| 2052 | 208,813.00 |
| 2053 | 208,813.00 |
| 2054 | 208,813.00 |
| 2055 | 208,813.00 |
| 2056 | 208,813.00 |
| 2057 | 208,813.00 |
| 2058 | 208,813.00 |
| 2059 | 1,001.00 |

WHEREAS, the principal and interest on the outstanding USDA CPAP Loan coming due in each Fiscal Year to its last principal payment date is as follows:

| Fiscal Year Ending | Total Payment |
|--------------------|---------------|
| 2022 | \$34,787.00 |
| 2023 | 34,427.00 |
| 2024 | 35,067.00 |
| 2025 | 34,685.00 |
| 2026 | 34,302.00 |
| 2027 | 34,920.00 |
| 2028 | 34,515.00 |
| 2029 | 35,110.00 |
| 2030 | 34,682.00 |
| 2031 | 34,255.00 |
| 2032 | 34,827.00 |
| 2033 | 34,377.00 |
| 2034 | 34,927.00 |
| 2035 | 34,455.00 |
| 2036 | 34,982.00 |
| 2037 | 34,487.00 |
| 2038 | 34,992.00 |
| 2039 | 34,475.00 |
| 2040 | 34,957.00 |
| 2041 | 34,417.00 |

| | |
|------|-----------|
| 2042 | 34,877.00 |
| 2043 | 34,315.00 |
| 2044 | 34,752.00 |
| 2045 | 35,167.00 |
| 2046 | 34,560.00 |
| 2047 | 34,952.00 |
| 2048 | 34,322.00 |
| 2049 | 34,692.00 |
| 2050 | 35,040.00 |
| 2051 | 34,365.00 |
| 2052 | 34,690.00 |
| 2053 | 34,992.00 |
| 2054 | 34,272.00 |
| 2055 | 34,552.00 |
| 2056 | 36,810.00 |

WHEREAS, the principal and interest on the outstanding USDA WWTP 92-12 Loan coming due in each Fiscal Year to its last principal payment date is as follows:

| Fiscal Year Ending | Total Payment |
|--------------------|---------------|
| 2022 | \$24,453.00 |
| 2023 | 24,453.00 |
| 2024 | 24,453.00 |
| 2025 | 24,453.00 |
| 2026 | 24,453.00 |
| 2027 | 24,453.00 |
| 2028 | 24,453.00 |
| 2029 | 24,453.00 |
| 2030 | 24,453.00 |
| 2031 | 24,453.00 |
| 2032 | 24,453.00 |
| 2033 | 24,453.00 |
| 2034 | 24,453.00 |
| 2035 | 24,453.00 |
| 2036 | 24,453.00 |
| 2037 | 24,453.00 |
| 2038 | 24,453.00 |
| 2039 | 24,453.00 |
| 2040 | 24,453.00 |
| 2041 | 24,453.00 |
| 2042 | 24,453.00 |
| 2043 | 24,453.00 |
| 2044 | 24,453.00 |
| 2045 | 24,453.00 |

| | |
|------|-----------|
| 2046 | 24,453.00 |
| 2047 | 24,453.00 |
| 2048 | 24,453.00 |
| 2049 | 24,453.00 |
| 2050 | 24,453.00 |
| 2051 | 24,453.00 |
| 2052 | 24,453.00 |
| 2053 | 24,453.00 |
| 2054 | 24,453.00 |
| 2055 | 24,453.00 |
| 2056 | 24,453.00 |
| 2057 | 24,453.00 |
| 2058 | 24,453.00 |
| 2059 | 24,539.00 |

WHEREAS, the principal and interest on the outstanding USDA WWTP 92-19 Loan coming due in each Fiscal Year to its last principal payment date is as follows:

| Fiscal Year Ending | Total Payment |
|--------------------|---------------|
| 2022 | \$11,772.00 |
| 2023 | 11,772.00 |
| 2024 | 11,772.00 |
| 2025 | 11,772.00 |
| 2026 | 11,772.00 |
| 2027 | 11,772.00 |
| 2028 | 11,772.00 |
| 2029 | 11,772.00 |
| 2030 | 11,772.00 |
| 2031 | 11,772.00 |
| 2032 | 11,772.00 |
| 2033 | 11,772.00 |
| 2034 | 11,772.00 |
| 2035 | 11,772.00 |
| 2036 | 11,772.00 |
| 2037 | 11,772.00 |
| 2038 | 11,772.00 |
| 2039 | 11,772.00 |
| 2040 | 11,772.00 |
| 2041 | 11,772.00 |
| 2042 | 11,772.00 |
| 2043 | 11,772.00 |
| 2044 | 11,772.00 |
| 2045 | 11,772.00 |
| 2046 | 11,772.00 |

| | |
|------|-----------|
| 2047 | 11,772.00 |
| 2048 | 11,772.00 |
| 2049 | 11,772.00 |
| 2050 | 11,772.00 |
| 2051 | 11,772.00 |
| 2052 | 11,772.00 |
| 2053 | 11,772.00 |
| 2054 | 11,772.00 |
| 2055 | 11,772.00 |
| 2056 | 11,772.00 |
| 2057 | 11,772.00 |
| 2058 | 11,772.00 |
| 2059 | 11,785.00 |

WHEREAS, the principal and interest on the outstanding NMED Loan coming due in each Fiscal Year to its last principal payment date is as follows:

NMED Loan Debt Service Requirements

| Fiscal Year Ending | Total Payment |
|--------------------|---------------|
| 2022 | \$16,613.00 |
| 2023 | 21,089.00 |
| 2024 | 21,089.00 |
| 2025 | 21,089.00 |
| 2026 | 21,089.00 |
| 2027 | 21,089.00 |
| 2028 | 21,089.00 |
| 2029 | 21,089.00 |
| 2030 | 21,089.00 |
| 2031 | 21,089.00 |
| 2032 | 21,089.00 |
| 2033 | 21,089.00 |
| 2034 | 21,089.00 |
| 2035 | 21,089.00 |
| 2036 | 21,089.00 |
| 2037 | 21,089.00 |
| 2038 | 21,089.00 |
| 2039 | 21,089.00 |
| 2040 | 21,089.00 |
| 2041 | 21,089.00 |

WHEREAS, the principal and interest on the 2022 Loan Agreement coming due in each Fiscal Year to its last principal date is as follows:

2022 Loan Agreement Debt Service Requirements

| Fiscal Year Ending | Principal | Interest | Total Payment |
|--------------------|-----------|-------------|---------------|
| 2023 | \$75,024 | \$21,313.07 | \$96,337.07 |
| 2024 | 77,113 | 26,232.82 | 103,345.82 |
| 2025 | 163,229 | 24,682.86 | 187,911.86 |
| 2026 | 164,094 | 21,173.42 | 185,267.42 |
| 2027 | 165,177 | 17,497.72 | 182,674.72 |
| 2028 | 166,531 | 13,665.62 | 180,196.62 |
| 2029 | 168,113 | 9,568.96 | 177,681.96 |
| 2030 | 169,862 | 5,214.82 | 175,076.82 |
| 2031 | 171,764 | 611.56 | 172,375.56 |

NOW THEREFORE, the undersigned do hereby certify as follows:

1. We are familiar with the provisions of the 2011 Resolution authorizing the execution and delivery of the 2011 Loan Agreement, the 2012 Ordinance authorizing the execution and delivery of the 2012 Loan Agreement, the 2019 DW-4794 Resolution authorizing the execution and delivery of the 2019 DW-4794 Loan Agreement, the 2019 PPRF-4967 Resolution authorizing the execution and delivery of the 2019 PPRF-4967 Loan Agreement, the USDA Loan Resolution, the NMED Loan Ordinance, and the 2022 Ordinance authorizing the execution and delivery of the 2022 Loan Agreement and with the provisions of the 2011 Loan Agreement, the 2012 Loan Agreement, the 2019 DW-4794 Loan Agreement, the 2019 PPRF-4967 Loan Agreement, the 2022 Loan Agreement, the USDA Loan, the NMED Loan, the USDA CPAP Loan, the USDA WWTP 92-12 Loan, and the USDA WWTP 92-19 Loan.

2. We are familiar with the books, accounts and funds of the Governmental Unit pertaining to the Pledged Revenues.

3. Except as stated in the preambles to this Certificate, the Pledged Revenues have not been pledged or hypothecated to the payment of any outstanding parity lien or senior lien obligations and no other outstanding obligations are payable from the Pledged Revenues.

4. The Governmental Unit is not, and has not been in default as to making any payments on the 2011 Loan Agreement, the 2012 Loan Agreement, the 2019 DW-4794 Loan Agreement the 2019 PPRF-4967 Loan Agreement, the USDA Loan, the NMED Loan, the USDA CPAP Loan, the USDA WWTP 92-12 Loan, or the USDA WWTP 92-19 Loan, nor under any of the covenants or requirements of the 2011 Loan Agreement, the 2012 Loan Agreement, the 2019 DW-4794 Loan Agreement, the 2019 PPRF-4967 Loan Agreement, the USDA Loan, the NMED Loan, the USDA CPAP Loan, the USDA WWTP 92-12 Loan, and the USDA WWTP 92-19 Loan.

5. The 2022 Loan Agreement is payable from the Pledged Revenues and will constitute a lien upon the Pledged Revenues on a parity with the lien of the outstanding 2011 Loan Agreement, the 2012 Loan Agreement, the 2019 Loan Agreement, and the NMED Loan, and subordinate to the lien of the outstanding USDA Loan, USDA CPAP Loan, USDA WWTP 92-12 Loan, USDA WWTP 92-19 Loan, all as described in the 2022 Loan Agreement.

6. The fiscal year immediately preceding the date of the 2022 Loan Agreement is the period commencing on July 1, 2021 and ending in June 30, 2022.

7. The Pledged Revenues for the fiscal year ended 2022 are fairly stated at \$1,152,391.

8. The combined maximum Aggregate Annual Debt Service Requirements on the 2011 Loan Agreement, the 2012 Loan Agreement, the 2019 DW-4794 Loan Agreement, the 2019 PPRF-4967 Loan Agreement, the USDA Loan, USDA CPAP Loan, USDA WWTP 92-12 Loan, USDA WWTP 92-19 Loan the NMED Loan and the 2022 Loan Agreement for the parity bond test set out in the preambles of this Certificate occurs in Fiscal Year 2024 and is \$620,874.92. One hundred thirty percent (130%) of such amount is \$807,137.40.

9. The Pledged Revenues of \$1,152,391 (i.e., paragraph 7 above) for the fiscal year immediately preceding the date of the execution and delivery of the 2022 Loan Agreement were sufficient to pay an amount representing 130% of the combined maximum Aggregate Annual Debt Service Requirements of \$807,137.40 on the 2011 Loan Agreement, the 2012 Loan Agreement, the 2019 DW-4794 Loan Agreement, the 2019 PPRF-4967 Loan Agreement, the USDA Loan, USDA CPAP Loan, USDA WWTP 92-12 Loan, USDA WWTP 92-19 Loan the NMED Loan and the 2022 Loan Agreement.

10. This certificate is for the benefit of each holder from time to time of the 2022 Loan Agreement and for the benefit of bond counsel in rendering opinions to the effect that the 2022 Loan Agreement is secured by a lien pledge on the Pledged Revenues on a parity with the 2011 Loan Agreement, the 2012 Loan Agreement, the 2019 DW-4794 Loan Agreement, the 2019 PPRF-4967 Loan Agreement, and the NMED Loan, and subordinate to the lien of the outstanding USDA Loan, USDA CPAP Loan, USDA WWTP 92-12 Loan, USDA WWTP 92-19 Loan, all as described in the 2022 Loan Agreement.

(Signature Page Follows)

WITNESS our hands this 22nd day of July, 2022.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

[SEAL]

By _____
Amanda Forrister, Mayor

By _____
Bruce Swingle, City Manager

By _____
Carol Kirkpatrick, Finance Director

SUTIN THAYER & BROWNE

A PROFESSIONAL CORPORATION
LAWYERS

IRWIN S. MOISE (1906-1984)
LEWIS R. SUTIN (1908-1992)
FRANKLIN JONES (1919-1994)
RAYMOND W. SCHOWERS (1948-1995)
GRAHAM BROWNE (1935-2003)
NORMAN S. THAYER (1933-2018)
STEPHEN CHARNAS (1934-2018)
MICHAEL G. SUTIN (1935-2019)
JAY D. HERTZ (1934-2020)

ROBERT G. HEYMAN (Of Counsel)

NOE ASTORGA-CORRAL
ANNE P. BROWNE

SUZANNE WOOD BRUCKNER
MARIA MONTOYA CHAVEZ
AMANDA E. CVINAR
JOHN A. DRAGOVITS
EDUARDO A. DUFFY
ALEXANDER G. ELBORN
TINA MUSCARELLA GOOCH
JUSTIN L. GREENE
JESSE D. HALE
MINGJIE L. HOEMMEN
WADE L. JACKSON
DAVID H. JOHNSON
ROBERT J. JOHNSTON
ISAAC A. LEON

CHRISTINA M. LOONEY
STEVAN DOUGLAS LOONEY
DEBORAH E. MANN
JESSICA R. MARTIN
LYNN E. MOSTOLLER
CHARLES J. PIECHOTA
JAY D. ROSENBLUM
FRANK C. SALAZAR
JUSTIN R. SAWYER
ANDREW J. SIMONS
BARBARA G. STEPHENSON
MARIPOSA PADILLA SIVAGE
BENJAMIN E. THOMAS

6100 UPTOWN BLVD NE, SUITE 400
ALBUQUERQUE, NEW MEXICO 87110
POST OFFICE BOX 1945
ALBUQUERQUE, NEW MEXICO 87103
505-883-2500
FAX 505-888-6565

150 WASHINGTON AVE, SUITE 210
SANTA FE, NEW MEXICO 87501
POST OFFICE BOX 2187
SANTA FE, NEW MEXICO 87504
505-988-5521
FAX 505-982-5297

WWW.SUTINFIRM.COM

July 22, 2022

New Mexico Finance Authority
207 Shelby St.
Santa Fe, NM 87501

City of Truth or Consequences
401 McAdoo Street
Truth or Consequences, NM 87901

\$1,320,907 New Mexico Finance Authority
Loan to the City of Truth or Consequences,
New Mexico (PPRF-5652)

Ladies and Gentlemen:

We have acted as Loan Counsel to the New Mexico Finance Authority (the "Finance Authority") in connection with the \$1,320,907 Loan Agreement (the "Loan Agreement") between the City of Truth or Consequences, New Mexico (the "Governmental Unit") and the Finance Authority. The Loan Agreement is executed and delivered by the Governmental Unit pursuant to Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, and the Governmental Unit's Ordinance No. 723 adopted on January 12, 2022, as amended by Ordinance No. 734 adopted on July 13, 2022 (the "Ordinance"). The Loan Agreement has been executed and delivered to provide funds for purchasing a new electrical transformer for the Governmental Unit's substation and to fund the Loan Agreement Reserve Account, as described in the Loan Agreement.

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

July 22, 2022

Page 2

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

1. The Ordinance creates a valid and binding special limited obligation of the Governmental Unit enforceable in accordance with its terms and creates the pledge of the Net System Revenues (the "Pledged Revenues") which it purports to create.

2. The Loan Agreement is a valid and binding special limited obligation of the Governmental Unit, enforceable in accordance with its terms and provisions and the terms and provisions of the Ordinance.

3. The Loan Agreement is a valid and binding special limited obligation of the Finance Authority, enforceable against the Finance Authority in accordance with its terms and provisions.

4. The Loan Agreement is payable solely from, and such payment is secured by a valid and binding first lien (but not an exclusive first lien) on the Pledged Revenues and on a parity with the lien thereon of other outstanding obligations secured by a first lien on the Pledged Revenues as set forth in the Loan Agreement. The Finance Authority has no right to have taxes levied by the Governmental Unit for the payment of principal of or interest on the Loan Agreement and the Loan Agreement does not represent or constitute a debt or a pledge of, or a charge against, the general credit of the Governmental Unit.

5. Assuming continuing compliance by the Finance Authority and the Governmental Unit with the requirements of the Internal Revenue Code of 1986, as amended (the "Code"), with the covenants of the Governmental Unit regarding the use, expenditure and investment of Loan Agreement proceeds and assuming the accuracy of certain representations of the Finance Authority and the Governmental Unit, interest on the Loan Agreement is excludable from gross income of the owners of the Loan Agreement for purposes of federal income taxation. Failure of the Governmental Unit to comply with its covenants and with the requirements of the Code may cause interest on the Loan Agreement to become includable in gross income for federal income tax purposes retroactive to the date of the Loan Agreement.

6. Interest on the Loan Agreement is excluded from net income of the owners thereof for State of New Mexico income tax purposes.

7. The Loan Agreement may be pledged as an "Additional Pledged Loan" or as a "Loan" under the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and BOKF, NA, as successor trustee (the "Trustee"), or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a pledge notification or supplemental indenture.

July 22, 2022
Page 3

We express no opinion with respect to the provisions of the Loan Agreement and the Ordinance with respect to indemnification, provisions requiring that amendments be in writing or payment of attorneys' fees. Other than as described in this opinion, we have not addressed nor are we opining on the tax consequences to any person of the investment in, or the receipt of interest on, the Loan Agreement.

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

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

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

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

Very truly yours,

SUTIN, THAYER & BROWNE
A Professional Corporation

\$1,320,907
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
NEW MEXICO FINANCE AUTHORITY
PUBLIC PROJECT REVOLVING FUND LOAN
Loan No. PPRF-5652

Closing Date: July 22, 2022

TRANSCRIPT OF PROCEEDINGS
INDEX

1. Open Meeting Act Resolution No. 01 21/22 adopted July 14, 2021
2. Loan Ordinance No. 723, adopted January 12, 2022, Loan Ordinance No. 734, adopted July 13, 2022; Agenda, and the Affidavits of Publication of the Notice of Intent to Adopt Ordinance and the Notice of Adoption of Ordinance in the *Sierra County Sentinel*
3. Loan Agreement
4. General and No Litigation Certificate
5. Arbitrage and Tax Certificate with Form 8038-G and evidence of filing and Finance Authority Tax Representations Certificate
6. Delivery, Deposit and Cross-Receipt Certificate
7. Pledged Revenue Certificate
8. Approving Opinion of Sutin, Thayer & Browne A Professional Corporation, Loan Counsel to the Finance Authority
9. Finance Authority Application and Project Approval (informational only)

TRANSCRIPT DISTRIBUTION LIST

City of Truth or Consequences, New Mexico
New Mexico Finance Authority
BOKF, NA
Sutin, Thayer & Browne A Professional Corporation



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: H.1

SUBJECT: Resolution 01 2022-2023 Open Meetings Act
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: July 8, 2022
SUBMITTED BY: Angela A. Torres, City Clerk-Treasurer
WHO WILL PRESENT THE ITEM: Angela A. Torres, City Clerk-Treasurer

Summary/Background:

The Open Meetings Act is found in NMSA 1978, Chapter 10, Article 15, Section 10-15-1 to 10-15-4 and are known as a "sunshine law." The Open Meetings Act or "Sunshine Law" generally requires that the Public business be conducted in full public view, and that the deliberations of public bodies be open to the public.

This Resolution is generally adopted as the first Resolution of each Fiscal Year at the first meeting in July.

Recommendation:

Approve the Resolution.

Attachments:

- Resolution No. 01 2022/2023

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. 01 2022/2023 Ordinance No. .

Continued To: . Referred To: .

☐ Approved ☐ Denied ☐ Other: .

File Name: CC Agendas 7-13-2022



CITY OF TRUTH OR CONSEQUENCES

RESOLUTION NO. 01 22/23

A RESOLUTION DESIGNATING THE MANNER IN WHICH ALL MEETINGS OF THE CITY COMMISSION, ITS BOARDS, COMMISSION AND COMMITTEES WILL BE HELD AND THE METHOD OF PUBLIC NOTIFICATION.

WHEREAS, pursuant to the requirements of the Open Meetings Act ("Act"), Section 10-15-1 et seq. NMSA 1978, all meetings of the City Commission, its boards, commissions or committees held for the purpose of formulating public policy or for the purpose of taking any action within the authority of or the delegated authority of any board, commission, committee, or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the state constitution or the Act; and

WHEREAS, all meetings subject to the provision of the Act at which the formation of public policy, such as discussion or adoption of any proposed resolution, rule, regulation, or formal action occurs and at which a majority of quorum of the body is in attendance shall be public meetings and shall be held only after reasonable Notice/Agenda to the public; and

WHEREAS, the Act requires the City Commission to determine annually in a public meeting what Notice/Agenda for a public meeting is reasonable when applied to the City Commission, its boards, commissions and committees.

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

1. Regular meetings of the City Commission shall be held on the second and fourth Wednesdays of each month at 9:00 a.m., or upon such times as the Commission agrees to change the meeting date or time. If said meeting falls on a holiday, the meeting shall then be held on Thursday, immediately following. All meetings will be held at the City Commission Chambers, 405 W. 3rd Street unless due Notice/Agenda is given to the public.
2. Regular meetings of any Board, Commission, or Committee shall be established by formal action of the respective body as to the date, time, and location. Consideration shall be given to holding such meetings at a date, time and location, which promotes the active participation of the community.
3. Notice/Agenda requirements for all meetings shall be in accordance with the following:

- A. **Regular Meetings** – Notice of the meetings, indicating the date, time, and location of the meetings shall be published in one or more newspapers of general circulation within the community at least once per month. The Notice/Agenda shall be given at least 5 days prior to the meeting. The final Notice/Agenda shall be posted in the City Clerk's Office and posted on the City's website.
- B. **Special Meetings** – May be called only by the majority of the members of the City Commission. Notice/Agenda shall be given with no less than 72 hours' Notice/Agenda before such meeting. The notice/agenda shall specify the business to be conducted, and shall be published in one or more newspapers of general circulation, broadcast over the radio, or in the alternative be posted in the following places: 1) Bulletin board at the City Utilities Office; 2.) the north bulletin board at the Sierra County Administrative Building; 3) First Savings Bank; 4) Bank of the Southwest at T or C; 5) U.S. Post Office located on Main Street; and 6) City Clerk's Office and on the City's website.
- C. **Emergency Meetings** – May be called only under circumstances that, if not addressed immediately by the City Commission, will likely result in injury or damage to persons or property or substantial financial loss to the City. Emergency meetings may be called by the Mayor or a majority of the Commission by giving 24 hours' notice/agenda prior to meeting. The Emergency meeting notice/agenda shall include an agenda containing a list of specific items of business to be discussed, or transacted at the meeting, or information on how the public may obtain a copy of such an agenda. It shall be broadcast over the radio, or in the alternative be posted in the following places: 1) Bulletin board at the City Utilities Office; 2.) the north bulletin board at the Sierra County Administrative Building; 3) First Savings Bank; 4) Bank of the Southwest at T or C; 5) U.S. Post Office located on Main Street; and 6) City Clerk's Office and on the City's website.
4. Pursuant to the Open Meetings Act 10-15-1 (C) NMSA if otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone, or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

PASSED, APPROVED AND ADOPTED this 13th day of July, 2022.

Amanda Forrister, Mayor

ATTEST:

Angela A. Torres, City Clerk



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: H.2

SUBJECT: Approve Resolution 02 22/23 Infrastructure Capital Improvement (ICIP) Plan

DEPARTMENT: Community Development

DATE SUBMITTED: July 7, 2022

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

Public Hearing was held on 6-22-2022 and Draft ICIP was presented. ICIP list has updated and brought back to the Commission for ranking and final approval and Resolution to adopt. Draft ICIP is in order recommended by staff, Commission to edit for any changes and/or accept as final plan. Staff will enter projects in order accepted and approved by Commission.

Recommendation:

Rank and approve top project priorities
Approve Resolution 02 22/23

Attachments:

- Infrastructure Capital Improvement Project Summary DRAFT 2024-2028
-

Fiscal Impact (Finance): TBD

-

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. 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 7-13-2022

CITY OF TRUTH OR CONSEQUENCES

RESOLUTION No. 02 22/23

A RESOLUTION ADOPTING AN INFRASTRUCTURE CAPITAL IMPROVEMENTS PLAN (ICIP), 2024-2028

WHEREAS, the City of Truth or Consequences recognizes that the financing of public capital projects has become a major concern in New Mexico and nationally; and

WHEREAS, in times of scarce resources it is necessary to find new financing mechanisms and maximize the use of existing resources; and

WHEREAS, systematic capital improvements planning is an effective tool for communities to define their development needs, establish priorities and pursue concrete actions and strategies to achieve necessary project development; and

WHEREAS, this process contributes to local and regional efforts in project identification and selection in short and long range capital planning efforts.

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

1. The City of Truth or Consequences has adopted the attached FY 2024-2028 Infrastructure Capital Improvement Plan, and
2. It is intended that the Plan be a working document and is the first of many steps towards improving rational, long range capital planning and budgeting for the New Mexico's infrastructure.
3. This Resolution supersedes Resolution No. 17 21/22

PASSED, APPROVED, AND ADOPTED by the governing body of the City Commission this 13th day of July 2022.

Amanda Forrister, Mayor

ATTEST:

Angela Torres, City Clerk

| ID | YEAR | RANK | PROJECT TITLE | CATEGORY | FUNDED TO DATE | 2024 | 2025 | 2026 | 2027 | 2028 | TOTAL PROJECT COST | AMOUNT NOT YET FUNDED | PHASES? |
|-------|------|------|---|--|-----------------|-----------------|-----------------|-----------------|------------------|------------------|--------------------|-----------------------|---------|
| 38540 | 2024 | 001 | Marie Street Improvements | Transportation - Highway/Roads/Bridges | 0 | \$ 282,000.00 | | | | | \$ 282,000.00 | \$ 282,000.00 | No |
| 38579 | 2024 | 002 | Animal Shelter Kennel Building | Facilities - Other | 0 | \$ 450,000.00 | | | | | \$ 450,000.00 | \$ 450,000.00 | Yes |
| 38589 | 2024 | 003 | Street Department 4000 Gal. Water Truck | Equipment - Other | 0 | \$ 186,000.00 | | | | | \$ 186,000.00 | \$ 186,000.00 | No |
| 38581 | 2024 | 004 | Soccer Field Improvements | Other - Other | 0 | \$ 430,000.00 | | | | | \$ 430,000.00 | \$ 430,000.00 | Yes |
| | 2024 | 005 | Clancy Force Main Improvements | Water-Wastewater | 0 | \$ 1,500,000.00 | | | | | \$ 1,500,000.00 | \$ 1,500,000.00 | Yes |
| | 2024 | 006 | Effluent Pond Irrigation Improvements | Water-Wastewater | 0 | \$ 250,000.00 | \$ 500,000.00 | \$ 1,000,000.00 | | | \$ 1,750,000.00 | \$ 1,750,000.00 | Yes |
| 36448 | 2024 | 007 | City wide Drainage Improvements | Other - Other | \$100,000.00 | \$ 800,000.00 | \$ 1,000,000.00 | \$ 1,700,000.00 | \$ 1,700,000.00 | | \$ 5,300,000.00 | \$ 5,200,000.00 | Yes |
| | 2024 | 008 | Water Meter Replacement/Updgrade | Water - Water Supply | 0 | \$ 1,000,000.00 | \$ 1,000,000.00 | \$ 1,000,000.00 | \$ 1,000,000.00 | \$ 1,000,000.00 | \$ 5,000,000.00 | \$ 5,000,000.00 | Yes |
| 38536 | 2024 | 009 | Police Department Flood Control | Facilities - Administrative Facilities | 0 | \$ 25,000.00 | | | | | \$ 25,000.00 | \$ 25,000.00 | No |
| | | | | Water - Storm/Surface Water Control | | | | | | | | | |
| 39246 | 2024 | 010 | Cantrell Dam Improvements | | \$825,000.00 | \$ 1,045,000.00 | \$ 1,130,000.00 | \$ 1,000,000.00 | \$ 1,000,000.00 | | \$ 5,000,000.00 | \$ 4,175,000.00 | Yes |
| 38590 | 2024 | 011 | Substation south Transformer Replacement | Equipment - Other | 0 | \$ 1,500,000.00 | | | | | \$ 1,500,000.00 | \$ 1,500,000.00 | No |
| 38582 | 2024 | 012 | Fleet Department Service Truck | Equipment - Other | 0 | \$ 165,000.00 | | | | | \$ 165,000.00 | \$ 165,000.00 | No |
| 38591 | 2024 | 013 | Electrical Substation Breaker Replacement | Equipment - Other | 0 | \$ 3,000,000.00 | | | | | \$ 3,000,000.00 | \$ 3,000,000.00 | No |
| 38592 | 2024 | 014 | Electrical Substation Transformer Switches | Equipment - Other | 0 | \$ 250,000.00 | \$ 250,000.00 | | | | \$ 500,000.00 | \$ 500,000.00 | Yes |
| 38538 | 2024 | 015 | Police Department Renovation | Facilities - Administrative Facilities | \$55,000.00 | \$ 30,000.00 | | | | | \$ 85,000.00 | \$ 30,000.00 | No |
| 36618 | 2024 | 016 | Multi-generational Campus | Facilities - Other | 0 | \$ 160,000.00 | \$ 3,500,000.00 | \$ 3,745,000.00 | \$ 4,000,000.00 | \$ 900,000.00 | \$ 12,305,000.00 | \$ 12,305,000.00 | Yes |
| | | | | | | | | | | | | | |
| 36714 | 2024 | 017 | Substation Primary Underground Feeder Replacement | Other - Utilities (publicly owned) | 0 | \$ 2,000,000.00 | | | | | \$ 2,000,000.00 | \$ 2,000,000.00 | Yes |
| | | | | | | | | | | | | | |
| 26605 | 2025 | 001 | MSD Streets Reconstruction | Transportation - Highway/Roads/Bridges | \$1,215,000.00 | | \$ 2,200,000.00 | | | | \$ 3,415,000.00 | \$ 2,200,000.00 | Yes |
| | | | | | | | | | | | | | |
| 32976 | 2025 | 002 | Water Distribution Line Replacement & Repavement | Transportation - Highway/Roads/Bridges | 0 | | \$ 1,200,000.00 | \$ 1,600,000.00 | | | \$ 2,800,000.00 | \$ 2,800,000.00 | Yes |
| | 2025 | 003 | Well #8 Replacement | Water-Wastewater | 0 | | \$ 750,000.00 | | | | \$ 750,000.00 | \$ 750,000.00 | No |
| | | | | | | | | | | | | | |
| 38572 | 2025 | 004 | W 9th Street Improvements | Transportation - Highway/Roads/Bridges | 0 | | \$ 240,000.00 | | | | \$ 240,000.00 | \$ 240,000.00 | No |
| | | | | | | | | | | | | | |
| 38574 | 2025 | 005 | Veater Street Improvements | Transportation - Highway/Roads/Bridges | 0 | | \$ 270,000.00 | | | | \$ 270,000.00 | \$ 270,000.00 | No |
| 38577 | 2025 | 006 | Golf Course Grounds Improvements | Other - Other | 0 | | \$ 25,000.00 | | | | \$ 25,000.00 | \$ 25,000.00 | No |
| 38533 | 2025 | 007 | Solid Waste Tipping Floor Improvements | Other - Solid Waste | 0 | | \$ 135,000.00 | | | | \$ 135,000.00 | \$ 135,000.00 | No |
| | 2025 | 008 | Library Facility Improvements | Facilities - Other | 0 | | \$ 24,500.00 | | | | \$ 24,500.00 | \$ 24,500.00 | |
| 38578 | 2025 | 009 | Golf Course Maintenance Equipment | Equipment - Other | 0 | | \$ 170,000.00 | | | | \$ 170,000.00 | \$ 170,000.00 | No |
| | 2025 | 010 | Ralph Edwards Skate Park Improvements | Other - Other | 0 | | \$ 170,000.00 | | | | \$ 170,000.00 | \$ 170,000.00 | No |
| | | | | | | | | | | | | | |
| 38571 | 2026 | 001 | Smith, Silver and E 9th Street Improvements | Transportation - Highway/Roads/Bridges | 0 | | | \$ 662,000.00 | \$ 500,000.00 | | \$ 1,162,000.00 | \$ 1,162,000.00 | Yes |
| 33030 | 2026 | 002 | Louis Armijo Sports Complex | Facilities - Other | 0 | | | \$ 400,000.00 | | | \$ 400,000.00 | \$ 400,000.00 | No |
| | | | | | | | | | | | | | |
| 38619 | 2026 | 003 | Wastewater Manhole Replacement/Improvements | Water - Wastewater | 0 | | | \$ 25,000.00 | \$ 225,000.00 | \$ 2,000,000.00 | \$ 2,250,000.00 | \$ 2,250,000.00 | Yes |
| 38576 | 2026 | 004 | Golf Course Clubhouse Improvements | Facilities - Other | 0 | | | \$ 45,000.00 | | | \$ 45,000.00 | \$ 45,000.00 | Yes |
| 36685 | 2026 | 005 | Swimming Pool Phase 1 | Facilities - Other | 0 | | | \$ 250,000.00 | \$ 1,250,000.00 | \$ 1,250,000.00 | \$ 2,750,000.00 | \$ 2,750,000.00 | Yes |
| | 2026 | 006 | Golf Course Facility Improvements | Facilities - Other | 0 | | | \$ 55,000.00 | | | \$ 55,000.00 | \$ 55,000.00 | No |
| | | | | | | | | | | | | | |
| | 2026 | 007 | Solid Waste Scale House Facility Improvements | Other - Solid Waste | 0 | | | \$ 50,000.00 | | | \$ 50,000.00 | \$ 50,000.00 | No |
| | | | | | | | | | | | | | |
| | 2026 | 008 | Police Department Security Access System | Facilities - Other | 0 | | | \$ 25,000.00 | | | \$ 25,000.00 | \$ 25,000.00 | No |
| | 2026 | 009 | Fleet Department Diagnostic Machine | Other - Other | 0 | | | \$ 15,000.00 | | | \$ 15,000.00 | \$ 15,000.00 | No |
| | | | | | | | | | | | | | |
| | 2026 | 010 | 10MVA Substation Power Transformer Replacement | Transporation - Lighting | 0 | | | \$ 3,000,000.00 | | | \$ 3,000,000.00 | \$ 3,000,000.00 | No |
| | | | | | | | | | | | | | |
| 33002 | 2027 | 001 | Water Infrastructure and Fire Hydrant Replacement | Water - Water Supply | \$19,930,232.00 | | | | \$ 19,402,616.00 | \$ 19,402,616.00 | \$ 58,735,464.00 | \$ 38,805,232.00 | Yes |

| | | | | | | | | | | | | | |
|-------|------|-----|---|--|---|--|--|--|-----------------|-----------------|------------------|------------------|-----|
| 38618 | 2027 | 002 | Golf Course Effluent Water System Improvements | Water - Wastewater | 0 | | | | \$ 2,000,000.00 | | \$ 2,000,000.00 | \$ 2,000,000.00 | Yes |
| 34164 | 2027 | 003 | Electric Pole and Conductor Replacement | Transportation - Lighting | 0 | | | | \$ 1,000,000.00 | | \$ 1,000,000.00 | \$ 1,000,000.00 | Yes |
| | 2027 | 004 | Wastewater Plant Improvements | Water - Wastewater | 0 | | | | \$ 5,000,000.00 | \$ 5,000,000.00 | \$ 10,000,000.00 | \$ 10,000,000.00 | Yes |
| | 2027 | 005 | Police Department Fire Monitoring System | Facilities - Other | 0 | | | | \$ 25,000.00 | | \$ 25,000.00 | \$ 25,000.00 | No |
| | 2027 | 006 | Punk Greer Rodeo Arena Improvements | Other - Other | 0 | | | | \$ 270,000.00 | | \$ 270,000.00 | \$ 270,000.00 | No |
| | 2027 | 007 | Well #4 Improvements | Water - Water Supply | 0 | | | | \$ 1,000,000.00 | | \$ 1,000,000.00 | \$ 1,000,000.00 | Yes |
| | 2027 | 008 | Electric Voltage Capacitor Replacement | Transportation - Lighting | 0 | | | | \$ 500,000.00 | | \$ 500,000.00 | \$ 500,000.00 | No |
| | 2027 | 009 | Fleet Department Building Improvements | Facilities - Other | 0 | | | | \$ 65,000.00 | | \$ 65,000.00 | \$ 65,000.00 | No |
| | 2027 | 010 | Lee Belle Johnson Facility Improvements | Facilities - Other | 0 | | | | \$ 100,000.00 | | \$ 100,000.00 | \$ 100,000.00 | No |
| 36768 | 2028 | 001 | Vista Memorial Gardens Cemetery | Facilities - Administrative Facilities | 0 | | | | | \$ 140,000.00 | \$ 140,000.00 | \$ 140,000.00 | Yes |
| 38573 | 2028 | 002 | Sierra Vista Street improvements | Transportation - Highway/Roads/Bridges | 0 | | | | | \$ 95,000.00 | \$ 95,000.00 | \$ 95,000.00 | No |
| | 2028 | 003 | Water/Wastewater Administrative Building | Facilities - Administrative Facilities | 0 | | | | | \$ 1,500,500.00 | \$ 1,500,500.00 | \$ 1,500,500.00 | Yes |
| | 2028 | 004 | Well #2 Replacement | Water - Water Supply | 0 | | | | | \$ 750,000.00 | \$ 750,000.00 | \$ 750,000.00 | No |
| | 2028 | 005 | Waterline Exensions Williamsburg | Water - Water Supply | 0 | | | | | \$ 250,000.00 | \$ 250,000.00 | \$ 250,000.00 | No |
| | 2028 | 006 | Fleet Department Forklift | Other - Other | 0 | | | | | \$ 20,000.00 | \$ 20,000.00 | \$ 20,000.00 | No |
| | 2028 | 007 | Fleet Department Vehicle Hauling Trailer | Other - Other | 0 | | | | | \$ 15,000.00 | \$ 15,000.00 | \$ 15,000.00 | No |
| | 2028 | 008 | Fleet Department Vehicle Lift | Other - Other | 0 | | | | | \$ 35,000.00 | \$ 35,000.00 | \$ 35,000.00 | No |
| | 2028 | 009 | Swimming Pool Facility Improvements and Repairs | Facilities - Other | 0 | | | | | \$ 250,000.00 | \$ 250,000.00 | \$ 250,000.00 | No |
| | 2028 | 010 | Animal Shelter Facility Improvements | Facilities - Other | 0 | | | | | \$ 250,000.00 | \$ 250,000.00 | \$ 250,000.00 | No |
| | 2028 | 011 | Geronimo Springs Museum Improvements | Facilities - Other | 0 | | | | | \$ 60,000.00 | \$ 60,000.00 | \$ 60,000.00 | No |
| | 2028 | 012 | City Hall Facility Improvements | Facilities - Administrative Facilities | 0 | | | | | \$ 35,000.00 | \$ 35,000.00 | \$ 35,000.00 | No |
| | | | Vehicular Bridge Crossing | Transportation - Highway/Roads/Bridges | 0 | | | | | \$ 5,500,720.00 | \$ 5,500,720.00 | \$ 5,500,720.00 | Yes |
| | | | Footbridge Crossing | | | | | | | \$ - | \$ - | \$ - | Yes |
| | | | | | | | | | | \$ - | \$ - | \$ - | |
| | | | | | | | | | | \$ - | \$ - | \$ - | |



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: H.3

SUBJECT: Resolution No. 03 22/23 to amend Animal Shelter Fees

DEPARTMENT: Animal Shelter

DATE SUBMITTED: July 7, 2022

SUBMITTED BY: O.J. Hechler

WHO WILL PRESENT THE ITEM: O.J. Hechler, Community Service Director

Summary/Background:

Staff is requesting to amend Resolution NO. 47 21/22 establishing fees for the Animal Shelter by adding fees for small animals and goats.

Recommendation:

Approve Resolution 03 22/23

-

Attachments:

- Resolution No. 47 21/22 Exhibit A
- Resolution No. 03 22/23 Exhibit A

-

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 7-13-22



CITY OF TRUTH OR CONSEQUENCES

RESOLUTION NO. 03 22/23

A RESOLUTION AMENDING FEES FOR THE ANIMAL SHELTER

WHEREAS, The City of Truth or Consequences owns and operates the Truth or Consequences Animal Shelter and is responsible for establishing fees and other charges; and

WHEREAS, The City staff has reviewed rates charged by other area Animal Shelters and determined the proposed fee set forth on Exhibit A are reasonable to other shelter fees.

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

1. The Animal Shelter Fees 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 fees set forth in Exhibit A annually.
3. The City Manager or his/her designee at his/her discretion may waive or reduce fee(s) on existing verbal or written agreements in effect upon adoption of this resolution.

NOW THEREFORE, BE IT FURTHER RESOLVED that this Resolution repeals Resolution No. 47 21/22.

PASSED, APPROVED AND ADOPTED this 13th day of July 2022.

Amanda Forrister, Mayor

Angela Torres, City Clerk - Treasurer

EXHIBIT A
ANIMAL SHELTER FEES

| | <u>FEE</u> | <u>DESCRIPTION</u> |
|--|-------------------|--|
| <u>ADOPTION FEES</u> | | |
| CANINE UP TO 7 YEARS | \$60.00 | All animals are tested, vaccinated and may be sterilized before adoption. |
| CANINE OVER 7 YEARS | \$35.00 | |
| FELINE UP TO 7 YEARS | \$50.00 | |
| FELINE OVER 7 YEARS | \$25.00 | |
| SMALL ANIMAL | \$10.00 | To include chickens, rabbits, rats, birds, etc. |
| GOATS | \$35.00 | All other livestock will be referred to the Livestock Inspector. |
| NON-STERILIZATION DEPOSIT | \$25.00 | Will be refunded upon proof of sterilization within 30 days. Sterilization agreement must be executed or breeder permit obtained (may be subject to age/weight requirements) |
| ADPOTION PRICES CAN CHANGE FOR A SPECIAL ADOPTION EVENT | | |
| | | |
| <u>IMPOUND FEES</u> | | |
| IMPOUND FEE | \$30.00 | 1st offense, then impound fee will increase by an additional \$10.00 every time the animal is impounded for (1) calendar year. |
| IMPOUND BOARDING FEE | \$15.00 | Per day on all animals impounded. |
| NON-STERILIZATION DEPOSIT | \$25.00 | Will be refunded upon proof of sterilization within (30) days. Sterilization agreement must be executed or breeder permit obtained (may be subject to age/weight reuirements). |
| OWNER SHALL BEAR THE COST OF ANY EXPENDITURES WHILE ANIMAL IS CONFIEND (INCLUDING VETERINARY SERVICES). | | |
| | | |
| <u>OTHER FEES</u> | | |
| COURT BOARDING | \$15.00 | Per day: Animals not picked up within 72 hours after court release may become property of the animal shelter. |
| MANDATORY QUARANTINE | \$10.00 | Per day: Animals not picked up within 72 hours after court release may become property of the animal shelter. |
| SAFEKEEP BOARDING | \$15.00 | The Shelter may hold animals up to 72 hours with no charge. After 72 hours a boarding fee may apply. |
| OWNER SHALL BEAR THE COST OF ANY EXPENDITURES WHILE ANIMAL IS CONFINED (INCLUDING VETERINARY SERVICES). | | |
| | | |
| <u>MISC. FEES</u> | | |
| MICROCHIP | \$20.00 | Owner information must be provided. Proof of animal license may be required. |
| OWNER SURRENDER | \$30.00 | Animal information form preferred to help aide in future adoption. |
| SMALL ANIMAL OWNER SURRENDER | \$10.00 | To include chickens, rabbits, rats, birds, etc. |
| NMGRT WILL BE ADDED TO ALL FEES EXCEPT OWNER SURRENDER FEES. | | |



CITY OF TRUTH OR CONSEQUENCES

RESOLUTION NO. 47 21/22

A RESOLUTION ESTABLISHING FEES FOR THE ANIMAL SHELTER

WHEREAS, the City of Truth or Consequences owns and operates the Truth or Consequences Animal Shelter and is responsible for establishing fees and other charges; and

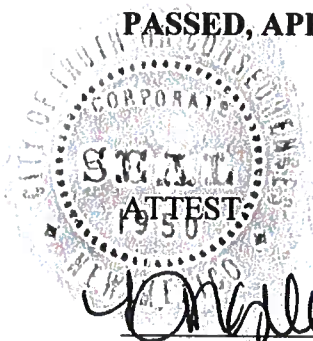
WHEREAS, the city staff has reviewed rates charged by other area Animal Shelters and determined the proposed fees set forth on Exhibit A are reasonable to other shelter fees.

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

1. The Animal Shelter Fees 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 fees set forth in Exhibit A annually.
3. The City Manager or his/her designee at his/her discretion may waive or reduce fee(s) on existing verbal or written agreements in effect upon adoption of this resolution.

NOW THEREFORE, BE IT FURTHER RESOLVED that this Resolution repeals Resolution No. 03 20/21.

PASSED, APPROVED AND ADOPTED this 9th day of February 2022.



Angela Torres, City Clerk-Treasurer



Amanda Forrister, Mayor

EXHIBIT A
ANIMAL SHELTER FEES

Current Fees

ADOPTION FEES

| | |
|----------------------|----------|
| CANINE UP TO 7 YEARS | \$ 60.00 |
| CANINE OVER 7 YEARS | \$ 35.00 |
| FELINE UP TO 7 YEARS | \$ 50.00 |
| FELINE OVER 7 YEARS | \$ 25.00 |

All Animals are tested, vaccinated and may be sterilized before adoption

| | |
|----------------------------|----------|
| NON -STERILIZATION DEPOSIT | \$ 25.00 |
|----------------------------|----------|

Will be refunded upon proof of sterilization within 30 days. Sterilization Agreement must be executed or breeder permit obtained (may be subject to age/weight requirements)

ADOPTION PRICES CAN CHANGE FOR A SPECIAL ADOPTION EVENT

IMPOUND FEES

| | |
|---------------------------|----------|
| IMPOUND FEE | \$ 30.00 |
| IMPOUND BOARDING FEE | \$ 15.00 |
| NON-STERILIZATION DEPOSIT | \$ 25.00 |

1st offense, then impound fee will increase by an additional \$10.00 every time the animal is impounded for 1 calendar year

Per day on all animals impounded

Will be refunded upon proof of sterilization within 30 days. Sterilization Agreement must be executed or breeder permit obtained (may be subject to age/weight requirements)

OWNER SHALL BEAR THE COST OF ANY EXPENDITURES WHILE ANIMAL IS CONFINED INCLUDING VETERINARY SERVICES

OTHER FEES

| | |
|----------------------|----------|
| COURT BOARDING | \$ 15.00 |
| MANDATORY QUARANTINE | \$ 10.00 |
| SAFEKEEP BOARDING | \$ 15.00 |

Per day: Animals not picked up within 72 hours after court release may become property of the animal shelter

Per day: Animals not picked up within 72 hours after court release may become property of the animal shelter

The Shelter may hold animals up to 72 hours with no charge. After 72 hours a boarding fee may apply

OWNER SHALL BEAR THE COST OF ANY EXPENDITURES WHILE ANIMAL IS CONFINED INCLUDING VETERINARY SERVICES

MISC FEES

| | |
|---------------------|----------|
| MICROCHIP | \$ 20.00 |
| OWNER SURRENDER FEE | \$ 30.00 |

Owner information must be provided Proof of animal license may be required

Animal Information form preferred to help aide in future adoption

NMGRT WILL BE ADDED TO ALL FEES EXCEPT OWNER SURRENDER FEES



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: H.4

SUBJECT: Resolution No. 04 22/23 South Central Council of Governments Annual Dues

DEPARTMENT: City Manager's Office

DATE SUBMITTED: June 21, 2022

SUBMITTED BY: Tammy Gardner

WHO WILL PRESENT THE ITEM: Bruce Swingle

Summary/Background:

Annual dues to South Central Council of Governments for FY 22-23 needs to be approved by resolution.

Recommendation:

Approval of Resolution

Attachments:

- Letter from SCCOG
- Resolution 04 22/23

Fiscal Impact (Finance): Yes

\$2,187.00

Legal Review (City Attorney): Choose an item.

-

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 7-13-2022



South Central COUNCIL OF GOVERNMENTS

District 7

June 15, 2022

Members

State Legislator:
Senator Mary Kay Papen

Doña Ana County

City of Las Cruces

City of Sunland Park

City of Anthony

City of Socorro

Socorro County

City of Truth or Consequences

Sierra County

Town of Mesilla

Village of Hatch

Village of Magdalena

Village of Williamsburg

City of Elephant Butte

Lower Rio Grande Public
Water Works Authority

San Antonio Mutual Domestic
Water Consumer Association

Polvadera Mutual Domestic
Water Consumer Association

Doña Ana Mutual Domestic
Water Consumer Association

Anthony Water & Sanitation
District

City Manager
City of Truth or Consequences
505 Sims Street
Truth or Consequences, NM 87901

Re: Request for Membership Dues for FY 2022-2023- Invoice

Dear Mr. Bruce Swingle:

This letter is a request to the City of Truth or Consequences for your membership in the South Central Council of Governments (SCCOG) for FY 22-23. Please find enclosed a membership dues invoice. This year's dues for the City of Truth or Consequences will remain the same in the amount of **\$2,187.00**.

It is required that your participation with the SCCOG be passed by resolution. For your convenience, a resolution is enclosed for the governing body's review and approval.

Your membership and participation in the SCCOG is crucial to our concerted efforts in the district. If you have any questions with respect to our request, please contact me at your earliest possible convenience.

Sincerely,

Jay Armijo
Executive Director

Enclosure

Main Office
P.O. Box 1072
600 Hwy. 195, Suite B & C
Elephant Butte, NM 87935
Phone: 575-744-4857
Fax: 575-744-5021

Jay Armijo, Executive Director
Email: jarmijo@sccog-nm.com
Website: www.sccog-nm.com

Mesilla Office
P.O. Box 297
2231 Avenida de Mesilla
Mesilla, NM 88046-0297
Email: tigoolsby@sccog-nm.com
Ph: 575-524-3262 Ext. 110

RESOLUTION NO. 04 22/23

**APPROVING PARTICIPATION IN THE PROGRAM OF THE
SOUTH CENTRAL COUNCIL OF GOVERNMENTS, INC.
FOR FISCAL YEAR 2022-2023**

WHEREAS, City of Truth or Consequences (herein-after known as the "Member"), desires to be a participating member in the program and policy development for the South Central Council of Governments, Inc. (hereinafter known as "SCCOG"); and

WHEREAS, it is necessary and desirable that an agreement setting forth the services to be performed by the SCCOG for the Member be entered into, wherewith the SCCOG is agreeing to furnish the following:

- A. Implement the work program as established by the SCCOG Board of Directors for the 2022-2023 Fiscal Year.
- B. Provide the Member, when requested, with technical, grant program planning, economic development, strategic overall planning and management assistance.
- C. Address problems, issues and opportunities of a regional nature which go beyond single municipal or county jurisdictional boundaries and serve as a liaison and advocate for local governments within the region at the state and federal levels.
- D. Provide information dissemination about statewide regional and community initiatives to foster greater coordination and efficiency of the programs.

WHEREAS, it is necessary to set forth the sum to be paid by the Member to the SCCOG as annual dues, thereby placing the Member with voting powers on the SCCOG Board of Directors, with an agreement to furnish the following:

- A. To participate, through their designated representatives or alternate, in the SCCOG's policy development process by attending meetings, helping formulate the annual work program, reviewing the SCCOG Goals and Objectives, and the District Comprehensive Economic Development Strategy (CEDS).
- B. To pay to the SCCOG the sum of \$2,187.00 annual membership dues as payment of the aforementioned services for the period beginning July 1, 2022 and ending June 30, 2023.
- C. The Member hereby appoints Amanda Forrister, Mayor, as their designated representative and Destiny Mitchell, Commissioner as alternate.

NOW THEREFORE, BE IT RESOLVED THAT the Member and the SCCOG hereby mutually agree to the aforementioned provisions of this Resolution and Agreement.

DONE this 13th day of July, 2022 at Truth or Consequences, New Mexico.

Attestation:

Member Government

Clerk, or other Authorized Official

Signature of Authorized Official

Attest :

South Central Council of Governments, Inc.

Jay Armijo, Executive Director

Chairwoman, Nora Barraza



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: H.5

SUBJECT: Publication of Ordinance 731 Amending the City of Truth or Consequences Municipal Code of Ordinances, By Amending Sections 11-10-4 And 11-10-5 And Adding Section 11-10-6 To the Planning and Zoning Code Pertaining to Storage Units/Shipping Containers

DEPARTMENT: Assistant City Manager

DATE SUBMITTED: July 7, 2022

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

Staff wishes to amend the code to include a section pertaining to shipping containers under Article X. - Accessory Buildings.

Recommendation:

Approve Ordinance 731 for publication

Attachments:

- Ordinance 731
- Draft Redline Version
- Code References

Fiscal Impact (Finance): No

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. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 7-13-2022

CITY OF TRUTH OR CONSEQUENCES

ORDINANCE ____

AN ORDINANCE AMENDING THE CITY OF TRUTH OR CONSEQUENCES MUNICIPAL CODE OF ORDINANCES, BY AMENDING SECTIONS 11-10-4 AND 11-10-5 AND ADDING SECTION 11-10-6 TO THE PLANNING AND ZONING CODE PERTAINING TO STORAGE UNITS/SHIPPING CONTAINERS

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

Section one. That section 11-10-4 of the Code of Ordinances of the City of Truth or Consequences be amended so that such section shall read as follows:

Sec. 11-10-4 – Storage Units/Shipping Containers

The regulation of storage units/shipping containers within the city limits of the City of Truth or Consequences shall be controlled by and shall conform to the regulations prescribed in this section. A storage unit/shipping container means a unit originally or specifically designed or used to store goods or merchandise during shipping or hauling by container ships, rail, commercial trucks, or other types of transportation.

A. Placement of storage units/shipping containers within C-1, M-1 and T-1 districts are permitted as accessory storage units as long as they are not used for dwelling purposes and with the following exceptions:

1. Conditional Use Permit is required for placement of all storage units/shipping containers within the boundaries of the Metropolitan Redevelopment Area (MRA) and Historic MainStreet District Area defined in the Downtown Master Plan.
2. Containers may not exceed 46 feet in length and 10 feet in height
3. Must be a subordinate use or structure customarily incidental to and located on the same lot with the principal use or building
4. Interior lot: No less than ten (10) feet from main use or structure and in conformance with the front setback for that district and no less than five (5) feet from the property lines of side and rear yards
5. Lots with more than one street frontage: No less than ten (10) feet from main use or structure, and no less than five (5) feet from the property line of yards without street frontage.
6. May not encroach in the clear-sight triangle.
7. Shall not create an unsanitary or hazardous premises as outlined in Sec 6-74 and 6-75.

B. Placement of storage units/shipping containers within Residential Districts is allowed as accessory storage units as long as they are not used for dwelling purposes and with the following exceptions:

1. Conditional Use Permit is required for placement of all storage units/shipping containers within the following districts: R-1, R-2, R-3, R-4 and RR-1.
2. Containers may not exceed 46 feet in length and 10 feet in height
3. Must be a subordinate use or structure customarily incidental to and located on the same lot with the principal use or building
4. Interior lot: No less than ten (10) feet from main use or structure and in conformance with the front setback for that district and no less than five (5) feet from the property lines of side and rear yards
5. Lots with more than one street frontage: No less than ten (10) feet from main use or structure, and no less than five (5) feet from the property line of yards without street frontage.
6. May not encroach in the clear-sight triangle.
7. Shall not create an unsanitary or hazardous premises as outlined in Sec 6-74 and 6-75.

C. Temporary placement of storage containers within Conditional Use Areas are allowed through written approval of the Designated Zoning Official as long as they are not used for dwelling purposes for:

1. the purpose of moving household contents in to or out of a house are allowed for up to 30 days in any 12-month period and can only be on the property or driveway.
2. the purpose of construction projects are allowed up to 3 months in any 12-month period from the time it's put on the construction site. The designated zoning official or designee may grant an extension but only if it is determined that:
 - a. The storage unit/shipping container is located on a site with an active building permit
 - b. The storage container is necessary part of the construction process
 - c. Not be allowed in public right-of-way
 - d. Construction is moving forward in a timely manner and in accordance with generally accepted industry standards.

Section two. That section 11-10-5 of the Code of Ordinances of the City of Truth or Consequences be amended so that such section shall read as follows:

Sec. 11-10-4 **5.** - Water Run-Off.

There shall be no water run-off on an adjacent property caused by an accessory building structure. Side gutters may be required by the designated Zoning Administrator.

Section three. That section 11-10-6 of the Code of Ordinances of the City of Truth or Consequences be amended so that such section shall read as follows:

Sec. 11-10-5 ~~6~~. - Use.

An accessory building shall not be used for commercial or dwelling purposes unless approved by the City ~~for Home Occupation uses.~~ by Sec. 11-5-6. - Special Use Permit.

Section three. All Ordinances or Resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This Repealer shall not be construed to revive any Ordinance or Resolution or part thereof, heretofore repealed.

Section four. This Ordinance shall take effect on the ____ day of _____ 2022.

PASSED, APPROVED, and ADOPTED by the GOVERNING BODY of the CITY OF TRUTH OR CONSEQUENCES this ____ day of _____, 2022.

AMANDA FORRISTER - Mayor

ATTEST:

ANGELA TORRES – City Clerk

ARTICLE X. - ACCESSORY BUILDINGS

Sec. 11-10-1. - Accessory Building.

A subordinate building, the use of which is incidental to and located on the same lot with the ~~principle~~principal building. An accessory building shall not exceed one-fourth ($\frac{1}{4}$) of the use or area of the main business or building.

Sec. 11-10-2. - Temporary Accessory Building.

A maximum of one (1) temporary building which is not attached permanently to a foundation and that does not exceed a maximum of one hundred twenty (120) square feet in gross floor area, and ten (10) feet in height shall be permitted as an accessory building on a lot, provided it is located in the rear yard, and provided such building shall be secured to the ground in a manner approved by the designated Zoning Administrator.

Sec. 11-10-3. - Permanent Accessory Building.

Permanent accessory buildings and structures shall be permanently attached to a slab or foundation and shall be subject to the following provisions:

- A. *Height:* A maximum height of fifteen (15) feet is permitted.
- B. *Accessory Use or Structure:* A subordinate use or structure customarily incidental to and located on the same lot with the principal use or building, and shall not occupy more than thirty percent (30%) of the rear yard.
- C. *Set-back Requirements (All Districts):*
 1. *Interior lot:* No less than ten (10) feet from main use or structure and in conformance with the front setback for that district and no less than five (5) feet from the property lines of side and rear yards.
 2. *Lots with more than one street frontage:* No less than ten (10) feet from main use or structure, and no less than five (5) feet from the property line of yards without street frontage.
 3. *Permanent Accessory Building, Setback Requirements:* Open-sided carports may be adjacent to main use or structures and no closer than five (5) feet from property lines in yards other than the primary front yard. Such carports may not encroach in the clear-sight triangle.

Sec. 11-10-4 – Storage Units/Shipping Containers

The regulation of storage units/shipping containers within the city limits of the City of Truth or Consequences shall be controlled by and shall conform to the regulations prescribed in this section. A storage unit/shipping container means a unit originally or specifically designed or used to store goods or merchandise during shipping or hauling by container ships, rail, commercial trucks, or other types of transportation.

- A. Placement of storage units/shipping containers within C-1, M-1 and T-1 districts are permitted as accessory storage units as long as they are not used for dwelling purposes and with the following exceptions:
 1. Conditional Use Permit is required for placement of all storage units/shipping containers within the boundaries of the Metropolitan Redevelopment Area (MRA) and Historic MainStreet District Area defined in the Downtown Master Plan.
 2. Containers may not exceed 46 feet in length and 10 feet in height

3. Must be a subordinate use or structure customarily incidental to and located on the same lot with the principal use or building
4. Interior lot: No less than ten (10) feet from main use or structure and in conformance with the front setback for that district and no less than five (5) feet from the property lines of side and rear yards
5. Lots with more than one street frontage: No less than ten (10) feet from main use or structure, and no less than five (5) feet from the property line of yards without street frontage.
6. May not encroach in the clear-sight triangle.
7. Shall not create an unsanitary or hazardous premises as outlined in Sec 6-74 and 6-75.

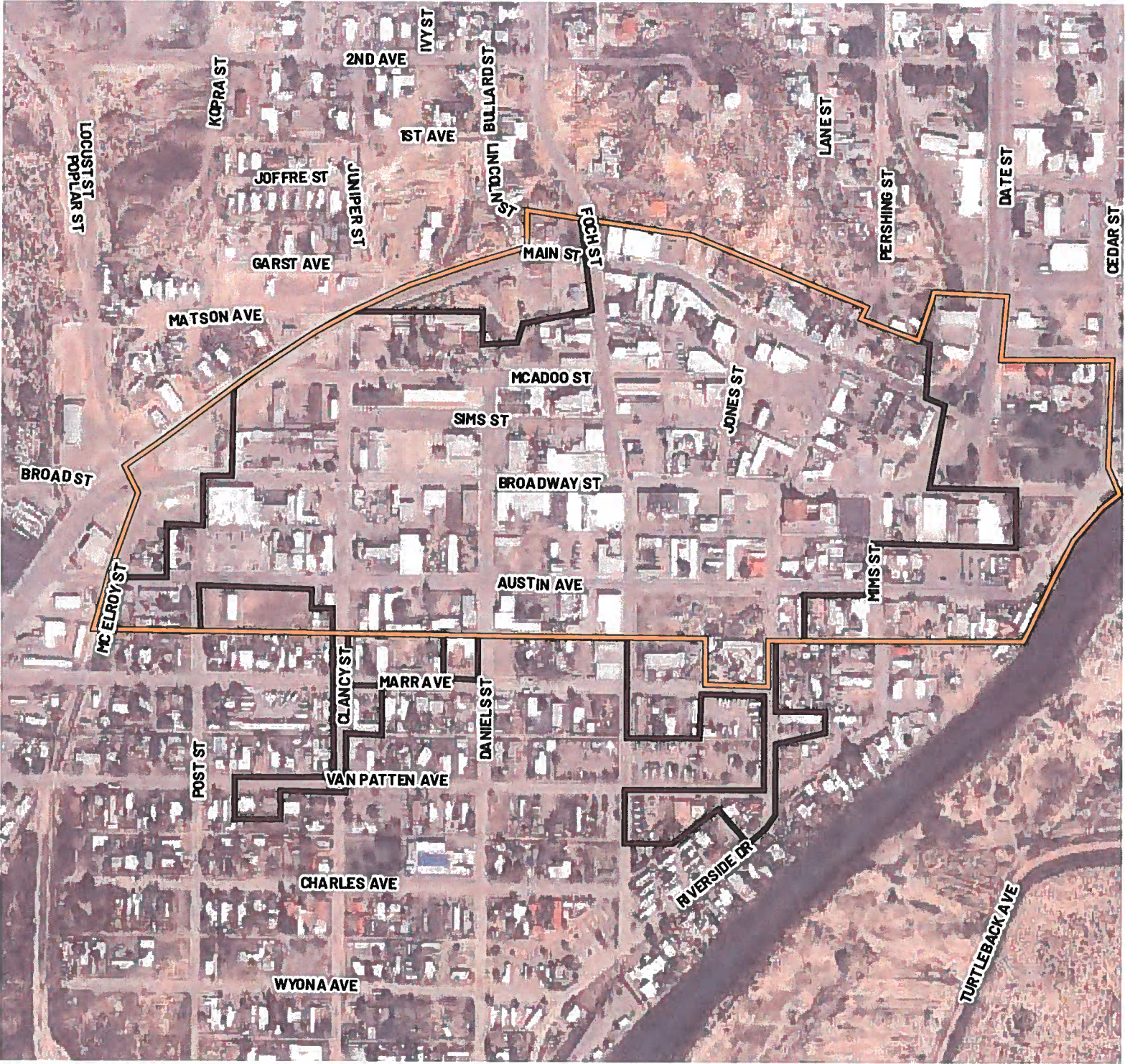
B. Placement of storage units/shipping containers within Residential Districts is allowed as accessory storage units as long as they are not used for dwelling purposes and with the following exceptions:

1. Conditional Use Permit is required for placement of all storage units/shipping containers within the following districts: R-1, R-2, R-3, R-4 and RR-1.
2. Containers may not exceed 46 feet in length and 10 feet in height
3. Must be a subordinate use or structure customarily incidental to and located on the same lot with the principal use or building
4. Interior lot: No less than ten (10) feet from main use or structure and in conformance with the front setback for that district and no less than five (5) feet from the property lines of side and rear yards
5. Lots with more than one street frontage: No less than ten (10) feet from main use or structure, and no less than five (5) feet from the property line of yards without street frontage.
6. May not encroach in the clear-sight triangle.
7. Shall not create an unsanitary or hazardous premises as outlined in Sec 6-74 and 6-75.

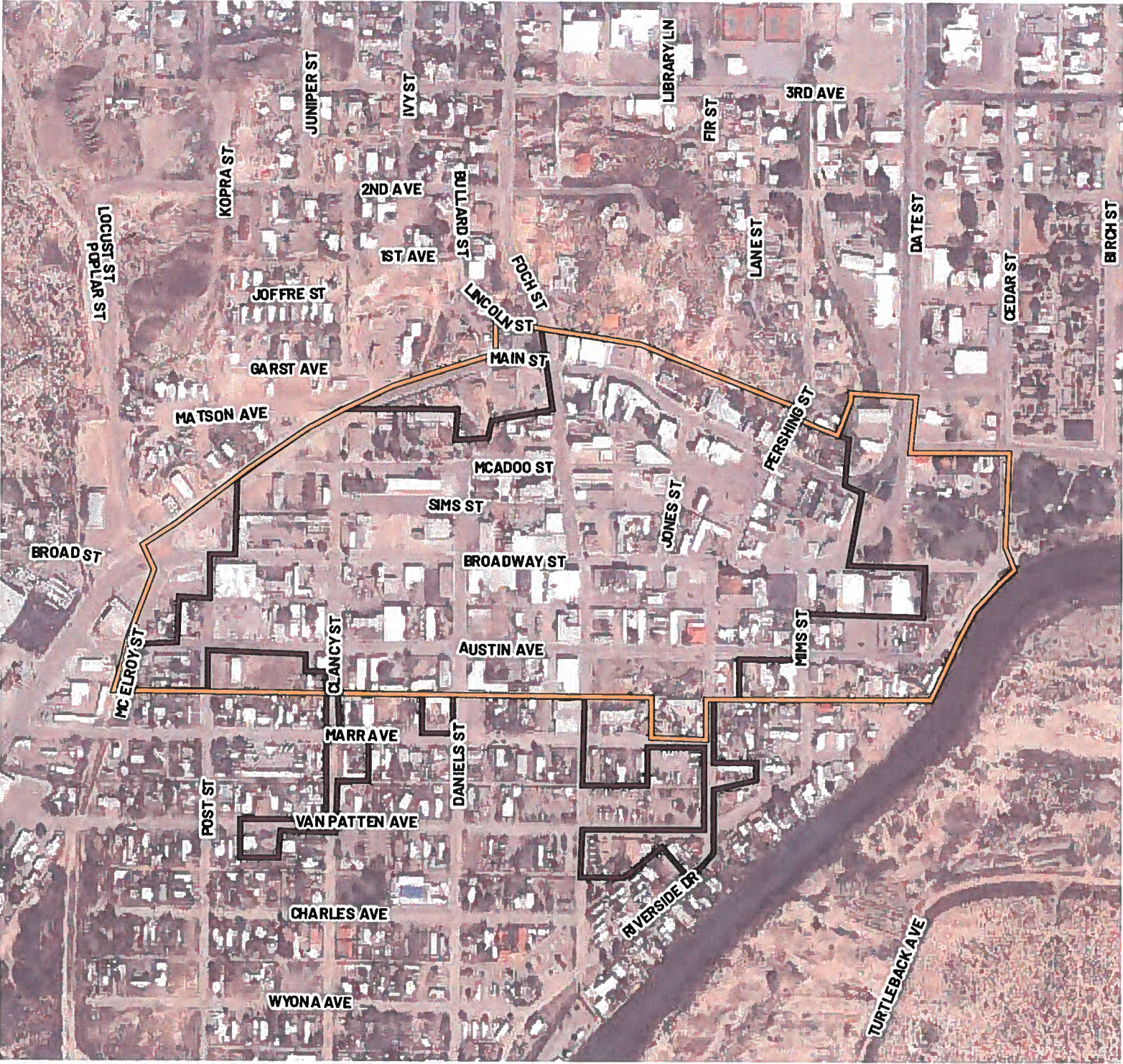
C. Temporary placement of storage units/shipping containers within Conditional Use Areas are allowed through written approval of the Designated Zoning Official as long as they are:

1. Not used for dwelling purposes
2. For the purpose of moving household contents in to or out of a house; will be allowed for up to 30 days in any 12-month period and can only be on the property or driveway in a location approved/designated by the Zoning Official.
3. For the purpose of construction projects; will be allowed up to 3 months in any 12-month period from the time it's put on the construction site. The designated zoning official or designee may grant an extension but only if it is determined that:

HOT SPRINGS BATHHOUSE AND COMMERCIAL HISTORIC DISTRICT



T OR C MAINSTREET AND MRA DISTRICT



Sec. 11-5-3. - Conditional Use Permit.

A permit may be authorized by the Planning and Zoning Commission for uses stipulated as conditional within specific Districts and as presented in Article IX of this Code.

A. *Provisions for conditional use.*

1. The use must be desirable or essential to the public welfare, safety, health, morals or convenience of the residents in that District.
2. The use must be compatible to the existing uses in that District.
3. The use may be important to the development of an undeveloped area.
4. The applicant shall notify all property owners of his/her intent in a manner specified in Section 11-7-2 and shall be subject to a public hearing as specified therein.

B. *Fee.* A non-refundable application as set by City Commission Resolution must accompany each application.

C. *Submission requirements.* The application for a conditional use permit shall be in the format stipulated by the City and shall contain plans and other information as required by the City. The completed application for a conditional use permit,, shall be submitted to the City Clerk for placement upon the agenda of the Planning and Zoning Commission.

D. *Review.* A conditional use permit shall be subject to review on each annual anniversary following its approval. If it is determined from the review that the current use is significantly different or larger in scale than that originally approved, the conditional use permit may be revoked by the Planning and Zoning Commission.

E. *Transferal.* Conditional use permits shall not be transferable from location to location, building owner to building owner, or applicant to other party.

Sec. 11-5-6. - Special Use Permit.

A special use permit may be authorized by the City Commission after hearing the recommendation of the Planning and Zoning Commission. A special use permit is required for a special land use, which is not permitted by right within the District wherein it is requested.

A. *Provisions for special use permit.*

1. In making a decision on a Special Use Permit, the Planning and Zoning Commission and the City Commission shall review the following factors and accord each factor the necessary weight on a case-by-case basis.
 - a. The increase in congestion of streets and other rights-of-way;
 - b. Diminishment of safety from fire, panic and other dangers;
 - c. Diminishment to the health and general welfare of the public;
 - d. Degradation of light and air for all properties in the immediate area of the proposed Permit; increases of overcrowding of land and undue concentrations of populations;
 - e. Adverse affects on provisions for transportation, water, sewer, schools, parks and other public facilities or increases in the effects of natural hazards;
 - f. Increases or facilitation of the unlawful use of structures, buildings or land; and
 - g. Promote the use or waste of energy in the use of structures, buildings, and land.
2. Special Use Permits shall not be granted in such cases where the use will result in negative impacts, which substantially outweigh the positive impacts of the purposed use.

- B. *Fee.* A non-refundable application fee to be set by City Commission Resolution must accompany each application.
- C. *Submission requirements.* The application for a special use permit shall be in the format stipulated by the City. There shall be a comprehensive statement included with each application indicating in detail the reason for the request, the purpose and proposed use of the property, all improvements to be made, and a site plan including the following:
1. Location of existing and proposed structures including the dimensions of setbacks;
 2. Existing and proposed vehicular circulation systems, including parking areas, storage areas, service areas, loading areas, and major points of access, including street pavement width and right-of-way;
 3. Location and treatment of open spaces including landscaping plan and schedule;
 4. Lighting;
 5. Signage;

A drainage plan, site plan and grading plan shall be required for all developments exceeding one (1) acre and to all new and all re-development within the C-1 and M-1 Planning and Zoning Districts, to all manufactured home parks, manufactured home subdivisions, recreational vehicle parks, and to all special and conditional uses in other Districts. For lesser developments when the designated Zoning Administrator determines said plans to be necessary, the designated Zoning Administrator shall so inform the applicant prior to accepting an application.

- D. *Public hearing and notice procedure.* A public hearing shall be held by the Planning and Zoning Commission for all special use permits. All property owners shall be notified in accordance with the provisions of Article 7 of this Code.
- E. *Review and approval.* The City Commission may deny special use permits, or may grant final approval in accord with certain conditions, with right of appeal in accordance with Article VII of this Code. Approval may also be granted with additional conditions imposed, which are deemed necessary to insure that the purpose and intent of this Code is met and to protect and provide safeguards for persons and property in the vicinity.
- F. *Time limitation and revocation.* If a special use is not initiated within one (1) year following approval or if a special use is discontinued for a period of one (1) year, said permit shall be automatically revoked. The City Commission may impose a different time limitation on a special use permit. All improvements shall be in accord with the development standards of the District except as otherwise authorized by the special use permit. Significant variation from the approved special use and related improvements shall result in the automatic revocation of the special use permit.
- G. *Re-submittal of application for special use permit.* Application for a special use permit shall not be resubmitted or reconsidered for a period of one (1) year after it has been acted upon by the City Commission except that an application may be made for a different special use permit on the same parcel of land six (6) months after such previous action has been taken.
- H. *Special use.* Special uses shall not be considered a District boundary change.



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: H.6

SUBJECT: Publication of Ordinance No. 735 Amending Section 14-48 pertaining to the Customer Generated Renewable Energy Program

DEPARTMENT: City Manager's Office

DATE SUBMITTED: July 6, 2022

SUBMITTED BY: Tammy Gardner

WHO WILL PRESENT THE ITEM: Bruce Swingle, City Manager

Summary/Background:

This is publication of Ordinance No. 735 to amend our Customer Generated Renewable Energy Program.

Recommendation:

Approval of publication.

Attachments:

- Ordinance No. 735
- -

Fiscal Impact (Finance): 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 7-13-2022

ORDINANCE NO. 735

Formatted: Left: 0.5", Right: 0.5", Top: 0.5", Bottom: 0.5"

AN ORDINANCE OF THE CITY OF TRUTH OR CONSEQUENCES, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF TRUTH OR CONSEQUENCES, BE AMENDED BY AMENDING SECTION 14-48 PERTAINING TO THE CUSTOMER GENERATED RENEWABLE ENERGY PROGRAM:

Sec. 14-48. Customer generated renewable energy program shall be amended in its entirety to read as follows:

a) CUSTOMER GENERATED RENEWABLE ENERGY PROGRAM

1) Overview

a. The City of Truth or Consequences (City) Customer Generated Renewable Energy Program is available to any City electric customer, residential or commercial, that installs a qualified renewable energy system and has it interconnected to the City's power grid. A Qualifying Facility means a cogeneration or a small power production facility which meets the criteria for qualification contained in 18 C.F.R. Section 292.203, or such other criteria as may be reasonably prescribed by rule by the City. Application is to be made to the Electrical Department ~~Manager~~Director. Blank application copies can be obtained from the electrical department or on the City website. All supporting technical, design and support documentation for the interconnection application must be submitted in writing via hard copy or electronic format. Review and approval of system design and size will be per the T or C Electrical Department and permitted through the Planning & Zoning Department and must conform to System design and size must be reviewed and approved by the T or C Electric Department Director and receive a Zoning approval permit:

i. The standards and procedures as described in Rule 17.9.568 NMAC and the most recent version of the New Mexico Interconnection Manual as approved by the Public Regulatory Commission.

ii. Provisions of Sec. 14-33, tampering with meters, of the City of Truth or Consequences, existing municipal code.

b. The City reserves the right, but not the duty, to inspect any system to ensure the system complies with all existing regulations, or regulations in effect at the time of installation.

c. The City reserves the right to deny interconnection for non-compliant systems. Denial of a customer's interconnection application can be appealed to the City's Electric Department ~~Manager~~Director. The appeal must specifically explain the basis of the appeal. If the City's Electric Department ~~Manager~~Director denies the appeal, the customer may appeal to the City ~~Manager~~Director. If the City ~~Manager~~Director denies the appeal, the customer may appeal to the City Commission. In such event, the procedure shall be in accordance with the rules applicable to 14-30 (e) appeals.

2) Applicability

a. This ordinance applies to any customer of the City of Truth or Consequences Electric Department that installs a solar, wind or other renewable energy system to generate electricity for onsite use, with the intent of reducing their electric bill.

b. This ordinance does not apply to any entity that constructs a system for the sole purpose of generating electricity to be sold to the Electric Department or any other entity.

3) Metering

a. Customers participating in the customer generated renewable energy program will be billed monthly

from a bi-directional or net main meter at the specific facility or residence. The monthly bill will reflect a net reading which will show customer usage in excess of customer generation as positive kWh, or customer generation in excess of customer usage as negative kWh. The customer will be billed per existing City of Truth or Consequences municipal code Sec. 14-43 for installation of the net meter by the City and those costs will be billed to the customer on the first billing cycle post net meter installation.

4) Rates

a. Residential and small non-residential installations.

i. Definition: This category includes systems of any size supporting a single family home, a single dwelling unit in a multifamily structure with its own electric meter, or any non-residential system with a generating capacity less than or equal to 10 kilowatts.

ii. Customers will be billed for service in accordance with the rate structure and monthly service charges that the customer would be assigned if the customer had not interconnected a qualifying facility.

iii. Customer kilowatt hour generation will be used to displace a customer's own kilowatt hour consumption.

iv. If electricity supplied by the City exceeds the electricity generated by the customer during a billing period, the customer will be billed for the net energy supplied by the City under the applicable rate.

v. If electricity generated by the customer exceeds the electricity supplied by the City during a billing period, the City will credit the customer for the excess kWh generated at the average wholesale cost paid by the electric department. This credit will be first applied against the monthly Customer Fee. Any remaining credit will be carried over to the next billing period.

vi. Each year, at the January billing, any credit in excess of \$20.00 on the customer's account after current charges are paid shall be refunded to the customer. If the credit amount is less than \$20.00, the credit will be carried over to the next billing cycle.

vii. In the event a customer disconnects from the City's system with a credit for excess production, the City will pay the customer for all credits. This amount will be first deducted from the customers final utility bill and then from any additional fees or fines that the customer owes to the City. Any remaining balance will be reimbursed to the customer by check or electronic transfer.

b. Large non-residential installations.

i. Definition: This category includes systems with a generating capacity greater than 10 kilowatts that support a non-residential facility.

ii. Customers will be billed for service in accordance with the rate structure and monthly service charges that the customer would be assigned if the customer had not interconnected a qualifying facility.

iii. Customer kilowatt hour generation will be used to displace a customer's own kilowatt hour consumption.

iv. If electricity supplied by the City exceeds the electricity generated by the customer during a billing period, the customer will be billed for the net energy supplied by the City under the applicable rate.

v. If electricity generated by the customer exceeds the electricity supplied by the City during a billing period, the City will credit the customer for the excess kWh generated at the average wholesale cost paid by the electric department. This credit will be first applied against the monthly Customer Fee. Any remaining credit will be carried over to the next billing period.

vi. Each year, at the January billing, any credit in excess of \$20.00 on the customer's account after current charges are paid shall be refunded to the customer. If the credit amount is less than \$20.00, the credit will be carried over to the next billing cycle.

vii. In the event a customer disconnects from the City's system with a credit for excess production, the City will pay the customer for all credits. This amount will be first deducted from the customers final utility bill and then from any additional fees or fines that the customer owes to the City. Any remaining balance will be reimbursed to the customer by check or electronic transfer.

c. The average wholesale cost of electricity shall be calculated annually and is defined as the total cost of the electricity, including demand charges, transmission costs and GRT divided by the total number of kilowatt hours purchased by the electric department in a given fiscal year.

d. The monthly Customer Fee for cogenerating customers will be ~~as follows~~ set by Resolution:

~~Residential: \$10.00~~
~~Small Commercial 1 Phase \$12.00~~
~~Small Commercial 3 Phase \$14.00~~
~~Large Commercial 1 Phase \$25.25~~
~~Large Commercial 3 Phase \$27.50~~

e. On the first utility billing ~~after the effective date of this ordinance cycle in January of each year~~, all existing credits in cogenerating customers' accounts shall be refunded to the customers.

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

Section 1. All Ordinances or Resolutions, or parts thereof, in particular Ordinance 664, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This Repealer shall not be construed to revive any Ordinance or Resolution or part thereof, heretofore repealed.

Section 2. This Ordinance shall take effect on the 1st day of September, 2022.

Formatted: Superscript

PASSED, APPROVED AND ADOPTED this 27th day of July, 2022.

Formatted: Superscript

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO

BY: _____

|
#####Amanda Forrister, Mayor

ATTEST: _____
Angela A. Torres- City Clerk



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: H.7

SUBJECT: Publication of Ordinance No. 736 repealing Ordinance No. 677 pertaining to the Truth or Consequences Brewing Company Local Economic Development Project

DEPARTMENT: City Manager's Office

DATE SUBMITTED: July 6, 2022

SUBMITTED BY: Tammy Gardner

WHO WILL PRESENT THE ITEM: Bruce Swingle, City Manager

Summary/Background:

This is publication of Ordinance No. 736 repealing Ordinance No. 677 pertaining to the Truth or Consequences Brewing Company Local Economic Development Project.

Recommendation:

Approval of publication

Attachments:

- Ordinance No. 736
- -

Fiscal Impact (Finance): 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 7-13-2022

ORDINANCE NO. 736

AN ORDINANCE REPEALING ORDINANCE NO. 677, TITLED AN ORDINANCE APPROVING PROPOSAL OF TRUTH OR CONSEQUENCES BREWING COMPANY FOR AN ECONOMIC DEVELOPMENT PROJECT

WHEREAS, the City of Truth or Consequences (the “City”), acting through its Board of City Commissioners is a New Mexico municipality duly organized and existing under the laws of the State of New Mexico (the “State”); and

WHEREAS, Article 9, section 14 of the State Constitution permits political subdivisions, such as municipalities, to create new job opportunities by providing land, buildings, or infrastructures for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources; and

WHEREAS, pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-17 NMSA 1978 (the “Act”), no public support for economic development may be provided until the governmental entity has adopted by ordinance an economic development plan, and has approved by a second ordinance an application for a project in keeping with such plan: and

WHEREAS, in January 2016, pursuant to City Ordinance No. 668 (the “Economic Development Plan Ordinance”), the City established the City’s Economic Development Plan (the “Plan”), as the City Economic Development Plan, as required by Section 5-10-6, NMSA 1978; and

WHEREAS, as provided in the City’s Economic Development Plan Ordinance, the City considered an application from Truth or Consequences Brewing Company, which proposed that the City serve as the local government conduit for an appropriation up to \$125,000 from the Legislature of the State of New Mexico (the “LEDA Funds”) to Truth or Consequences Brewing Company, for the purpose of establishing a brewery on property located at 410 N. Broadway in the City of Truth or Consequences, New Mexico; and

WHEREAS, Truth or Consequences Brewing Company, was able to complete the Job Target requirements for the Project Participation Agreement (PPA) attached hereto; and

WHEREAS, the City has remitted to Truth or Consequences Brewing Company the \$125,000 based upon expenditures Truth or Consequences Brewing Company has made and jobs created; and

WHEREAS, Section 6 (Termination) of Ordinance No. 677 provides that termination of the Project that is the subject of Ordinance No. 677 shall be by ordinance; and

WHEREAS, the New Mexico Economic Development Department and Truth or Consequences Brewing Company concur with the repeal of Ordinance No. 677.

NOW, THEREFORE, BE IT ORDERED, the Board of the City of Truth or Consequences Commission hereby repeals ordinance No. 677; and

BE IT FURTHER ORDERED, the Board of the City of Truth or Consequences Commission hereby terminates its Intergovernmental Agreement pertaining to the Project by and between the New Mexico Economic Development Department and the City, and terminates the Project Participation Agreement by and between the City and Truth or Consequences Brewing Company, both of which were approved on March 19th, 2017.

PASSED, APPROVED AND ADPOTED this 27 day of July, 2022.

CITY OF TRUTH OR CONSEQUENCES COMMISSION, NEW MEXICO

By: _____
Amanda Forrister, Mayor

ATTEST:

Angela Torres, City Clerk



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #:I.1

SUBJECT: Notice of Termination Truth or Consequences Brewing Company Local Economic Development Project

DEPARTMENT: City Manager's Office

DATE SUBMITTED: July 7, 2022

SUBMITTED BY: Tammy Gardner

WHO WILL PRESENT THE ITEM: Bruce Swingle, City Manager

Summary/Background:

The State of New Mexico Economic Development Department, the City of Truth or Consequences and Truth or Consequences Brewing Company entered into a Project Participation Agreement and an Intergovernmental Agreement. All criteria has been met, therefore both agreements will be terminated.

Recommendation:

Approval of Notice of termination

Attachments:

- Notice of Termination
- -

Fiscal Impact (Finance): 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 7-13-2022



**NOTICE OF TERMINATION
TRUTH OR CONSEQUENCES BREWING COMPANY
LOCAL ECONOMIC DEVELOPMENT PROJECT**

This Notice of Termination (this "Notice"), dated as of June 22, 2022, is entered into by and among the STATE OF NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT (the "EDD"), CITY OF TRUTH OR CONSEQUENCES, a New Mexico political subdivision (the "City"), and TRUTH OR CONSEQUENCES BREWING COMPANY, a New Mexico Corporation (the "Company") and together with the City and the EDD, (the "Parties"), in reference to the following facts:

WHEREAS, the City and the Company entered into that certain Project Participation Agreement (the "PPA") dated as of February 14, 2017, pursuant to the City's Local Economic Development Plan; and

WHEREAS, the PPA provided that the City was to contribute up to \$125,000 for an Economic Development Project for the benefit of the Company (the "Project") in exchange for certain Job Creation Commitments made by the Company for the benefit of the City (the "Commitments"); and

WHEREAS, the PPA further required that the Company deliver Security for its Commitments to the City in the form of a mortgage guarantee, which the Company delivered; and

WHEREAS, the City and the EDD entered into that certain Intergovernmental Agreement (the "IGA") on February 14, 2017, to facilitate the disbursement by the City of \$125,000 for eligible expenditures requested by the Company for the Project; and

WHEREAS, the Company has continuously operated in the City since February 2017, as required by the PPA; and

WHEREAS, as of the date of this Notice, the Company has accessed \$125,000 of the public funds appropriated for the Project (the "First Payment"); and

WHEREAS, the Company requested on May 16, 2022, that the PPA and the security be terminated; and

WHEREAS, the EDD has confirmed that Company has met the Commitments associated to the First Payment; and

WHEREAS, the City and the EDD have determined that an adequate return on investment has been received from the First Payment and have no objections to terminating the PPA and the Security.

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated into this Notice, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Termination of the Participation Agreement

The PPA is hereby terminated as of the date hereof and the PPA is void and of no further force or effect as of the date hereof. Neither the City nor the Company (or its successors or assigns) shall have any further rights or obligations under the PPA.

2. Release of Security

The City hereby waives any remaining rights it may have in the Security, as of the date hereof and releases the Company from any obligations to maintain such Security. Neither the City nor the Company (or its successors or assigns) shall have any further rights or obligations in relation to the Security.

3. Termination of Intergovernmental Agreement

The IGA is hereby terminated, as of the date hereof and the IGA is void and of no further force or effect as of the date hereof. Neither the EDD nor the City shall have any further rights or obligations under the IGA.

4. Return of Surplus Funds

The Company expensed all funds on the project in accordance with the PPA; therefore, there are no surplus funds.

5. Transmission of Original Signatures and Executing Multiple Counterparts

This Notice may be executed in one or more counterparts. Electronic signatures shall have the same force and effect as original signatures.

[Signatures on the following page]

STATE OF NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

By: _____

Print Name: _____

Its Cabinet Secretary

By: _____

Print Name: _____

Its General Counsel, certifying as to legal sufficiency

By: _____

Print Name: _____

CITY OF TRUTH OR CONSEQUENCES

Amanda Forrister, Mayor

TRUTH OR CONSEQUENCES BREWING COMPANY

By: _____

Print Name: John Masterson

Title: Owner, Chief Beer Officer



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: 1.2

SUBJECT: Approval of the Biennial Memorandum of Understanding (MOU) between MainStreet and the City of T or C.

DEPARTMENT: City Manager's Office

DATE SUBMITTED: June 28, 2022

SUBMITTED BY: Tammy Gardner

WHO WILL PRESENT THE ITEM: Bruce Swingle, City Manager

Summary/Background:

This is an agreement (MOU) with MainStreet Truth or Consequences to enhance the economic development of downtown Truth or Consequences.

Recommendation:

Approval of MOU

Attachments:

- MOU
- .

Fiscal Impact (Finance): 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 7-13-2022



**NEW MEXICO
MAINSTREET™**
ENGAGE PEOPLE • REBUILD PLACES
REVITALIZE ECONOMIES

Biennial Memorandum of Understanding (MOU)

July 1, 2022 – June 30, 2024

Between

**New Mexico MainStreet Program, City of Truth or Consequences,
and MainStreet Truth or Consequences**

The State of New Mexico's Economic Development Department seeks to increase the number of jobs and businesses, sustain and expand existing businesses, mitigate commercial leakage, support local entrepreneurs in start-ups, and improve property values within traditional and historic commercial districts. To that end, it has dedicated resources, professional assistance, and services to partnering municipalities and a local nonprofit organization representing stakeholders within the designated commercial district through the New Mexico MainStreet (NMMS), New Mexico Arts & Cultural Districts (ACD), Frontier and Native American Communities (FNAC) Initiative, and Urban Neighborhood Commercial Corridors (UNCC) Initiative programs. The partners of this MOU agree to dedicate collaborative resources, adopt local economic growth and revitalization tools, and establish economic development funding for operations and program implementation to restore economic vitality within the MainStreet economic redevelopment district.

New Mexico MainStreet (NMMS) is a designated "Main Street America" State Coordinating Program. Main Street America (MSA) is a program of the nonprofit National Main Street Center, Inc. (NMSC), a subsidiary of the National Trust for Historic Preservation. The New Mexico Economic Development Department (NMEDD) is licensed and accredited annually to administer the NMSC's *Main Street Approach*™ to downtown revitalization. It does this through the development of "Economic Transformation Strategies" that are implemented through comprehensive work in four broad areas known as the **Four Points: Economic Vitality, Design, Promotion, and Organization**.

Through the execution of this biennial MOU, the New Mexico MainStreet program establishes an economic development partnership program with local, eligible communities. The NMEDD, by New Mexico State Statute (New Mexico MainStreet Act 3-60B-1 to 3-60B-4 NMSA 1978, as amended 2013, and the Arts and Cultural District Act 2007), is authorized to select local partners to participate in the New Mexico MainStreet's program based on the standards and principles set forth by the MSA/NMSC and when legislative appropriation allows. Local partners (the local revitalization organization and the local governing body), join their resources (human, social and financial) to directly support the economic development of the district.

As a Main Street America State Coordinating Program, NMMS provides local MainStreet organizations and their local government partners with resources, training, and technical services that enhance local culture and heritage, and build the economic vitality of each participating community's downtown, village plaza, town center, courthouse square, historic commercial corridor, or traditional neighborhood central business district.

The local government partner (municipal, county or tribal government) financially supports the work of a community economic development partnership within the dedicated MainStreet district for both operations and program implementation through a service contract with the local, state-designated MainStreet organization. Since the NMMS program and its designation of local partners are established by state statute, and with the understanding that the service contract binds the local MainStreet organization to the implementation of economic development projects which have a fair-market value in exchange for funds received, local government partners remain in compliance with the anti-donation clause of the New Mexico Constitution.

The local MainStreet organization is an economic development organization comprised of downtown stakeholders, whose programs, projects, and activities enhance the local downtown economy and contribute to the quality of life of its citizens. The organization builds local partnerships to leverage resources and buy-in for the revitalization of the district.

This MOU commits partners to the criteria defined in New Mexico MainStreet Program Guidelines (Attachment 1).

This MOU covers a period of two (2) years beginning July 1, 2022. Once fully executed by all parties on the signature page below, it replaces any previous Letters of Agreement (LOA) or MOU related to the NMMS program of the NMEDD.

I. PARTICIPATION AND COMMITMENT UNDER THIS MEMORANDUM OF UNDERSTANDING

The local Governing body of the City of Truth or Consequences and MainStreet Truth or Consequences agree to abide by the eligibility and participation requirements as set forth below. The local governing body's official representative and the steering committee or Board of the local MainStreet organization have read and understand the Accreditation requirements of the NMMS Program and the MSA "Accreditation Standards" as set forth in Attachment 1.

II. REQUIREMENTS OF THE LOCAL MAINSTREET ORGANIZATION – MAINSTREET TRUTH OR CONSEQUENCES

- A. Provide community economic growth revitalization services to the property and business owners and residents of the district through the Main Street Approach™, and in alignment with the guidelines of the MSA/NMSC.
- B. The organization and local government partner has a fully executed Memorandum of Understanding (MOU) with the Economic Development Department.
- C. The organization has a separate annual contract of services with the local government partner(s) (municipality, county, and/or tribal government) to implement community economic development initiatives within the designated MainStreet and/or Arts & Cultural District. The organization must supply NMMS with a copy of the executed agreement annually.
- D. Work with the local government partner(s) (municipal, county, or tribal government) to ensure 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).
- E. Maintain compliance with all annual nonprofit registration and reporting requirements of the New Mexico Secretary of State's Corporations Bureau, the New Mexico Attorney General's Office (Charitable Organizations Division) and Internal Revenue Service (IRS). The organization files all compliance and related documents to the NMMS Digital Dashboard.
- F. In partnership with the local government partner(s), maintains the minimum required operating budget relevant to the size of the community, neighborhood or district served (Attachment 1, Table 1).

- G. If established as an independent nonprofit corporation, the organization must have a Board of Directors with oversight of the organization's performance.
- 1) The organization is expected to generate additional operating funds beyond the local government partners contribution to meet minimum budget and staffing requirements for New Mexico MainStreet/Main Street America Affiliate and Accredited programs per the specifications (Attachment 1, Table 1).
 - 2) The organization must maintain an adequate budget to support training for staff and Board members in nonprofit management and leadership and ensure Board attendance requirements are met.
- H. Establish three (3) NMMS approved Economic Transformation Strategies (ETS) based on adopted economic development plans for the district, implement the work of the Main Street Four-Point Approach®, and provide evidence of annual progress towards implementation.
- 1) One (1) of the three (3) ETS's should be dedicated to organizational capacity-building activities that directly relates to programs/districts specific economic development goals.
 - 2) The organization is required to have a written work plan adopted by the Board of Directors that reflects projects and activities that utilize each of the Four Points towards realization of outcomes of the three (3) Economic Transformation Strategies.
- I. Adopt and abide by the following organizational policies as recommended by the IRS and the New Mexico Attorney General's office:
- 1) Conflict of Interest policy: All members of the Board of Directors or Steering Committee must sign a Conflict of Interest Disclosure statement in accordance with the adopted Conflict of Interest policy,
 - 2) Records and Retention and Destruction policy,
 - 3) Whistleblower Protections policy,
 - 4) Fiscal Controls/Financial Management policy, and
 - 5) Non-discrimination policy.
- J. Upon revision to the local MainStreet organization's operational bylaws and/or amendment of its Articles of Incorporation, the local organization will provide NMMS with updated copies.
- K. Hire an Executive Director to oversee day-to-day operations of the nonprofit (see Attachment 1, Table 1), to provide outreach and support to the MainStreet District's constituents, attend required meetings and trainings and support the Board and its committees in implementing the goals, projects, and activities outlined in Board-adopted ETS's.
- 1) The Board of Directors provides the Executive Director with a written job description; an appropriate annual staff work plan based on the organization's annual work plan; and at minimum an annual job performance review.
 - 2) The Board of Directors ensures the Executive Director has an office equipped to conduct the work of the program.
 - 3) The Board of Directors maintains adequate funding for the Executive Director's expenses in building skills knowledge and expertise to assist the organization through the trainings and programs offered by NMMS and Main Street America.
- L. Meet all MSA Accreditation Standards needed to maintain status as a Main Street America Affiliate or Accredited program. Provide evidence of annual compliance with all programmatic requirements of the NMMS program including legal compliance documents, annual work plans, operating budgets, assessment surveys, progress reporting and adoption of required policies.
- M. Meet all requirements for reporting NMMS reinvestment statistics.

- 1) The organization agrees to submit Quarterly Reports to NMMS as established by the state legislature, tracking performance measures for the program. Reports are submitted according to the following schedule:
 1. The First Quarter Report, July 1 through September 30 is due October 10.
 2. The Second Quarter Report, Oct 1 through December 31 is due January 10
 3. The Third Quarter Report, January 1 through March 31 is due April 10
 4. The Fourth Quarter Report, April 1 through June 30 is due July 10.
 - 2) The organization ensures the timely filing of all other reports and surveys required by the NMSC, the State Legislature, the NMEDD, and, where applicable, municipal and governmental partners.
- N. Staff and Board members must participate in an annual NMMS assessment to review organization and staff performance.
- O. Notify NMMS of any changes to contact information for the local program office, Executive Director, Board President, Board Members and Committee Chairs.

III. REQUIREMENTS OF THE LOCAL GOVERNMENT PARTNER – CITY OF TRUTH OR CONSEQUENCES

The Main Street Approach™ offers community-based revitalization initiatives with a practical, adaptable framework for downtown transformation that is easily tailored to local conditions. The Main Street Approach helps communities get started with revitalization and grows with them over time but also requires a cooperative, working partnership of the public and private sectors to succeed.

With the execution of this MOU, the NMMS program requires each local MainStreet program to have in place a resolution of financial support adopted by the local government stating its support and funding commitment to the local MainStreet organization. A copy the annual scope of services agreement or service contract should be delivered to the NMMS office as a condition of receiving services or funding from NMMS. Failure to adopt such resolution of financial support, or to provide the required financial resources, may result in the suspension of the services provided by NMMS and designation of the local organization as “inactive.”

- A. NMMS requires the local government partner to enter into an annual service contract (or similar procurement mechanism in accordance with local policies and standards) for such financial support based on the adopted District Cultural Economic Development Plan, District Master Plan or Metropolitan Redevelopment Area Plan and the ETS, with the local MainStreet organization. Contracts should specify the commitment of resources in accordance with the *New Mexico MainStreet Program Guidelines* (minimum funding contributions by the local government partner are described in Attachment 1, Table 1) and shall include deliverables and/or services relevant to the revitalization of the downtown MainStreet District and/or Arts & Cultural District under the specifications of an adopted Cultural Economic Development Plan, District Master Plan or Metropolitan Redevelopment Area Plan for the District(s) and in alignment with the local MainStreet programs selected ETS's.
- B. Coordinate planning and implementation of revitalization projects through designated/appointed liaisons (local government Manager, Administrator, or Planning Director).
- C. Where applicable, adopt appropriate ordinances, tools (LEDA, etc.), plans (District Cultural Economic Development Plan, District Master Plan or Metropolitan Redevelopment Area Plan) and include projects on local Infrastructure Capital Improvement Plans (ICIP) to support the district revitalization. The local government partner will dedicate economic development funding to priority economic development projects identified in adopted ordinances, tools, and plans, and agrees to administer state and federal funds with the MainStreet organization partner.
- D. Partner in public infrastructure reinvestment in the district by administering funds in a timely manner, coordinating projects, and managing capital outlay or other state or federal funds dedicated to revitalization projects.

- E. Assist the MainStreet and/or Arts & Cultural District organization, where applicable, with collection and dissemination of relevant information, plans and statistics that support the district economic revitalization or reporting to the New Mexico State Legislature through the NMMS program.

IV. REQUIREMENTS OF THE NEW MEXICO MAINSTREET PROGRAM

NMMS, in consideration of financial resources established annually through the New Mexico State Legislature, will provide the following services to designated MainStreet communities (inclusive of the local government partner, local MainStreet organization, and businesses/property owners within the MainStreet district):

- A. Through its staff or contractors, provide technical assistance relevant to the *Main Street Approach*™ and other commercial district economic growth, revitalization, and management topics. Each local organization may request services from NMMS, through submission of a Service Request Form to the NMMS Director.
- B. Provide trainings, institutes, workshops, and conferences to support the community revitalization work of organizations and local government partners, and the professional development of local MainStreet Executive Directors and Board Members, including Executive Director State-Certification.
- C. Conduct an annual Accreditation Review of the local MainStreet organization, a comprehensive assessment of the program's accomplishments under the Main Street Approach™ with recommendations required of the organization as a State-Designated Revitalization Partner.
- D. Seek, manage and coordinate public resources (capital outlay, public infrastructure or other state/federal funds) and partnership grants for the implementation of local revitalization projects.
- E. Supplies Main Street America network membership dues and discounted registration fees for trainings, institutes, workshops, and conferences, as funding is available.

V. SUBLICENSES

Designated Main Street America Affiliate and Accredited Programs must sign an annual sublicensing agreement established by Main Street America and implemented through the NMMS State Coordinating Program. The sublicensing agreements establish guidelines for participation and use of Main Street America Logos and Branding.

VI. MAIN STREET AMERICA ACCREDITATION

Consideration for Accreditation by Main Street America (MSA) applies only to organizations that implement their Economic Transformation Strategies, track and fulfill performance measures, and meet the Standards of Performance established by MSA (Attachment 1, Section IV, C).

VII. NONCOMPLIANCE

An organization that is unable to meet its programs requirements, especially organizations with minimum budget and staff salaries, does not maintain its agreements with local government, or does not follow the *Main Street Approach*™ may be re-designated and NMMS services may be suspended. The Economic Development Department may also notify programs of termination of the MOU at the New Mexico MainStreet Director's recommendation. Upon cancellation of the MOU, NMMS will no longer provide services to the organization and local government partner and they will be ineligible to apply for NMMS funding opportunities. The organization may be further prohibited from using the Main Street America name, a trademark of the National Main Street Center, Inc. Inactive programs must reapply to NMMS for designation through the NMMS Accelerator Process.


VIII. AGREEMENT

The parties hereunder do mutually agree that they have read and fully understand the obligations and responsibilities in operating as a partner with the New Mexico Economic Development Department's New Mexico MainStreet program as a MainStreet and/or Arts & Cultural District as stated herein and in Attachment 1 (*New Mexico MainStreet Program Guidelines*) accompanying this MOU. The parties further agree to abide by the terms of this MOU, implementing it to the best of their ability, with the assistance of services and resources (when available) provided through the New Mexico MainStreet program, and in accordance with the *Main Street Approach™* as defined by the Main Street America.

The local MainStreet and/or Arts & Cultural District organization, local government partner and New Mexico MainStreet program hereby mutually agree to support the revitalization of the designated MainStreet and/or Arts & Cultural District under the specifications listed herein and in Attachment 1 (*New Mexico MainStreet Program Guidelines*) accompanying this MOU.

We do hereby sign:

On behalf of the New Mexico MainStreet Program, a program of the New Mexico Economic Development Department:



Director, New Mexico MainStreet Program
4/24/2022
Date

On behalf of the Local MainStreet Organization:



President of MainStreet Truth or Consequences
5/10/2022
Date

On behalf of the Local Government Partner:

Mayor/Manager/Representative of the City of Truth or Consequences
Date

Please enclose the annual resolution of the City Council, County Commission or Tribal Council identifying financial support for the MainStreet organization. Also attach any other working agreements or contracts between the **local governing body** and the **local MainStreet organization**.



Attachment 1: New Mexico MainStreet Program Guidelines

for July 1, 2022 through June 30, 2024

I. Background

***Mission:** The New Mexico MainStreet Program fosters economic development in the state by supporting local MainStreet/Arts & Cultural District revitalization organizations and their local government partner in their economic work in downtowns and adjacent neighborhoods. The Program provides resources, education, training, and services for asset-based economic growth that builds local knowledge and skills based on the Main Street Approach™, which preserves and enhances the built environment, supports district businesses and entrepreneur development, and conserves and interprets local culture and heritage resulting in increased economic vitality of each participating local MainStreet district.*

New Mexico MainStreet is a designated "Main Street America" State Coordinating Program. Main Street America is a program of the nonprofit National Main Street Center, Inc., a subsidiary of the National Trust for Historic Preservation. The New Mexico Economic Development Department is licensed and accredited annually to administer the MSA/NMSC's *Main Street Approach™* to downtown revitalization. It does so through the development of "Economic Transformation Strategies" that are implemented through comprehensive work in four broad areas known as the **Four Points**: *Economic Vitality, Design, Promotion, and Organization*.

NMMS is delegated by state statute (Main Street Act, NMSA 1978, 3-60B-1 to 3-60B-4 and the Arts and Cultural District Act, NMSA 1978 15-5A-1 to 15-5A-7 NMSA 1978), and through NMEDD, to assist communities in building capacity in community economic development that creates jobs, supports commercial property owners, mitigates leakage of economic resources, grows businesses, encourages and supports entrepreneurship, benefits the local economy, and raises the quality of life for its residents. The NMMS program was launched in 1984 and accepted its first designated organizations in 1985. NMMS is responsible for coordinating and orchestrating resources, services, and professional technical assistance to its organizations via several programs and initiatives. For more information, visit the NMMS website: www.nmmainstreet.org.

II. New Mexico MainStreet and Main Street America Designations

Local New Mexico MainStreet programs are established as public-private, community economic development partnership programs dedicated to revitalization and economic growth of traditional and/or historic commercial centers. Local programs are tiered, based on local capacity/development, and receive resources, technical assistance, and support from NMMS concurrent with their program designation or authorization.

- A. New Mexico MainStreet Project-Based Initiatives and Accelerator Process:** When resources are available to add new MainStreet programs, local communities can enter the NMMS Program by participating in one of NMMS's *Project-Based Initiatives* and follow-up participation/acceptance in the *NMMS Accelerator Process*.

- 1) **Frontier & Native American Communities Initiative (FNAC):** The MainStreet Act was amended in 2013 by the State Legislature to establish the Frontier and Native American Communities Initiative administered by NMMS to provide project-based community economic development support for rural communities under 15,000 in population. The 12 to 18-month affiliation with NMMS through the Initiative focuses on one economic development project within a traditional or historic village or town center. The FNAC Initiative is not open to communities which already have a MainStreet or Arts & Cultural District Program. The program focuses not only on the proposed project, but it also seeks to renew and build leadership in community economic development. It requires a group of stakeholders working in partnership with a local governing body, however, it does not require a non-profit board and paid staff as does the MainStreet Program.
 - 2) **Urban Neighborhood Commercial Corridors Initiative (UNCC):** The UNCC Initiative is a new pilot program of the New Mexico Economic Development Department's MainStreet program aimed at providing project-based community economic development support to urban neighborhood commercial corridors located in cities with more than 50,000 in population that may currently not have the capacity or resources to start or operate a full-fledged MainStreet Program. Like the FNAC Initiative, the UNCC requires a group of stakeholders working in partnership with a local governing body. Selected communities receive NMMS professional services and technical assistance to implement and complete a community economic development project within 12 to 18 months.
 - 3) **New Mexico MainStreet Accelerator Process:** The NMMS Accelerator Process is an intensive coaching and capacity building start-up course in the Main Street Approach™ for new MainStreet communities/organizations that brings the local stakeholder group/board of directors and local government partner up to full capacity within 18 months. Based on available NMMS resources to add new communities, local communities that have successfully completed one of NMMS's Project-Based Initiatives, has local government support, and shows they have the capacity and resources for a full MainStreet Program can apply to participate in the Accelerator Process. Successfully completing established benchmarks and graduating from the Accelerator Process leads to designation as a "Main Street America" program and makes the community part of a larger network with a proven track record for celebrating community character, preserving local history, and generating impressive economic returns.
- B. Designation as Main Street America Affiliate™ or Accredited™ Program:** NMMS, as a licensed and accredited State Coordinating Program, annually awards local Mainstreet programs with a Main Street America Affiliate™ or Main Street America Accredited™ designation based on progress in the prior 12 months toward meeting Main Street America's Performance Requirements and Operating Standards (outlined in Section IV, C of this document).
- 1) **Main Street America Affiliate™** status is for revitalization programs or organizations that have demonstrated a commitment to the comprehensive Main Street Approach™ to District revitalization, have completed the NMMS Accelerator Process benchmarks, and are building organizational capacity using economic transformation strategies that engage the four points to develop their goals and annual implementation plans. Affiliate Programs are building or re-establishing their operational capacity and their programmatic engagement with demonstrable economic performance toward completing their ETS goals and working to attain Main Street America Accredited designation.
 - 2) **Main Street America Accredited™** status is for programs or organizations that demonstrate success in planning, implementing, and measuring successful Economic Transformation Strategies utilizing the Main Street Approach™. Accredited programs have fully engaged Boards, committees or task groups working in all Four Points and a paid Executive Director commensurate with the requirements listed in Table 1 (*Budget and Staffing*) based on the size of the community. Accredited programs establish, monitor, and report rigorous outcome performance measurements and document achievement under all Standards of Performance established by Main Street America.

C. Sublicensing Agreements for Main Street America Affiliate and Accredited programs:

- 1) New Mexico MainStreet organizations designated as a Main Street America Affiliate or Accredited program must sign an annual sublicensing agreement established by Main Street America and implemented through the NMMS Coordinating Program.
- 2) The sub-licensing agreements establish guidelines for participation and requisite use of Main Street America Logos and Branding.

D. New Mexico Arts & Cultural Districts Program and Designation: The NM Arts & Cultural Districts Program (ACD), was established by the legislature in 2007 and statutorily attached to New Mexico MainStreet, to assist communities in developing their cultural and creative economy resources to create dynamic and economically vibrant districts. The ACD Program is a joint effort of three state agencies, New Mexico MainStreet, New Mexico Arts Division, and Historic Preservation Division (HPD). The NMMS Director, by statute, serves as the State Coordinator overseeing the ACD program. The New Mexico Arts Commission authorizes new districts, compounds, and institutions based on recommendations from the ACD State Coordinator, and HPD administers the NM State Income Tax Credit for Preservation of Cultural Properties that provides a doubling of the available tax credit when a listed property is located within the boundaries of a State-Authorized ACD.

- 1) **Arts & Cultural District Start-Up Designation:** When state resources allow, municipalities, citizens, NMMS Organizations, or other nonprofit organizations can apply or petition to participate in NMMS's *Creative Economy Jump Start* as the first step toward the *Arts & Cultural District Start-Up Designation*.
 - The purpose of the *Creative Economy Jump Start* is to work with local Main Street Organizations and non-NMMS communities interested in becoming a NMMS Program to access capacity and identify opportunities with respect to Creative and Cultural Economy work and their potential for designation as a New Mexico State Authorized Arts & Cultural District.
 - NMMS Organizations can request to participate in the *Creative Economy Jump Start* by submitting a NMMS Service Request and justification memo outlining the communities creative and cultural assets and potential for designation as a New Mexico State Authorized Arts & Cultural District.
 - Non-NMMS communities can apply to participate in the *Creative Economy Jump Start* by applying to NMMS' FNAC or UNCC Project-Based Initiatives when NMMS has the available resources to add new projects through a competitive application process.
 - **Start-Up Arts & Cultural District Designation:**
 - NMMS Organizations that have successfully completed the initial phases of the Creative Economy Jump Start and have effectively documented their potential for State Authorized ACD designation can petition NMMS to enter the ACD Start-Up phase to develop strategies to grow their arts, cultural, and creative economy assets.
 - When resources are available to add new MS programs, non-NMMS communities that have completed the Creative Economy Jump Start and are interested in becoming a NMMS Program with an ACD Designation can apply for participation in a joint/hybrid NMMS Accelerator/ACD Start-Up Process.
 - ACD Start-Up's must complete the ACD Start-Up Performance Benchmarks that includes organizational, financial, planning, and image development modules that build local capacity, develops local arts and cultural assets, and help develop a cohesive and well-recognized Arts & Cultural district with a high concentration of cultural facilities and programs that serve as the main anchors of economic and destination development. A comprehensive outline of the Start-

Up process and list of benchmarks is available for download at www.nmmainstreet.org/resource.

- 2) Start-Up and State-Authorized Arts & Cultural District (ACD) designations are attached to a local MainStreet organization designated by New Mexico MainStreet as an Accredited or Affiliate Main Street America program. These Arts & Cultural Districts are administered by an ACD Coordinating Council that is responsible for developing and implementing Creative Economy projects and activities in the Arts & Cultural District. The ACD Coordinating Council operates under the local MainStreet organizations structure as a Standing Committee or Taskforce and are subject to the policies and procedures of the host organization.
- 3) State-Authorized Arts & Cultural District Designation: MainStreet Programs that have completed the ACD Start-Up benchmarks, established arts and cultural assets and programming, have a developed, cohesive, easily recognizable District, and have an adopted Cultural Economic Development Plan can petition the NMMS Director/ACD Coordinator and NM Arts Commission for designation as a State-Authorized Arts & Cultural District. State Authorization:
 - Enables the doubling of the state's historic tax credits (up to \$50,000) for rehabilitation of eligible historic commercial properties listed on the State Register of cultural properties within the district's boundary.
 - Enables local MS/ACD program to apply for NMMS Capital Outlay Public Infrastructure projects identified in the adopted Cultural Economic Development Plan.
 - Enables access to Four Point technical assistance to implement arts, cultural, and creative economy projects in the district.
 - Ensures the local ACD district will be included in Statewide branding and marketing of the Districts as an arts and cultural destination.
 - Through municipal adoption of the Local Economic Development Act (LEDA), qualifying entities under the "cultural facilities" definition can apply for local and state LEDA funds for public/private economic development projects prioritized in the ACD Cultural Economic Development Plan, Master Plan, and/or MRA Plan.

E. MainStreet programs with Start-Up or State-Authorized Arts & Cultural District (ACD): In addition to NMMS and National Main Street Operations and Performance Standards (see Section IV. Performance Requirements and Operating Standards), programs with a Start-Up or State-Authorized ACD designation must also meet the following guidelines:

- 1) The organization shall meet all the statutory obligations of the Arts & Cultural District Act (2007).
- 2) The organization shall meet all policy requirements established by the State ACD Council:
 - Quarterly/Semi-Annual Reporting
 - Creative economy benchmarks and performance measures
- 3) The organization shall have or will work with their local government partner to complete an ACD Cultural Economic Development Plan adopted by the local governing body.
- 4) MainStreet programs having chosen and received Start-Up or State Authorized ACD designation shall add, or dedicate at least one of their ETS's to ACD/creative economy work.
 - The ACD Cultural Economic Development Plan will help guide the development of ACD ETS to grow the District's Cultural Economy.
 - Goals of the ETS shall be integrated into the annual work plan and budget of the MainStreet organization.
- 5) Establish and maintain a standing ACD Coordinating Council (Committee or Taskforce) dedicated to implementing ACD/creative economy work:

- The ACD Coordinating Council should include artists, artist organizations, and cultural and creative entrepreneurs.
 - The MainStreet Board is responsible for ensuring adequate staffing, resourcing or support to the ACD Coordinating Council.
 - With the support of staff, the ACD Coordinating Council shall prioritize and implement projects in the Board-adopted ETS's, and in line with the Cultural Economic Development Plan adopted by local government.
 - The Coordinating Council shall contribute to and participate in the annual performance or accreditation reviews conducted by NMMS.
 - Please see *"Policy Establishing Guidelines for the ACD Coordinating Council in State-Authorized Arts & Cultural Districts"* for more detailed information.
- 6) ACD staff (and, when possible, ACD Coordinating Council members) shall participate in NMMS trainings, conferences, and institutes.

III. Economic Transformation Strategies and Community Revitalization

The local MainStreet organization is required to establish and implement three (3) NMMS-approved Economic Transformation Strategies (ETS) for the District based on one of the adopted economic development plans. Of the three ETS, one should be dedicated to organizational capacity building ("Capacity Building Strategy") and is not directly related to specific economic development goals. An annual work plan is developed based on the three (3) ETS. All work in the Main Street Approach™ and Four-Points (Organization, Design, Promotion, and Economic Vitality), should directly support outcomes established under the ETS strategies. Work teams, task forces or committees are established to implement projects that advance each strategy.

The focus of the annual performance review of each local organization will be based on the positive outcomes of the Board and staff in meeting performance metrics in the annual work plan related to each ETS strategy and the engagement of each of the Four Points by the organization in meeting each strategy.

ETS strategies should be concrete, specifically defined, and achievable with the existing resources of the local organization. Local resources include volunteers established as committees/taskforces/work teams, funding, and adopted revitalization and redevelopment tools necessary for successful completion of each of the annual strategies. Requests for NMMS services, resources and support are available to help achieve these annual economic development strategies.

Annual strategies are derived from:

- **For Main Street America Affiliate or Accredited programs, or State Authorized Arts & Cultural Districts:**
 - Adopted District Master Plans, Metropolitan Redevelopment Area Plans, District Cultural Economic Development Plans
- **For communities engaged in the New Mexico MainStreet Accelerator or Arts & Cultural District Start-Up process:**
 - NMMS Readiness Assessment and/or Resource Team Report
 - Other Accelerator or Start-Up benchmarks established by NMMS

Based on designation of the local **MainStreet and/or Arts & Cultural District** organization as a Main Street America Affiliate™, Main Street America Accredited™ program, NMMS will provide professional assistance and support through the Main Street Four-Point Approach® tied to ETS's and annual work plans via a service request form submitted to NMMS. NMMS will work with the local governing body and the local organization to identify and apply for funding for planning and infrastructure/capital investments within the district identified as priority projects in adopted plans. Priority is given to those MainStreet projects on the Infrastructure Capital Improvement Plans; additional bonus points on competitive applications may also be considered.

IV. Performance Requirements and Operating Standards

A. Requirements for Local MainStreet Organizations

Maintaining a Main Street America Affiliate or Accredited Program enables access to additional specialized technical support, incentive programs, and resources, and serves as a pre-requisite to apply for MainStreet Public Infrastructure funds and operations/project funding through NMMS Partners (MFA, NMFA, FundIt, and other federal, state and foundation grantors partnering with NMMS). Maintaining a Main Street America Accredited program also ensures access to scholarships and grants from the New Mexico Resiliency Alliance (NMRA) and its funding partners.

New Mexico MainStreet maintains a digital dashboard (www.nmmainstreet.org/dashboard/login.php) to track annual compliance filings and monitor progress toward State Certification and National Accreditation. Local MainStreet organizations are responsible for uploading compliance and other required filings on an annual basis.

A local MainStreet organization designated by NMMS of the NMEDD must meet or exceed the following requirements to maintain its designation:

- 1) *MOU*: The organization has a fully executed Memorandum of Understanding with the Economic Development Department and Local Government Partner.
- 2) *Contract/MOU/LOA with Local Government Partner*: It is required that the local MainStreet organization have a separate annual contract for services with the municipality and/or county to do community economic development work within the designated district, outlining expectations of the municipality and clearly defined deliverables for its financial support of the local MainStreet organization. The organization must provide NMMS with a copy of the executed agreement annually.
- 3) Resolution of Support and Funding by the Local Government Partner (City Council, County or Tribal Commission). Each MainStreet and/or Arts & Cultural District program must have in place a biennial MOU with NMEDD's NMMS program and the local governing body, along with an annual resolution adopted by the local government partner for the term of the MOU stating its support and funding commitment to the local MainStreet organization. If the resolution is for only the first year of this MOU, then a new resolution by the governing body will need to be approved and delivered to NMMS prior to services from NMMS continuing into the second year of the two-year MOU cycle. Failure to adopt such resolution of financial support, or to provide the operational resources to sustain the Public-Private Partnership, may result in the suspension of the services provided by NMMS. The annual funding commitment required of the local government partner is described in Table 1 below.
- 4) The MainStreet organization is required to engage in fundraising and resource development activities needed to meet the minimum operational budget requirements for a Main Street America Program (Table 1).

Table 1: Budget and staffing requirements for New Mexico MainStreet/Main Street America organizations.

| | <i>Rural Community</i> | <i>Small Community</i> | <i>Mid-Size Community or Commercial Neighborhood</i> | <i>Large Community or Urban Program</i> |
|---|----------------------------|----------------------------|--|---|
| Population | < 5,000 | 5,001 - 15,000 | 15,001 - 50,000 | > 50,000 |
| Min. Operating Budget for Main Street America Affiliate program | \$25,000 | \$45,000 | \$60,000 | \$100,000+ |
| Min. Operating Budget for Main Street America Accredited Program | \$40,000 | \$60,000 | | \$100,000+ |
| Required Minimum Contribution to local MainStreet program by Local Gov't Partner | \$20,000 | \$35,000 | \$40,000 | \$60,000 |

| | | | | |
|---|---|----|--|--|
| | | | | |
| Executive Director Staffing Requirement, MainStreet America Affiliate (hrs/wk) | 20 | 30 | | |
| Executive Director Staffing Requirement, Main Street America Accredited program (hrs/wk) | 20 | 40 | | |
| | | | | |
| NMMS Accelerator and ACD Start-Up process Designate | \$15,000 from local government; no staffing requirement | | | |

*Note: operating at minimum budget/staffing benchmarks is usually not adequate to advance Four Point projects.

B. Participation Requirements for Local MainStreet/ACD Organizations

The MainStreet/Arts & Cultural District Executive Director and/or appropriate staff should attend NMMS Institute trainings as established by the State Coordinating Program to build their skills and knowledge.

1) Requirements for Executive Directors:

- Executive Director must attend the annual NMMS Winter Conference and NMMS Summer Institute.
- The Executive Director must complete the MainStreet Executive Directors Certification Program where they will receive one-time training in MainStreet Fundamentals.
 - Executive Directors wishing to substitute equivalent training courses, or to receive a waiver for previously-attended trainings, must obtain prior written approval from NMMS and proper documentation must be provided when courses are completed.
- An Executive Director must attend a National Main Street Conference within the first two years of employment and at least once every four years to keep up-to-date on the accomplishments and innovations of other MainStreet leaders nationally.
 - The organization, through reimbursement or other schedule of payment, assumes the costs of the Executive Director's participation in all required trainings.

2) Board President/Board Members:

- The local organization Board President is expected to attend one of the following each year: NMMS Winter Conference, NMMS Summer Institute, or national Main Street Now conference.
- The Board President and other Board members shall attend any required Board member trainings established by NMMS.

C. National Main Street Center Standards of Performance

- 1) *Main Street America Accreditation:* Consideration for Accreditation by the National Main Street Center applies only to those local MainStreet organizations implementing their Economic Transformation Strategies, tracking and fulfilling performance measures, and meeting the MSA/NMMS Standards of Performance, listed below. A comprehensive listing of the indicators and scoring process is available for download at www.nmmainstreet.org/resource.

1. Broad-based Community Commitment
2. Inclusive Leadership & Organizational Capacity

3. Diverse and Sustainable Funding
4. Strategy-Driven Programming
5. Preservation-Based Economic Development
6. Demonstrated Impact & Result

V. Resources Provided by New Mexico MainStreet:

NMMS is funded through the New Mexico State Legislature and provides a variety of resources to designated communities including access to professional technical assistance, economic growth and revitalization supports, networking, and education as described in the following pages:

A. Technical Assistance Services

Through its staff or contractors, NMMS will provide technical assistance in a variety of subject areas relevant to the *Main Street Four-Point Approach®* and other commercial district economic growth, revitalization and management topics. Each local organization may request on-site, email, and/or telephone consultation(s) from NMMS. Access to Technical Assistance is initiated through submission of a Service Request Form to the NMMS Director/ACD Coordinator. Upon receiving the service request, the NMMS Director/ACD Coordinator will assign the appropriate Revitalization Specialist(s) to coordinate design and delivery of services, on-site visits and/or other communications. Service request forms, along with descriptions of available services are available online at: nmmainstreet.org/resource/programs/.

Technical Assistance services include, but are not limited to:

- Organization: Organizational development consultants provide facilitation in strategic planning, visioning and mission statements, work plan development, resource development, leadership and volunteer development, succession planning, nonprofit management, committee training, staff training, and continuous quality improvement of the program.
- Marketing and Promotion: Promotion, Marketing and Graphic Design specialists offer assistance with image development and branding, marketing strategies, logo design, promotional and collateral materials development, event planning, visual merchandising, media relationships, online/social media, publicity and advertising.
- Economic Vitality: Economists, business, and property development specialists provide technical assistance and training in market analysis, business strengthening and recruitment, real estate development, economic development incentives, revitalization financing tools, placemaking, and program progress and impacts monitoring.
- Architectural and Design Services: Architects and Planners provide conceptual design services for façade improvements, floor plans, parking, landscape, signage and interior improvements.
 - a. Design Intensives: Specialized, local volunteer-driven, on-site design intensives are offered by the NMMS Design Team through application (when available) to the MainStreet Placemaking, and MainStreet Façade Squad, and other architectural restoration.
- Planning and Historic Preservation: Planners and design professionals provide assistance in placemaking, historic preservation, community-based planning processes, streetscape design, vehicular and pedestrian circulation enhancements, parks, way-finding design, district master planning, metropolitan redevelopment plans, urban planning, and zoning.
- Arts & Cultural/Creative Economy Resources Development: Cultural Resource consultants, in partnership with staff and consultants from New Mexico Arts, offer technical assistance and services related to protection, development and promotion of arts and cultural resources, cultural facilities and historic properties to enhance the local creative economy supporting cultural entrepreneurs, creative enterprises and industries.

B. Other Resources

New Mexico MainStreet provides a variety of resources and partnerships to assist local communities and organizations with the revitalization of their traditional or historic commercial district. These include:

- *Trainings, Workshops, Conferences, and Institutes:* Annually, NMMS identifies opportunities for intermediate and advanced-level trainings in specific areas of the Main Street Four-Point Approach® to strengthen and build skills for organizational and municipal leaders and partnering organizations.
 - *Annual NMMS Winter Conference and NMMS Summer Institute*
 - Managing the MainStreet/ACD Nonprofit Corporation training
 - Multi-part series on Grant Writing and Nonprofit Fundraising for local MainStreet leaders
 - *Online trainings:* NMMS provides webinars, videos or other online training opportunities to build capacity of staff, community leaders and organization volunteers in support of the district economic growth and revitalization.
- *NMMS Executive Director Boot Camp and Certification Program:* Executive Directors who successfully complete the Boot Camp and other required trainings shall automatically qualify as a State-Certified Executive Director.
- *Marketing:* NMMS and NMEDD provide statewide marketing opportunities for local MainStreet organizations/districts, initiatives and activities through its websites (www.goNM.biz, www.nmmainstreet.org, www.offtheroadnm.org), social media platforms, e-newsletters, and *Choose MainStreet* marketing campaign.
- *Information and Networking:* Through regular email, list serves, mailings, websites and meetings, NMMS provides timely notice on grant and partnership opportunities, guidance on innovative revitalization tools and techniques, and helps with addressing the multiple challenges that arise during the day-to-day course of each local organization's MainStreet efforts.
- *Accreditation Review:* Accreditation by the NMSC recognizes achievement under the Standards of Performance established by the National Main Street Center, Inc. NMMS conducts an annual accreditation review – a comprehensive assessment of the program's accomplishments under the Main Street Four-Point Approach® for the previous calendar year. Participation in the Accreditation review is required and the NMMS Director prepares recommendations for the NMSC based on the performance of the previous 12 months. Main Street America Accreditation is also contingent upon meeting all compliance requirements listed in preceding sections.
- *National Main Street Network Membership:* The state program pays each local organization's annual network membership fee to the NMSC. Membership benefits include the monthly *Main Street News*, discounted conference and workshop registration fees, access to members-only informational resources on the NMSC website, and member rates on publications.
 - National Main Street Center Conference – Main Street Now: Annually, NMMS provides discounted basic registration for Main Street America Affiliate and Accredited programs to help each Executive Director attend the Main Street Now conference. Local organizations meeting all annual performance standards for Main Street America Accredited programs are also provided one (1) additional discounted basic registration to the NMSC conference for a member of the Board of Directors when funding is available.
- *MainStreet Public Infrastructure Funding:* MainStreet America Affiliate, MainStreet America Accredited, and Arts & Cultural District programs are eligible to apply for NMMS Capital Outlay Public infrastructure funding for priority pedestrian safety upgrades and infrastructure improvements within designated MainStreet Districts
 - NMEDD works with the State Legislature and Governor to appropriate Public Infrastructure funds, which are then awarded on a competitive basis with particular emphasis on construction-ready

projects and organizational commitment to leverage such funds for direct economic growth and private sector reinvestment.

- ***MainStreet Partnership Grants and Resources:*** NMMS works closely with several other state agencies including the Tourism Department, Historic Preservation Division, New Mexico Arts Division, and the Department of Transportation as well as other statewide partnering organizations that share a common vision including the New Mexico Coalition of MainStreet Communities (NMCMS) and the New Mexico Resiliency Alliance (NMRA).
 - The State Coordinating Program also works with statewide nonprofit and corporate funding partner organizations that provide funding opportunities to local MainStreet/ACD programs to access and coordinate resources for district economic development and revitalization projects.



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: I.3

SUBJECT: Approval of contract for Steven Sage as the appointed Public Defender Attorney for the Municipal Court.

DEPARTMENT: Municipal Court

DATE SUBMITTED: July 8, 2022

SUBMITTED BY: Municipal Court

WHO WILL PRESENT THE ITEM: City Attorney Rubin

Summary/Background:

This is an annual Public Defender Contract for Services for indigent defendants.

Recommendation:

Approval of Contract.

Attachments:

- Contract with Steven Sage

-

Fiscal Impact (Finance): Choose an item.

.

Legal Review (City Attorney): Yes

-

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 7-13-2022

CITY OF TRUTH OR CONSEQUENCES
505 Sims
Truth or Consequences, New Mexico 87901
City Manager

NAME: STEVEN SAGE, Attorney (hereinafter called "Contractor")

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

FEDERAL / EMPLOYEE ID NUMBER: _____

STATE ID: _____

BUSINESS LICENSE NUMBER: _____

PHONE: _____ **CELL:** _____ **EMAIL:** _____ **FAX:** _____

CAPTIONS

Each paragraph of this Agreement has been supplied with a caption to serve only as a guide to the contents. The caption does not control the meaning of the paragraph or in any way determines its interpretation or application.

APPROVALS

City:

Amanda Forrister, Mayor _____ **Date** _____

ATTEST: Angela A. Torres, City Clerk _____ **Date** _____

CONTRACTOR

_____, Attorney **Date** _____

_____ **J. RUBIN, City Attorney** **Date** _____

City of Truth or Consequences
Contract for services
2022-2023

Part I

THIS agreement for services by and between the City of Truth or Consequences (hereinafter called "City ") and Steven Sage, Attorney (hereinafter called "Contractor").

WHEREAS the City wishes to engage the services of an Attorney to represent and serve as Counsel in cases requiring an Attorney before the Municipal Court.

NOW THEREFORE the parties do mutually agree as follows:

The City agrees to engage the Contractor and the Contractor hereby agrees to perform the Scope of Work detailed in **Exhibit A** to this agreement.

TIME OF PERFORMANCE

The services of the Contractor shall commence on **July 1, 2022** and be completed on **June 30, 2023**. The Contractor represents that he/she are in good standing with the **New Mexico State Bar**. Such services shall be continued in such sequence as to assure their relevance to the purposes of this agreement. This contract may be extended on an annual basis for an additional three (3) years commencing on July 1 of the next fiscal year. In no event shall the original term of this contract, together with all extensions exceed four (4) years.

ACCESS TO INFORMATION

It is agreed that all information, data, report, records, maps, etc. as are existing available and necessary for the carrying out of work outlined in the agreement, shall be furnished to the contractor by the City at no charge.

COMPENSATION AND METHOD OF PAYMENT

The maximum amount of compensation and reimbursement to be paid hereunder **shall not exceed Six Hundred Fifty and No/100 (\$650.00) per case. Applicable** gross receipts taxes, services including travel, per diem, and other expenses of the contractor or its subcontractors shall be the Contractors' responsibility. Total compensation to be paid under the agreement shall not exceed \$26,000 in total. If compensation paid under this contract exceeds \$600.00 the City will issue IRS Form 1099 on calendar year basis.

CLAIMS

The Contractor shall save and hold the City free from claims that may arise in connection with work the Contractor will perform under the 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 Contractors' involvement in this assignment, whether subpoenaed by the City or any other group.

BRIBES AND GRATUITIES

It is illegal in New Mexico for any public employee to solicit or accept anything of value in connection with award of the 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)

EXHIBIT A

SCOPE OF WORK

Representation of the defendants who are eligible for appointment of counsel or are determined to be indigent and are facing charges filed in the Municipal Court of Truth or Consequences, New Mexico. The Municipal Court Judge determines eligibility for indigent counsel services, applicability of the right to counsel and has assigned Contractor to provide legal representation to said defendant; such representation shall continue until defendant has been sentenced by the court, acquitted of all charges or the charges have been dismissed by the prosecution or the Court on motion or Sua Sponte.

The Contractor will follow the Municipal Court of Truth or Consequences Policy and Rules of Procedure. (Copy to be provided)



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: I.4

SUBJECT: Accept and Approve Bridge Loan Funding Offer from Bank of the Southwest

DEPARTMENT: Assistant City Manager

DATE SUBMITTED: July 7, 2022

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

Water System Improvements –Staff proposes to use pre-development financing in an amount not to exceed \$750,000 to pay for costs incurred for all pre-development activities including preparation of PER/ER, Design, final plans and specifications, obtain required easements and potentially prepare bid documents. Staff will then seek Interim Financing for the total amount of the USDA Loan. Bank of the Southwest has provided a letter of Commitment for pre-development financing.

Recommendation:

Approve City Manager to proceed with pre-development Financing

Attachments:

- USDA Authorization Letter for Predevelopment Funds
- Water Project Scope of Work
- Bank of the Southwest Letter of Commitment

Fiscal Impact (Finance): Yes

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. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 7-13-2022



United States Department of Agriculture

Rural Development

May 18, 2022

New Mexico
State Office

One Sun Plaza
100 Sun Ave NE
Suite 130
Albuquerque, NM
87109

Bruce Swingle, City Manager
City of Truth or Consequences
505 Sims Street
Truth or Consequences, NM 87091

Voice (505) 761-4950
Fax (855) 543-9499

Subject: City of Truth or Consequences
Water System Improvement – Phase 1
Authorization of Pre-Development Loan

Dear Mr. Swingle:

Reference is made to a request from the City of Truth or Consequences (herein referred to as "Applicant") through Traci Alvarez, Asst. City Manager, for Pre-Development financing from your bank to construct its Water System Improvement – Phase 1 (herein referred to as "project"). This letter is to confirm certain understandings on behalf of the New Mexico Rural Development (herein referred to as "Agency").

The Agency has obligated \$ 4,811,000 in loan funds for the project, in addition to \$ 2,720,000 in grant funds. The total estimated project cost is \$ 7,531,000. This letter is in reference to the loan portion of the Agency's assistance. Please see the enclosed letter of conditions outlining the conditions that must be met before the Agency can close its loan.

The Applicant proposes to use pre-development financing in an amount not to exceed \$750,000 to pay for costs incurred for all pre-development activities including preparation of PER/ER, Design, final plans and specifications, obtain required easements and potentially prepare bid documents. The Applicant will then seek Interim Financing for the total amount of the Agency Loan. Interim Loan funds are expected to be available to pay off the total amount of advances your bank will make for authorized purposes, including accrued interest to the date of closing.


It is proposed by the Applicant that the bank advance funds, with the approval of the Agency, in accordance with the agreed terms and conditions stated in the enclosed Letter of Conditions, dated 8/24/2021, as needed to pay for authorized and legally eligible expenses, upon presentation of proper statements or work estimates approved by both the Applicant and Agency.

USDA is an equal opportunity provider, employer, and Lender.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: mail at U.S. Department of Agriculture, Office of the Secretary for Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

We appreciate your assistance to the community and look forward to working with you on this project.

Sincerely,
**CHRISTINE
GRIEGO**

 Digitally signed by CHRISTINE
GRIEGO
Date: 2022.05.18 12:20:53
-06'00'

Christine Griego
Acting Community Program Director

Enclosure:
Letter of Conditions, dated 8/24/2021

Water System Performance Improvements 1

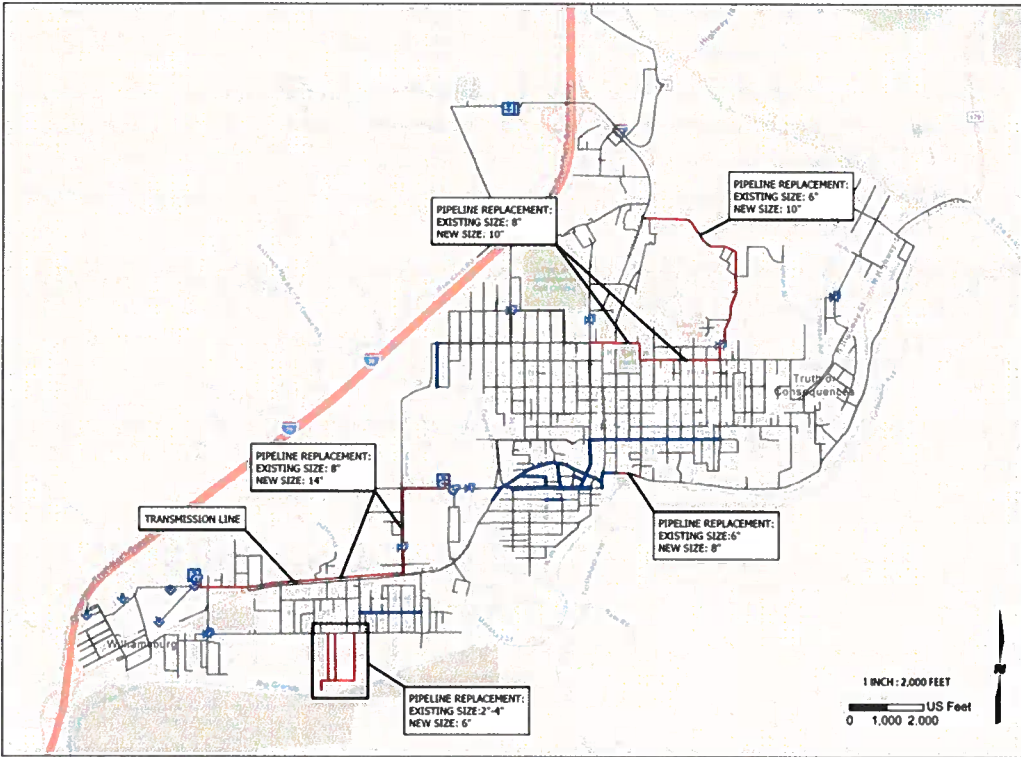
City of Truth or Consequences, New Mexico

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



- Legend**
- Proposed PRV
 - Well
 - Booster Station
 - Tank
 - Existing Waterline
 - Funded Upgrades
 - Recommended

III-A. SYSTEM HIGH PRESSURE
SOLUTIONS

FIGURE 13



Member FDIC

True to you.

July 8, 2022

City of Truth or Consequences
505 Sims St.
Truth or Consequences, NM 87109

Dear City Officials,

Thank you for considering Bank of the Southwest (BOSW) for your financing needs. BOSW is pleased to submit the following terms in which Bank of the Southwest would purchase a Bond from the City of Truth or Consequences, for the Water System Improvement-Phase 1 Water Application Pre-Development financing.

**Requested Loan Amount
and Purpose:**

\$750,000 For the Pre-Development financing of the Water System, Improvement-Phase 1 Water Application, approved by USDA Letter of Conditions, dated 8/24/21.

Interest Rate:

5.75%

Terms:

18-month interim line of credit,

Closing Costs:

All ordinary and customary closing costs such as, but not limited to but not limited to, 1% origination fee if possible.

Collateral:

City of Truth or Consequences Bond

Terms proposed herein shall expire thirty (30) days from the date of this letter. Bank of the Southwest will require various conditions precedent to each advance as detailed by USDA Letter of Conditions dated 8/24/21.

These elements include certain customary representations and warranties as well as the above-described conditions, including documentation requested by legal review. Those matters which are not covered by or made clear herein are subject to mutual

agreement of the parties and all matters are subject to amplification in the legal documentation.

We look forward to working with the City of Truth or Consequences on this project. If you have any questions or concerns, please feel free to call anytime. Once again, the staff of BOSW would like to express appreciation to you for giving Bank of the Southwest this opportunity.

Sincerely,

Jason Garcia
Vice President/Branch Manager

Georgia Hewitt
Executive Vice President/Chief Lending Officer



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: I.5

SUBJECT: Approve Roadway Hazard Identification Beacon Maintenance Agreement between the City of T or C and NMDOT

DEPARTMENT: Assistant City Manager

DATE SUBMITTED: July 7, 2022

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

Flashing Crosswalk Beacons will be installed at the Double lane Roundabouts at Smith Road and New School Road. Once installed, City will be responsible for all maintenance/repairs/replacements of Beacons as needed.

Recommendation:

Approve and execute Maintenance Agreement

Attachments:

- Maintenance Agreement
- Revised Plan showing locations of beacons

Fiscal Impact (Finance): Yes

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. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 7-13-2022

Contract No.: _____

MAINTENANCE AGREEMENT

ROADWAY HAZARD IDENTIFICATION BEACON

This Agreement is between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION** (Department), and the **CITY OF TRUTH OR CONSEQUENCES**, (Public Entity). This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

Whereas, the Department contemplates the construction of a highway project within the boundaries of the Public Entity, identified as PN: 1101231, and CN:1101231 (Project);

Whereas, the Department and Public Entity agree with the need for installation of a roadway hazard flashing beacon (Beacon) at the following location(s): I-25 Business Loop 11 at milepost 4.39 located on the south side of Smith Street and at milepost 4.45 located on north side of New School Road.

Whereas, the installation of the Beacon will promote traffic safety;

Whereas, the parties want to set forth their responsibilities on operation and maintenance of the Beacon.

Now therefore, pursuant to NMSA 1978, Section 67-3-28, the parties agree as follows:

1. The Department Shall:

- a. Provide the necessary plans, designs and estimates and documents required for the construction of the Project and cause the Project to be constructed in the manner provided by law.
- b. Determine the design, provide and install new Beacon equipment with cabinet to include controller and batteries, solar panels, concrete foundations, poles, signal heads, signing, underground conduit, and conductor for complete assembly.
- c. Provide and install approximately 8 Rectangular Rapid Flashing Beacons Beacon(s), on type I or II standards on I-25 Business Loop 11 at milepost 4.39 located on the south side of Smith Street and at milepost 4.45 located on north side of New School Road I-25 Business Loop 11 from mile post 4.3 to mile post 4.5 for a fully operational Beacon.
- d. After construction is completed, provide the Public Entity with as built drawings of the repairs to the flashing beacons and a complete list of all parts and components, used including the brands and specifications.
- e. After completion of the Project, allow the Public Entity to enter into the Department's right of way to perform maintenance as detailed in Section 2 below.

2. The Public Entity Shall:

After the Beacon system has been constructed:

- a. Provide at its own expense all electrical energy.
- b. Provide at its own expense initial timing (if necessary), routine adjustments for daylight savings time (if necessary), and change of flashing schedule and periodical monitoring of the system.
- c. Perform any and all maintenance to keep the system operating, which includes signal head replacement, if solar is used: solar batteries and panels replacement as well as replacement of all parts and components as a result of equipment failure, accidental damage and intentional damage, which includes vandalism.
- d. Perform maintenance as detailed in this Section 2, to all parts and components, which includes and is not limited to poles or fixtures, conduits and wiring, and as provided by as-built drawings.
- e. Make replacement of all parts and components with the same kind or brand for continued satisfactory operation of the Beacon system.

3. Term.

This Agreement becomes effective upon signature of all parties. The effective date is the date when the last party signed the Agreement on the signature page below.

4. Third Party Beneficiaries.

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

5. New Mexico Tort Claims Act.

As between the Department and Public Entity, 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 the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, *et seq.* This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

6. Scope of Agreement.

This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior Agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

7. Terms of this Agreement.

The terms of this Agreement are lawful; performance of all duties and obligations shall conform with and do not contravene any state, local, or federal statutes, regulations, rules, or ordinances

8. Equal Opportunity Compliance.

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States shall, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

9. Appropriations and Authorizations.

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Public Entity, Legislature or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given by one party to the other. The Department and Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

10. Severability.

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

11. Contingent on Project Being Let.

In the event that the Project is not let for any reason, this Agreement shall become null and void and shall create no obligation on any of the parties.

12. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper in a New Mexico Court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

13. Principal Contacts and Notices.

The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail) and shall be given to the principal contacts listed below.

Name: Trent Doolittle, P.E.
Title: District Engineer
New Mexico Department of Transportation
Address: 2912 E. Pine St., Deming, NM 88030
Office: 575-494-3227
E-mail: trentdoolittle@state.nm.us

Name: Bo Easley
Title: Electric Department Director
Public Entity: City of Truth of Consequences
Address: 505 Sims Street, City of Truth of Consequences, NM
Office: 575-894-6673
E-mail: Beasley@torcnm.org

14. Amendment.

This Agreement shall not be altered, modified, or amended except by an instrument in writing and executed by the parties.

In witness whereof, each party is signing this Agreement on the date stated opposite that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Cabinet Secretary or Designee

Date: _____

Recommended by:

By: _____
Chief Engineer

Date: _____

By: _____
District Engineer

Date: _____

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: _____
Assistant General Counsel

Date: _____

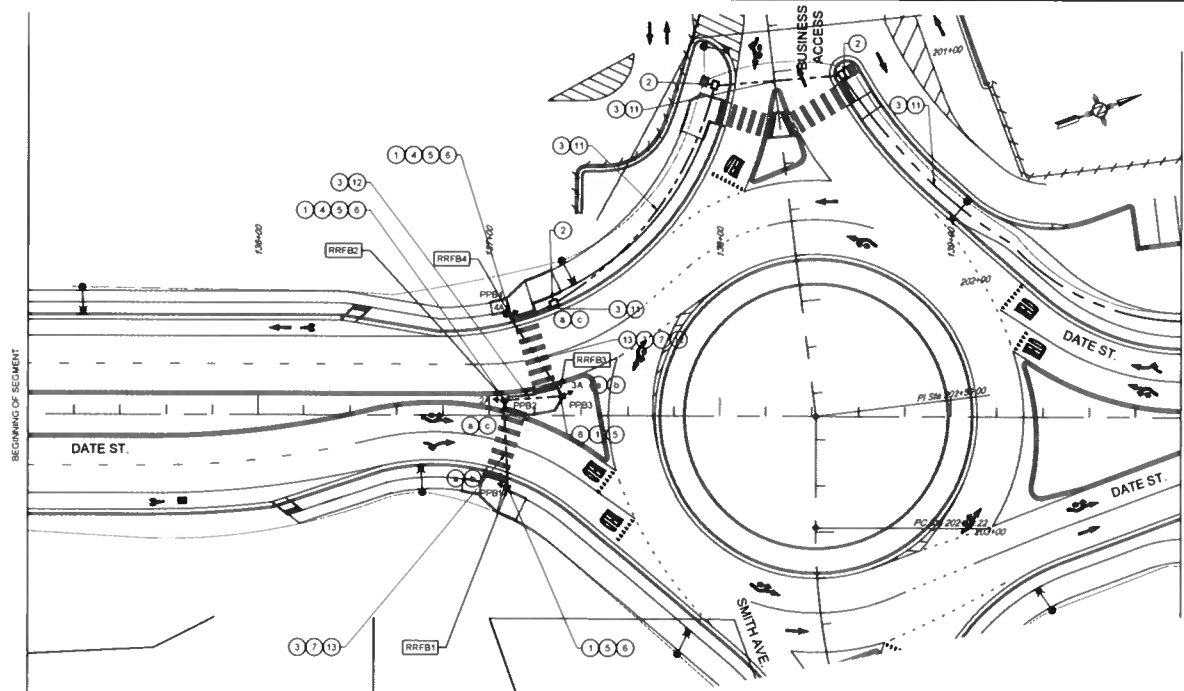
CITY OF TRUTH OR CONSEQUENCES

By: _____

Date: _____

Title: _____

Attest: _____



RRFB NOTES

- | | |
|---|---|
| 1. INSTALL 15 FT POLE AND FOUNDATION* | 9. INSTALL SERVICE RISER |
| 2. INSTALL STANDARD ELECTRICAL PULL BOX | 10. INSTALL 2" CONDUIT WITH 3/8 COPPER |
| 3. INSTALL 3" PVC CONDUIT | 11. INSTALL MULTICONDUCTOR CABLE MCC 5 (SERVICE) (2 EACH) |
| 4. INSTALL RRFB CABINET AND CONTROLLER | 12. INSTALL MULTICONDUCTOR CABLE MCC 5 (SERVICE) (1 EACH) |
| 5. INSTALL DIMMABLE RRFB LED LIGHT BAR ASSEMBLY | 13. INSTALL MULTICONDUCTOR CABLE MCC 5 (BEACONS) |
| 6. INSTALL ACCESSIBLE PEDESTRIAN SIGNAL PUSH BUTTON STATION | |
| 7. INSTALL MULTICONDUCTOR CABLE MCC 5 (BUTTONS) | |
| 8. INSTALL METER PEDESTAL | |

* TYPE 1 STANDARD, 15 FT POLE AND FOUNDATION. PED POLE FOUNDATION TO BE POURED MONOLITHICALLY WITH HEADER CURB SO THAT PED POLE BASE WILL BE FLUSH WITH FACE ON HEADER CURB.

RRFB POLES

| ID # | TYPE | STATION | OFFSET | REMARKS |
|-------|----------------------------|---------|--------|----------------|
| RRFB1 | PEDESTAL POLE - 15' TYPE 1 | 137+09 | 31' RT | NEW FOUNDATION |
| RRFB2 | PEDESTAL POLE - 15' TYPE 1 | 137+08 | 4' LT | NEW FOUNDATION |
| RRFB3 | PEDESTAL POLE - 15' TYPE 1 | 137+33 | 12' LT | NEW FOUNDATION |
| RRFB4 | PEDESTAL POLE - 15' TYPE 1 | 137+21 | 47' LT | NEW FOUNDATION |

ABBREVIATIONS

RRFB1 RRFB POLE NUMBER
PPB1 PEDESTRIAN PUSH BUTTON NUMBER
3A SIGNAL HEAD NUMBER



35' W11-2



| REVISIONS OR CHANGE NOTICES | |
|-----------------------------|-------------|
| NO. | DESCRIPTION |
| 1 | |
| 2 | |
| 3 | |
| 4 | |

NEW MEXICO DEPARTMENT OF TRANSPORTATION

1101231
I-25 BUSINESS LOOP RECONSTRUCTION
RRFB PLAN



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: I.6

SUBJECT: Award Recommendation for RFP #21-22-009 Engineering Services for T or C Airport Improvements

DEPARTMENT: Finance Department

DATE SUBMITTED: July 7, 2022

SUBMITTED BY: Carol Kirkpatrick, Finance Director

WHO WILL PRESENT THE ITEM: Carol Kirkpatrick, Finance Director

Summary/Background: RFP #21-22-009 for Engineering Services for the T or C Airport Improvements was advertised for two consecutive weeks and posted on the City's website. A Pre-Proposal meeting was held on June 3, 2022 at the Airport. Proposals were due on June 16, 2022 at 2:00 pm. Evaluations were performed on July 6, 2022. Oral presentations were not held.

Recommendation:

Evaluation Committee's Recommendation for Award is Delta Airport Consultants, Inc.

Attachments:

- Evaluation Committee Report and Recommendation
-

Fiscal Impact (Finance): Yes

Cost will be on a Task Order basis.

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. [Click here to enter text.](#) Ordinance No. .

Continued To: . Referred To: .

☐ Approved ☐ Denied ☐ Other: .

File Name: CC Agendas 7-13-22



EVALUATION COMMITTEE REPORT and RECOMMENDATION RFP#21-22-009 ENGINEERING SERVICES FOR THE TRUTH OR CONSEQUENCES AIRPORT IMPROVEMENTS

SUBJECT: Evaluation Committee Report and Recommendation– RFP#21-22-009 ENGINEERING SERVICES FOR THE TRUTH OR CONSEQUENCES AIRPORT IMPROVEMENTS

The Procurement Office received five (5) responses to its Request for Proposals for the RFP#21-22-009 Engineering Services for the Truth or Consequences Airport Improvements, prior to the submission deadline of 2:00 pm Mountain Standard Time, June 16, 2022. The companies who responded were: Delta Airport Consultants, Inc., Armstrong, Parkhill, Bohannon Houston, and Dubois & King, Inc.

A Pre Proposal meeting was held on June 3, 2022 at 10:00 am at the City of Truth or Consequences Municipal Airport located at Hwy 181 North, Truth or Consequences, NM.

Summary of Evaluation Committee Activity

The members of the evaluation committee were: Bruce Swingle, City Manager, Chad Rosacker, Tech 45 Enterprises, and Orrin (OJ) Hechler, Community Services Director.

The Committee met on July 6, 2022 to score proposals. The evaluation criteria were listed in the Request for Proposal. The Evaluation Point Table Summary attached reflects all of the evaluation criteria used for scoring and the scores received for each proposer. (Attachment A)

Evaluation Points

Specialized Design and Technical Competence: A total of 25 points were available based on specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required.

Capacity and Capability: A total of 25 Points were available based on capacity and capability of the business to perform the work, including any consultants, their representatives, qualifications and locations, to perform the work including any specialized services, within the time limitations.

Past Record of Performance: A total of 20 points were available based upon past record of performance on contracts with government agencies and private industry with respect to such factors as control of costs, quality of work and ability to meet schedules.

Familiarity with City of Truth or Consequences Airport: A total of 15 points were available based upon proximity to or familiarity with the area in which the project is located; Firm and proposed key personnel's familiarity with the City of Truth or Consequences Airport and its setting; Firm's experience in New Mexico and in dealing with state and federal funding, administrative, and regulatory agencies.

Approach to Providing the Services: A total of 10 points were available based upon evidence of understanding of scope of work, the site, and existing conditions. Firm was to describe their approach to providing and managing the anticipated services and projects.

Amount of Design Work in New Mexico: A total of 5 points were available based upon the amount of design work that will be produced by a New Mexico business within this state.

Recommendation of the Committee: The committee considered all five offerors qualified to perform the work as specified in the Request for Proposals. As a result of the scoring, the committee respectfully recommends that the award and contract to perform the scope of work as outlined in the Request for Proposal #21-22-009 Engineering Services for the Truth or Consequences Airport Improvements be awarded to Delta Airport Consultants, Inc. who scored a total of 91.33 points out of a possible 100. Armstrong scored a total of 89.83 points. Bohannon Houston scored a total of 86.33 points. Parkhill scored a total of 85.67 points. Dubois & King, Inc. scored a total of 84.33 points. None of the bidders qualified for Veteran's Certificate bonus points of 10.

Thank you for your time and consideration of the recommendation.

Bruce Swingle, Evaluation Committee Member

Orrin (OJ) Hechler, Evaluation Committee Member

Chad Rosacker, Evaluation Committee Member

**REQUEST FOR PROPOSALS
FOR
PROFESSIONAL SERVICES**

RFP: 21-22-009



Project Name:

Engineering Services for Truth or Consequences Airport Improvements

Amendment #2

June 8, 2022

Contracting Agency:

**City of Truth or Consequences
505 Sims Street
Truth or Consequences, New Mexico 87901**

Telephone: [575] 894 - 6673

FAX: [575] 894 - 0363

Funding Type: Federal, FAA, State, & Local

NOTICE OF REQUEST FOR PROPOSALS

Competitive sealed proposals for services will be received by the Contracting Agency, the City of Truth or Consequences for **RFP: 21-22-009**

The Contracting Agency is requesting qualifications-based proposals for **Professional Engineering Services for Truth or Consequences Airport Improvements.**

Proposals will be received at the **Office of the Procurement Officer, City Hall 505 Sims Street, Truth or Consequences, NM 87901** **June 16, 2022 at 2:00 p.m.**

Copies of the project description, scope of work, qualifications, and method of selection are available at the of the Procurement Officer, City Hall 505 Sims Street, Truth or Consequences, NM 87901 or will be mailed upon written or telephone request at **575-894-6673 ext. 309**

A Pre-Proposal Conference [X] will [] will not be held on June 03, 2022 at 10:00 am at the City of Truth or Consequences Airport located at HWY 181 North, Truth or Consequences, NM 87901.

Chief Procurement Officer

Date: May 09, 2022

Kristin Saavedra

[for Contracting Agency's Use Only]

| | | |
|------------------|----------------|----------------|
| Newspaper: _____ | Publish: _____ | P.O. No. _____ |
| Newspaper: _____ | Publish: _____ | P.O. No. _____ |
| Newspaper: _____ | Publish: _____ | P.O. No. _____ |

[Note: This Notice is issued pursuant to the requirements of §13-1-104 NMSA 1978 and must be published not less than 10 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.]

**THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
REQUEST FOR PROPOSALS (RFP)
PROFESSIONAL ENGINEERING SERVICES
INSTRUCTIONS AND CONDITIONS TO OFFERORS**

A. Project Description

The City of Truth or Consequences is soliciting qualification and experience information to be used in selecting principal consultants to provide planning and/or engineering services for the following potential projects at the Truth or Consequences Municipal Airport.

The City of Truth or Consequences plans to award a one-year contract with possibly three (3) one Year renewals for the engineering services for any and all engineering projects subject to Federal Assistance under the Airport and Airway Improvement Act of 1892 as amended. Contemplated Projects under this contract may include:

Rehabilitate Taxiway A (RS TW IM) (Preservation)
Environmental Assessment for Airfield Improvements
BIL – Rehabilitate Apron (RS AP IM) (Preservation)
Rehabilitate Runway 13/31 (RS RW IM) (Preservation)
Airfield Pavement Maintenance
Runway Safety Area Grading (SA RW SF)
~~Replace ASOS with AWOS~~
Update ALP/Action Plan or Master Plan
Environmental documentation for projects
Fuel Farm Improvement
Add: Moving of the entry gate to further north of the fence line

The above-contemplated projects are dependent upon federal AIP funding and State Aviation Division funding and approval of the City of Truth or Consequences, so it shall be understood that some of the services related to the above-listed projects may be deleted and that the City of Truth or Consequences reserves the right to initiate additional services not included in the initial procurement. Services, as outlined in FAA Advisory Circular 150/5100-14E Chapter One, include engineering and planning services for all phases and required incidental services for some or all of the above projects which may be multiple FAA and/or NMDOT - Aviation Division grants funded.

B. Scope of Work

The engineering firm may perform professional services as hereafter stated:

1. To develop project plans and specifications for the Truth or Consequences Municipal Airport.
2. To apply for federal and state grants for the City of Truth or Consequences to help defray the cost of the engineering services and construction.

3. To advertise for bids, receipt of bids, and prepare recommendation of Award to the City of Truth or Consequences.
4. General engineering supervision and contract administration during construction.
5. Periodic or full-time on-site observation during construction.
6. Multi Agency Compliance with rules and regulations.

C. Criteria for Evaluation of Proposals

Selection criteria will include: recent experience in airport projects, capability to perform all aspects of project, reputation, ability to meet schedules within budget, quality of previous airport projects undertaken, familiarity with the project location, understanding of the airport and proposed projects, approach to proposed projects, approach to communication with the owner, and firm personnel qualifications.

Selection criteria contained in FAA Advisory Circular 150/5100-14E Chapter Two and additional City criteria Evaluation Point Summary. The following is a summary of evaluation factors with point value assigned to each. These, along with the general requirements, will be used in the evaluation of Offeror proposals. Short listing - A maximum total of 100 points are possible in scoring each proposal for the shortlist evaluation. The Selection Committee will evaluate the proposals and may or may not conduct interviews with Offerors applying for selection. The evaluation criteria to be used by the Selection Committee for the proposal shortlist and the corresponding point values for each criterion are as follows:

1. Specialized Design and Technical Competence 25 Points
Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required
2. Capacity and Capability 25 Points
Capacity and capability of the business to perform the work, 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 20 Points
Past record of performance on contracts with government agencies and private industry with respect to such factors as control of costs, quality of work and ability to meet schedules.
4. Familiarity with City of Truth or Consequences Airport 15 Points
Proximity to or familiarity with the area in which the project is located. Firm and proposed key personnel's familiarity with the City of Truth or Consequences Airport and its setting. Firm's experience in New Mexico and in dealing with state and federal funding, administrative, and regulatory agencies.
5. Approach to Providing the Services 10 Points
Evidence of understanding of scope of work, the site, and existing conditions. Firm should describe their approach to providing and managing the anticipated services and projects.

6. The amount of design work that will be produced by a New Mexico business within this state. 5 Points

D. Contractual Terms

The following contractual terms will be included in any contract entered into by the City of Truth or Consequences and the Engineering Firm Selected.

1. Fees

A fee schedule for basic and other services will be negotiated with the engineering firm selected. Specific projects will be negotiated on a task order basis.

2. Funding

This solicitation is subject to the availability of funds to accomplish the work.

3. Termination

This contract may be terminated by either of the parties for upon written notice delivered to the other party at will.

4. Timeliness

All work shall be performed in a timely manner, as requested.

5. Communication with the City of Truth or Consequences

The Engineering Firm shall be required to continuously update the City of Truth or Consequences on the status of projects.

6. Work Stoppage

The Engineering Firm shall not assign, sublet, or transfer their interest in this agreement without the written agreement. If such an assignment is allowed, the Engineering Firm entering into this contract shall be ultimately responsible to ensure that the work is performed satisfactorily.

7. Scope of Contract

This contract incorporates all the agreements, covenants, and understanding between the parties concerning the subject matter of this contract, and all such agreements, covenants, and understandings have been merged into this written contract. No prior agreement, covenant, or understanding, oral or written, of the parties or their agents shall be valid or enforceable, unless embodied into this contract. The City shall not be bound to exclusive use of any contracted party.

8. Amendment

The contract will not be altered, changed, or amended except by written document signed by the parties.

9. Registration

All work shall be under the direction of an Engineer registered by the State of New Mexico.

10. Professional Standards

The engineering firm agrees to abide by and perform its duties in accordance with the ethics of its profession and all federal and state municipal laws, regulations, and ordinances regulation the practice of engineering.

11. Authority to Bind the City

The engineering firm shall not have the authority to enter into any contract binding upon the City or to create any obligations on the part of the City, except such as shall be specifically authorized by the City's representative, acting pursuant to authority granted by the City.

12. Notices

Any notice required to be given under this agreement shall be deemed sufficient if given in writing by mail to the Procurement Officer's office or hand delivered to City Offices.

13. Subject to Other Documents

This agreement is subject to the terms and conditions of the statutes of the State of New Mexico and Ordinances of the City of Truth or Consequences, New Mexico, as they exist at the time this agreement is signed. All of these statutes and ordinances are incorporated by reference into this agreement.

14. Insurance

The engineering firm must hold errors and omissions liability insurance of at least \$1,000,000.

15. Conflict of Interest

The engineering firm warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of service under this contract.

16. Change Orders

The City of Truth or Consequences retains the unilateral right to order, in writing, changes in the work within the scope of projects.

A schedule of fees will be negotiated with the selected consultant for the services to be performed under the initial NMDOT - Aviation Division or FAA grant.

This contract is subject to the provisions of Executive Order 11246 (Affirmative Action to Ensure Equal Employment Opportunity) and to the provisions of Department of Transportation Regulations 49 CFR Part 26 (Disadvantaged Business Enterprise Participation).

The consultant or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- A. is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- B. has not knowingly entered into any contract or subcontract for this project with a contractor that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- C. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor (consultant) or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on the said list for use on the project, the Federal Aviation Administration may direct, through the sponsor, cancellation of the contract at no cost to the government.

E. Date and Location for Receipt of Proposals

Proposals pursuant to this request for proposals must be received at;

Kristin Saavedra
Chief Procurement Officer
505 Sims Street
Truth or Consequences, New Mexico 87901

Five copies of statements, limited to 25 pages, shall be submitted by **2:00 P.M. June 16, 2022**. The outside envelope shall be plainly marked in the bottom left-hand corner "Airport RFP: 21-22-009".

F. Format for Engineering Services Proposals:

- 1. Maximum of twenty (25) pages, excluding title, index, divider tabs, etc., cover or letter of transmittal.
- 2. Front cover with proposal title, date, and firm's name (cannot include any other text); not included in 25-page limitation.
- 3. Back cover without any text; not included in 25-page limitation.
- 4. Bound on left hand margin.
- 5. 8 1/2" x 11" paper.
- 6. Printed on one side of sheet only.
- 7. Five (5) copies of proposal are required.
- 8. Transmittal letter, if any, not to be included in twenty (25) page limit.
- 9. No other material to be included.

G. Envelopes

Sealed proposal envelopes shall be clearly marked "Airport RFP 21-22-009" on outside of the envelope. This information shall be placed on the lower left-hand corner of the envelope. Failure to comply with this requirement shall result in rejection of the proposal.

H. Award of Contract

The award shall be made to the responsible offeror or offerors whose proposals are most advantageous to the City of Truth or Consequences, taking into consideration the evaluation factors set forth in this request for proposal. After initial ranking of the proposals, at the City's sole option, the City may decide to interview the top two or three ranked firms to develop final rankings or may consider the rankings based on the proposals as being final. The City will undertake negotiations with any finalist firm and make recommendation to City Commission for approval. Selected firm fee negotiations will be completed at convenience of both parties. The City at its sole option may award engineering services contracts to multiple firms and issue task orders per project to the firm of its choice.

Approval will be at the next scheduled meeting of the City Commission of Truth or Consequences following conclusion of firm negotiations.

I. Contact with City Officials or Staff Members

All correspondences regarding the RFP shall be directed solely to Kristin Saavedra, Chief Procurement Officer, 505 Sims, Truth or Consequences, New Mexico, 87901 who can be contacted at (575) 894-6673 ext. 309.

J. Bribery and Kickbacks

As required by Section 13-1-191, N.M.S.A., 1978; it should be noted that it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employees (Section 30-4-1, N.M.S.A., 1978); it is a third-degree felony to commit the offense of demanding or receiving a bribe by a public officer or employee (Section 30-24-2, N.M.S.A., 1978); it is a fourth-degree felony to commit the offense of soliciting or receiving illegal kickbacks (Section 30-40-1, N.M.S.A., 1978); it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-40-2, N.M.S.A., 1978).

K. Responsibility of Proposer

At all times, it shall be the responsibility of the Proposer to see that their proposal is delivered to the City by the date and time set for the opening of bids or proposals. If the mail or delivery of said bid proposal is delayed beyond the deadline set for the bid or proposal opening, bids or proposals thus delayed will not be considered.

L. Costs of Preparing and Submitting Proposals

The City will not pay for any costs associated with the preparation or submission of proposals.

INSTRUCTIONS TO OFFERORS

1. DEFINITIONS AND TERMS

which clarifies, corrects, or changes the Request for Proposals. Plural: addenda.

- 1.1 **Addendum:** a written or graphic instrument issued prior to the opening of Proposals

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 design professional 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 or Proposer:** means an offeror or proposer who submits a responsive proposal and who has furnished, when required, information and data to prove that his 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 which 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. Failure to comply with a mandatory item or factor will result in the rejection of the offeror's proposal.

1.10 The terms can, may, should preferable, or prefers identify a desirable or discretionary item or factor.

2. REQUEST FOR PROSAL DOCUMENTS

2.1 COPIES OF REQUEST FOR PROPOSALS

A. A complete set of the Request for Proposals may be obtained from the Contracting Agency (unless another issuing office is designated in the RFP).

B. A complete set of the Request for Proposals 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 Request for Proposals.

C. The Contracting Agency in making copies of Request for Proposals 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 Request for Proposals shall be submitted to the Procurement Manager or 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 Requests for Proposals. 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 Request for Proposals.

2.3 ADDENDA

- A. Addenda will be mailed by certified mail with return receipt requested, by facsimile, by electronic mail, or hand delivered to all who are known by the Contracting Agency to have received a complete set of Request for Proposals.
- B. Copies of Addenda will be made available for inspection wherever Request for Proposals are on file for that purpose.
- C. No Addenda will be issued later than 5 days prior to the date for receipt of Proposals, except an Addendum withdrawing the Request for Proposals 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 transmittal letter.

3. PROPOSAL SUBMITTAL PROCEDURES

3.1 NUMBER, FOR AND STYLE OF PROPOSALS

- A. Offerors shall provide Five (5) copies of their proposal to the location specified on the cover page on or before the closing date and time for receipt of proposals.
- B. All proposals must be typewritten on standard 8 ½ x 11 paper and bound on the left-hand margin. 11x17-size sheets, if used, shall count as two pages per 11x17 sheet.
- C. A maximum of twenty (25) pages, excluding title, index, etc., Letter of Transmittal or front and back covers.
- D. The proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated:
 - 1) Letter of Transmittal, if any;
 - 2) Response to Background of Proponent Firm(s);
 - 3) Response to Qualifications and Assignments of Key Personnel
 - 4) Response to Project History

5) Response to Evidence of Financial Stability

- 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 nonconfidential portion of the proposal. A request that states that the entire proposal be kept 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, 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 prequalified 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 prequalified businesses (§13-1-134 NMSA 1978). For purposes of this RFP, if prequalification 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 §13-4-11 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 Proposals.
- 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 Bid envelope: Project Title, Project No., Request for Proposals 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 his 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 Request for Proposals 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 Requests for Proposals.

3.7 NOTICE OF CONTRACT REQUIREMENTS BINDING ON OFFEROR

- A. In submitting this proposal, the Offeror represents that the Offeror has familiarized himself with the nature and extent of the Request for Proposals dealing with federal, state, and local requirements which are a part of these Request for Proposals.
- 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 Request for Proposals 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 qualification for the type of service required, and shall be based on the evaluation factors set forth in this RFP. 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 funding, 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) The evaluation of proposals will be performed by an evaluation committee composed of representatives selected by the Contracting Agency. 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 furnish 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 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 request for proposals 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 his designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning a procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorney's fees (§13-1-174 NMSA 1978).
- D. The Purchasing Agent or his 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 1978).

5.2 EXECUTION AND APPROVAL OF AGREEMENT

The Agreement shall be signed by the Successful Offeror and returned within an agreed upon 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 a 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: NONE

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 his agents and employees are independent Contractors and are not employees of the Contracting Agency. The Consultant and his 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 prohibit 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 Service will be negotiated with the Offeror selected. Construction Observation will be calculated on a Payroll Cost times a multiplier³. Additional Services will be calculated on a Payroll Cost times a multiplier³.

[Note: ³ Or as appropriate to agreed upon.]

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 [X] 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]

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 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 either 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.

"Contract" means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“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.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who 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 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:

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(The above fields are unlimited in size)

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 Veteran's 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.



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: I.7

SUBJECT: Review and Approval of the Memorandum of Understanding (MOU) between the Truth or Consequences Police Department and the NM Attorney General's Office for an Internet Crimes Against Children Taskforce

DEPARTMENT: Police Department

DATE SUBMITTED: July 8, 2022

SUBMITTED BY: Chief Victor Rodriguez

WHO WILL PRESENT THE ITEM: Chief Victor Rodriguez

Summary/Background:

Seeking Commission approval of the Memorandum of Understanding (MOU) between the Truth or Consequences Police Department and the NM Attorney General's Office for an Internet Crimes Against Children Taskforce

Recommendation:

Approval of MOU

Attachments:

- Internet Crimes Against Children Taskforce MOU

-

Fiscal Impact (Finance): No

-

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. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 7-13-2022

New Mexico Attorney General's Office
Internet Crimes Against Children Task Force

Memorandum of Understanding

Parties

The New Mexico Attorney General's Office (NMAGO) Internet Crimes Against Children (ICAC) Task Force is a partially grant-funded, multi-agency endeavor. Grant funding comes from the Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

This Memorandum of Understanding (MOU) is entered into by and between the following agencies:

Truth or Consequences Police Department and New Mexico Attorney General's Office

Nothing in this MOU should be construed as limiting or impeding the basic spirit of cooperation that exists between the participating agencies. It will be the sole responsibility of the New Mexico Attorney General's Office to meet the program objectives of the grant funding from the Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Mission

The mission of the NMAGO ICAC Task Force is to apprehend and prosecute Internet sexual predators who exploit children through the use of computers. The Task Force will investigate crimes involving Internet sexual predators. The Task Force will produce high-quality investigations leading to successful prosecutions of Internet sexual predators. The Task Force will participate in community education efforts regarding the prevention of Internet Crimes Against Children. The Task Force will provide funding for investigative training and equipment to employees of member-agencies in New Mexico. Task Force members are prepared to respond on short notice to assist law enforcement agencies, subject to availability.

Purpose

The purpose of this MOU is to delineate the responsibilities of the NMAGO ICAC Task Force, maximize inter-agency cooperation, and formalize relationships between member-agencies. The Task Force will investigate suspects who utilize the Internet to seek children as sexual partners and/or who traffic in child pornography. Specific ICAC crimes include Child Luring and Dissemination of Material That is Harmful to A Minor By Computer, as described in Chapter 30, Article 37, NMSA 1978. Under Federal law, sexual exploitation of children is described in Title 18, Chapter 11. This MOU does not prohibit the investigation of other Internet crimes against children.

Organizational Structure

The NMAGO ICAC Task Force includes investigators and supervisors from various local, state, and federal law enforcement agencies who provide assistance subject to availability.

Direction

All participants acknowledge that the Task Force is a cooperative operation. The chain of command supervision of the NMAGO Investigations Division is responsible for the policy and general direction of the Task Force. The Task Force supervisor will periodically contact supervisors and investigators from

other participating agencies to keep them informed of training opportunities, unusual circumstances, problems and successes of the Task Force.

Activities of the ICAC Task Force are further governed by the Operational and Investigative standards of the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention. The document describing the Operational and Investigative Standards contains confidential information not for public release. Member agencies must understand and comply with the standards. The standards are proprietary to the ICAC Board. Release of the standards is protected because release will likely jeopardize ongoing investigations.

Supervision

The day-to-day operational supervision and administrative control of the Task Force is the responsibility of the ICAC Task Force Supervisor, assigned to the NMAGO Investigations Division. The supervision will work cooperatively with other supervisors and investigators from the participating agencies to keep them informed of Task Force issues and progress. Responsibility for the personal and professional conduct of Task Force members remains with the respective agencies, in keeping with each agency's rules regarding conduct.

Investigations

All NMAGO ICAC Task Force investigations will be conducted in a spirit of cooperation and participating agencies availability to assist in investigations. Investigations will follow guidelines established by each agency's respective policy manual or guidelines. This MOU is not intended to infringe on the ongoing investigations of any other agency. Nothing mandates a participating agency to conduct an ICAC investigation if the participating agency no longer has the ability to do so. It is agreed that unilateral acts on the part of employees involved in Task Force investigations are not in the best interest of the Task Force.

Prosecution

The criteria for determining whether to prosecute a particular violation in state or federal court will focus on achieving the greatest overall benefit to the public. Any question arising pertaining to jurisdiction will be resolved through discussions among the investigative and protectoral agencies having jurisdiction in the matter. When joint jurisdiction exists, this MOU does not preclude additional prosecution(s) in other jurisdictions.

Media Relations and Releases

Media release information regarding joint Task Force operations should be coordinated and made jointly by all participant agencies. No information pertaining to the Task Force should be released to the media before notification to the participant agencies. Media releases shall not include information regarding specific investigative techniques.

All efforts will be made to protect undercover on-line identities. Member agencies will refrain from releasing the undercover on-line identity, age, or sex of investigators. Release of such information could jeopardize ongoing investigations where the same undercover name, age and sex are currently in use.

Funding for Equipment

Dedicated grant funds may be provided for equipment to be loaned to the participating agencies in the course of investigations involving Internet crimes against children. The equipment shall be distributed in

a manner permitting agencies in New Mexico to equip law enforcement with tools that will improve the investigative process.

Funding for Training

Dedicated ICAC grant funds may be provided to finance training that would be useful in the investigation of Internet Crimes Against Children. The funds shall be distributed in a manner that will permit various agencies in New Mexico to gain knowledge and skills needed to investigate Internet crimes against children. Member agencies utilizing ICAC funds for training agree to conduct investigations of crimes against children as required within their jurisdictions based on availability of each agency. Specific ICAC crimes include Child Luring and dissemination of material that is harmful to a minor by computer, as described in Title 18, Chapter 110.

Duration and Termination

This MOU will remain in effect for a minimum two-year period beginning on the last date of signing listed below. Renewal of an agreement will be automatic unless the agreement is terminated by either party. Task Force member agencies may voluntarily withdraw participation at any time by providing written notice. Membership may be terminated by written notice of violation of ICAC operational and investigative standards.

Jay Ratliff- SAiC/Commander
New Mexico Attorney General's Office
Internet Crimes Against Children (ICAC)

Victor Rodriguez, Chief of Police
Truth or Consequences Police Department

Date: _____

Date: _____



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: I.8

SUBJECT: Review and Approval of the Memorandum of Understanding (MOU) between the Truth or Consequences Police Department and the NM Attorney General's Office for a Human Trafficking Taskforce

DEPARTMENT: Police Department

DATE SUBMITTED: July 8, 2022

SUBMITTED BY: Chief Victor Rodriguez

WHO WILL PRESENT THE ITEM: Chief Victor Rodriguez

Summary/Background:

Seeking Commission approval of the Memorandum of Understanding (MOU) between the Truth or Consequences Police Department and the NM Attorney General's Office for a Human Trafficking Taskforce

Recommendation:

Approval of MOU

Attachments:

- Human Trafficking Taskforce MOU

Fiscal Impact (Finance): No

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. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 7-13-2022

New Mexico Office of the Attorney General
Human Trafficking Task Force

Memorandum of Understanding

Parties

The New Mexico Office of the Attorney General (NMOAG) Human Trafficking Task Force (NMHTTF) is a grant-funded, multi-agency endeavor. Grant funding comes from the Department of Justice, Office of Justice Programs, and Bureau of Justice Assistance.

This Memorandum of Understanding (MOU) is entered into by and between the following agencies:

TRUTH OR CONSEQUENCES POLICE DEPARTMENT

Nothing in this MOU should be construed as limiting or impeding the basic spirit of cooperation that exists between the participating agencies.

Purpose

The purpose of the *Enhanced Collaborative Model to Combat Human Trafficking Program* is to support the development and enhancement of multidisciplinary human trafficking task forces that implement collaborative approaches to combat all forms of human trafficking—sex trafficking and labor trafficking—of foreign nationals and U.S. citizens (of all sexes and ages) within the United States. Funding through this program will be used to assist in developing effective and sustainable multidisciplinary task forces that will implement victim-centered and coordinated approaches to identifying victims of all types of human trafficking, addressing the individualized needs of victims through quality services, and investigating and prosecuting human trafficking cases at the local, state, tribal, and federal levels.

Goals, Objectives, and Activities

The crime of human trafficking requires a comprehensive and collaborative response between law enforcement and service providers. By signing this MOU, the signing agencies agree to:

- Collaborate productively with other NMHTTF members to help establish and sustain effective leadership and a structure that will marshal the resources necessary to support the successful identification of victims of all forms of human trafficking;
 - Hold quarterly task force meetings;
 - Develop and update operational protocols
- Make data-driven decisions based on a shared understanding of the prevalence, scope, and nature of human trafficking within the State of New Mexico.
 - Establish plans for routine collection of critical data;
 - Develop a process for sharing and analyzing data;
 - Coordinate on the submission of semiannual progress reports (only applicable to NMOAG and The Life Link);
 - Develop a plan for evaluation task force performance and effectiveness, and use findings to improve task force performance

New Mexico Office of the Attorney General
Human Trafficking Task Force

- Identify victims of all types of human trafficking through the use of coordinated training, public awareness and outreach efforts, and trauma-informed screening and interview techniques;
- Cross training will be coordinated and address appropriate subjects relating to human trafficking including the:
 - Understanding of the complex legal and immigration issues attached to assisting victims of human trafficking;
 - Understanding the complex service needs of human trafficking victims to ensure their safety, reduce trauma, and support the victims' ability to work with law enforcement to hold their traffickers accountable;
 - Understanding how law enforcement can proactively identify, rescue, and place victims with service providers;
 - Understanding that sex trafficking in Indian Country is a significant problem, often overlooked as victims, with tribal women and children suffering at higher rates than the general population in New Mexico communities.
- Abide by any confidentiality, safety, and media relations agreements;
- Make a "good faith" effort to resolve any and all program implementation challenges.

Organizational Structure

The NMAGO Human Trafficking Task Force includes investigators and supervisors from various local, state, and federal law enforcement agencies (USAO, FBI, and Tribal Law Enforcement) and the service provider (The Life Link).

Direction

All participants acknowledge that the Task Force is a cooperative operation with the New Mexico Office of the Attorney General being the lead law enforcement agency. Activities of the Human Trafficking Task Force are further governed by the Operational and Investigative standards of the United States Department of Justice.

Supervision

The day-to-day operational supervision and administrative control of the Task Force is the responsibility of the Human Trafficking Task Force Supervisor, assigned to the NMOAG Investigations Division. The supervisor will work cooperatively with other supervisors and investigators from the participating agencies to keep them informed of Task Force issues and progress. Responsibility for the personal and professional conduct of Task Force members remains with the respective agencies, in keeping with each agency's rules regarding conduct.

Investigations

All NMAGO Human Trafficking Task Force investigations will be conducted in a spirit of cooperation. Investigations will follow guidelines established by each agency's respective policy manual or guidelines. This MOU is not intended to infringe on the ongoing investigations of any other agency.

New Mexico Office of the Attorney General
Human Trafficking Task Force

Prosecution

The criteria for determining whether to prosecute a particular violation in state or federal court will focus on achieving the greatest overall benefit to the public. Any question arising pertaining to jurisdiction will be resolved through discussions among the investigative and protectoral agencies having jurisdiction in the matter. When joint jurisdiction exists, this MOU does not preclude additional prosecution(s) in other jurisdictions.

Media Relations and Releases

Media release information regarding joint Task Force operations should be coordinated and made jointly by all participant agencies. No information pertaining to the Task Force should be released to the media before notification to the participant agencies. Media releases shall not include information regarding specific investigative techniques.

Duration and Termination

This MOU will remain in effect for a minimum three-year period beginning on the last date of signing listed below. Renewal of the agreement will be automatic unless the agreement is terminated by either party. Task Force member agencies may voluntarily withdraw participation at any time by providing written notice. Membership may be terminated by written notice of violation of Human Trafficking operational and investigative standards.

Jay Ratliff
SAiC/Commander
Human Trafficking Task Force

Victor Rodriguez
Chief of Police
Truth or Consequences Police Department

Date: _____

Date: _____

This document has been approved as to form by the NMAGO.



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: 1.9

SUBJECT: Selection of appointees to serve on the Magistrate Court Designation Committee

DEPARTMENT: City Manager's Office

DATE SUBMITTED: July 8, 2022

SUBMITTED BY: City Clerk Torres

WHO WILL PRESENT THE ITEM: City Manager Swingle

Summary/Background:

On 6/22/22 the Commission adopted a Resolution to designate the Sierra County Magistrate Court as the court having jurisdiction over the City of Truth or Consequences Code of Municipal Ordinances. Within 15 days from the adoption of the resolution the governing body of the municipality shall create a municipal ordinance jurisdiction advisory committee. The committee shall be composed of the following members: (1) the Mayor (2) A member of the Governing Body (3) A municipal Judge (4) The Chief of Police (5) 3 members of the public, each selected by the Mayor, the Governing Body, and the Municipal Judge.

Recommendation:

Appoint 7 members to serve on the Magistrate Court Designation Committee.

Attachments:

- SS 35-14-1

Fiscal Impact (Finance): No

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 7-13-2022

appearance bonds, summons, service and appeal, effective January 1, 1989.

ANNOTATIONS

Meaning of "trial de novo". — Appeals from a magistrate court to the district court shall be determined by trial de novo which means "answ." *Southern Union Gas Co. v. Taylor*, 1971-NMSC-087, 82 N.M. 670, 486 P.2d 606.

Amendment to show jurisdiction allowed. — Former statute called for an affirmative showing on the face of the papers as to jurisdictional matters, and where it did not so appear upon any appeal, and yet the jurisdiction actually existed, it was the duty of district court to allow the necessary amendment to show such fact. *Tietjen v. McCoy*, 1918-NMSC-074, 24 N.M. 164, 172 P. 1144 (decided under former law).

Amendment not sufficient. — Amendment to complaint to show jurisdiction by means of a paper clipped to the complaint was not sufficient. *Bell v. Beck*, 1989-NMSC-086, 48 N.M. 816, 92 P.2d 992 (decided under former law).

Error in refusal to permit amendment. — In action of replevin begun in justice of peace court (now magistrate court) and appealed to district court, district court erred in refusing to permit plaintiff to amend affidavit of

replevin in controversy. *Romero v. Luna*, 1892-NMSC-011, 6 N.M. 440, 30 P. 855 (decided under former law).

Leave to amend not to be withheld. — Power of district court to exercise its discretion in giving leave to amend was not to be withheld in cases of appeal, when it appeared that justice of the peace (now magistrate) had jurisdiction of subject matter in controversy and of parties in the case. *Sanchez v. Luna*, 1857-NMSC-012, 1 N.M. 238 (decided under former law).

Grant of summary judgment not error. — Where there was nothing to show the trial court failed to consider the matters he was required to consider by Rule 56(c), now Rule 1-056C, N.M.R. Civ. P., grant of summary judgment regardless of magistrate's findings was not error. *Southern Union Gas Co. v. Taylor*, 1971-NMSC-087, 82 N.M. 670, 486 P.2d 606.

Scope of appeal. — Where defendant did not challenge his convictions on appeal and did not claim to be aggrieved, but only challenged constitutionality of a federal statute and its effect on him, defendant lacked the right to appeal his conviction. *State v. Garcia*, 2009-NMCA-045, 188 N.M. 444, 68 P.3d 1184.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 47 Am. Jur. 2d Justices of the Peace § 98.

51 C.J.S., Justices of the Peace §§ 151, 153(3), 154(3), 174, 180, 226.

ARTICLE 14

Municipal Courts

Sec.

35-14-1. Municipal court; creation.

35-14-2. Jurisdiction.

35-14-3. Judges; qualifications; bond; salary.

35-14-4. Election; term; vacancy.

35-14-5. Temporary incapacity or absence of a municipal judge.

35-14-6. Duties of temporary municipal judge.

Sec.

35-14-7. Monthly reports and remittances.

35-14-8. Itemized statement.

35-14-9. Penalty.

35-14-10. Municipal judges; training required.

35-14-11. Municipal ordinance; court costs; collection; purpose.

35-14-12. Municipal courts; automation required.

35-14-1. Municipal court; creation.

A. Except for municipalities with a population of fewer than two thousand five hundred or more than five thousand persons in the most recent federal decennial census lying within the boundaries of a class A county with a population of more than two hundred thousand persons in the most recent federal decennial census and municipalities that have adopted an effective ordinance pursuant to Subsection D of this section, there is established a municipal court in each incorporated municipality. The municipal courts shall be presided over by municipal judges. As used in Chapter 35, Articles 14 and 15 NMSA 1978, "municipality" includes H class counties.

B. The governing body of a municipality that is not governed by home rule, territorial or special charter and having a population fewer than ten thousand persons in the most recent federal decennial census, where the municipal court is located twenty-five or fewer miles from the nearest magistrate court, may by resolution express its intent to designate the magistrate court of the county in which the municipality is located as the court having jurisdiction over municipal ordinances. Within fifteen days from the adoption of a resolution pursuant to this section, the governing body of the municipality shall create a "municipal ordinance jurisdiction advisory committee". The municipal ordinance jurisdiction advisory committee shall be composed of the following members, who shall be residents of the municipality:

- (1) the mayor;
- (2) a member of the governing body;
- (3) a municipal judge;
- (4) the chief of police; and

(5) three members of the public, each selected by the mayor, the governing body and the municipal judge.

C. A municipal ordinance jurisdiction advisory committee shall:

(1) hold at least one public hearing on the question of designating the magistrate court of the county in which the municipality is located as the court having jurisdiction over municipal ordinances;

(2) hear testimony from all interested persons, including the mayor, the governing body and the municipal judge; and

(3) submit a report, including recommendations directly to the governing body of the municipality, with copies to the mayor and municipal judge.

D. Following receipt of a report from the municipal ordinance jurisdiction advisory committee, the governing body of a municipality may, subject to approval by the supreme court, adopt an ordinance upon a three-fourths majority vote to designate the magistrate court of the county in which the municipality is located as the court having jurisdiction over municipal ordinances. An ordinance adopted shall become effective only upon supreme court approval and the expiration of the term of the municipal judge in office on the date of the supreme court's approval of the ordinance.

E. Within five days after the effective date of an ordinance adopted pursuant to Subsection D of this section, the governing body of the municipality shall:

(1) forward a copy of the ordinance to the magistrate court and to the administrative offices of the courts; and

(2) provide to the magistrate court copies of all municipal ordinances over which the magistrate court will have jurisdiction.

F. A magistrate court designated pursuant to Subsection D of this section shall, with respect to ordinances of the municipality:

(1) follow the rules of procedure for the municipal courts and the procedures provided Chapter 35, Article 15 NMSA 1978;

(2) impose no fine or sentence greater than that permitted for municipalities;

(3) remit monthly to the state the court automation and judicial education fees collected pursuant to Subsection B of Section 35-14-11 NMSA 1978 as a result of enforcement of municipal ordinances; and

(4) remit monthly to the municipality the corrections fee collected pursuant to Subsection B of Section 35-14-11 NMSA 1978 as a result of the enforcement of municipal ordinances.

G. Any municipality that has passed an ordinance designating the magistrate court as the court having jurisdiction over municipal ordinances may re-establish the municipal court as the court having jurisdiction over municipal ordinances through the following procedures:

(1) the governing body of the municipality may pass an ordinance rescinding the ordinance that was made pursuant to Subsection B of this section; or

(2) following receipt of a petition signed by at least twenty percent of the registered voters who voted in the last municipal election for the office of mayor:

(a) convene a municipal ordinance jurisdiction advisory committee pursuant to Subsection B of this section that shall make a report and recommendation, if any, to the governing body of the municipality; and

(b) the governing body shall indicate its assent to re-establishment of the municipal court by ordinance.

History: 1983 Comp., § 37-1-1, enacted by Laws 1981, ch. 208, § 1; 1987, ch. 215, § 1; 1988, ch. 62, § 152; 1978, ch. 343, § 12; 1984, ch. 80, § 2; 1985, ch. 123, § 2; 1992, ch. 143, § 1; 2019, ch. 244, § 1.

Cross references. — For classification of counties, see 4-44-1 and 4-44-3 NMSA 1978.

For Rules of Procedure for the Municipal Courts, see Rule 8-101 NMRA et seq.

The 2019 amendment, effective June 14, 2019, revised procedures regarding the designation by a municipality of the magistrate court of the county in which the

municipality is located as the court having jurisdiction over municipal ordinances, provided that the municipality establish the municipal court as the court having jurisdiction over municipal ordinances, and the court-imposed fees to be remitted to the state pursuant to Subsection A, after "pursuant to Subsection B" added "D"; added new Subsections B through F, designated former Subsections B and C as Subsections E and F, respectively, in Subsection E, in the paragraph, after the subsection designation, governing body of a municipality with a petition



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: I.10

SUBJECT: Interview of applicants for the Planning & Zoning Commission

DEPARTMENT: Clerk's Office

DATE SUBMITTED: July 8, 2022

SUBMITTED BY: Angela A. Torres, City Clerk

WHO WILL PRESENT THE ITEM: City Clerk Torres

Summary/Background:

The Planning & Zoning Commission has 4 vacancies on their board. Rick Dumiak, Eduardo Alicea, Robert Carey, Esther Luchini, and Susan Buhler applied to be members on the board. During the 6/22/22 Commission Meeting, the governing body interviewed applicants Rick Dumiak, Eduardo Alicea, and Susan Buhler. Applicants Robert Carey and Esther Luchini were not able to attend the 6/22/22 meeting. Therefore, the governing body voted to postpone the appointment of board members until they could interview all 5 applicants.

Recommendation:

None. Interviews only.

Attachments:

- Robert Carey and Esther Luchini board applications.
- -

Fiscal Impact (Finance): No

-

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. -

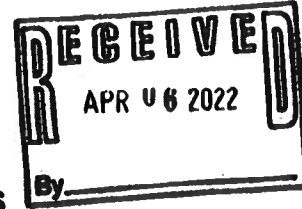
Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 7-13-2022



City of Truth or Consequences
City Boards Application



Name: ROBERT CAREY Address: 820 W 4th AVE
Phone: 917-699-9493 Email: ROBTCAREY@GMAIL.COM

I am interested in serving as a member of one the following Boards:

- | | | |
|--|--|---|
| <input type="checkbox"/> Airport Advisory Board | <input type="checkbox"/> Public Arts Advisory Board | <input type="checkbox"/> Golf Course Advisory Board |
| <input type="checkbox"/> Public Utility Advisory Board | <input type="checkbox"/> Library Advisory Board | <input type="checkbox"/> Recreation Advisory Board |
| <input type="checkbox"/> Lodger's Tax Advisory Board | <input checked="" type="checkbox"/> Planning & Zoning Commission | <input type="checkbox"/> Impact Fee Board |
| <input type="checkbox"/> Other: _____ | | |

My qualifications are:

I AM A GOOD LISTENER
I HAVE BEEN A MEMBER OF THE COMMUNITY AND A PROPER
OUTREACH IN TORC FOR 8 YEARS NOW AND AM FAMILIAR
WITH SOME ISSUES AND CONCERNS
I CAN COMMUNICATE WELL AND AM A FAIR AND OPEN
MINDED INDIVIDUAL.

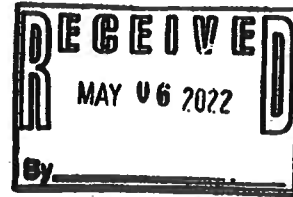
THANK YOU FOR YOUR CONSIDERATION.

I hereby certify that my appointment to this board neither creates, nor should create, any conflict of interest for myself or the Board. I further confirm that any possible conflict of interest that may arise will be reported to the Board and the City Clerk.

Signature: [Signature] Date: 4.6.22



City of Truth or Consequences
City Boards Application



Name: Arthur Luchini Address: _____
Phone: 575.740.7372 Email: esluchini@yahoo.com

I am interested in serving as a member of one the following Boards:

- | | | |
|--|--|---|
| <input type="checkbox"/> Airport Advisory Board | <input type="checkbox"/> Public Arts Advisory Board | <input type="checkbox"/> Golf Course Advisory Board |
| <input type="checkbox"/> Public Utility Advisory Board | <input type="checkbox"/> Library Advisory Board | <input type="checkbox"/> Recreation Advisory Board |
| <input type="checkbox"/> Lodger's Tax Advisory Board | <input checked="" type="checkbox"/> Planning & Zoning Commission | <input type="checkbox"/> Impact Fee Board |
| <input type="checkbox"/> Other: _____ | | |

My qualifications are:

- City of Torc property owner
- lifelong Sierra County resident

I hereby certify that my appointment to this board neither creates, nor should create, any conflict of interest for myself or the Board. I further confirm that any possible conflict of interest that may arise will be reported to the Board and the City Clerk.

Signature: Arthur Luchini Date: 7 May 2022



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: I.11

SUBJECT: Selection of board members to fill the vacancies on the Planning & Zoning Commission

DEPARTMENT: Clerk's Office

DATE SUBMITTED: July 8, 2022

SUBMITTED BY: Angela A. Torres, City Clerk

WHO WILL PRESENT THE ITEM: City Clerk Torres

Summary/Background:

The Planning & Zoning Commission has 4 vacancies on their board. We received applications from Rick Dumiak, Eduardo Alicea, Robert Carey, Esther Luchini, and Susan Buhler. If selected, two members shall serve for one year, and two shall serve for two years so that there will be overlapping tenures of office. Each term shall expire on June 30, provided, however, that any member of the Board shall continue to hold his office until his successor is appointed and qualified. The Code states that 3 members shall serve for two years, and that 3rd member is our only remaining member Chris Sisney.

Recommendation:

Selection of members to serve on the Planning & Zoning Commission.

Attachments:

- Sec. 2-226. - Creation
- -

Fiscal Impact (Finance): No

-

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 7-13-2022

Sec. 2-226. - Creation.

There is hereby created a Planning and Zoning Commission consisting of five members to be appointed by the Governing Body, whose terms shall be for two years, except that three of the first appointees shall serve for two years and two for one year. There after all terms of the Planning and Zoning Commission members shall be for two years, so that there will be overlapping tenures of office. Each term shall expire on June 30, provided, however, that any member of the Board shall continue to hold his office until his successor is appointed and qualified.

(Code 1962, § 2-1-1; Ord. No. 456-97, § 1, 5-11-98)



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: I.12

SUBJECT: Consideration of the re-appointment of Mark Shipley to the Airport Advisory Board.

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: July 8, 2022

SUBMITTED BY: Angela A. Torres, Clerk-Treasurer

WHO WILL PRESENT THE ITEM: Angela A. Torres, Clerk-Treasurer

Summary/Background:

Mark Shipley is a current member on the Airport Advisory Board. His term expired in June 2022. On July 5, 2022, the Airport Advisory Board recommended the re-appointment Mr. Shipley to serve another 2 year term on the board.

Recommendation:

Re-appointment of Mark Shipley to serve another 2 year term on the Airport Advisory board.

Attachments:

- Board Member Application.

-

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 7-13-2022



City of Truth or Consequences
City Boards Application



Name: Mark Shipley Address: 603 Skyline Dr. Elephant Butte, NM
Phone: 509 998 4936 Email: jalonhomesandconstruction@gmail.com

I am interested in serving as a member of one the following Boards:

- ☒ Airport Advisory Board ☐ Public Arts Advisory Board ☐ Golf Course Advisory Board
☐ Public Utility Advisory Board ☐ Library Advisory Board ☐ Recreation Advisory Board
☐ Lodger's Tax Advisory Board ☐ Planning & Zoning Commission ☐ Impact Fee Board
☐ Other: _____

My qualifications are:

Current Airport Advisory board chairman.
private pilot
Business man.

I hereby certify that my appointment to this board neither creates, nor should create, any conflict of interest for myself or the Board. I further confirm that any possible conflict of interest that may arise will be reported to the Board and the City Clerk.

Signature: Mark Shipley Date: 6/30/22



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: July 13, 2022

Agenda Item #: I.13

SUBJECT: Consideration of the re-appointment of Larry Mullenax to the Airport Advisory Board.

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: July 8, 2022

SUBMITTED BY: Angela A. Torres, Clerk-Treasurer

WHO WILL PRESENT THE ITEM: Angela A. Torres, Clerk-Treasurer

Summary/Background:

Larry Mullenax is a current member on the Airport Advisory Board. His term expired in June 2022. On July 5, 2022, the Airport Advisory Board recommended the re-appointment Mr. Mullenax to serve another 2 year term on the board.

Recommendation:

Re-appointment of Larry Mullenax to serve another 2 year term on the Airport Advisory board.

Attachments:

- Board Member Application.

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: -

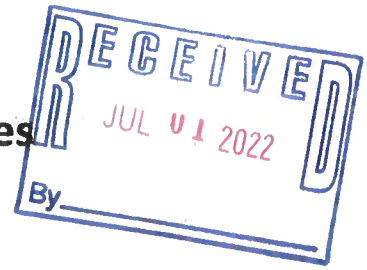
☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 7-13-2022



City of Truth or Consequences

City Boards Application



Name: Larry W. Mullenax Address: 40 San Miguel Rd. Cuchillo, NM 87901
Phone: 575-743-0005 Email: lmullenax@aol.com

I am interested in serving as a member of one the following Boards:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> Airport Advisory Board | <input type="checkbox"/> Public Arts Advisory Board | <input type="checkbox"/> Golf Course Advisory Board |
| <input type="checkbox"/> Public Utility Advisory Board | <input type="checkbox"/> Library Advisory Board | <input type="checkbox"/> Recreation Advisory Board |
| <input type="checkbox"/> Lodger's Tax Advisory Board | <input type="checkbox"/> Planning & Zoning Commission | <input type="checkbox"/> Impact Fee Board |
| <input type="checkbox"/> Other: _____ | | |

My qualifications are:

Renew current position

I hereby certify that my appointment to this board neither creates, nor should create, any conflict of interest for myself or the Board. I further confirm that any possible conflict of interest that may arise will be reported to the Board and the City Clerk.

Signature: _____

Larry W. Mullenax

Date: _____

7/1/22