

Amanda Forrister
Mayor

Rolf Hechler
Mayor Pro-Tem

Merry Jo Fahl
Commissioner



Destiny Mitchell
Commissioner

Shelly Harrelson
Commissioner

Bruce Swingle
City Manager

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REGULAR MEETING

THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3RD ST., ON WEDNESDAY, AUGUST 24, 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. Commemorative Certificate of Appreciation for Collysue Lawson. Commissioner Mitchell

D. PUBLIC COMMENT (3 Minute Rule Applies)

E. REPORTS

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

F. CONSENT CALENDAR

1. City Commission Regular Minutes, August 10, 2022
2. Acknowledge Public Utility Advisory Board Minutes, July 18, 2022
3. Take Home Vehicle Form for Parks Department

G. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Resolution No. 09 22/23 Proclaiming the City's Commitment to End All Traffic Fatalities and Serious Injury Accidents in Truth or Consequences Through Participation in The Vision Zero Pledge. Wilson & Company
2. Discussion/Action: Publication of Ordinance No. 735 Amending Section 14-48 pertaining to the Customer Generated Renewable Energy Program. City Manager Swingle
3. Discussion/Action: Publication of Ordinance No. 740 authorizing the issuance of the City of Truth or Consequences, New Mexico Water System Improvement revenue bonds, Series 2022 in the principal amount of \$750,000 for the purpose of pre-development financing. Chris Muirhead and Traci Alvarez, Assistant City Manager

H. NEW BUSINESS

1. Discussion/Update: City Wide Project Update. Wilson & Company
2. Discussion/Action: Accept and Approve Wilson and Co. Inc. recommendation of award Main Street District (MSD) Water System Improvements. Wilson & Company
3. Discussion/Action: Accept and Approve State of NM Tourism Department Clean and Beautiful Grant Program Agreement. Traci Alvarez, Assistant City Manager
4. Discussion/Action: Approval of the 2022 Youth Soccer Association field fees. City Manager Swingle
5. Discussion/Action: Approval of the Smartphone Water Meter Reading Agreement. City Manager Swingle
6. Discussion/Action: Approval of Purchase Requisitions over \$20,000. Carol Kirkpatrick, Finance Director

I. EXECUTIVE SESSION

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

J. 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 SEPTEMBER 14, 2022



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: August 24, 2022

Agenda Item #: C.1

SUBJECT: Commemorative Certificate of Appreciation for Collysue Lawson.
DEPARTMENT: Clerk's Office
DATE SUBMITTED: August 17, 2022
SUBMITTED BY: Angela A. Torres, City Clerk
WHO WILL PRESENT THE ITEM: Commissioner Mitchell

Summary/Background:

Commissioner Mitchell would like to dedicate a Commemorative Certificate to Collysue Lawson. She was one of our local community members who was a dedicated advocate for our local swimming pool.

Recommendation:

Presentation Only.

Attachments:

-
- -

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 8-24-2022



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: August 24, 2022

Agenda Item #: F.1

SUBJECT: City Commission Regular Minutes, August 10, 2022
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: August 17, 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 8-24-2022

**CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
WEDNESDAY, AUGUST 10, 2022**

A. CALL TO ORDER:

The meeting was called to order by Mayor Amanda Forrister at 9:00 a.m., who presided and Lisa Gabaldon, Deputy City Clerk, 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
Hon. Merry Jo Fahl, Commissioner
Hon. Shelly Harrelson, Commissioner via teleconference

Also Present: Bruce Swingle, City Manager
Traci Alvarez, Assistant City Manager
Jay Rubin, City Attorney
Victor Rodriguez, Chief of Police
Lisa Gabaldon, Deputy Clerk

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 Mitchell to lead the Pledge of Allegiance.

4. APPROVAL OF AGENDA:

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

C. PRESENTATIONS:

1. Presentation of City of Truth or Consequences Employee Service Anniversary Awards:

City Manager Swingle presented an Employee Service Anniversary Award to Alona Niebergall for 2 years of service with the City of Truth or Consequences.

City Manager Swingle and Tara Manning, Animal Shelter Manager presented an Employee Service Anniversary Award to Jessica Bowles for 2 years of service with the City of Truth or Consequences

City Manager Swingle and Sonya Renfro, Utility Office Manager presented an Employee Service Anniversary Award to Katy Martinez for 2 years of service with the City of Truth or Consequences.

City Manager Swingle and Andy Alvarez, Sanitation Director presented an Employee Service Anniversary Award to Jeremiah Easley for 2 years of service with the City of Truth or Consequences.

City Manager Swingle and Sonya Renfro, Utility Office Manager presented an Employee Service Anniversary Award to Rene Loera for 3 years of service with the City of Truth or Consequences.

City Manager Swingle presented an Employee Service Anniversary Award to OJ Hechler for 5 years of service with the City of Truth or Consequences.

City Manager Swingle and Bo Easley, Electric Department Director presented an Employee Service Anniversary Award to William Montoya for 12 years of service with the City of Truth or Consequences.

City Manager Swingle and Traci Alvarez, Assistant City Manager presented an Employee Service Anniversary Award to Pat O'Hanlon for 29 years of service with the City of Truth or Consequences.

City Manager Swingle and Victor Rodriguez, Chief of Police presented an Employee Service Anniversary Award to Donald Venable for 5 years of service with the City of Truth or Consequences.

City Manager Swingle and Victor Rodriguez, Chief of Police presented an Employee Service Anniversary Award to Rafael Marin for 6 years of service with the City of Truth or Consequences.

D. PUBLIC COMMENT (3 Minute Rule Applies):

George Henson addressed the Commission with comments related to:

- (1) Sustaining his mental health and the difficult time he feels he has had with Code Enforcement, City Attorney Rubin, and Assistant City Manager Alvarez.
- (2) He expressed his feelings about the removal of his property that was on the city easement.
- (3) He expressed his differences with City Attorney Rubin. He feels that we need to have better applicants.
- (4) He commented on Chief Rodriguez, and he feels that he is being attacked by the city, and there is some miscommunication because he spent since February amending his property and it still came to a violation.

E. REPORTS:

City Commission Reports:

City Manager Swingle reported the following:

- The employees are doing a fantastic job. He couldn't be prouder of them.
- He received some calls and emails from community members supporting the city's efforts to clean up the city and remove the blight from the community. It is something that we are committed to and we are going to continue to do it until we get the city cleaned up. It is going to take a lot of time to do that, but the city is committed to doing that.
- We received a thank you letter from the county for our assistance with them, and with the forest service on the fire. It recognized the cooperation between all of the agencies so that was a fantastic correspondence to receive.
- We continue to have vacancies on the Airport Advisory Board, Golf Course Advisory Board, Lodgers Tax Advisory Board, Impact Fee Advisory Board, and Recreation Advisory Board. Anyone interested in serving on those advisory boards, please contact the City Clerk's Office.
- We still have a large amount of water leaks every week. Staff is rolling through them as fast as they can. However, it is going to be an ongoing basis for a long time until we can make the permanent fix which is the infrastructure improvements.
- You received an email from an individual who wanted to purchase the easement between his property and the Dollar General Store that is being constructed as we speak. We've looked at that easement and currently we don't have any infrastructure on it. However, the private sector does. TDS is using that easement for internet services, and with future properties and future development of the property in that area it doesn't make sense for the city to entertain the idea of selling that easement. We will likely use it in the future for those properties when they are developed.
- He provided a draft copy of the street, water and wastewater bond questions, and a presentation of what the city's position is on it outlining what its purpose is, the need for it and the impact that it will have on property owners. On the streets

current status, right now the budget is about \$1.6 million dollars for road maintenance which includes alleys, and all of the other ancillary responsibilities they have which include all of the drainages as well as the dams. All the funding that we currently budget only provides for minimal maintenance. It doesn't call for anything that actually improves the infrastructure or allows us to increase roads or improve roads to any affect at all. Sadly, the funding we have available is insufficient for long term street improvements. We receive one state grant a year for a street project, and one street out of all of the streets we have, we will never catch up with that type of funding. The streets are deteriorating city wide, and we have very limited curb, gutter and sidewalks around the city which is quite a public safety concern. Particularly around the school areas, so \$1 million dollars is dedicated to street improvements. The next page is wastewater and the current status is around \$975,000 budget which is absolutely insufficient for long term capital improvement to the wastewater system. The wastewater department has zero debt capacity. They are maxed out on their debt capacity at this point. The plant and the system are failing in wastewater. The riverside Vac station fails on a weekly basis, and the employees have to go out and manually fix it and clear it out, sometimes multiple times a week. Almost city wide the manholes are antiquated and are collapsing and leaking, and they all need to be replaced. The wastewater plant aeration system has failed, and currently staff is using manual operations to keep the plant functioning properly. The bar screen and head works are undersized for the facility and they have failed. They do a lot of manual work to keep the plant working. The investment has not occurred over time to the plant and to that infrastructure. We've got to get a grip on it with some serious capital to make the improvements over time. The bond question is basically to dedicate \$1 million dollars for streets, \$2 million for water, and \$1 million for wastewater. The plant electrical system and the SCADA system is failing. The SCADA system is the system that communicates with the system and lets us know if there is a problem. Right now, for the most part we have to go out and observe that something has failed to detect that it has. Those are part of projects in the future to get the SCADA system working to where it alerts us when something is failing or has failed so we can make the adjustments timely vs. having to have a sewer backup or something of that nature. The flow meter building is collapsing and the wiring has absolutely failed at the building. The reuse water pump is failing and that is what pumps effluent water to the Golf Course. The Williamsburg flow meter structure is also failing and is unsafe. It is a confined space issue which is quite dangerous if not done safely with a lot of protocols in place to protect staff and the systems. We have about \$1.1 million budgeted for water and that is insufficient for long term capital improvements to the water system. The water system also has zero debt capacity at this point to take on anymore debt or loans. Virtually all of the loans that are out there for water and wastewater are a loan/grant mixture. We just don't have the capacity to take on anymore debt. Engineering estimates for the water system improvements are about \$102 million dollars. Based on quotes we received lately on other projects, that's probably somewhere in the neighborhood of 50% under of what it will actually cost us. We are probably looking at closer to \$150 million dollars to make the water system

improvements citywide. 60% of the water lines are 60 years or older in the community. The city continues to average 15-20 water leaks a week. Those pipes are going to continue to leak as time goes on. They are just getting older until we can get that major investment in to replace those lines. The water meters are 25 plus years old on average which we know is really impacting our production of water and what we are actually billing for. We are experiencing significant water loss right now. Over the last year about 42% of the water that we produce is going unbilled and the low flow that the meters are not detecting is a major contributor to that so we need to address the water meters as well and upgrade those so we are registering what people are actually using. The pumps valves and wells are failing for the most part. All of our wells are located in the southern part of the city in the Williamsburg area which doesn't give us a lot of options in drought conditions. We really need to install a new well on the northern part of town to protect the residents and the integrity of the water system. No other use of the bond funds is permissible by law if the voters approve the bond issues. The city receives around \$170,000 a year in property taxes. He thinks that's really confusing for property owners when they are paying \$1000 - \$1,200 in property taxes. The city gets a very small share of that. The City, County, Schools, State, Sierra Soil and Water and other entities all get a portion of the property taxes not just the city. The city only receives \$74.16 in property taxes on a \$100,000 home with the bond increase it would go from 2.225 mills to 5.225 mills. So, a \$75,000 home will see a \$75 annual increase in property taxes. A \$100,000 home will see a \$100 annual increase in property taxes, and so on and so forth.

City Attorney Rubin reported the following:

- We had some considerable success in enforcing our liens. We would demolish a dangerous building and then we would put a lien on the property for the costs associated with the city demolishing the building and/or removing the debris. He just got a couple more that came across his desk that he will be proceeding with and we will be keeping an active flow on this.

City Commission Reports:

Commissioner Mitchell had no reports.

Commissioner Fahl reported the following:

- She is part of the administrative arm for an organization. New Mexico Watershed and Dam Owners Coalition. It is a statewide organization that has dam owners, which we have several. They try and advocate for funding because there are a lot of requirements if you have a dam. They have all kinds of state training, and we have an annual conference every year. She asked the Commissioners to think about going to one of the trainings because owning dams is not a pleasant endeavor. There are a lot of requirements and liability and if you don't do your due diligence, you will have a problem as dam owners. She feels that most municipalities who own dams rely a lot on engineers to help them when a

problem occurs, so to really understand the complexity and the liability when you own that structure is very important so that is why she feels that the Commission should attend those trainings. The very first day of the conference is about dam ownership and it would be really good to at least go that first day. Most of the dams in New Mexico were built by a USDA agency and a lot of them were built in the 50's and 60's. They were designed as dirt structures and they had a capacity to accumulate 50 years' worth of sediment, and once those structures were full, they would then have a high potential of breaching. She thinks once the Commission is educated then we can be more aware and then we can pay more attention to getting an ONM done.

Mayor Pro-Tem Hechler reported the following:

- He gave a shout out to the folks who coordinated National Night Out last week. It is a great way for the public to recognize our first responders, and meet the folks who take care of our communities.

Commissioner Harrelson had no reports.

Mayor Forrister reported the following:

- She commended the employees for all of their hard work.

F. CONSENT CALENDAR:

1. Amended City Commission Regular Minutes, July 13, 2022
2. City Commission Regular Minutes, July 27, 2022
3. July 2022 Accounts Payable

Commissioner Mitchell moved to approve the Consent Calendar as submitted. Commission 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. 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 explained that this ordinance amendment was approved by the Commission for publication. We are now bringing it back to the Commission for the public hearing portion and final adoption. The amendment was to add in a section to our shipping containers under Article X: Accessory Buildings. It would allow shipping containers to be used as storage units by right in the commercial district with the exception of the downtown Main Street Historic District as well as in the residential areas that would need to go to a conditional or special use permit for allowance.

CITY COMMISSION AUGUST 10, 2022 REGULAR MEETING MINUTES

Mayor Forrister opened the Public Hearing.

Proponents:

None.

Opponents:

None.

Mayor Forrister closed the Public Hearing.

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

2. Public Hearing/Discussion/Action: Final Adoption of Ordinance No. 736 repealing Ordinance No. 677 pertaining to the Truth or Consequences Brewing Company Local Economic Development Project:

City Manager Swingle explained that this was on the agenda two meetings ago for publication. The Brewery has met all of the conditions of the ordinance and the project participation agreement as well as the intergovernmental agreement. You also approved the Notice of Termination. Based on the State Economics criteria the project has been completed and this is the final step to relieve the Brewery of any other responsibilities toward the LEDA funding that they received. Kudos to the Brewery. They did an amazing job and it is time to relieve them of any other responsibilities at this point.

Mayor Forrister opened the Public Hearing.

Proponents:

None.

Opponents:

None.

Mayor Forrister closed the Public Hearing.

Mayor Pro-Tem Hechler moved to approve Ordinance No. 736 repealing Ordinance No. 677 pertaining to the Truth or Consequences Brewing Company Local Economic Development Project. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. Public Hearing/Discussion/Action: Approval to Submit USDA/RUS Funding Applications for Police Department vehicles and equipment needs and Authorization and Approval for City Manager and/or Mayor to Execute, Sign and Submit Required and Requested Documents Related to the USDA/RUS Applications for Federal Assistance:

Traci Alvarez, Assistant City Manager explained that this is the grant that the city has applied for and has a 55% grant, 45% match. In the past we applied for a new street sweeper, front end loader, police vehicles, electric reel trailer, backhoe, skid steer, various parks equipment, and Kubota and landscape trailer. This year we would like to submit for new vehicles for the police department. Our Chief had already budgeted for some vehicles so this will give him some cost savings. The approximate application amount is \$150,000. It may vary a little bit because she believes we just got some recent quotes that she believes brings it to \$156,000.

Mayor Forrister opened the Public Hearing.

Proponents:

None.

Opponents:

None.

Mayor Forrister closed the Public Hearing.

Commissioner Fahl moved to approve the submission of the USDA/RUS Funding Applications for Police Department vehicles and equipment needs and Authorization and Approval for City Manager and/or Mayor to Execute, Sign and Submit required and requested Documents Related to the USDA/RUS Applications for Federal Assistance. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

H. ORDINANCES/RESOLUTIONS/ZONING:

1. Discussion/Action: Resolution No. 08 22/23 in support of the Infrastructure Capital Improvement Plan (ICIP) for the Sierra Joint Office on Aging (SJOA):

Crystal Walton, SJOA Executive Director reviewed the SJOA Improvement Plan (ICIP) that was provided in the packet, and explained with support of this resolution you are agreeing to be their fiscal agent for these projects.

Mayor Pro-Tem Hechler moved to approve Resolution No. 08 22/23 in support of the Infrastructure Capital Improvement Plan (ICIP) for the Sierra Joint Office on Aging (SJOA) projects. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. Discussion/Action: Publication of Ordinance No. 737 amending Sections 7-106 through Section 7-114 of our Municipal Code of Ordinances pertaining to Rental Spaces and Licensure:

Police Chief Rodriguez explained that this ordinance which used to be Article 5 under only addressed Flea Markets. This really just cleans up a lot of the language and adds the Farmers Market onto this and defines what the Farmers Market vendors are. It really makes a difference between Flea Market Centers who will be required to get an actual business license opposed to a Farmers Market who are doing a good service to the community. It also includes any event that could be exempted that would include our Fiesta. Any City Commission recognized public event or activity would only be required to have a sponsor who would then get a business license and the vendor would not. It would fall under the sponsor's business license. It also cleans up some of the language to require individuals who are maybe serving food to provide the proper environmental department documentation to the sponsors so they can submit it as well. It also exempts locally recognized civic organizations, churches, museums, private premises or other nonprofit organizations, which operate public arts and crafts fairs, yard or rummage sales, or other such functions from time to time and are not regularly engaged in the business of conducting such activities. We wouldn't require them to have a business license as long as they are just doing it from time to time and not regularly engaged in business. It also makes sure that any second-hand stores obtain a city business license because they are selling to the community. He also cleaned up Sec. 7-110. - *Camping prohibited*. Camping is prohibited unless approved for events. Sec. 7-1135 *under Taxes* was also cleaned up and states that people are responsible for claiming their own taxes, and the last portion that was amended was Sec. 7-1146. - Penalty for violation of article that stated that any person violating any provision of this article shall be subject to penalties as prescribed in Section 1-10 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Commissioner Mitchell moved to approve publication of Ordinance No. 737 amending Sections 7-106 through Section 7-114 of our Municipal Code of Ordinances pertaining to Rental Spaces and Licensure. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. Discussion/Action: Publication of Ordinance No. 738 amending the City of Truth or Consequences Municipal Code of Ordinances, by adding a section 8-53 regulating the use of BB or pellet guns:

Police Chief Rodriguez explained that he was surprised when he reviewed our municipal ordinance that we didn't have any type of ordinance that prohibited the discharging of BB or pellet guns within city limits which is very common in New Mexico. He found cities throughout the state that have the ordinances. Since a BB gun and pellet gun can produce injury and can produce property damage, we want to regulate the safety use of them, and allow the use of them as long as the projectile that the gun produces stays within your property, and does not hit any other property or anything else.

Mayor Pro-Tem Hechler moved to approve publication of Ordinance No. 738 amending the City of Truth or Consequences Municipal Code of Ordinances, by adding a section 8-53 regulating the use of BB or pellet guns. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

Commissioner Harrelson left the conference call prior to item H4.

4. Discussion/Action: Publication of Ordinance No. 739 amending the City of Truth or Consequences Municipal Code of Ordinances, by adding a section 8-149 of the code pertaining to closing of certain City Parks and Properties:

Police Chief Rodriguez explained that this cleans up ordinance section 8-149. What was interesting about this ordinance before is the only park that is mentioned is the Ralph Edwards Park. Every other park was allowed to be open at night so what this does is clean up the ordinance to add that the parks are closed between 10:00 p.m. through 5:00 a.m. and people have no business at our city parks or properties unless they have permission. We wanted to amend this ordinance due to the fact that people are vandalizing some of these properties, and this gives the Police Department the opportunity to take the appropriate enforcement action. This also carves out the allowance for use a city event or someone who has an approved rental agreement for overnight stay.

Commissioner Fahl moved to approve publication of Ordinance No. 739 amending the City of Truth or Consequences Municipal Code of Ordinances, by adding a section 8-149 of the code pertaining to closing of certain City Parks and Properties. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

I. NEW BUSINESS:

1. Discussion/Action: Review and approval of the Junior Bill Appropriation for the SJOA:

Traci Alvarez, Assistant City Manager explained that the Senior Joint Office on Aging received this \$35,000 last year as well. It's a 100% grant, and the city is the fiscal agent on this so Finance Director Kirkpatrick will need to do a budget amendment to account for this. This is on a reimbursement basis. The funding last year was used to reimburse the Senior Joint Office on Aging for expenses they had for meals and kitchen equipment. This year we are assuming that the language for the grant is going to be very similar which will be a reimbursement for meals and equipment. We are looking into the possibility of whether or not these funds could be used to offset a shortfall in funding that they are going to have for the appropriations they received for vehicles. The vehicles are a little more expensive. They have reached out to aging long term services to see if there is other funding available.

Commissioner Fahl moved to approve the Junior Bill Appropriation for the SJOA. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. Discussion/Action: Approval of the Chamber of Commerce Lodger's Tax Contract Extension Letter:

Tammy Gardner, Executive Assistant explained that this was submitted for fiscal year 21/22. The Chamber of Commerce was approved for a contract for \$38,000, and they didn't finish their project so they are requesting an extension to allow them to finish their project. The remaining amount is \$17,500.

Commissioner Mitchell moved to approve the Chamber of Commerce Lodger's Tax Contract Extension Letter. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. Discussion/Action: Review, Approve and/or Allocate Funds for MainStreet Truth or Consequences:

Tammy Gardner, Executive Assistant reviewed the MainStreet Truth or Consequences Lodgers Tax Application provided in the packet, and stated that the requested amount was approved by the Lodgers Tax Advisory Board.

Commissioner Mitchell moved to approve and allocate Funds to MainStreet Truth or Consequences in the amount of \$4,600. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

4. Discussion/Action: Review, Approve and/or Allocate Funds for Geronimo Trail Scenic Byway (GTSB):

Tammy Gardner, Executive Assistant reviewed the Geronimo Trail Scenic Byway (GTSB) Lodgers Tax Application provided in the packet, and stated that the requested amount was approved by the Lodgers Tax Advisory Board.

Commissioner Fahl moved to approve and allocate Funds to Geronimo Trail Scenic Byway (GTSB) in the amount of \$3,869.63. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

5. Discussion/Action: Review, Approve and/or Allocate Funds for Veteran's Memorial Park and Museum:

Tammy Gardner, Executive Assistant reviewed the Veteran's Memorial Park and Museum Lodgers Tax Application provided in the packet, and stated that the requested amount was approved by the Lodgers Tax Advisory Board.

Commissioner Mitchell moved to approve and allocate Funds to Veteran's Memorial Park and Museum in the amount of \$4,755.84. Mayor Pro-Tem Hechler seconded the motion. Roll call was taken by the Clerk-Treasurer.

Hon. Amanda Forrister, Mayor voted aye

Hon. Rolf Hechler, Mayor Pro-Tem voted aye

Hon. Destiny Mitchell, Commissioner voted aye

Hon. Merry Jo Fahl, Commissioner abstained from the vote because she is on the Veteran's Memorial Park and Museum.

Motion carried with a 3-0 vote and one abstention.

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

City Manager Swingle reviewed the Purchase Requisitions over \$20,000 that was provided in the packet.

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

7. Discussion/Action: Approval of Professional Services Agreement with Delta Airport Consultants, Inc. for RFP #21-22-009 Engineering Services for T or C Airport Improvements:

Traci Alvarez, Assistant City Manager explained in July the city approved the award to Delta Airport Consultants, Inc. for our Engineering Services for T or C Airport Improvements. This is a request to approve that contract.

Commissioner Fahl moved to approve the Professional Services Agreement with Delta Airport Consultants, Inc. for RFP #21-22-009 Engineering Services for T or C Airport Improvements. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

8. Discussion/Action: Approval of award and contract for Morgan Street Booster Pump ITB #21-22-011:

City Manager Swingle explained that we have had serious problems with the Booster Pump at Morgan Street. We went out on an RFP and request for bids and we had a couple of respondents. One of the bidders did not provide all of the documentation they needed so we ended up with Morrow Enterprises Inc. as the successful candidate. The bid price was \$126,000 to upgrade and replace the two Booster Pumps at Morgan Street.

Commissioner Fahl moved to approve the award and contract for Morgan Street Booster Pump ITB #21-22-011. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

9. Discussion/Action: Consideration of the appointment of Jessica MacKenzie to the Lodgers Tax Advisory Board:

City Manager Swingle explained that the Lodgers Tax Advisory Board currently has two vacancies on their board. At their July 25th meeting they recommended the appointment of applicant Jessica MacKenzie to serve as a member on the board.

CITY COMMISSION AUGUST 10, 2022 REGULAR MEETING MINUTES

Commissioner Mitchell moved to approve the appointment of Jessica MacKenzie to the Lodgers Tax Advisory Board. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

J. ADJOURNMENT:

Passed and Approved this 24th day of August, 2022.

Amanda Forrister, Mayor

ATTEST:

Angela A. Torres, CMC, City Clerk



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: August 24, 2022

Agenda Item #: F.2

SUBJECT: Acknowledge Regular Public Utility Advisory Board Minutes, July 18, 2022.

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: August 17, 2022

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

WHO WILL PRESENT THE ITEM: Consent Calendar

Summary/Background:

Acknowledge Minutes.

Recommendation:

Acknowledge minutes.

Attachments:

Minutes

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): N/A

None.

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 8-24-2022

**CITY OF TRUTH OR CONSEQUENCES
PUBLIC UTILITY ADVISORY BOARD
MONDAY, JULY 18, 2022**

MINUTES

REGULAR MEETING

Regular meeting of the Public Utility Advisory Board of the City of Truth or Consequences, New Mexico to be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, on Monday, July 18, 2022 at 3:30 pm.

CALL TO ORDER:

The meeting was called to order by Chairman Szigeti.

ROLL CALL:

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

ALSO PRESENT:

Bruce Swingle, City Manager
Traci Alvarez, Assistant City Manager
Lisa Gabaldon, Deputy Clerk

1. APPROVAL OF AGENDA:

Vice-Chairman Dornbusch made a motion to approve the agenda.
Member Avelar seconded the motion.
Motion carried unanimously.

2. APPROVAL OF MINUTES:

- a. Regular meeting of June 21, 2022.

Member Pacourek made a motion to approve the minutes.
Member Avelar seconded the motion.
Motion carried unanimously.

3. COMMENTS FROM THE PUBLIC: (3 Minute rule applies)

No comments.

4. OLD BUSINESS:

- a. Discussion/Action: Ordinance No. 735. George Szigeti

Chairman Szigeti stated that Ordinance No. 735 is the solar ordinance that the board approved last month and he took it before the commission last week. The main objection that they had come from Commissioner Hechler

concerning that they were decreasing the amount which the solar customers would get for their excess generation. We explained the reasons why; he felt that there was some degree of unfairness to those customers who follow the rules and put in an appropriately sized system. In the end they asked the board to come back and look at this again and discuss it. He doesn't see a way around this. One of the commissioners mentioned grandfathering in those whose systems were installed prior to this; but we have people that have grossly oversized their systems in violation of the City's ordinance. You do not want to be rewarding people that did not follow the ordinance for the sake of the ones who did. Someone else suggested that maybe we should pay up to 90% of the usage at the retail rate and anything else above that at the reduced rate; things got even more complicated after that. The other commissioners were just a little bit confused about this and they decided to postpone it and ask the board to discuss the issue again. You can't overly complicate things because the billing office would go nuts. He wants to go back to the commission with the same proposal that they originally had. City Manager Swingle stated that he received a call on Friday evening from the state and he asked them to provide him a copy of the language but they haven't as of yet. They indicated that the feds have enclosed an interpretation of the rule that said that they can limit the construction of the size up to 120% of use. Chairman Szigeti stated that he had not heard of this, but he thinks that Sierra Electric Co-op uses this. That being a federal law would supersede any state laws with regard to this. City Manager Swingle stated that the concern he has is that depending on the payback to the customer at some point they could be harming the electric department revenue if they're allowing people to produce whatever size and they're compensating them out of the fair market value; that's going to be detrimental to the electric department. Chairman Szigeti stated that no one objected to the language for any new customers; they're talking about the existing customers because they seem to fall into those two groups of the ones that fell in line with the rules and those that went beyond them for whatever reason.

Chairman Szigeti made a motion to take the item to the City Commission.

Vice-Chairman Dornbusch seconded the motion.

Motion carried unanimously.

- b. Discussion/Action: Regular Scheduled review of Utility Rates, Fees, and Charges subject to annual increases. George Szigeti**

Chairman Szigeti stated that he asked for copies of the amended versions of ordinance no. 648 for solid waste, ordinance no. 662 for wastewater, and ordinance no. 712 for water and that he has made some changes for the board to look at. They are changing the term to fee or rate as appropriate; that would be redlined throughout the ordinance. It is almost identical for each of the three ordinances; in the original ordinance there is merely a sentence that is added in under the rates and fees that stipulate that there will be an annual increase of either 5% or based on the CPI. He gave that sentence a paragraph number and then a subsequent paragraph number stating about how often and how the review is done. The only difference is that solid waste only has fees; the others say fees and rates. The water one has consumer pricing rather than the 5%. So every 3 years starting the year after passage of this amendment, the director of the department shall present to the public utilities advisory board during their April meeting a financial justification for continuation of the automatic rate increase for the next 3 years. Based on this report, the PUAB may decide to either a) continue with the scheduled rate fee increases b) increase or decrease the amount of the annual fee increase or c) pause the annual rate increase for the next 3 years. Then the recommendation of the PUAB will then be forwarded to the City Commission for their decision. As for Ordinance No. 667 with regards to Williamsburg wastewater, they can insert the exact same wording with regards to the annual rate increase.

Member Pacourek stated that he feels that they should have a ceiling on the CPI. The utilities don't need to have food, housing, or clothing included in the calculation of their CPI. There should be a 5% limit as well as a lower limit of 2%; so anything in between, you'd use the CPI for Ordinance No. 712.

City Manager Swingle stated that he's not sure as to how they came up with the idea of using the CPI. The total CPI came out at 9.1%; the commissioners have asked him not to impose that rate until the meeting next week as they want to have a discussion about it. We just finished the second request for proposals for the MSD project,

the water project downtown and the first closest bid was 67% over what was estimated. The second time we're still \$2.5 million short of being able to afford that project; 9.1% is not even close to the inflation that we're actually seeing in reality. He would like to take the board's recommendation to the City Commission next week. Chairman Szigeti stated that the utility departments have to have the money to operate if they're going to provide the utilities. They are starting out in the hole and the city has a fair amount of catching up to so. As the City Manager has said, the Commission has the final say on this and they can come in without their recommendation. This board needs to stick to the basics on this and if Jesse comes in and we're looking at a 9% CPI increase this year, if he can't justify why they cannot use 9% more money in the next year then the board can recommend not using it; that's part of the review process. Just because it says CPI doesn't mean that their review has to go along with that if they don't believe it's justified. He believes they can leave it set at CPI because they have the authority to question that number when the review comes in.

Member Pacourek made a motion for Ordinance No. 712 to have a lower cap of 2% and an upper cap on a CPI of 5%.

There was no second.

Motion died.

Chairman Szigeti stated that they will use the CPI. There will be an opportunity every 3 years for the Utility Board to question whether the CPI is too high or too low. At any time, the City Commission can intervene if they think it is putting too much of a strain on the City's customers. He went on to ask for a formal redline on these and asked for a Word version of the ordinances.

City Manager Swingle advised the board that they do have a Word version for Ordinance No. 712 but he is not sure about the other ordinances.

Deputy Clerk Gabaldon advised that there are only scanned versions.

Chairman Szigeti advised that he did the redline himself for Ordinance No. 735. He said that he can do them himself and have them ready for approval at the next meeting.

Chairman Szigeti made a motion that he will come back to the next PUAB meeting with a redline version for the final approval for the agenda.

Member Avelar stated that he would like to see the redline version beforehand.

Chairman Szigeti stated that he will get them to the board for their review and then they can make the recommendation.

5. NEW BUSINESS:

a. Discussion/Action: Contingency planning for Utility Operations. George Szigeti

Chairman Szigeti stated that he's had a number of citizens talk to him about the possibility of shutting down of electrical generation at Lake Mead or Lake Powell; and what would that do to our electric supply. He looked at the latest WAPA contract and they are obligated by contract to deliver so much electricity to us and he is assuming that they have the same agreement with other entities that they sell electricity to. What happens if they reach a point where there isn't enough electricity to go around? There are a number of questions and concerns that he has along with the citizens. If we have to make up for the lack of electricity through Sierra Electric, we would be paying a higher price and that will immediately increase the electrical cost to the City; we would have to look at doing an immediate rate increase to our customers. Another thing they have talked about is putting in additional water well because these wells are all older. We have a good healthy aquifer down there as has been demonstrated over the last couple of years with all of the shutdowns. If we were to have a well failure particularly on our big well that can't be quickly repaired and we have to drill a new one, it would be good to have a backup on the north side of town. We do have contingencies on what to do if we have water shortages. There was a document prepared a number of years ago by an outside contractor, The Water Conservation Plan.

Member Avelar asked for a copy of The Water Conservation Plan.

Chairman Szigeti stated that the issues they have with water, wastewater and solid waste is what happens if we have electric shortages. We need to know if the electric utility has any plans for implementing rolling blackouts. We need to have a plan in place that allows the electric department to distribute the electricity that we're

getting in an equitable way and still keep the essential functions going. He doesn't know if the electric department has such a document or not; if it does, it should be reviewed and updated.

City Manager Swingle stated that it would be critical to have the utility directors at the next meeting talk to you about what emergency plans they do have in place.

Chairman Szigeti he agreed with the city manager; he just wanted to introduce the subject at this point to give the rest of the board to think about, that way they can prepare questions for the department directors when they come in.

6. REPORTS FROM THE BOARD:

No Comments.

7. REPORTS FROM STAFF:

City Manager Swingle advised the board that Jesse Cole resigned today; he has given us his 30 day notice as of today. The electric department has been going through the exercise of soliciting a company to do a rate study; we've selected one and they are ironing out the contract as we speak. He believes there will be a significant jump since we haven't increased rates since 2002. We also know that we have a loss in revenue so that will also be factored in.

Vice-Chairman Dornbusch asked if the rate increase would bring us up to purchasing a professional engineer by bringing one on board or an administrator.

City Manager Swingle answered that they will have to discuss that with them when they come onsite as to what kind of administrative capacity do we want to have. We will be looking at all of the infrastructure needs and lack of the commitment in the past to update things. Next thing he addressed was the Morgan Street pumps; they went out Friday and one is dead in the water, it's been rebuilt a number of times. With the other one, we had consultants come and they were able to get it up and running. We have one pump operating and the other one is not going to be repaired. We are monitoring the water levels at the north tank. The pump that is out is part of the Wispy Project which is probably a year out before construction starts. It's a pretty significant cost to replace this pump.

Chairman Szigeti mentioned that we should alert the citizens now so that they are aware of this issue.

City Manager Swingle said that they are doing that now.

8. ADJOURNMENT:

There being no further business to come before the Public Utility Advisory Board, *Chairman Szigeti* made a motion to adjourn the meeting. *Vice-Chairman Dornbusch seconded the motion.* Motion carried unanimously. The meeting was adjourned.

PASSED AND APPROVED ON THIS 15th DAY OF AUGUST 2022.


George Szigeti, Chairman
Public Utility Advisory Board



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: August 24, 2022

Agenda Item #: F.3

SUBJECT: Take-home vehicle form for the Police Department.

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: August 17, 2022

SUBMITTED BY: Angela A. Torres

WHO WILL PRESENT THE ITEM: Consent Calendar

Summary/Background:

The City of Truth or Consequences Parks Department has an employee who will be taking home a City Vehicle. In accordance with Resolution No. 12 21/22, all take-home vehicle requests must be approved by the City Commission. The take-home vehicle request is from Sean Yorty.

Recommendation:

Approve take-home vehicle form.

Attachments:

- Take-home vehicle form.

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. [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 8-24-2022



Take Home Vehicle Authorization Request

Employee: SEAN YORTY Department: PARKS

Position Title: PARKS MAINTENANCE WORKER 2 Commute Miles/Day: 2 MILES

Employee Address: 1008 E 7TH AVE. 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.

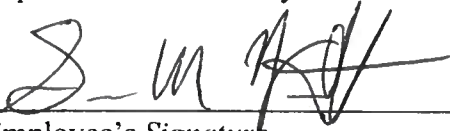
☐ **Emergency Response:** Employee has primary responsibility for responding to emergency situations which require immediate response to protect life or property.

☐ **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

August 17, 2022

Date


Department Director Signature

☒ Approved ☐ Denied

Commission

☐ Approved

☐ Denied

Amanda Forrister, Mayor Signature

Date



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: August 24, 2022

Agenda Item #: G.1

SUBJECT: Approve Resolution 09 22/23 Proclaiming the City's Commitment to End All Traffic Fatalities and Serious Injury Accidents in Truth or Consequences Through Participation in The Vision Zero Pledge.

DEPARTMENT: Assistant City Manager

DATE SUBMITTED: August 17, 2022

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

The Bipartisan Infrastructure Law (BIL) established the new Safe Streets and Roads for All (SS4A) discretionary program with \$5 billion in appropriated funds over the next 5 years. In fiscal year 2022 (FY22), up to \$1 billion is available. The SS4A program funds regional, local, and Tribal initiatives through grants to prevent roadway deaths and serious injuries. There are two types of SS4A grants: Action Plan Grants and Implementation Grants.

Action Plan Grants provide Federal funds to develop, complete, or supplement a comprehensive safety action plan. The goal of an Action Plan is to develop a holistic, well-defined strategy to prevent roadway fatalities and serious injuries in a locality, Tribe, or region.

Implementation Grants provide Federal funds to implement projects and strategies identified in an Action Plan to address a roadway safety problem - must have an existing Action Plan to apply for Implementation Grants

Recipients are required to contribute a local matching share of no less than 20 percent of eligible activity costs. Funding is to be provided on a reimbursement basis

Applications must be submitted by 5:00 p.m. EDT on Thursday, September 15, 2022 -If awarded it will be brought back to Commission to officially accept the award and grant agreement terms. USDOT expects to obligate SS4A funding via a signed grant agreement between the Department and the recipient within 12 months after awards have been announced

Application requires a resolution of commitment from the governing body to publicly commit to an eventual goal of zero roadway fatalities and serious injuries and must include either setting a target date to reach zero, OR setting one or more targets to achieve significant declines in roadway fatalities and serious injuries by a specific date

Requesting planning funds to update the 2021 Safety Plan into an Action Plan. Minimum amount of application is \$200,000.00. Action Plan is required for future funding requests under this grant program

Recommendation:

Approve Resolution 09 22/23

Attachments:

- Resolution 09 22/23

Fiscal Impact (Finance): TBD

Legal Review (City Attorney): Yes



RESOLUTION NO. 09 22/23

A RESOLUTION BY THE CITY COMMISSION, THE GOVERNING BODY OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, PROCLAIMING THE CITY'S COMMITMENT TO END ALL TRAFFIC FATALITIES AND SERIOUS INJURY ACCIDENTS IN TRUTH OR CONSEQUENCES THROUGH PARTICIPATION IN THE VISION ZERO PLEDGE.

WHEREAS, Six individuals were needlessly killed, and 135 individuals were injured on the City of Truth or Consequences (hereafter, City) roadways between 2016 and 2020; and,

WHEREAS, the City recognizes the need for action to increase safety and to prevent deaths and injuries on City streets; and,

WHEREAS, City partners such as the South Central Council of Governments ("SCCOG"), the New Mexico Department of Transportation, Truth or Consequences Municipal Schools, and Sierra County have pledged to join with Truth or Consequences to meet this goal; and,

WHEREAS, Vision Zero is a proven framework for eliminating traffic deaths and serious injuries through intergovernmental and community partnerships leveraging resources and funds to ensure safe and efficient multimodal transportation; and,

WHEREAS, A comprehensive Vision Zero strategy unifies existing safety efforts and elevates improvements through engineering and street design, education and engagement efforts, enforcement and technology, evaluation and data analysis, and equity; and,

WHEREAS, taking the Vision Zero pledge gives the City access to global best practices and resources; and,

WHEREAS, the Truth or Consequences City Council adopted the Multimodal Transportation Safety Plan in 2021 to utilize best practices for safe and efficient multimodal transportation on City streets; and,

NOW, THEREFORE, BE IT RESOLVED THAT, I, Amanda Forrister, Mayor the City of Truth or Consequences, by virtue of the City Commission of the City of Truth or Consequences, do hereby:

1. Pledge the City of Truth or Consequences' commitment to Vision Zero by addressing and mitigating the high rate of pedestrian and vehicular fatalities and injuries on City roadways, with the ultimate goal of achieving zero fatalities and serious injuries by the year 2030.

2. Order the immediate creation of a Vision Zero Executive Committee responsible for drafting, within 12 months upon securing its funding, a Truth or Consequences Vision Zero Action Plan with the input of multiple City departments, our Vision Zero partners, and Truth or Consequences community members.

PASSED, APPROVED AND ADOPTED this 24^h day of August 2022.

Amanda Forrister, Mayor

ATTEST:

Angela Torres, City Clerk

THIS EXECUTIVE ORDER does not create any legal rights or right of action on the part of any person or entity and shall not serve as a basis for any challenge to ordinances, rules, regulations, policies, administrative instructions, or any other action or inaction by the City. This Executive Order supersedes any previous orders, proclamations, or directives to the extent they are in conflict with the terms above.

This Executive Order shall take effect immediately.

Amanda Forrister, Mayor

ATTEST:

Angela A. Torres, City Clerk-Treasurer



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: August 24, 2022

Agenda Item #: G.2

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: August 17, 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 8-24-2022

CITY OF TRUTH OR CONSEQUENCES

ORDINANCE NO. 735

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:

Section 1. That section 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 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. 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 Director. The appeal must specifically explain the basis of the appeal. If the City's Electric Department Director denies the appeal, the customer may appeal to the City Director. If the City 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 set by Resolution.

e. On the first utility billing 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 2. 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 3. This Ordinance shall take effect on the 1st. day of September, 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



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: August 24, 2022

Agenda Item #: G.3

SUBJECT: Publication of Ordinance No. 740 Authorizing The Issuance Of The City Of Truth Or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2022, In The Principal Amount Of Seven Hundred Fifty Thousand Dollars (\$750,000) For The Purpose Of Predevelopment Financing

DEPARTMENT: Assistant City Manager

DATE SUBMITTED: August 18, 2022

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Chris Muirhead

Summary/Background: First reading of Bond Ordinance and approval to publish Notice of Meeting and Intent to Adopt Ordinance related to \$750,000 loan with Bank of the Southwest for the pre-development financing of the Water System Improvement as approved by USDA Letter of Conditions, dated 8/24/21. The financing will pay for costs incurred for all pre-development activities including preparation of PER/ER, design, final plans and specifications, obtained required easements and prepare bid documents.

Recommendation: The City Staff recommends approval of first reading of bond ordinance and publication of Notice of Meeting and Intent to Adopt Bond Ordinance.

Attachments:

- Bond Ordinance No. 740
- USDA Project Letter of Conditions
- Project Description and Map

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 8-24-2022

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

The City Commission of the City of Truth or Consequences, New Mexico, met in regular session in full conformity with law and the rules and regulations of the City Commission at the City Commission Chambers, 405 West Third Street, Truth or Consequences, New Mexico, being the regular meeting place of the City Commission, on the ____ day of September, 2022, at the hour of 9:00 a.m. Upon roll call, the following members, which constitute a quorum of the City Commission, were found to be present:

Present:

Absent:

Thereupon, there was officially filed with the Mayor, each Commissioner and the City Clerk-Treasurer a copy of a proposed bond ordinance in final form.

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
ORDINANCE NO. 740

AUTHORIZING THE ISSUANCE OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO WATER SYSTEM IMPROVEMENT REVENUE BONDS, SERIES 2022, IN THE PRINCIPAL AMOUNT OF SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) FOR THE PURPOSE OF PREDEVELOPMENT FINANCING FOR ACQUIRING, EXTENSION, ENLARGING, BETTERING, REPAIRING OR OTHERWISE IMPROVING THE CITY'S WATER SYSTEM; PROVIDING FOR THE ISSUANCE AND SALE OF THE BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S WATER SYSTEM; PROVIDING FOR THE TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, THE METHOD OF PAYING THE BONDS AND OTHER DETAILS CONCERNING THE BONDS AND SUCH SYSTEM, INCLUDING BUT NOT LIMITED TO COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH AND APPERTAINING THERETO.

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

WHEREAS, the City of Truth or Consequences, Sierra County, New Mexico, is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State of New Mexico; and

WHEREAS, the City now owns, operates and maintains a public water utility, and which the City hereby declares shall be continued to be operated as a public utility; and

WHEREAS, the City has heretofore provided for the imposition of rates and charges against users of the System; and

WHEREAS, the City is authorized under the Act to issue revenue bonds for the Project and the Series 2022 Bonds shall be issued pursuant to the Act; and

WHEREAS, the issuance of the Series 2022 Bonds will provide for the preservation of the public health, peace and safety; and

WHEREAS, it is in the best interest of the City that the Series 2022 Bonds be issued with a first lien on the Net Revenues; and

WHEREAS, the Bank of the Southwest has offered to purchase the Series 2022 Bonds, in the principal amount of \$750,000 at par and at an interest rate of 5.75% per annum pursuant to this Ordinance, plus accrued interest, if any, to the date of delivery; and

WHEREAS, all required authorizations, consents or approvals of any state, governmental body, agency or authority, in connection with the authorization, execution and delivery of the

Series 2022 Bonds which are required to have been obtained by the date hereof have been obtained, and which will be required to be obtained prior to the date of the issuance of the Series 2022 Bonds, will have been obtained by such date.

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

Section 1. Definitions. In addition to words and terms elsewhere defined in this Ordinance, the following words and terms shall have the following meanings:

“Act” means the powers of the City under the authority given by the provisions of Sections 3-31-1 through 3-31-12 NMSA 1978, as amended and supplemented, and all enactments of the Commission relating to the issuance of the Series 2022 Bonds.

“Bond Fund” means the “City of Truth or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2022, Interest and Bond Retirement Fund” created by Section 16 hereof.

“Bondholder”, “holder” or “owner” means any registered owner of the Series 2022 Bonds.

“City” means the municipal corporation, a body corporate and politic known as the “City of Truth or Consequences, New Mexico.”

“Commission” means the City Commission, or any succeeding legislative body of the City, as such governing body from time to time may be constituted and authorized to act and approve actions by a properly constituted quorum.

“Consulting Engineer” means any registered or licensed professional engineer or firm of such engineers having a wide and favorable repute for skill and experience in the field of designing, preparing plans and specifications for, and supervising construction of water systems and facilities entitled to practice and practicing as such under the laws of the State of New Mexico.

“Debt Service Schedule” means the payment schedule for the Series 2022 Bonds as provided by the Purchaser, as the same may be revised in the event of partial prepayment of the Series 2022 Bonds.

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

“Herein” or “hereby” or “hereunder” or “hereof” or “hereinbefore” or “hereinafter” refers to this Ordinance and not solely to the particular portion thereof in which such word is used.

“Income Fund” means the “Water Utility System Gross Income Fund” continued by Section 16 hereof.

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

“Insured Bank” means a bank or savings and loan association insured by an agency of the United States and which invests public funds in accordance with the provisions of Section 6-10-10 NMSA 1978, as amended.

“Mayor” means the Mayor of the City, or if the form of government of the City is changed, the presiding officer of the City no matter how such officer may be designated.

“Net Revenues” means the Gross Revenues of the System less Operation and Maintenance expenses, which net revenues are pledged to the payment of the Series 2022 Bonds are provided herein.

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

“Operation and Maintenance Fund” means the “Operation and Maintenance Fund” continued herein.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses of the City, paid or accrued, of operating, maintaining and repairing the System, and shall include without limiting the generality of the foregoing, insurance premiums, reasonable charges of depository banks, paying agents and bond registrars, contractual services, professional services required by this Ordinance, salaries and System administrative expenses, labor, cost of materials and supplies used for current operations, legal and overhead expenses of the various City departments directly related and reasonably allocable to the administration of the System, any payments made to the City's general fund as payments in lieu of franchise taxes or fees or other City taxes or fees or other similar payments or transfers to other funds of the City, but shall not include any allowance for depreciation, liabilities incurred by the City as the result of negligence in the operation of the System, costs of improvements, extensions, enlargements or betterments, or any charges for the accumulation of reserves for capital replacements.

“Ordinance” means this ordinance.

“Outstanding” or “outstanding” means, on any particular date, the aggregate of such bonds issued and delivered under the City ordinance authorizing the issuance of such bonds except:

A. Those cancelled at or prior to such date or delivered to or acquired by the City at or prior to such date for cancellation;

B. Those which have been paid or are deemed to be paid in accordance with the City ordinance authorizing the issuance of the applicable bonds or otherwise relating thereto; and

C. Those in lieu of or in exchange or substitution for which other bonds have been delivered, unless proof satisfactory to the City and paying agent for the applicable bonds is presented that any bond for which a new bond was issued or exchanged is held by a bona fide holder in due course.

“Parity Obligations” or “Parity Bonds” means any other bonds and other obligations now or hereafter issued or incurred payable from the Net Revenues and issued or incurred with a lien on the Net Revenues on parity with the Series 2022 Bonds.

“Paying Agent” means the City Clerk-Treasurer or any successor thereto designated by the Commission to act in such capacity for the Series 2022 Bonds.

“Project” means predevelopment financing for acquiring, extending, enlarging, bettering, repairing or otherwise improving the System.

“Project Fund” means the “City of Truth or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2022, Project Fund” created by Section 14 hereof.

“Purchaser” means the Bank of the Southwest to whom the Series 2022 Bonds are to be originally sold and delivered.

“Registrar” means the City Clerk-Treasurer or any successor thereto designated by the Commission to act in such capacity for the Series 2022 Bonds.

“Revenues”, “Gross Revenues”, “income” or “gross income” means all income and revenues (including but not limited to interest income from the investment of System revenues) derived by the City from the operation of the System, or any part thereof, whether resulting from improvements, extensions, enlargements, repairs or betterments to the System, or otherwise, and includes all revenues derived by the City or any municipal corporation succeeding to the rights of the City, from the System and from the sale and use of water service and facilities, or any combination thereof, to the residents of what is now the City (including all territorial annexations which may be made while the Series 2022 Bonds or any part thereof are outstanding), or from the sale and use of water service and facilities, by means of the System owned and operated by the City as the same may at any time exist to serve customers outside the City limits as well as customers within the City limits.

“Series 2022 Bonds” means the “City of Truth or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2022” authorized by Section 5 hereof.

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

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Commission and the officers of the City directed toward the Project and toward the issuance of the Series 2022 Bonds and the sale of the Series 2022 Bonds to the Purchaser is hereby ratified, approved and confirmed.

Section 3. Authorization of Project. The Project shall be constructed and acquired at a total estimated cost not exceeding \$750,000 with costs in excess of the amount of the purchase price of the Series 2022 Bonds to be defrayed from sources other than proceeds from the issuance of the Series 2022 Bonds.

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

A. It is in the best interest of the City and its residents to undertake the sale of the Series 2022 Bonds.

B. Moneys available for the Project from all sources other than the issuance of the Series 2022 Bonds are not sufficient to accomplish the Project.

C. The issuance by the City of the Series 2022 Bonds under the Act to provide funds for the Project is necessary and in the interest of the public health, safety, morals and welfare of the residents of the City.

D. The Net Revenues may lawfully be pledged to secure the payment of the Series 2022 Bonds as set forth herein.

E. The net effective interest rate on the Series 2022 Bonds of 5.75% is less than the statutory maximum of 12% per annum.

Section 5. The Series 2022 Bonds.

A. Authorization. Pursuant to the findings of Section 4 hereof, it is hereby declared that the City, pursuant to the Act, shall issue and sell the Series 2022 Bonds. The Series 2022 Bonds, in the principal amount of \$750,000, are hereby authorized to be issued and sold at par to the Purchaser.

B. Details of the Series 2022 Bonds. There are hereby authorized and created a series of bonds designated as the “City of Truth or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2022.”

The Series 2022 Bonds shall be dated as of the date of issuance and delivery, shall be originally issued as one bond in the denomination of \$750,000, numbered R-1, shall be payable to the registered owner, and shall bear interest on the outstanding principal amount advanced under the Series 2022 Bonds at a rate of 5.75% per annum, calculated on the basis of a 365-day year, actual number of days elapsed. Both principal and accrued interest on the Series 2022 Bonds shall become due and payable on or about March 1, 2024 (i.e., eighteen months after issuance of the Series 2022 Bonds).

The form, term, and provisions of the Series 2022 Bonds, in the form set forth in Section 12 hereof are hereby approved with only such changes therein as are not inconsistent with this Ordinance.

Section 6. Prior Redemption.

A. Optional Redemption, Date and Price. The Series 2022 Bonds are subject to prior redemption at the option of the City on any date, in whole or in part, as the City may determine, at a redemption price equal to the principal amount being redeemed, plus accrued interest to the date fixed for redemption. Any partial redemption of the Series 2022 Bonds shall be in inverse order of principal maturity and, after principal redemptions, if any, interest thereafter shall accrue only upon the then outstanding principal amount of Series 2022 Bonds.

B. Notice. Notice of redemption shall be given by the Registrar by sending a copy of such notice by first-class, postage prepaid mail, or by electronic transmission, at least thirty (30) days prior to the redemption date to the registered owner of the Series 2022 Bonds to be redeemed at the address shown on the registration books kept by the Registrar as of the close of business of the Registrar on the fifth day prior to the mailing of notice. Notice of redemption shall specify the principal amount to be redeemed, the date fixed for redemption, and that on such redemption date there will become and be due and payable at the office of the Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Notice having been given in the manner provided above, the principal amount of the Series 2022 Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem the principal amount of the Series 2022 Bonds called for redemption shall on the redemption date be on deposit with the Paying Agent, the principal amount of the Series 2022 Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Series 2022 Bonds to be redeemed at the office of the Paying Agent, the Paying Agent will pay the principal amount of the Series 2022 Bonds so called for redemption plus accrued interest to the redemption date.

Section 7. Signatures, Execution and Authentication of Series 2022 Bonds.

A. Filing of Signatures. Prior to the execution of any Series 2022 Bond, the Mayor and City Clerk-Treasurer may each file with the New Mexico Secretary of State his or her manual signature certified by him or her under oath pursuant to Sections 6-9-1 to 6-9-6 NMSA 1978, as amended; provided that filing shall not be necessary for any officer where any previous filing may have legal application to the Series 2022 Bonds.

B. Execution. The Series 2022 Bonds shall be signed with the engraved, imprinted, stamped or otherwise reproduced facsimile of the signature, or the manual signature, of the Mayor and shall be attested with the facsimile or the manual signature of the City Clerk-Treasurer. There shall be affixed to each Series 2022 Bond the printed, engraved, stamped or otherwise placed facsimile of, or imprint of, the City's corporate seal. The Series 2022 Bonds shall be authenticated by the manual signature of an authorized officer of the Registrar. The Series 2022 Bonds when authenticated and bearing the manual or facsimile signature of the officers in office at the time of signing thereof shall be valid and binding special obligations of the City, notwithstanding that before delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices. The Mayor and City Clerk-Treasurer, at the time of the execution of the Series 2022 Bonds and the signature certificate, each may adopt as and for his or her own facsimile signature, the facsimile signature of his or her predecessor in office if such facsimile signature appears upon any of the Series 2022 Bonds or certificates pertaining to the Series 2022 Bonds.

C. Authentication. No Series 2022 Bond shall be valid or obligatory for any purpose unless the certificate of authentication has been duly executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been fully executed if manually signed and inscribed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Series 2022 Bonds issued hereunder.

Section 8. Negotiability. The Series 2022 Bonds shall be fully negotiable and shall have all the qualities of negotiable paper, and the Bondholder shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code--Investment Securities.

Section 9. Payment and Presentation of Series 2022 Bonds for Payment. Principal and interest on the Series 2022 Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal and interest on the Series 2022 Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the 5th calendar day next preceding the payment date (the "Record Date"). If any payment on the Series 2022 Bonds remains unpaid when due, the payment shall continue to bear interest at the rate or rates designated in, and applicable to, the Series 2022 Bonds. The records of the Paying Agent and the Registrar with respect to payments paid to the registered owners of the Series 2022 Bonds shall be conclusive and no posting or notation of payments on the Series 2022 Bond forms shall be required.

Section 10. Registration, Transfer, Exchange and Ownership of Series 2022 Bonds.

A. Registration, Transfer and Exchange. The City shall cause books for registration, transfer, and exchange of the Series 2022 Bonds as provided herein to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of the fully registered Series 2022 Bonds at the principal office of the Registrar duly endorsed by the registered owner or his attorney duly authorized in writing, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Registrar and duly executed, the Registrar shall, without cost to the registered owner, authenticate and deliver, not more than three (3) business days after receipt of the Series 2022 Bonds to be transferred, in the name of the transferee or registered owner, as appropriate, a new Series 2022 Bond or Series 2022 Bonds in authorized denominations, in fully registered form of the same aggregate principal amount, maturity and interest rate.

B. Limitations. The Registrar shall not be required to transfer or exchange any Series 2022 Bonds (i) during the period of fifteen (15) days next preceding mailing of notice calling the Series 2022 Bonds for prior redemption as herein provided, or (ii) after mailing to the registered owner of notice calling such Series 2022 Bonds for prior redemption as herein provided. The Registrar shall close books for change of registered owners' addresses five (5) days prior to each payment date. Transfers shall be permitted within the five (5) days prior to each payment date; such transfer shall not include a transfer of the principal and interest payable on such payment date.

C. Owner of Series 2022 Bonds. The entity in whose name the Series 2022 Bonds are registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of either the principal of or interest on the Series 2022 Bonds shall be made only to or upon the order of the registered owner thereof or his legal representative as stated herein, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2022 Bonds to the extent of the sum or sums so paid.

D. Lost Series 2022 Bonds. If the Series 2022 Bonds shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such Series 2022 Bonds, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, authenticate and deliver replacement Series 2022 Bonds of a like aggregate principal amount and of the same series, maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If any such lost, stolen, destroyed or mutilated Series 2022 Bonds shall have matured, the Registrar may request the Paying Agent to pay such bond in lieu of replacement.

Section 11. Special Obligations. The Series 2022 Bonds, together with interest accruing thereon, shall be payable and collectible solely out of Net Revenues, the revenues of which are so pledged, and the Bondholders may not look to any general or other municipal fund for the payment of principal and interest on such obligations, except the designated special funds pledged therefor. The Series 2022 Bonds shall not constitute indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation, nor shall they be considered or

held to be general obligations of the City. Nothing herein shall prevent the City from using any other legally available funds for the payment of the principal of and interest on the Series 2022 Bonds, in its sole discretion.

Section 12. Form of Series 2022 Bonds. The Series 2022 Bonds and the forms of authentication and assignment to be attached thereto shall be in substantially the following form with such changes therein as are not inconsistent with this Ordinance.

(Form of Series 2022 Bonds)

UNITED STATES OF AMERICA
STATE OF NEW MEXICO COUNTY OF SIERRA
CITY OF TRUTH OR CONSEQUENCES
WATER SYSTEM IMPROVEMENT REVENUE BONDS
SERIES 2022

No. R-1 **\$750,000**

Interest Rate	Maturity Date	Date of Bonds
5.75%	[March] 1, 2024	September __, 2022

REGISTERED OWNER: BANK OF THE SOUTHWEST

PRINCIPAL AMOUNT: SEVEN HUNDRED FIFTY THOUSAND DOLLARS

The City of Truth or Consequences, New Mexico (the “City”) for value received, hereby acknowledges itself indebted and promises to pay, but only from the sources and in the manner provided for herein, to the Registered Owner stated above, or its registered assigns, in lawful money of the United States of America the principal amount stated above, together with interest thereon, in the amounts and on the dates set forth in the debt service schedule provided by the Registered Owner, until full payment of the principal amount plus accrued interest has been made. This bond shall bear interest on the outstanding principal advanced on the Series 2022 Bonds at the rate of 5.75% per annum, calculated on the basis of a 365-day year, actual number of days elapsed. Both principal and accrued interest on the Series 2022 Bonds shall become due and payable on the Maturity Date. Payment on the Series 2022 Bonds shall be payable upon presentation and surrender of the Series 2022 Bonds to the City Clerk-Treasurer, as Paying Agent. If any payment of this bond is not made as herein provided, the payment shall continue to bear interest at the Interest Rate stated above until the payment is paid in full. The principal and interest on this bond are payable in lawful money of the United States of America, without deduction for the services of the Paying Agent or Registrar.

This bond is a fully registered bond of the City in the aggregate principal amount of \$750,000, designated as the “City of Truth or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2022” (the “Series 2022 Bonds”) issued under and pursuant to City Ordinance No. _____ (the “Bond Ordinance”).

This bond may be redeemed, in whole or in part, at the option of the City on any date on at a redemption price equal to the principal amount being redeemed, plus accrued interest to the date fixed for redemption.

Notice of redemption will be given by providing at least thirty (30) days prior written notice by first-class, postage prepaid mail to the owner of the Series 2022 Bonds, to be redeemed at the address shown on the registration books as of the close of business of the Registrar on the fifth day prior to the mailing of notice. The notice of redemption shall specify the redemption date and the principal amount thereof, plus accrued interest to the redemption date, and that from and after such date interest will cease to accrue. Notice having been given in the manner provided above, the Series 2022 Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem the Series 2022 Bonds called for redemption shall on the redemption date be on deposit with the Paying Agent, the Series 2022 Bonds to be redeemed shall not be deemed to be outstanding and shall cease to bear interest from and after such redemption date.

Upon surrender for transfer or exchange of this bond at the principal office of the Registrar duly endorsed by the registered owner or his attorney duly authorized in writing, or accompanied by a written instrument of transfer or exchange in form satisfactory to the Registrar and duly executed, the Registrar will authenticate and deliver in the name of the transferee or registered owner, as appropriate, a new bond in fully registered form of the same outstanding principal amount, maturity and interest rate, in an authorized denomination. The person in whose name any Bond is registered will be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal of and interest on the Series 2022 Bonds will be made only to or upon the order of the registered owner thereof or his legal representative. All such payments will be valid and effectual to satisfy and discharge the liability upon the Series 2022 Bonds to the extent of the sum so paid.

This bond and the payments of principal hereof and interest hereon do not constitute indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the City and is payable and collectible solely out of the net revenues of the City's water utility system (the "Net Revenues") as more particularly described in the Bond Ordinance. The holder of this bond may not look to any general or other municipal fund for payment of the principal of or interest on this bond. The City has covenanted to pay the Net Revenues an amount sufficient to pay specified operation and maintenance expenses of the System, and the regularly scheduled payments on the Series 2022 Bonds and other Parity Obligations when due. For a more complete description of the nature and extent of the security, reference is made to the Bond Ordinance.

The Series 2022 Bonds are issued by the City for the purpose of predevelopment financing for acquiring, extending, enlarging, bettering, repairing or otherwise improving the City's Water Utility System (the "Project").

The Series 2022 Bonds are secured by a pledge of the Net Revenues. The Series 2022 Bonds constitute an irrevocable first lien (but not an exclusive first lien) upon the Net Revenues on parity with the lien thereon of the City's outstanding Parity Obligations (as defined in the

Bond Ordinance). Additional bonds may be issued and made payable from the Net Revenues, subject to express conditions, having a lien thereon on parity with the lien of the Series 2022 Bonds in accordance with the provisions of the Bond Ordinance. The City covenants and agrees with the owner of this bond and with each and every person who may become the owner hereof that it will keep and perform all of the covenants of the Bond Ordinance.

The Series 2022 Bonds will not be entitled to any benefit under the Bond Ordinance or become valid or obligatory for any purpose until an authorized officer of the Registrar has manually signed the Certificate of Authentication hereon.

It is hereby certified that all acts and conditions necessary to be done or performed by the City or to have happened precedent to and in the issuance of the Series 2022 Bonds to make them legal, valid and binding special obligations of the City have been performed and have happened, as required by law, and that the Series 2022 Bonds do not exceed or violate any constitutional, statutory or charter limitation. No member of the City Commission, or any officer or employee of the City, including those executing this bond, shall be personally liable on any Series 2022 Bonds.

IN WITNESS WHEREOF, the City of Truth or Consequences, in the State of New Mexico, has caused this bond to be signed and executed on the City's behalf by the signatures of its Mayor and City Clerk-Treasurer and has caused the seal of the City to be affixed hereon all as of the Date of Bond specified above.

CITY OF TRUTH OR CONSEQUENCES
NEW MEXICO

By _____
Mayor

[SEAL]

By _____
Clerk-Treasurer

(Form of Certificate of Authentication)

Date of Registration: _____

This bond is one of the Series 2022 Bonds authorized to be issued by and under the provisions of the Bond Ordinance.

By _____

Clerk-Treasurer

Truth or Consequences, New Mexico

(End of Form of Certificate of Authentication)

(Form of Assignment)

ASSIGNMENT CLAUSE

For value received, the undersigned sells, assigns and transfers unto _____, whose social security or tax identification number is _____, the within bond and all rights thereunder, and does hereby irrevocably constitute and appoint _____ as legal representative to transfer the within bond on the books of the Registrar, with full power of substitution in the premises.

DATED: _____

NOTE: The above signature must correspond with the name as written on the face of the within bond in every particular.

(End of Form of Assignment)

(End of Form of Bonds)

Section 13. Sale of Series 2022 Bonds. The sale and award of the Series 2022 Bonds to the Purchaser are hereby ratified, approved and confirmed. The Mayor and other City officers are hereby authorized to do all things necessary and consistent with this Ordinance in connection with the sale, issuance and delivery of the Series 2022 Bonds.

Section 14. Delivery of the Series 2022 Bonds and Disposition of Proceeds. When the Series 2022 Bonds have been duly executed and authenticated, they shall be delivered to the

Purchaser. By purchasing the Series 2022 Bonds, the Purchaser agrees to pay to the City the principal amount of the Series 2022 Bonds.

The City shall account for the proceeds of the Series 2022 Bonds as follows:

A. Accrued Interest. The Series 2022 Bonds shall be dated as of the date of actual issuance and delivery and no accrued interest shall be payable by the Purchaser for the period prior to the date of actual issuance and delivery of the Series 2022 Bonds.

B. Sale Proceeds. The proceeds from the sale of the Series 2022 Bonds, as advanced by the Purchaser, shall be deposited by the City promptly upon the receipt thereof in a separate account in an Insured Bank, designated by the City, which account is hereby created and shall be known as the "City of Truth or Consequences, New Mexico Water System Improvement Revenue Bonds, Series 2022, Project Fund." The Insured Bank shall be required to pledge collateral security for all deposits in the Project Fund in accordance with the laws of the State of New Mexico, and laws and regulations of the United States of America. The monies in the Project Fund, except as herein otherwise specifically provided, shall be used and paid out solely for the purposes specified in this Ordinance.

C. Purchaser Not Responsible. The Purchaser of the Series 2022 Bonds shall not be responsible for the application or disposal by the City or by its officers of the funds derived from the sale thereof or of any other funds herein designated.

Section 15. The Project Fund.

A. Withdrawals. Monies shall be withdrawn from the Project Fund for the Project by the Mayor and the City Clerk-Treasurer.

B. Disposition of Unspent Amounts in the Project Fund. When all work on the Project is completed in accordance with the plans and specifications and all amounts due therefor are paid, the Consulting Engineer shall file with the City a certificate so stating, and thereupon the City shall cause the Insured Bank to transfer to the Bond Fund all funds remaining in the Project Fund, if any, and such proceeds shall be promptly used to pay debt service on the Series 2022 Bonds.

Section 16. Special Funds.

A. The Income Fund is hereby continued. The Water Utility System Gross Income Fund shall be used for the deposit of the Gross Revenues of the System and shall be a special fund, not part of the general treasury or general fund of the City.

B. The Operation and Maintenance Fund is hereby continued as a separate account in the Income Fund and shall be used for the deposit of revenues of the System to be used for the payment of Operation and Maintenance Expenses of the System as set forth in Section 17 of this Ordinance.

C. The Bond Fund is hereby created as a separate account in the Income Fund and shall be used for deposit of Net Revenues of the System to be used for the payment of principal and interest on the Series 2022 Bonds as set forth in Section 17 hereof.

Section 17. Administration of Income Fund. So long as the Series 2022 Bonds shall be outstanding either as to principal or interest, or both, the Gross Revenues of the System shall be set aside and deposited into the Income Fund and the following monthly payments shall be made from the Income Fund:

A. Operation and Maintenance Expenses. Money in the Income Fund shall first be disbursed to make deposits into the Operation and Maintenance Fund. There shall be deposited in the Operation and Maintenance Fund each month an amount sufficient to meet the current Operation and Maintenance Expenses of the month.

B. Bond Fund. Second and concurrently with the monthly payments required by paragraph C of this Section, and subject to and after the payments required by paragraph A of this Section, from any moneys remaining in the Income Fund there shall be deposited to the Bond Fund the following:

(1) Monthly, commencing on the first of the month immediately succeeding the issuance and delivery of the Series 2022 Bonds, an amount which is necessary, together with any moneys therein and available therefor, to pay the payment of principal and interest on the Series 2022 Bonds at the Maturity Date; and

(2) If prior to the Maturity Date, there has been accumulated in the Bond Fund the entire amount necessary to pay the principal and interest due on the Maturity Date, the payment required in subparagraph (1) of this subsection, may cease or be appropriately reduced.

Except as provided in paragraph 1 of this Section, the moneys in the Bond Fund shall be used only to pay the principal of and interest on the Series 2022 Bonds as the same become due.

C. Payment of the Additional Parity Obligations. Concurrently with the payments required by paragraph B of this Section, and subject to and after the payments required by paragraph A of this Section, any balance remaining in the Income Fund shall be used by the City for the payment of principal of and interest on the Parity Obligations (including, in each case, reserves therefor), if any, issued and payable from the Net Revenues, as the same accrue.

D. Payment of Subordinate Obligations. Third, and subject to and after the payments required by paragraphs A through C of this Section, from any monies remaining in the Income Fund, there shall be made the payment of interest on and principal of, and reserves for, additional bonds or other obligations hereafter authorized to be issued and payable from the Net Revenues with a lien thereon which is subordinate and junior to the lien thereon of Parity Obligations.

E. Use of Surplus Revenues. Gross Revenues accumulated over and above that needed to pay Operating and Maintenance Expenses and debt service for any outstanding obligations may only be retained or used to make prepayments on the Parity Obligations or subordinate obligations or for System improvements. Gross Revenues cannot be used to pay any expenses which are not directly incurred for the System.

Section 18. General Administration of Funds. The funds designated in Sections 16 and 17 shall be administered and invested as follows:

A. Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be deposited in one or more bank accounts in an Insured Bank or Banks. Each fund shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the stated purpose. Payments shall be made into the proper account not later than the first day of the month except when the first day shall be a Sunday or legal holiday, and then payment shall be made on the next succeeding business day. No later than three (3) days prior to each payment date, moneys sufficient to pay interest and principal then due on the Series 2022 Bonds shall be transferred to the Paying Agent. Nothing in this Ordinance shall prevent the Commission from establishing one or more bank accounts in an Insured Bank or Insured Banks for all the funds required by this Ordinance or, except for the Project Fund which must be maintained as a separate account, shall prevent the combination of such funds and accounts with any other bank account or accounts for other funds and accounts of the City.

B. Investment of Moneys. Moneys in any fund or account not immediately needed may be invested in any investment permitted by law. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The City Clerk-Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

Section 19. Lien on Net Revenues. The Series 2022 Bonds shall constitute an irrevocable first lien (but not an exclusive first lien) on, and the City hereby grants to the owners of the Series 2022 Bonds a security interest in, the Net Revenues as set forth herein and on parity with any existing Parity Obligations or future Parity Obligations which may be issued. The Net Revenues are hereby authorized to be pledged and are hereby pledged and the City grants a security interest therein and in the funds on deposit in the Bond Fund and Project Fund for the payment of the principal of and interest on the Series 2022 Bonds.

Section 20. Additional Bonds or Other Obligations Payable from Net Revenues.

A. Earnings Test. Nothing in this ordinance contained shall be construed to prevent the issuance by the City of additional Parity Obligations payable from the Net Revenues and constituting a lien upon said revenues on a parity with, but not prior or superior to the lien of the Series 2022 Bonds, nor to prevent the issuance of bonds or other obligations refunding all or

a part of the Series 2022 Bonds, provided, however, that before any such additional Parity Obligations are authorized or actually issued, the following tests shall be satisfied:

(1) The City is not, and has not been in default as to making any payments required by Section 17 hereof during the twelve months immediately preceding the issuance of such additional Parity Obligations, or if none of the Series 2022 Bonds have been issued and Outstanding for a period of at least twelve months, then for the longest period of time any of such Series 2022 Bonds have been issued and Outstanding; and

(2) The Net Revenues for the Fiscal Year immediately preceding the date of issuance of such additional Parity Obligations shall have been sufficient to pay an amount representing one hundred twenty percent (120%) of the combined average annual principal and interest requirements coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations payable from and constituting a lien upon the Net Revenues and the additional Parity Obligations proposed to be issued (excluding any reserves therefor).

The foregoing limitations on the issuance of Parity Obligations shall not apply with regard to issuance of the Series 2022 Bonds or in the case of the issuance of additional Parity Obligations necessary to complete the Project in accordance with the original plans and specifications therefor.

B. Certification or Opinion of Earnings. A written certification or opinion by an Independent Accountant or the City Clerk-Treasurer that Net Revenues for the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Obligations are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver the proposed additional Parity Obligations on a parity with the Series 2022 Bonds.

C. Consideration of Additional Revenue Permitted. In determining whether or not additional Parity Obligations may be issued as aforesaid, consideration may be given to any probable increase in the estimated Net Revenues of the System that may result from the expenditure of funds proposed to be derived from the issuance and sale of the proposed additional Parity Obligations or an increase in System rates.

D. Subordinate Obligations Permitted. Nothing herein contained shall be construed to prevent the City from issuing bonds or other obligations payable from the revenues of the System and having a lien thereon subordinate, inferior and junior to the lien of the Series 2022 Bonds.

E. Superior Obligations Prohibited. Nothing herein contained shall be construed to permit the City to issue bonds or other obligations payable from the revenues of the System and having a lien thereon prior and superior to the lien of the Series 2022 Bonds.

Section 21. Refunding Bonds. The provisions of Section 20 hereof are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time the Commission shall find it desirable to refund the Outstanding Series 2022 Bonds, the Series 2022 Bonds may be refinanced and paid, in whole or in part, in advance of their maturity.

B. Limitations upon Issuance of Parity Refunding Obligations. No refunding bonds or other refunding obligations payable from any revenues of the System shall be issued on a parity with the Series 2022 Bonds, unless the refunding bonds or other refunding obligations are issued in compliance with paragraph A of Section 20 hereof.

C. Limitations upon Issuance of any Refunding Obligations. Any refunding bonds or other refunding obligations payable from any revenues of the System shall be issued with such details as the Commission may provide by ordinance.

Section 22. Protective Covenants. The City covenants and agrees with each and every holder of the Series 2022 Bonds:

A. Public Utility. The municipal water facilities of the City shall continue to constitute a public utility designated as the System and shall hereafter be operated and maintained as a public utility.

B. Use of Series 2022 Bonds Proceeds. The City, with the proceeds derived from the sale of the Series 2022 Bonds, shall proceed to complete and acquire the Project without delay.

C. Payment of the Series 2022 Bonds. The City shall promptly pay the principal of and interest on the Series 2022 Bonds at the place, on the dates, and in the manner specified herein. Principal and interest on the Series 2022 Bonds are payable solely from Net Revenues, and the special funds herein authorized for such purpose.

D. City's Existence. The City shall maintain its corporate identity and existence so long as the Series 2022 Bonds remain outstanding, unless another political subdivision or authority by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of the holder of the Series 2022 Bonds.

E. Impairment of Contract. Except with the approval of the holder of the Outstanding Series 2022 Bonds, the City agrees that this Ordinance shall not be repealed or otherwise directly or indirectly modified, in such a manner as to adversely affect the Outstanding Series 2022 Bonds.

F. Use Charges. Rates for services rendered by the System shall be reasonable and just, taking into account the cost and value of the System, Operation and Maintenance Expenses, proper allowances for depreciation and the amounts necessary to retire all bonds payable from Net Revenues, and any reserves therefor. There shall be charged against all users, including the City, rates and amounts, which shall be increased from time to time if necessary, sufficient to produce revenues to pay the annual Operation and Maintenance

Expenses, and 120% of the combined average annual principal and interest requirements on all outstanding Parity Bonds and other obligations payable from Net Revenues. No free services of the System shall be furnished by the City. Any use of the System by the City shall be paid for from the City's general fund at the reasonable value of the use so made. Income so derived from the City shall be treated in the same manner as any other System income. The City is granted a statutory lien upon realty for unpaid rates and charges pursuant to Section 3-23-6 NMSA 1978. The City covenants and agrees that it will cause any lien on each property to be perfected and enforced in accordance with the provisions of Sections 3-23-6 and 3-36-1 through 3-36-7 NMSA 1978.

G. Levy and Reduction of Charges. Prior to the delivery of the Series 2022 Bonds, the City has established and levied the required rates and charges for use of the System. No reduction in any initial rate schedule may be made unless:

(1) The City has complied with Section 17 hereof for at least one Fiscal Year immediately preceding such reduction; and

(2) The audit for the one full Fiscal Year immediately preceding such reduction discloses that the estimated revenues resulting from the proposed rate schedule will be sufficient to meet the requirements of paragraph F of this Section.

H. Efficient Operation. The City shall operate the System as long as the Series 2022 Bonds are outstanding and shall make such improvements and repairs to the System as may be necessary to insure its economical and efficient operation and its ability to meet demands for service and its continual operation and maintenance in good condition.

I. Records of System. Separate records will be kept showing complete and correct entries of all transactions relating to the System. Such records shall include monthly entries showing the number of customers, the revenues received, a detailed statement of expenses, and such other items as deemed relevant.

J. Right to Inspect. The Purchaser or any other owner of the Series 2022 Bonds or their duly authorized agents shall have the right at all reasonable times to inspect the System and all records, accounts and data relating thereto.

K. Audits and Budgets. So long as the Series 2022 Bonds shall be Outstanding, the City shall furnish to the Purchaser, and to any owner or owners or insurers of the Series 2022 Bonds who has requested the same, not later than thirty (30) days after the close of each three-month fiscal period, complete operating and income statements of the System in reasonable detail covering such three-month period, and, not later than sixty (60) days after the close of each fiscal year, complete financial statements of the System to the owner of the Series 2022 Bonds covering such fiscal year. In addition, the City will prepare and adopt prior to the beginning of each fiscal year, a budget for the ensuing fiscal year for the System, such budget to include an estimate of revenues and expenses during such fiscal year.

L. Billing Procedure and Discontinuance of Service. All System bills shall be sent out on a regularly established day of each month in advance or after service is rendered. If bills are not paid within a reasonable time after such date, they shall be collected in any lawful manner. Upon nonpayment of charges, water service will be discontinued if permitted by law and will be restored only upon payment of the delinquent amounts plus the cost of restoration.

M. Use of Bond Fund. The Bond Fund shall be used solely and only, and said funds are hereby pledged, for the purposes set forth in this Ordinance.

N. Charges and Liens upon System. The City, from Revenues, will pay all taxes and governmental charges lawfully levied in respect of the System when due. The City will comply with all valid requirements of any governmental authority relative to the System and will not create or permit to be created any lien or charge on the System or the Revenues except as permitted herein. The City will satisfy within sixty days after the same shall accrue all lawful claims and demands which might by law become a lien on the System or upon the Revenues unless the validity thereof is being contested in good faith by appropriate legal proceedings.

O. Insurance. The City, in its operation of the System, will carry fire and extended coverage insurance, public liability insurance and other types of insurance in such amounts and to such extent as is normally carried by private corporations operating facilities of the same type. The City will also maintain, as provided by law, a self-insurance fund to cover workmen's compensation insurance or will carry equivalent insurance. The cost of insurance shall be considered one of the Operation and Maintenance Expenses of the System. In the event of property loss or damage, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged, any remainder shall be treated as Net Revenues, and shall be subject to distribution in the manner provided hereinabove in Section 17, for Net Revenues derived from the operation of the System. Nothing herein shall prevent the City from establishing a funded self-insurance program.

P. Competing System. The City shall not grant any franchise or license to a competing system, or permit any person or organization to sell water service and facilities within the City (unless required to do so by law). To the extent permitted by law, the City will require all residents to connect to the System facilities.

Q. Alienating System. While the Series 2022 Bonds are outstanding, the City will not sell, lease, mortgage, pledge or otherwise alienate the System, or any part thereof. In the event of any sale as aforesaid, the proceeds of such sale shall be distributed as Net Revenues in the manner provided hereinabove in Section 17 hereof.

R. Extension of Interest Payments. The City will not extend or be a party to the extension of the time for paying any claim for interest on the Series 2022 Bonds. Any installment of interest so extended shall not be entitled in case of default hereunder to the benefit or security of this Ordinance except subject to the prior payment in full of the principal of all Series 2022 Bonds and interest which has not been extended.

S. Management of the System. The City shall employ competent and experienced management personnel for the System. If an “event of default” shall occur and continue for a period of sixty (60) days or if the Net Revenues in any Fiscal Year fail to equal principal, interest and reserve requirements for all Outstanding Parity Obligations and other obligations payable from the Net Revenues, the City shall retain an independent consultant who is qualified in the management of facilities similar to the System, to assist in the management of the System so long as such event of default continues or the Net Revenues are less than the amount designated.

T. Fidelity Bonds. Each municipal official responsible for receiving income and maintaining the accounts of the System shall be bonded at all times, which bond shall be conditioned upon the proper allocation of such income. The cost of each bond shall be considered one of the Operation and Maintenance Expenses of the System.

U. Performing Duties. To the extent permitted by applicable law, the City will faithfully and punctually perform all duties with respect to the System required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the City, including but not limited to, the making and collecting of reasonable and sufficient rates and charges for services rendered or furnished by the System as hereinbefore provided.

V. Service Connections. The City shall provide adequate service to all persons within the service area of the System who can feasibly and legally be served.

Section 23. Events of Default. It is an “event of default” if:

A. Nonpayment of Principal. Payment of principal of any Series 2022 Bonds is not made when due either at maturity or by proceedings for prior redemption, or otherwise; or

B. Nonpayment of Interest. If payment of any installment of interest shall not be made when the same becomes due and payable; or

C. Incapable to Perform. The City becomes incapable of fulfilling its obligations hereunder; or

D. Default of any Provision. The City defaults in the punctual performance of any other of its covenants hereunder for sixty (60) days after written notice shall have been given to the City by the holders of twenty-five percent (25%) of the principal amount of the Series 2022 Bonds then outstanding.

Section 24. Remedies on Default. Upon the happening and continuance of any event of default, the holder or holders of not less than twenty-five percent (25%) of the principal amount of the Series 2022 Bonds then outstanding, or a trustee therefor, may protect and enforce the rights of any owner of Series 2022 Bonds by proper legal or equitable remedy deemed most effectual including mandamus, specific performance of any covenant, the appointment of a receiver (the consent to such appointment being hereby granted), injunctive relief or requiring the Commission to act as if it were the trustee of an express trust, or any combination of such

remedies. All proceedings shall be maintained for the equal benefit of all owners of Series 2022 Bonds. Any receiver appointed to protect the rights of owners of Series 2022 Bonds may take possession and operate and maintain the System in the same manner as the City itself might do. The failure of the owner of the Series 2022 Bonds to proceed does not relieve the City or any person of any liability for failure to perform any duty hereunder. The foregoing rights are in addition to any other rights and the exercise of any right by any owner of the Series 2022 Bonds shall not be deemed a waiver of any other right.

Section 25. Duties upon Default. Upon the happening of any event of default, the City will perform all proper acts to protect and preserve the security created for the prompt payment of the principal of and interest on the Series 2022 Bonds. The holders of not less than twenty-five percent (25%) in the principal amount of the Series 2022 Bonds, after written demand, may proceed to protect and enforce the rights provided by this Section and by Section 24.

Section 26. Amendment of Ordinance. This Ordinance may not be amended without the written consent of the owner of the Series 2022 Bonds.

Section 27. Delegated Powers. The officers of the City be, and they hereby are, authorized and directed to take all action required by this Ordinance, and all such other action as may be necessary or appropriate to effectuate the provisions of this Ordinance, including, without limiting the generality of the foregoing, any required printing of the Series 2022 Bonds and the execution of such certificates as may be required by the Purchaser or bond counsel.

Section 28. Repeal. This Ordinance shall not be repealed unless the Series 2022 Bonds have been discharged in full or provision has been fully made therefor.

Section 29. Limitation of Action. After the passage of 30 days from the publication required by Section 32 hereof, any action attacking the validity of any proceedings had or taken by the City preliminary to and in the authorization and issuance of the Series 2022 Bonds, shall be perpetually barred.

Section 30. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 31. Effective Date. Upon its adoption, final passage and approval, this Ordinance shall be recorded in the book of ordinances of the City kept for that purpose and authenticated by the signatures of the Mayor and the City Clerk-Treasurer and the seal of the City affixed hereto. The title and general summary of the subject matter contained in this Ordinance (set out in Section 32 hereof) shall be published in a newspaper which is of general circulation in the City in accordance with law, and the Ordinance shall be in full force and effect five days after such publication and posting as provided by law.

Section 32. General Summary for Publication. 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 an Ordinance (the "Ordinance") duly adopted and approved by the City Commission of the City of Truth or Consequences, New Mexico, on September __, 2022. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk-Treasurer, 505 Sims Street, Truth or Consequences, New Mexico. The title of the Ordinance is:

AUTHORIZING THE ISSUANCE OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO WATER SYSTEM IMPROVEMENT REVENUE BONDS, SERIES 2022, IN THE PRINCIPAL AMOUNT OF SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) FOR THE PURPOSE OF PREDEVELOPMENT FINANCING FOR ACQUIRING, EXTENSION, ENLARGING, BETTERING, REPAIRING OR OTHERWISE IMPROVING THE CITY'S WATER SYSTEM; PROVIDING FOR THE ISSUANCE AND SALE OF THE BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S WATER SYSTEM; PROVIDING FOR THE TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, THE METHOD OF PAYING THE BONDS AND OTHER DETAILS CONCERNING THE BONDS AND SUCH SYSTEM, INCLUDING BUT NOT LIMITED TO COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH AND APPERTAINING THERETO.

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

(End of Form of Summary of Ordinance for Publication)

PASSED, APPROVED, AND ADOPTED THIS ____ DAY OF SEPTEMBER, 2022.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

MAYOR

[SEAL]

ATTEST:

CLERK-TREASURER

Commissioner _____ then moved adoption of the foregoing ordinance, duly seconded by Commissioner _____. The motion to adopt said ordinance, as amended, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye:

Those Absent:

_____ () Commissioner having voted in favor of said motion, the motion to suspend the rules was thereupon declared by the Mayor to have passed.

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

Dated this ____ day of September, 2022.

CITY OF TRUTH OR CONSEQUENCES,
NEW MEXICO

MAYOR

[SEAL]

ATTEST:

CLERK-TREASURER



United States Department of Agriculture

Rural Development

August 24, 2021

New Mexico
State Office

One Sun Plaza
100 Sun Ave NE
Suite 130
Albuquerque, NM
87109

Voice (505) 761-4950
Fax (855) 543-9499

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

SUBJECT: Recipient Name: Truth or Consequences, City of
Project Name: Water System Improvements – Phase 1
Water Application
CFDA NUMBER 10.760 - Water and Waste Disposal Systems for
Rural Communities

Loan: \$ 4,811,000
Grant: \$ 2,720,000

Dear Mayor Whitehead:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA Rural Development, both of which are referred to throughout this letter as the Agency. Any changes in project cost, source of funds, scope of project, or any other significant changes in the project or applicant must be reported to and concurred with by the Agency by written amendment to this letter. If significant changes are made without obtaining such concurrence, the Agency may discontinue processing of the application.

All conditions set forth under Section III – Requirements Prior to Advertising for Bids must be met within 365 days of the date of this letter. If you have not met these conditions, the Agency reserves the right to discontinue the processing of your application.

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following forms within 3 days:

Form RD 1942-46, "Letter of Intent to Meet Conditions"
Form RD 1940-1, "Request for Obligation of Funds"

The loan and grant will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds," is signed by the approving official. Thus, this letter in itself does not constitute loan and/or grant approval, nor does it ensure that funds are or will be available for the project. When funds are available, the Form 1940-1 will be

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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.

provided to you for your signature. After you sign and return the form to the Agency, the request will be processed, and loan and grant funds will be approved and obligated.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. All parties may access information and regulations referenced in this letter at our website located at www.rd.usda.gov.

The conditions are as follows:

SECTION I - PROJECT DETAIL

1. **Project Description** – Funds will be used to install water meters and waterline replacements which entails the water transmission lines including pressure relief valves (PRVs) throughout the city in order to address the System High Pressure issues. This project will replace approximately 4.9 miles of failing water lines due to age and condition of current infrastructure.

Facilities will be designed and constructed in accordance with sound engineering practices and must meet the requirements of Federal, State, and local agencies. The proposed facility design must be based on the Preliminary Engineering Report (PER) as concurred with by the Agency.

2. **Project Funding** – The Agency is offering the following funding for your project:

Agency Loan -	\$ 4,811,000
Agency Grant -	\$ 2,720,000
TOTAL PROJECT COST -	\$ 7,531,000.00

Funding is offered based on the amounts stated above. Prior to loan closing, any increase in non-Agency funding will be applied first as a reduction to Agency grant funds, up to the total amount of the grant, and then as a reduction to Agency loan funds.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. Prior to advertisement for construction bids, you must provide evidence of applicant contributions and other funding sources.

This evidence should include a copy of the commitment letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

3. **Project Budget** – Funding from all sources has been budgeted for the estimated expenditures as follows:

<u>Project Costs:</u>	<u>Total Budgeted:</u>
Construction	\$4,930,683
NMGRT	\$461,019
Contingency	\$493,738
Engineering Fees	\$1,171,179
Includes:	
Predevelopment Work (PER/ER)	\$47,000
Design	\$554,850
Construction Administration	\$75,933
Resident Project Representation (Inspection)	\$235,270
Additional Services	\$168,475
NMGRT	\$89,651
Interest/Fees- Interim/Bridge	\$440,746
Legal Fees - Local Attorney	\$10,000
Legal Fees - Bond Counsel	\$21,000
Legal Fees - NMGRT	\$2,635
TOTAL	\$7,351,000

Obligated loan or grant funds not needed to complete the proposed project will be deobligated prior to start of construction. Any reduction will be applied to grant funds first. An amended letter of conditions will be issued for any changes to the total project budget or scope.

SECTION II – LOAN AND GRANT TERMS

4 **Repayment** – The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing unless you request otherwise. Should the interest rate be reduced, the payment will be recalculated to the lower amount.

Your loan will be scheduled for repayment over a period of 40 years. Payments will be equal annual amortized installments, beginning one year after closing. For planning purposes, use a 1.375% interest rate and an amortization factor of 32.67, which provides for an annual payment of \$ 1,57,176.00. The precise payment amount will be based on the interest rate at which the loan is closed and may be different than the one above.

The payment due date will be established as the day that the loan closes. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided.

5 **Security** – The loan will be secured by a Revenue bond with parity lien position in the amount of \$4,811,000.00. The bond will be fully registered as to both principal and interest in the name of the United States of America, Acting through the United States Department of Agriculture.

The bond and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or its authorizing law. There must be no defeasance or refinancing clause in conflict with the graduation requirements of 7 U.S.C. 1983.

Additional security requirements are contained in RUS Bulletin 1780-12, "Water and Waste System Grant Agreement," and RUS Bulletin 1780-27, "Loan Resolution." A draft of all security instruments, including draft bond resolution, must be reviewed, and concurred in by the Agency prior to advertising for bids. The bond resolution and Loan Resolution must be duly adopted and executed prior to loan closing. The Grant Agreement must be fully executed prior to the first disbursement of grant funds.

6. **Electronic Payments** – Payments will be made on the day your payment is due through an electronic preauthorized debit system. You will be required to complete Form RD 3550-28, "Authorization Agreement for Preauthorized Payments," for all new and existing indebtedness to the Agency prior to loan closing.

7. **Construction Completion Timeframe** - All projects must be completed, and all funds disbursed within five years of obligation. If funds are not disbursed within five years of obligation, you must submit to the Agency a written request for extension of time with adequate justification of circumstances beyond your control. Requests for waivers beyond the initial extension will be submitted to the Assistant Administrator for concurrence decision.

8. **Disbursement of Agency Funds** - Agency funds will be disbursed into the borrower's depository account through an electronic transfer system. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to advertising for bids.

Any applicant contribution will be the first funds expended, followed by other funding sources. Interim financing or Agency loan funds will be expended after all other funding sources unless a written agreement is reached with all other funding sources on how funds are to be disbursed prior to start of construction or loan closing, whichever occurs first. Interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds. The Grant Agreement must not be executed, and funds must not be disbursed prior to loan funds except as specified in RUS Instruction 1780.45(d). In the unlikely event the Agency mistakenly disburses funds, the funds will be remitted back to the Agency electronically.

Grant funds are to be deposited in an interest-bearing account (exception provided below) in accordance with 2 CFR Part 200 and interest in excess of \$500 per year remitted to the Agency. The funds should be disbursed by the recipient immediately upon receipt and there should be little interest accrual on the Federal funds. Recipients shall maintain advances of Federal funds in interest-bearing accounts, unless:

- a. The recipient receives less than \$120,000 in Federal awards per year.

- b. The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
- c. The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
- d. A foreign government or banking system prohibits or precludes interest-bearing accounts.]

9. **Reserves** – Reserves must be properly budgeted to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency maintenance and repairs and assist with debt service should the need arise. The following reserves are required to be established as a condition of this loan:

- a. **Debt Service Reserve** – As a part of this Agency loan proposal, you must establish a debt service reserve fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment per year for ten years or until the balance is equal to one annual loan payment. Ten percent of the proposed loan installment would equal \$1,310 per month; this amount should be deposited monthly until a total of \$15,718 has accumulated. Prior written concurrence from the Agency must be obtained before funds may be withdrawn from this account during the life of the loan. When funds are withdrawn during the life of the loan, deposits will continue as designated above until the fully funded amount is reached.
- b. **Short-Lived Asset Reserve** – In addition to the debt service reserve fund, you must establish a short-lived asset reserve fund. Based on the preliminary engineering report, you must deposit at least \$182,347 into the short-lived asset reserve fund annually for the life of the loan to pay for repairs and/or replacement of major system assets. It is your responsibility to assess your facility's short-lived asset needs on a regular basis and adjust the amount deposited to meet those needs.

Current assets can also be used to establish and maintain reserves for expected expenses, including but not limited to operation and maintenance, deferred interest during the construction period, and an asset management program.

SECTION III – REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

10. **Environmental Requirements** – The project as proposed has been evaluated to be consistent with the National Environmental Policy Act. Other Federal, State, tribal, and local laws, regulations and/or permits may apply or be required. If the project or any project element deviates from or is modified from the originally approved project, additional environmental review may be required.

11. **Engineering Services** – You have been required to complete an Agreement for Engineering Services, which should consist of the Engineers Joint Contract Documents

Committee (EJCDC) documents as indicated in RUS Bulletin 1780-26, “Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance,” or other approved form of agreement. The Agency will provide concurrence prior to advertising for bids and must approve any modifications to this agreement.

12. Contract Documents, Final Plans, and Specifications

- a. The contract documents must consist of the EJCDC construction contract documents as indicated in RUS Bulletin 1780-26 or other Agency-approved forms of agreement.
- b. The contract documents, final plans, and specifications must comply with RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Constructing and Inspections, and must be submitted to the Agency for concurrence prior to advertising for bids along with an updated cost estimate. The Agency may require another updated cost estimate if a significant amount of time elapses between the original submission and advertising for bids.
- c. The use of any procurement method other than competitive sealed bids must be requested in writing and approved by the Agency.
- d. **American Iron and Steel Requirements.** Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference applies a new American Iron and Steel (AIS) requirement to obligations made after May 5, 2017:
 - (1) No Federal funds made available for this fiscal year for the rural water, wastewater, waste disposal, and solid waste management programs authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 et seq.) shall be used for a project for the construction, alteration, maintenance, or repair of a public water or wastewater system unless all of the iron and steel products used in the project are produced in the United States.
 - (2) The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
 - (3) The requirement shall not apply in any case or category of cases in which the Secretary of Agriculture (in this section referred to as the “Secretary”) or the designee of the Secretary finds that—
 - (a) applying the requirement would be inconsistent with the public interest.
 - (b) iron and steel products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
 - (c) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.
 - (4) Owners are ultimately responsible for compliance with AIS requirements and will be responsible for the following:

- (a) **Signing** loan resolutions, grant agreements and letters of intent to meet conditions which include AIS language, accepting AIS requirements in those documents and in the letter of conditions.
- (b) **Signing** change orders (i.e. C-941 of EJCDC) and partial payment estimates (i.e. C-620 of EJCDC) and thereby **acknowledging** responsibility for compliance with American and Iron Steel requirements.
- (c) **Obtaining** the certification letters from the consulting engineer upon substantial completion of the project and **maintaining** this documentation for the life of the loan.
- (d) Where the owner provides their own engineering and/or construction services, **providing** copies of engineers', contractors', and manufacturers' certification letters (*as applicable*) to the Agency to insert into the Agency file. All certification letters must be kept in the engineer's project file and on-site during construction. For Owner Construction (Force Account), all clauses from Section 17 must be included in the Agreement for Engineering Services.
- (e) Where the owner directly procures AIS products, **including** AIS clauses in the procurement contracts and **obtaining** manufacturers' certification letters and **providing** copies to consulting engineers and contractors.

13. Legal Services – You have been required to execute a legal services agreement with your attorney and bond counsel, if applicable, for any legal work needed in connection with this project. The agreement should stipulate an hourly rate for the work, with a “not to exceed” amount for the services, including reimbursable expenses. RUS Bulletin 1780-7, “Legal Services Agreement,” or similar format may be used. The Agency will provide concurrence prior to advertising for bids. Any changes to the fees or services spelled out in the original agreement must be reflected in an amendment to the agreement and have prior Agency concurrence.

14. Property Rights - Prior to advertising for bids, you and your legal counsel must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights-of-way needed for the project. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Such control over the lands and rights will be evidenced by the following:

- a. **Right-of-Way Map** – Your engineer will provide a map clearly showing the location of all lands and rights-of-way needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
- b. **Form RD 442-20, “Right-of-Way Easement”** – This form, or similar format, may be used to obtain any necessary easements for the proposed project.
- c. **Form RD 442-21, “Right-of-Way Certificate”** – You will provide a certification on this form that all right-of-way requirements have been obtained for the proposed project.
- d. **Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way”** – Your attorney will provide a certification and legal opinion on this form addressing rights-of-way, easements, and title.

- e. **Preliminary Title Work (Title Opinion)** – When applicable, your attorney will provide a preliminary title opinion for any property related to the facility, currently owned and to be acquired, along with copies of deeds, contracts or options for purchasing said property. Form RD 1927-9, “Preliminary Title Opinion,” may be used.

The approving official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. Any such waivers must be provided by the approving official in writing prior to closing or the start of construction, whichever occurs first.

You are responsible for the acquisition of all property rights necessary for the project and for determining that prices paid are reasonable and fair. The Agency may require an appraisal by an independent appraiser or Agency employee in order to validate the price to be paid.

15. System Policies, Procedures, Contracts, and Agreements – The facility must be operated on a sound business plan which involves adopting policies, procedures, and/or ordinances outlining the conditions of service and use of the proposed system. Mandatory connection policies should be used where enforceable. The policies, procedures, and/or ordinances must contain an effective collection policy for accounts not paid in full within a specified number of days after the date of billing. They should include appropriate late fees, specified timeframes for disconnection of service, and reconnection fees. A draft of these policies, procedures, and/or ordinances must be submitted for Agency review and concurrence, along with the documents below, before closing instructions may be issued unless otherwise stated.

- a. **Conflict of Interest Policy** – Prior to obligation of funds, you must certify in writing that your organization has in place an up-to-date written policy on conflict of interest. The policy will include, at a minimum: (1) a requirement for those with a conflict or potential conflict to disclose the conflict/potential conflict; (2) a clause that prohibits interested members of the applicant’s governing body from voting on any matter in which there is a conflict, and (3) a description of the specific process by which the governing body will manage identified or potential conflicts.

You must also submit a disclosure of planned or potential transactions related to the use of Federal funds that may constitute or present the appearance of personal or organizational conflict of interest. Disclosure must be in the form of a written letter signed and dated by the applicant’s official. A negative disclosure in the same format is required if no conflicts are anticipated.

Sample conflict of interest policies may be found at the National Council of Nonprofits website, <https://www.councilofnonprofits.org/tools-resources/conflict-of-interest>, or in Internal Revenue Service Form 1023, Appendix A, “Sample Conflict of Interest Policy,” at <http://www.irs.gov/pub/irs-pdf/i1023.pdf>. Though these examples reference non-profit corporations, the requirement applies to all types of Agency borrowers.

Assistance in developing a conflict of interest policy is available through Agency-contracted technical assistance providers if desired.

- a. **Contracts for Other Services/Lease Agreement** – Drafts of any contracts or other forms of agreements for other services, including audit, management, operation, and maintenance, or lease agreements covering real property essential to the successful operation of the facility, must be submitted to the Agency for review and concurrence prior to advertising for bids.
- b. **Parity/Intercreditor Agreement** – Projects with parity liens must have in place a written agreement between the parity lenders. The draft agreement must receive Agency concurrence prior to advertising for bids.
- c. **Other agreements** with governments or other entities regarding joint operation of facilities, granting authority to Agency borrower for providing service within another entity's service area, etc. – Village of Williamsburg Water System Service Agreement – The draft agreement must receive Agency concurrence prior to advertising for bids.

Fully executed copies of any policies, procedures, ordinances, contracts, or agreements must be submitted prior to loan closing, with the exception of the conflict of interest policy, which must be in place prior to obligation of funds.

16. Closing Instructions – The Agency will prepare closing instructions as soon as the requirements of the previous paragraphs are complete, as well as a draft of the security instrument(s). Closing instructions must be obtained prior to advertising for bids.

17. Interim Financing – For all loans exceeding \$500,000, where loan funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be used to preclude the necessity for multiple advances of Agency loan funds. You must provide the Agency with a copy of the interim loan financing agreement for review prior to advertising for bids. The Agency approving official may make an exception when interim financing is cost prohibitive or unavailable. Grant funds from the Agency will be disbursed by multiple advances through electronic transfer of funds after interim financing or Agency loan funds are expended, in accordance with RUS Instruction 1780.45.

18. Construction Account – You must establish a construction account for all funds related to the project. Construction funds will be deposited with an acceptable financial institution or depository that meets the requirements of 31 CFR Part 202. A separate account will not be required for Federal funds and other funds; however, the recipient must be able to separately identify, report, and account for all Federal funds, including the receipt, obligation and expenditure of funds. Financial institutions or depositories accepting deposits of public funds and providing other financial agency services to the Federal Government are required to pledge adequate, acceptable securities as collateral, in accordance with 31 CFR Part 202. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the construction account at any one time. Your financial institution can provide additional guidance on collateral pledge requirements.

Agency funds will be disbursed into the borrower's depository account through an electronic transfer system. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to advertising for bids.

19. System Users – This letter of conditions is based upon your indication at application that there will be at least 2,741 residential users and 540 non-residential users on the existing system when construction is completed.

Before the Agency can agree to the project being advertised for construction bids, you must certify that the number of users indicated at application are currently using the system or signed up to use the system once it is operational.

If the actual number of existing and/or proposed users that have signed up for service is less than the number indicated at the time of application, you must provide the Agency with a written plan on how you will obtain the necessary revenue to adequately cash flow the expected operation, maintenance, debt service, and reserve requirements of the proposed project (e.g., increase user rates, sign up an adequate number of other users, reduce project scope, etc.). Similar action is required if there is cause to modify the anticipated flows or volumes presented following approval.

If you are relying on mandatory connection requirements, you must provide evidence of the authorizing ordinance or statute along with your user certification.

20. Other Funding – Prior to advertising for bids, you must provide evidence of applicant contributions and other funding sources. This evidence should include a copy of the commitment letter from each source.

21. Proposed Operating Budget – You must establish and/or maintain a rate schedule that provides adequate income to meet the minimum requirements for operation and maintenance (O&M), debt service, and reserves. Prior to advertising for bids, you must submit a proposed annual operating budget to the Agency which supports the operation, maintenance, debt service, and reserves, as well as your proposed rate schedule. The operating budget should be based on a typical year cash flow after completion of the construction phase and should be signed by the appropriate official of your organization. Form RD 442-7, "Operating Budget," or similar format may be utilized for this purpose. It is expected that O&M will change over each successive year and user rates will need to be adjusted on a regular basis.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system. This assistance is available free to your organization. If you are interested, please contact our office for information.

22. Permits – The owner or responsible party will be required to obtain all applicable permits for the project, prior to advertising for bids. The consulting engineer must submit written evidence that all applicable permits required prior to construction have been obtained with submission to the Agency of the final plans, specifications, and bid documents.

23. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – The Agency requires all financed water and wastewater systems to have a VA/ERP in place. Borrowers with existing systems must provide a certification that a VA/ERP has been completed prior to advertising for bids. The VA/ERP documents themselves are not submitted to the Agency. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

For new systems, see Section V of this letter of conditions. For VA/ERP requirements throughout the life of the loan, see Section VII. Technical assistance at no cost is available in preparing these documents.

24. Bid Authorization - Once all the conditions outlined in Section III of this letter have been met, the Agency will authorize you to advertise the project for construction bids. Such advertisement must be in accordance with applicable State statutes.

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

25. Bid Tabulation – Immediately after bid opening, you must provide the Agency with the bid tabulation and your engineer's evaluation of bids and recommendations for contract awards. If the Agency agrees that the construction bids received are acceptable, adequate funds are available to cover the total project costs, and all the requirements of Section III of this letter have been satisfied, the Agency will authorize you to issue the Notice of Award.

- a. **Cost Overruns**. If bids are higher than expected, or if unexpected construction problems are encountered, you must utilize all options to reduce cost overruns. Negotiations, redesign, use of bidding alternatives, rebidding or other means will be considered prior to commitment of subsequent funding by the Agency. Any requests for subsequent funding to cover cost overruns will be contingent on the availability of funds. Cost overruns exceeding 20% of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.
- b. **Excess Funds**. If bids are lower than anticipated at time of obligation, excess funds must be deobligated prior to start of construction except in the cases addressed in this paragraph. In cases where the original PER for the project included items that were not bid, or were bid as an alternate, the State Office official may modify the project to fully utilize obligated funds for those items. Amendments to the PER, ER, and letter of conditions may be needed for any work not included in the original project scope. In all cases, prior to start of construction, excess funds will be deobligated, with grant funds being deobligated first. Excess funds do not include contingency funds as described in this letter.

26. Contract Review – Your attorney will certify that the executed contract documents, including performance and payment, if required, are adequate and that the persons executing

these documents have been properly authorized to do so in accordance with RUS Instruction 1780.61(b).

Once your attorney has certified that they are acceptable, the contract documents will be submitted to the Agency for its concurrence. The Notice to Proceed cannot be issued until the Agency has concurred with the construction contracts.

27. Final Rights-of-Way – If any of the rights-of-way forms listed previously in this letter contain exceptions that do not adversely affect the suitability, successful operation, security value, or transferability of the facility, the approving official must provide a written waiver prior to the issuance of the Notice to Proceed. For projects involving the acquisition of land, you must provide evidence that you have clear title to the land prior to the issuance of the Notice to Proceed.

- a. **Final Title Work** - Your attorney must furnish a separate final title opinion on all existing real property related to the facility, now owned and to be acquired for this project, as of the day of loan closing or start of construction, whichever occurs first. Form RD 1927-10, "Final Title Opinion" may be used.

28. Insurance and Bonding Requirements - Prior to the start of construction or loan closing, whichever occurs first, you must acquire and submit to the Agency proof of the types of insurance and bond coverage for the borrower shown below. The use of deductibles may be allowed, providing you have the financial resources to cover potential claims requiring payment of the deductible. The Agency strongly recommends that you have your engineer, attorney, and insurance provider(s) review proposed types and amounts of coverage, including any exclusions and deductible provisions. It is your responsibility and not that of the Agency to assure that adequate insurance and fidelity or employee dishonesty bond coverage is maintained.

- a. **General Liability Insurance** – Include vehicular coverage.
- b. **Workers' Compensation** – In accordance with appropriate State laws.
- c. **Fidelity or Employee Dishonesty Bonds** – Include coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through blanket coverage providing protection for all appropriate workers. During construction, each position should be bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The coverage may be increased during construction based on the anticipated monthly advances. After construction and throughout the life of the loan, the amount of coverage must be for at least the total annual debt service of all outstanding Agency loans. The Agency will be identified in the fidelity bond for receipt of notices. Form RD 440-24, "Position Fidelity Schedule Bond," or similar format may be used.
- d. **National Flood Insurance** - If the project involves acquisition or construction in designated special flood or mudslide prone areas, you must purchase a flood insurance policy at the time of loan closing.
- e. **Real Property Insurance** – Fire and extended coverage will normally be maintained on all structures except reservoirs, pipelines and other structures if such structures are not

normally insured, and subsurface lift stations except for the value of electrical and pumping equipment. The Agency will be listed as mortgagee on the policy when the Agency has a lien on the property. Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all facilities identified above.

Insurance types described above are required to be continued throughout the life of the loan. See Section VII.

29. Initial Compliance Review – The Agency will conduct an initial compliance review of the borrower prior to loan closing or start of construction, whichever occurs first, in accordance with 7 CFR 1901, Subpart E.

SECTION V – REQUIREMENTS PRIOR TO LOAN CLOSING

30. Interim Financing - Interim financing is being used. Loan closing will occur near the end of construction when interim funds are about to be completely disbursed. Documents detailed above from Sections II and III regarding security, electronic payments (Form 3550-28), and system policies, procedures, contracts, and agreements must be adopted and/or executed and submitted to the Agency prior to loan closing. In addition, the following items are required prior to closing:

31. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – The Agency requires all financed water and wastewater systems to have a VA/ERP in place. New water or wastewater systems must provide a certification that an ERP is complete prior to the start of operation, and a certification that a VA is complete must be submitted within one year of the start of operation. Borrowers with existing systems must provide a certification that a VA and ERP are completed prior to authorization to advertise for bids. The VA/ERP documents are not submitted to the Agency. Technical assistance is available in preparing these documents at no cost to you. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

32. Other Requirements – All requirements contained in the Agency’s closing instructions, as well as any requirements of your bond counsel and/or attorney, must be met prior to loan closing.

- a. **System for Award Management**. You will be required to maintain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain an active registration in the System for Award Management (SAM) database. Renewal can be done on-line at: <http://sam.gov>. This registration must be renewed and revalidated every twelve (12) months for as long as there are Agency funds to be expended. See Appendix A.

To ensure the information is current, accurate and complete, and to prevent the SAM account expiration, the review and updates must be performed within 365 days of the

activation date, commonly referred to as the expiration date. The registration process may take up to 10 business days. (See 2 CFR Part 25 and the “Help” section at <http://sam.gov>).

- b. **Litigation.** You are required to notify the Agency within 30 days of receiving notification of being involved in any type of litigation prior to loan closing or start of construction, whichever occurs first. Additional documentation regarding the situation and litigation may be requested by the Agency.
- c. **Certified Operator.** Evidence must be provided that your system has or will have, as defined by applicable State or Federal requirements, a certified operator available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

33. **Resident Inspector(s)** – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must concur with the request. Inspection services are to be provided by the consulting engineer unless other arrangements are requested in writing and concurred with by the Agency. A resume of qualifications of any resident inspector(s) will be submitted to the owner and Agency for review and concurrence prior to the pre-construction conference. The resident inspector(s) must attend the pre-construction conference.

34. **Preconstruction Conference** – A preconstruction conference will be held prior to the issuance of the Notice to Proceed. The consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, other funders, and other interested parties, and will provide minutes of this meeting to the owner and Agency.

35. **Inspections** - The Agency requires a pre-construction conference, pre-final and final inspections, and a warranty inspection. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the one-year warranty period to address and/or resolve any warranty issues. The Agency will conduct an inspection with you of your records management system at the same time and will continue to inspect the facility and your records system every three years for the life of the loan. See Section VII of this letter.

36. **Change Orders** – Prior Agency concurrence is required for all Change Orders.

37. **Payments** – Prior Agency concurrence is required for all invoices and requests for payment before Agency funds will be released. Requests for payment related to a contract or service agreement will be signed by the owner, project engineer, and contractor or service provider prior to Agency concurrence. Invoices not related to a construction contract or service agreement will include the owner’s written concurrence.

38. Use of Remaining Funds – Applicant contribution and connection or tap fees will be the first funds expended in the project, followed by non-Agency sources of funds. Remaining funds may be considered in direct proportion to the amounts obtained from each source and handled as follows:

- a. Remaining funds may be used for eligible loan and grant purposes, provided the use will not result in major changes to the original scope of work and the purpose of the loan and grant remains the same.
- b. Grant funds not expended for authorized purposes will be cancelled (de-obligated) within 45 days of final completion of project. Prior to actual cancellation, you and your attorney and engineer will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.
- c. Loan funds that are not needed will be cancelled (de-obligated) prior to loan closing.

39. Technical, Managerial and Financial Capacity - It is required that members of the Board of Directors, City Council members, trustees, commissioners and other governing members possess the necessary technical, managerial, and financial capacity skills to consistently comply with pertinent Federal and State laws and requirements. It is recommended members receive training within one year of appointment or election to the governing board, and a refresher training for all governing members on a routine basis. The content and amount of training should be tailored to the needs of the particular individual and the utility system. Technical assistance providers are available to provide this training for your organization, often at no cost. Contact the Agency for information.

40. Reporting Requirements Related to Expenditure of Funds

- a. **Financial Audit**– An annual audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law and must be submitted within 9 months of your fiscal year end.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit to be completed, the time frame in which the audit will be completed, and how irregularities will be reported.

- b. **Reporting Subawards and Executive Compensation** – You as a recipient of Federal funds and your first-tier contractors are required by 2 CFR Part 170 to report

disbursements to subrecipients in accordance with Appendix B of this letter and www.fsrs.gov. Your Agency processing office can provide more information.

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

41. Prepayment and Extra Payments - Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower, with no penalty.

Security instruments, including bonding documents, must contain the following language regarding extra payments, unless prohibited by State statute:

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of borrower to pay the remaining installments as scheduled in your security instruments.

42. Graduation - By accepting this loan, you are also agreeing to refinance (graduate) the unpaid loan balance in whole, or in part, upon request of the Government. If at any time the Agency determines you are able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms, you will be requested to refinance. Your ability to refinance will be assessed every other year for those loans that are five years old or older.

43. Security/Operational Inspections – The Agency will inspect the facility and conduct a review of your operations and records management system and conflict of interest policy every three years for the life of the loan. You must participate in these inspections and provide the required information.

44. Annual Financial Reporting/Audit Requirements – You are required to submit an annual financial report at the end of each of your fiscal years. The annual report will be certified by the appropriate organization official, and will consist of financial information, and a current rate schedule and listing of board members and their terms. Financial statements must be prepared on the accrual basis of accounting in accordance with generally accepted accounting principles (GAAP) and must include at a minimum a balance sheet and income and expense statement. The annual report will include separate reporting for each water and waste disposal facility, and itemize cash accounts by type (debt service, short-lived assets, etc.) under each facility. All records, books and supporting material are to be retained for three years after the issuance of the annual report. Technical assistance is available at no cost with preparing financial reports.

The type of financial information that must be submitted is specified below:

- a. **Audits** – An annual audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended

from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. The audit must be prepared by an independent auditor meeting the requirements of generally accepted government auditing standards (GAGAS) and must be submitted within 9 months of your fiscal year end. With the submission of the audit report, you will be required to provide a current rate schedule and listing of board members and their terms.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit or financial statements to be completed, the time frame in which the audit or financial statements will be completed, what type of reports will be generated from the services provided, and how irregularities will be reported.

- b. **Financial Statements** – If you expend less than \$750,000 in Federal financial assistance per fiscal year, you may submit financial statements in lieu of an audit which include at a minimum a balance sheet and an income and expense statement. You may use Form RD 442-2, “Statement of Budget, Income and Equity,” and 442-3, “Balance Sheet,” or similar format to provide the financial information. The financial statements must be signed by the appropriate borrower official and submitted within 60 days of your fiscal year end. With the submission of the year-end report, you will be required to provide a current rate schedule and listing of board members and their terms.
- c. **Quarterly Reports** – Quarterly Income and Expense Statements will be required until the processing office waives this requirement. You may use Form RD 442-2 or similar format to provide this information, and the reports are to be signed by the appropriate borrower official and submitted within 30 days of each quarter’s end. The Agency will notify you in writing when the quarterly reports are no longer required.

45. Annual Budget and Projected Cash Flow - Thirty days prior to the beginning of each fiscal year, you will be required to submit an annual budget and projected cash flow to this office. The budget must be signed by the appropriate borrower official. Form RD 442-2 or similar format may be used.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system, as well as completing the annual budget. If you are interested, please contact our office for information.

46. **Vulnerability Assessment/Emergency Response Plan (VA/ERP)** – You will be required to submit a certification to the servicing office every three years that the VA/ERP is current and covers all sites related to the facility. The documents themselves are not submitted to the Agency. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

47. **Insurance**. You will be required to maintain insurance on the facility and employees as previously described in this letter for the life of the loan.

48. **Statutory and National Policy Requirements** – As a recipient of Federal funding, you are required to comply with U.S. statutory and public policy requirements, including but not limited to:

- a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.
- b. **Civil Rights Act of 1964** – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.
- c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.
- d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, “Improving

Access to Services by Persons with Limited English Proficiency” and further affirmed in the USDA Departmental Regulation 4330-005, “Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA.”

Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. You must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor your compliance with these requirements during regular compliance reviews.

49. Compliance Reviews and Data Collection – The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36 CFR 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the security inspections described in this letter. If beneficiaries (users) are required to complete an application or screening for the use of the facility or service that you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

SECTION VIII – REMEDIES FOR NON-COMPLIANCE

Non-compliance with the conditions in this letter or requirements of your security documents will be addressed under the provisions of 7 CFR 1782 and other applicable regulations, statutes, and policies.

We look forward to working with you to complete this project. If you have any questions, please contact Elizabeth Ybarra at (505) 761-4963 or by e-mail at Elizabeth.ybarra@usda.gov

Sincerely,

**CHRISTINE
GRIEGO**

Christine Griego
Acting Community Program Director

Digitally signed by
CHRISTINE GRIEGO
Date: 2021.08.24 15:56:13
-06'00'

Attachments

cc: Community Programs Director
Accountant
Attorney
Bond Counsel
Engineer

ACRONYMS:

ABA - Architectural Barriers Act
ACH – Automated Clearing House
AD – Agriculture Department
ADA – Age Discrimination Act
AIS – American Iron and Steel
CFDA – Catalog of Federal Domestic Assistance
CFR – Code of Federal Regulations
CPAP – Commercial Programs Application Processing
DUNS – Dun and Bradstreet Data Universal Numbering System
EJCDC – Engineers Joint Contract Documents Committee
ERP – Emergency Response Plan
GAAP – Generally Accepted Accounting Principles
GAGAS – Generally Accepted Government Auditing Standards
LEP – Limited English Proficiency
NPA – Nationwide Programmatic Agreement
OC – Owner Construction
OPS – Owner-Performed Services
O&M – Operation and Maintenance
PER – Preliminary Engineering Report
RD – Rural Development
RUS – Rural Utilities Service
SAM – System for Award Management
SF – Standard Form
UCC – Uniform Commercial Code
USC – United States Code
USDA – United States Department of Agriculture
VA – Vulnerability Assessment

FORMS and BULLETINS:

Form AD-3031 “Assurance Regarding Felony Convictions or Tax Delinquent Status for Corporate Applicants” – Item 29
 Internal Revenue Service Form 1023, Appendix A, “Sample Conflict of Interest Policy” - Item 15
 Form RD 440-22, “Promissory Note” – Item 5
 Form RD 440-24, “Position Fidelity Schedule Bond” – Item 28
 Form RD 442-2, “Statement of Budget, Income and Equity” – Items 44 and 45
 Form RD 442-3, “Balance Sheet” – Item 44
 Form RD 442-7, “Operating Budget” – Item 21
 Form RD 442-20, “Right-of-Way Easement” – Item 14
 Form RD 442-21, “Right-of-Way Certificate” – Item 14
 Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way” – Item 14
 Form RD 1927-9, “Preliminary Title Opinion” – Item 14
 Form RD 1927-10, “Final Title Opinion” – Item 27
 Form RD 1940-1, “Request for Obligation of Funds” – Pages 1 and 2
 Form RD 1942-8, “Resolution of Members or Stockholders” – Item 5
 Form RD 1942-46, “Letter of Intent to Meet Conditions” – Page 1
 Form RD 3550-28, “Authorization Agreement for Preauthorized Payments” – Items 6 and 30
 Form UCC-1, “Financing Statement” – Item 5
 Form UCC-1Ad, “UCC Financing Statement Addendum” – Item 5
 SF 3881, “ACH Vendor/Miscellaneous Payment Enrollment Form” – Items 8 and 18
 RUS Bulletin 1780-7, “Legal Services Agreement” – Item 13
 RUS Bulletin 1780-9, “Water Users Agreement” - Items 15 and 19
 RUS Bulletin 1780-12, “Water and Waste System Grant Agreement” – Page 1 and Item 5
 RUS Bulletin 1780-26, “Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance” – Items 11 and 12
 RUS Bulletin 1780-27, “Loan Resolution (Public Bodies)” – Item 5
 RUS Bulletin 1780-28, “Loan Resolution Security Agreement” – Item 5

Appendix A
2 CFR Part 25

**SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER
REQUIREMENTS**

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another appendix.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this appendix) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

C. Definitions

For purposes of this appendix:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
3. Entity, as it is used in this appendix, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and

- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

Appendix B
2 CFR Part 170

Reporting Subawards and Executive Compensation

a. Reporting of first tier subawards.

1. **Applicability.** Unless you are exempt as provided in paragraph d. of this appendix, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this appendix).
2. **Where and when to report.**
 - i. You must report each obligating action described in paragraph a.1. of this appendix to <http://www.fsrs.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. **What to report.** You must report the information about each obligating action listed in the submission instructions posted at <http://www.fsrs.gov>.

b. Reporting Total Compensation of Recipient Executives.

1. **Applicability and what to report.** You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. the total Federal funding authorized to date under this award is \$25,000 or more;
 - ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this appendix:

- i. As part of your registration profile at <https://www.sam.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this appendix, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

- i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this appendix:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month

of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this appendix:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization, or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax-qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

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Sincerely,

Elizabeth Ybarra
Loan Specialist – Water and Environmental Programs

Enclosure (if applicable)

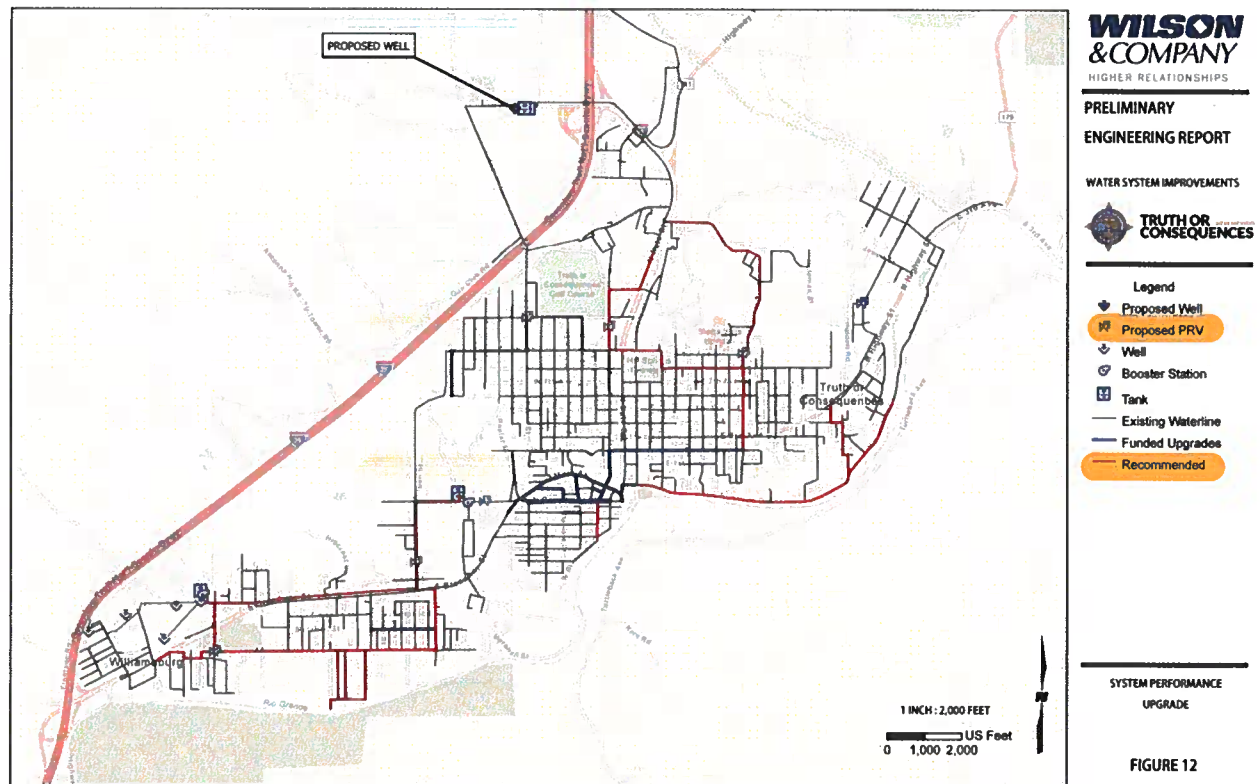


Figure 12: Alternative III System Performance Upgrade

5.2.4 Alternative III-A: System High Pressure Solution

5.2.4.1 Description

Alternative III-A 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 involves replacing 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 alternative 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 in this alternative are replaced via open trench by placing the new line parallel to the existing and abandoning the existing waterline in place; except where noted otherwise. Areas of the City of Truth or Consequences were evaluated based on current GIS information, upsizing the existing water line to an 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 increases available pressure in the City and provide for better fire flow capacity. 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 side walk or, curb and gutter if a water meter is found in the existing roadway and needs to be replaced. This portion of line repairs also includes the replacement of the existing casing and crossing pipe underneath any NMDOT ROW’s via jack and bore construction methods.

5.2.4.2 Replacement of City Water Lines

Due to extensive leaks and pipe breaks as described in the “Existing Facilities” portion of this report, infrastructure defined as “System High Pressure Solutions” (**Figure 13**) should be replaced. Since these four particular waterlines are also known as the main transmission lines, their primary purpose is to ensure that water transmission runs from Cook Street Booster station to Morgan Street Booster station to finally provide water flow to multiple areas of the city. By replacing these particular lines, the water system will reduce the 30 psi pressure fluctuation in the system, mostly in the “Williamsburg” and “East” areas

Waterlines replacements locating on the “North” area feeding the City’s high school and hospital, Upsizing a main cast iron waterline located on portions of East 8th and East 9th Streets in the “East” side of the city, and additionally replacing and looping an area in the “Williamsburg” area will also prevent pressure fluctuation in the system and mostly in the “Williamsburg” and “East” areas and will ensure water quality for the “Williamsburg” area.

The existing flow capacity has been determined to be insufficient due to several breakages reports and the inability to meet fire flow requirement. All pipes are assumed to be replaced with PVC C-900 DR18, sizes with 6 Inch or greater. Dewatering of groundwater is a consideration in this alternative as described in the previous "Cost Evaluation Methodology" section via open trench.

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.

5.2.4.3 Replacement of City Water Meters

Due to aging, inaccurate meter readings and manually reading record described in the "Existing Facilities" portion of this report, it has been determined that all of the water meters should be replaced in their entirety. Water meters are currently older than 40 years, exceeding their useful life. This provides incorrect data regarding water usage, water loss percentages and has a negative impact on the City's billing system. 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.

5.2.4.4 Water and Energy Efficiency

The amount of lost water in this portion of the system is estimated at ~ 32 Million gallons per year. This amount of water represents \$56,346 in lost revenue per year, at the rate the city charges per gallon of water.

5.2.4.5 Green Infrastructure

This alternative will reduce water losses by approximately 32 Million gallons per year due to line breaks, which is an essential consideration in New Mexico with limited water supply available. See **Appendix 8** for justification on water loss numbers.

5.2.4.6 Land Requirements

No additional land requirements are anticipated for the replacement of the water lines, as all new water lines are within existing right-of-way.

5.2.4.7 Potential Construction Problems

The largest potential for construction problems in this alternative lies on the neighborhoods located on each side of I-25 business route which will require service lines crossing all lanes within an NMDOT owned road. Crossings will either require extensive closures, or more likely, will

require directional drilling. It is assumed that drilling will be required, and a bid item for drilling has been included in the cost estimate for this portion of the alternative.

Dewatering quantities are another large potential concern for this alternative. A large proportion of these main transmission's lines run parallel with the Rio Grande, which indicate a shallow water table. Existing water levels in excavation trenches cannot be quantified until further examination. As explained in the "existing system" part of this report, waterlines replaced within the southern portion of the "East Side" and "Williamsburg" areas will have 60 percent dewatering of the trench. In other areas of the city 5 percent dewatering will be assumed.

5.2.4.8 Resiliency and Operational Simplicity

The only regular maintenance item for this alternative are the PRV 's which will require periodic maintenance as recommended by the manufacturer. The new pipelines and water meter replacements are anticipated to greatly reduce the operations costs associated with pipe repairs in this area.

5.2.4.9 Alternative Pros/Cons

ADVANTAGES:

- This option has a capital cost that is within the City's budget
- This option fixes a large percentage of the safety issues (in the form of infiltration and lack of fire flow)
- This option eliminates high pressures issues that caused the aging infrastructure to break more often.
- This option conserves a large percentage of water, close to a third of the water losses
- This option extremely reduces service outages for residents
- This option improves approximately 6.2 percent of the existing water system
- This option improves approximately 27 percent of the aging water system
- This option doesn't produce any changes on billing charges

DISADVANTAGES:

- This option has a large dewatering cost for the "East" and "Williamsburg" areas near the Rio Grande
- This option requires a large amount of NMDOT crossing permits
- This option doesn't improve the backup and redundancy to the water system



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: August 24, 2022

Agenda Item #: H.1

SUBJECT: City wide project update
DEPARTMENT: Assistant City Manager
DATE SUBMITTED: August 17, 2022
SUBMITTED BY: Traci Alvarez
WHO WILL PRESENT THE ITEM: Alfredo Holguin

Summary/Background: Update Commission and Public on the status of current projects and applications

Recommendation:

No Action

Attachments:

- None
-

Fiscal Impact (Finance): Yes

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 8-24-2022



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: August 24, 2022

Agenda Item #: H.2

SUBJECT: Accept and Approve Wilson and Co. Inc recommendation of award Main Street District (MSD) Water System Improvements

DEPARTMENT: Assistant City Manager

DATE SUBMITTED: August 17, 2022

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

Bids were received on Thursday, July 07, 2022, and publicly opened and read. Two bids were received from Morrow Enterprise Inc and Smithco Construction Inc. The low bidder was Smithco Construction Inc. The city held a meeting to negotiate with Smithco Construction Inc to meet the available funding. Wilson and Company have reviewed the bid and based on the information provided, the lowest responsive, responsible bidder is Smithco Construction, Inc.

Recommendation:

Staff recommends the the Main Street District (MSD) Water System Improvements Project, Base Bid, be awarded to Smithco Construction, Inc for a total contract award amount of \$6,314,951.70, excluding NMGR.

Attachments:

- Letter of Recommendation of Award and supporting documents
-

Fiscal Impact (Finance): Choose an item.

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. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 8-24-2022

August 112022

Traci Alvarez
Assistant City Manager
City of Truth or Consequences
505 Sims Street
Truth or Consequences, NM 87901

Re: Recommendation of Award, Main Street District (MSD) Water System Improvements

Bids were received at the City of Truth or Consequences Finance Department located at 505 Sims Street, Truth or Consequences, NM, on Thursday, July 07, 2022, until 2:00 pm MST local time. At 2:30 pm MST, July 07, 2022, the bids will be moved to the Commission Chambers at 405 W 3rd Street, Truth or Consequences, NM to be publicly opened and read. The following bids were received and are presented in the order in which they were opened:

No.	Company	Base Bid (excl. NMGRT)	Additive Alternate #1 (excl. NMGRT)	Combined Base Bid + Add. Alt. #1 (excl. NMGRT)	Additive Alternate #2 (excl. NMGRT)	Combined Base Bid + Add. Alt. #1 & #2 (excl. NMGRT)
1	MORROW ENTERPRISE, INC.	\$9,699,992.70	\$1,172,486.45	\$10,872,486.15	\$490,877.00	\$11,363,363.15
2	SMITHCO CONSTRUCTION, INC.	\$7,523,789.00	\$957,628.00	\$8,481,417.00	\$480,000.00	\$8,961,417.00

A complete tabulation of bids is attached. The evaluation of the bid is based on the Base Bid. Two bids were received from Morrow Enterprise Inc and Smithco Construction Inc. The low bidder was Smithco Construction Inc. The city held a meeting to negotiate with Smithco Construction Inc to meet the available funding. (See attachment Summary of Negotiations, Main Street District (MSD) Water System Improvements)

The bid amounts were modified as follows:

No.	Company	Base Bid (excl. NMGRT)
1	SMITHCO CONSTRUCTION, INC.	\$6,314,951.70

Wilson and Company have reviewed the bid for the following information:

- The Bid Proposal was signed by an individual duly authorized to bind the company.
- Smithco Construction Inc acknowledged receipt of all addenda.
- Smithco Construction Inc is a licensed contractor in the State of New Mexico in good standing.
- The appropriate license classifications are contingent upon the License Determination Request submitted to CID.

Included with the signed Bid Proposal form, Smithco Construction, Inc. submitted the following:

- Required Bid Security
- List Of Proposed Subcontractors (None)
- List of Proposed Suppliers
- Evidence of authority to do business in the state of the Project
- Contractor's license number
- Required Bidder Qualification Statement with supporting data
- signed Compliance Statement (RD 400-6)
- Signed Lower Tier Covered Transactions (AS-1048)
- Singed RD Instruction 1940-Q Exhibit A-1
- Bid Bond
- Power of Attorney

Based on the information provided, the lowest responsive, responsible bidder is Smithco Construction, Inc. We, therefore, recommend the construction contract for the J Main Street District (MSD) Water System Improvements Project, Base Bid, be awarded to Smithco Construction, Inc for a total contract award amount of \$6,314,951.70, excluding NMGRT. We recommend verifying the obligated funding amounts with the U.S Department of Agriculture, Rural Development (RD) prior to awarding any portion of the project.

Sincerely,



Mark A. Nasi, PE

Sr. Water/Wastewater Project Manager
Wilson & Company, Inc., Engineers & Architects

Enclosures:

Summary of Negotiations, Main Street District (MSD) Water System Improvements Bid Tabulation
Required Bid Documents Checklist
Sign-in Sheet

Amanda Forrister
Mayor

Rolf Hechler
Mayor Pro-Tem

Merry Jo Fahl
Commissioner



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

Destiny Mitchell
Commissioner

Shelly Harrelson
Commissioner

Bruce Swingle
City Manager

August 9, 2022

Rylan Edgmon
Estimator, Smithco Construction, Inc.
6 King Canyon Loop,
Caballo NM, 87931

Re: Summary of Negotiations, Main Street District (MSD) Water System Improvements

Mr. Edgmon

This letter is a summary of our negotiations on the Main Street District (MSD) Water System Improvements, which will need your concurrence to proceed on awarding the contract.

Summary:

Bids were publicly opened on Thursday, July 07, 2022, at 2:30 pm MST local time. Smithco Construction Inc. was the responsible low bidder with a base bid of \$7,523,789.00 (excl. NMGR), which exceeded the available funding of \$6,314,951.70. The city elected to negotiate with Smithco Construction Inc.

Negotiations:

A virtual negotiation meeting was held on July 27, 2022, at 3:00 PM between the City, Smithco Construction Inc., and Wilson & Company. The city elected to reduce the scope and have Smithco Construction Inc. complete some value engineering on the project to reduce the cost of the available funding. The scope reductions are as follows:

1. **Foch St:** removal of Foch St. payment quantities and landscaping covered under the "T or C Great Blocks S. Foch St.: Main St. to Broadway Ave. Master Paving Plan"
2. **Main Street Avenue:** Sheet CU-201, removal of 177 LF "12-inch FPVC C-900, DR 18 PVC Pipe: Pipe Bursting Method" Bid Item #38
3. **Well #8:** Removal of well 8 includes the following
4. **Sheets removed:** Removal of the following roads and sheets (see attachment for quantities and cost)
 - o McAdoo West CU 224, CU 225
 - o Riverside CU 230
 - o Date St CU 231, CU 232
 - o Broadway CU-222, CU-223

Smithco Construction Inc. sent back a revised bid of \$6,323,552.00 (excl. NMGR) on August 4, 2022, along with Value Engineering Options.

Final Negotiations:


The city after evaluation of the revised bid submitted by Smithco Construction Inc. on August 4, 2022, with Wilson & Company, decided to revise the scope as follows:

1. **Sheets to be re-added:** Broadway CU-222, CU-223
2. **Bid Item #38 quantity removed:** Sheet CU-201, removal of 177 LF "12-inch FPVC C-900, DR 18 PVC Pipe: Pipe Bursting Method"

The final negotiated bid is \$6,314,951.70 (excl. NMGRT) as detailed in the attached Bid Negotiation Tabulation. The Value Engineering Options are appreciated and will be considered once the contract is awarded.

This final negotiated bid of \$6,314,951.70 is within the available funding. **Concurrence is required by Smithco Construction Inc. on this document with its attachment.** The contract agreement will include this final negotiated bid as attached.

Sincerely,


Bruce Swingle
City Manager

Attachment:

Bid Negotiation Tabulation
Value Engineering Options

CONCURRENCE:



Smithco Construction Inc.

BASE BID - MAINS STREET DISTRICT WATERLINES REPLACEMENT				FINAL NEGOTIATED BID	
#	DESCRIPTION	UNIT	UNIT PRICE	COST	
ALLOWANCES AND MISCELLANEOUS					
1	Mobilization & Demobilization	LS	\$350,000.00	\$350,000.00	
2	SWPPP Preparation	LS	\$25,000.00	\$25,000.00	
3	SWPPP Implementation and Inspection	LS	\$25,000.00	\$25,000.00	
4	Construction Sign	LS	\$2,000.00	\$2,000.00	
5	Construction Survey to include staking, layout and identifying project boundaries.	LS	\$100,000.00	\$100,000.00	
6	Traffic Control	LS	\$250,000.00	\$250,000.00	
7	Utility Relocation	ALLW	\$50,000.00	\$50,000.00	
8	Material Testing Allowance	ALLW	\$73,339.00	\$73,339.00	
9	Subsurface Utility Locating	ALLW	\$50,000.00	\$50,000.00	
10	SCADA Allowance	ALLW	\$150,000.00	\$150,000.00	
COOK ST. TREATMENT FACILITY CONSTRUCTION ITEMS					
17	Furnish and install 18-inch DIP, including Trenching and Compacted Backfill, per APWA Standard Spec. 801, Complete in Place	LF	\$180.00	\$5,040.00	
18	Furnish and install Vent-Matic Check valve, CIP	EA	\$30,000.00	\$60,000.00	
19	Furnish and install ARV w/ Furnish and appurtenances, CIP	EA	\$6,000.00	\$12,000.00	
20	Furnish and install 10' E-H Manometer, Pumps W400, SW4CZF, DN30 12 9'X5' in precast concrete vault with bypass, and new chlorine injection port, CIP	LS	\$45,000.00	\$45,000.00	
21	Furnish and install Pump and Motor w/ VFD	EA	\$125,000.00	\$125,000.00	
22	Outside Iron MJ fittings, class 250, 18" Waterlines incl. Joining Material	LB	\$3.00	\$10,875.00	
22 A	18" Gate Valves w/ Valve Can, CIP	EA	\$25,000.00	\$25,000.00	
23	Furnish and install 10-inch Cast Iron Gate Valve (MJ)	EA	\$6,000.00	\$12,000.00	
24	Furnish and install 12-inch Cast Iron Gate Valve (MJ)	EA	\$6,500.00	\$13,000.00	
25	Connect to Existing 18-inch Waterline, Complete in Place	EA	\$6,500.00	\$17,000.00	
26	Furnish and install new gas-chlorination disinfection system, including fiberglass shed CIP	EA	\$70,000.00	\$70,000.00	
27	Chlorination Building Foundation Pad, including subgrade prep reinforcement installed	LB	\$60,000.00	\$60,000.00	
29	Furnish and install 18-inch DI Mechanically Restrainted pipe length from T to T along per APWA Standard Spec. 801, Complete in Place. 1's W/ restraints on all Sides	LF	\$50.00	\$1,470.00	
30	12' E-H Manometer, Pumps W400, SW4C3H, DN30 12, 7'X7' in precast concrete vault with bypass CIP	EA	\$48,000.00	\$48,000.00	
IMPROVEMENTS TO DISTRIBUTION SYSTEM					
31	8-inch PPVC C-900, DR 18 PVC Pipe Horizontal Directional Drill	LF	\$0.00	\$0.00	
32	8-inch PPVC C-900, DR 18 PVC Pipe Horizontal Directional Drill	LF	\$0.00	\$0.00	
33	12-inch PPVC C-900, DR 18 PVC Pipe Horizontal Directional Drill	LF	\$477.00	\$162,180.00	
34	6" Waterline C-900 DR-18 PVC Pipe Installed	LF	\$50.00	\$13,050.00	
35	8" Waterline C-900 DR-18 PVC Pipe Installed	LF	\$100.00	\$351,200.00	
36	12" Waterline C-900 DR-18 PVC Pipe Installed	LF	\$150.00	\$786,400.00	
37 A	8-inch PPVC C-900, DR 18 PVC Pipe Pipe Bursting Method	LF	\$0.00	\$0.00	
37	8-inch PPVC C-900, DR 18 PVC Pipe Pipe Bursting Method	LF	\$0.00	\$0.00	
38	12-inch PPVC C-900, DR 18 PVC Pipe Pipe Bursting Method	LF	\$1,100.00	\$0.00	
39	6" PVC pipe restrained coupling installed Series #3809S	EA	\$3,500.00	\$35,000.00	
40	8" PVC pipe restrained coupling installed Series #3809S	EA	\$3,800.00	\$22,800.00	
41	12" PVC pipe restrained coupling installed Series #3812S	EA	\$4,000.00	\$12,000.00	
42	6" Gate Valves w/ Valve Can, CIP	EA	\$3,000.00	\$51,000.00	
43	8" Gate Valves w/ Valve Can, CIP	EA	\$3,800.00	\$126,200.00	
44	12" Gate Valves w/ Valve Can, CIP	EA	\$4,200.00	\$189,000.00	
44 A	1" Combination Air Release Valve (CARV) Assembly	EA	\$7,000.00	\$7,000.00	
45	1 1/2" Depth Fire Hydrant w/ pipe valves, and connection	EA	\$10,000.00	\$10,000.00	
46	3 1/2" Depth Fire Hydrant w/ pipe valves, and connection	EA	\$10,000.00	\$10,000.00	
47	Pressurized waterline connections, CIP	EA	\$115,000.00	\$119,500.00	
48	Outside Iron MJ Fittings, All Sizes, Class 25, CIP	LB	\$3.00	\$30,250.00	
49	Joint Restraints 4"-8", CIP	EA	\$100.00	\$8,400.00	
50	Joint Restraints 10"-12", CIP	EA	\$200.00	\$22,000.00	
51	Water Meter Box Remove & Replace and connectors & smart valve, compl.	EA	\$2,600.00	\$280,800.00	
52	De-watering of Trench and Bore Pits, CIP	LF	\$50.00	\$146,200.00	
53	Temporary water services	LF	\$0.00	\$0.00	
54	Temporary Service connection	EA	\$0.00	\$0.00	
ROADWAY					
55	Asphalt Roadway, Remove, Dispose and Replace with SP IV, 3" Thick for Residential Streets, include Base Course and Subgrade Prep, CIP	SY	\$70.00	\$30,240.00	
56	Asphalt Roadway, Remove, Dispose and Replace with SP III, 4" Thick for NMDOT ROW, include Base Course and Subgrade Prep, CIP	SY	\$100.00	\$453,000.00	
57	Excavate and Dispose of Unusable Material, CIP	CY	\$10.00	\$29,540.00	
58	Import of select material	CY	\$25.00	\$73,850.00	
59	Geogrid Base Roadway Reinforcement	SY	\$5.00	\$24,315.00	
60	Remove and replace Curb and Gutter, CIP	LF	\$15.00	\$13,720.00	
61	Remove and replace Sidewalk, CIP	SY	\$90.00	\$27,720.00	
ELECTRICAL / CONTROLS					
62	Well 1 Demolition and Installation, CIP	LS	\$55,000.00	\$55,000.00	
63	Well 2 Demolition and Installation, CIP	LS	\$120,000.00	\$120,000.00	
64	Well 6 Demolition and Installation, CIP	LS	\$68,000.00	\$68,000.00	
65	Well 7 Demolition and Installation, CIP	LS	\$68,000.00	\$68,000.00	
66	Well 8 Demolition and Installation, CIP	LS	\$0.00	\$0.00	
67	Morgan St. Demolition and Installation, CIP	LS	\$82,000.00	\$82,000.00	
68	Cemetery St. Demolition and Installation, CIP	LS	\$130,000.00	\$130,000.00	
69	Cook St. Demolition and Installation, CIP	LS	\$750,000.00	\$750,000.00	
MECHANICAL					
70	Cook St. Demolition, Plumbing, HVAC, and Installation, CIP	LS	\$28,000.00	\$28,000.00	
CONSTRUCTION SUBTOTAL				\$6,314,851.70	
NMGRT (6.5%)				\$536,770.89	
TOTAL ESTIMATED PROJECT COSTS				\$6,851,722.59	

TarC MSD Water System Improvements
Value Engineering Options
8/4/2022

Bid Item	Description	Sub/Supplier	VE Suggestion	Potential Savings
18	2ea 16" Valmatic 98120XF at: Bronze trim lined disc Plug Check Valves	Core & Main	Switch to 2ea 16" 12" Val-Matic Model 7212AXD Surgebuster Check Valve ANSI Class 125 Flanged Ends AISI approved Ductile Iron Body B1-NA-N Disc Stainless Steel Disc Accelerator and Bolts, Fusion Bonded Epoxy Coating	\$ 20,692.09
22A	1ea 18" MJ RW Gate Valve	Core & Main	Switch to 1ea 18" Val-Matic Model 2118/2E02CXD 3XF Butterfly Valve Banded Service, Cast Iron Body, Ductile Iron Disc, Stainless Steel Shaft and Body Seat Ring, Resilient Seat, LSA Traveling Actuator with 2" AWWA Square Nut Operator, Stainless Steel Bonnet Hardware, Fusion Bonded Epoxy Coating AISI Approved	\$ 10,728.33
23	1ea 10" MJ RW Gate Valve 1ea 10" MJ Butterfly Valve	Core & Main	Switch to 2ea 10" MJ Butterfly Valve	\$ 1,534.44
28	FRP Chlorine Building 6'x8'	Pure Ops	Reduce building size to 6'x6'	\$ 4,427.00
34-36	Open Cut Waterlines Bedding Material	Barlow	Remove Bedding Requirement and use Native material (if native material doesn't meet spec utilize bid item 37 & 58 to remove and replace with import material)	\$ 53,061.00
52	Demolition	Self Performed	Modify item to \$50,000 allowance and only use as needed	\$ 86,300.00
63	Well #2 Electrical	LE Electric	Change service entrance conductors and generator sub feed conductors from copper to aluminum pricing	\$ 426.00
63	Well #2 Electrical	LE Electric	Reduce AIC ratings on panels and transformers to aluminum wound	\$ 2,130.00
62	Cook #1 Electrical Clarification to Specification	LE Electric	Bypasses are not available for the Drives in MCC-1	\$
62	Cook #1 Electrical	LE Electric	Change Cook #1 steel service entrance conductors and generator sub feeds to aluminum	\$ 13,845.00
Total Potential Cost Savings				\$ 283,134.47

BO EVALUATION BID OPENING 07/07/2022

BASE BID - BAYNE STREET DISTRICT WATERLINES REPLACEMENT				MORROW ENTERPRISES, INC.		BETHCO CONSTRUCTION, INC.	
ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QTY	UNIT PRICE	COST	UNIT PRICE	COST
ALLOWANCE / MISCELLANEOUS							
1	Mobilization & Demobilization	LS	1.00	\$328,187.31	\$328,187.31	\$485,954.00	\$485,954.00
2	SWPPP Preparation	LS	1.00	\$25,000.00	\$25,000.00	\$2,480.00	\$2,480.00
3	General Inspection and inpection	LS	1.00	\$50,000.00	\$50,000.00	\$4,432.00	\$4,432.00
4	Construction Sign	LS	1.00	\$1,000.00	\$1,000.00	\$2,710.00	\$2,710.00
5	Construction Survey to include staking, layout and identifying project boundaries	LS	1.00	\$50,437.00	\$50,437.00	\$2,568.00	\$2,568.00
6	Traffic Control	LS	1.00	\$250,000.00	\$250,000.00	\$1,582.70	\$1,582.70
7	Utility Relocation	ALLW	1.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00
8	Material Testing Allowance	ALLW	1.00	\$77,338.55	\$77,338.55	\$73,338.00	\$73,338.00
9	Subsurface Utility Locating	ALLW	1.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00
10	SCADA Allowance	ALLW	1.00	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00
COOK BY TREATMENT FACILITY CONSTRUCTION ITEM							
17	Furnish and Install 18-inch DIP, including Threading and Compressed Buckle, per APWA Standard Spec 801, Complete in Place	LF	51.00	\$130.00	\$6,630.00	\$124.50	\$6,389.25
18	Flush and install Valve/Metric Check valve, CIP	EA	2.00	\$10,000.00	\$20,000.00	\$31,540.00	\$63,080.00
19	Furnish and install APV 60" Furnish and install, approximately, CIP	EA	2.00	\$4,000.00	\$8,000.00	\$5,722.00	\$11,444.00
20	Furnish and install 10" 4" Magister Pumping WOOD, DWACF, DN30 12 82X, in precast concrete vault with bypass, and new chrome injection part, CIP	LS	1.00	\$50,484.55	\$50,484.55	\$44,857.00	\$44,857.00
21	Furnish and install Pump and Motor M/V/D	EA	2.00	\$75,000.00	\$150,000.00	\$148,754.00	\$297,508.00
22	Double Iron 94 Range, class 250 1P, Waterlines and Jarring Material	LS	2.175.00	\$6.50	\$14,137.50	\$11.00	\$23,925.00
22.A	12" Data Valves w/ Valve Cdn, CIP	EA	1.00	\$4,000.00	\$4,000.00	\$28,615.00	\$28,615.00
23	Furnish and install 10-inch Cast Iron Data Valve (M)	EA	2.00	\$1,610.00	\$3,220.00	\$5,898.00	\$11,796.00
24	Furnish and install 12-inch Cast Iron Data Valve (M)	EA	2.00	\$3,380.00	\$6,760.00	\$5,892.00	\$11,784.00
25	Connect to Existing 12-inch Waterline, Complete in Place	EA	2.00	\$4,000.00	\$8,000.00	\$13,182.00	\$26,364.00
26	Furnish and install new gas distribution distribution system, including Bourgeois steel CIP	EA	1.00	\$51,187.00	\$51,187.00	\$153,562.00	\$153,562.00
27	Chlorination Building Foundation Pad, including subgrade prep reinforcement, finished	LS	1.00	\$9,038.00	\$9,038.00	\$15,112.00	\$15,112.00
28	Furnish and install 18-inch DI Monorail, Rebarless Joint Assembly, per APWA Standard Spec 801, Complete in Place	EA	50.00	\$500.00	\$25,000.00	\$1,001.00	\$50,050.00
29	12" 4" Magister Pumping WOOD, DWACF, DN30 12 7X7, in precast concrete vault with bypass, CIP	EA	1.00	\$11,128.00	\$11,128.00	\$42,731.00	\$42,731.00
IMPROVEMENTS TO DISTRIBUTION SYSTEM							
31	Run PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	LF	88.00	\$150.00	\$13,200.00	\$150.00	\$13,200.00
32	Run PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	LF	387.00	\$210.00	\$81,270.00	\$210.00	\$81,270.00
33	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	LF	340.00	\$320.00	\$108,800.00	\$320.00	\$108,800.00
34	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	LF	380.00	\$750.00	\$285,000.00	\$750.00	\$285,000.00
35	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	LF	2,824.00	\$800.00	\$2,259,200.00	\$800.00	\$2,259,200.00
36	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	LF	5,433.00	\$120.00	\$651,960.00	\$120.00	\$651,960.00
37	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	LF	856.00	\$220.00	\$188,320.00	\$220.00	\$188,320.00
38	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	LF	1,980.00	\$320.00	\$633,600.00	\$320.00	\$633,600.00
39	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	LF	177.00	\$430.00	\$75,810.00	\$430.00	\$75,810.00
40	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	10.00	\$400.00	\$4,000.00	\$4,777.00	\$47,770.00
41	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	6.00	\$840.00	\$5,040.00	\$4,853.00	\$50,436.00
42	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	3.00	\$880.00	\$2,640.00	\$5,021.00	\$15,063.00
43	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	18.00	\$1,800.00	\$32,400.00	\$3,008.00	\$54,144.00
44	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	34.00	\$1,800.00	\$61,200.00	\$4,000.00	\$136,000.00
45	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	48.00	\$4,300.00	\$206,400.00	\$5,127.00	\$246,096.00
46	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	1.00	\$10,500.00	\$10,500.00	\$5,343.00	\$53,430.00
47	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	1.00	\$8,800.00	\$8,800.00	\$12,362.00	\$123,620.00
48	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	16.00	\$8,800.00	\$140,800.00	\$10,217.00	\$163,472.00
49	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	13.00	\$3,000.00	\$39,000.00	\$13,429.00	\$174,577.00
50	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	15.00	\$1,100.00	\$16,500.00	\$9,100.00	\$136,500.00
51	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	183.00	\$150.00	\$27,450.00	\$417.00	\$76,311.00
52	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	110.00	\$320.00	\$35,200.00	\$99.00	\$10,890.00
53	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	119.00	\$2,700.00	\$321,300.00	\$3,722.00	\$440,218.00
54	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	2,608.00	\$170.00	\$443,360.00	\$118.00	\$307,744.00
55	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	1,972.00	\$7.50	\$14,790.00	\$29.00	\$57,172.00
56	12-inch PVC C-800, DR 18 PVC Pipe Horizontal Directional Drill	EA	23.00	\$780.00	\$18,060.00	\$4,808.00	\$110,584.00
ROADWAY							
57	Align Roadway, Remove, Dispose and Replace with 6" 4" Thick for Roadway Struts include Base Course and Subgrade Prep, CIP	BY	1,184.00	\$80.00	\$94,720.00	\$149.00	\$176,416.00
58	Align Roadway, Remove, Dispose and Replace with 6" 4" Thick for Roadway Struts include Base Course and Subgrade Prep, CIP	BY	4,869.00	\$47.00	\$228,813.00	\$133.00	\$647,637.00
59	Excavate and Dispose of Unstable Material, CIP	CY	3,308.00	\$23.00	\$76,084.00	\$43.00	\$142,336.00
60	Import of select material	CY	3,308.00	\$27.00	\$89,316.00	\$90.00	\$297,720.00
61	Design Base Roadway Reinforcement	BY	8,143.00	\$5.00	\$40,715.00	\$8.00	\$65,144.00
62	Remove and replace Curb and Outer, CIP	LF	440.00	\$40.00	\$17,600.00	\$48.00	\$21,120.00
63	Remove and replace Sidewalk, CIP	BY	339.00	\$120.00	\$40,680.00	\$175.00	\$59,225.00
ELECTRICAL/CONTROL							
64	Wire 1 Demolition and Installation, CIP	LS	1.00	\$28,022.88	\$28,022.88	\$51,840.00	\$51,840.00
65	Wire 2 Demolition and Installation, CIP	LS	1.00	\$59,787.25	\$59,787.25	\$113,838.00	\$113,838.00
66	Wire 3 Demolition and Installation, CIP	LS	1.00	\$30,408.38	\$30,408.38	\$60,017.00	\$60,017.00
67	Wire 4 Demolition and Installation, CIP	LS	1.00	\$30,408.38	\$30,408.38	\$64,245.00	\$64,245.00
68	Wire 5 Demolition and Installation, CIP	LS	1.00	\$30,408.38	\$30,408.38	\$66,637.00	\$66,637.00
69	Wire 6 Demolition and Installation, CIP	LS	1.00	\$30,408.38	\$30,408.38	\$78,772.00	\$78,772.00
70	Wire 7 Demolition and Installation, CIP	LS	1.00	\$30,408.38	\$30,408.38	\$123,215.00	\$123,215.00
71	Wire 8 Demolition and Installation, CIP	LS	1.00	\$30,408.38	\$30,408.38	\$170,000.00	\$170,000.00
72	Wire 9 Demolition and Installation, CIP	LS	1.00	\$30,408.38	\$30,408.38	\$246,464.00	\$246,464.00
MECHANICAL							
73	Cope 81 Demolition, Plumbing, HVAC and Installation, CIP	LS	1.00	\$12,757.50	\$12,757.50	\$28,244.00	\$28,244.00
TOTAL BASE BID EXCLUDING PERMIT							
				\$4,088,648.13		\$7,525,788.00	
				\$5,000,249.87		\$9,526,037.87	
				\$7,212,648.23		\$13,051,825.87	

BID EVALUATION BID OPENING 07/07/2022									
ADDITIVE ALTERNATE 1- COOK ST. 3000 GALLON TANK						MORROW ENTERPRISE, INC.		SMITHCO CONSTRUCTION, INC.	
ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QTY	UNIT PRICE	COST	UNIT PRICE	COST	UNIT PRICE	COST
COOK ST. 300,000 Gallon Tank Construction Items									
11	Site Grading/Excavation	CY	1,000.00	\$10.00	\$10,000.00	\$44.00	\$44,000.00	\$15.00	\$15,000.00
12	Engineered Fill/Subgrade Prep for Tank Foundation, Including Compaction and Testing	CY	630.00	\$12.00	\$7,560.00	\$42.00	\$26,460.00	\$60.00	\$37,800.00
13	6-Inch Gravel Pad, Including Subgrade Prep, Installed	SY	821.00	\$20.00	\$16,420.00	\$21.00	\$17,241.00	\$13.00	\$10,673.00
14	Furnish and Install 0.300 Million Gallon Welded Steel Tank, AWWA D100-11, CIP	LS	1.00	\$537,000.00	\$537,000.00	\$620,329.45	\$620,329.45	\$550,000.00	\$550,000.00
15	Tank Foundation, Installed	LS	1.00	\$50,000.00	\$50,000.00	\$209,797.00	\$209,797.00	\$160,000.00	\$160,000.00
16	Furnish and Install Cathodic Protection for Tank, Complete in Place	LS	1.00	\$52,000.00	\$52,000.00	\$21,023.00	\$21,023.00	\$25,000.00	\$25,000.00
17	Furnish and Install 18-Inch DIP, Including Trenching and Compacted Backfill, per APWA Standard Spec. 801, Complete in Place	LF	301.00	\$150.00	\$45,150.00	\$262.00	\$78,862.00	\$180.00	\$54,180.00
22	Ductile Iron MJ fittings, class 250, 18" Waterlines incl. Joining Material	LB	3,795.00	\$4.20	\$15,939.00	\$9.00	\$34,155.00	\$5.00	\$18,975.00
22.A	18" Gate Valves w/ Valve Can, CIP	EA	3.00	\$4,600.00	\$13,800.00	\$29,600.00	\$88,800.00	\$25,000.00	\$75,000.00
28.A	4 1/2" Depth Fire Hydrant w/ piping valves, and connection	EA	1.00	\$6,500.00	\$6,500.00	\$11,799.00	\$11,799.00	\$10,000.00	\$10,000.00
29	Furnish and Install 18-Inch DI Mechanically Restrained Joint Assembly, per APWA Standard Spec. 801, Complete in Place	EA	20.00	\$450.00	\$9,000.00	\$1,001.00	\$20,020.00	\$50.00	\$1,000.00
	TOTAL BASE BID EXCLUDING NMGR				\$6,088,649.13		\$9,699,999.70		\$7,523,789.00
	TOTAL ADDITIVE ALTERNATE 1 EXCLUDING NMGR				\$763,369.00		\$1,172,486.45		\$857,628.00
	SUB-TOTAL BASE BID + ADD ALT 1, EXCL NMGR				\$6,852,018.13		\$10,872,486.15		\$8,481,417.00
	NEW MEXICO GROSS RECEIPTS TAX (NMGR) @8.8%				\$582,421.54		\$924,161.32		\$720,920.45
	TOTAL BASE BID + ADD ALT 1, AMOUNT INCL NMGR				\$7,434,439.67		\$11,796,647.47		\$9,202,337.45

BID EVALUATION BID OPENING 07/07/2022

ADDITIVE ALTERNATE 2- COOK ST. GENERATOR						MORROW ENTERPRISE, INC.		SMITHCO CONSTRUCTION, INC.	
ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QTY	UNIT PRICE	COST	UNIT PRICE	COST	UNIT PRICE	COST
COOK ST. GENERATOR CONSTRUCTION ITEMS									
27	Generator, 1MW, 480/277V, 3 Phase, 4W, Diesel Unit and Generator Pad, including subgrade prep reinforcement, installed	LS	1	\$ 795,257.00	\$795,257.00	\$490,877.00	\$490,877.00	\$480,000.00	\$480,000.00
	TOTAL BASE BID EXCLUDING NMORT			\$8,088,649.13			\$9,699,999.70		\$7,523,769.00
	TOTAL ADD ALT 1 EXCLUDING NMORT			\$763,369.00			\$1,172,486.45		\$957,628.00
	TOTAL ADD ALT 2 EXCLUDING NMORT			\$795,257.00			\$490,877.00		\$480,000.00
	SS-TOTAL BASE BID + ADD ALT 1 + ADD ALT 2 EXCL NMORT			\$7,647,275.13			\$11,363,363.15		\$9,961,417.00
	NEW MEXICO GROSS RECEIPTS TAX (NMORT) @ 8.8%			\$650,018.36			\$655,885.87		\$781,720.45
	TOTAL BASE BID + ADD ALT 1 + ADD ALT 2 INCL NMGRY			\$8,297,293.52			\$12,329,249.02		\$9,723,137.45

BID OPENING CHECKLIST FORM



PROJECT NAME San Joaquin District Waterlines Replacement

BID OPENING DATE & TIME June 2, 2022 - 2:00 PM

No.	Bidders Name	Addendum Received #1 A - 84 A	Bid Security		List of Proposed Subcontractors		List of Proposed Suppliers		Evidence of authority to do business in the state of the Project		Contractor's license number		Required Bidder Qualification Statement with supporting data		Signed Compliance Statement (RD 400-6)		Signed Lower Tier Covered Transactions (AS 104E)		Signed RD Instruction (RD 400-6 Exhibit A-1)		Bid Bond		Power of Attorney		TOTAL BASE BID EXCLUDING TAXES	TOTAL ALTERNATE 1 EXCLUDING TAXES	TOTAL ALTERNATE 2 EXCLUDING TAXES	3d TOTAL BASE BID + ADD ALT 1 + ADD ALT 2 EXCLUDING TAXES	TOTAL BASE BID + ADD ALT 1 + ADD ALT 2 INCLUDING TAXES
			Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Amount	Amount	Amount	Amount	Amount
1	MORROW ENTERPRISE, INC.	YES	X		X		X		X		X		X		X		X		X		X		X		\$9,899,999.79	\$1,171,488.45	\$498,822.00	\$11,569,309.15	\$12,829,349.82
2	SANTHO CONSTRUCTION, INC.	YES	X		X		X		X		X		X		X		X		X		X		X		\$7,325,789.00	\$957,628.00	\$488,888.00	\$8,772,305.00	\$9,731,137.45
3																													
4																													
5																													
6																													
7																													
8																													
9																													
10																													

PROJECT ENGINEER _____
Mark T. Hall, PE

**CITY OF TRUTH OR CONSEQUENCES
MAIN STREET DISTRICT WATERLINES REPLACEMENT
PLAN JULY 07, 2022 @ 2:30 PM
BID OPENING
ATTENDANCE SHEET
(PLEASE PRINT CLEARLY, FOR THE RECORD)**

NAME	REPRESENTING	EMAIL ADDRESS	PHONE
1. Traci Alvarez	TORC/ Assistant City Manager	talvarez@torcnm.org	575-952-0565
2. Jesse Cole	TORC/ Water/Wastewater Director	jcole@torcnm.org	575-894-733
3. Mark A. Nasi	WCI/ Project Manager	mark.nasi@wilsonco.com	505-348-4170
4. Daniela Ducon-Walk	WCI/ Designer	daniela.ducon@wilsonco.com	505 348 4131
5. Carol Kirkpatrick	TORC/ Finance Director	ckirkpatrick@torcnm.org	575-740-7323
6. Jesus Duran	Torc wastewater	JDuran@torcnm.org	575-202-8681
7. Ezekiel Alvarez	Torc Water	zeekalvarez267@gmail.com	575-740-6418
8. Jesse Cole	Torc	jcole@torcnm.org	740-4157
9. Brian Cloutier	Morrow ent	bids@morrownm.com	575-522-1178
10. Marco Cortez	Wilson Co.	marco.cortez@wilsonco.com	575-441-1469
11. BRUCE SWINGLE	TORC	bswingle@torcnm.org	505 999-7742
12. OJ Hechler	Torc	orin.hechler@torcnm.org	575-740-6716

**WILSON
& COMPANY**

**CITY OF TRUTH OR CONSEQUENCES
MAIN STREET DISTRICT WATERLINES REPLACEMENT
PLAN JULY 07, 2022 @ 2:30 PM
BID OPENING
ATTENDANCE SHEET
(PLEASE PRINT CLEARLY, FOR THE RECORD)**

NAME	REPRESENTING	EMAIL ADDRESS	PHONE
13. Rylan Edgman	Smithco	rylan@smithco.cc	575-740-3492
14. Carol Kirkpatrick	Cty & TAC	ckirkpatrick@cityoftruthorconsequences.org	575-740-7323
15. Albedo Holguin	Wilson	albedo.holguin@wilsonco.com	575-642-8537
16.			
17.			
18.			
19.			
20.			
21.			

Amanda Forrister
Mayor

Rolf Hechler
Mayor Pro-Tem

Merry Jo Fahl
Commissioner



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

Destiny Mitchell
Commissioner

Shelly Harrelson
Commissioner

Bruce Swingle
City Manager

August 12, 2022

Elizabeth Ybarra
Community Program Loan Specialist
New Mexico - Rural Development
U.S. Department of Agriculture
One Sun Plaza | 100 Sun Avenue NE, Suite 130 |
Albuquerque, NM 87109

Re: City Manager Concurrence -Recommendation of Award, Main Street District (MSD) Water System Improvements

Dear Ms. Ybarra,

I am pleased to write this letter regarding the city's concurrence with Wilson and Company, Inc.'s recommendation to award the Main Street District (MSD) Water System Improvements Project, Base Bid, for a total contract award amount of \$6,314,951.70. to Smithco Construction Inc.

Smithco Construction Inc, credentials, and documentation were evaluated and successfully approved.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Swingle".

Bruce Swingle
City Manager
City of Truth or Consequences



City of Truth or Consequences

505 Sims Street

Truth or Consequences, New Mexico 87901

City (575) 894-6673 • Fax (575) 894-7767

August 15, 2022

United States Department of Agriculture

Re: City Attorney Opinion Letter regarding:
Bid Opening Procedure and Cost, Main Street District (MSD) Water System
Improvements

Dear Ladies and Gentlemen,

Please be advised that I represent the City of Truth or Consequences as the City Attorney. I have reviewed the bid opening procedures and bids for the City of Truth or Consequences, Main Street District (MSD) Water System Improvements project. It is my opinion that the bid opening procedures met applicable state law, and that the bid for the apparent low bidder meets the minimum requirements for bids as stipulated in the project specification manual.

Very sincerely,

A handwritten signature in black ink, appearing to be "JR" or "Jaime Rubin", written in a cursive style.

Jaime F. Rubin, Esq.
JFR: toa



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: August 24, 2022

Agenda Item #: H.3

SUBJECT: Accept and Approve State of NM Tourism Department Clean and Beautiful Grant Program Agreement

DEPARTMENT: Assistant City Manager

DATE SUBMITTED: August 17, 2022

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

City submitted an application for recycled benches, and was awarded \$1,678.25. Grant does require a cash match of 25% which amounts to approximately \$420.00 of in kind services and/or purchased materials

Recommendation:

Approve and execute grant agreement

Attachments:

- State of NM Tourism Department Clean and Beautiful Grant Program Agreement
-

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 8-24-2022

**STATE OF NEW MEXICO
TOURISM DEPARTMENT
Litter Control and Beautification
“Clean & Beautiful” Grant Program Agreement**

THIS AGREEMENT, numbered **23-418-6002-00021-00**, is made and entered into by the State of New Mexico Tourism Department, hereinafter referred to as the “NMTD,” and CITY OF TRUTH OR CONSEQUENCES, hereinafter referred to as the “Partner” (collectively the “Parties”) and is effective as set forth below.

RECITALS

WHEREAS, the purpose of the New Mexico “Litter Control and Beautification Act,” NMSA 1978, § 67-16-1 et seq. (hereinafter “the Act”) is to control litter by authorizing NMTD to eliminate litter from the state to the maximum practical extent through a state-coordinated plan of education, control, prevention, and elimination; and

WHEREAS, the “Litter Control and Beautification Fund,” hereinafter “the Fund,” is appropriated to NMTD for the purpose of carrying out the provisions of the Act; and

WHEREAS, the Act provides that NMTD may contract with other state and local government agencies to carry out the provisions of the Act;

AGREEMENT

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES, in consideration of the mutual covenants and obligations contained herein, as follows:

I. Obligations of Partner.

- A. Perform and complete the projects and programs, expending all related funds, as outlined in the Project Award Schedule, as approved by NMTD and attached hereto as *Exhibit A*.
- B. Acknowledge and comply with all Grant Program Guidelines, as approved by NMTD and attached hereto as *Exhibit B*.
- C. Complete and submit all required documentation for Initial Disbursement and Final Reimbursement in accordance with the requirements described in *Exhibit B*.
- D. Acknowledge that any failure to adhere to the parameters set forth herein may affect Partner’s eligibility for future awards.

II. Obligations of NMTD.

- A. Provide award funds for all eligible expenses in accordance with the Act and according to *Exhibit A* and *Exhibit B*.

- B. Provide access to all forms required for submission for Initial Disbursement and Final Reimbursement in accordance with the requirements described in *Exhibit B*.

III. Additional Terms & Conditions:

- A. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico. If sufficient appropriations and authorization are not made, this Agreement shall terminate upon written notice given by NMTD to the Partner. NMTD's decision as to whether sufficient appropriations are available shall be accepted by the Partner and shall be final.
- B. This Agreement shall become effective upon its execution by both Parties and shall terminate on **June 30, 2023**. Either party may terminate or seek to further negotiate this Agreement upon ninety (90) days written notice to the other. In the event of termination, neither party may nullify obligations already incurred for performance or failure to perform, prior to the date of termination and any outstanding reimbursements shall be made pro rata.
- C. This Agreement shall not be altered, changed, or amended except by instrument of writing executed by the Parties hereto, with the exception of Exhibit A, which may be adjusted by authorization of the NMTD Tourism Development Division Director.
- D. Neither Party will be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond the non-performing Party's control and without such Party's fault or negligence, such as acts of God, pandemic-related public health orders, acts of civil or military authority, embargoes, epidemics, war, acts of terrorism, riots, insurrections, fires, explosions, earthquakes, floods, loss of power, strikes or lockout. If any Force Majeure condition affects Partner's ability to perform its obligations, Partner shall give written notice to NMTD, and Partner will offer mutually agreeable amendments to Exhibit A. Until such time as this Agreement is amended, NMTD will withhold payment of award funds as set forth in Exhibit A.
- E. Partner shall obtain prior approval from NMTD for any and all use of the KNMT Brand. NMTD reserves the right to inspect any usage of the Brand to ensure proper quality and consistency.
- F. Partner shall ensure that any activities carried out in accordance with this Agreement conform to all current Public Health Orders and corresponding COVID-Safe Practices.
- G. The Parties shall not be jointly liable. 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 by either party in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, §41-4-1, et seq., NMSA 1978, as amended.

- H. This Agreement is governed by the laws of the State of New Mexico.
- I. This Agreement is not intended to and does not create any rights in any persons or entity not a party hereto.
- J. Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service, by electronic mail or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To NMTD: New Mexico Tourism Department
Lucy Stanus, Clean & Beautiful Program Coordinator
491 Old Santa Fe Trail | Santa Fe, NM 87501
505-660-4734 | lucy.stanus@state.nm.us

To Partner: City of Truth or Consequences
Bruce Swingle
505 Sims Street | Truth or Consequences, NM 87901
(575)-894-6673 | bswingle@torcnm.org

Program Manager: Traci Alvarez
Phone: (575)-894-6673
Email: talvarez@torcnm.org

- K. The individual signing below on behalf of the Partner represents and warrants that he or she has the authority to bind the Partner, and that no further action, resolution or approval from the Partner is necessary to enter into a binding agreement.

THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of signature by the NMTD Deputy Secretary listed below.

By: _____ Date: _____

Print Name: _____
For PARTNER (CITY OF TRUTH OR CONSEQUENCES)

By: _____ Date: _____
Yodel Catanach, NMTD ASD Director

Approved for legal sufficiency:

By: _____ Date: _____
Jennifer Saavedra, NMTD General Counsel

By: _____ Date: _____
Antoinette Vigil, NMTD Deputy Secretary

The records of the Taxation and Revenue Department reflect that the Partner is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 01-405755-00-7

By: _____ Date: _____
Taxation and Revenue Department

EXHIBIT A
PROJECT AWARD SCHEDULE
CITY OF TRUTH OR CONSEQUENCES

	<u>Goal 1</u>	<u>Goal 2</u>	<u>Goal 3</u>	<u>Goal 4</u>	<u>Goal 5</u>
End Littering					
Reduce Waste					
2.5 Recycled Benches		\$1,678.25			
Beautify Communities					
Empower Youth					
Increase Program Capacity					
Subtotals	\$0.00	\$1,678.25	\$0.00	\$0.00	\$0.00
Total Award	\$1,678.25				

<i>Lancing Adams</i>	8/16/22
Approved by: NMTD Tourism Development Division Director	Date

EXHIBIT B

NEW MEXICO TOURISM DEPARTMENT CLEAN AND BEAUTIFUL GRANT PROGRAM FY23 GUIDELINES

GRANT PURPOSE

The purpose of the New Mexico “Litter Control and Beautification Act,” NMSA 1978, § 67-16-1 et seq., is to accomplish litter control by vesting in the New Mexico Tourism Department (Department) the authority to eliminate litter from the state to the maximum practical extent. The Department shall aid in establishing a statewide Keep America Beautiful Program through the New Mexico Clean and Beautiful Grant Program to end littering, improve recycling, and beautify New Mexico communities.

ELIGIBILITY

All New Mexico municipalities, counties, and Tribal Governments in good standing with New Mexico Taxation and Revenue Department are eligible for funding (correct CRS numbers are required within the application process). Entities need not be Keep America Beautiful affiliates to apply.

ELIGIBLE EXPENDITURES

Projects and initiatives that contribute to the following goals and objectives, as identified through Keep America Beautiful and the Litter Control and Beautification Act, may be eligible for funding:

Goal #1 - End Littering

- Objective 1.1 – Prevent littering.
- Objective 1.2 – Provide access to proper waste disposal.
- Objective 1.3 – Remove litter.

Goal #2 – Reduce Waste

- Objective 2.1 – Reuse.
- Objective 2.2 – Repair.
- Objective 2.3 – Repurpose.
- Objective 2.4 – Improve composting and sustainable organics management.
- Objective 2.5 – Improve recycling and sustainable materials management.

Goal #3 - Beautify Communities

- Objective 3.1 – Improve green spaces through sustainable park design.
- Objective 3.2 – Maximize sustainable landscaping throughout communities.
- Objective 3.3 – Prevent graffiti.
- Objective 3.4 – Eradicate graffiti.

Goal #4 – Empower Youth

- Objective 4.1 – Educate students.
- Objective 4.2 – Provide service opportunities for youth groups.
- Objective 4.3 – Employ youth interns.
- Objective 4.4 – Provide youth leadership opportunities.

- Youth initiatives must directly contribute to at least one of the above-mentioned goals
- Applicants may either hire a youth group as a subcontractor, or hire individual youths
- For individual youth interns:
 - a) Individuals must be between 14 to 25 years of age
 - b) Salary range = at least local minimum wage
 - c) Youth Employment Verification forms are required for each youth employed

Goal #5 – Increase Program Capacity

- Objective 5.1 – Recruit and engage volunteers.
- Objective 5.2 – Build coalitions through professional affiliations.
- Objective 5.3 – Increase knowledge through professional development.

EXHIBIT B

- Activities must directly contribute to at least one of the above-mentioned goals

MATCHING REQUIREMENTS

This grant requires a 25% match. The following sections may be used to determine the costs and calculate totals for In-Kind & Monetary Donations, which must be reported in the End-of-Year Report.

Donated Goods or Services:

Entities may receive non-monetary contributions of goods or services, often referred to as “in-kind donations” from businesses, groups and individuals. Examples include private waste hauler services, “pro-bono” accounting services, food/drinks, donated advertising space, or office space in a non-government building. The dollar value of any donated goods or services is equal to the market price of the goods or services contributed. Whenever possible, submit the dollar-value in writing.

How to Calculate Government Costs:

Government employee time and services for which they receive government salary, overtime or compensatory time are considered a cost. If a government employee is working on a project on their own time, as a volunteer or board member, calculate their time as a volunteer hour. Government in-kind goods include hauling by sanitation vehicles, printing, and the use of consumable supplies. To calculate the value of in-kind government agency costs, estimate the market value of the goods or services provided to your affiliate and add to that the dollar-value for each hour of work given by government employees.

Volunteer Hours:

All volunteer hours should be documented on a Volunteer Sign-In Sheet. Each volunteer hour should be assigned the applicable state value provided by Independent Sector unless a professional provides a specific value for professional services. Current value for volunteer hours is available at https://www.independentsector.org/volunteer_time.

GRANT AGREEMENT

The grant award will be officially executed upon receipt by the Department of the signed grant agreement. Agreements will include two accompanying exhibits: Project Award Schedule (*Exhibit A*) and these Grant Program Guidelines (*Exhibit B*).

INITIAL DISBURSEMENT OF FUNDS

For FY23 grant awards, Partners will be eligible to receive 50% of the total award amount following the execution of the grant agreement and submission of the Initial Disbursement Invoice. This form is available for download at the NM Clean & Beautiful Grant Resources webpage.

REIMBURSEMENT REQUIREMENTS

In order to receive reimbursement for the remaining 50% of the total award amount, Partners must submit the Final Reimbursement Request Packet at project end.

Final Reimbursement Request Packet should include, submitted no later than June 15, 2023:

- Final Reimbursement Invoice
- Total Project Expense Worksheet with back-up documentation*
- Youth Employment Verification forms, if applicable
- Event and trainings registration confirmations, and KAB Affiliate dues receipt, if applicable

Final Reimbursement Request Packet should include, submitted no later than July 5, 2023:

- End-of-Year Report
- Volunteer Sign-in Sheet, if applicable

EXHIBIT B

*Eligible back-up documentation includes:

1. Invoices *or* receipts

AND

2. Cleared checks, warrants, bank statements *or* an attestation by Partner's CFO or equivalent financial authority

SUBMISSION REQUIREMENTS

- All required forms are available for download at the NM Clean & Beautiful Grant Resources webpage at: <https://nmtourism.smapply.io/res/p/nmcbresources/>
- Submission of all required forms and back-up documentation must be submitted via upload to the Survey Monkey Apply portal located at: <https://nmtourism.smapply.io/> or by email to lucy.stanus@state.nm.us

PROGRAM ASSISTANCE

Clean & Beautiful Grant Program Coordinator (Lucy Stanus) will establish communication schedules and provide technical assistance for all awardees. She can be reached by email at lucy.stanus@state.nm.us or by phone at 505-660-4734.



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: August 24, 2022

Agenda Item #: H.4

SUBJECT: Approval of the 2022 Youth Soccer Association field fees.

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: August 17, 2022

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

WHO WILL PRESENT THE ITEM: City Manager Swingle

Summary/Background:

On 7/27/22 the Sierra County Youth Soccer Association requested that the Commission phase in their fees for the use of the Louis Armijo Sports Complex for youth sports. The request was also submitted to the Recreation Advisory Board and the board agreed with city staff's recommendation to amend the fee for the 2022 Soccer Season to reflect the same price that other leagues paid prior to the implementation of the new set fees.

Recommendation:

-

Attachments:

N/A

-

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. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 8-24-2022



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: August 24, 2022

Agenda Item #: H.5

SUBJECT: Approval of the Smartphone Water Meter Reading Agreement.

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: August 17, 2022

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

WHO WILL PRESENT THE ITEM: City Manager Swingle

Summary/Background:

This is for a SPMR Subscription Agreement ("Agreement") between SPMR, L.L.C., a Texas limited liability corporation and the City of Truth or Consequences for smart phones, or similar devices, to record utility meter data and to communicate such data to its remote server for water meters.

Recommendation:

Approval of agreement.

Attachments:

Agreement.

Fiscal Impact (Finance): Yes

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. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 8-24-2022

SPMR SUBSCRIPTION AGREEMENT

This SPMR Subscription Agreement ("Agreement") is made by and between SPMR, L.L.C., a Texas limited liability corporation, located at 811 E Plano Parkway, Suite 110A, Plano, Texas 75074 ("SPMR"), and Truth or Consequences, NM doing business at 505 Sims, Truth or Consequences, NM 87901 ("Subscriber").

RECITALS

- A. WHEREAS SPMR licenses, in object form only, proprietary computer software ("Software") as an application for smart phones, or similar devices, to record utility meter data and to communicate such data to its remote server ("Application");
- B. WHEREAS SPMR hosts the utility meter data on its remote server for retrieval by Subscriber ("Hosting") and collectively, the Application, Hosting and any other services such as training or set-up shall constitute "Services"; and
- C. WHEREAS Subscriber desires to use the Services;

IN CONSIDERATION of the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 - GENERAL TERMS

- 1. ENTIRE AGREEMENT. It is agreed that this Agreement and any EXHIBIT(S) attached hereto and made a part hereby embody the entire agreement of the parties in relation to the subject matter hereunder, and that there is no other oral or written agreement or understanding between the parties at the time of execution pertaining to the subject matter of this Agreement. This Agreement shall not be modified except by the written agreement of all parties hereto.
- 2. GOVERNING LAW AND CHOICE OF VENUE. This agreement shall be construed, interpreted and enforced under the laws and statutes of the State of Texas without regard for any of said state's conflicts of law provisions. Any legal actions relating to this Agreement shall be brought in either a state court in Collin County, Texas or in a Federal court in the Northern District of Texas, Dallas Division.
- 3. TAXES. Subscriber shall pay all taxes arising out of this Agreement, except for taxes levied upon the net income of SPMR. Subscriber agrees to provide an exemption certificate with this contract if Subscriber is an exempt organization for state sales and use tax purposes.

ARTICLE 2 – PAYMENTS

- 1. APPLICATION AND OTHER SERVICES. Subscriber shall pay SPMR for the fees described in EXHIBIT 1 for the Services. Payment shall be made as follows:
 - A. Subscriber shall have access to Services when Services are activated ("Activation Date"). The initial payment of service fees shall be made within ten (10) business days of the Activation Date and if the Activation Date is not on the first day of the month, a prorated fee shall be included in the initial payment of service fees for Services provided from the Activation Date through the last day of that month. Subsequent payments shall be for an entire annual period ("Subscription Year") and shall be made on each subsequent anniversary of the start of each Subscription Year invoiced until the Agreement is terminated.
 - B. Subscriber shall pay SPMR for any support or training at SPMR's quoted price no later than thirty (30) days after the invoice date.
 - C. SPMR ongoing fees are subject to change on the first and subsequent anniversaries of the Activation Date in the amount of ten (10) percent.
 - D. Any invoice amounts payable hereunder that remain unpaid after their due date shall be subject to a late fee.
- 2. Subscriber's rights to use the Application or Hosting are expressly conditioned on the timely prepayment of the fees described in EXHIBIT 1 and Subscriber's rights to use the Application and Hosting will terminate effective the date any prepayment was due if not paid.

ARTICLE 3 – SOFTWARE

- 1. SPMR SOFTWARE LICENSE GRANT. SPMR hereby grants to Subscriber a nontransferable and nonexclusive license for the use and possession of the SPMR Software in object code form only. Said license is granted under the terms and conditions set forth herein.
- 2. Subscriber agrees that SPMR retains ownership rights to the Software, and that Subscriber acquires no title to the Software, nor any other interest in the Software, other than the right to use and possess the Software in accordance with the terms and conditions of this Agreement. All rights not explicitly granted to Subscriber are retained by SPMR.
- 3. Subscriber may not copy, decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify or create derivative works of the Application or any part thereof.
- 4. Subscriber agrees that it shall not attempt to or actually sell, give, lend, lease, convey, transfer, license, sublease, provide, or in any other manner transfer any of its rights in the Software, whether or not modified. Subscriber shall obtain SPMR's written permission before allowing any non-subscriber employee, contractor or third-party any access to the Software or Application.

ARTICLE 4 – SERVICES

1. SPMR shall provide Subscriber with the Services described on the attached EXHIBIT(S).
2. Services include those specifically described on the attached EXHIBIT(S) and Subscriber agrees that any services not described such as supplemental training or consulting and any related travel and living expenses are not included and Subscriber agrees to pay such charges and expenses within thirty (30) days of SPMR's invoice.

ARTICLE 5 - WARRANTIES

1. SPMR warrants that the Software shall operate substantially in accordance with the on-line User Manual. The exclusive remedy for any valid warranty claim shall be the provision of conforming software.
2. DISCLAIMER OF WARRANTY AND LIMITATIONS OF REMEDIES. TO THE EXTENT ALLOWED BY LAW, SUBSCRIBER UNDERSTANDS AND AGREES AS FOLLOWS:
 - A. THE EXPRESS WARRANTIES AS SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY SPMR.
 - B. SPMR SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING SOFTWARE, SERVICES OR ANY OTHER PERFORMANCE UNDER OR PURSUANT TO THIS AGREEMENT.
 - C. SPMR DOES NOT WARRANT THE OPERATION OF SOFTWARE OR SERVICES TO BE ERROR FREE.
 - D. SPMR DOES NOT WARRANT THE EFFICIENCY, PROPAGATION OR THE PROVISION OF CELLULAR SERVICES.
 - E. THE SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF ANY AND ALL WARRANTIES AND THE SOLE REMEDIES FOR SPMR'S LIABILITY OF ANY KIND (INCLUDING LIABILITY FOR NEGLIGENCE) WITH RESPECT TO THE SOFTWARE OR SERVICES COVERED BY THIS AGREEMENT OR ANY PERFORMANCE BY SPMR UNDER OR PURSUANT TO THIS AGREEMENT, WILL BE LIMITED TO THE REMEDIES SET FORTH IN THIS ARTICLE AND IN NO EVENT SHALL EXCEED THE AGGREGATE CONSIDERATION PAID BY SUBSCRIBER IN THE MOST RECENT TWELVE MONTHS FOR THE SERVICES.
 - F. IN NO EVENT SHALL SPMR'S LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SPMR SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

ARTICLE 6 – TERM AND TERMINATION

1. This Agreement shall automatically renew for an additional Subscription Year unless Subscriber provides SPMR with written notice of termination at least sixty (60) days prior to the beginning of the upcoming Subscription Year.
2. If Subscriber defaults on any obligation in accordance with the terms and conditions of this Agreement and SPMR notifies Subscriber in writing of the details of said failure of performance, then SPMR may, at its option, terminate this Agreement without notice to Subscriber.
3. In the event either party terminates this Agreement or the license of Software, or should Subscriber fail to timely make any payment for the services, all licenses granted under this Agreement shall be terminated, and Subscriber shall, immediately, on the termination date, erase the Software in whatever form retained, and return or destroy any copies of Software documentation. Subscriber shall certify in writing to SPMR that Subscriber has so returned and/or destroyed the Software and SPMR Documentation.

SPMR, L.L.C.

Signature: _____

Print Name: _____

Title: _____

Date: _____

TRUTH OR CONSEQUENCES NM

Signature: _____

Print Name: _____

Title: _____

Date: _____

Exhibit 1 – SPMR Services Schedule

Description - Recurring Fees	Effective Rate per Month	Qty	Cost Extended Annual Pre-Pay
SPMR SmartPhone: License, Support per SmartPhone*	\$ 129.00	2	\$ 3,096.00
SPMR SmartPhone: Data Hosting per SmartPhone**	\$ 29.00	2	\$ 696.00
SPMR Web: License, Support per Web Seat*	\$ 129.00	1	\$ 1,548.00
Recurring Total			\$ 5,340.00

Other User Fees and One-Time Service Fees	Cost
Setup - Web Server, Web Seat(s), Phone(s), Users (List \$899)	\$ 899.00
Training - SPMR Web, SPMR SmartPhone (List \$1,599)	\$ 1,599.00

**Hosting Assumes 1 Photo per 4 Meters

**Unlimited Photos are \$59 per Device per Month



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: August 24, 2022

Agenda Item #: H.6

SUBJECT: Approval of Purchase Requisitions Over \$20,000

DEPARTMENT: Finance

DATE SUBMITTED: August 24, 2022

SUBMITTED BY: Carol Kirkpatrick, Finance Director

WHO WILL PRESENT THE ITEM: Carol Kirkpatrick, Finance Director

Summary/Background:

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

Recommendation:

Approval Recommended by Finance Director

Attachments:

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

Fiscal Impact (Finance): Choose an item.

As Per Total on Listing of Purchase Requisitions

Legal Review (City Attorney): Choose an item.

[Click here to enter text.](#)

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. [Click here to enter text.](#) Ordinance No. [Click here to enter text.](#)

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

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

File Name: CC Agendas 8-24-2022

PURCHASE REQUISITION APPROVAL

2022-23 FISCAL YEAR

COMMISSION MEETING 8/24/22

Number	Vendor Name	Description	Requested By	Department	Funding Source	Total Amount	Procurement Type
88252	San Bar Construction Corp.	Striping and sign installation around schools: Smith Ave/Silver & New School Rd/N, Pershing	Benny Fuentes	Streets		\$ 81,452.30	3 quotes: San Bar Const, Highway Supply and Interwest Safety Supply
88253	Bartoo Sand & Gravel, Inc.	Hotmix Delivered and Placed for 2" overlay East & West Val Verde - Williamsburg	Benny Fuentes	Streets		\$ 105,646.45	
						\$ 187,098.75	

ATTEST:

Angela Torres, Clerk-Treasurer

Date

Amanda Forrester, Mayor

Date



REQUISITION

Requisition #: 88252

Date: 08/10/2022

Vendor #: 6003

ISSUED TO: SAN BAR CONSTRUCTION CORP.
9101 BROADWAY SE
ALBUQUERQUE, NM 87105

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

ITEM	UNITS DESCRIPTION	PROJECT #	PRICE GL ACCOUNT NUMBER	AMOUNT
1	0 SIGNAGE/STRIPING- TRAFFIC CONTROL		0.00 216-4503-44607	81,452.30
PO Description: PUBLIC SCHOOL SIGNAGE- STREETS Detailed Description: STRIPING AND SIGN INSTALLATION AROUND SCHOOLS: SMITH AVE/SILVER & NEW SCHOOL RD/N, PERSHING. QUOTES: SAN BAR CONSTRUCTION, HIGHWAY SUPPLY & INTERWEST SAFETY SUPPLY				

Authorized By: _____

SUBTOTAL:	76,001.25
TOTAL TAX:	5,451.05
SHIPPING:	0.00
TOTAL	81,452.30



REQUISITION

Requisition #: 88253

Date: 08/10/2022

Vendor #: 0041

ISSUED TO: BARTOO SAND & GRAVEL, INC.
PO BOX 3769
T OR C, NM 87901

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

ITEM	UNITS DESCRIPTION	PROJECT #	PRICE GL ACCOUNT NUMBER	AMOUNT
1	910 HOTMIX DELIVERED & PLACED		107.00 216-4503-43550	105,646.45
PO Description: 2" OVERLAY- EAST & WEST VAL VERDE- WILLIAMSBURG				
Detailed Description: 2" OVERLAY- EAST & WEST VAL VERDE- WILLIAMSBURG				

Authorized By: _____

SUBTOTAL:	97,370.00
TOTAL TAX:	8,276.45
SHIPPING:	0.00
TOTAL	105,646.45