Amanda Forrister Mayor

Rolf Hechler Mayor Pro-Tem

Merry Jo Fahl Commissioner



Destiny Mitchell Commissioner

Shelly Harrelson Commissioner

Bruce Swingle City Manager

505 Sims St.

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

#### REGULAR MEETING

THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3RD ST., ON WEDNESDAY, SEPTEMBER 14, 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. Certificate of Commendation presented by Chief of Police Rodriguez. Victor Rodriguez, Chief of Police
  - 2. Presentation of City of Truth or Consequences Employee Service Anniversary Awards. City Manager Swingle and Department Supervisors
- D. PUBLIC COMMENT (3 Minute Rule Applies)
- E. REPORTS
  - 1. City Manager
  - 2. City Attorney
  - 3. City Commission

#### F. CONSENT CALENDAR

- 1. City Commission Regular Minutes, August 24, 2022
- 2. August 2022 Accounts Payable
- 3. Take Home Vehicle Forms

#### G. PUBLIC HEARINGS (5 Minute Rule Applies)

- 1. Public Hearing/Discussion/Action: Public Hearing and approval of the issuance of a Small Brewer Off-Site Liquor License for Sidekixx, located at 820 Cedar Street, Truth or Consequences, New Mexico. Angela A. Torres, City Clerk
- 2. Public Hearing/Discussion/Action: Final Adoption of Ordinance No. 737 amending Sections 7-106 through Section 7-114 of our Municipal Code of Ordinances pertaining to Rental Spaces and Licensure. Victor Rodriguez, Chief of Police
- 3. Public Hearing/Discussion/Action: Final Adoption 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. Victor Rodriguez, Chief of Police
- 4. Public Hearing/Discussion/Action: Final Adoption 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. Victor Rodriguez, Chief of Police
- 5. Public Hearing/Discussion/Action: Final Adoption 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, Modrall Sperling

#### H. ORDINANCES/RESOLUTIONS/ZONING

- 1. Discussion/Action: Resolution No. 10 22/23 Budget Adjustment Resolution. Carol Kirkpatrick, Finance Director
- 2. Discussion/Action: Publication of Ordinance No. 735 Amending Section 14-48 pertaining to the Customer Generated Renewable Energy Program. City Manager Swingle

#### I. NEW BUSINESS

- 1. Discussion/Action: Approval of the Spaceport Visitors Center Memorandum of Understanding. City Manager Swingle
- 2. Discussion/Action: Approve Contract Package and Agreement between City of T or C and Smithco Construction Inc. for Main Street District (MSD) Water System Improvements Project. Traci Alvarez, Assistant City Manager
- 3. Discussion/Action: Approval of Purchase Requisitions over \$20,000. Carol Kirkpatrick, Finance Director
- 4. Discussion/Action: Approval of Contract renewal with Wilson and Company, Inc. Carol Kirkpatrick, Finance Director
- 5. Discussion/Action: Approval of the El Terrero Construction Company Rental Agreement. City Manager Swingle
- 6. Discussion/Action: Approval of City Attorney Contract Renewal for Jaime F. Rubin, LLC. City Manager Swingle

#### J. EXECUTIVE SESSION

1. Threatened & Pending Litigation (*Cloverleaf*) pursuant to 10-15-1(H.7).

### K. 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 28, 2022**

## AGENDA REQUEST FORM

MEETING DATE: September 14, 2022 Agenda Item #: C.1

SUBJECT:	Certificate of Commendation presented by Chief of Police Rodriguez.
<b>DEPARTMENT:</b>	Clerk's Office
<b>DATE SUBMITTED:</b>	September 8, 2022
SUBMITTED BY:	Angela A. Torres, City Clerk
WHO WILL PRESEN	IT THE ITEM: Chief Rodriguez
Summary/Backgro	und:
Presentation.	
Recommendation:	
Presentation Only.	
Attachments:	
-	
• -	
Fiscal Impact (Fina	nce): No
•	
Legal Review (City	Attorney): No
•	
Approved For Subn	nittal By: 🛛 Department Director
Reviewed by:	City Clerk
Final Approval: ⊠	•
Filiui Appiovui.	City Manager
	CITY CLEDY'S LISE ONLY COMMISSION ACTION TAYEN
	CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN
Resolution No	Ordinance No
Continued To: .	
☐ Approved	☐ Denied ☐ Other: Circk here to enter text.
File Name: CC Ag	
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## **AGENDA REQUEST FORM**

MEETING DATE: September 14, 2022 Agenda Item #: <u>C.2</u>

SUBJECT:	<b>Presentation of Service Anniversar</b>	y Awards.
DEPARTMENT:	Finance	
DATE SUBMITTED:	September 7, 2022	
SUBMITTED BY:	Alona Niebergall	
	NT THE ITEM: City Manager Swingle	e and department supervisor
Summary/Backgro		
Employee Anniversa Employee Anniversa Employee Anniversa Employee Anniversa	iry: Frazier, Kaci - 2 YEARS iry: Toutcheque, Melissa – 1 YEAR iry: Martin, Elijah – 1 YEARS iry: Fuentes, Priscilla – 7 YEARS iry: Otero, Ruby – 6 YEARS iry: Fuentes, Benny – 24 YEARS	Employee Anniversary: Myers, Wesley – 2 YEARS Employee Anniversary: Smith, Steven – 2 YEARS Employee Anniversary: Bobelu. Thomas – 7 YEARS Employee Anniversary: Ramos, Christina – 4 YEARS Employee Anniversary: Blomquist, Jaffee – 5 YEARS Employee Anniversary: Gabaldon, Lisa – 4 YEARS
Recommendation:		
None. Presentation	n Only.	
Attachments:		
Printed cert  -	tificates to be signed by city manag	er and mayor
Fiscal Impact (Fina	ince): No	
Legal Review (City	Attorney): No	
•		
Approved For Subr	mittal By: 🛛 Department Director	
Reviewed by:	City Clerk ☑ Finance ☐ Legal [	Other: Click here to enter text
-	_	Other. ellek here to effer text.
Final Approval: 🛛	City Manager	
	CITY CLERK'S USE ONLY -	COMMISSION ACTION TAKEN
Resolution No Continued To: .  Approved File Name: CC Ag	Referred To: .  □ Denied □ Other: Click her	e to enter text.



#### **AGENDA REQUEST FORM**

MEETING DATE: September 14, 2022

Agenda Item #: <u>F.1</u>

SUBJECT:	City Commission Regular Minutes, August 24, 2022
DEPARTMENT:	City Clerk's Office
	September 8, 2022
SUBMITTED BY:	Angela A. Torres, Clerk-Treasurer
WHO WILL PRESEN	IT THE ITEM: Consent Calendar
<u> </u>	
Summary/Backgro	ouna:
Minutes approval.	
williates approvai.	
Recommendation:	
Approve the minut	res.
Attachments:	
<ul> <li>CC Minutes</li> </ul>	
-	
Fiscal Impact (Fina	nce): N/A
\$0.00	
Legal Review (City	Attorney): N/A
None.	
Approved For Subn	nittal By:   Department Director
Reviewed by:	City Clerk ☐ Finance ☐ Legal ☐ Other: Click here to enter text.
Final Approval: $oxtimes$	City Manager
	CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN
Resolution No	Ordinance No
Continued To: -	
☐ Approved	□ Denied □Other: -
File Name: CC Ag	

# CITY COMMISSION MEETING MINUTES CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO CITY COMMISSION CHAMBERS, 405 W. 3RD St. WEDNESDAY, AUGUST 24, 2022

#### A. CALL TO ORDER:

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

#### **B. INTRODUCTION:**

#### 1. ROLL CALL:

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

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

Also Present: Bruce Swingle, City Manager

Traci Alvarez, Assistant City Manager Angela A. Torres, City Clerk-Treasurer Sonya Renfro, Utility Office Manager Bo Easley, Electric Department Director

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

#### 2. SILENT MEDITATION:

Mayor Forrister called for fifteen seconds of silent meditation.

#### 3. PLEDGE OF ALLEGIANCE:

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

#### 4. APPROVAL OF AGENDA:

Commissioner Mitchell asked that item C1 be removed from the agenda and added to a future meeting.

Commissioner Mitchell moved to approve the agenda as amended. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

#### C. PRESENTATIONS:

#### 1. Commemorative Certificate of Appreciation for Collysue Lawson:

Item was moved to a future meeting.

#### D. PUBLIC COMMENT (3 Minute Rule Applies):

There were no comments from the public.

#### E. REPORTS:

#### City Manager Swingle reported the following:

- He thanked the staff for weed control. The weeds have been growing like crazy
  with the rain that we have had. Parks, Facility Maintenance, Streets and all of the
  departments are working on their little areas and cleaning out the weeds.
- 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. We just received a resignation from one of the members on the Planning & Zoning Board so we now have a vacancy on that board as well. Anyone interested in serving on those advisory boards, please contact the City Clerk's Office.
- We have a Court Committee Public Hearing on September 12, 2022 at 9:00 a.m.
  in the City Commission Chambers. The committee will be soliciting public
  comment concerning designating the Magistrate Court as a Court having
  jurisdiction for Municipal Ordinances for Truth or Consequences. We will get that
  notice in the paper.
- We recently received notice that we received a small Clean & Beautiful grant for some recycled benches for Parks. They are using recycled materials for the benches.
- He reminded the public that we still have a large amount of water leaks every
  week. It's an ongoing process. This problem didn't happen overnight and it won't
  be resolved overnight. It will take years to get a grip on it, but at least we are
  putting in the plans to address the problem.
- We've had a problem with the Vac Station on Riverside for many years and that
  problem is continuing to worsen. We have a Colonias grant that we are working
  with and trying to get that fully funded. We just have to go through all of the
  paperwork dynamics to make that happen. That funding is specifically for that.
  The sooner we can get on that the better.
- They had a hospital board meeting yesterday and they got to welcome two new doctors. One is from Roswell and the other is from Silver City. They are very excited about getting their practices started and moving forward. They are working on contracting an additional behavioral health professional to come into the community as well. The hospital is working hard to develop and bring in more doctors and providers into the community. The board also executed a contract yesterday for a company that provides sleep studies here locally. We send a ton of those studies to other entities because didn't have that capability here. That will be up and running within the next 3 months. We are looking at 15-16 a month

- that are now going to other entities so our hospital is excited to have one here locally.
- Donna Montoya from Environmental Services in the housekeeping staff at the
  hospital was recognized and received an award by the State for the cleanliness
  and decontamination of the hospital. The measures that she takes to ensure that
  they do proper cleanings of hospital facilities is fantastic. She is 1 in 14
  individuals in New Mexico that have received that recognition. She is very excited
  to receive the award. The hospital has great folks, doing great work and it is nice
  that it was recognized by the State.

#### City Attorney Rubin reported the following:

• He encouraged the Commissioners to attend the Court Committee Public Hearing on September 12<sup>th</sup> because at some point they may be called upon to address an ordinance that may come before you so he thinks that they would want to hear the public hearing.

#### **City Commission Reports:**

Commissioner Harrelson had no reports.

#### **Commissioner Mitchell reported the following:**

- Their first Fiesta Meeting for 2023 will be on September 7, 2022. It will be at 5:00 p.m. at the Chamber of Commerce. It is a preliminary meeting. They are just trying to figure out who their volunteers are. What their theme is going to be, and possibly moving the dates because of feedback.
- They got to see some proposed plans of the hospital changes at the JPC meeting. There were lots of improvements and plans in place for the hospital, and she thinks that is a good step towards getting us where we need to be up there.

#### Commissioner Fahl had no reports.

Mayor Pro-Tem Hechler had no reports.

#### Mayor Forrister reported the following:

- She reminded the Commissioners that their reports are used as time to report back on what they have been doing for the Commission so if there are boards that they are sitting on she would like for them to make it a point to come back and report on what is going on in the boards that they are serving on.
- The Hot Springs Volleyball team had their first win last night.

#### 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

Mayor Pro-Tem Hechler 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. 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:

Assistant City Manager Alvarez: This resolution is part of a grant application for some Bipartisan Infrastructure Law (BIL) funds to establish the new safe streets and roads for all. There is \$5 billion in appropriated funds over the next 5 years. In order to apply for the funds you have to have a safety action plan. We don't have one so our application is going to be to turn our safety plan that we did that was limited in certain areas to an overall safety plan throughout the entire city. The total amount is to be determined, but it is a minimum request of \$200,000.

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

1. Discussion/Action: Publication of Ordinance No. 735 Amending Section 14-48 pertaining to the Customer Generated Renewable Energy Program:

City Manager Swingle: We brought this to the Commission a couple of meetings ago and it was sent back to the Public Utility Advisory Board for consideration of some modifications. The overall just of the ordinance is to eliminate the 90% requirement that they can only build up to 90% of their usage, and the 12 month analysis period where 90% of the 12 months. That's the major change in it, as well as in the rates and the money that would be returned to the consumer solar provider. Bottom line, every January the billing will credit accounts in access of \$20 should the individual ask for a credit, and then we would compensate them for the money they had in January for the prior year's solar credits that they had obtained. That would be new for us as well. It was sent back to the Public Utility Advisory Board to take into consideration possibly grandfathering some people in, and looking at options to modify it so those people that already provide solar and have had it for a long time would receive the benefit that they currently have vs. what they would have with this new ordinance, and ultimately the board decided not to change it. They didn't think they could come up with a way that was really workable for now as well as in the future. If we modify it and grandfather folks

in today, then when we change the ordinance we will have to grandfather additional folks in the future and so on as the ordinance was amended over time.

George Szigeti, Public Utility Advisory Board Chairman: The board had a heated discussion over this and they really wanted to try to accommodate people on this, and we are in strong support of making solar power available to any of the city residents as they want to install it. They threw a lot of ideas around, and like the City Manager said you start making little exceptions here and there, and then say to anybody whose system is under 90% we'll allow those to grandfather, and then somebody comes in a system that is at 91%, and they say what about me. So all of these put together, plus the additional burden that we put on the Utility Office, we decided that the fairest way to go forward with this is to treat everybody the same. The other issue that was mentioned is if we pay people more than the wholesale rate for electricity, we may be stepping over the line on the anti-donation clause because we are paying more for something than what the actual value of it is.

Commissioner Mitchell: What do we currently pay per kWh usage, for solar power?

George Szigeti, Public Utility Advisory Board Chairman: Any access production is currently reimbursed at the retail rate of 13.12 cents/kWh, but they have a 90% cap.

Commissioner Mitchell: What does El Paso Electric pay back for Solar?

Sonya Renfro, Utility Office Manager: El Paso Electric and Sierra Electric Coop both pay .02 cents/kWh.

George Szigeti, Public Utility Advisory Board Chairman: stated that their proposal is to calculate the average annual cost of electricity that the city pay, and use that value, and that will probably come around to the .06 cents/kWh range.

Commissioner Mitchell: If we are talking about selling our Electric Department then our solar users are going to go from getting 13.12 cents/kWh from the city down to .02 cents/kWh so she thinks that they need to make some kind of adjustment to prepare for that because that is a huge drop.

Mayor Forrister: The proposal right now is around .06 cents/kWh.

George Szigeti, Public Utility Advisory Board Chairman: He would have to look at it again because it may be a little more now because prices have changed. We would recalculate that every year and use that value for the next 12 months.

Commissioner Fahl: We talked in the past about how the metering is difficult for the Utility Office. She asked Sonya to explain the process of what they have to do for the net metering.

Sonya Renfro, Utility Office Manager: She thinks that the net metering is something they need to get done anyways. It will require some work, but that's what they are here for. As far as grandfathering people in, that would probably require a manual process.

Commissioner Fahl: Even if we understood the grandfathering issue, we would be losing way too much money off of that, and the workflow it would create for you guys would be quite difficult.

Sonya Renfro, Utility Office Manager: She thinks we need to take into consideration the payback amount like having to have trucks on the ground, providing wire, telephone poles, replacing transformer for the solar customers also.

Electric Department Director Easley: He agrees with Sonya. We need to put a price there because now that we've taken away the 90% we're going to have people coming in here and building larger solar arrays to make money, and that's not what it is intended for. We need to set a set price. Even the customers that are out there now that are built at 90% can do another application and put up more solar panels, so they wouldn't have to be grandfathered in.

Mayor Pro-Tem Hechler: So we're talking about 23 customers give or take who have the 90%.

Electric Department Director Easley: We probably have around 80 customers with the applications that he has now.

Mayor Pro-Tem Hechler: So 80 customers have paid between \$16,000 to \$24,000 to put that system in, because he did it, and he did it with the idea of the only way of it being cost affective is if he gets 13 cents/kWh back. He has never broken even, but at least he can start to pay some of that back. His payback is 10 to 12 years, and now you're talking about a payback of 15 to 17 years, and it's not worth doing. Maybe those people who started out with the 90% rule would not have put their system in. He knows that we wouldn't have because it wouldn't have been cost affective to do so, and now he feels that these customers don't have a voice anymore, and he doesn't think that is fair for those customers. When you look at it this way, grandfathering in means past customers. It doesn't mean future customers. It doesn't mean we can't implement this from this day forward, and now you have it at 120% which now when you look at it, it makes a little more sense to put a system in because you know that you can reasonably recoup your money, but f those customers who have already signed up have already lost their money, and it wasn't their mistake. It was the city who decided that a system could only be installed at 90%, and that was wrong for the city to tell them to do so. By the end of the year he is in the negative numbers and he is paying the city whatever cost it is, and for those customers who are making an addition on top of that, they should be compensated all the wholesale cost.

Sonya Renfro, Utility Office Manager: If that were to go forward there should also be something written down that the customers who are only producing 90% are not able to add on to their systems. That should be grandfathered in also.

Mayor Pro-Tem Hechler: The contract in the past should be null and void should the current customers wished to upgrade their system. They should have to sign a new agreement with the city for what you are proposing.

George Szigeti, Public Utility Advisory Board Chairman: Your suggestion has merit, but that would require the Utility Office to change the way they track and record it. Right now the excess production is immediately changed to monetary value each month so in order to do that they would instead have to track the excess production as Kwh, and that would completely change the way the Utility Office would do their business and he doesn't know if their system is set up where they can do that right now.

Commissioner Mitchell: Does changing this ordinance open us up for any kind of legal compensation back?

City Attorney Rubin: He has thought about that, and the question of grandfathering customers in. He would like to check with City Attorney Appel on that one.

Commissioner Mitchell made a motion to table this item until we can get further information from legal to incorporate that opinion into the ordinance and present it back to the commission when it is ready. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. 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, Modrall Sperling: This ordinance relates to another water system improvement project as being ultimately financed through the US Department of Agriculture and their Rural Development program. They have approved a total project loan of \$4,811,000 and a grant of \$2,720,000. It used to be that you would just close on that whole amount and go throughout the project from start to finish and pay that back over the 40 years of that transaction, but they changed in the last 5 years or so, and basically you are getting interim loans for each step of the process starting, in this case, the pre-development work for \$750,000, then you would get another loan for the construction work for more along the lines of the \$7.5 million dollars for the project, and then ultimately close on the USDA Bonds when the project is completed and there is the total cost. We looked at this on another USDA project several months ago with the Bank of the Southwest where it was the interim financing for the construction, and they did that transaction. This is another one that is similar in process also with the Bank of the Southwest. This is just for the pre-development work which is basically defined as the

all pre-development activities including preparation of the PER/ER, design, final plans and specifications, obtained required easements, and required necessary permits. What we did on this one is go back more toward the traditional structure of how Municipal debt is done. The first one with the Bank of the Southwest that we did a couple of months ago was done by a promissory note, security agreement which is more of a commercial context. It is legally sufficient, but we may want to go back and restructure it like this one because normally for Municipal debt the community would issue a bond which is the debt obligation for a Finance Authority Loan Agreement. This one is structured consistent with that. He and Traci Alvarez have been working for several months on and off to try and get it all squared away. The ordinance approves that \$750,000 pre-development financing with the Bank of the Southwest. It is an 18 month line of credit at 5.75% interest. The interest accrues once you draw any of that money so once we close on this it doesn't start accruing on the \$750,000 and 5.75%. It will start accruing at 5.75% for each part of that \$750,000 that is drawn down over the next 18 months. There is a onetime maturity payment at the 18 month mark where it pays all interest and principal at that time with no individual interim maturity so it is much more, straight forward. He is comfortable with the ordinance. It is consistent with what the city has done with the USDA debt. This will be an 18 month financing loan and it is at 5.75% for \$750,000. This is a pledge of your net system revenues from our Joint Utility System so all of the debt is tied into the same pledge. It is important to note that any holders of your debt that is pledged with the Joint Utility revenue do not have a lien against any state shared gross receipts tax, any other local option gross receipts tax, property taxes or other Enterprise funds that you might have. This is a special pledge limited to that. The main hammer that any holder of this debt has is if the system looks like it is not producing sufficient revenues to pay the debt, they can require that you raise your rates.

Assistant City Manager Alvarez: Once we get through all of the pre-development we would turn around and go back out for the construction portion of the loan, and once the project is complete, USDA will pay it all off with the Bank of the Southwest, and then our loan will then be through USDA.

Commissioner Mitchell made a motion to approve the 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. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

#### H. NEW BUSINESS:

1. Discussion/Update: City Wide Project Update:

Alfredo Holguin, Wilson & Company gave an update on the City Wide Projects. (Compete copy attached hereto and made a part hereof).

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

Alfredo Holguin, Wilson & Company: They went out to bid for the Main Street District (MSD) Water System Improvements project and they had to re-bid because they came out over budget. That actually led them to be able to do some negotiations with the contractor, and in the end they needed to reduce the scope. The overall reduction included removal of a water storage tank at Cook Street as well as some water lines in the eastside of the Main Street District. As a whole they were able to include a big portion of the project. They are recommending the award to Smith Co. Construction. We have already received concurrence from USDA, and the next step is if the City and the Commission sees fit to approve the award. If so, we will then provide that to the contractor and start preparing the performance bonds, and payment bonds. We will then start to schedule a pre-construction meeting and execute all of the agreements, and then be under way on construction.

Commissioner Mitchell made a motion to accept and approve Wilson and Company's recommendation of award to Smith Co. Construction for the Main Street District (MSD) Water System Improvements. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. Discussion/Action: Accept and Approve State of NM Tourism Department Clean and Beautiful Grant Program Agreement:

Traci Alvarez, Assistant City Manager: The city submitted an application to Clean & Beautiful for recycled benches, and it was awarded \$1,678.25. The grant does require a cash match of 25% which amounts to approximately \$420.00 of in kind services and/or purchased materials.

Commissioner Fahl moved to Accept and Approve State of NM Tourism Department Clean and Beautiful Grant Program Agreement. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

4. Discussion/Action: Approval of the 2022 Youth Soccer Association field fees:

City Manager Swingle: We had the discussion a couple of meetings back, and you asked us to talk to the Recreation Board about the facility pricing. In the discussion with the Recreation Board we had ultimately come up with the realization that we offered Little League and Softball a rate of \$40 per team, and that was the fee prior to the new

resolution being passed. The Youth Soccer Association approached the city and tried to get registered, and take everything under that old resolution, but we didn't except it because there was going to be a new pricing schedule for all events after July 1<sup>st</sup>. Ultimately, that was unfair on our part. We should have given them the rate that we were giving the other leagues so our recommendation is to charge the Youth Soccer Association \$40 per team for the 2022 soccer season. With concurrence of the Recreation Board, we will move forward with the current pricing structure next season for all of the sports. The board was in agreement that the pricing was probably legitimate, and should stay where it is at. It is under what most entities are paying around the State of New Mexico. However, this season we will give them the rate of \$40 per team and give them a rebate of what that cost is from what they have already paid for because they paid the full amount of the current fees. The Youth Soccer Association is okay with the \$40 per team and feels that is a fair price.

Commissioner Mitchell made a motion to charge the Youth Soccer Association \$40 per team for the 2022 soccer season. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

# 5. Discussion/Action: Approval of the Smartphone Water Meter Reading Agreement:

City Manager Swingle: We currently only have one meter reader. We have two positions. One is vacant and has been vacant for a long time. We are looking at technology improvements that we can make to help us operate, and operate a little more effectively and efficiently. Sonya Renfro, Utility Office Manager is interested in purchasing this SPR which is basically the Smartphone Meter Reading capability. What we are buying is the software that allows us to utilize with the phones to go out and GPS the meters, and allow them to enter the reading so we will have verification. Very often we will have a scenario arise where members of the community will say that the individual never read their meter and it was estimated. Things of that nature. This takes that out of the picture. We can verify, and it's really one person's word against another, and it's also improving the process for the billing office. It's going to cost us about \$16 more a year on the software. We have the initial cost of almost \$900 for the web server and web seats, and almost \$1,600 for the training for the package. The annual cost would be for the licensing and maintenance of the software moving forward. You awarded money during the budget process to the Water Department to hire interns to go out and GPS. This is a perfect time for us to tie all of this together. We just won't have to buy the GPS system because it will be part of this package so it will actually save us money in the long run.

Commissioner Fahl moved to approve the Smartphone Water Meter Reading Agreement. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

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

City Manager Swingle: There was an amendment to the Purchase Requisitions over \$20,000 that was provided in the packet. The San Bar Construction Corp purchase requisition will be removed at this time.

Commissioner Mitchell moved to approve the Purchase Requisition over \$20,000. Commissioner Harrelson seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

#### I. EXECUTIVE SESSION:

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

Mayor Pro-Tem Hechler made a motion to go into executive session at 11:05 a.m. to discuss Threatened & Pending Litigation (Erica Baker vs. City of T or C) pursuant to 10-15-1(H.7). Commissioner Fahl seconded the motion. Roll call vote was taken by the Clerk-Treasurer. Motion carried unanimously.

Mayor Forrister reconvened the meeting in open session at 11:34 a.m.

Mayor Pro-Tem Hechler certified that only matters pertaining to Threatened & Pending Litigation (Erica Baker vs. City of T or C) pursuant to 10-15-1(H.7) was discussed in Executive Session.

No action was taken.

#### J. ADJOURNMENT:

Mayor Pro-Tem Hechler moved to adjourn at 11:35 a.m. Commissioner Mitchell seconded the motion. Motion carried unanimously.

Passed and Approved this 14th day of September, 2022

	<u>,</u>	
ATTEST:	Amanda Forrister, Mayor	_
Angela A. Torres, CMC, City Clerk		

## AGENDA REQUEST FORM

MEETING DATE: September 14, 2022

Agenda Item #: F.2

4	
SUBJECT: A	August 2022 Accounts Payable
DEPARTMENT: F	inance
DATE SUBMITTED: A	August 29, 2022
SUBMITTED BY:	Ruby Otero, Accounts Payable
WHO WILL PRESENT	THE ITEM: Consent Calendar
Summary/Backgrou	nd:
Each month there m which shall include a each budgetary item	28 of the Municipal Code related to Publication of expenditures: asy be published a summary of expenditures made during the preceding calendar month, a list of the total expenditures during the month, the amount spent in connection with a, and a summary of all receipts; provided, however, that the publication mentioned in made only at the discretion of the Commission if it shall deem such publication blic interest.
Recommendation:	
Approve the Accoun	ts Payable summary for AUGUST 2022
Attachments:	
<ul> <li>End of Month</li> </ul>	n Accounts Payable Report by Fund
Fiscal Impact (Finan	ce): Yes
All Funds Summary i	s a total of \$ 1,165,133.69
<b>Legal Review (City A</b> N/A	ttorney): N/A
Approved For Submi	ttal By:   Department Director
Reviewed by: 🛛 Ci	ty Clerk 🛮 Finance 🗆 Legal 🖾 Other: Ruby Otero, Account Payable
Final Approval: 🗆 C	ity Manager
	CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN
Continued To: - R	Denied Other: Click here to enter text.



#### **Truth or Consequences**

# **Expense Approval Report**

By Fund
Payable Dates 8/1/2022 - 8/31/2022

#### **PAYABLE APPROVAL**

I hereby approve the issuance of these payments.

FINANCE DIRECTOR OR DESIGNEE

DATE:

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
Fund: 101 - General					
XEROX CORP.	016585794/016585792	08/05/2022	BASE CHARGE/METER USAGE	101-1004-43465	568.12
TDS	07/18/22	08/05/2022	TDS FIBER INTERNET OPEN PO	O 101-1018-43780	4,687.10
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 20	022 101-1001-41226	117.96
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 20	022 101-1002-41226	43.87
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 20	22 101-1003-41226	223.91
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 20	022 101-1004-41226	254.86
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 20	22 101-1006-41226	120.67
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 20	22 101-1007-41226	927.53
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 20	)22 101-1008-41226	113.11
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 20	22 101-1009-41226	134.13
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 20	)22 101-1010-41226	96.74
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 20	22 101-1011-41226	317.28
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 20	)22 101-1012-41226	97.56
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 20	22 101-1013-41226	77.30
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 20	22 101-1014-41226	207.67
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 20	22 101-1016-41226	204.98
MANANA	107.22	08/05/2022	OPEN PO-LANDSCAPING SERV	/I 101-1009-47415	900.00
INTERNAL SERVICE FUND	112900	08/05/2022	MAINT.& SERVICE FOR DEPT.	V 101-1009-47420	84.49
INTERNAL SERVICE FUND	112900	08/05/2022	MAINT.& SERVICE FOR DEPT.	V 101-1012-47420	79.84
INTERNAL SERVICE FUND	112900	08/05/2022	MAINT.& SERVICE FOR DEPT.	V 101-1014-47420	20.00
AMAZON CAPITAL SERVICES, IN	1R46-L176-VRCH	08/05/2022	ADOPT DON'T SHOP SHIRT- M	IED 101-1006-42620	19.99
AMAZON CAPITAL SERVICES, IN	1R46-L176-VRCH	08/05/2022	ANIMAL RESCUE SHIRT	101-1006-42620	19.99
AMAZON CAPITAL SERVICES, IN	1R46-L176-VRCH	08/05/2022	ANIMAL RESCUE SHIRT- XXL	101-1006-42620	19.99
AMAZON CAPITAL SERVICES, IN	1R46-L176-VRCH	08/05/2022	ADOPT DON'T SHOP SHIRT- X	XL 101-1006-42620	19.99
AMAZON CAPITAL SERVICES, IN	1R46-L176-VRCH	08/05/2022	FOSTER ADOPT SHIRT- MED	101-1006-42620	47.98
AMAZON CAPITAL SERVICES, IN	1R46-L176-VRCH	08/05/2022	ADOPT DON'T SHOP SHIRT- M	IED 101-1006-42620	19.99
AMAZON CAPITAL SERVICES, IN	1R46-L176-VRCH	08/05/2022	FOSTER ADOPT SHIRT- XXL	101-1006-42620	23.99
AMAZON CAPITAL SERVICES, IN	1R46-L176-VRCH	08/05/2022	ANIMAL RESCUE SHIRT- MED	101-1006-42620	19.99
AMAZON CAPITAL SERVICES, IN	1R46-L176-VRCH	08/05/2022	PETMATE SPADE AND PAN	101-1006-44607	49.98
SIERRA AUTO/CARQUEST	302072	08/05/2022	STARTER RMFD	101-1012-44607	142.40
SIERRA AUTO/CARQUEST	302558	08/05/2022	RELAY UNIVERSAL	101-1012-44607	6.91
SIERRA AUTO/CARQUEST	302560	08/05/2022	BATTERY GOLD 3 YEARS	101-1012-44607	165.21
SIERRA AUTO/CARQUEST	302607	08/05/2022	RADIATOR FLUSH CLEANER	101-1012-44607	8.78
SIERRA AUTO/CARQUEST	302609	08/05/2022	HEATER HOSE MOLDED	101-1012-44607	15.71
SIERRA AUTO/CARQUEST	302610	08/05/2022	AUTOMOTIVE FUSE	101-1012-44607	5.26
SIERRA AUTO/CARQUEST	302611	08/05/2022	20 XTRACLEAR 2009 FORD E-1		14.58
SILVERSKY, INC.	461226-SI	08/05/2022	EMAIL SERVICE OPEN PO FY22	•	211.22
MPG SERVICES, LLC	4634	08/05/2022	REPAIR A/C PARTS AND LABO		134.18
TRANS UNION RISK & ALTERNAT	·	08/05/2022	MONTHLY CHARGE FOR TLO S		110.00
SHERI A. ARMIJO	660920	08/05/2022	CIVIC CENTER REFUND-FUNER		250.00
ARENAS VALLEY ANIMAL CLINIC	•	08/05/2022	VET SERVICES	101-1006-48598	316.47
ARENAS VALLEY ANIMAL CLINIC	•	08/05/2022	VET SERVICES	101-1006-48598	538.64
ARENAS VALLEY ANIMAL CLINIC	•	08/05/2022	VET SERVICES	101-1006-48598	77.31
ARENAS VALLEY ANIMAL CLINIC		08/05/2022	VET SERVICES	101-1006-48598	152.82
ARENAS VALLEY ANIMAL CLINIC		08/05/2022	VET SERVICES	101-1006-48598	182.07
INTEGRATED TECHNOLOGIES G.	7437	08/05/2022	IT SERVICES JULY 1,2022 TO S	EP 101-1018-48598	984.84

#### Expense Approval Report Payable Dates: 8/1/2022 - 8/31/2022

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
CITY UTILITIES	8/1/22	08/05/2022	CITY UTILITIES CYCLE C&D/OPE	101-1018-43780	6,915.92
JAIME F. RUBIN, LLC	8122	08/05/2022	OPEN PO FOR LEGAL SERVICES	101-1000-43597	4,693.04
VERIZON WIRELESS	9912007686	08/05/2022	PHONE BILLS/OPEN PO FY 22/23	101-1007-43775	247.26
VERIZON WIRELESS	9912007686	08/05/2022	PHONE BILLS/OPEN PO FY 22/23	101-1008-43775	123.63
BORDER INTERNATIONAL TRUC	. X400080788.01	08/05/2022	BAT,GRP,65 850CCA 150RC	101-1012-44607	652.52
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	. 101-1001-41226	117.96
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	. 101-1002-41226	43.87
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022		223.91
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	. 101-1004-41226	254.86
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	. 101-1006-41226	120.67
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	. 101-1007-41226	975.68
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	. 101-1008-41226	113.11
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	. 101-1009-41226	128.45
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	. 101-1010-41226	96.74
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	. 101-1011-41226	317.28
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	. 101-1012-41226	121.99
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	. 101-1013-41226	77.30
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022		207.67
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022		198.49
TEXAS- NEW MEXICO NEWSPAP.	0004821690	08/19/2022	JOB ADS IN THE LAS CRUCES SU		450.73
WEX BANK	07312022	08/19/2022	WEX BANK FUEL CARD OPEN PO.		785.88
WEX BANK	08012022	08/19/2022	FUEL FOR ANIMAL CONTROL/C		993.26
WILLIAM I. BUHLER	08052022	08/19/2022	FISH POND WATER RIGHTS FY 2		450.00
DRAGONFLY TRAINING AND CO		08/19/2022	TRAINING REGISTRATION	101-1008-42720	323.04
SIERRA COLLISION & TOWING	1238	08/19/2022	VEHICLE TOWED FOR EVIDENCE		249.55
SUN VALLEY, INC.	164599	08/19/2022	FIELD SUPPLIES OPEN PO FOR J		918.53
SUN VALLEY, INC.	164647	08/19/2022	OPEN PO FOR NON-CAPITAL IT		351.49
SUN VALLEY, INC.	164797	08/19/2022	OPEN PO FOR NON-CAPITAL IT		199.99
SUN VALLEY, INC.	164900/164878/164648/164870		OPEN PURCHASE ORDER (FIELD		350.09
STANTEC CONSULTING SERVICE		08/19/2022	SILVER CITY NMGRT @ 8.0%	101-1010-48598	20.01
STANTEC CONSULTING SERVICE		08/19/2022	DEVELOPMENT REVIEW MORG		250.10
STANTEC CONSULTING SERVICE		08/19/2022	DEVELOPMENT REVIEW 905 PA		282.65
STANTEC CONSULTING SERVICE		08/19/2022	DEVELOPMENT REVIEW 601 W		218.30
STANTEC CONSULTING SERVICE		08/19/2022	SILVER CITY NMGRT @ 8.0%	101-1010-48598	17.46
STANTEC CONSULTING SERVICE	. 1963951-4	08/19/2022	DEVELOPMENT REVIEW DOLLAR.		306.53
STANTEC CONSULTING SERVICE	. 1963951-4	08/19/2022	SILVER CITY NMGRT @ 8.0%	101-1010-48598	24.52
STANTEC CONSULTING SERVICE	. 1963951-5	08/19/2022	SILVER CITY NMGRT @ 8.0%	101-1010-48598	122.81
STANTEC CONSULTING SERVICE	. 1963951-5	08/19/2022	DEVELOPMENT REVIEW	101-1010-48598	1,535.13
STANTEC CONSULTING SERVICE	. 1963951-6	08/19/2022	DEVELOPMENT REVIEW 808 M		5,052.60
STANTEC CONSULTING SERVICE	. 1963951-6	08/19/2022	SILVER CITY NMGRT @ 8.0%	101-1010-48598	404.21
STANTEC CONSULTING SERVICE	. 1963951-7	08/19/2022	SILVER CITY NMGRT @ 8.0%	101-1010-48598	178.45
STANTEC CONSULTING SERVICE	. 1963951-7	08/19/2022	DEVELOPMENT REVIEW 2324 S		2,230.60
STANTEC CONSULTING SERVICE	. 1963951-8	08/19/2022	SILVER CITY NMGRT @ 8.0%	101-1010-48598	162.70
STANTEC CONSULTING SERVICE	. 1963951-8	08/19/2022	DEVELOPMENT REVIEW 101 AU		2,033.76
AUTOZONE STORES, LLC	2529048722	08/19/2022	OIL WRENCH	101-1012-44607	15.86
ALARM CONTROL TECHNOLOGI	. 25735/25736	08/19/2022	FIRE ALARM MONITORING OPE		53.88
QUILL CORPORATION	26649386	08/19/2022	INK 902 4/PACK	101-1002-44606	234.87
QUILL CORPORATION	26649386	08/19/2022	FELT PEN	101-1002-44606	17.09
QUILL CORPORATION	26649386	08/19/2022	DAY MINDER	101-1002-44606	22.31
QUILL CORPORATION	26649386	08/19/2022	ROLLAR PEN EXTRA FINE	101-1002-44606	26.09
QUILL CORPORATION	26649386	08/19/2022	DESK PAD CALENDAR	101-1002-44606	27.96
QUILL CORPORATION	26649386	08/19/2022	DISPOSABLE MASK	101-1002-44606	39.98
QUILL CORPORATION	26649386	08/19/2022	DISINFECTING WIPES	101-1002-44606	41.99
QUILL CORPORATION	26649386	08/19/2022	KN95 MASK	101-1002-44606	99.98
QUILL CORPORATION	26799970/26899540	08/19/2022	PEN REFILLS	101-1003-44606	15.20
QUILL CORPORATION	26799970/26899540	08/19/2022	KLEENEX 6/PK	101-1003-44606	15.99
QUILL CORPORATION	26799970/26899540	08/19/2022	WALL CALENDAR	101-1003-44606	34.19
QUILL CORPORATION	26799970/26899540	08/19/2022	POST IT TABS	101-1003-44606	10.79
QUILL CORPORATION	26799970/26899540	08/19/2022	BUSINESS CARDS FOR TRACI 25		25.72
NU-WAY LAUNDRY & CLEANERS	·	08/19/2022	NU-WAY CARPET SERVICES 22		137.99
		- *			

8/29/2022 4:02:57 PM Page 2 of 17

#### **Expense Approval Report**

TALON SEPTIC & POTTY SERVICE 856

#### **Vendor Name** Payable Number **Post Date** Description (Item) **Account Number** Amount **VALLEY VET SUPPLY** 6483489 08/19/2022 **DURAMUNE MAX 5-CVK PUPPY... 101-1006-44607** 607.50 VALLEY VET SUPPLY 6483489 08/19/2022 BRONCH-SHIELD ORAL FOR DO... 101-1006-44607 397.90 INTEGRATED TECHNOLOGIES G... 7451 08/19/2022 ADOBE ACROBAT DC PRO - 1 YR., 101-1003-43815 232.00 **BRADY INDUSTRIES, LLC** 7459404 08/19/2022 2 PLY TOILET PAPER 101-1014-44607 618 90 **BRADY INDUSTRIES, LLC** 7459404 08/19/2022 CENTER PULL PAPER HAND TO ... 101-1014-44607 502.50 **BRADY INDUSTRIES, LLC** 7459404 08/19/2022 **FUEL CHARGE** 101-1014-44607 8.00 **CITY UTILITIES** 8/17/22 08/19/2022 CITY UTILITIES CYCLE A&B/OPEN.. 101-1018-43780 4,757,31 **CITY UTILITIES** 8/5/22 08/19/2022 CITY LANDFILL BILLS/OPEN PO F... 101-1018-43780 50.50 WFX BANK 8012022 08/19/2022 WEX FUEL POLICE DEPT-FY JULY... 101-1007-43316 6,432.75 TDS 8012022 08/19/2022 INTERNET SERVICE/PD OPEN PO.. 101-1007-43775 149.00 STAPLES CONTRACT & COMME... 8067182111 08/19/2022 BOSTITCH ELECTRIC STAPLER 101-1000-44606 24.64 STAPLES CONTRACT & COMME... 8067182111 08/19/2022 STAPLES FILE POCKET LEGAL BR... 101-1000-44606 41.00 STAPLES CONTRACT & COMME... 8067182111 08/19/2022 SOFTSOAP ANTI BACTERIAL HA... 101-1000-44606 7.16 STAPLES CONTRACT & COMME... 8067182111 08/19/2022 FELLOWES FOAM MOUSE PAD 101-1000-44606 12.95 STAPLES CONTRACT & COMME... 8067182111 08/19/2022 BROTHER LABEL MARKER TAP 0... 101-1000-44606 13.19 STAPLES CONTRACT & COMME... 8067182111 08/19/2022 APPLE CABLE FOR IPAD 101-1000-44606 8.60 STAPLES CONTRACT & COMME... 8067182111 08/19/2022 POST IT SIGN HERE 1" YELLOW ... 101-1000-44606 5.87 STAPLES CONTRACT & COMME... 8067182111 08/19/2022 POST-IT INITIAL HERE FLAGS 100.. 101-1000-44606 3.91 STAPLES CONTRACT & COMME... 8067182111 08/19/2022 POST-ITS 1" 100 PK 101-1000-44606 3.40 QUEST DIAGNOSTICS, INC. 9199717003 08/19/2022 SCREENING & MRO FEE FY22-23.. 101-1004-48599 326.40 GRAINGER, INC. 9382151976 08/19/2022 PET WASTE BAGS 101-1009-44607 544.48 GRAINGER, INC. 9399964031/9400321866 08/19/2022 TRAFFIC STENCIL HANDICAP 101-1009-44607 63.90 9399964031/9400321866 GRAINGER, INC. 08/19/2022 TRIMMER LINE 101-1009-44607 114.99 DONA ANA BRANCH COMMUNI... CDLTEST202203 08/19/2022 CDL SKILLS TEST FOR STEVEN S... 101-1012-42720 200.00 SOUTH CENTRAL COUNCIL OF ... FY22-SCCOG-13 08/19/2022 ANNUAL MEMBERSHIP DUES 2... 101-1000-43770 2,187.00 **BLUE 360 MEDIA, LLC** IN2207163206 08/19/2022 2022 NM CRIMINAL & TRAFFIC ... 101-1002-43770 291.26 LASTING PAWS PET MEMORIAL ...LC10391-I-0029 08/19/2022 **ANIMAL CREMATIONS** 101-1006-48598 678.72 SIERRA COUNTY SENTINEL 109405 08/25/2022 OPEN PO FOR FY 22/23 PUBLIC... 101-1001-43740 513.25 109512 SIERRA COUNTY SENTINEL 08/25/2022 HELP WANTED ADS FY22-23- O... 101-1004-43740 347.20 REED'S TIRE CENTER 11736 08/25/2022 TIRES 101-1007-47420 704.00 AMAZON CAPITAL SERVICES, IN... 11G3-FR4F-C1CD/17YY-6YQ-XK... 08/25/2022 MARANTA GREEN PRAYER PLA... 101-1012-44606 14.65 AMAZON CAPITAL SERVICES, IN., 11G3-FR4F-C1CD/17YY-6YO-XK., 08/25/2022 PAPER SHREADAR FOR HOME O...101-1012-44606 129.99 AMAZON CAPITAL SERVICES, IN... 11G3-FR4F-C1CD/17YY-6YQ-XK... 08/25/2022 COMFFF MICROWAVE 101-1012-44606 81.99 AMAZON CAPITAL SERVICES, IN.,, 11G3-FR4F-C1CD/17YY-6YO-XK.,, 08/25/2022 O'CEDAR CLOTH MOP 101-1012-44606 37.00 AMAZON CAPITAL SERVICES, IN... 11G3-FR4F-C1CD/17YY-6YQ-XK... 08/25/2022 PLEDGE MUTI-SURFACE FURNI... 101-1012-44606 29.89 AMAZON CAPITAL SERVICES, IN... 11G3-FR4F-C1CD/17YY-6YQ-XK... 08/25/2022 AMERICAN OLANT EXCHANGE 101-1012-44606 24.45 AMAZON CAPITAL SERVICES, IN... 11G3-FR4F-C1CD/17YY-6YQ-XK... 08/25/2022 MURPHY OIL SOAP WOOD CLE... 101-1012-44606 23.88 AMAZON CAPITAL SERVICES, IN... 11G3-FR4F-C1CD/17YY-6YQ-XK... 08/25/2022 50 PACK SIMPLE HOUSEWARE C... 101-1012-44606 21.97 AMAZON CAPITAL SERVICES, IN... 11G3-FR4F-C1CD/17YY-6YQ-XK... 08/25/2022 **GOLDEN POTHOS PLANT** 101-1012-44606 37.36 AMAZON CAPITAL SERVICES, IN... 1FJ3-P3VK-3XNT 08/25/2022 BISSELL 2252 BAGLESS VACUUM 101-1009-44613 118.44 OFFICE DEPOT 257075169001 08/25/2022 SHARPIF FINE POINT 101-1007-44606 22.39 OFFICE DEPOT 257075169001 08/25/2022 OFFICE DEPOT 6X9 ENVELOPES ... 101-1007-44606 5.84 OFFICE DEPOT 257075169001 08/25/2022 KLEENEX PACK OF 6 BOXES 101-1007-44606 11.75 OFFICE DEPOT 257075169001 08/25/2022 SHARPIE GEL PENS RED 12 PACK 101-1007-44606 12.59 OFFICE DEPOT 257075169001 08/25/2022 OFFICE DEPOT 9X12 ENVELOPES.. 101-1007-44606 16.10 OFFICE DEPOT 257075169001 08/25/2022 OFFICE DEPOT MEMO BOOKS 101-1007-44606 16.80 OFFICE DEPOT 257075169001 08/25/2022 **PILOT BLUR PEN 12 PACK** 101-1007-44606 18.82 OFFICE DEPOT 257075169001 08/25/2022 SHARPIE GEL PENS BLUE PACK ... 101-1007-44606 50.36 OFFICE DEPOT 257075169001 08/25/2022 **HP 63XL BLACK INK** 101-1007-44606 170.35 OFFICE DEPOT 257075169001 08/25/2022 OFFICE DEPOT PRINTER PAPER ... 101-1007-44606 314.70 OFFICE DEPOT 257075169001 08/25/2022 PILOT BLACK PEN 12 PACK 101-1007-44606 18.82 OFFICE DEPOT 257075169001 08/25/2022 POST IT 24 PACK 101-1007-44606 49.26 OFFICE DEPOT 257075169001 SHARPIE GEL PENS BLACK PACK... 101-1007-44606 08/25/2022 37.77 OFFICE DEPOT 257075169001 08/25/2022 **AVERY BUSINESS CARDS** 101-1007-44606 43.78 OFFICE DEPOT 257075169001 08/25/2022 USB FLASH DRIVES 5 COUNT 101-1007-44606 37.79 TARA MANNING 523760 08/25/2022 NM HUMANE CONFERENCE.8/1...101-1006-42720 76.87 BEATRICE SANDERS 8/26/22 08/25/2022 65TH NMML ANNUAL CONFER... 101-1002-42720 268.70 CHAPARRAL SURVEYING, LLC 81722 08/25/2022 NMGRT 101-1010-48598 69.38 CHAPARRAL SURVEYING, LLC 81722 08/25/2022 CITY PROPERTY EASEMENT SUR... 101-1010-48598 1.000.00

Payable Dates: 8/1/2022 - 8/31/2022

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RENTAL OF PORTABLE TOILETS ... 101-1009-43465

1,000.00

08/25/2022

Expense Approval Report	Payable Dates: 8/1/2022 - 8/31/2022
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					2 - 0/31/2022
Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
JCG TECHNOLOGIES, INC.	8647	08/25/2022	SUPPORT SERVICES PACKAGE 1	101-1001-47410	450.00
GRAINGER, INC.	912108194	08/25/2022	SAFETY GLOVES MED	101-1009-44615	172.60
JUSTICE SYSTEMS, INC	INV142011	08/25/2022	FULL COURT LICENSES	101-1040-43815	2,717.80
JUSTICE SYSTEMS, INC	INV142011	08/25/2022	ORACLE MAINTENANCE	101-1040-43815	313.88
ARROW MAGNOLIA INTERNATI.	IV220007018	08/25/2022	DS-1600-4X1-GL-8IO SAN	101-1009-44607	153.56
ARROW MAGNOLIA INTERNATI.	IV220007018	08/25/2022	SHIPPING AND HANDLING	101-1009-44607	31.00
XEROX CORP.	016813617/0168136192	08/26/2022	BASE CHARGE/METER USAGE	101-1004-43465	544.82
XEROX CORP.	016813618	08/26/2022	XEROX BASE CHARGE/METER U	101-1001-43465	294.78
XEROX CORP.	016813621	08/26/2022	BASE CHARGE - METER USAGE	101-1007-43465	343.96
XEROX CORP.	016813635	08/26/2022	METER USAGE OPEN PO 22/23	101-1003-43465	309.87
XEROX CORP.	016813637	08/26/2022	BASE CHARGE/METER USAGE FY.	101-1009-43465	223.80
XEROX CORP.	016916475	08/26/2022	XEROX CHARGE/METER USAGE	101-1040-43465	256.10
NM MUNICIPAL LEAGUE	08222022	08/26/2022	REGISTRATION BEATRICE SAND	101-1002-42720	110.00
TURTLEBACK PEST CONTROL, I	08232022	08/26/2022	TURTLEBACK PEST CONTROL SE	101-1014-43403	728.04
T OR C FIRE DEPARTMENT	08242022	08/26/2022	FIRE DEPARTMENT ALLOTMENT	101-1005-48599	21,500.00
TESTON'S FREEWAY CHEVRON	4352	08/26/2022	OPEN PO FY22/23 FUEL PURCH	101-1013-43316	85.50
TESTON'S FREEWAY CHEVRON	4362	08/26/2022	TESTOS FUEL/OIL OPEN P.O FY	101-1009-43316	1,243.52
WINDSTREAM CORPORATION	8/18/22	08/26/2022	PHONE BILLS/OPEN PO FY 22/23	101-1003-43775	90.02
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23	101-1001-43775	278.82
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		195.87
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		233.67
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		251.14
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		109.98
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		1,066.48
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		177.64
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		145.81
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		93.77
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		69.97
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		86.28
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		105.98
SIERRA VISTA HOSPITAL / SIERR.		08/29/2022	GRT DISTRIBUTION FY 22/23 OP		67,705.17
NEW MEXICO GAS COMPANY, I NEW MEXICO GAS COMPANY, I		08/29/2022	· .	101-1018-43780	478.90
TDS	08/18/22	08/29/2022 08/29/2022	GAS BILLS/ANIMAL SHELTER FY TDS FIBER INTERNET OPEN PO		60.26
NEW MEXICO GAS COMPANY, I		08/29/2022	GAS BILLS/NM WORKFORCE C		<b>4,707.10</b> 26.38
WEW WEXIES GAS COM AIVI, I	00/10/22	00/23/2022	GAS BILLS/NIVI WORKFORCE C	Fund 101 - General Total:	176,170.48
				rana tot - deneral rotal.	170,170.46
Funda 201 Commenters					
Fund: 201 - Corrections	07313033	00/05/2022	DAV DIAM & COURT AUTO FFFC	204 4002 44005	04.00
ADMINISTRATIVE OFFICE OF	07312022	08/05/2022	PAY DWI & COURT AUTO FEES		84.00
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT.	07312022	08/05/2022	PAY JUDICIAL FEES FY 22/23 OP	201-1903-44805	42.00
ADMINISTRATIVE OFFICE OF				201-1903-44805 201-1903-48710	42.00 1,760.00
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER	07312022	08/05/2022	PAY JUDICIAL FEES FY 22/23 OP	201-1903-44805	42.00
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER Fund: 209 - Fire	07312022 08012022	08/05/2022 08/19/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU	201-1903-44805 201-1903-48710 Fund <b>201</b> - Corrections Total:	42.00 1,760.00 1,886.00
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER Fund: 209 - Fire MEGAHERTZ COMPUTER CONS	07312022 08012022 59811	08/05/2022 08/19/2022 08/05/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU INTERNET SERVICE/NORTH FIRE	201-1903-44805 201-1903-48710 Fund 201 - Corrections Total:	42.00 1,760.00 1,886.00
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES	. 07312022 08012022 . 59811 8/1/22	08/05/2022 08/19/2022 08/05/2022 08/05/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE	201-1903-44805 201-1903-48710 Fund 201 - Corrections Total: 209-1603-43775 209-1603-43780	42.00 1,760.00 1,886.00 54.25 274.49
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L	07312022 08012022 59811 8/1/22 2965	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX	201-1903-44805 201-1903-48710 Fund 201 - Corrections Total: 209-1603-43775 209-1603-43780 209-1603-47420	42.00 1,760.00 1,886.00 54.25 274.49 271.87
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L.	07312022 08012022 59811 8/1/22 2965 2965	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022 08/19/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX LADDER HEAT SENSORS	201-1903-44805 201-1903-48710 ————————————————————————————————————	42.00 1,760.00 1,886.00 54.25 274.49 271.87 16.00
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L.	07312022 08012022 . 59811 8/1/22 2965 2965 2965	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022 08/19/2022 08/19/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX LADDER HEAT SENSORS TESTING OF ALL GROUND LADD	201-1903-44805 201-1903-48710 ————————————————————————————————————	42.00 1,760.00 1,886.00 54.25 274.49 271.87 16.00 693.00
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L	07312022 08012022 . 59811 8/1/22 2965 2965 2965 2965	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX LADDER HEAT SENSORS TESTING OF ALL GROUND LADD TESTING OF ALL FIRE HOSE	201-1903-44805 201-1903-48710 ————————————————————————————————————	42.00 1,760.00 1,886.00 54.25 274.49 271.87 16.00 693.00 2,489.50
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. CITY UTILITIES	07312022 08012022 . 59811 8/1/22 2965 2965 2965 2965 8/17/22	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX LADDER HEAT SENSORS TESTING OF ALL GROUND LADD TESTING OF ALL FIRE HOSE CITY UTILITIES CYCLE A&B/OPEN	201-1903-44805 201-1903-48710	42.00 1,760.00 1,886.00 54.25 274.49 271.87 16.00 693.00 2,489.50 438.16
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. CITY UTILITIES  IRON MAN CONSTRUCTION	07312022 08012022 . 59811 8/1/22 2965 2965 2965 2965 2965 8/17/22 81222	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/25/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX LADDER HEAT SENSORS TESTING OF ALL GROUND LADD TESTING OF ALL FIRE HOSE CITY UTILITIES CYCLE A&B/OPEN OUTSIDE WALL PACK (7)	201-1903-44805 201-1903-48710	42.00 1,760.00 1,886.00 54.25 274.49 271.87 16.00 693.00 2,489.50 438.16 1,260.00
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. CITY UTILITIES  IRON MAN CONSTRUCTION IRON MAN CONSTRUCTION	07312022 08012022 . 59811 8/1/22 2965 2965 2965 2965 8/17/22 81222 81222	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/25/2022 08/25/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX LADDER HEAT SENSORS TESTING OF ALL GROUND LADD TESTING OF ALL FIRE HOSE CITY UTILITIES CYCLE A&B/OPEN OUTSIDE WALL PACK (7) SENSORS	201-1903-44805 201-1903-48710	42.00 1,760.00 1,886.00 54.25 274.49 271.87 16.00 693.00 2,489.50 438.16 1,260.00 100.00
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. CITY UTILITIES IRON MAN CONSTRUCTION IRON MAN CONSTRUCTION IRON MAN CONSTRUCTION	07312022 08012022 . 59811 8/1/22 2965 2965 2965 2965 8/17/22 81222 81222 81222	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/25/2022 08/25/2022 08/25/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX LADDER HEAT SENSORS TESTING OF ALL GROUND LADD TESTING OF ALL FIRE HOSE CITY UTILITIES CYCLE A&B/OPEN OUTSIDE WALL PACK (7) SENSORS TAX	201-1903-44805 201-1903-48710 Fund 201 - Corrections Total: 209-1603-43775 209-1603-43780 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405	42.00 1,760.00 1,886.00 54.25 274.49 271.87 16.00 693.00 2,489.50 438.16 1,260.00 100.00 81.90
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. CITY UTILITIES IRON MAN CONSTRUCTION	07312022 08012022 . 59811 8/1/22 2965 2965 2965 2965 8/17/22 81222 81222 81222 81222	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX LADDER HEAT SENSORS TESTING OF ALL GROUND LADD TESTING OF ALL FIRE HOSE CITY UTILITIES CYCLE A&B/OPEN OUTSIDE WALL PACK (7) SENSORS TAX RETRO FIT ALL LIGHT FIXTURES	201-1903-44805 201-1903-48710 Fund 201 - Corrections Total:  209-1603-43775 209-1603-43780 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405	42.00 1,760.00 1,886.00 54.25 274.49 271.87 16.00 693.00 2,489.50 438.16 1,260.00 100.00 81.90 2,520.00
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. CITY UTILITIES IRON MAN CONSTRUCTION EMERGENCY SERVICES MARKET.	07312022 08012022 . 59811 8/1/22 2965 2965 2965 8/17/22 81222 81222 81222 81222 81222 81222	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX LADDER HEAT SENSORS TESTING OF ALL GROUND LADD TESTING OF ALL FIRE HOSE CITY UTILITIES CYCLE A&B/OPEN OUTSIDE WALL PACK (7) SENSORS TAX RETRO FIT ALL LIGHT FIXTURES 1 YEAR PHONE SUPPORT	201-1903-44805 201-1903-48710 Fund 201 - Corrections Total:  209-1603-43775 209-1603-43780 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47705 209-1603-47705	42.00 1,760.00 1,886.00 54.25 274.49 271.87 16.00 693.00 2,489.50 438.16 1,260.00 100.00 81.90 2,520.00 10.00
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. CITY UTILITIES IRON MAN CONSTRUCTION EMERGENCY SERVICES MARKET.	07312022 08012022 . 59811 8/1/22 2965 2965 2965 8/17/22 81222 81222 81222 81222 81222 81222 82422	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX LADDER HEAT SENSORS TESTING OF ALL GROUND LADD TESTING OF ALL FIRE HOSE CITY UTILITIES CYCLE A&B/OPEN OUTSIDE WALL PACK (7) SENSORS TAX RETRO FIT ALL LIGHT FIXTURES 1 YEAR PHONE SUPPORT 1 YEAR SUBSCRIPTION/PAGER D	201-1903-44805 201-1903-48710 Fund 201 - Corrections Total:  209-1603-43775 209-1603-43780 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-4770 209-1603-43770 209-1603-43815	42.00 1,760.00 1,886.00 54.25 274.49 271.87 16.00 693.00 2,489.50 438.16 1,260.00 100.00 81.90 2,520.00 10.00 800.00
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. CITY UTILITIES IRON MAN CONSTRUCTION EMERGENCY SERVICES MARKET. EMERGENCY SERVICES MARKET. XEROX CORP.	07312022 08012022 . 59811 8/1/22 2965 2965 2965 8/17/22 81222 81222 81222 81222 81222 81222 81222 81222 81222 81222 81222 81222 81223	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX LADDER HEAT SENSORS TESTING OF ALL GROUND LADD TESTING OF ALL FIRE HOSE CITY UTILITIES CYCLE A&B/OPEN OUTSIDE WALL PACK (7) SENSORS TAX RETRO FIT ALL LIGHT FIXTURES 1 YEAR PHONE SUPPORT 1 YEAR SUBSCRIPTION/PAGER D BASE CHARGE/METER USAGE O	201-1903-44805 201-1903-48710 Fund 201 - Corrections Total:  209-1603-43775 209-1603-43780 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-43770 209-1603-43815 209-1603-43465	42.00 1,760.00 1,886.00 54.25 274.49 271.87 16.00 693.00 2,489.50 438.16 1,260.00 100.00 81.90 2,520.00 10.00 800.00 260.36
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. CITY UTILITIES IRON MAN CONSTRUCTION EMERGENCY SERVICES MARKET. EMERGENCY SERVICES MARKET. XEROX CORP. TESTON'S FREEWAY CHEVRON	07312022 08012022 . 59811 8/1/22 2965 2965 2965 2965 8/17/22 81222 81222 81222 81222 81222 81222 81222 81222 81222 81223 82422 82422 82422 016813639 4349	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX LADDER HEAT SENSORS TESTING OF ALL GROUND LADD TESTING OF ALL FIRE HOSE CITY UTILITIES CYCLE A&B/OPEN OUTSIDE WALL PACK (7) SENSORS TAX RETRO FIT ALL LIGHT FIXTURES 1 YEAR PHONE SUPPORT 1 YEAR SUBSCRIPTION/PAGER D BASE CHARGE/METER USAGE O FUEL ALL TRUCK - OPEN PO FY	201-1903-44805 201-1903-48710 Fund 201 - Corrections Total:  209-1603-43775 209-1603-43780 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-43770 209-1603-43815 209-1603-43316	42.00 1,760.00 1,886.00 54.25 274.49 271.87 16.00 693.00 2,489.50 438.16 1,260.00 100.00 81.90 2,520.00 10.00 800.00 260.36 301.92
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. CITY UTILITIES IRON MAN CONSTRUCTION EMERGENCY SERVICES MARKET. EMERGENCY SERVICES MARKET. XEROX CORP. TESTON'S FREEWAY CHEVRON WINDSTREAM CORPORATION	07312022 08012022 . 59811 8/1/22 2965 2965 2965 8/17/22 81222 81222 81222 81222 81222 81222 81222 81222 81222 82422 82422 82422 016813639 4349 8/18/22	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/26/2022 08/26/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX LADDER HEAT SENSORS TESTING OF ALL GROUND LADD TESTING OF ALL FIRE HOSE CITY UTILITIES CYCLE A&B/OPEN OUTSIDE WALL PACK (7) SENSORS TAX RETRO FIT ALL LIGHT FIXTURES 1 YEAR PHONE SUPPORT 1 YEAR SUBSCRIPTION/PAGER D BASE CHARGE/METER USAGE O FUEL ALL TRUCK - OPEN PO FY PHONE BILLS/OPEN PO FY 22/23	201-1903-44805 201-1903-48710 Fund 201 - Corrections Total:  209-1603-43775 209-1603-43780 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-43815 209-1603-43316 209-1603-43775	42.00 1,760.00 1,886.00 54.25 274.49 271.87 16.00 693.00 2,489.50 438.16 1,260.00 100.00 81.90 2,520.00 10.00 800.00 260.36 301.92 119.67
ADMINISTRATIVE OFFICE OF NM JUDICIAL EDUCATION CENT. SIERRA COUNTY TREASURER  Fund: 209 - Fire  MEGAHERTZ COMPUTER CONS CITY UTILITIES  WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. WATERWAY OF NEW MEXICO, L. CITY UTILITIES IRON MAN CONSTRUCTION EMERGENCY SERVICES MARKET. EMERGENCY SERVICES MARKET. XEROX CORP. TESTON'S FREEWAY CHEVRON	07312022 08012022 . 59811 8/1/22 2965 2965 2965 8/17/22 81222 81222 81222 81222 81222 81222 82422 82422 82422 82422 016813639 4349 8/18/22 9913526343	08/05/2022 08/19/2022 08/05/2022 08/05/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/19/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022 08/25/2022	PAY JUDICIAL FEES FY 22/23 OP PRISONER CARE OPEN PO FY JU  INTERNET SERVICE/NORTH FIRE CITY UTILITIES CYCLE C&D/OPE TAX LADDER HEAT SENSORS TESTING OF ALL GROUND LADD TESTING OF ALL FIRE HOSE CITY UTILITIES CYCLE A&B/OPEN OUTSIDE WALL PACK (7) SENSORS TAX RETRO FIT ALL LIGHT FIXTURES 1 YEAR PHONE SUPPORT 1 YEAR SUBSCRIPTION/PAGER D BASE CHARGE/METER USAGE O FUEL ALL TRUCK - OPEN PO FY	201-1903-44805 201-1903-48710 Fund 201 - Corrections Total:  209-1603-43775 209-1603-43780 209-1603-47420 209-1603-47420 209-1603-47420 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-47405 209-1603-43815 209-1603-43815 209-1603-43316 209-1603-43775 209-1603-43775	42.00 1,760.00 1,886.00 54.25 274.49 271.87 16.00 693.00 2,489.50 438.16 1,260.00 100.00 81.90 2,520.00 10.00 800.00 260.36 301.92

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Expense Approval Report				Payable Dates: 8/1/2022	2 - 8/31/2022
Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
NEW MEXICO GAS COMPANY, I	. 08/18/22	08/29/2022	GAS BILLS/FIRE STATION FY 22	. 209-1603-43780	68.09
				Fund 209 - Fire Total:	9,974.39
Fund: 211 - Law Enforce Prot					
INTERNAL SERVICE FUND	112900	08/05/2022	MAINT.& SERVICE FOR DEPT. V	211-2003-47420	101.92
SIERRA AUTO/CARQUEST	302073	08/05/2022	22" XCLEAR WINDSHIELD WIPER.		17.98
AMAZON CAPITAL SERVICES, IN		08/19/2022	KASONIC 12 FEET EXTENSION C		17.99
AMAZON CAPITAL SERVICES, IN.		08/19/2022	WATERPROOF SEAT COVERS FO		48.99
AMAZON CAPITAL SERVICES, IN		08/19/2022	CAMERA CASE	211-2003-44607	189.90
INTERNATIONAL ASSOCIATION THE LINE, LLC	. E2498 1657	08/25/2022	TRAINING REGISTRATION FOR F		550.00
THE LINE, LLC	1657	08/26/2022 08/26/2022	CONDOR COMBAT SHIRT-1 2XL 5.11 ICON PANTS- VEGA		40.95
THE LINE, LLC	1657	08/26/2022	SABA MED POUCH BELT AND	211-2003-44573	72.00
THE LINE, LLC	1657	08/26/2022	5.11 STRYKE PANTS-JEFFERS 42		79.98 146.00
THE LINE, LLC	1657	08/26/2022	KYDEX SLICK HANDCUFF TACO	211-2003-44573	35.00
THE LINE, LLC	1657	08/26/2022	CONDOR SHORT SLEEVE-1 2XL		34.95
THE LINE, LLC	1657	08/26/2022	CHEST NAME EMBROIDERY	211-2003-44573	16.00
THE LINE, LLC	1657	08/26/2022	SEWING PATCHES	211-2003-44573	12.00
THE LINE, LLC	1657	08/26/2022	CONDOR MOLLE BATON POUCH		41.85
THE LINE, LLC	1657	08/26/2022	TRU-SPEC SHORT SLEEVE-JEFFE		71.92
				and 211 - Law Enforce Prot Total:	1,477.43
Fund: 214 - Lodgers Tax					•
SUNNY 505	17387	08/05/2022	GRANT MANAGEMENT	214-2540-48599	3,537.56
SUNNY 505	17565	08/05/2022	GRANT MANAGEMENT (NM TO		8,402.08
LINDMARK OUTDOOR MEDIA	INV41384/INV41390	08/05/2022	CITY ADVERTISING-OPEN PO-FY		824.92
RUANNA WALDRUM	8822	08/19/2022	WEBSITE AND MULTI-MEDIA U		669.87
		,,		Fund 214 - Lodgers Tax Total:	13,434.43
Fund: 216 - Muni Street					,
INTERNAL SERVICE FUND	112900	08/05/2022	MAINT.& SERVICE FOR DEPT. V	216-4502 47420	316.75
SIERRA AUTO/CARQUEST	302342	08/05/2022	WIND SHIELD WIPERS	216-4503-47420	17.76
SIERRA AUTO/CARQUEST	302344	08/05/2022	THERMASTAT 195F	216-4503-47420	11.44
SIERRA AUTO/CARQUEST	302344	08/05/2022	WATER PUMP	216-4503-47420	128.63
SIERRA AUTO/CARQUEST	302344	08/05/2022	SERP BELT POLY RIB	216-4503-47420	37.84
SIERRA AUTO/CARQUEST	302344	08/05/2022	WATER OUTLET	216-4503-47420	29.44
SOUTHWEST CONSTRUCTION P	. 93562	08/05/2022	INJECTOR	216-4503-47420	156.39
B & H OIL CO.	53584/53589/53595/53908/53	. 08/19/2022	RED DIESEL- OPEN PO FY 22/23	216-4503-43316	4,374.25
SOUTHWEST CONSTRUCTION P	. 93720	08/25/2022	POLY TUBE BROOM	216-4503-47420	794.64
TESTON'S FREEWAY CHEVRON	4348	08/26/2022	GAS/DIESEL FUEL PURCHASES	216-4503-43316	417.99
				Fund 216 - Muni Street Total:	6,285.13
Fund: 294 - State Library					
OCLC, INC.	1000228998	08/05/2022	INTERLIBRARY LOAN SERVICE FY.	. 294-5003-60834	210.24
TDS	08012022	08/10/2022	INTERNET SERVICE LIBRARY OP		116.15
RIVERSIDE TECHNOLOGIES, INC	0358164-IN/0358845-IN	08/19/2022	HP ELITEONE 800 G6 (I5) ALL-IN	. 294-5003-44613	9,485.00
RIVERSIDE TECHNOLOGIES, INC	0358164-IN/0358845-IN	08/19/2022	HP ELITEONE 800 G6 (17) ALL-IN	294-5003-44613	4,974.00
XEROX CORP.	016813632/016916477	08/26/2022	METER USAGE - OPEN PO FY 20	. 294-5003-43465	36.62
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23	294-5003-43775	168.29
				Fund 294 - State Library Total:	14,990.30
Fund: 295 - Muni Pool					
TDS	07/18/22	08/05/2022	TDS FIBER INTERNET OPEN PO	295-4803-43780	600.00
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 2022.	. 295-4803-41226	73.18
CITY UTILITIES	8/1/22	08/05/2022	CITY UTILITIES CYCLE C&D/OPE	. 295-4803-43780	920.16
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	. 295-4803-41226	73.18
MASSIEL GARCIA	072280	08/25/2022	POOL RENTAL DEPOSIT REFUND	295-4803-34355	50.00
IMPACT MINISTRIES	234689	08/25/2022	POOL RENTAL DEPOSIT REFUND	295-4803-34355	50.00
XEROX CORP.	016813626	08/26/2022	BASE CHARGE/METER USAGE 2	295-4803-43465	33.35
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		28.76
NEW MEXICO GAS COMPANY, I		08/29/2022	GAS BILLS/SWIMMING POOL CY		26.03
TDS	08/18/22	08/29/2022	TDS FIBER INTERNET OPEN PO		600.00
				Fund 295 - Muni Pool Total:	2,454.66

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Expense Approval Report Payable Dates: 8/1/2022 - 8/31/2022

Expense Approvat Report				rayable Dates. 6/1/202	.Z - 0/ 31/ 2UZZ
Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
Fund: 296 - PD GRT					
APEX TECHNOLOGIES LLC	27681	08/05/2022	PANIC BUTTON	296-2403-44613	255.97
WAC UPFITTERS	1051	08/26/2022	SOUNDOFF MPOWER 48"	296-2403-80810	2,675.00
WAC UPFITTERS	1051	08/26/2022	TROY STRAIGHT FRAME SPACE		1,041.00
WAC UPFITTERS	1051	08/26/2022	TROY 40"W X 32"D X 12"H W/ 2.	296-2403-80810	1,300.00
WAC UPFITTERS	1051	08/26/2022	DUAL HANDCUFF/BARREL-LOCK.		448.00
WAC UPFITTERS	1051	08/26/2022	LABOR	296-2403-80810	3,698.94
WAC UPFITTERS	1051	08/26/2022	911 CIRCUITS HARNESS W/ 15		1,000.00
WAC UPFITTERS	1051	08/26/2022	TROY HEIGHT ADJUSTABLE, NO		41.00
WAC UPFITTERS	1051	08/26/2022	3/4" 17' RG-58/U CO -AXIAL	296-2403-80810	13.00
WAC UPFITTERS	1051	08/26/2022	LARSEN 150/450/800	296-2403-80810	30.00
WAC UPFITTERS	1051	08/26/2022	TROY INT. STORAGE TRAY	296-2403-80810	33.00
WAC UPFITTERS	1051	08/26/2022	WATCH GUARD VISTA/4RE BU		5,250.00
WAC UPFITTERS	1051	08/26/2022	SOUNDOFF SIGNAL REAR SPOIL.		41.00
WAC UPFITTERS	1051	08/26/2022	4" INTERNALLY MOUNTED DUAL		43.00
WAC UPFITTERS	1051	08/26/2022	TROY 18" CONSOLE FOR 2021+		500.00
WAC UPFITTERS	1051	08/26/2022	KENWOOD NX-5700 VHF 136-1		897.60
WAC UPFITTERS	1051	08/26/2022	TROY 2020+ DURANGO PPV/SSV		528.00
WAC UPFITTERS	1051	08/26/2022	TRUTH OR CONSEQUENCES REF.		560.00
WAC UPFITTERS	1051	08/26/2022	MPOWER LIGHT - STUD MOUNT.		122.00
WAC UPFITTERS	1051	08/26/2022	DC OUTLET/USB MODULE FACE		56.00
WAC UPFITTERS	1051	08/26/2022	UNITY DRIVER SIDE SPOTLIGHT		60.00
WAC UPFITTERS	1051	08/26/2022	TROY DURANGO 2018-21+ 3 PC		160.00
WAC UPFITTERS	1051	08/26/2022	TWO-COLOR, COMPARTMENT L.		60.20
WAC UPFITTERS	1051	08/26/2022	MAGNETIC MIC SINGLE UNIT C		62.00
WAC UPFITTERS	1051	08/26/2022	TROY DURANGO FX REAR CAGE		530.00
WAC UPFITTERS	1051	08/26/2022	SOUNDOFF SIGNAL 3" MPOWER.		75.00
WAC UPFITTERS	1051	08/26/2022	SOUNDOFF SIGNAL 3" MPOWER.		
WAC UPFITTERS	1051	08/26/2022	TROY CONSOLE MOUNTED HEI		75.00
WAC UPFITTERS	1051	08/26/2022	MPOWER LIGHT - STUD MOUNT.		142.00 122.00
WAC UPFITTERS	1051	08/26/2022	SOUNDOFF SIGNAL	296-2403-80810	
WAC UPFITTERS	1051	08/26/2022	TROY VERTICAL STEEL WINDOW.		175.00
WAC UPFITTERS	1051	08/26/2022	SOUNDOFF SIGNAL		233.00
WAC UPFITTERS	1051	08/26/2022		296-2403-80810	175.00
WAC UPFITTERS	1051		UNITY 6" HALOGEN SPOTLIGHT SOUNDOFF TAIL LIGHT FLASHER.		200.00
WAC UPFITTERS	1051	08/26/2022			188.00
WAC UPFITTERS	1051	08/26/2022 08/26/2022	SOUNDOFF SIGNAL 100J5 SERIE SOUNDOFF SIGNAL		180.00
WAC UPFITTERS	1051			296-2403-80810	180.00
WAC UPFITTERS	1051	08/26/2022	SETINA PB450L2 LIGHT READY NERGY™ 400 SERIES MULTI-FU		423.20
WAC UPFITTERS	1051	08/26/2022	LABOR 2		420.00
WAC UPFITTERS	1051	08/26/2022		296-2403-80810	396.00
		08/26/2022	CONSOLE SIDE HT. ADJ. MOUNT.		395.00
WAC UPFITTERS	1051	08/26/2022	SOUNDOFF SIGNAL	296-2403-80810	350.00
WAC UPFITTERS	1051	08/26/2022	SOUNDOFF SIGNAL	296-2403-80810	350.00
WAC UPFITTERS	1051	08/26/2022	GAMBER JOHNSON	296-2403-80810	823.50
WAC UPFITTERS WAC UPFITTERS	1051	08/26/2022	SHOP SUPPLIES	296-2403-80810	204.00
	1202	08/26/2022	NERGY™ 400 SERIES MULTI-FU		420.00
WAC UPFITTERS WAC UPFITTERS	1202	08/26/2022	TROY 18" CONSOLE 10"	296-2403-80810	400.00
	1202	08/26/2022	TROY PASSENGER SEAT MOUNT.		510.00
WAC UPFITTERS	1202	08/26/2022	WATCH GUARD VISTA/4RE BU		5,250.00
WAC UPFITTERS	1202	08/26/2022	911 CIRCUITS HARNESS W/ 15		1,000.00
WAC UPFITTERS	1202	08/26/2022	KENWOOD NX-5700	296-2403-80810	897.60
WAC UPFITTERS	1202	08/26/2022	GAMBER JOHNSON	296-2403-80810	823.50
WAC UPFITTERS	1202	08/26/2022	E-SLIDE US CAGE, SQ. HOLE BKT		705.00
WAC UPFITTERS	1202	08/26/2022	TROY 2020+ PIU TILT UP CARGO.		630.00
WAC UPFITTERS	1202	08/26/2022	TROY 2020 PI UTILITY REAR PAR		585.00
WAC UPFITTERS	1202	08/26/2022	LABOR 2	296-2403-80810	3,694.53
WAC UPFITTERS	1202	08/26/2022	SOUNDOFF MPOWER 48"	296-2403-80810	2,675.00
WAC UPFITTERS	1202	08/26/2022	TROY	296-2403-80810	1,300.00
WAC UPFITTERS	1202	08/26/2022	WESTIN ELITE PUSH BUMPER F		390.00
WAC UPFITTERS	1202	08/26/2022	TRUTH OR CONSEQUENCES REF	. 296-2403-80810	560.00

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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
WAC UPFITTERS	1202	08/26/2022	TROY INT. STORAGE TRAY	296-2403-80810	33.00
WAC UPFITTERS	1202	08/26/2022	SHOP SUPPLIES	296-2403-80810	204.00
WAC UPFITTERS	1202	08/26/2022	TROY DOOR HANDLE COVERS F	. 296-2403-80810	39.00
WAC UPFITTERS	1202	08/26/2022	LIGHT CHANNEL	296-2403-80810	38.00
WAC UPFITTERS	1202	08/26/2022	LARSEN	296-2403-80810	30.00
WAC UPFITTERS	1202	08/26/2022	3/4" 17' RG-58/U CO -AXIAL	296-2403-80810	13.00
WAC UPFITTERS	1202	08/26/2022	MAGNETIC MIC SINGLE UNIT C		62.00
WAC UPFITTERS	1202	08/26/2022	TWO-COLOR.	296-2403-80810	60.20
WAC UPFITTERS	1202	08/26/2022	DC OUTLET/USB MODULE FACE		56.00
WAC UPFITTERS	1202	08/26/2022	4" INTERNALLY MOUNTED DUAL		43.00
WAC UPFITTERS	1202	08/26/2022	TROY HEIGHT ADJUSTABLE, NO		41.00
WAC UPFITTERS	1202	08/26/2022	REAR SPOILER BRACKET	296-2403-80810	41.00
WAC UPFITTERS	1202	08/26/2022	SOUNDOFF SIGNAL FLASHBACK		106.00
WAC UPFITTERS	1202	08/26/2022	PUTCO 7440 WHITE LED BULBS		88.00
WAC UPFITTERS	1202	08/26/2022	UNIVERSAL UNDERCOVER SCR		83.00
WAC UPFITTERS	1202	08/26/2022	UNIVERSAL UNDERCOVER SCR		83.00
WAC UPFITTERS	1202	08/26/2022	SOUNDOFF SIGNAL 3"	296-2403-80810	75.00
WAC UPFITTERS	1202	08/26/2022	SOUNDOFF SIGNAL 3"	296-2403-80810	75.00
WAC UPFITTERS	1202	08/26/2022	SOUNDOFF SIGNAL	296-2403-80810	175.00
WAC UPFITTERS	1202	08/26/2022	SOUNDOFF SIGNAL	296-2403-80810	175.00
WAC UPFITTERS	1202	08/26/2022	TROY 3PC KICK PANELS	296-2403-80810	152.00
WAC UPFITTERS	1202	08/26/2022	TROY CONSOLE MOUNTED HEI		142.00
WAC UPFITTERS	1202	08/26/2022	SOUNDOFF MPOWER® HD	296-2403-80810	122.00
WAC UPFITTERS	1202	08/26/2022	SOUNDOFF SIGNAL	296-2403-80810	350.00
WAC UPFITTERS	1202	08/26/2022	SOUNDOFF SIGNAL	296-2403-80810	350.00
WAC UPFITTERS	1202	08/26/2022	LABOR	296-2403-80810	340.00
WAC UPFITTERS	1202	08/26/2022	TROY WINDOW BARS - VERTICA.		228.00
WAC UPFITTERS	1202	08/26/2022	SOUNDOFF SIGNAL 100J5 SERIE		180.00
WAC UPFITTERS	1202	08/26/2022	SOUNDOFF MPOWER® HD	296-2403-80810	122.00
WAC UPFITTERS	1202	08/26/2022	DUAL HANDCUFF/BARREL-LOCK.		448.00
Wite of the End	1101	00,20,202	DONE TANDEST Y BARREE LOCK.	Fund 296 - PD GRT Total:	48,307.24
Sound 207 DD Confidential					10,007121
Fund: 297 - PD Confidential	09042022	00/05/2022	CONFIDENTIAL FUNDS DISBURS	207 2202 45507	4 000 00
VICTOR RODRIGUEZ	08012022	08/05/2022	CONFIDENTIAL FUNDS DISBURS	_	1,000.00
			•	Fund 297 - PD Confidential Total:	1,000.00
Fund: 298 - PD Donations					
AMAZON CAPITAL SERVICES, IN.		08/05/2022	COTTON CANDY SUGARS	298-2103-45607	45.99
AMAZON CAPITAL SERVICES, IN.	1HMG-CL9K-9WCC	08/05/2022	COTTON CANDY CONES 1000	298-2103-45607	54.73
				Fund 298 - PD Donations Total:	100.72
Fund: 303 - Vet Wall					
WINDSTREAM CORPORATION	8/18/22	08/26/2022	PHONE BILLS/OPEN PO FY 22/23	303-4703-43775	149.52
				Fund 303 - Vet Wall Total:	149.52
Fund: 360 - NMFA PROJECTS					
WILSON & COMPANY, INC. ENG.	108540	08/26/2022	ENG SERVICES ROADWAY IMPR	360-7009-80847	15,147.58
,,		00, 10, 1011		und 360 - NMFA PROJECTS Total:	15,147.58
F	DD DD015-51		•••		25,241.50
Fund: 370 - WATER TRUST BOA		00/05/0000	ENGINEEDING GERLIGGE CANEE	272 7242 222 4	
WILSON & COMPANY, INC. ENG.	10629/106754/107587/108297	08/26/2022	ENGINEERING SERVICES CANTR	_	159,357.73
			Fund 370 - WATER	R TRUST BOARD PROJECTS Total:	159,357.73
Fund: 403 - Pledge State					
NEW MEXICO FINANCE AUTHOR	073122	08/05/2022	NMFA LOAN PYMT TORC 18	403-1203-12918	690.58
NEW MEXICO FINANCE AUTHOR	073122	08/05/2022	NMFA LOAN PYMT TORC 19	403-1203-12919	7,598.76
NEW MEXICO FINANCE AUTHOR	073122	08/05/2022	NMFA LOAN PYMT PPRF-4967	403-1203-12967	7,150.63
NEW MEXICO FINANCE AUTHOR	073122	08/05/2022	NMFA LOAN PYMT PPRF-5652	403-1203-90905	8,336.00
NEW MEXICO FINANCE AUTHOR	073122	08/05/2022	NMFA LOAN PYMT PPRF-5652 I	. 403-1203-90910	2,368.12
BANK OF THE SOUTHWEST	08022022	08/17/2022	INTEREST PAYMENTS MSD WAT.	403-1203-90910	4,678.20
				Fund 403 - Pledge State Total:	30,822.29
Fund: 501 - Cemetary					
CITY UTILITIES	8/17/22	08/19/2022	CITY UTILITIES CYCLE A&B/OPEN	501-1803-43780	2,985.87
				Fund 501 - Cometany Total:	2 985 87

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Fund 501 - Cemetary Total:

2,985.87

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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
Fund: 502 - Util Office - Pool					
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 2022.	.502-3601-41226	265.90
INSTA-COPY IMAGING	569961	08/05/2022	10,000 # 10 WINDOW & 10,000	. 502-3601-43740	1,672.11
CITY UTILITIES	8/1/22	08/05/2022	CITY UTILITIES CYCLE C&D/OPE	502-3601-43780	290.75
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	.502-3601-41226	261.76
STAPLES CONTRACT & COMME	38067169752	08/25/2022	XEBRA Z-GRIP PEN 24/PK	502-3601-44606	5.54
STAPLES CONTRACT & COMME	38067169752	08/25/2022	DUCT TAPE	502-3601-44606	7.29
STAPLES CONTRACT & COMME	38067169752	08/25/2022	STAPLES CORVAIR MESH BACK	502-3601-44606	232.91
STAPLES CONTRACT & COMME	38067169752	08/25/2022	DAB N SEAL ENVELOPE SEALER	502-3601-44606	2.55
STAPLES CONTRACT & COMME	38067169752	08/25/2022	PILOT G2 PEN 24/PK	502-3601-44606	9.70
STAPLES CONTRACT & COMME	38067169752	08/25/2022	STAPLES CORRECTION TAPE 10/	.502-3601-44606	10.10
STAPLES CONTRACT & COMME	38067169752	08/25/2022	<b>ENVELOPES 6X9 BROWN 100/B</b>	502-3601-44606	12.53
STAPLES CONTRACT & COMME	38067169752	08/25/2022	ACCORDION FILE ALPHABETICAL.	.502-3601-44606	19.08
STADIES CONTRACT & COMME	38067160752	08/25/2022	DOST-IT NOTES 3Y3 34 DADS	502-2601-44606	10 13

STAPLES CONTRACT & COMME	. 38067169752	08/25/2022	STAPLES CORVAIR MESH BACK	502-3601-44606	232.91
STAPLES CONTRACT & COMME	. 38067169752	08/25/2022	DAB N SEAL ENVELOPE SEALER	502-3601-44606	2.55
STAPLES CONTRACT & COMME	. 38067169752	08/25/2022	PILOT G2 PEN 24/PK	502-3601-44606	9.70
STAPLES CONTRACT & COMME		08/25/2022	STAPLES CORRECTION TAPE 10/		10.10
STAPLES CONTRACT & COMME		08/25/2022	ENVELOPES 6X9 BROWN 100/B		12.53
STAPLES CONTRACT & COMME		08/25/2022	ACCORDION FILE ALPHABETICAL		19.08
STAPLES CONTRACT & COMME		08/25/2022	POST-IT NOTES 3X3 24 PADS	502-3601-44606	18.12
STAPLES CONTRACT & COMME		08/25/2022	CLOROX DISINFECTING WIPES 5		47.83
STAPLES CONTRACT & COMME		08/25/2022	KLEENEX BOUTIQUES FACIAL TI		51.30
STAPLES CONTRACT & COMME		08/25/2022	TRU RED 8.5X11 500 REAMS 5		119.70
STAPLES CONTRACT & COMME		08/25/2022	FIRST AID REFILL KIT UTILITY OF		30.64
XEROX CORP.	016813623/016934089/01681	*. *.	XEROX CORP. UTILITY OFFICE FY.		619.26
TESTON'S FREEWAY CHEVRON	4347		UTILITY OFFICE FUEL TESTONS		
		08/26/2022			329.28
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		192.09
			r	und 502 - Util Office - Pool Total:	4,198.44
Fund: 503 - Electric					
PETE'S EQUIPMENT, INC.	0032590	08/05/2022	HOSE END WELD 8"	503-3702-47420	137.08
TDS	07/18/22	08/05/2022	TOS FIBER INTERNET OPEN PO	503-3702-43780	600.00
BIXBY ELECTRIC, INC	07262022	08/05/2022	12.47 kV DISTRIBUTION LINE R	503-3702-47415	99,010.32
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 2022.	.503-3702-41226	413.28
INTERNAL SERVICE FUND	112900	08/05/2022	MAINT.& SERVICE FOR DEPT. V	503-3702-47420	143.40
SHARE CORP.	207147	08/05/2022	LIQUID WEED KILLER	503-3702-44607	272.50
SIERRA AUTO/CARQUEST	302403	08/05/2022	WINDSHIELD WIPERS. 07561-G	503-3702-47420	35.52
SIERRA AUTO/CARQUEST	302403	08/05/2022	GREASE, BACKHOE, 614-19	503-3702-47420	10.02
SIERRA AUTO/CARQUEST	302403	08/05/2022	GREASE GUN- BACKHOE, 614-19	503-3702-47420	50.62
ZIA UTILITY SERVICES, LLC	4567	08/05/2022	CLASS 2 GLOVES	503-3702-44615	2,030.00
ZIA UTILITY SERVICES, LLC	4567	08/05/2022	GLOVE TESTING	503-3702-44615	210.00
ZIA UTILITY SERVICES, LLC	4567	08/05/2022	CLASS 2 MOLDED SLEEVES	503-3702-44615	455.00
ZIA UTILITY SERVICES, LLC	4567	08/05/2022	CLASS 0 GLOVES	503-3702-44615	540.00
ZIA UTILITY SERVICES, LLC	4567	08/05/2022	SLEEVE TESTING	503-3702-44615	96.00
SILVERSKY, INC.	461226-SI	08/05/2022	EMAIL SERVICE OPEN PO FY22/		211.21
MPG SERVICES, LLC	4624	08/05/2022	003-201207 NO KINK HOSE BIBB.		8.98
MPG SERVICES, LLC	4624	08/05/2022	023-2003 COUPLING BLACK 1/2		0.87
MERCHANT JOB TRAINING & SA.		08/05/2022	3RD YEAR TUITION- CRISPIN BU		550.00
MERCHANT JOB TRAINING & SA.		08/05/2022	1ST YEAR TUITION- CADE CHRIS		550.00
MERCHANT JOB TRAINING & SA.		08/05/2022	1ST YEAR TUITION- JOSH BREU		550.00
INTEGRATED TECHNOLOGIES G		08/05/2022	IT SERVICES JANUARY 1 THROU		984.85
CITY UTILITIES	8/1/22	08/05/2022			
SSA SOLAR OF NM 4, LLC	NM-14-015A-08022022	08/05/2022	CITY UTILITIES CYCLE C&D/OPE		4,938.63
VILLAGE OF WILLIAMSBURG	06/30/2022		POWER SERVICES- OPEN PO FY		28,311.45 5.065.83
SIERRA ELECTRIC CO-OP, INC.	* *	08/10/2022	FRANCHISE TAX FY 22/23 OPEN		
·	08022022/08052022	08/10/2022	MIMS CITY LIGHTS- OPEN PO FY.		574.31
SIERRA ELECTRIC CO-OP, INC.	08022022/08052022	08/10/2022	POWER SERVICES- OPEN PO FY		314,004.50
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022		413.28
TRIPLE H SOLAR, LLC	0308	08/19/2022	ENGINEERING SERVICES- OPEN		2,730.00
SUN VALLEY, INC.	164621	08/19/2022	SAKRETE GRAVEL MIX 80LBS	503-3702-44607	21.16
COOPERATIVE EDUCATIONAL S		08/19/2022	AERIAL MED-VOLTAGE DISTRIB		3,805.68
TRI-STATE GENERATION & TRA		08/19/2022	POWER SERVICES- OPEN PO FY		35,497.14
CITY UTILITIES	8/17/22	08/19/2022	CITY UTILITIES CYCLE A&B/OPEN.		164.77
CITY UTILITIES	8/5/22	08/19/2022	CITY LANDFILL BILLS/OPEN PO F.		42.00
VERIZON WIRELESS	9912598030	08/19/2022	PHONE BILLS/OPEN PO FY 22/23		51.25
CHERRILL'S WESTERN APPAREL	698532	08/25/2022	JEANS- CADE CHRISTENSEN	503-3702-42620	270.00
LANDIS+GYR TECHNOLOGY, INC		08/25/2022	SaaS MONTHLY FLAT FEE- OPEN.		950.00
XEROX CORP.	16697018/016585815	08/26/2022	BASE CHARGE & METER USAGE	. 503-3702-43465	157.11

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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
	•				
TESTON'S FREEWAY CHEVRON	4350	08/26/2022	GAS/DIESEL FUEL PURCHASES		2,709.62
WESTERN UNITED ELECTRIC	6066911	08/26/2022	SPRING EXTENSION	503-3702-44613	38.00
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		193.19
NEW MEXICO GAS COMPANY, I	• •	08/29/2022	GAS BILLS/ELECTRIC FY 22-23	503-3702-43780	24.17
TDS	08/18/22	08/29/2022	TDS FIBER INTERNET OPEN PO		600.00
				Fund 503 - Electric Total:	507,421.74
Fund: 504 - Water					
TDS	07/18/22	08/05/2022	TDS FIBER INTERNET OPEN PO		600.00
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 2022	504-3803-41226	91.30
INTERNAL SERVICE FUND	112900	08/05/2022	MAINT.& SERVICE FOR DEPT. V	. 504-3803-47420	27.74
4 RIVERS EQUIPMENT	1327781	08/05/2022	12.5/80-18 134A8 GALAXY SUP		1,136.26
BAKER UTILITY SUPPLY CORP.	302279	08/05/2022	FLG BOLT & GSKT SET 4" - 150#,		31.34
BAKER UTILITY SUPPLY CORP.	302279	08/05/2022	ROMAC MACRO HP CPLG 6"		896.80
BAKER UTILITY SUPPLY CORP.	302279	08/05/2022	MEGA LUG 4" - PVC, RED, L/ACC		158.64
BAKER UTILITY SUPPLY CORP.	302279	08/05/2022	MJxMJ DI 45 BEND 4" - C-153, C.		129.98
BAKER UTILITY SUPPLY CORP.	302279	08/05/2022	MJ SKIN PACK 4" - REG GSK, T		38.36
BAKER UTILITY SUPPLY CORP.	302279	08/05/2022	MEGA LUG 6" - PVC, RED, L/ACC		90.92
BAKER UTILITY SUPPLY CORP.	302279	08/05/2022	MJ SKIN PACK 4" - REG GSK, T		38.36
BAKER UTILITY SUPPLY CORP.	302279	08/05/2022	MEGA LUG 4" - PVC, RED, L/ACC		79.32
BAKER UTILITY SUPPLY CORP.	302279	08/05/2022	MEGA LUG 4" - PVC, RED, L/ACC		79.32
BAKER UTILITY SUPPLY CORP.	302279	08/05/2022	MJ SKIN PACK 4" - REG GSK, T		76.72
BAKER UTILITY SUPPLY CORP.	302279	08/05/2022	MJ SKIN PACK 6" - REG GSK, T		48.70
BAKER UTILITY SUPPLY CORP.	302279	08/05/2022	AFC RW GATE VLV 4" - MJxFL, 2"		1,028.30
BAKER UTILITY SUPPLY CORP.	302279	08/05/2022	MJxMJ DI TEE 6" x 4" - C-153, CL		168.91
SILVERSKY, INC.	461226-SI	08/05/2022	EMAIL SERVICE OPEN PO FY22/		211.21
INTEGRATED TECHNOLOGIES G		08/05/2022	IT SERVICES JANUARY 1 THROU.		984.85
CITY UTILITIES	8/1/22	08/05/2022	CITY UTILITIES CYCLE C&D/OPE.		7,649.57
STEVE BELL CONSTRUCTION	C18223	08/05/2022	ANNUAL USE OF CRUSHER FINE.		516.00
VILLAGE OF WILLIAMSBURG	06/30/2022	08/10/2022	FRANCHISE TAX FY 22/23 OPEN.		1,205.06
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022.		91.30
TAXATION AND REVENUE	07312022 11626	08/19/2022	WATER CONSERVATION FEE FY .		1,411.61 346.00
REED'S TIRE CENTER		08/19/2022	IRONMAN TIRES	504-3803-47420	
SUN VALLEY, INC. INTEGRATED TECHNOLOGIES G	164661/165044	08/19/2022 08/19/2022	OPEN PO FOR UNSTOCKED FIEL  JESSE COLE- ADOBE ACROBAT		41.74 232.00
DPC INDUSTRIES, INC.	747001727-22	08/19/2022	CHLORINE USAGE FOR THE YEA		1,426.28
CITY UTILITIES	8/17/22	08/19/2022	CITY UTILITIES CYCLE A&B/OPEN		626.14
CITY UTILITIES	8/5/22	08/19/2022	CITY LANDFILL BILLS/OPEN PO F.		6.00
DPC INDUSTRIES, INC.	DE74000480-22	08/19/2022	MONTHLY DEMURRAGE FEE FO.		60.00
BAKER UTILITY SUPPLY CORP.	INV302770	08/25/2022	WRAP CLAMPS 1.05 X3" (3/4 ST.		468.00
PURE OPERATIONS, LLC	NI225311	08/25/2022	4" METER 1010 THIRD ST NEW		2,895.50
TESTON'S FREEWAY CHEVRON	4388/4345	08/26/2022	OPEN PO FOR DIESEL/UNLEAED.		2,078.29
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		69.97
TDS	08/18/22	08/29/2022	TDS FIBER INTERNET OPEN PO		600.00
NEW MEXICO GAS COMPANY, I		08/29/2022	GAS BILLS/WATER FY 22-23	504-3803-43780	48.79
,	,,	,,		Fund 504 - Water Total:	25,689.28
Fund: 505 - Solid Waste					•
CITY OF LAS CRUCES	.87843	08/05/2022	SCSWA OPEN PO FY2022-2023	505-3904-45601	41,775.77
TDS	07/18/22	08/05/2022	TDS FIBER INTERNET OPEN PO		600.00
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 2022		490.97
INTERNAL SERVICE FUND	112900	08/05/2022	MAINT.& SERVICE FOR DEPT. V		368.28
AUTOZONE STORES, LLC	2529046294	08/05/2022	DEF AUTOZONE	505-3904-44607	287.76
SIERRA AUTO/CARQUEST	302559	08/05/2022	HUB CAP	505-3904-47420	287.70
SILVERSKY, INC.	461226-SI	08/05/2022	EMAIL SERVICE OPEN PO FY22/		211.21
SIERRA AUTO/CARQUEST	6016-302045	08/05/2022	EXHAUST FLANGE HARDWARE K		14.11
INTEGRATED TECHNOLOGIES G		08/05/2022	IT SERVICES JANUARY 1 THROU		984.85
CITY UTILITIES	8/1/22	08/05/2022	CITY UTILITIES CYCLE C&D/OPE.		624.28
BORDER INTERNATIONAL TRUC		08/05/2022	ZEP PURPLE DEGREASER	505-3904-44607	257.00
VILLAGE OF WILLIAMSBURG	06/30/2022	08/10/2022	FRANCHISE TAX FY 22/23 OPEN.		1,512.48
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022.		490.97
M & M INDUSTRIES, INC	132272	08/19/2022	TRAVEL TIME (5 HOURS)	505-3904-47420	525.00
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Expense Approval Report Payable Dates: 8/1/2022 - 8/31/2022

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
M & M INDUSTRIES, INC	132272	08/19/2022	OFFSIGHT LABOR /LABOR TAX	505-3904-47420	187.29
4 RIVERS EQUIPMENT	1331076	08/19/2022	LATCHES	505-3904-47420	52.46
	. 1FJ-6W7H-X7C7/FTRW-MN3T-X		LILITHE KEYBOARD TRAY UNDER.		44.98
·	. 1FJ-6W7H-X7C7/FTRW-MN3T-X		UNICLIFE 1/5 INCH RACK KEY T		17.99
•	. 1FJ-6W7H-X7C7/FTRW-MN3T-X	•	DIAL PROF. BASICS HYPOALLLIQ		56.98
	. 1FJ-6W7H-X7C7/FTRW-MN3T-X		MAGREEL HIP WADERS, LWT WP.		32.99
	. 1FJ-6W7H-X7C7/FTRW-MN3T-X		GODESON DUAL HEAD TIRE PRE		16.98
	. 1FJ-6W7H-X7C7/FTRW-MN3T-X		SEVENTH GEN ALL PURP CLEAN		29.14
	. 1FJ-6W7H-X7C7/FTRW-MN3T-X		OUTUS 15 SHEETS MAILBOX N	505-3904-44607	8.99
OCD, LLC	201	08/19/2022	LIGHTING UPGRADE TO LED	505-3904-43403	7,406.39
RUSTY'S WEIGH SCALES & SERV	. 220805-1009	08/19/2022	<b>GUARD RAIL BRACKET &amp; MOUN</b>	. 505-3904-44607	870.45
QUILL CORPORATION	26803396/26768328	08/19/2022	DURACELL COPPERTOP AAA BA	505-3904-44606	20.29
QUILL CORPORATION	26803396/26768328	08/19/2022	SCOTCH THERMAL LAM.POUCH	. 505-3904-44606	35.00
QUILL CORPORATION	26803396/26768328	08/19/2022	MOUNT-IT-MONITOR STAND W	. 505-3904-44606	27.89
QUILL CORPORATION	26803396/26768328	08/19/2022	CASIO HR 170RC 12-DIG DESKT	505-3904-44606	25.00
QUILL CORPORATION	26803396/26768328	08/19/2022	SCOTCH HD SHIPP PACKING TA	505-3904-44606	9.52
QUILL CORPORATION	26803396/26768328	08/19/2022	DURACELL COPPERTOP AA ALK	505-3904-44606	20.29
QUILL CORPORATION	26803396/26768328	08/19/2022	SCOTCH THERMAL LAMINATOR,	505-3904-44606	70.00
QUILL CORPORATION	26803396/26768328	08/19/2022	QUILL BRAND MULTIPURPOSE	505-3904-44606	210.54
QUILL CORPORATION	26803396/26768328	08/19/2022	QUILL BRAND THERMAL CASH	505-3904-44606	293.38
QUILL CORPORATION	26803396/26768328	08/19/2022	SCOTCH MAGIC INV TAPE REFILL,	505-3904-44606	51.98
QUILL CORPORATION	26803396/26768328	08/19/2022	EURO TECH APOLLO MESH DRA	. 505-3904-44613	354.74
RED WING SHOES OF LAS CRUC		08/19/2022	SAFETY TOE BOOTS- MELISSA T	505-3904-44615	190.00
CITY UTILITIES	8/5/22	08/19/2022	CITY LANDFILL BILLS/OPEN PO F	.505-3904-45601	23,543.28
WEX BANK	82710156	08/19/2022	WEX DIESEL & GASOLINE	505-3904-43316	6,141.22
CNA SURETY	BOND#62153207	08/19/2022	RENEWAL BOND # 62153207		100.00
DONA ANA BRANCH COMMUNI		08/19/2022	COMMERCIAL DRIVER LICENSE		200.00
DONA ANA BRANCH COMMUNI		08/19/2022	COMMERCIAL DRIVER LICENSE		200.00
NM DEPT OF AGRICULTURE	LICENSE NO 593	08/19/2022	WEIGHMASTER LICENSE RENE		350.00
BORDER INTERNATIONAL TRUC		08/19/2022	SHOP & HAZ MATERIAL	505-3904-47420	81.28
BORDER INTERNATIONAL TRUC		08/19/2022	LABOR & LABOR TAX	505-3904-47420	642.64
BORDER INTERNATIONAL TRUC		08/19/2022	PARTS & SHIPPING	505-3904-47420	9,748.34
BORDER INTERNATIONAL TRUC		08/19/2022	RED N TACKY GREASE/30X1/1	505-3904-44607	151.20
SOUTHWESTERN EQUIPMENT SOUTHWESTERN EQUIPMENT		08/25/2022 08/25/2022	AIR VALVE COIL AIR VALVE	505-3904-47420	320.98 140.00
XEROX CORP.	016813625/016916476	08/26/2022	METER USAGE & BASE CHARGE	505-3904-47420 E05-3904-42465	140.00
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		166.39
TDS	08/18/22	08/29/2022	TDS FIBER INTERNET OPEN PO		600.00
NEW MEXICO GAS COMPANY, I		08/29/2022	GAS BILLS/RECYCLE CENTER FY		24.41
,		,,	,	Fund 505 - Solid Waste Total:	100,755.64
Fund: 506 - WWTP					200,700.07
TDS	07/18/22	08/05/2022	TOS EIDED INTERNET ODEN DO	EOC 400E 42790	600.00
NM RETIREE HEALTH CARE	103271	08/05/2022	TDS FIBER INTERNET OPEN PO RETIREE HEALTHCARE PPE 2022.		600.00 310.15
INTERNAL SERVICE FUND	112900	08/05/2022	MAINT.& SERVICE FOR DEPT. V		20.00
Q A BALANCE SERVICES INC	13946	08/05/2022	CALIBRATION SERVICES FOR LAB.		1,061.00
HALL ENVIRONMENTAL ANALYS.		08/05/2022	EPA MWTHOD 624 VOCS	506-4005-48598	100.00
HALL ENVIRONMENTAL ANALYS.	·	08/05/2022	SM5210B BOD	506-4005-48598	120.00
HALL ENVIRONMENTAL ANALYS.		08/05/2022	TAX ON LABOR 7.875%	506-4005-48598	48.06
HALL ENVIRONMENTAL ANALYS.		08/05/2022	EPA METHOD 625 SVOCS	506-4005-48598	225.00
HALL ENVIRONMENTAL ANALYS.	· · · · · · · · · · · · · · · · · · ·	08/05/2022	EPA 200.8 METALS/200.7 META		175.00
SIERRA AUTO/CARQUEST	302343	08/05/2022	COMBO SWITCH	506-4005-47420	153.28
SIERRA AUTO/CARQUEST	302345	08/05/2022	FLASHER	506-4005-47420	20.18
SILVERSKY, INC.	461226-SI	08/05/2022	EMAIL SERVICE OPEN PO FY22/		211.21
INTEGRATED TECHNOLOGIES G	7437	08/05/2022	IT SERVICES JANUARY 1 THROU		984.85
CITY UTILITIES	8/1/22	08/05/2022	CITY UTILITIES CYCLE C&D/OPE	506-4005-43780	6,364.09
STEVE BELL CONSTRUCTION	C18223	08/05/2022	ANNUAL USE OF CRUSHER FINE	. 506-4005-47415	516.00
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	. 506-4005-41226	310.15
VILLAGE OF WILLIAMSBURG	07312022	08/19/2022	SEWER RECEIPTS FY 22/23 OPEN.	506-4005-48798	3,737.97
REED'S TIRE CENTER	11627	08/19/2022	IRONMAN TIRES	506-4005-47420	346.00
SUN VALLEY, INC.	164661/165044	08/19/2022	OPEN PO FOR UNSTOCKED FIEL	506-4005-44607	26.58

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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
HALL ENVIRONMENTAL ANALYS	2207963/2207D75/2207A62/2	08/19/2022	TAX ON LABOR 7.875%	506-4005-48598	53.49
	2207963/2207D75/2207A62/2	*. *.	EPA 200.8 METALS/200.7 META		245.00
	2207963/2207D75/2207A62/2		EPA MWTHOD 624 VOCS	506-4005-48598	100.00
HALL ENVIRONMENTAL ANALYS	2207963/2207D75/2207A62/2	08/19/2022	SM5210B BOD	506-4005-48598	120.00
HALL ENVIRONMENTAL ANALYS	2207963/2207D75/2207A62/2	08/19/2022	EPA METHOD 625 SVOCS	506-4005-48598	225.00
JAMES, COOKE & HOBSON, INC.	232964	08/19/2022	IMPELAR MECHANICAL SEAL KI	506-4005-47420	2,100.00
B & H OtL CO.	5383/53567/53915	08/19/2022	OPEN PO FOR DIESEL,OIL AND	506-4005-43316	739.26
CITY UTILITIES	8/17/22	08/19/2022	CITY UTILITIES CYCLE A&B/OPEN.	.506-4005-43780	849.42
CITY UTILITIES	8/5/22	08/19/2022	CITY LANDFILL BILLS/OPEN PO F	.506-4005-43780	6.00
XEROX CORP.	016813629	08/26/2022	BASE CHARGE/METERED USAGE.	. 506-4005-43465	177.42
USA BLUEBOOK	036272/056530	08/26/2022	ISCO STRIP CHART 4.5" WIDTH	. 506-4005-44605	312.48
USA BLUEBOOK	036272/056530	08/26/2022	YSI PRO20I DO METER 4-M CAB	. 506-4005-44613	969.86
USA BLUEBOOK	078213	08/26/2022	DIPPER 6' L HANDLE 32 OZ CUP	506-4005-44607	143.37
USA BLUEBOOK	078213	08/26/2022	COREPRO SR 15' SAMPLER 3 SE	506-4005-44607	287.90
USA BLUEBOOK	078213	08/26/2022	COREPRO SR 5' MIDDLE SECTION	506-4005-44607	111.90
TESTON'S FREEWAY CHEVRON	4388/4345	08/26/2022	OPEN PO FOR DIESEL/UNLEAED		1,090.98
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		366.16
NEW MEXICO GAS COMPANY, I.	- 1. 1.	08/29/2022	GAS BILLS/VACUUM STATION FY.		26.19
TDS	08/18/22	08/29/2022	TDS FIBER INTERNET OPEN PO		600.00
				Fund 506 - WWTP Total:	23,853.95
Fund: 508 - Golf Course					
MASEK ROCKY MOUNTAIN GOL.		08/05/2022	YAM - COVER,LOWER 1	508-4303-44607	139.72
MASEK ROCKY MOUNTAIN GOL		08/05/2022	YAM -PAD, SILENCER 8	508-4303-44607	47.19
MASEK ROCKY MOUNTAIN GOL		08/05/2022	YAM-PAD, SILENCER	508-4303-44607	9.90
MASEK ROCKY MOUNTAIN GOL.		08/05/2022	YAM-PAD, SILENCER 7	508-4303-44607	3.98
TDS	07/18/22	08/05/2022	TDS FIBER INTERNET OPEN PO		600.00
NM RETIREE HEALTH CARE	103271 150603	08/05/2022	RETIREE HEALTHCARE PPE 2022.		63.07
AUSTIN TURF & TRACTOR, INC. AUSTIN TURF & TRACTOR, INC.	150603	08/05/2022 08/05/2022	SEAT CHUTE	508-4303-44607 508-4303-44607	262.09 200.13
SIERRA AUTO/CARQUEST	302431	08/05/2022	OPEN PO FIELD SUPPLIES - JULY		258.44
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022		63.07
SUN VALLEY, INC.	164702/06	08/19/2022	OPEN PO FIELD SUPPLIES - JULY		419.38
B & H OIL CO.	54406	08/19/2022	UNLEADED FUEL	508-4303-43316	847.80
B & H OIL CO.	54406	08/19/2022	DYED DIESEL	508-4303-43316	1,265.70
CITY UTILITIES	8/17/22	08/19/2022	CITY UTILITIES CYCLE A&B/OPEN		1,414.24
XEROX CORP.	016916479	08/26/2022	BASE CHARGE/METER USAGE FY.		172.28
YAMAHA MOTOR FINANCE COR	782430	08/26/2022	OPEN PO FY22/23 YAMAHA LEA.	508-4303-43465	903.51
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23	508-4303-43775	80.62
TDS	08/18/22	08/29/2022	TDS FIBER INTERNET OPEN PO	508-4303-43775	600.00
				Fund 508 - Golf Course Total:	7,351.12
Fund: 509 - Muni Airport					
NM RETIREE HEALTH CARE	103271	08/05/2022	RETIREE HEALTHCARE PPE 2022.	.509-4403-41226	34.73
SIERRA ELECTRIC CO-OP, INC.	2154 08/2/2022	08/10/2022	OPEN PO FY22/23 SIERRA ELEC	. 509-4403-43780	1,041.78
NM RETIREE HEALTH CARE	612743	08/18/2022	RETIREE HEALTHCARE PPE 2022	.509-4403-41226	39.68
IRON MAN CONSTRUCTION	81722	08/25/2022	TAX ON LABOR	509-4403-43403	129.37
IRON MAN CONSTRUCTION	81722	08/25/2022	LABOR	509-4403-43403	1,500.00
IRON MAN CONSTRUCTION	81722	08/25/2022	MATERIAL TO REPAIR HANGAR		4,748.00
XEROX CORP.	016916480	08/26/2022	XEROX PRINTER OPEN PO FY 22		41.23
TESTON'S FREEWAY CHEVRON	4344	08/26/2022	OPEN PO FY 22-23 TESTONS FR		145.10
WINDSTREAM CORPORATION	8/18/22	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		341.91
VERIZON WIRELESS	9913526343	08/26/2022	PHONE BILLS/OPEN PO FY 22/23		107.16
				Fund 509 - Muni Airport Total:	8,128.96
Fund: 600 - Internal Serv	V400000700 04	00/05/2022	DAT ODD DATES	500 7002 4455-	
BORDER INTERNATIONAL TRUC.		08/05/2022	BAT,GRP,BATTERY,GROUP31P,9		377.90
BORDER INTERNATIONAL TRUC.		08/05/2022	BAT.GRP,BATTERY,GROUP31,95		219.98
BORDER INTERNATIONAL TRUC.		08/05/2022	ZEP PURPLE DEGREASER	600-7003-44607	385.50
RELADYNE CONSERVANCY OIL RELADYNE CONSERVANCY OIL		08/19/2022 08/19/2022	UTHF 5W/30 OIL	600-7003-43316	1,225.00 778.25
RELADYNE CONSERVANCY OIL		08/19/2022	FUEL SURCHARGE	600-7003-43316 600-7003-43316	778.25 4.95
HELDENIC CONSERVANCE OIL	0000020-111	00/ 23/ 2022	, occ sonchange	000 7003-43310	4.33

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Expense Ap	proval	Report
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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
KING'S LOCKSMITH	08207	08/19/2022	GATE AND G 79498 KEYS	600-7003-44607	4.39
KING'S LOCKSMITH	08207	08/19/2022	GATE AND G 79498 KEYS	600-7003-44607	4.55
KING'S LOCKSMITH	08210	08/19/2022	KEY FOR OFFICE	600-7003-44607	2.00
STAPLES CONTRACT & COMME	3515563018	08/25/2022	GOJO HAND CLEANER	600-7003-44607	40.06
STAPLES CONTRACT & COMME	3515563018	08/25/2022	DAWN MUTI SURFACE DEGREA.	600-7003-44607	43.09
XEROX CORP.	016916481	08/26/2022	RENT OF EQUIPMENT/XEROX O.	. 600-7003-43465	105.12
				Fund 600 - Internal Serv Total:	3,190.79

Grand Total: 1,165,133.69

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## **Report Summary**

#### **Fund Summary**

Fund		Payment Amount
101 - General		176,170.48
201 - Corrections		1,886.00
209 - Fire		9,974.39
211 - Law Enforce Prot		1,477.43
214 - Lodgers Tax		13,434.43
216 - Muni Street		6,285.13
294 - State Library		14,990.30
295 - Muni Pool		2,454.66
296 - PD GRT		48,307.24
297 - PD Confidential		1,000.00
298 - PD Donations		100.72
303 - Vet Wall		149.52
360 - NMFA PROJECTS		15,147.58
370 - WATER TRUST BOARD PROJECTS		159,357.73
403 - Pledge State		30,822.29
501 - Cemetary		2,985.87
502 - Util Office - Pool		4,198.44
503 - Electric		507,421.74
504 - Water		25,689.28
505 - Solid Waste		100,755.64
506 - WWTP		23,853.95
508 - Golf Course		7,351.12
509 - Muni Airport		8,128.96
600 - Internal Serv		3,190.79
	Grand Total:	1,165,133.69

#### **Account Summary**

Account Number	Account Name	Payment Amount
101-1000-43597	ATTORNEY FEES-GOVERN	4,693.04
101-1000-43770	SUBSCRIPTION & DUES	2,187.00
101-1000-44606	OFFICE SUPPLIES-GOVERN	120.72
101-1001-41226	RETIREE INSURANCE	235.92
101-1001-43465	RENT OF EQUIPMENT	294.78
101-1001-43740	PRINTING/PUBLISHING	513.25
101-1001-43775	TELEPHONE	278.82
101-1001-47410	MAINTENANCE CONTRAC	450.00
101-1002-41226	RETIREE INSURANCE	87.74
101-1002-42720	EMPLOYEE TRAINING-M	378.70
101-1002-43770	SUBSCRIPTION & DUES	291.26
101-1002-43775	TELEPHONE	195.87
101-1002-44606	OFFICE SUPPLIES	510.27
101-1003-41226	RETIREE INSURANCE	447.82
101-1003-43465	RENT OF EQUIPMENT	309.87
101-1003-43775	TELEPHONE	323.69
101-1003-43815	SOFTWARE	232.00
101-1003-44606	OFFICE SUPPLIES	76.17
101-1004-41226	RETIREE INSURANCE	509.72
101-1004-43465	RENT OF EQUIPMENT	1,112.94
101-1004-43740	PRINTING/PUBLISHING	797.93
101-1004-43775	TELEPHONE	251.14
101-1004-48599	OTHER CONTRACTUAL SE	326.40
101-1005-48599	OTHER CONTRACTUAL SE	21,500.00
101-1006-41226	RETIREE INSURANCE	241.34
101-1006-42620	UNIFORMS LINEN-CODE	191.91
101-1006-42720	EMPLOYEE TRAINING-CO	76.87
101-1006-43775	TELEPHONE	109.98
101-1006-44607	FIELD SUPPLIES	1,055.38

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#### **Account Summary**

	Account Summary	
Account Number	Account Name	Payment Amount
101-1006-48598	PROFESSIONAL SERVICES	1,946.03
101-1007-41226	RETIREE INSURANCE	1,903.21
101-1007-43316	GAS & OIL	6,432.75
101-1007-43465	RENT OF EQUIPMENT	343.96
101-1007-43775	TELEPHONE	1,462.74
101-1007-43815	SOFTWARE	110.00
101-1007-44606	OFFICE SUPPLIES	827.12
101-1007-47420	MAINTENANCE VEHICLE/	704.00
101-1007-48598	PROFESSIONAL SERVICES	249.55
101-1008-41226	RETIREE INSURANCE	226.22
101-1008-42720	EMPLOYEE TRAINING-CO	323.04
101-1008-43316	GAS & OIL	993.26
101-1008-43775	TELEPHONE	301.27
101-1009-41226	RETIREE INSURANCE	262.58
101-1009-43316	GAS & OIL	1,243.52
101-1009-43465	RENT OF EQUIPMENT	1,223.80
101-1009-43770	SUBSCRIPTION & DUES	450.00
101-1009-43775	TELEPHONE	145.81
101-1009-44607	FIELD SUPPLIES-MUNI RE	1,826.46
101-1009-44613	NON-CAPITAL ITEMS	118.44
101-1009-44615	SAFETY EQUIPMENT	172.60
101-1009-47415	MAINTENANCEREPAIRS	900.00
101-1009-47420	MAINTENANCE VEHICLE/	84.49
101-1010-41226	RETIREE INSURANCE	193.48
101-1010-43775	TELEPHONE	93.77
101-1010-44606	OFFICE SUPPLIES	25.72
101-1010-48598	PROFESSIONAL SERVICES	13,909.21
101-1011-41226	RETIREE INSURANCE	634.56
101-1011-43775	TELEPHONE	69.97
101-1012-41226	RETIREE INSURANCE	219.55
101-1012-42720	EMPLOYEE TRAINING-FLE	200.00
101-1012-43775	TELEPHONE	86.28
101-1012-44606	OFFICE SUPPLIES	401.18
101-1012-44607	FIELD SUPPLIES-FLEET MA	1,027.23
101-1012-47420	MAINTENANCE-VEHICLE/	79.84
101-1013-41226	RETIREE INSURANCE	154.60
101-1013-43316	GAS & OIL	85.50
101-1014-41226	RETIREE INSURANCE	415.34
101-1014-43316	GAS & OIL	785.88
101-1014-43403	REGULAR BUILDING MAI	862.22
101-1014-43775	TELEPHONE	105.98
101-1014-44607	FIELD SUPPLIES-FACILITY	1,617.48
101-1014-44613	NON-CAPITAL ITEMS	551.48
101-1014-47410	MAINTENANCE CONTRAC	53.88
101-1014-47420	MAINTENANCE-VEHICLE/	20.00
101-1016-41226	RETIREE INSURANCE	403.47
101-1017-48599	OTHER CONTRACTUAL SE	67,705.17
101-1018-43780	UTILITIES  SOFTMARE MG/SOFTMAR	21,683.47
101-1018-43815	SOFTWARE LIC/SOFTWAR	211.22
101-1018-48598	PROFESSIONAL SERVICES RENT OF EQUIPMENT	984.84
101-1040-43465 101-1040-43815	SOFTWARE	256.10
101-1040-43815	RENT OF PUBLIC FACILITIES	3,031.68
201-1903-44805	AUTO/LAB/DWI/JUD ED	250.00
201-1903-44803	CARE OF PRISONERS-COR	126.00 1,760.00
209-1603-43316	GAS & OIL	301.92
209-1603-43465	RENT OF EQUIPMENT	260.36
209-1603-43770	SUBSCRIPTION & DUES	10.00
200 1000 70770	SOUSCILL HOLL & DOLS	10.00

#### **Account Summary**

	Account Summary	
Account Number	Account Name	Payment Amount
209-1603-43775	TELEPHONE	362.72
209-1603-43780	UTILITIES	807.12
209-1603-43815	SOFTWARE LIC/SOFTWAR	800.00
209-1603-47405	MAINTENANCE-BUILDING	3,961.90
209-1603-47420	MAINTENANCE VEHICLE/	3,470.37
211-2003-42535	EMPLOYEE TRAINING	550.00
211-2003-44573	UNIFORM & EQUIPMENT	550.65
211-2003-44607	FIELD SUPPLIES	256.88
211-2003-47420	MAINTENANCE-VEHICLE/	119.90
214-2503-47597	9% ADVERTISING/MARKET	824.92
214-2540-48598	OTHER PROFESSIONAL SE	8,402.08
214-2540-48599	OTHER CONTRACT SERVIC	3,537.56
214-2540-60725	GRANTS TO SUB-RECIPIE	669.87
216-4503-43316	GAS & OIL	4,792.24
216-4503-47420	MAINT.VEHICLE/FURN/E	1,492.89
294-5003-43465	RENT OF EQUIPMENT	36.62
294-5003-43775	TELEPHONE	168.29
294-5003-44613	NON-CAPITAL ITEMS	14,459.00
294-5003-60834	STATE LIBRARY GRANT-ST	326.39
295-4803-34355	POOL DEPOSIT/RENTAL	100.00
295-4803-41226	RETIREE INSURANCE	146.36
295-4803-43465	RENT OF EQUIPMENT	33.35
295-4803-43775	TELEPHONE	28.76
295-4803-43780	UTILITIES-MUNI POOL	2,146.19
296-2403-44613	NON-CAPITAL ITEMS	255.97
296-2403-80810	OTHER CAPITAL EQUIPM	48,051.27
297-2203-45607	MISC EXP-PD CONFIDENT	1,000.00
298-2103-45607	MISC. EXPENSES	100.72
303-4703-43775	TELEPHONE	149.52
360-7009-80847	ROADWAYS/BRIDGES	15,147.58
370-7019-80847	ROADWAYS AND BRIDGES	159,357.73
403-1203-12918	CWPA PPRF-2613 TORC 18	690.58
403-1203-12919	CWPA PPRF-2737 TORC 19	7,598.76
403-1203-12967	PPRF-4967 OPERATING	7,150.63
403-1203-90905	DEBT SERVICE PRINCIPAL	8,336.00
403-1203-90910	DEBT SERVICE INTEREST	7,046.32
501-1803-43780	UTILITIES	2,985.87
502-3601-41226	RETIREE INSURANCE	527.66
502-3601-43316	GAS & OIL	329.28
502-3601-43465	RENT OF EQUIPMENT	619.26
502-3601-43740	PRINTING/PUBLISHING	1,672.11
502-3601-43775	TELEPHONE	192.09
502-3601-43780	UTILITIES	290.75
502-3601-44606	OFFICE SUPPLIES	567.29
503-3702-41226	RETIREE INSURANCE	826.56
503-3702-42620	UNIFORM/LINEN-ELECTRI	270.00
503-3702-42720	EMPLOYEE TRAINING-ELE	1,650.00
503-3702-43316	GAS & OIL	2,709.62
503-3702-43465	RENT OF EQUIPMENT	157.11
503-3702-43770	SUBSCRIPTION & DUES	950.00
503-3702-43775	TELEPHONE	244.44
503-3702-43780	UTILITIES	6,943.88
503-3702-43815	SOFTWARE LIC/SOFTWAR	211.21
503-3702-44607	FIELD SUPPLIES	293.66
503-3702-44613	NON-CAPITAL ITEMS	38.00
503-3702-44615	SAFETY EQUIPMENT	3,331.00
503-3702-45796	FRANCHISE TAX-ELECTRIC	5,065.83
503-3702-477415	MAINTENANCEREPAIRS	99,010.32
333 3102 71713	MAINTENAUCE-TREFAINS	55,010.32

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#### **Account Summary**

Account Summary									
Account Number	Account Name	Payment Amount							
503-3702-47420	MAINTENANCE-VEHICLE/	386.49							
503-3702-48598	PROFESSIONAL SERVICES	7,520.53							
503-3702-50795	WHOLESALE POWER COS	377,813.09							
504-3803-41226	RETIREE INSURANCE	182.60							
504-3803-43316	GAS & OIL	2,078.29							
504-3803-43465	RENT OF EQUIPMENT	60.00							
504-3803-43775	TELEPHONE	69.97							
504-3803-43780	UTILITIES	9,530.50							
504-3803-43797	WATER CONSERVATION	1,411.61							
504-3803-43815	SOFTWARE LIC/SOFTWAR	443.21							
504-3803-44607	FIELD SUPPLIES-WATER D	7,697.19							
504-3803-45796	FRANCHISE TAX-WATER D	1,205.06							
504-3803-47415	MAINTENANCEREPAIRS	516.00							
504-3803-47420	MAINTENANCE-VEHICLE/	1,510.00							
504-3803-48598	PROFESSIONAL SERVICES	984.85							
505-3904-41226	RETIREE INSURANCE	981.94							
505-3904-42720	EMPLOYEE TRAINING-SOL	400.00							
505-3904-43316	GAS & OIL	6,141.22							
505-3904-43403	REGULAR BUILDING MAI	7,406.39							
505-3904-43465	RENT OF EQUIPMENT	141.18							
505-3904-43770	SUBSCRIPTION & DUES	450.00							
505-3904-43775	TELEPHONE	166.39							
505-3904-43780	UTILITIES	1,848.69							
505-3904-43815	SOFTWARE LIC/SOFTWAR	211.21							
505-3904-44606	OFFICE SUPPLIES	826.86							
505-3904-44607	FIELD SUPPLIES-SOLID WA	1,711.49							
505-3904-44613	NON-CAPITAL ITEMS	354.74							
505-3904-44615	SAFETY EQUIPMENT	190.00							
505-3904-45601	WASTE DISPOSAL	65,319.05							
505-3904-45796	FRANCHISE TAX	1,512.48							
505-3904-47420	MAINTENANCE-VEHICLE/	12,109.15							
505-3904-48598	PROFESSIONAL SERVICES	984.85							
506-4005-41226	RETIREE INSURANCE	620.30							
506-4005-43316	GAS & OIL	1,830.24							
506-4005-43465	RENT OF EQUIPMENT	177.42							
506-4005-43775	TELEPHONE	366.16							
506-4005-43780	UTILITIES	8,445.70							
506-4005-43815	SOFTWARE LIC/SOFTWAR	211.21							
506-4005-44605	CHEMICALS/LABORATORY	312.48							
506-4005-44607	FIELD SUPPLIES-WASTEW	569.75							
506-4005-44613	NON-CAPITAL ITEMS	969.86							
506-4005-47415	MAINTENANCEREPAIRS	516.00							
506-4005-47420	MAINTENANCE-VEHICLE/	3,700.46							
506-4005-48598	PROFESSIONAL SERVICES	2,396.40							
506-4005-48798	VILLAGE OF WILLIAMSBU	3,737.97							
508-4303-41226	RETIREE INSURANCE	126.14							
508-4303-43316	GAS & OIL	2,113.50							
508-4303-43465	RENT OF EQUIPMENT	1,075.79							
508-4303-43775	TELEPHONE	1,280.62							
508-4303-43780	UTILITIES	1,414.24							
508-4303-44607	FIELD SUPPLIES	1,340.83							
509-4403-41226	RETIREE INSURANCE	74.41							
509-4403-43316	GAS & OIL	145.10							
509-4403-43403	REGULAR BUILDING MAI	6,377.37							
509-4403-43465	RENT OF EQUIPMENT	41.23							
509-4403-43775	TELEPHONE	449.07							
509-4403-43780	UTILITIES	1,041.78							
600-7003-43316	GAS & OIL	2,008.20							

**Expense Approval Report** 

**Account Summary** 

**Account Number Account Name** 600-7003-43465 RENT OF EQUIPMENT 600-7003-44607 FIELD SUPPLIES

1,077.47

**Grand Total:** 

1,165,133.69

105.12

**Payment Amount** 

Payable Dates: 8/1/2022 - 8/31/2022

**Project Account Summary** 

**Project Account Key** \*\*None\*\*

**Payment Amount** 1,165,133.69

**Grand Total:** 

1,165,133.69

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Accounts Payable Transfer Sheet - 21-22 FY Post Date Ending: 8/5/22,8/10/22,8/17/22,8/19/22,8/26/22,8/29/22

	Description	8/5/2022	8/10/2022	8/17/2022	8/19/2022	8/26/2022	8/29/2022	GRAND TOTAL TRANSFERS
101	General	\$25,467.78		Ţ	\$40,014.09	\$37,710.80	\$72,977.81	\$176,170.48
201	Local Government Corrections	\$126.00			\$1,760.00			\$1,886.00
209	State Fire	\$328.74			\$3,908.53	\$5,642.65	\$94.47	\$9,974.39
211	Law Enforcement Protection	\$119.90			\$256.88	\$1,100.65		\$1,477.43
14	Lodger's Tax	\$12,764.56			\$669.87			\$13,434.43
16	Street Renovation	\$698.25			\$4,374.25	\$1,212.63		\$6,285.13
93	Veterans Wall Perpetual							\$0.00
94	State Library	\$210.24	\$116.15		\$14,459.00	\$204.91		\$14,990.30
95	Municipal Pool	\$1,593.34	_		\$73.18	\$162.11	\$626.03	\$2,454.66
96	PD-GRT Fund	\$255.97		-		\$48,051.27	·	\$48,307.24
98	PD-Donations	\$1,000.00						\$1,000.00
02	Electrical Construction	\$100.72		· · · · · · · · · · · · · · · · · · ·			•	\$100.72
03	Veterans Memorial					\$149.52		\$149.52
04	SJOA - Grants							\$0.00
05	Capital Improvement General		1					\$0.00
06	Captial Improvement Joint Utility	<del></del>			***			\$0.00
08	USDA -Sweeper							\$0.00
9	USDA-Wastewater							\$0.00
10	R&R-Emergency							\$0.00
11	R&R-Sewer			<del> </del>			-	\$0.00
12	R&R-Airport							\$0.00
3	R&R-Water							\$0.00
14	CDBG - Grant	-			+			\$0.00
5	Cl Reserve- Non Capital Equipment							\$0.00
16	Emergency Reserve			-				\$0.00
20	<b>USDA Water System Improvements</b>			<u> </u>				\$0.00
60	NMFA PROJECTS			f		\$15,147.58		\$15,147.58
80	Cemetery	<del>-</del>				\$159,357.73		\$159,357.73
03	Pledge State Tax	\$26,144.09		\$4,678.20				\$30,822,29
01	Cemetery			. ,	\$2,985.87			\$2,985.87
02	Utility Office	\$2,228.76			\$261.76	\$1,707.92		\$4,198.44
03	Electric Dept	\$140,109.73	\$319,644.64		\$42,725.28	\$4,317.92	\$624.17	\$507,421.74
04	Water Dept	\$14,082.60	\$1,205.06		\$4,241.07	\$5,511.76	\$648.79	\$25,689.28
05	Solid Waste	\$45,643.00	\$1,512.48		\$52,207.20	\$768.55	\$624.41	\$100,755.64
06	WasteWater	\$10,908.82			\$8,858.87	\$3,460.07	\$626.19	\$23,853.95
7	Solid Waste Landfill/Collection						· · · · · · · · · · · · · · · · · · ·	\$0.00
8	Golf Course	\$1,584.52			\$4,010.19	\$1,156.41	\$600.00	\$7,351.12
)9	Municipal Airport	\$34.73	\$1,041.78		\$39.68	\$7,012.77	,	\$8,128.96
0	Internal Service Fund	\$983.38	. ,=		\$2,019.14	\$188.27		\$3,190.79
00	PD Bond				,			\$0.00
99	Revolving				-	-		\$0.00
	-	<del></del>		+				73.00

# **AGENDA REQUEST FORM**

MEETING DATE: September 14, 2022

Agenda Item #: F.3

4
SUBJECT: Take-home vehicle forms
<b>DEPARTMENT:</b> City Clerk's Office
DATE SUBMITTED: September 8, 2022
SUBMITTED BY: Angela A. Torres
WHO WILL PRESENT THE ITEM: Consent Calendar
Summary/Background:
The City of Truth or Consequences Water 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 for Anne Royster/ City Airport, Pete English/ Water-Waste Water Dept, James Childress/Parks, and Officer Martin Madden.
Recommendation:
Approve take-home vehicle forms.
Attachments:
Take-home vehicle forms
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 9-14-2022



Employee: Anne Royster	Dep	artment:	Airport	
Position Title: Airport Attendant		•	Miles/Day:_	
Employee Address: 138 Alamosa (	Tillage Rd	Elephant	Butten	M 8793
Pursuant to the Take-Home Vehicle Pol demonstrate an official need for a City veh any, of the following reflect the official need	licy, requests to nicle beyond norm	authorize tal nal working h	ce-home ve ours. Identi	fy which, if
☑ Emergency Response: Employee has situations which require immediate response.	ns primary respon ponse to protect l	nsibility for re ife or property	sponding to /.	emergency
On-call Status: Employee is on- cal occurring after normal work hours and	l and responds to on weekends.	public safety	y or health o	emergencies
Other: explain				
Note: A city owned take-home vehicle is a	fringe benefit the	at may genera	te a tax liabi	lity.
By signing below, I acknowledge that I have use of a take-home vehicle and prohibitions program, I consent to complying with the requirements of the City's Take-Home Veh	<ul> <li>By voluntarily he policy, and l</li> </ul>	participating i	in the take-h	ome vehicle
Ine Rolle Employee's Signature		S/2 Date	29 /2022	
Department Director Signature		⊗ Appro	oved OD	enied
Commission (	Approved	<b>○</b> Deni	ied	
Amanda Forrister, Mayor Signature		Date		



Employee:	Pete English		Department:	Water/Wastewater
Position Title				e Miles/Day: 5
Employee Ac	ddress: <u>/0529</u> <u>/</u>	onstitution	AVE. NE	. Albuguergue, NM
demonstrate a	an official need for a C	ity vehicle beyond	normal working	ake-home vehicles must hours. Identify which, if normal working hours.
	cy Response: Emplo which require immedi			responding to emergency ty.
	Status: Employee is after normal work hou			ty or health emergencies
Other: ex	cplain			
Note: A city	owned take-home vehic	cle is a fringe benef	fit that may gener	ate a tax liability.
use of a take- program, I c	home vehicle and prohi	bitions. By voluntations with the policy, a	arily participating	policy governing proper in the take-home vehicle t this request meets the
fel	64	,		9/4/22
Employee's S	Signature		Date	
0	7	$\geq$	(OApp	roved ( Denied
Department I	Director Signature			<u> </u>
	Commission	○ Approve	ed O Den	ied
Amanda Forr	ister, Mayor Signature		Date	



Employee: Martin D. Maddan Dep	partment: Tor C P.D.
Position Title: uncertified police officer	
Employee Address: 13882 Hwg 187 11.1156.	0 NM 88042
Pursuant to the Take-Home Vehicle Policy, requests to demonstrate an official need for a City vehicle beyond nor any, of the following reflect the official need for the city ve	mal working hours. Identify which, if
Emergency Response: Employee has primary responsituations which require immediate response to protect	nsibility for responding to emergency life or property.
On-call Status: Employee is on- call and responds to occurring after normal work hours and on weekends.	o public safety or health emergencies
Other: explain	
Note: A city owned take-home vehicle is a fringe benefit th	at may generate a tax liability.
By signing below, I acknowledge that I have read and a proper use of a take-home vehicle and prohibitions. By home vehicle program, I consent to complying with the meets the requirements of the City's Take-Home Vehicle Po	voluntarily participating in the take- policy, and I certify that this request
m 2 1 1 1	9/8/77
Employee's Signature	9/8/22 Date
rell.	Approved () Denied
Department Director Signature	
Commission	O Denied
Amanda Forrister, Mayor Signature	Date



Employee: <u>James Childress</u>	Departmen	t:Parks
Position Title: Parks Worker 1		mmute Miles/Day: 2
Employee Address: LOW N. Gold St	reet, Torc	Nm 87901
Pursuant to the Take-Home Vehicle Policy demonstrate an official need for a City vehicl any, of the following reflect the official need	e beyond normal wo	rking hours. Identify which, it
Emergency Response: Employee has p situations which require immediate response.		
On-call Status: Employee is on- call a occurring after normal work hours and on		c safety or health emergencies
Other: explain OPENING AND CLOSON WEEKENDS.	SING FACILITIES	DURNING THE WEEK AND
Note: A city owned take-home vehicle is a fri	nge benefit that <u>may</u>	generate a tax liability.
By signing below, I acknowledge that I have proper use of a take-home vehicle and prohome vehicle program, I consent to comply meets the requirements of the City's Take-Ho	ibitions. By volunting with the policy,	arily participating in the take-
James Dr. 1 dos	P	9/6/2022
Employee's Signature		Date
Department Director Signature		Approved O Denied
Commission	Approved C	) Denied
Amanda Forrister, Mayor Signature		Date

## **AGENDA REQUEST FORM**

MEETING DATE: September 14, 2022

Agenda Item #: <u>G.1</u>

SUBJECT: Public Hearing and approval of the issuance of a Small Brewer Off-Site Liquor License for Sidekixx, located at 820 Cedar Street, Truth or Consequences, New Mexico. **DEPARTMENT:** City Clerk's Office DATE SUBMITTED: September 8, 2022 Angela A. Torres, Clerk-Treasurer SUBMITTED BY: WHO WILL PRESENT THE ITEM: City Clerk Torres Summary/Background: The Truth or Consequences Brewing Company purchased the Beddroxx Bowling Alley located at 820 Cedar Street and they are applying for a Small Brewer Off-Site Liquor License. (Application No. 1232856). The name of the business will be Sidekixx. A zoning statement has already been approved by our Planning & Zoning Department, and the Director of the Alcohol and Gaming Division has given Preliminary Approval for the issuance of this License. We are required to hold a public hearing to receive public input, as well as final approval from our governing body. **Recommendation:** Public Hearing and Approval of a Small Brewer Off-Site Liquor License at 820 Cedar. Broadway Street, Truth or Consequences, New Mexico. **Attachments:**  Public Hearing Notice Application, letter from the NM Alcoholic Beverage Control Division & letters of support. Fiscal Impact (Finance): N/A \$0.00 Legal Review (City Attorney): Yes Click here to enter text. Approved For Submittal By: 

Department Director **Reviewed by:**  $\square$  City Clerk  $\square$  Finance  $\square$  Legal  $\square$  Other: Click here to enter text. Final Approval: ⊠ City Manager CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN Resolution No. -Ordinance No. -Continued To: - Referred To: -☐ Approved ☐ Denied Other: -File Name: CC Agendas 9-14-2022



## STATE OF NEW MEXICO MICHELLE LUJAN GRISHAM, GOVERNOR Linda M. Trujillo, Superintendent

Andrew Vallejos, Director

July 25, 2022

By Email to: aatorres@torcnm.org AND Certified Mail No.: 9171 9690 0935 0155 3729 36

### City of Truth or Consequences

Attn: Angela Torres, City Clerk 505 Sims Street T or C, NM 87901

Lic. No. /Appl. No.:

Application No. 1232856

Name of Applicant:

Truth or Consequences Brewing Company, LLC

**Doing Business As:** 

Sidekixx

Proposed Location:

820 Cedar St, T or C, New Mexico 87901

The Director of the Alcoholic Beverage Control Division (ABC) has reviewed the referenced Application and granted Preliminary Approval. It is being forwarded to you for Local Option District approval or disapproval of the Liquor License Application.

Notice of the Public Hearing required by the Liquor Control Act shall be given by the governing body by publishing a notice of the date, time, and place of the hearing twice during the 30 days prior to the hearing in a newspaper of general circulation within the territorial limits of the governing body. The first notice must be published at least thirty (30) days before the hearing. Both publications must occur before a hearing can be conducted. The notice shall include:

- (A) Name and address of the Applicant/Licensee;
- (B) The action proposed to be taken;
- (C) The location of the licensed premises.

In addition, if the Local Option District has a website, the Notice shall also be published on the website.

While the law states that "within forty-five (45) days after receipt of a Notice from the Alcoholic Beverage Control, the governing body shall hold a Public Hearing in the question of whether the department should approve the proposed issuance or transfer", we recognize the potential for conflict between the requirement for publication of 30 day notice and the 45 day hearing requirement.

With that in mind, when a local governing body receives a liquor license application from ABC, that governing body has a couple of options:

- 1) Hold a hearing on the license application within the statutory time frame of forty-five (45) days, as required by the Liquor Control Act, and comply with all other statutory and regulatory procedures and notify ABC of your decision within thirty (30) days of the hearing;
- 2) Request from ABC an extension of time, past the forty-five (45) days, designating how much additional time will be needed to conduct the hearing in compliance with all statutory and



regulatory procedures. After the extension is granted and the hearing is held, notify ABC of your decision within thirty (30) days of the hearing;

ABC has no preference in the option you choose.

The governing body is required to send notice by certified mail to the Applicant of the date, time, and place of the Public Hearing. The governing body may designate a Hearing Officer to conduct the hearing. A record shall be made of the hearing.

# THE APPLICANT IS SEEKING A SMALL BREWER OFF-SITE LIQUOR LICENSE.

Within thirty (30) days after the Public Hearing, the governing body shall notify ABC of their decision to approve or disapprove the issuance or transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application must be returned together with the notices of publication. If the Governing Body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the Public Hearing, the Director may issue the license.

If the Governing Body disapproves the issuance or transfer of the license, it shall notify ABC within thirty (30) days setting forth the reasons for the disapproval. A copy of the Minutes of the Public Hearing shall be submitted to ABC with the Notice of Disapproval (*Page 1 of the Application, noting disapproval*).

Respectfully,

Tammy M. Sandoval

Admin Law Judge | Hearing Officer NM Regulation & Licensing Department Alcoholic Beverage Control Division

Phone: (505) 476-4548 Fax: (505) 476-4595

Email: Tammy.Sandoval@state.nm.us

**Enclosures:** 

1. Original Page 1 of the Application (must be signed and returned w/notices of publication)

2. Copy of Page 2 of the Application

3. Copy of the Zoning Statement





# RECEIVED

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Linda M. Trujillo, Superintendent
Andrew Vallejos, Director

MAY 17 7072

Small Brewer and Off-Site Location Application \$200.00 Application Fee, non-refundable ABC USE ONLY: Application Fee \$ 200. Received on:  ALCOHOLIGREVERAGE CONTROL Receipt No. 244444
License Fee \$ Received on: Receipt No. 34 (1979)
License Fee \$ Received on: Receipt No Application Number: \_\23285\\ \ Local Option District:
Check appropriate boxes
Application is for □New License   ■Off-Site Location — □1st, ■ 2nd, □3rd   Master License Number 67087
Applicant is □Individual □Limited Liability Company ■Corporation □Partnership (General/Limited)
NAME OF APPLICANT: Truth or Consequences Brewing Company
D/B/A Name to be used: Sadie's Sidekixx Business Phone No: 575-297-0289
Mailing Address: 410 N Broadway St, Tor C NM 87901
Email (required) john@torc.beer
Physical location where license is to be used: 820 Cedar St, T or C, NM 87901
County: Sierra (Include street number / highway number / state road, city, state, and zip code
Are alcoholic beverages currently being dispensed at the proposed location Yes  ON If Yes, License # / Type: winery 60034
Contact Person: John Masterson Phone #: 575-297-9797 Email: john@torc.beer
I, (print name) John Masterson , as (title) Chief Beer Officer being
I, (print name) John Masterson , as (title) Chief Beer Officer being first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make
first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s
first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make
first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s that if any statements or representations herein are found to be false, the Director may refuse to issue or renew the license or may cause the license to be revoked at any time.
first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s that if any statements or representations herein are found to be false, the Director may refuse to issue or renew the license or may cause the license to be revoked at any time.  You must sign and date this form before a Notary Public.
first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s that if any statements or representations herein are found to be false, the Director may refuse to issue or renew the license or may cause the license to be revoked at any time.
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# Premises Location, Ownership, and Description | NMSA §60-6B-10 | Page 2

1. The land and building which is proposed to be the licensed premise	es is: (check one)
☐ Owned by Applicant, copy of deed/document attached	RECEIVED
☑ Leased by Applicant, copy of lease/document attached	h2. 11
Other (provide details):	ALCOHOLIC BEVERAGE CONTROL
2. If the land and building are not owned by Applicant, indicate the fo	Manage Control of the
A. Owner(s): Art First, LLC - Subject to Purchase	agreement
B. Date and Term of Lease: September 1, 2022, 120 months	,
3. Premises location is Zoned (example C-1, see Zoning Statement): C1	
Zoning Statement attached,  Yes  No Must be obtained from the location by address, Type of Zone, state whether alcoholic beverages applicable, whether packaged sales, patio service and/or manufactur the proposed location, attach Statement from the local government, indicated the proposed location of the local government.	are allowed at proposed location, and it ing is allowable. If there is no zoning in
4. Distance* from nearest Church: (Property line of church to closest points)	
Name of Church: Ow Lady of Perptul Hipe	Miles/feet: 2080
Name of Church: Ow Lady of Puptul Hipe  Address/location of Church: 515 N Det St Trick	NM 87401
5. Distance* from nearest School: (Property line of school to closest point	of licensed premises—shortest distance)
Name of School: Tor C Middle School	Miles/feet: 4000
Address/location of School: 1802 Perhing St Tor (	Nm 879ul
6. Attach Detailed Floor Plan, must include the Total Square Footag Show which direction is North; Show each level (floor) where alcohol exterior walls, doors, and interior walls; Patio Area with type of barr floor plan should be no larger than 8½ x 11 inches and must be labe which will reflect the proposed Licensed Premises.	e of premises; List nearest cross street lic beverages will be sold or consumed, ier used; Highlight Bonded Areas. The
7. Type of Operation:	kage Grocery 🔲 Racetrack
☐ Restaurant ☐ Craft Distiller ☑ Small Brewer ☐ Wir	nery
Other (specify): small brewer offsite	

\*NOTE: If the distance is beyond 300 feet, but less than 400 feet, and the Applicant does not admit that the location is within 300 feet and requests a waiver from the LOD, a Registered Engineer or Licensed Surveyor must complete a Survey Certificate showing the exact distance.



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

May 13, 2022

Re:

820 N Cedar Street

Truth or Consequences, NM 87901

Subject:

Zoning Statement - Liquor License

MAC 14 2022

ALCOHOLIC BEVERAGE CONTROL

### TO WHOM IT MAY CONCERN,

Th City of Truth or Consequences has reviewed your request to approve zoning for the sale and consumption of Alcoholic Beverages at 820 N Cedar Street. As requested, here is the zoning statement.

- A. The Complete physical address is 820 N Cedar Street, Truth or Consequences, NM 87901
- B. The property is located in C-1 Zoning area
- C. C-1 zoning is the City's commercial use zone. Permitted business uses within C-1 include production, on-site consumption, patio service, packaged to-go sales, and wholesale sales of alcoholic beverages.

The property located at 820 N Cedar Street is permitted by right for the sale of alcoholic beverages.

If you have any further questions, please feel free to contact me.

Traci Alvarez

Assistant City Manager
Designated Zoning Official

City of Truth or Consequences

Truth or Consequences, NM 87901

(575) 894-6673 Ext. 353

talvarez@torcnm.org

Amanda Forrister Mayor

Rolf Hechler Mayor Pro-Tem

Merry Jo Fahl Commissioner



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Shelly Harrelson Commissioner

Bruce Swingle City Manager

## **NOTICE OF PUBLIC HEARING**

NOTICE is hereby given that the City of Truth or Consequences City Commission will hold a Public Hearing during their Regular Meeting scheduled on Wednesday, September 14, 2022 in the Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, to receive input regarding the following:

Public Hearing/Discussion/Action: The purpose of the Public Hearing is to receive public input regarding the issuance of a Small Brewer Off-Site Liquor License at Sidekixx, located at 820 Cedar Street, Truth or Consequences, New Mexico. Applicant is the Truth or Consequences Brewing Company, LLC. Application No. is 1232856.

The agenda for this meeting may be obtained on Friday, September 9, 2022 on the city website at <a href="www.torcnm.org">www.torcnm.org</a>; by contacting the City Clerk's Office at 575-894-6675; or by email to: <a href="mailto:aatorres@torcnm.org">aatorres@torcnm.org</a>.

/s/ Angela A. Torres, CMC, City Clerk

Publish on the following date:

- Sentinel

   Friday, July 29, 2022
- Sentinel

   Friday, August 5, 2022

# **AGENDA REQUEST FORM**

MEETING DATE: September 14, 2022

Agenda Item #: G.2

SUBJECT: Public Hearing & Final Adoption of Ordinance No. 737 amending Sections 7-106 through Section 7-
114 of our Municipal Code of Ordinances pertaining to Rental Spaces and Licensure.
DEPARTMENT: City Manager
DATE SUBMITTED: September 8, 2022
SUBMITTED BY: City Clerk Torres
WHO WILL PRESENT THE ITEM: Victor Rodriguez, Chief of Police
Summary/Background:
Staff wishes to amend the code to include a section that requires all Flea Markets and rental spaces within
the municipality to acquire a city business license.
Recommendation:
Public Hearing and Approval of Ordinance.
Attachments:
Proposed Ordinance No. 737
• -
Fiscal Impact (Finance): Unknown
-
Local Povious (City Attornov), NI/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. 737
Continued To: Glock here to enter a date. Referred To: Click here to enter text.
☐ Approved ☐ Denied ☐ Other: Click here to enter text.
File Name: CC Agendas 9-14-2022

#### **ORDINANCE 737**

AN ORDINANCE OF THE CITY OF TRUTH OR CONSEQUENCES, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF TRUTH OR CONSEQUENCES, BE AMENDED BY AMENDING SECTIONS 7-106 THROUGH 7-114 PERTAINING TO RENTAL SPACES AND LICENSURE

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

Article V. FLEA MARKETS shall be amended in its entirety to read as follows:

Article V. FLEA MARKETS RENTAL SPACES AND LICENSURE

Sec. 7-106. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Farmers' market means a market at which local farmers or sellers sell fruit, vegetables, meat, cheese, and bakery goods, and items that are recognized by the New Mexico Farmers Market Association directly to consumers.

Flea market means a market place, indoors or out-of-doors, where new or used personal property, merchandise, or items of all kinds are displayed, offered for sale, sold or exchanged from individual locations, including but not limited to spaces, lots, booths, vehicles, or other areas, with each location being operated independently from other locations.

Flea market operator means the owner or proprietor of a flea market.

Flea market-Seller means a person, firm or corporation selling items or offering items for sale at a flea market.

(Code 1962, § 5-1-6(A))

Sec. 7-107. - Renting space to sellers.

<del>(a)</del>

License required. No person shall operate the business of renting space or allocating space to fleamarket sellers without first obtaining a license therefor. Applications for licenses shall be made to the City Clerk, on forms to be provided by the City Clerk.

(a) <u>License required</u>. A flea or farmers' market operator shall obtain a business license when operating a business of renting space or allocating space to sellers and therefor shall comply with all city zoning requirements including any required inspections or approvals. Applications for licenses shall be made to the City Clerk, on forms to be provided by the City Clerk.

One license shall be required for each market space or booth, but the individual flea market sellers shall not be required to obtain a license or pay a business registration fee so long as

the person operating the business of renting space or allocating space to flea market sellers has complied with this section. The fee for each such space shall be \$25.00 per year in addition to the business registration fee paid by the person operating the business of renting or allocating space to flea market sellers.

- (b) Each individual flea market seller shall be required to obtain a business license.
- (c) Sellers at a 1) farmer's market, 2) the Truth or Consequences Annual Fiesta, or 3) any City Commission recognized public activity or event are not required to obtain an individual business license as long as they are participating in the qualified activity or event. In such cases, the event sponsor may obtain one permit by paying the fee set by resolution, and such permit will cover all of the sellers invited by them who are occupying a booth provided or space reserved. If a farmer's market seller, or other seller is not participating in the farmer's market or City Commission recognized public activity or event they shall be required to obtain a business license.

The fee for each such space shall be \$25.00 per year in addition to the business registration fee paid by the person operating the business of renting or allocating space to flea market sellers.

(d) The fee for business license is set by resolution as noted in Section 7-32, as amended in Ordinance 727.

Exceptions. This section shall not apply to locally recognized civic organizations, churches, museums, or other nonprofit organizations which operate arts and crafts fairs, sales, rummage sales, or other such functions from time to time and are not regularly engaged in the business of conducting such activities. Further, this section shall not apply to activities or public celebrations recognized in advance by the City Commission, such as but not limited to vendors invited by the Truth or Consequences—Sierra County Chamber of Commerce to occupy booths provided by them during the annual Fiesta. In such cases, the Chamber of Commerce or other qualified organization may obtain one permit by paying the \$25.00 fee, and such permit will cover all of the vendors invited by them who are occupying a booth provided or space reserved by such organization.

- (e) Exceptions. This section shall not apply to 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.
- Records to be kept by licensee. Each person required by this article to obtain a license shallkeep accurate records of the names and addresses of each flea market seller, together with a brief description of the type of merchandise offered for sale by that seller.
- (f) Records to be kept by licensee. Each person required by this article to obtain a license shall keep accurate records of their license or the names and addresses of each flea market

seller, together with a brief description of the type of merchandise offered for sale by that seller.

Sec. 7-108. - Secondhand stores excepted.

<u>A</u> No person having a license as a secondhand store shall be required to obtain a license under this section.

(Code 1962, § 5-1-6(E))

Sec. 7-109. - More than one market.

Any person renting or allocating space to flea market sellers in more than one place of business shall be required to obtain a license for each place of business—, provided that one license shall be adequate for locations that are on the same lot, adjacent lots, or lots separated only by an alley.

(Code 1962, § 5-1-6(F))

Any person renting or allocating space to sellers in more than one place of business shall be required to obtain a license for each place of business , provided that one license shall be adequate for locations that are on the same lot, adjacent lots, or lots separated only by an alley.

Sec. 7-110. - Camping prohibited.

Temporary or overnight camping, lodging, or staying by flea market sellers or customers isprohibited unless accommodations are provided therefor, pursuant to the standards for recreational vehicle parks.

Temporary or overnight camping, or lodging, by sellers or customers is prohibited unless accommodations are provided therefor, pursuant to the standards for recreational vehicle parks or as authorized by the City Manager or designee for City Commission public events or activities.

(Code 1962, § 5-1-6(G))

Sec. 7-111. - Purchases from children regulated.

No flea market seller shall purchase any personal property, item, merchandise, used householditem, antique, or used article whatsoever from any person under the age of 18 years, unlesssuch person is accompanied.

(Code 1962, § 5-1-6(H))

No seller shall purchase any personal property, item, merchandise, used household item, antique, or used article whatsoever from any person under the age of 18 years, unless such person is accompanied by the person's parent or guardian.

# Sec. 7-112. - Customer parking.

Each applicant for a flea market license shall furnish the City Clerk with evidence of not fewer than two offstreet parking spaces to accommodate each flea market seller's customers in addition to the normal onstreet parking capability available in street frontage of the building or open space used in connection with the flea market.

(Code 1962, § 5-1-6(I))

Sec. 7-1123. - Sanitary facilities and food service. Public selling of food or drinks

Each applicant for a flea market license shall provide the City Clerk with a certificate, permit, or other approval from the New Mexico Environmental Improvement Division evidencing the availability of restroom facilities and, in addition, potable water and handwashing facilities provided by the applicant if food service of any kind is to be provided in the flea market area or facility.

(Code 1962, § 5-1-6(J))

Sellers offering food or drink products for public consumption shall provide the City Clerk as part of their business application with a certificate, permit, or other approval verifying their compliance with the New Mexico Environmental Department. Food or drink sellers participating at a 1) Farmers' market, 2) the Truth or Consequences Annual Fiesta, or 3) any other City Commission recognized public activity or event shall provide proof of New Mexico Environmental Department compliance to the activity or event sponsor, so that the ponsor can include such documentation in the business license application.

Sec. 7-114. - Zones.

Licenses for flea markets may be approved only for areas zoned commercial.

(Code 1962, § 5-1-6(K))

Sec. 7-11<u>3</u>5. - Taxes.

Each flea market operator shall be and is hereby made responsible for requiring each flea market seller to be licensed in New Mexico pursuant to the law and the regulations of the New Mexico Taxation and Revenue Department.

(Code 1962, § 5-1-6(L))

Each seller and/or operator shall be individually responsible for being licensing and compliance pursuant to the law and the regulations of the New Mexico Taxation and Revenue Department and the Internal Revenue Service.

Sec. 7-1146. - Penalty for violation of article.

Any person violating any provision of this article shall be fined not more than \$300.00 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(Code 1962, § 5-1-6(M))

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.

Secs. 7-11<u>5</u>7—7-135. - Reserved

Section 1. All Ordinances or Resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This Repealer shall not be construed to revive any Ordinance or Resolution or part thereof, heretofore repealed.

Section 2.	This Ordinance shall ta	ke effect on the	_day of	_2022.
	PROVED, and ADOI CONSEQUNCES this	•		Y of the CITY OF

	Amanda Forrister, Mayo
ATTEST:	
Angela A. Torres, City Clerk	<del></del>

# **AGENDA REQUEST FORM**

MEETING DATE: September 14, 2022

Agenda Item #: G.3

A. Company of the com	
SUBJECT: Public Hearing and Final Adoption 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.	
<b>DEPARTMENT:</b> Police Department	
DATE SUBMITTED: September 8, 2022	
SUBMITTED BY: City Clerk Torres	
WHO WILL PRESENT THE ITEM: Victor Rodriguez, Chief of Police	
Summary/Background:	
This proposed ordinance pertains to regulating the use of BB or Pellet Guns within the Municipality.	
Recommendation:	
Public Hearing and Final Adoption of Ordinance No. 738.	
Attachments:	
Proposed Ordinance No. 738	
• -	
Fiscal Impact (Finance): Unknown	
-	
Legal Review (City Attorney): N/A	
<del>-</del>	
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. 738	
Continued To: Click here to enter a date. Referred To: Click here to enter text.	
H. [18] [18] [18] [18] [18] [18] [18] [18]	
File Name: CC Agendas 9-14-2022	

#### **ORDINANCE 738**

# AN ORDINANCE 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

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

**Section one.** That section 8-53 of the Code of Ordinances of the City of Truth or Consequences be added so that such section shall read as follows:

# SEC. 8-53. – REGULATING THE USE OF BB OR PELLET GUNS

## A. BB OR PELLET GUN DEFINED

BB or Pellet Gun shall be defined as any instrument, whether or not designed as a pistol or rifle, which by reason of its mechanical construction, enables the propelling by force of compressed air or any other means of BB's, pellets or other metal or hard substance.

# B. DISCHARGING LOAED BB OR PELLET GUNS UNLAWFUL.

No person shall discharge or shoot any BB or pellet gun of any description, by whatever name it may be known, that by means of compressed air, compressed gas, springs or any other means of propulsion is capable of discharging shots, pellets or any other projectiles.

# C. EXCEPTION

Subsection B shall not apply to shooting ranges or on private grounds or premises under circumstances when the BB or pellet gun can be fired, discharged or operated in a manner such as not to endanger persons or property, and also in such manner as to prevent the projectile from striking any property or traveling past space outside the limits of such ranges, grounds or premises.

Section two.	Effective date.	The provision	s of this An	nended Ordina	ance shall b	ecome effe	ctive
	<del></del> •						
PASSED, A	PPROVED, a	nd ADOPTEI	by the G	<b>OVERNING</b>	BODY of	the CITY	OF
TRUTH OR	CONSEQUN	CES thisd	ay of	2022.			

	Amanda Forrister, Mayor	
ATTEST:		
Angela A. Torres, City Clerk	<del></del>	

# AGENDA REQUEST FORM

MEETING DATE: September 14, 2022

Agenda Item #: G.4

· · ·	
SUBJECT: Public Hearing and Final Adoption 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.	
<b>DEPARTMENT:</b> Police Department	
DATE SUBMITTED: September 8, 2022	
SUBMITTED BY: City Clerk Torres	
WHO WILL PRESENT THE ITEM: Victor Rodriguez, Chief of Police	
Summary/Background:	
This proposed ordinance pertains to the closing hours of certain City Parks and Properties.	
Recommendation:	
Dublic Heaving and Final Adouting of Outropy at 12.	
Public Hearing and Final Adoption of Ordinance No. 739.	
Attachments:	_
Attuchments.	
Proposed Ordinance No. 739	
8 -	
Fiscal Impact (Finance): Unknown	_
_	
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. 739	
Continued To: Click here to enter a date. Referred To: Click here to enter text.	
☐ Approved ☐ Denied ☐ Other: Click here to enter text.	
File Name: CC Agendas 9-14-2022	

## **ORDINANCE 739**

AN ORDINANCE AMENDING THE CITY OF TRUTH OR CONSEQUENCES MUNICIPAL CODE OF ORDINANCES, BY AMENDING SECTION 8-149 OF THE CODE PERTAINING TO CLOSING OF CERTAIN CITY PARKS AND PROPERTIES

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

**Section one.** That section 8-149 of the Code of Ordinances of the City of Truth or Consequences be amended so that such section shall read as follows:

**SEC. 8-149.** – Closing of certain city parks and properties.

Angela A. Torres, City Clerk

Designated city parks and properties such as Ralph Edwards Park including Fish Pond Area, Rotary Park, Family Park, Children's Memorial Park, Louis Armijo Sports Complex, Carole Wheeler Dog Park, J.A. Hodges Pool Park, Gene Speer Tennis Complex, Punk Greer Rodeo Arena, Adobe Hills Shooting Range, and the Municipal Golf Course shall be closed every day from 10:00 p.m. through 5:00 a.m. No person or vehicle shall enter, remain on, stay or loiter on these designated city parks or properties between the period commencing at 10:00 p.m. on any day and ending at 5:00 a.m., except by special written permission authorized by the City Manager and/or Rental Agreement for prior approved public and private events. It shall be unlawful for any person or persons to occupy or be present in said park during any hours in which the park is not open to the public.

(Ord. No. 445, § 1, 4-28-97)	
Section two. Effective date. The pr	rovisions of this Amended Ordinance shall become effective
·	
	OPTED by the GOVERNING BODY of the CITY OF
TRUTH OR CONSEQUNCES thi	isday of 2022.
A TOTAL COT	Amanda Forrister, Mayor
ATTEST:	



# **AGENDA REQUEST FORM**

**MEETING DATE**: September 14, 2022

Agenda Item #: G.5

SUBJECT: Public Hearing and Final Adoption 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: September 8, 2022
SUBMITTED BY: Traci Alvarez
WHO WILL PRESENT THE ITEM: Chris Muirhead

Summary/Background: This is for the Intent to Adopt an Ordinance related to a \$750,000 loan with the 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:** Public Hearing and Final Adoption of the Bond Ordinance.

#### **Attachments:**

- Bond Ordinance No. 740
- USDA Project Letter of Conditions

• OSDA 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		
CITY CLERK 5 USE UNLT - COMMINISSION ACTION TAKEN		

Resolution No. Click here to enter text. Ordinance No. 740

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 9-14-2022



#### **United States Department of Agriculture**

**Rural Development** 

August 24. 2021

New Mexico State Office

City of Truth or Consequences

505 Sims Street

Truth or Consequences, NM 87901

100 Sun Ave NE Suite 130 Albuquerque, NM 87109

One Sun Plaza

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** 

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

> 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 <a href="https://www.rd.usda.gov">www.rd.usda.gov</a>.

The conditions are as follows:

# **SECTION I - PROJECT DETAIL**

1. <u>Project Description</u> – 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. <u>Project Funding</u> – 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.

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

<b>Project Costs:</b>	<b>Total Budgeted:</b>	
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 <u>Security</u> – 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. <u>Electronic Payments</u> 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. <u>Construction Completion Timeframe</u> 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. <u>Disbursement of Agency Funds</u> 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. <u>Environmental Requirements</u> 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. <u>Engineering Services</u> 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. <u>Legal Services</u> 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, <a href="https://www.councilofnonprofits.org/tools-resources/conflict-of-interest">https://www.councilofnonprofits.org/tools-resources/conflict-of-interest</a>, or in Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy," at <a href="http://www.irs.gov/pub/irs-pdf/i1023.pdf">http://www.irs.gov/pub/irs-pdf/i1023.pdf</a>. 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. <u>Closing Instructions</u> 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. <u>Interim Financing</u> For all loans exceeding \$500,000, where loan funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be used to preclude the necessity for multiple advances of Agency loan funds. You must provide the Agency with a copy of the interim loan financing agreement for review prior to advertising for bids. The Agency approving official may make an exception when interim financing is cost prohibitive or unavailable. Grant funds from the Agency will be disbursed by multiple advances through electronic transfer of funds after interim financing or Agency loan funds are expended, in accordance with RUS Instruction 1780.45.
- 18. Construction Account You must establish a construction account for all funds related to the project. Construction funds will be deposited with an acceptable financial institution or depository that meets the requirements of 31 CFR Part 202. A separate account will not be required for Federal funds and other funds; however, the recipient must be able to separately identify, report, and account for all Federal funds, including the receipt, obligation and expenditure of funds. Financial institutions or depositaries accepting deposits of public funds and providing other financial agency services to the Federal Government are required to pledge adequate, acceptable securities as collateral, in accordance with 31 CFR Part 202. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the construction account at any one time. Your financial institution can provide additional guidance on collateral pledge requirements.

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

19. <u>System Users</u> – 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.

**Yulnerability 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.** <u>Bid Authorization</u> - 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. <u>Bid Tabulation</u> 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

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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. <u>Final Rights-of-Way</u> 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. <u>Insurance and Bonding Requirements</u> 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.** <u>Initial Compliance Review</u> – 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. <u>Interim Financing</u> 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. <u>Vulnerability Assessment/Emergency Response Plan (VA/ERP)</u> 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: <a href="http://sam.gov">http://sam.gov</a>. 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 <a href="http://sam.gov">http://sam.gov</a>).
- b. <u>Litigation</u>. 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. <u>Certified Operator</u>. 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. <u>Inspections</u> 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.
- <u>Payments</u> 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. <u>Use of Remaining Funds</u> 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 <u>original</u> 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. <u>Financial Audit</u>— 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 <a href="https://www.fsrs.gov">www.fsrs.gov</a>. Your Agency processing office can provide more information.

#### SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

41. <u>Prepayment and Extra Payments</u> - 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. <u>Graduation</u> 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.** <u>Security/Operational Inspections</u> 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.

- **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. <u>Insurance</u>. 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.** <u>Statutory and National Policy Requirements</u> 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 <u>et seq.</u>) 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** 

Digitally signed by CHRISTINE GRIEGO Date: 2021.08.24 15:56:13

GRIEGO

Christine Griego

**Acting Community Program Director** 

Attachments

cc: Community Programs Director

Accountant Attorney Bond Counsel Engineer

#### **ACRONYMS**:

ABA - Architectural Barriers Act

ACH - Automated Clearing House

AD – Agriculture Department

ADA – Age Discrimination Act

AIS - American Iron and Steel

CFDA – Catalog of Federal Domestic Assistance

CFR – Code of Federal Regulations

CPAP - Commercial Programs Application Processing

DUNS - Dun and Bradstreet Data Universal Numbering System

EJCDC - Engineers Joint Contract Documents Committee

ERP – Emergency Response Plan

GAAP - Generally Accepted Accounting Principles

GAGAS - Generally Accepted Government Auditing Standards

LEP – Limited English Proficiency

NPA – Nationwide Programmatic Agreement

OC – Owner Construction

**OPS – Owner-Performed Services** 

O&M - Operation and Maintenance

PER – Preliminary Engineering Report

RD – Rural Development

RUS - Rural Utilities Service

SAM – System for Award Management

SF – Standard Form

UCC - Uniform Commercial Code

USC – United States Code

USDA - United States Department of Agriculture

VA – Vulnerability Assessment

#### **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 <a href="http://www.sam.gov">http://www.sam.gov</a>).
- 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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**Topical Cross-Reference** 

### **TOPICAL CROSS-REFERENCE**

Age Discrimination Act         48         VII           Agreement, Engineering         11         III           Agreement, Lease         15         III           Agreement, Cother         15         III           Agreement, Other         15         III           Agreement, Parity / Intercreditor         5         II           Agreement, Parity / Intercreditor         15         III           Agreement, Water / Sewer User         15         III           Americans with Disabilities Act         48, 49         VII           Annual Operating Budget and Projected Cash Flow         45         VII           Annual Financial Reporting/Audit Requirements         44         VII           Audit (Construction)         40         VI           Audit (Servicing)         44         VII           Bid Authorization         24         III           Bid Tabulation         25         IV           Bond, Fidelity         28         IV           Bond, Fidelity         47         VII           Bond, Fidelity         47         VII           Bond, Revenue and General Obligation         5         II           Budget, Project         3         1           <	<u>Keyword</u>	<u>Item</u> Number	Section
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Sincerely,

Elizabeth Ybarra Loan Specialist – Water and Environmental Programs

Enclosure (if applicable)

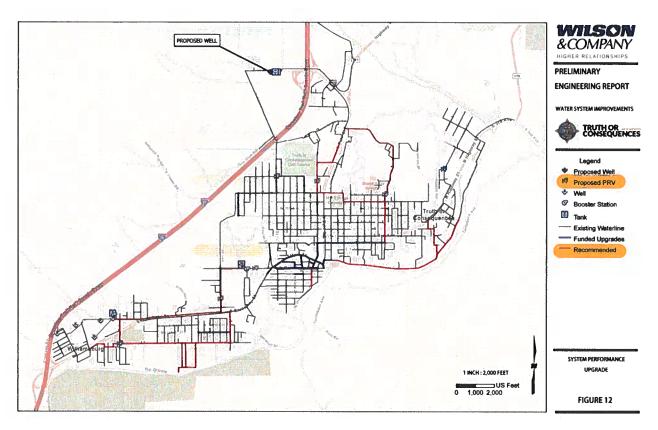


Figure 12: Alternative III System Performance Upgrade



#### Project No. 19-600-216-01

#### 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 an6, 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 8<sup>th</sup> and East 9<sup>th</sup> 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 entirely. 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  $\sim$  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 <u>Potential Construction Problems</u>

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: September 14, 2022

Agenda Item #: H.1

SUBJECT: Resolution No. 10 22/23 Budget Adjustment Request  DEPARTMENT: Finance Department  DATE SUBMITTED: September 7, 2022
SUBMITTED BY: Carol Kirkpatrick, Finance Director WHO WILL PRESENT THE ITEM: Carol Kirkpatrick, Finance Director
Summary/Background: Reconciling Budget Adjustments Requests (based on Chapter 6, Article 6 NM Statute)
needed for budget adjustments, increases, and decreases per attached.
Recommendation:
Approval Resolution No. 10 22/23 Budget Adjustment Requests for Fiscal Year 2022-2023
Attachments:
Resolution No 10 22/23  • Schedule of Budget Adjustments, Supporting Documentation
Sales of Badget Adjustments, Supporting Botamentation
Fiscal Impact (Finance): Yes
Changes in funding as presented on the Department of Finance and Administration Schedule of Budget Adjustments
Legal Review (City Attorney): 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 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 9-14-22



#### **RESOLUTION NO. 10 22/23**

# A RESOLUTION REQUESTING FINAL BUDGET ADJUSTMENTS IN THE REVENUE AND EXPENDITURE BUDGET FOR FISCAL YEAR 2022-2023.

WHEREAS, the final budget for was approved by the City Commission of the City of Truth or Consequences, New Mexico, pursuant to Chapter 6, Article 76 NMSA 1978; and

WHEREAS, the City Commission in and for the City of Truth or Consequences, State of New Mexico needs to adjust the current approved budget for Fiscal Year 2022-2023; and

WHEREAS, said budget was adjusted on the basis of need and through cooperation with all user departments, elected officials and other department supervisors; and

WHEREAS, the official meeting for the review of said documents was duly advertised in compliance with the State Open Meetings act; and

WHEREAS, it is the majority opinion of this Board that the adjusted budget meets the requirements as currently determined.

**NOW THEREFORE**, **BE IT RESOLVED** that the City Commission of the City of Truth or Consequences, State of New Mexico hereby adopts the budget adjustment hereinabove described and attached and respectfully requests approval from the Local Government Division of the Department of Finance and Administration.

PASSED, ADOPTED and APPROVED this 14th day of September, 2022.

	Amanda Forrister, Mayor
ATTEST:	
Angela A. Torres, City Clerk-Treasurer	

# Department of Finance and Administration Local Government Division Financial Management Bureau SCHEDULE OF BUDGET ADJUSTMENTS

ENTITY NAME: FISCAL YEAR: DFA Resolutio BAR NUMBER		City of Truth or Consequence 2022-23 10 22/23	s 9/14/2022  								
DOCUMENT NUMBER	FUND	ACCOUNT STRING	ACCOUNT NAME	REVENUE, EXPENDITURE, or RANSFER (TO or FROM	APPROVI BUDGE	ED	ADJUSTMENT /INCREASE	ADJUSTMENT / DECREASE	江州城南	ADJUSTED BUDGET	PURPOSE
1	Fiscal Recovery Funds	260-2002-31375	Federal Grants	Revenue	\$	-	\$ 712,404.00	<b>\$</b> -	\$	712,404	Received 2nd half of Fiscal Recovery Funds.
1	Fiscal Recovery Funds	260-2002-47415	Maint & Repair Grounds and Roadways	Expense	\$	-	\$ 445,666	\$ -	\$	445,666	Budget funds temporarily in Maint & Repair until further decisions can be made on use of funds
1	Fiscal Recovery Funds	260-2002	Transfer Out	Expense			\$ 266,738		\$	266,738	Reimbursement owed to fund 315 from 2021-22 payment on Roundabout.
									\$	-	6
2	General	101-1099-32381	Clean & Beautiful	Revenue	\$	-	\$ 1,679		\$	1,679	Budget award for NM Clean & Beautiful Grant Awarded
2	General	101-1009-44613	Supply Assets	Expense			<b>\$</b> 1,679	\$ -	\$	1,679	NM Clean & Beautiful for Recycled Benches
									\$		
3	Senior Grants	304-4903-32314	SJOA Grant	Revenue	\$ 105,4	413	\$ 35,000	\$ -	\$	140,413	Senior Grants (SJOA) Junior Bill Appropriations for
3	Senior Grants	304-4903-80810	Equipment / Vehicles	Expense	\$ 112,3	346	\$ 35,000		\$	147,346	Additional funds to use toward purchase of vehicle
-									\$	-	
						+					
			-			-			_		
	_	<u> </u>	1								<u></u>
ATTEST:		Angela Torres, Clerk-Treasu	ır (Date)						Am	anda Forrister, Mayo	or (Date)

For Local Government Division use only:

# **DOCUMENT #1**

### Payments & transfers

# Create a transfer ₩



**⊘** Your transfer is pending client approval. Your reference number is 116699457.

**Template** 

Open transfer

From account

**JOINT UTILITY \*\*\*\*8891** 

To account

Special Revenue Funds \*\*\*\*2876

**Date** 

Sep 02, 2022

**Amount** 

\$712,403.50

Description

2021 FISCAL RECOVERY FUNDS 2ND 1/2 DISTRIBUTION

### **JOINT UTILITY - \*\*\*\*8891 →**

#### **Search transactions**

Activity: All transactions Type: All; Amount: \$712,403.50

### **Transactions**

Pending	• Posted	Totals ar	e not supported	d for your search criteria.
Date 🗸	Description \$	Debit 💠	Credit \$	Balance
Sep 01, 202	2 VNDR PYMT State of New Mex FY23 NEU DISTRIBUTION #2 DFA Contact Jeannette Galle		712,403.50	
Jul 29, 202	1 2021 FISCAL RECOVERY FUNDS 1/2 DISTRIBUTION	712,403.50		
<ul><li>Jul 23, 202</li></ul>	1 VNDR PYMT State of New Mex 20210720 DFA Contact Jeannette Gallegos 505-660-8744		712,403.50	

# **DOCUMENT #2**



### 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
<b>DEPARTMENT:</b> 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:
<ul> <li>State of NM Tourism Department Clean and Beautiful Grant Program Agreement</li> </ul>
• -
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;

#### <u>AGREEMENT</u>

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 CONSEQU	ENCES)
By:	Yodel Catanach, NMTD ASD Director	Date:
Appr	roved for legal sufficiency:	
Ву:	Jennifer Saavedra, NMTD General Counsel	Date:
Ву:	Antoinette Vigil, NMTD Deputy Secretary	Date:
Taxat	records of the Taxation and Revenue Department reflection and Revenue Department of the State of Newbensating taxes.	et that the Partner is registered with the Mexico to pay gross receipts and
ID N	umber: <u>01-405755-00-7</u>	
By:	Taxation and Revenue Department	Date:

	PROJECT AWA				
Cľ	TY OF TRUTH O			2 2	
	Goal 1	Goal 2	Goal 3	Goal 4	Goal 5
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	W. T. S. V. T. S.	

Lancing Adams	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 <u>Volunteer Sign-In Sheet</u>. 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 <a href="https://www.independentsector.org/volunteer">https://www.independentsector.org/volunteer</a> 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 <u>Initial Disbursement Invoice</u>. 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 <u>Final Reimbursement Request Packet</u> 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: <a href="https://nmtourism.smapply.io/res/p/nmcbresources/">https://nmtourism.smapply.io/res/p/nmcbresources/</a>
- Submission of all required forms and back-up documentation must be submitted via upload to the Survey Monkey Apply portal located at: <a href="https://nmtourism.smapply.io/">https://nmtourism.smapply.io/</a> 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 <a href="mailto:lucy.stanus@state.nm.us">lucy.stanus@state.nm.us</a> or by phone at 505-660-4734.

# **DOCUMENT#3**

# Aging & Long-Term Services Department (ALTSD) Junior Bill Appropriations Agreement

APPROPRIATION RECIPIENT: City of Truth or Consequences/Sierra Joint Office on Aging

APPROPRIATION NUMBER: APPROPRIATION AMOUNT: REVERSION DATE: 65100000000 \$35,000 June 30, 2023

# APPROPRIATION LANGUAGE

For senior meal sites

Grant funds unexpended by June 30, 2023, will be reverted to the State of New Mexico's general fund.

# APPROPRIATION REIMBURSEMENT

The appropriation funds will be disbursed through a reimbursement process. The Appropriation Recipient will submit to the ALTSD Exhibit A: Request for Payment Form, along with supporting document(s) that evidence the expenses to be reimbursed. The ALTSD will review these documents to ensure all reimbursed expenses reflect the intent and purpose of the appropriation language. All expenditures for which the Appropriation Recipient requests reimbursement must occur prior to the reversion date.

# CERTIFICATION

I hereby certify that:

- 1. Shall only use the appropriation funds to earry out or perform activities described in appropriation language.
- Shall comply with the State Procurement Code and the execution of binding written obligations or purchase orders
  with third party contractors or vendors for the provision of services, including professional services, or the
  purchase of tangible personal property and real property for the project.
- Shall ensure that the appropriation funds only benefit entities in accordance with applicable law, including, but not limited to Article IX, Section 14 of the Constitution of the State of New Mexico, "Anti-Donation Clause."
   Shall follow the procedure described in "Appropriation Reimbursement" section for reimbursement of

appropriated funds.	Aug 10, 2022
Entity	Date 8-17-22
Entity	Date

# APPROVAL

In accordance with the authority conferred on the Aging & Long-Term Services Department by the statute appropriating these funds, I hereby approve this certification for appropriation number XXXX in the amount of .

ALTSD Agency	Date
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# CITY OF TRUTH OR CONSEQUENCES

MEETING DATE: September 14, 2022

Agenda Item #: H.2

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SUBJECT: Publication of Ordinance No. 735 Amending Section 14-48 pertaining to the Customer Generated
Renewable Energy Program
<b>DEPARTMENT:</b> City Manager's Office
DATE SUBMITTED: September 8, 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:
<ul> <li>Ordinance No. 735</li> <li>-</li> </ul>
Fiscal Impact (Finance): N/A
-
Legal Review (City Attorney): Yes
<b>-</b>
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 9-14-2022

# **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 1<sup>st</sup>. day of September, 2022.

**ANGELA TORRES** –City Clerk

PASSED, APPROVED, and AD TRUTH OR CONSEQUNCES th	OOPTED by the GOVERNING BODY of the CITY OF hisday of 2022.
	AMANDA FORRISTER – Mayor
ATTEST:	

# CITY OF TRUTH OR CONSEQUENCES

# AGENDA REQUEST FORM

MEETING DATE: September 14, 2022

Agenda Item #: I.1

	A.
SUBJECT:	Approval of the Spaceport Visitors Center Memorandum of Understanding.
DEPARTM	ENT: City Manager's Office
DATE SUB	MITTED: September 8, 2022
SUBMITTE	D BY: Tammy Gardner
	L PRESENT THE ITEM: Bruce Swingle, City Manager
Summary,	Background:
<b>-</b> 1 · · · · ·	
	the use of the Lee Belle Johnson Center located at 301 S. Foch Street for the continued use as an
exnibit spa	ace and Visitor Center.
Recomme	ndation:
Approval o	of MOU.
Attachme	nts:
• M0	DU
• -	
Fiscal Imp	act (Finance): N/A
-	
Lenal Revi	ew (City Attorney): Yes
Legui nevi	ew (City Attorney). Tes
-	
Annroyad	For Cubmitted Buy M Donortmont Director
	For Submittal By:   Department Director
Reviewed	by: ☐ City Clerk ☐ Finance ☒ Legal ☐ Other: Click here to enter text.
Final Appr	oval: ⊠ City Manager
	CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN
Resolution	on No. Click here to enter text. Ordinance No. Click here to enter text.
	ed To: Click here to enter a date. Referred To: Click here to enter text.
☐ Appro	
	e: CC Agendas 9-14-2022
and the state of t	- O-



# MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU"), dated as of this 22<sup>nd</sup> day of August, 2022, is made and entered into by and between the City of Truth or Consequences, New Mexico, a municipal corporation (the "City"), and the New Mexico Spaceport Authority (the "Authority") (collectively, the "Parties") to provide for the shared use of the Lee Belle Johnson Center owned by the City and located at 301 South Foch Street, Truth or Consequences, New Mexico, for the governmental purposes described herein.

# I. Recitals

WHEREAS, the Authority is an agency of the State of New Mexico (the "State") that is administratively attached to the Economic Development Department of the State, and is the operator of Spaceport America (the "Spaceport"), located in Sierra County not far from the City; and

WHEREAS, the City is a municipal corporation under the laws of the State and is a political subdivision of the State; and

WHEREAS, the premises have been leased to the Authority since 2017 for the purpose of providing an exhibit space and visitor center within the City to accommodate persons wishing to learn more about the Spaceport and to arrange for and participate in tours to the Spaceport; and

WHEREAS, the Parties wish to provide for continued use of the Premises, as set forth herein, to serve essentially the same purposes as an exhibit space and visitor center that the Premises served under the previous lease; and

WHEREAS, the Authority intends to continue using the Premises for the same purposes, which is a normal use within the regular operations of the Lee Belle Johnson Center for the use and enjoyment of the public, including both residents of the City and visitors to the City; and

WHEREAS, the Premises at the Lee Belle Johnson Center are located within the City on the east side of the Interstate Highway 25, thus falling within the area previously contemplated for Spaceport-related visitor center, as memorialized in a 2008 memorandum of understanding between the Authority and Sierra County; and

WHEREAS, it is economically advantageous for the City to cooperate with the Authority to provide a visitor center that will attract Spaceport visitors to the City, since such visitors are likely to spend money locally for lodging, food, and other items, thus benefitting tourism-related business in the City; and



WHEREAS, the Authority is authorized to enter into cooperative agreements with municipalities, including this MOU, in accordance with Section 58-31-5(B) NMSA 1978.

# II. Understanding of the Parties

Now, therefore, the Parties agree as follows:

- 1. Possession and Use of Premises. During the term of this MOU, the Authority shall have primary possession and use of the Premises shown on Exhibit "A-1", including in particular the gym, raised platform and kitchen areas of the Lee Belle Johnson Center, for a visitor center and exhibit space. The Authority shall also have shared use of all other portions of the Lee Belle Johnson Center, in common with the City, as needed to support the Authority's use of the Premises for a visitor center and exhibit space. The Authority may make use of the Premises for any activities or purposes reasonably calculated or intended to support the Authority's purposes, powers and duties as set forth in the Spaceport Development Act, Sections 58-31-1 et seq., NMSA 1978, as amended and supplemented.
- 2. Allocation of Costs and Duties. In consideration of the Spaceport's contribution to tourism and the economic benefits it provides to the City, there shall be no charge to the Authority for use of the Premises. However, the Authority shall pay the City three hundred dollars (\$300) per month to defray costs of electric, gas, water, wastewater and solid waste utilities and services. The Authority shall ensure that all invoices for such utilities and services are timely paid to the City.

The Authority shall be responsible for minor day-to-day maintenance and cleaning of exhibits and any other Authority property kept or stored on the Premises. The City as owner shall be responsible for all utilities and for the cleaning and maintenance of the (gym) floor inside the Spaceport Visitor Center area, the stage (raised platform) flooring, shared common areas, including rest rooms and other areas of shared or common use. The City shall also provide for maintenance and repair, if necessary, of the Lee Belle Johnson Center building and grounds, including fixtures and any furniture or other appurtenances owned by the City. As there was a severe mold issue discovered in the storage areas dedicated to the Spaceport Visitor Center in 2016, the City will also be responsible for mold remediation and ongoing maintenance to prevent reoccurring mold within the Space Visitor Center areas.

3. Modifications of Premises. The Authority shall make structural modifications to the Premises only with the written consent of the City. In the event that the Authority and the City agree to make any structural modifications or enhancements to the Premises, the costs of such modifications or enhancements shall be shared as determined by the Parties, and shall be reflected in a separate memorandum of understanding or other written



agreement reflecting each Party's share of the costs and responsibility for completion of the work.

- 4. Contractors, Subcontractors and Associated Entities. In conjunction with its use of the Premises, the Authority may from time to time permit the use of the Premises by contractors and subcontractors of the Authority or by other persons or entities, either public or private, for any purposes that are reasonably calculated to support the Authority's programs, to provide goods and services needed or requested by the Authority, or to support tourism in the City and in Sierra County. If the Premises or any portion thereof are made available for use by a private (non-governmental) person or entity, the Authority and the City shall negotiate reasonable compensation to be made for the use by such person or entity, and shall enter into a contract reflecting the terms of use, the payment of compensation, and the allocation of such compensation as between the Authority and the City. The Authority shall notify the City as to the identity and contact information of all Authority contractors, subcontractors, and associated entities entitled to any occupancy or use of the Premises under the provisions of this Paragraph 4. Notwithstanding the provisions of this paragraph, the Authority may permit tour operators to use the site as a location for commencing and terminating tours of the Spaceport without such use being considered use of the Premises so long as the tour operator does not establish an office, service counter or other facility on the Premises.
- 5. <u>Business Registration: Gross Receipts Taxes.</u> In the event that the Premises or any portion thereof are made available for use by a business other than a not-for-profit corporation or entity, the Authority shall ensure that the business is registered in the City and that the owner thereof is aware of his or her obligations to pay gross receipts taxes under the appropriate Location Code (21-124) of the New Mexico Taxation & Revenue Department for businesses located within the City.
- 6. Term. This MOU shall be effective on the date signed on behalf of both Parties and shall continue through the date that is one (1) years from the effective date, unless otherwise terminated by the Authority or by mutual agreement of the Parties as provided herein. The Authority may commence its occupation and use the Premises on the effective date. This MOU may be extended for a further term or terms by mutual consent of the Parties, reflected in a writing executed on behalf of both Parties.
- 7. <u>Voluntary Termination</u>. This MOU may be terminated at any time by mutual written agreement of the Parties, for their mutual benefit. This MOU may also be terminated by either party upon thirty (30) days written notice to the other party.
- 8. <u>Amendment.</u> This MOU may be amended at any time by mutual agreement of the Parties, so long as such amendment is reflected in a writing duly executed on behalf of the Parties by appropriate officers of each, but no unwritten understanding contrary to this MOU



shall be binding on the Parties.

- 9. Insurance and Indemnification. During the term of this MOU, the City shall maintain fire and casualty insurance and general liability insurance for the Lee Belle Johnson Center in the amounts and subject to the coverage limitations imposed in the City's general policies of insurance through the New Mexico Self Insurers Fund or other insurance providers. The Authority during the term of this MOU shall maintain appropriate and adequate general liability coverage through the State's Risk Management Division or through other insurance providers. Each Party agrees to defend, indemnify and hold harmless the other Party against any claims or causes of action resulting from death, injury or damage as a consequence of the negligence or malfeasance of the indemnifying Party or any of its officers, employees, agents, contractors, or subcontractors. Nothing in this MOU shall be construed to limit or modify any immunity or protection provided to either Party under the New Mexico Tort Claims Act, Sections 41-4-1 et seq., NMSA 1978, which remains in full force and effect notwithstanding any provision hereof.
- 10. <u>Integration Clause</u>. This MOU contains the entire agreement of the Parties hereto with respect to any matter covered or mentioned in this MOU, and no prior agreements or understanding pertaining to any such matters, to the extent inconsistent with the MOU, shall be effective for any purpose.
- 11. <u>Headings and Titles.</u> The headings and titles contained in this MOU are for ease of reference only, and shall not be construed to affect meaning, construction or interpretation hereof.
- 12. <u>Notices.</u> Any notice under this MOU may be made in writing (including by telefax or by e-mail) to the Parties at their respective addresses, as follows:

To the City, to:

City of Truth or Consequences Attn.: City Manager 505 Sims Street Truth or Consequences, NM 87901 Fax (575)894-6690

To the Authority, to:

New Mexico Spaceport Authority Attn.: Executive Director 4605 Research Park Circle A Las Cruces, NM 88001



IN WITNESS WHEREOF, and upon the authority of their respective governing bodies, the Parties through their authorized officers have executed this Memorandum of Understanding as of the dates written below:

CITY OF TRUTH OR CONSEQUENCES	
Authorized Signature By: Bruce Swingle Its: City Manager	Date
NEW MEXICO SPACEPORT AUTHORITY	August 23, 2022
Authorized signature By: Scott A. McLaughlin	Date

File Name: CC Agendas 9-14-2022

# CITY OF TRUTH OR CONSEQUENCES

# AGENDA REQUEST FORM

MEETING DATE: September 14, 2022

Agenda Item #: I.2

And the second s
SUBJECT: Discussion/Action: Approve Contract Package and Agreement between City of T or C and Smithco Construction Inc. for Main Street District (MSD) Water System Improvements Project DEPARTMENT: Assistant City Manager DATE SUBMITTED: September 8, 2022 SUBMITTED BY: Traci Alvarez WHO WILL PRESENT THE ITEM: Traci Alvarez
Summary/Background:
City issued a Notice of Award to Smithco Construction for the Main Street District (MSD) Water System improvements Project. This is the contract package and agreement for this award. Project is funded by USDA Grant/Loan.
Recommendation:
Staff recommends approval of the contract package and agreement.
Notice of Award     Contract Package including Agreement
Fiscal Impact (Finance): Yes
Project has been budgeted. Construction contract agreement \$6,851,722.59
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 have to enter text. Ordinance No  Continued To: - Referred To: -

# **NOTICE OF AWARD**

Date of

08/31/2022

Owner:	City of Truth or Consequences	Owner's Project No.: 19-600-205-00		
ingineer:	Wilson & Company, Engineers and Architects, Inc.	Engineer's Project No.: 19-600-205-0		
Project:	Main Street District (MSD) Water System Improvement	ents .		
Contac Name:	Main Street District (MSD) Water System Improveme	ents .		
	Smithco Construction, Inc.			
Bidder's	6 King Canyon Loop, Caballo, New Mexico, 87931			
	ed that the Owner has accepted your Bid dated <b>08/3</b> he Successful Bidder and are awarded a Contract for:	-		
	\$6,851,722.59. The owner reserves the right to add and base Alternate 2 at a later date as funding allows.	portion of the base Additive		
adjustment b	Price of the awarded Contract is \$[ \$6,851,722.59 ased on the provisions of the Contract, including but Price Work, and Work performed on a cost-plus-fee	not limited to those governing		
Contract Docu	[5] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.			
☐ Dr	awings will be delivered separately from the other Co	ontract Documents.		
	You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:			
1. Delive	. Deliver to Owner [5] counterparts of the Agreement, signed by Bidder (as Contractor).			
paym	<ol> <li>Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.</li> </ol>			
3. Other	conditions precedent (if any):			
	Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.			
counterpart o	rs after you comply with the above conditions, Owne of the Agreement, together with any additional copies aragraph 2.02 of the General Conditions.			
Owner:	City of Truth or Consequences			
By (signature	e): B			
Name (printe	ed): Bruce Swingle			
Title:	City Manager			
Copy: Engin	eer			
	EJCDC® C-510, Notice of Award.			
	EJUDU- U-STU, NUTICE OF AWARD.			

# FOR CONSTRUCTION OF

# MAIN STREET DISTRICT (MSD) WATER SYSTEM IMPROVEMENTS

Wilson & Company Project No. 19-600-205-00

# PREPARED FOR:

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

# CONSTRUCTION DOCUMENTS PREPARED BY:

Wilson & Company, Inc., Engineers & Architects 4401 Masthead St. NE, Suite 150 Albuquerque NM 87109

September 2022



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These Plans and Contract Specifications, for the <u>CITY OF TRUTH OR CONSEQUENCES</u>, <u>Main Street District</u> (MSD) WATER SYSTEM IMPROVEMENTS PROJECT, were prepared by:

Wilson & Company, Inc., Engineers & Architects 4401 Masthead St. NE, Suite 150 Albuquerque NM 87109

The Technical Material and data contained in the specification were prepared by or under the supervision and direction of Mr. Mark A. Nasi, P.E., whose seal as a Professional Engineer, licensed to practice in the State of New Mexico is affixed below.

RRK A. NAO		
TOFESSION ME		
01/13/2022	Date:	
ool)		

(Seal)

All questions about the meaning or intent of these documents shall be submitted only to the Engineer of Record, stated above, in writing for interpretations.

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# City of Truth or Consequences Main Street District (MSD) Water System Improvements

Wilson & Company, Inc. Project No. 19-600-205-00

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# AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between [ty of Truth or Consequences] ("Owner") and [Smithco Construction, Inc.] ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

#### **ARTICLE 1—WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The project is to replace 9,415 feet of waterline in the Main Street District (MSD) of the City of Truth or Consequences with 6, 8, 12 and 18-inch PVC waterline via open trench. All service connections will be replaced with new service lines, meter cans, and meters. Upgrades to the Cook Street Booster Station site to include a gas chlorination system, VFD booster pumps with electrica, meter, and chlorination injection vaults.

#### ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Main Street District (MSD) Water System Improvements

## **ARTICLE 3—ENGINEER**

- 3.01 The Owner has retained **Wilson & Company, Inc., Engineers & Architects** ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by **Wilson & Company, Inc., Engineers & Architects** ("Engineering").

## **ARTICLE 4—CONTRACT TIMES**

- 4.01 Time is of the Essence
  - A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 Contract Times: Days
  - A. The Work will be substantially complete within **360** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **30** days after the date when the Contract Times commence to run.

# 4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
  - 1. Substantial Completion: Contractor shall pay Owner \$[1,075.00] for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
  - Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$[1,430.00] for each day that expires after such time until the Work is completed and ready for final payment.
  - 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

# 4.04 Special Damages

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

# **ARTICLE 5—CONTRACT PRICE**

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

	UNIT PRICE WORK					
#	DESCRIPTION	UNIT	ESTIMATED QTY	UNIT PRICE	COST	
	ALLOWANCES AND MISCELLANEOUS					
1	Mobilization & Demobilization	LS	1	\$350,000.00	\$350,000.00	
2	SWPPP Preparation	LS	1	\$25,000.00	\$25,000.00	
3	SWPPP Implementation and inspection	LS	1	\$25,000.00	\$25,000.00	
4	Construction Sign	LS	1	\$2,000.00	\$2,000.00	
5	Construction Survey to include staking, layout, and identifying project boundaries.	LS	1	\$100,000.00	\$100,000.00	
6	Traffic Control	LS	1	\$350,000.00	\$350,000.00	
7	Utility Relocation	ALLW	1	\$50,000.00	\$50,000.00	
8	Material Testing Allowance	ALLW	1	\$73,339.00	\$73,339.00	
9	Subsurface Utility Locating	ALLW	1	\$50,000.00	\$50,000.00	
10	SCADA Allowance	ALLW	1	\$150,000.00	\$150,000.00	
	ALLOWANCES SUBTOTAL				\$1,175,339.00	

- A. For all Work from items 1-10 other than Unit Price Work, a lump sum of \$[1,175,339.00].

  All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.
- B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

	UNIT PRICE WOR	Κ			
#	DESCRIPTION	UNIT	ESTIMATED QTY	UNIT PRICE	COST
	COOK ST. TREATMENT FACILITY CO	ISTRUCTION	ON ITEMS	-	
17	Furnish and Install 18-Inch DIP, Including Trenching and Compacted Backfill, per APWA Standard Spec. 801, Complete in Place	LF	28	\$180.00	\$5,040.00
18	Finish and install Val-Matic Check valve, CIP	EA	2	\$30,000.00	\$60,000.00
19	Furnish and install ARV W/ Furnish and appurtenances, CIP	EA	2	\$6,000.00	\$12,000.00
20	Furnish and Install 10" E+H Magmeter, Promag W400, 5W4C2F, DN30 12 9'X5' in precast concrete vault with bypass, and new chlorine injection port. CIP	LS	1	\$45,000.00	\$45,000.00
21	Furnish and install Pump and Motor W/ VFD	EA	2	\$125,000.00	\$250,000.00
22	Ductile Iron MJ fittings, class 250,18" Waterlines incl. Joining Material	LB	2175	\$5.00	\$10,875.00
22.A	18" Gate Valves w/ Valve Can, CIP	EA	1	\$25,000.00	\$25,000.00
23	Furnish and Install 10-Inch Cast Iron Gate Valve (MJ)	EA	2	\$6,000.00	\$12,000.00
24	Furnish and Install 12-Inch Cast Iron Gate Valve (MJ)	EA	2	\$6,500.00	\$13,000.00
25	Connect to Existing 18-Inch Waterline, Complete in Place	EA	2	\$8,500.00	\$17,000.00
26	Furnish and install new gas- chlorination disinfection system, including fiberglass shed, CIP.	EA	1	\$70,000.00	\$70,000.00
28	Chlorination Building Foundation Pad, including subgrade prepreinforcement, Installed	LS	1	\$60,000.00	\$60,000.00
29	Furnish and Install 18-Inch DI Mechanically Restrained pipe length from T to T along per APWA Standard Spec. 801, Complete in Place, T's W/ restrains on all Sides	LF	28	\$50.00	\$1,400.00
30	12" E+H Magmeter, Promag W400, 5W4C3H, DN30 12, 7'X7' in precast concrete vault with bypass.CIP	EA	1	\$48,000.00	\$48,000.00

#	DESCRIPTION	UNIT	ESTIMATED QTY	UNIT PRICE	COST	
	IMPROVEMENTS TO DISTRIBUTION SYSTEM					
31	6-inch FPVC C-900, DR 18 PVC Pipe: Horizontal Directional Drill	LF	0.00	\$0.00	\$0.00	
32	8-inch FPVC C-900, DR 18 PVC Pipe: Horizontal Directional Drill	LF	0.00	\$0.00	\$0.00	
33	12-inch FPVC C-900, DR 18 PVC Pipe: Horizontal Directional Drill	LF	340.00	\$477.00	\$162,180.00	
34	6" Waterline C-900 DR-18 PVC Pipe Installed	LF	279.00	\$50.00	\$13,950.00	
35	8" Waterline C-900 DR-18 PVC Pipe Installed	LF	3512.00	\$100.00	\$351,200.00	
36	12" Waterline C-900 DR-18 PVC Pipe Installed	LF	5256.00	\$150.00	\$788,400.00	
37.A	6-inch FPVC C-900, DR 18 PVC Pipe: Pipe Bursting Method	LF	0.00	\$0.00	\$0.00	
37	8-inch FPVC C-900, DR 18 PVC Pipe: Pipe Bursting Method	LF	0.00	\$0.00	\$0.00	
38	12-inch FPVC C-900, DR 18 PVC Pipe: Pipe Bursting Method	LF	0.00	\$1,100.00	\$0.00	
39	6" PVC pipe restrained coupling installed Series #3800S	EA	10.00	\$3,500.00	\$35,000.00	
40	8" PVC pipe restrained coupling installed Series #3808S	EA	6.00	\$3,800.00	\$22,800.00	
41	12" PVC pipe restrained coupling installed Series #3812S	EA	3.00	\$4,000.00	\$12,000.00	
42	6" Gate Valves w/ Valve Can, CIP	EA	17.00	\$3,000.00	\$51,000.00	
43	8" Gate Valves w/ Valve Can, CIP	EA	34.00	\$3,800.00	\$129,200.00	
44	12" Gate Valves w/ Valve Can, CIP	EA	45.00	\$4,200.00	\$189,000.00	
44.A	1 "Combination Air Release Valve (CARV) Assembly	EA	1.00	\$7,000.00	\$7,000.00	
45	4 1/2'-Depth Fire Hydrant w/ piping valves, and connection	EA	1.00	\$10,000.00	\$10,000.00	
46	3 1/2'-Depth Fire Hydrant w/ piping valves, and connection	EA	15.00	\$10,000.00	\$150,000.00	
47	Pressurized waterline connections, CIP	EA	13.00	\$11,500.00	\$149,500.00	
48	Ductile Iron MJ Fittings, All Sizes, Class 25, CIP	LB	12760.00	\$3.00	\$38,280.00	
49	Joint Restraints 4"-8", CIP	EA	84.00	\$100.00	\$8,400.00	
50	Joint Restraints 10"-12", CIP	EA	110.00	\$200.00	\$22,000.00	
30	Water Meter Box Remove & Replace, incl connectors & smart	LA	110.00	\$200.00	322,000.00	
51	valve, compl.	EA	108.00	\$2,600.00	\$280,800.00	
52	Dewatering of Trench and Bore Pits, CIP	LF	2924.00	\$50.00	¢146 200 00	
53	Temporary water services	LF	0.00	\$0.00	\$146,200.00	
54	Temporary Service connection	EA	0.00	\$0.00	<del></del>	
	ROADWAY	LA	0.00	\$0.00	\$0.00	
	Asphalt Roadway, Remove, Dispose and Replace with SP IV, 3"	T				
55	Thick for Residential Streets, include Base Course and, Subgrade	SY	432.00	\$70.00	\$30,240.00	
33	Prep, CIP	31	432.00	\$70.00	\$30,240.00	
	Asphalt Roadway, Remove, Dispose and Replace with SP III, 4"					
56	Thick for NMDOT ROW, include Base Course and Subgrade Prep,	SY	4430.00	\$100.00	\$443,000.00	
30	CIP	31	4430.00	\$100.00	\$445,000.00	
57	Excavate and Dispose of Unsuitable Material, CIP	CY	2954.00	\$10.00	\$29,540.00	
58	Import of select material	CY	2954.00	\$25.00	\$73,850.00	
59	Geogrid Base Roadway Reinforcement	SY	4863.00	\$5.00	\$24,315.00	
60	Remove and replace Curb and Gutter, CIP	LF	392.00	\$35.00		
61	Remove and replace Sidewalk, CIP	SY	308.00	\$90.00	\$13,720.00	
01	ELECTRICAL / CONTR		306.00	\$30.00	\$27,720.00	
62		T	1	ĆEE 000 00	¢55 000 00	
63	Well 1 Demolition and Installation, CIP	LS	1	\$55,000.00	\$55,000.00	
$\overline{}$	Well 2 Demolition and Installation, CIP	LS	1	\$120,000.00	\$120,000.00	
64	Well 6 Demolition and Installation, CIP  Well 7 Demolition and Installation, CIP	LS	1	\$68,000.00	\$68,000.00	
65		LS	1	\$68,000.00	\$68,000.00	
66	Well 8 Demolition and Installation, CIP	LS	0	\$0.00	\$0.00	
67	Morgan St. Demolition and Installation, CIP	LS	1	\$82,000.00	\$82,000.00	
68	Cemetery St. Demolition and Installation, CIP	LS	1	\$130,000.00	\$130,000.00	
69	Cook St. Demolition and Installation, CIP	LS	1	\$750,000.00	\$750,000.00	
70	MECHANICAL  Cool So Percelition Physics IIIVAC and textulation CIP	1.0		420.000.00	Ang. 222.52	
70	Cook St. Demolition, Plumbing, HVAC and Installation, CIP	LS	1	\$28,000.00	\$28,000.00	
CONSTRUCTION SUBTOTAL \$5,139,612					\$5,139,612.70	
		() ====:			A=======	
	ITEM 1-70 NMGRT (8.5%) TOTAL				\$536,770.89	

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) \$[6,851,722.59].

# **PAYMENT PROCEDURES**

# 6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

# 6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the [25th] day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
  - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
    - a. 95 percent of the value of the Work completed (with the balance being retainage).
      - 1) "Deleted"
    - b. **95** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, of the entire construction to be provided under the construction Contract Documents. Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

# 6.03 Final Payment

A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

# 6.04 Consent of Surety

A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

# 6.05 Interest

A. All amounts not paid when due will bear interest at the rate of [1.5] percent per annum

# **ARTICLE 6—CONTRACT DOCUMENTS**

## 7.01 Contents

- A. The Contract Documents consist of all of the following:
  - 1. This Agreement.
  - 2. Bonds:
    - a. Performance bond (together with power of attorney).
    - b. Payment bond (together with power of attorney).
  - 3. General Conditions.
  - 4. Supplementary Conditions.
  - 5. Specifications as listed in the table of contents of the project manual (copy of list attached).
  - 6. Drawings (not attached but incorporated by reference) consisting of [110] sheets with each sheet bearing the following general title: "Truth or Consequences MSD Water System Improvements."
  - 8. Addenda (numbers [ 1.A] to [ 4.A], inclusive).
  - 9. Exhibits to this Agreement (enumerated as follows):

- 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
  - a. Notice to Proceed.
  - b. Work Change Directives.
  - c. Change Orders.
  - d. Field Orders.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

# ARTICLE 7—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

# 8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
  - Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
  - Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
  - 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
  - 7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  - 8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  - Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
  - 10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

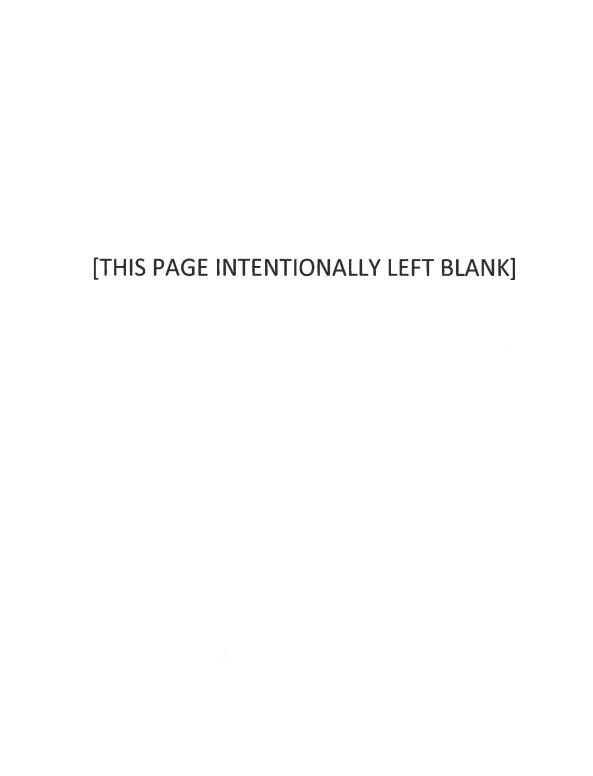
# 8.02 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
  - "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  - "coercive practice" means harming or threatening to harm, directly or indirectly, persons
    or their property to influence their participation in the bidding process or affect the
    execution of the Contract.

# 8.03 Standard General Conditions

A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

This Agreement will be effective on [	(which is the Effective			
Date of the Contract).				
Owner;	Contractor:			
	Smithco Construction, Inc.			
(typed or printed name of organization)	(typed or printed name of organization)			
Ву:	By:			
(individual's signature)	(individual's signature)			
Date:	Date:			
(date signed)	(date signed)			
Name:	Name: Twister Smith			
(typed or printed)	(typed or printed)			
Title: (typed or printed)	Title: President			
(typed of printed)	(typed or printed) (If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of guttority to sign.)			
Attest:	Attest:			
(individual's signature)	(individual's signature)			
Title:	Title: Vice President			
(typed or printed)	(typed or printed)			
Address for giving notices:	Address for giving notices:			
	6 King Canyon Loop			
	Caballo, NM 87931			
Designated Representative:	Designated Representative:			
Name:	Name:			
(typed or printed)	(typed or printed)			
Title:	Title:			
(typed or printed)	(typed or printed)			
Address:	Address:			
Phone:	Phone: 575-894-6161			
Email:	Email: smithco@smithco.cc			
(If [Type of Entity] is a corporation, attach evidence of	License No.: 056580			
authority to sign. If <b>(Type of Entity)</b> is a public body, attach evidence of authority to sign and resolution or	(where applicable)			
other documents authorizing execution of this	State: New Mexico			
Agreement )	State: New Mexico			





#### **PERFORMANCE BOND**

CONTRACTOR (name and address): Smithco Construction, Inc. P.O. Box 45 6 King Canyon Loop Caballo, NM 87931	SURETY (name and address of principal place of business): Travelers Casualty and Surety Company of America One Tower Square Hartford, CT 06183
OWNER (name and address): City of Truth or Cons 505 Sims Street Truth or Consequence	•
Amount: \$6,851,722.59 Six Million Eight Hundred In Description (name and location): Main Street Distriction	, 2022 Fifty One Thousand Seven Hundred Twenty Two Dollars and 59/100 ct (MSD) Water System Improvements No.: 19-600-205-00
BOND Engineer's Project Bond Number: 107637182  Date (not earlier than the Effective Date of the Agreement of	et No.: 19-600-205-00
Surety and Contractor, intending to be legally bound he this Performance Bond to be duly executed by an authoromatic Contractor as Principal	ereby, subject to the terms set forth below, do each cause orized officer, agent, or representative.  SURETY
Smithco Construction, Inc. (seal)	Travelers Casualty and Surety Company of America (sea!)
By: Signature	By: Signature (attach power of attorney)
Twister Smith	Dick Minick
Print Name	Print Name
President	Attorney-in-Fact
Title Suff	Attest: DE EWSTELLE
Signature	Signature
Vice President	Secretary
Title	Title
Notes: (1) Provide supplemental execution by any additional Contractor, Surety, Owner, or other party shall be considered	al parties, such as joint venturers. (2) Any singular reference to ed plural where applicable.
	Performance Bond Engineers, American Council of Engineering Companies, gineers. All rights reserved. 1 of 3

- 1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
- 2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
- 3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:
  - The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - 3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
  - 3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
- 4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
- 5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
  - 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
  - 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the

Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

- 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
  - 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
  - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
- 6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
- 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
  - 7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
  - 7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than

the Owner or its heirs, executors, administrators, successors, and assigns.

- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- 12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.
- 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### 14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including

allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

- 14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
- 14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
- 14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.
- 15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
- 16. Modifications to this Bond are as follows:



Travelers Casualty and Surety Company of America Travelers Casualty and Surety Company St. Paul Fire and Marine Insurance Company

#### **POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint DICK MINICK of Albuquerque

New Mexico their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 3rd day of February. 2017.







State of Connecticut

City of Hartford ss.

On this the 3rd day of February, 2017, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal

My Commission expires the 30th day of June, 2021



Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America. Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED. that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority, and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Senior Vice President, any Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents. Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned. Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in tull force and effect.

Dated this

day of September 2022







Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880. Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.

SBOSWELL

2,000,000

3.000.000

10,000,000

ACORD

#### CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 9/5/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(les) must have ADDITIONAL INSURED provisions or be endorsed.

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	Cruces, NM 88011				E-MAIL ADDRE	<sub>SS:</sub> sboswel	l@burke-in	surance.com		
						INS	SURER(S) AFFOR	RDING COVERAGE		NAIC#
					INSURE	RA: Cincinn	ati Insuran	ce Company (Th	e)	10677
INSU	RED				INSURE	RB:Builder	s Trust of N	IM		52519
	Smithco Construction, Inc.				INSURE	R c : Travele	rs Insuranc	e		524126
	P.O. BOX 45				INSURE	RD:				
	CABALLO, NM 87931				INSURE	RE:				
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A	X COMMERCIAL GENERAL LIABILITY							EACH OCCURRENCE	\$	1,000,000
	CLAIMS-MADE X OCCUR	X	X	EPP 0237545		3/15/2022	3/15/2023	DAMAGE TO RENTED PREMISES (Ea occurren	nce) \$	500,000
								MED EXP (Any one perso	on) \$	10,000
								PERSONAL & ADV INJU	JRY \$	1,000,000
l	CENT ACCRECATE LIMIT ADDITIES DED-							CENEDAL ACCRECATE		2,000,000

GENERAL AGGREGATE POLICY X PRO-2,000,000 LOC PRODUCTS - COMP/OP AGG \$ OTHER: COMBINED SINGLE LIMIT (Ea accident) Α 1,000,000 **AUTOMOBILE LIABILITY** χ EPP 0237545 ANY AUTO 3/15/2022 3/15/2023 X BODILY INJURY (Per person) s SCHEDULED AUTOS OWNED AUTOS ONLY BODILY INJURY (Per accident) \$ X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY PROPERTY DAMAGE (Per accident) Hired/Non-owned 1,000,000 3,000,000 X UMBRELLA LIAB Х OCCUR EACH OCCURRENCE EPP 0237545 3/15/2022 3/15/2023 3,000,000 **EXCESS LIAB** CLAIMS-MADE AGGREGATE \$ 0 DED X RETENTIONS В WORKERS COMPENSATION AND EMPLOYERS' LIABILITY OTH-ER X PER STATUTE WC-100-0005750-2022A 1/1/2022 1/1/2023 2,000,000 ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) X E.L. EACH ACCIDENT \$ N/A 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ If yes, describe under DESCRIPTION OF OPERATIONS below

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Project: Main Street District ( MSD) Water Systems Improvements

EX-1T696311-22-NF

6604H596053

Ower's Project No: 19-600-205-00 Engineer's Project No. 19-600-205-00

SEE ATTACHED ACORD 101

**Excess Liability** 

**Builders Risk** 

C

CE	RT	<u>IFICA</u>	TE	HOL	DER

City of Truth or Consequences

**505 Sims Truth Or Consequences, NM 87901** 

#### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**AUTHORIZED REPRESENTATIVE** 

3/15/2022

3/15/2022

3/15/2023

3/15/2023

Mer A 1 E.L. DISEASE - POLICY LIMIT

**Excess Liability** 

**Builders Risk** 

AGENCY CUSTOMER ID:	SMITCON-01
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**SBOSWELL** 

LOC #: 1



#### ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

Burke Insurance Group, LLC		NAMED INSURED Smithco Construction, Inc. P.O. BOX 45	
POLICY NUMBER		CABALLO, NM 87931	
SEE PAGE 1			
CARRIER	NAIC CODE		
SEE PAGE 1	EE P 1	EFFECTIVE DATE: SEE PAGE 1	

#### ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM, FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

**Description of Operations/Locations/Vehicles:** 

City of Truth or Consequences is named as Additional Insured per Additional Insured Endorsement for ongoing and completed operation for General Liability as required by written contract. City of Truth or Consequences is named as Additional Insured on all policies except Worker's Compensation per written contract. A waiver of subrogation exists in favor of City of Truth or Consequences as to the general liability, auto, umbrella and workers compensation policies per written contract. The general liability, auto and umbrella policies are primary and non-contributory.

#### THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. Endorsement - Table of Contents:

Coverage:	<b>Begins on Page:</b>
<ol> <li>Employee Benefit Liability Coverage</li> <li>Unintentional Failure to Disclose Hazards</li> <li>Damage to Premises Rented to You</li> <li>Supplementary Payments</li> <li>Medical Payments</li> </ol>	
Voluntary Property Damage (Coverage a.) and Care, Custody or Control     Liability Coverage (Coverage b.)	
<ul> <li>7. 180 Day Coverage for Newly Formed or Acquired Organizations</li> <li>8. Waiver of Subrogation</li> <li>9. Automatic Additional Insured - Specified Relationships: <ul> <li>Managers or Lessors of Premises;</li> <li>Lessor of Leased Equipment;</li> <li>Vendors;</li> <li>State or Political Subdivisions - Permits Relating to Premises;</li> <li>State or Political Subdivisions - Permits; and</li> </ul> </li> </ul>	10 10
<ul> <li>Contractors' Operations</li> <li>10. Broadened Contractual Liability - Work Within 50' of Railroad Property</li> <li>11. Property Damage to Borrowed Equipment</li> <li>12. Employees as Insureds - Specified Health Care Services: <ul> <li>Nurses;</li> <li>Emergency Medical Technicians; and</li> <li>Paramedics</li> </ul> </li> </ul>	14 15
13. Broadened Notice of Occurrence	15

#### B. Limits of Insurance:

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

#### 1. Employee Benefit Liability Coverage

Each Employee Limit: \$ 1,000,000 Aggregate Limit: \$ 3,000,000 Deductible: \$ 1,000

#### 3. Damage to Premises Rented to You

The lesser of:

a. The Each Occurrence Limit shown in the Declarations; or

b. \$500,000 unless otherwise stated \$\_\_\_\_\_

#### 4. Supplementary Payments

a. Bail bonds: \$ 1,000b. Loss of earnings: \$ 350

#### 5. Medical Payments

Medical Expense Limit: \$ 10,000

# Voluntary Property Damage (Coverage a.) and Care, Custody or Control Liability Coverage (Coverage b.) Limits of Insurance (Each Occurrence) Coverage a. \$1,000 Coverage b. \$5,000 unless otherwise stated \$\_\_\_\_\_\_\_

Deductibles (Each Occurrence)

Coverage a. \$250

Coverage b. \$250 unless otherwise stated

\$	
•	 _

COVERAGE	PREMIUM BASIS	RATE	ADVANCE PREMIUM
	<ul><li>(a) Area</li><li>(b) Payroll</li><li>(c) Gross Sales</li><li>(d) Units</li><li>(e) Other</li></ul>	(For Limits in Excess of \$5,000)	(For Limits in Excess of \$5,000)
b. Care, Custody or Control			\$
	\$		

#### 11. Property Damage to Borrowed Equipment

Each Occurrence Limit:

\$ 10,000

Deductible:

\$ 250

#### C. Coverages:

#### 1. Employee Benefit Liability Coverage

- The following is added to SECTION I
   COVERAGES: Employee Benefit Liability Coverage.
  - (1) Insuring Agreement
    - (a) We will pay those sums that the insured becomes legally obligated to pay as damages caused by any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any claim or "suit" that may result. But:
      - The amount we will pay for damages is limited as described in SEC-

### TION III - LIMITS OF INSURANCE; and

 Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- (b) This insurance applies to damages only if the act, error or omission, is negligently committed in the "administration" of your "employee benefit program"; and
  - Occurs during the policy period; or
  - 2) Occurred prior to the effective date of this endorsement provided:
    - a) You did not have knowledge of a claim or "suit" on or before the ef-

fective date of this endorsement.

You will be deemed to have knowledge of a claim or "suit" when any "authorized representative";

- Reports all, or any part, of the act, error or omission to us or any other insurer;
- ii) Receives a written or verbal demand or claim for damages because of the act, error or omission; and
- b) There is no other applicable insurance.

#### (2) Exclusions

This insurance does not apply to:

(a) Bodily Injury, Property Damage or Personal and Advertising Injury

"Bodily injury", "property damage" or "personal and advertising injury".

(b) Dishonest, Fraudulent, Criminal or Malicious Act

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

(c) Failure to Perform a Contract

Damages arising out of failure of performance of contract by any insurer.

(d) Insufficiency of Funds

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the

"employee benefit program".

(e) Inadequacy of Performance of Investment / Advice Given With Respect to Participation

Any claim based upon:

- 1) Failure of any investment to perform;
- Errors in providing information on past performance of investment vehicles; or
- Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

### (f) Workers' Compensation and Similar Laws

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

#### (g) ERISA

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

#### (h) Available Benefits

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

#### (i) Taxes, Fines or Penalties

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

### (j) Employment-Related Practices

Any liability arising out of any:

- Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, acts or omissions; or
- (4) Consequential liability as a result of (1), (2) or (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

#### (3) Supplementary Payments

SECTION I - COVERAGES, SUPPLEMENTARY PAY-MENTS - COVERAGES A AND B also apply to this Coverage.

#### b. Who is an Insured

As respects Employee Benefit Liability Coverage, SECTION II - WHO IS AN INSURED is deleted in its entirety and replaced by the following:

- (1) If you are designated in the Declarations as:
  - (a) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - (b) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds but only with respect to the conduct of your business.
  - (c) A limited liability company, you are an insured. Your members are also insureds.

- but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- (d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- (e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- (2) Each of the following is also an insured:
  - (a) Each of your "employees" who is or was authorized to administer your "employee benefit program".
  - (b) Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.
  - (c) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- (3) Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However, coverage under this provision:
  - (a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

(b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

#### c. Limits of Insurance

As respects Employee Benefit Liability Coverage, SECTION III - LIMITS OF INSURANCE is deleted in its entirety and replaced by the following:

- (1) The Limits of Insurance shown in Section B. Limits of Insurance, 1. Employee Benefit Liability Coverage and the rules below fix the most we will pay regardless of the number of:
  - (a) Insureds;
  - (b) Claims made or "suits" brought;
  - (c) Persons or organizations making claims or bringing "suits":
  - (d) Acts, errors or omissions; or
  - (e) Benefits included in your "employee benefit program".
- (2) The Aggregate Limit shown in Section B. Limits of Insurance, 1. Employee Benefit Liability Coverage of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".
- (3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section B. Limits of Insurance, 1. Employee Benefit Liability Coverage of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:
  - (a) An act, error or omission; or
  - (b) A series of related acts, errors or omissions, regard-less of the amount of time that lapses between such acts, errors or omissions,

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

#### (4) Deductible Amount

- (a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in the Declarations as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.
- (b) The deductible amount stated in the Declarations applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.
- (c) The terms of this insurance, including those with respect to:
  - Our right and duty to defend the insured against any "suits" seeking those damages; and
  - Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim,

apply irrespective of the application of the deductible amount.

(d) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

#### d. Additional Conditions

As respects Employee Benefit Liability Coverage, SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

- (1) Item 2. Duties in the Event of Occurrence, Offense, Claim or Suit is deleted in its entirety and replaced by the following:
  - 2. Duties in the Event of an Act, Error or Omission, or Claim or Suit
    - a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:
      - What the act, error or omission was and when it occurred; and
      - (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.
    - b. If a claim is made or "suit" is brought against any insured, you must:
      - Immediately record the specifics of the claim or "suit" and the date received; and
      - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.
- (2) Item 5. Other Insurance is deleted in its entirety and replaced by the following:

#### 5. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary except when c. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in b. below.

#### b. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers

#### c. No Coverage

This insurance shall not cover any loss for which the insured is entitled to recovery under any other insurance in force previous to the effective date of this Coverage Part.

#### e. Additional Definitions

As respects Employee Benefit Liability Coverage, SECTION V - DEFINITIONS is amended as follows:

- (1) The following definitions are added:
  - 1. "Administration" means:
    - a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
    - b. Interpreting the "employee benefit programs";
    - c. Handling records in connection with the "employee benefit programs"; or
    - d. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include:

- Handling payroll deductions; or
- b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.
- 2. "Cafeteria plans" means plan authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.
- "Employee benefit programs" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
  - Group life insurance; group accident or health insurance: dental, vision and hearing plans: and flexible spending accounts: provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements:
  - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
  - c. Unemployment insurance, social security

- benefits, workers' compensation and disability benefits; and
- d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.
- (2) The following definitions are deleted in their entirety and replaced by the following:
  - 21. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:
    - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;
    - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
    - c. An appeal of a civil proceeding.
  - 8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 2. Unintentional Failure to Disclose Hazards

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 7. Representations is hereby amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage

under this Coverage Part based solely on such failure.

#### 3. Damage to Premises Rented to You

a. The last Subparagraph of Paragraph
 2. SECTION I - COVERAGES,
 COVERAGE A. - BODILY INJURY
 AND PROPERTY DAMAGE, 2. LI-ABILITY Exclusions is hereby deleted and replaced by the following:

Exclusions c. through q. do not apply to damage by fire, explosion, lightning, smoke or soot to premises while rented to you or temporarily occupied by you with permission of the owner.

- b. The insurance provided under SEC-TION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROP-ERTY DAMAGE LIABILITY applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.
  - (1) As respects Water Damage Legal Liability, as provided in Paragraph 3.b. above:

The exclusions under SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, other than i. War and the Nuclear Energy Liability Exclusion, are deleted and the following are added:

This insurance does not apply to:

- (a) "Property damage":
  - Assumed in any contract; or
  - 2) Loss caused by or resulting from any of the following:
    - a) Wear and tear;
    - Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
    - c) Smog;
    - d) Mechanical breakdown including rupture or

- bursting caused by centrifugal force:
- e) Settling, cracking, shrinking or expansion; or
- Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.
- (b) Loss caused directly or indirectly by any of the following:
  - Earthquake, volcanic eruption, landslide or any other earth movement;
  - Water that backs up or overflows from a sewer, drain or sump;
  - Water under the ground surface pressing on, or flowing or seeping through:
    - a) Foundations, walls, floors or paved surfaces;
    - b) Basements, whether paved or not; or
    - c) Doors, windows or other openings.
- (c) Loss caused by or resulting from water that leaks or flows from plumbing, heating, air conditioning, or fire protection systems caused by or resulting from freezing, unless:
  - You did your best to maintain heat in the building or structure; or
  - You drained the equipment and shut off the water supply if the heat was not maintained.
- (d) Loss to or damage to:
  - Plumbing, heating, air conditioning, fire protection systems, or

- other equipment or appliances; or
- 2) The interior of any building or structure, or to personal property in the building or structure caused by or resulting from rain, snow, sleet or ice, whether driven by wind or not.

#### c. Limit of Insurance

The Damage to Premises Rented to You Limit as shown in the Declarations is amended as follows:

- (2) Paragraph 6. of SECTION III LIMITS OF INSURANCE is hereby deleted and replaced by the following:
  - Subject to 5. above, the Damage to **Premises** Rented to You Limit is the most we will pay under COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, for damages because "property damage" premises while rented to you or temporarily occupied by you with permission of the owner, arising out of any one "occurrence" to which this insurance applies.
- (3) The amount we will pay is limited as described in Section B. Limits of Insurance, 3. Damage to Premises Rented to You of this endorsement.

#### 4. Supplementary Payments

Under SECTION I - COVERAGE, SUP-PLEMENTARY PAYMENTS - COVER-AGES A AND B:

**a.** Paragraph **2.** is replaced by the following:

Up to the limit shown in Section B. Limits of Insurance, 4.a. Bail Bonds of this endorsement for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

**b.** Paragraph **4.** is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to the limit shown in Section B. Limits of Insurance, 4.b. Loss of Earnings of this endorsement per day because of time off from work.

#### 5. Medical Payments

The Medical Expense Limit of Any One Person as stated in the Declarations is amended to the limit shown in Section B. Limits of Insurance, 5. Medical Payments of this endorsement.

- 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage
  - a. Voluntary Property Damage Coverage

We will pay for "property damage" to property of others arising out of operations incidental to the insured's business when:

- (1) Damage is caused by the insured; or
- (2) Damage occurs while in the insured's possession.

With your consent, we will make these payments regardless of fault.

b. Care, Custody or Control Liability Coverage

SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, j. Damage to Property, Subparagraphs (3), (4) and (5) do not apply to "property damage" to the property of others described therein.

With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

a. The Limits of Insurance shown in the Declarations are replaced by the limits designated in Section B. Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section B. Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control

Liability Coverage of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (1) Insureds;
- (2) Claims made or "suits" brought; or
- (3) Persons or organizations making claims or bringing "suits".

#### b. Deductible Clause

- (1) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the deductible amount stated in Section B. Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage of this endorsement. The limits of insurance will not be reduced by the application of such deductible amount.
- (2) Condition 2. Duties in the Event of Occurrence, Offense, Claim or Suit, applies to each claim or "suit" irrespective of the amount.
- (3) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.
- 7. 180 Day Coverage for Newly Formed or Acquired Organizations

**SECTION II - WHO IS AN INSURED** is amended as follows:

Subparagraph a. of Paragraph 4. is hereby deleted and replaced by the following:

a. Insurance under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier:

#### 8. Waiver of Subrogation

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 9. Transfer of Rights of Recovery Against Others to Us is hereby amended by the addition of the following:

We waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract requiring such waiver with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

- 9. Automatic Additional Insured Specified Relationships
  - a. The following is hereby added to SECTION II - WHO IS AN INSURED:
    - (1) Any person or organization described in Paragraph 9.a.(2) below (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of:
      - (a) A written contract or agreement; or
      - (b) An oral agreement or contract where a certificate of insurance showing that person or organization as an additional insured has been issued.

is an insured, provided:

- (a) The written or oral contract or agreement is:
  - Currently in effect or becomes effective during the policy period; and
  - Executed prior to an "occurrence" or offense to which this insurance would apply; and
- (b) They are not specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part.
- (2) Only the following persons or organizations are additional insureds under this endorsement, and insurance coverage provided to such additional insureds is limited as provided herein:

(a) The manager or lessor of a premises leased to you with whom you have agreed per Paragraph 9.a.(1) above to provide insurance, but only with respect to liability arising out of the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- Any "occurrence" which takes place after you cease to be a tenant in that premises.
- Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
- (b) Any person or organization from which you lease equipment with whom you have agreed per Paragraph 9.a.(1) above to provide insurance. Such person(s) or organization(s) are insureds solely with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person(s) or organizations(s). However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
- (c) Any person or organization (referred to below as vendor) with whom you have per agreed Paragraph 9.a.(1) above to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:
  - 1) The insurance afforded the vendor does not apply to:

- "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the would vendor have in the absence of the contract or agreement;
- Any express warranty unauthorized by you;
- c) Any physical or chemical change in the product made intentionally by the vendor;
- d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- Any failure make such e) to spections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products:
- f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with

- the sale of the product;
- g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.
- This insurance does not apply to any insured person or organization:
  - haye acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products; or
  - b) When liability included within the "productscompleted operations hazard" has been excluded under this Coverage Part with respect to such products.
- (d) Any state or political subdivision with which you have agreed per Paragraph 9.a.(1) above to provide insurance, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent or control and to which this insurance applies:

 The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street

- banners, or decorations and similar exposures; or
- The construction, erection, or removal of elevators; or
- The ownership, maintenance, or use of any elevators covered by this insurance.
- (e) Any state or political subdivision with which you have agreed per Paragraph 9.a.(1) above to provide insurance, subject to the following provisions:
  - This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
  - 2) This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or political subdivision.
- (f) With respect to injury or damage that occurs in New Mexico, any person or organization with which you have agreed per Paragraph 9.a.(1) above to provide insurance, but only to the extent that the liability is caused by "your work" performed for that additional insured and only to the extent that such liability is caused by your negligence, acts or omissions or the negligence, acts or omissions of those acting on your behalf. A person or organization's status as an insured under this provision of this endorsement continues for only the period of time required by the written contract or agreement, but in no event beyond the expiration date of this Coverage Part. If there is no written contract or agreement, or if no period of time is required by the written con-

- tract or agreement, a person or organization's status as an insured under this endorsement ends when your operations for that insured are completed.
- (g) With respect to injury or damage that occurs in the "coverage territory" but not in the state of New Mexico, any person or organization with which you have agreed Paragraph 9.a.(1) above to provide insurance. but only with respect to liability arising out of "your work" performed for that additional insured by you or on your behalf. A person or organization's status as an insured under this provision of this endorsement continues for only the period of time required by the written contract or agreement, but in no event beyond the expiration date of this Coverage Part. If there is no written contract or agreement, or if no period of time is required by the written contract or agreement, a person or organization's status as an insured under this endorsement ends when your operations for that insured are completed.
- (3) Any insurance provided to an additional insured designated under Paragraph 9.a.(2):
  - (a) Subparagraphs (e), (f) and (g) do not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard";
  - (b) Subparagraphs (a), (b), (d), (e) and (g) do not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence or willful misconduct of the additional insured or its "employees"; or
  - (c) Subparagraph (f) and (g) do not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

- The rendering of, or failure to render, any professional services by you or on your behalf, but only with respect to either or both of the following operations:
  - Providing engineering, architectural or surveying services to others: and
  - b) Providing, or hiring independent professionals to provide, engineering, architectural surveying services in connection with construction work you perform.
- 2) Subject to Paragraph 3) below, professional services include:
  - a) Preparing. approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
  - b) Supervisory or inspection activities performed as part of any related architectural or engineering activities.
- 3) Professional services do not include services construction within means, methods, techniques, sequences and procedures employed by you in connection with construction work you perform.
- (d) Subparagraphs (f) and (g) do not apply to "bodily injury" or "property damage" arising out of "your work" for which a consolidated (wrapup) insurance program has been provided by the prime contractor / project man-

- ager or owner of the construction project in which vou are involved.
- b. Only with regard to insurance provided to an additional insured designated under Paragraph 9.a.(2) Subparagraphs (f) and (g) above, SEC-TION III - LIMITS OF INSURANCE is amended to include:

The limits applicable to the additional insured are those specified in the written contract or agreement or in the Declarations of this Coverage Part, whichever are less. If no limits are specified in the written contract or agreement, or if there is no written contract or agreement, the limits applicable to the additional insured are those specified in the Declarations of this Coverage Part. The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

- **SECTION IV COMMERCIAL GEN-**ERAL LIABILITY CONDITIONS is hereby amended as follows:
  - (1) Condition 5. Other Insurance is amended to include:
    - (a) Where required by a written contract or agreement, this insurance is primary and / or noncontributory as respects any other insurance policy issued to the additional insured, and such other insurance policy shall be excess and / or noncontributing, whichever applies. with this insurance.
    - (b) Any insurance provided by this endorsement shall be primary to other insurance available to the additional insured except:
      - As otherwise provided in SECTION IV - COMMERCIAL GEN-LIABILITY ERAL CONDITIONS, 5, Other Insurance, b. Excess Insurance; or
      - 2) For any other valid and collectible insurance available to the additional insured as an additional insured by attachment of an endorsement to another insurance policy that is

written on an excess basis. In such case, the coverage provided under this endorsement shall also be excess.

- (2) Condition 11. Conformance to Specific Written Contract or Agreement is hereby added:
  - 11. Conformance to Specific Written Contract or Agreement
    - With respect to additional insureds described in Paragraph
       9.a.(2)(f) above only:

If a written contract or agreement between you and the additional insured specifies that coverage for the additional insured:

- (1) Be provided by the Insurance Services Office additional insured form number CG 32 04 or CG 32 12; or
- (2) Include coverage for completed operations; or
- (3) Include coverage for "your work";

and where the limits or coverage provided to the additional insured is more restrictive than was specifically required in that written contract or agreement, the terms of Paragraphs 9.a.(3)(a) or 9.b. above, or any combination thereof. shall be interpreted as providing the limits or coverage required by the terms of the written contract or agreement, but only to the extent that such limits or coverage is included within the terms of the Coverage Part to which this endorsement is attached.

With respect to additional insureds described in Paragraph
 9.a.(2)(g) above only:

If a written contract or agreement between you and the additional insured specifies that coverage for the additional insured:

- a. Be provided by the Insurance Services Office additional insured form number CG 20 10 or CG 20 37 (where edition specified); or
- Include coverage for completed operations; or
- c. Include coverage for "your work";

and where the limits or coverage provided to the additional insured is more restrictive than was specifically required in that written contract or agreement, the terms of Paragraphs 9.a.(3)(a), 9.a.(3)(b) or 9.b. above, or any combination thereof, shall be interpreted as providing the limits or coverage required by the terms of the written contract or agreement, but only to the extent that such limits or coverage is included within the terms of the Coverage Part to which this endorsement is attached. If, however, the written contract or agreement specifies the Insurance Services Office additional insured form number CG 20 10 but does not specify which edition, or specifies an edition that does not **Paragraphs** exist. 9.a.3.b. and 9.b. of this endorsement shall not apply and Paragraph 9.a.(3)(a) of this endorsement shall apply.

10. Broadened Contractual Liability - Work Within 50' of Railroad Property

It is hereby agreed that Paragraph f.(1) of Definition 12. "Insured contract" (SECTION V - DEFINITIONS) is deleted.

### 11. Property Damage to Borrowed Equipment

a. The following is hereby added to Exclusion j. Damage to Property of Paragraph 2., Exclusions of SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

Paragraphs (3) and (4) of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

- b. With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:
  - (1) The Limits of insurance shown in the Declarations are replaced by the limits designated in Section B. Limits of Insurance, 11. of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section B. Limits of Insurance, 11. of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:
    - (a) Insureds;
    - (b) Claims made or "suits" brought; or
    - (c) Persons or organizations making claims or bring "suits".

#### (2) Deductible Clause

- (a) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the Deductible amount stated in Section B. Limits of Insurance, 11. of this endorsement. The limits of insurance will not be reduced by the application of such Deductible amount.
- (b) Condition 2. Duties in the Event of Occurrence, Of-

fense, Claim or Suit, applies to each claim or "suit" irrespective of the amount.

(c) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

### 12. Employees as Insureds - Specified Health Care Services

It is hereby agreed that Paragraph 2.a.(1)(d) of SECTION II - WHO IS AN INSURED, does not apply to your "employees" who provide professional health care services on your behalf as duly licensed:

- a. Nurses:
- b. Emergency Medical Technicians; or
- c. Paramedics,

in the jurisdiction where an "occurrence" or offense to which this insurance applies takes place.

#### 13. Broadened Notice of Occurrence

Paragraph a. of Condition 2. Duties in the Event of Occurrence, Offense, Claim or Suit (SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS) is hereby deleted and replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

This requirement applies only when the "occurrence" or offense is known to an "authorized representative".

#### COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this Coverage Part restrict this insurance. Read the entire Coverage Part carefully to determine rights, duties and what is and is not covered.

Throughout this Coverage Part the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this Coverage Part. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under **SECTION II - WHO IS AN INSURED**.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V - DEFINITIONS**.

#### **SECTION I - COVERAGES**

### COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

#### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:
  - (1) The amount we will pay for damages is limited as described in SECTION III LIMITS OF INSURANCE; and
  - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under SECTION I COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY; SECTION I COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY; or medical expenses under SECTION I COVERAGES, COVERAGE C. MEDICAL PAYMENTS.

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under

### SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
  - The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - (2) The "bodily injury" or "property damage" occurs during the policy period; and
  - (3) Prior to the "coverage term" in which "bodily injury" or "property damage" occurs, you did not know, per Paragraph 1.d. below, that the "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part.
- c. "Bodily injury" or "property damage" which:
  - Occurs during the "coverage term"; and
  - (2) Was not, prior to the "coverage term", known by you, per Paragraph 1.d. below, to have occurred;

includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "coverage term" in which it first became known by you.

- d. You will be deemed to know that "bodily injury" or "property damage" has occurred at the earliest time when any "authorized representative":
  - Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage";
  - (3) First observes, or reasonably should have first observed, the "bodily injury" or "property damage";
  - (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that "bodily injury" or "property damage" had occurred or had begun to occur; or
  - (5) Becomes aware, or reasonably should have become aware, of a

condition from which "bodily injury" or "property damage" is substantially certain to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

#### 2. Exclusions

This insurance does not apply to:

#### a. Expected or Intended Injury

"Bodily injury" or "property damage" which may reasonably be expected to result from the intentional or criminal acts of the insured or which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually expected or intended. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

#### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. When a claim for such "bodily injury" or "property damage" is made, we will defend that claim provided the insured has assumed the obligation to defend such claim in the "insured contract". Such defense payments will not reduce the limits of insurance.

#### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

### d. Workers' Compensation and Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

#### e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured sustained in the "workplace";
- (2) An "employee" of the insured arising out of the performance of duties related to the conduct of the insured's business; or
- (3) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraphs (1) or (2) above.

This exclusion applies:

- Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

#### f. Pollutant

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, Paragraph (a) does not apply to:
    - 1) "Bodily injury" to any person injured while on any premises, site or location owned or occupied by, or rented or loaned to, you provided:

- The injury is caused by the inadequate ventilation of vapors;
- b) The person injured is first exposed to such vapors during the policy period; and
- Within 30 days of such first exposure, the person injured is clinically diagnosed or treated by a physician for the medical condition caused by the exposure to such vapors. However, Paragraph c) does not apply if the "bodily injury" is caused by vapors produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their quests.

This exception 1) shall apply only to Named Insureds; we shall have no duty to defend or pay damages for any person or organization that is not a Named Insured. However, this paragraph does not apply if the "bodily injury" is caused by vapors produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use. by the building's occupants or their guests.

For the purpose of the exception granted in Paragraph 1) only, vapors means any gaseous or airborne irritant or airborne contaminant, including smoke, fumes, vapor or soot, but excluding asbestos, which is discharged, dispersed, emitted, released or escapes from materials, machinery or equipment used in the service or maintenance of the premises. Vapors does not mean any gaseous or

- airborne irritants or contaminants used in a manufacturing process or which is the product or by-product of any manufacturing process;
- "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor, and the owner or lessee of such premises. site or location has been added to this Coverage Part as an additional insured with respect to your ongoing operations or "your work" performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by. or rented or loaned to, any insured, other than that additional insured; or
- "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire":
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
  - 1) Any insured; or
  - Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, Paragraph (d) does not apply to:
  - "Bodily injury" or "property damage" arising out of the discharge, dispersal, seepage, migration, release, es-

cape or emission of fuels, lubricants or other operating fluids, or exhaust gases, which are needed to perform, or are the result of, the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids, or exhaust gases, escape, seep or migrate, or are discharged, dispersed, released emitted from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids, or exhaust gases, escape, seep or migrate, or are discharged, dispersed, released emitted with the intent to cause "bodily injury" or "property damage" or with the knowledge that "bodily injury" or "property damage" is substantially certain to occur, or if such fuels, lubricants or other operating fluids, or exhaust gases, are brought on or to the premises, site or location with such intent to escape, seep or migrate, or be discharged, dispersed, released or emitted as part of the operations being performed by such insured, contractor or subcontractor;

- 2) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the op-

erations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, Paragraphs (2)(a) and (b) do not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

#### g. Aircraft, Auto or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and

- (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
  - (a) The operation of machinery or equipment that is on, attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
  - (b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

#### h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

#### i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by

governmental authority in hindering or defending against any of these.

#### j. Damage to Property

"Property damage" to:

- Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of an insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire or explosion) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days, for which the amount we will pay is limited to the Damage To Premises Rented To You Limit as described in SECTION III - LIMITS OF INSURANCE.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

#### k. Damage to Your Product

"Property damage" to "your product" arising out of it or any part of it.

#### I. Damage to Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

### m. Damage to Impaired Property or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

### n. Recall of Products, Work or Impaired Property

Any liability or damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product":
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

#### o. Personal and Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

#### p. Asbestos

"Bodily injury" or "property damage" arising out of, attributable to, or any way related to asbestos in any form or transmitted in any manner.

#### q. Employment-Related Practices

"Bodily injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employmentrelated practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

#### r. Additional Insured Prior Knowledge

An additional insured added by attachment of an endorsement to this Coverage Part that is seeking coverage for a claim or "suit", if that additional insured knew, per the following paragraph, that "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part, prior to the "coverage term" in which such "bodily injury" or "property damage" occurs or begins to occur.

An additional insured added by attachment of an endorsement to this Coverage Part will be deemed to have known that "bodily injury" or "property damage" has occurred or has begun to occur at the earliest time when that additional insured, or any one of its owners, members, partners, managers, executive officers, "employees" assigned to manage that additional insured's insurance program, or "employees" assigned to give or receive notice of an "occurrence", "personal and advertising injury" offense, claim or "suit":

- Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage";
- (3) First observes, or reasonably should have first observed, the "bodily injury" or "property damage";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that "bodily injury" or "property damage" had occurred or had begun to occur; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "bodily injury" or "property damage" is substantially certain to occur.

#### s. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

#### t. Distribution of Material in Violation of Statutes

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions c. through q. do not apply to "property damage" by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner, for which the amount we will pay is limited to the Damage to Premises Rented To You Limit as described in SECTION III - LIMITS OF INSURANCE.

### COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY

#### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:
  - (1) The amount we will pay for damages is limited as described in SECTION III - LIMITS OF INSURANCE; and
  - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under SECTION I COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY; SECTION I COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY; or medical expenses under SECTION I COVERAGES, COVERAGE C. MEDICAL PAYMENTS.

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

- b. This insurance applies to "personal and advertising injury" only if:
  - The "personal and advertising injury" is caused by an offense arising out of your business; and
  - (2) The "personal and advertising injury" offense was committed in the "coverage territory" during the policy period; and
  - (3) Prior to the "coverage term" in which the "personal and advertising injury" offense is committed, you did not know, per Paragraph 1.d. below, that the offense had been committed or had begun to be committed, in whole or in part.
- c. "Personal and advertising injury" caused by an offense which:
  - (1) Was committed during the "coverage term"; and

(2) Was not, prior to the "coverage term", known by you, per Paragraph 1.d. below, to have been committed;

includes any continuation, change or resumption of that offense after the end of the "coverage term" in which it first became known by you.

- d. You will be deemed to know that a "personal and advertising injury" offense has been committed at the earliest time when any "authorized representative":
  - Reports all, or any part, of the "personal and advertising injury" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "personal and advertising injury";
  - (3) First observes, or reasonably should have first observed, the offense that caused the "personal and advertising injury";
  - (4) Becomes aware, or reasonably should have become aware, by any means, other than as described in (3) above, that the offense had been committed or had begun to be committed; or
  - (5) Becomes aware, or reasonably should have become aware, of a condition from which "personal and advertising injury" is substantially certain to occur.

#### 2. Exclusions

This insurance does not apply to:

#### a. Knowing Violation of Rights of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

#### b. Material Published With Knowledge of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

#### Material Published Prior to Coverage Term

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the later of the following:

- The inception of this Coverage Part; or
- (2) The "coverage term" in which insurance coverage is sought.

#### d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

#### e. Contractual Liability

"Personal and advertising injury" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "personal and advertising injury" is caused by or arises out of an offense committed subsequent to the execution of the contract or agreement. When a claim for such "personal and advertising injury" is made, we will defend that claim, provided the insured has assumed the obligation to defend such claim in the "insured contract". Such defense payments will not reduce the limits of insurance.

#### f. Breach of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

### g. Quality or Performance of Goods - Failure to Conform to Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

#### h. Wrong Description of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

#### Infringement of Copyright, Patent, Trademark or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, pat-

ent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

#### j. Insureds in Media and Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 17. a., b. and c. of "personal and advertising injury" under SECTION V - DEFINITIONS.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet is not, by itself, considered the business of advertising, broadcasting, publishing or telecasting.

#### k. Electronic Chatrooms or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board any insured hosts, owns, or over which any insured exercises control.

### I. Unauthorized Use of Another's Name or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

#### m. Employment Related Practices

"Personal and advertising injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation

or discrimination directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

#### n. Pollutant

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" at any time.

#### o. Pollutant-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

#### p. Asbestos

"Personal and advertising injury" arising out of, attributable to, or any way related to asbestos in any form or transmitted in any manner.

#### q. Additional Insured Prior Knowledge

An additional insured added by attachment of an endorsement to this Coverage Part that is seeking coverage for a claim or "suit", if that additional insured knew, per the following paragraph, that a "personal and advertising injury" offense had been committed or had begun to be committed, in whole or in part, prior to the "coverage term" in which such offense

was committed or began to be committed.

An additional insured added by attachment of an endorsement to this Coverage Part will be deemed to have known that a "personal and advertising injury" offense has been committed or has begun to be committed at the earliest time when that additional insured, or any one of its owners, members, partners, managers, executive officers, "employees" assigned to manage that additional insured's insurance program, or "employees" assigned to give or receive notice of an "occurrence", "personal and advertising injury" offense, claim or "suit":

- Reports all, or any part, of the "personal and advertising injury" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "personal and advertising injury";
- (3) First observes, or reasonably should have first observed, the offense that caused the "personal and advertising injury";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that the "personal and advertising injury" offense had been committed or had begun to be committed; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "personal and advertising injury" is substantially certain to occur.

#### r. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- s. Distribution of Material in Violation of Statutes

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

#### **COVERAGE C. MEDICAL PAYMENTS**

#### 1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
  - (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;

#### provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within three years of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
  - (1) First aid administered at the time of an accident;
  - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
  - (3) Necessary ambulance, hospital, professional nursing and funeral services.

#### 2. Exclusions

We will not pay expenses for "bodily injury":

#### a. Any Insured

To any insured, except "volunteer workers".

#### b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

#### c. Injury on Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

### d. Workers' Compensation and Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

#### e. Athletic Activities

To any person injured while officiating, coaching, practicing for, instructing or participating in any physical exercises or games, sports, or athletic contests or exhibitions of an athletic or sports nature.

### f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

#### g. Coverage A Exclusions

Excluded under COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LI-ABILITY.

### SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- 1. All expenses we incur.
- 2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", in-

- cluding actual loss of earnings up to \$250 a day because of time off from work.
- All costs taxed against the insured in the "suit".
- 6. Prejudgment interest awarded against the insured on that part of the judgment we become obligated to pay and which falls within the applicable limit of insurance. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- 7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

#### **SECTION II - WHO IS AN INSURED**

- 1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- 2. Each of the following is also an insured:
  - a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by

you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

- (1) "Bodily injury" or "personal and advertising injury":
  - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
  - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
  - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
  - (d) Arising out of his or her providing or failing to provide professional health care services.
- (2) "Property damage" to property:
  - (a) Owned, occupied or used by; or
  - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by,

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
  - With respect to liability arising out of the maintenance or use of that property; and
  - (2) Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- 3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - Insurance under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. COVERAGE B. PERSONAL AND AD-VERTISING INJURY LIABILITY does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

#### **SECTION III - LIMITS OF INSURANCE**

- The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds:
  - b. Claims made or "suits" brought; or
  - Persons or organizations making claims or bringing "suits".
- 2. a. The General Aggregate Limit is the most we will pay for the sum of:
  - (1) Medical expenses under COVER-AGE C. MEDICAL PAYMENTS:
  - (2) Damages under COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - (3) Damages under COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY.

This General Aggregate Limit will not apply if either the Location General Aggre-

gate Limit of Insurance, Paragraph 2.b., or the Construction Project General Aggregate Limit of Insurance, Paragraph 2.c. applies.

- b. A separate Location General Aggregate Limit of Insurance, equal to the amount of the General Aggregate Limit shown in the Declarations, shall apply to each location owned by, or rented or leased to you and is the most we will pay for the sum of:
  - (1) Damages under COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - (2) Medical expenses under COVER-AGE C. MEDICAL PAYMENTS,

which can be attributed to operations at only a single location owned by, or rented or leased to you.

- c. A separate Construction Project General Aggregate Limit of Insurance, equal to the amount of the General Aggregate Limit shown in the Declarations, shall apply to each construction project and is the most we will pay for the sum of:
  - (1) Damages under COVERAGE A.
    BODILY INJURY AND PROPERTY
    DAMAGE LIABILITY, except damages because of "bodily injury" or
    "property damage" included in the
    "products-completed operations
    hazard"; and
  - (2) Medical expenses under COVER-AGE C. MEDICAL PAYMENTS;

which can be attributed only to ongoing operations and only at a single construction project.

- d. Only for the purpose of determining which General Aggregate Limit of Insurance,
   2.a., 2.b., or 2.c., applies:
  - (1) Location means premises involving the same or connecting lots, or premises, whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
  - (2) Construction project means a location you do not own, rent or lease where ongoing improvements, alterations, installation, demolition or maintenance work is performed by you or on your behalf. All connected ongoing improvements, alterations, installation, demolition or maintenance work performed by you or on

your behalf at the same location for the same persons or organizations, no matter how often or under how many different contracts, will be deemed to be a single construction project.

- The Products-Completed Operations Aggregate Limit is the most we will pay under COV-ERAGE A. BODILY INJURY AND PROP-ERTY DAMAGE LIABILITY for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
- 4. Subject to 2.a. above, the Personal and Advertising Injury Limit is the most we will pay under COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
- 5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - Damages under COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LI-ABILITY; and
  - b. Medical expenses under COVERAGE C. MEDICAL PAYMENTS:

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

- 6. Subject to 5. above, the Damage to Premises Rented to You Limit is the most we will pay under COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire or explosion, while rented to you or temporarily occupied by you with permission of the owner.
- Subject to 5. above, the Medical Expense Limit is the most we will pay under COVER-AGE C. MEDICAL PAYMENTS for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each "coverage term".

#### SECTION IV - COMMERCIAL GENERAL LI-ABILITY CONDITIONS

#### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

- 2. Duties in the Event of Occurrence, Offense, Claim or Suit
  - a. You must see to it that we are notified as soon as practicable of an "occurrence" or

a "personal and advertising injury" offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
  - Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:
  - Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

#### 3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

#### 4. Liberalization

If, within 60 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will automatically apply to this Coverage Part as of the latter of:

- The date we implemented the change in your state; or
- The date this Coverage Part became effective; and

will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

#### 5. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY or COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY of this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary except when **b**. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c**. below.

#### b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar insurance for "your work";
  - (b) That is Fire or Explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;
  - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to

premises rented to you or temporarily occupied by you with permission of the owner; or

- (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to SECTION I -COVERAGES, COVERAGE A. BODILY INJURY AND PROP-ERTY DAMAGE LIABILITY, 2. Exclusions, g. Aircraft, Auto or Watercraft.
- (2) Any other primary insurance available to the insured covering liability for damages arising out of the premises or operations, or the products and completed operations, for which the insured has been added as an additional insured by attachment of an endorsement.
- (3) Any other insurance:
  - (a) Whether primary, excess, contingent or on any other basis, except when such insurance is written specifically to be excess over this insurance; and
  - (b) That is a consolidated (wrap-up) insurance program which has been provided by the prime contractor/project manager or owner of the consolidated project in which you are involved.

When this insurance is excess, we will have no duty under COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY or COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and selfinsured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance

shown in the Declarations of this Coverage Part.

### c. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

### 6. Premium Audit

- We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If:
  - The earned premium is less than the deposit premium, we will return the excess to the first Named Insured; or
  - (2) The earned premium is greater than the deposit premium, the difference will be due and payable to us by the first Named Insured upon notice from us.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### 7. Representations

By accepting this Coverage Part, you agree:

- The statements in the Declarations are accurate and complete;
- Those statements are based upon representations you made to us; and
- c. We have issued this Coverage Part in reliance upon your representations.

## 8. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

# 9. Transfer of Rights of Recovery Against Others to Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

# 10. Two or More Coverage Forms or Policies Issued by Us

If this Coverage Part and any other Coverage Form, Coverage Part or policy issued to you by us or any company affiliated with us apply to the same "occurrence" or "personal and advertising injury" offense, the aggregate maximum limit of insurance under all the Coverage Forms, Coverage Parts or policies shall not exceed the highest applicable limit of insurance under any one Coverage Form, Coverage Part or policy. This condition does not apply to any Coverage Form, Coverage Part or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Part.

### 11. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

# **SECTION V - DEFINITIONS**

- "Advertisement" means a notice that is broadcast, telecast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. "Advertisement" includes a publicity article. For purposes of this definition:
  - Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an "advertisement".
- 2. "Authorized representative" means:
  - a. If you are designated in the Declarations as:

- (1) An individual, you and your spouse are "authorized representatives".
- (2) A partnership or joint venture, your members, your partners, and their spouses are "authorized representatives".
- (3) A limited liability company, your members and your managers are "authorized representatives".
- (4) An organization other than a partnership, joint venture or limited liability company, your "executive officers" and directors are "authorized representatives". Provided you are not a publicly traded organization, your stockholders are also "authorized representatives".
- (5) A trust, your trustees are "authorized representatives".
- b. Your "employees":
  - (1) Assigned to manage your insurance program; or
  - (2) Responsible for giving or receiving notice of an "occurrence", "personal and advertising injury" offense, claim or "suit":

are also "authorized representatives".

### 3. "Auto" means:

- A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

- "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- 5. "Coverage term" means the following individual increment, or if a multi-year policy period, increments, of time, which comprise the policy period of this Coverage Part:
  - a. The year commencing on the Effective Date of this Coverage Part at 12:01 AM standard time at your mailing address shown in the Declarations, and if a multiyear policy period, each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at

- 12:00 AM standard time at your mailing address shown in the Declarations on the earlier of:
- The day the policy period shown in the Declarations ends; or
- (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.
- b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".
- 6. "Coverage territory" means:
  - The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - Goods or products made or sold by you in the territory described in a. above;
    - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication.

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement to which we agree.

- 7. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

- "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- The repair, replacement, adjustment or removal of "your product" or "your work"; or
- Your fulfilling the terms of the contract or agreement.
- 12. "Insured contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "property damage" by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement:
  - Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury", "property damage" or "personal and advertising injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

(1) That indemnifies a railroad for "bodily injury", "property damage" or "personal and advertising injury" arising out of construction or demolition operations, within 50 feet of any rail-

- road property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (2) above and supervisory, inspection, architectural or engineering activities:
- (4) That indemnifies an advertising, public relations or media consulting firm for "personal and advertising injury" arising out of the planning, execution or failure to execute marketing communications programs. Marketing communications programs include but are not limited to comprehensive marketing campaigns; consumer. trade and corporate advertising for all media; media planning, buying, monitoring and analysis; direct mail; promotion; sales materials; design; presentations; point-of-sale materials; market research; public relations and new product development;
- (5) Under which the insured, if an advertising, public relations or media consulting firm, assumes liability for "personal and advertising injury" arising out of the insured's rendering or failure to render professional services, including those services listed in Paragraph (4), above;
- (6) That indemnifies a web-site designer or content provider, or Internet search, access, content or service provider for injury or damage arising out of the planning, execution or failure to execute Internet services. Internet services include but are not limited to design, production, distribution, maintenance and administration of web-sites and web-banners; hosting web-sites; registering domain names; registering with search

- engines; marketing analysis; and providing access to the Internet or other similar networks; or
- (7) Under which the insured, if a website designer or content provider, or Internet search, access, content or service provider, assumes liability for injury or damage arising out of the insured's rendering or failure to render Internet services, including those listed in Paragraph (6), above.
- 13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" includes supervisors furnished to you by the labor leasing firm. "Leased worker" does not include a "temporary worker".
- **14.** "Loading or unloading" means the handling of property:
  - After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - **b.** While it is in or on an aircraft, watercraft or "auto"; or
  - While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

- 15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
  - Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - **b.** Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads:
  - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to

permanently attached equipment of the following types:

- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
- (2) Cherry pickers and similar devices used to raise or lower workers:
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

- **16.** "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
  - a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
- 18. "Pollutant" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property or the environment regardless of whether the injury or damage is caused directly or indirectly by the "pollutants" and whether:
  - The insured is regularly or otherwise engaged in activities which taint or degrade the environment; or
  - **b.** The insured uses, generates or produces the "pollutant".
- 19. "Products-completed operations hazard":
  - a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
    - Products that are still in your physical possession; or
    - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
      - (a) When all of the work called for in your contract has been completed; or
      - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
      - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- **b.** Does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3) Products or operations for which the classification, listed in the Declarations or in a schedule, states that products-completed operations are included.

# 20. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

- 21. "Suit" means a civil proceeding in which money damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent:
  - Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
  - c. An appeal of a civil proceeding.
- 22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- "Volunteer worker" means a person who is not your "employee", and who donates his or

her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Workplace" means that place and during such hours to which the "employee" sustaining "bodily injury" was assigned by you, or any other person or entity acting on your behalf, to work on the date of "occurrence".

# 25. "Your product":

# a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (a) You;
  - (b) Others trading under your name; or
  - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

### b. includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

# 26. "Your work":

#### a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

# b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.

# NUCLEAR ENERGY LIABILITY EXCLUSION (Broad Form)

- 1. The insurance does not apply:
  - A. Under any Liability Coverage, to "bodily injury" or "property damage":
    - (1) With respect to which an insured under this Coverage Part is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
    - (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the insured is, or had this Coverage Part not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
  - B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.
  - C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from the "hazardous properties" of "nuclear material", if:
    - (1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an insured, or (b) has been discharged or dispersed therefrom;
    - (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an insured; or
    - (3) The "bodily injury" or "property damage" arises out of the furnishing by

an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

### 2. As used in this exclusion:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- A. Any "nuclear reactor";
- B. Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";
- C. Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

D. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

# THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# PRIMARY AND NONCONTRIBUTORY INSURANCE

This endorsement modifies insurance provided under the following:

## **BUSINESS AUTO COVERAGE FORM**

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	Policy Number:	
3/15/2022	EPP0237545	
Named Insured:		
Smithco Construction, Inc.		
Countersigned by: Starry Bowell		
(Authorized Representative)		

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

# 1. Noncontributory Insurance

SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance is replaced by the following:

c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary and we will not seek contribution from any other insurance for any liability assumed under an "insured contract" that requires liability to be assumed on a primary noncontributory basis.

# THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# **BLANKET WAIVER OF SUBROGATION - AUTO**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	Policy Number:
3/15/2022	EPP0237545
Named Insured:	
Smithco Construction, Inc.	
Countersigned by: Stacy Bound	
(A - th 1 D 1 - th )	

(Authorized Representative) /

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

# 1. Blanket Waiver of Subrogation

SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer of Rights of Recovery Against Others to Us is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization because

of payments we make for "bodily injury" or "property damage" arising out of the operation of a covered "auto" when you have assumed liability for such "bodily injury" or "property damage" under an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the "insured contract".

# THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# ADDITIONAL INSURED BY CONTRACT

This endorsement modifies insurance provided under the following:

# BUSINESS AUTO COVERAGE FORM GARAGE COVERAGE FORM

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 3/15/2022	Policy Number: EPP0237545
Named Insured:	
Smithco Cor	nstruction, Inc.
Countersigned by: Starry B	owell
(Authorized Representative)	

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**SECTION II - LIABILITY COVERAGE, A. Coverage, I. Who is an Insured** is amended to include as an insured any person or organization with which you have agreed in a valid written contract to provide insurance as is afforded by this policy.

This provision is limited to the scope of the valid written contract.

This provision does not apply unless the valid written contract has been executed prior to the "bodily injury" or "property damage".



## WAIVER OF SUBROGATION

Insured Name: SMITHCO CONSTRUCTION, INC Insured Policy Number: WC100-0005750-2022A

Builders Trust of New Mexico waives any right of recovery of subrogation against the certificate holder named on this certificate of insurance, but only to the extent that the employers to whom we provide coverage performs work under a written contract with the certificate holder that requires this waiver.

Name of Person	Name of Organization
	Blanket Waiver of Subrogation

Date: 12/8/2021

Countersigned by

andy Z. akin

Agency Number: 6 – 8

Agency Name: Burke Insurance Group LLC



# **PAYMENT BOND**

CONTRACTOR (name and address): Smithco Construction, Inc. P.O. Box 45 6 King Canyon Loop Caballo, NM 87931 SURETY (name and address of principal place of business): Travelers Casualty and Surety Company of America One Tower Square Hartford, CT 06183

OWNER (name and address): City of Truth 505 Sims St	or Consequences
505 Sime St	root
	reet requences, NM 87901
Description (name and location): Main Street Dis	, 2022 red Fifty One Thousand Seven Hundred Twenty Two Dollars and 59/100 strict (MSD) Water System Improvements ct No.: 19-600-205-00
SOND Engineer's Pro	ject No.: 19-600-205-00
Bond Number: 107637182  Date (not earlier than the Effective Date of the Agreemer Amount: \$6,851,722.59 Six Million Eight Hundr Modifications to this Bond Form: X None	et of the Construction Contract): September , 2022  ed Fifty One Thousand Seven Hundred Twenty Two Dollars and 59/100  See Paragraph 18
urety and Contractor, intending to be legally boun his Payment Bond to be duly executed by an autho	d hereby, subject to the terms set forth below, do each cause crized officer, agent, or representative.
CONTRACTOR AS PRINCIPAL	SURETY
Smithco Construction, Inc. (sea	Travelers Casualty and Surety Company of America (seal)
Sy: Signature	Surety's Name and Corporate Seal  By:  Signature (attach power of attorney)
Twister Smith	Dick Minick
Prin <b>t N</b> ame	Print Name
President	Attorney-in-Fact
Title / //	Title
Attest:	Attest: Ole Editality
Signature	Signature
Vice President	Secretary
Title	Title
Notes: (1) Provide supplemental execution by any add	itional parties, such as joint venturers. (2) Any singular reference
to Contractor, Surety, Owner, or other party shall be co	
Copyright © 2013 National Society of Profess	C-615, Payment Bond ional Engineers, American Council of Engineering Companies, iil Engineers. All rights reserved. 1 of 3

- The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
- If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
- 3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
- 4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
- The Surety's obligations to a Claimant under this Bond shall arise after the following:
  - 5.1 Claimants who do not have a direct contract with the Contractor,
    - 5.1.1 have furnished a written notice of nonpayment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).

- If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
- When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2 Pay or arrange for payment of any undisputed amounts.
  - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
- The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
- 9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
- 10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
- 11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

- 12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- 13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
- 14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
- 15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

### 16. Definitions

- 16.1 Claim: A written statement by the Claimant including at a minimum:
  - 1. The name of the Claimant:
  - The name of the person for whom the labor was done, or materials or equipment furnished:
  - A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
  - A brief description of the labor, materials, or equipment furnished;
  - The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
  - The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
  - 7. The total amount of previous payments received by the Claimant; and

- The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor. materials, or equipment were furnished.
- 16.3 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.
- 17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
- 18. Modifications to this Bond are as follows:



# Travelers Casualty and Surety Company of America Travelers Casualty and Surety Company St. Paul Fire and Marine Insurance Company

### **POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America. Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint DICK MINICK of Albuquerque

New Mexico , their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 3rd day of February, 2017.







State of Connecticut

City of Hartford ss.

By: Robert L. Raney, Sefilor Vice President

On this the 3rd day of February, 2017, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America. Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal

My Commission expires the 30th day of June, 2021



Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary, and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned. Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this

day of September , 2022







Kevin F. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.

Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.

CERTFICATE OF OWNER'S ATTORNEY	
PROJECT NAME:	
CONTRACTOR NAME AND CONTRACT NUMBER:	
I, the undersigned,	, the duly authorized and acting legal
representative of	performance and payment bond(s) and the manner of the aforesaid agreements is adequate and has ng through their duly authorized representatives; rity to execute said agreements on behalf of the ing agreements constitute valid and legally binding
Name	Date
AGENCY CONCURRENCE	
As lender or insurer of funds to defray the costs of thi thereunder, the Agency hereby concurs in the form, co	
Agency Representative	Date
Name	
THATTE	

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

### **ARTICLE 1—DEFINITIONS AND TERMINOLOGY**

# 1.01 Defined Terms

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
  - 1. Addenda—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  - Agreement—The written instrument, executed by Owner and Contractor, that sets forth
    the Contract Price and Contract Times, identifies the parties and the Engineer, and
    designates the specific items that are Contract Documents.
  - 3. Application for Payment—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  - 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  - 5. Bidder—An individual or entity that submits a Bid to Owner.
  - 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
  - 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
  - 8. Change Order—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  - 9. Change Proposal—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

### 10. Claim

 a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

- requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
- c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
- d. A demand for money or services by a third party is not a Claim.
- 11. Constituent of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
- 12. Contract—The entire and integrated written contract between Owner and Contractor concerning the Work.
- 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
- 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
- 15. Contract Times—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
- 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
- 17. Cost of the Work—See Paragraph 13.01 for definition.
- 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
- 19. Effective Date of the Contract—The date, indicated in the Agreement, on which the Contract becomes effective.
- 20. Electronic Document—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
- 21. Electronic Means—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

- 22. Engineer—The individual or entity named as such in the Agreement.
- 23. Field Order—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
- 24. Hazardous Environmental Condition—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
- 25. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
- 26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
- 27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
- Notice of Award—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
- Notice to Proceed—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
- 30. Owner—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
- 31. Progress Schedule—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
- 32. Project—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

- 33. Resident Project Representative—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
- 34. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
- 35. Schedule of Submittals—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.
- 36. Schedule of Values—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
- 37. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
- 38. Site—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
- 39. Specifications—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
- 40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
- 41. Submittal—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
- 42. Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.

- 43. Successful Bidder—The Bidder to which the Owner makes an award of contract.
- 44. Supplementary Conditions—The part of the Contract that amends or supplements these General Conditions.
- 45. Supplier—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

### 46. Technical Data

- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
- b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
- c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
- 47. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
- 48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
- 49. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- 50. Work Change Directive—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

# 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. Intent of Certain Terms or Adjectives: The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. Day: The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*: The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - 1. does not conform to the Contract Documents;
  - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - 3. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).

## E. Furnish, Install, Perform, Provide

- The word "furnish," when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
- 2. The word "install," when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
- 3. The words "perform" or "provide," when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
- 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. Contract Price or Contract Times: References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

### **ARTICLE 2—PRELIMINARY MATTERS**

# 2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. Evidence of Contractor's Insurance: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. Evidence of Owner's Insurance: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

# 2.02 Copies of Documents

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

# 2.03 Before Starting Construction

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  - a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  - 2. a preliminary Schedule of Submittals; and
  - a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

# 2.04 Preconstruction Conference; Designation of Authorized Representatives

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

# 2.05 Acceptance of Schedules

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
  - The Progress Schedule will be acceptable to Engineer if it provides an orderly progression
    of the Work to completion within the Contract Times. Such acceptance will not impose
    on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or
    progress of the Work, nor interfere with or relieve Contractor from Contractor's full
    responsibility therefor.
  - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
  - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
  - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

### 2.06 Electronic Transmittals

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

## ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

# 3.01 Intent

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
  - any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
  - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

### 3.02 Reference Standards

- A. Standards Specifications, Codes, Laws and Regulations
  - Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

# 3.03 Reporting and Resolving Discrepancies

## A. Reporting Discrepancies

- 1. Contractor's Verification of Figures and Field Measurements: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
- 2. Contractor's Review of Contract Documents: If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
- 3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

## B. Resolving Discrepancies

- Except as may be otherwise specifically stated in the Contract Documents, the provisions
  of the part of the Contract Documents prepared by or for Engineer take precedence in
  resolving any conflict, error, ambiguity, or discrepancy between such provisions of the
  Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

# 3.04 Requirements of the Contract Documents

A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

# 3.05 Reuse of Documents

- A. Contractor and its Subcontractors and Suppliers shall not:
  - have or acquire any title to or ownership rights in any of the Drawings, Specifications, or
    other documents (or copies of any thereof) prepared by or bearing the seal of Engineer
    or its consultants, including electronic media versions, or reuse any such Drawings,
    Specifications, other documents, or copies thereof on extensions of the Project or any
    other project without written consent of Owner and Engineer and specific written
    verification or adaptation by Engineer; or
  - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

### ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

- 4.01 Commencement of Contract Times; Notice to Proceed
  - A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.
- 4.02 Starting the Work
  - A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.
- 4.03 Reference Points
  - A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

# 4.04 Progress Schedule

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

# 4.05 Delays in Contractor's Progress

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
  - Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  - Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  - 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
  - 1. The circumstances that form the basis for the requested adjustment;
  - 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  - 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  - 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  - 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

# ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

# 5.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

## 5.02 Use of Site and Other Areas

- A. Limitation on Use of Site and Other Areas
  - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. Removal of Debris During Performance of the Work: During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. Cleaning: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

- and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. Loading of Structures: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

## 5.03 Subsurface and Physical Conditions

- A. Reports and Drawings: The Supplementary Conditions identify:
  - Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data:
  - Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
  - 3. Technical Data contained in such reports and drawings.
- B. Underground Facilities: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. Reliance by Contractor on Technical Data: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.
- D. Limitations of Other Data and Documents: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
  - the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
  - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
  - the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
  - 4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

## 5.04 Differing Subsurface or Physical Conditions

- A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
  - 1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
  - 2. is of such a nature as to require a change in the Drawings or Specifications;
  - 3. differs materially from that shown or indicated in the Contract Documents; or
  - 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. Engineer's Review: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. Owner's Statement to Contractor Regarding Site Condition: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. Early Resumption of Work: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. Possible Price and Times Adjustments
  - Contractor shall be entitled to an equitable adjustment in Contract Price or Contract
    Times, to the extent that the existence of a differing subsurface or physical condition, or
    any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
- b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
- c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
  - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
  - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
  - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
- 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
- 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. Underground Facilities; Hazardous Environmental Conditions: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

## 5.05 Underground Facilities

- A. Contractor's Responsibilities: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
  - 1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  - 2. complying with applicable state and local utility damage prevention Laws and Regulations;

- 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
- 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
- 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. Notice by Contractor: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. Engineer's Review: Engineer will:
  - promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
  - identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
  - obtain any pertinent cost or schedule information from Contractor; determine the extent,
    if any, to which a change is required in the Drawings or Specifications to reflect and
    document the consequences of the existence or location of the Underground Facility; and
  - 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
  - During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. Owner's Statement to Contractor Regarding Underground Facility: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. Early Resumption of Work: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. Possible Price and Times Adjustments
  - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
- b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
- c. Contractor gave the notice required in Paragraph 5.05.B.
- If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
- 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
- 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

## 5.06 Hazardous Environmental Conditions at Site

- A. Reports and Drawings: The Supplementary Conditions identify:
  - 1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
  - 2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  - 3. Technical Data contained in such reports and drawings.
- B. Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
  - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
- 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
- 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

- conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

#### ARTICLE 6—BONDS AND INSURANCE

- 6.01 Performance, Payment, and Other Bonds
  - A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
  - B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
  - C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

## 6.02 Insurance—General Provisions

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

### H. Contractor shall require:

- 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
- 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

## 6.03 Contractor's Insurance

- A. Required Insurance: Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions*: The policies of insurance required by this Paragraph 6.03 as supplemented must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
  - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
  - 5. include all necessary endorsements to support the stated requirements.
- C. Additional Insureds: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  - include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

- 4. not seek contribution from insurance maintained by the additional insured; and
- as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

## 6.04 Builder's Risk and Other Property Insurance

- A. Builder's Risk: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. Property Insurance for Facilities of Owner Where Work Will Occur: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. Property Insurance for Substantially Complete Facilities: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. Partial Occupancy or Use by Owner: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. Insurance of Other Property; Additional Insurance: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

## 6.05 Property Losses; Subrogation

A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

- 1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
- 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
  - Owner waives all rights against Contractor, Subcontractors, and Engineer, and the
    officers, directors, members, partners, employees, agents, consultants and
    subcontractors of each and any of them, for all losses and damages caused by, arising out
    of, or resulting from fire or any of the perils, risks, or causes of loss covered by such
    policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

## 6.06 Receipt and Application of Property Insurance Proceeds

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

#### ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

## 7.01 Contractor's Means and Methods of Construction

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

## 7.02 Supervision and Superintendence

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

## 7.03 Labor; Working Hours

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

# 7.04 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

### 7.05 *"Or Equals"*

- A. Contractor's Request; Governing Criteria: Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
- 3) has a proven record of performance and availability of responsive service; and
- 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
  - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. Contractor's Expense: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. Engineer's Evaluation and Determination: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. Effect of Engineer's Determination: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. Treatment as a Substitution Request: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

### 7.06 Substitutes

- A. Contractor's Request; Governing Criteria: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
  - Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

- 3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
  - a. will certify that the proposed substitute item will:
    - perform adequately the functions and achieve the results called for by the general design;
    - 2) be similar in substance to the item specified; and
    - 3) be suited to the same use as the item specified.

## b. will state:

- 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
- 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
- 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

## c. will identify:

- 1) all variations of the proposed substitute item from the item specified; and
- 2) available engineering, sales, maintenance, repair, and replacement services.
- d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. Engineer's Evaluation and Determination: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. Reimbursement of Engineer's Cost: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. Effect of Engineer's Determination: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

## 7.07 Concerning Subcontractors and Suppliers

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

## 7.08 Patent Fees and Royalties

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 7.09 Permits

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### 7.10 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

## 7.11 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

## 7.12 Record Documents

A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

## 7.13 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

## 7.14 Hazard Communication Programs

A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

## 7.15 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

### 7.16 Submittals

- A. Shop Drawing and Sample Requirements
  - 1. Before submitting a Shop Drawing or Sample, Contractor shall:
    - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
    - b. determine and verify:
      - all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
      - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
      - all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
    - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
  - 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

- 3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. Submittal Procedures for Shop Drawings and Samples: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

#### 1. Shop Drawings

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

## 2. Samples

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
- 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

# C. Engineer's Review of Shop Drawings and Samples

- Engineer will provide timely review of Shop Drawings and Samples in accordance with the
  accepted Schedule of Submittals. Engineer's review and approval will be only to
  determine if the items covered by the Submittals will, after installation or incorporation
  in the Work, comply with the requirements of the Contract Documents, and be
  compatible with the design concept of the completed Project as a functioning whole as
  indicated by the Contract Documents.
- 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
- 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
- 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

- document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.
- 5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
- 6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
- 7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
- 8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.
- D. Resubmittal Procedures for Shop Drawings and Samples
  - 1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
  - 2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
  - 3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.
- E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs
  - 1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
    - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
    - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
    - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03. 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

## 7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
  - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  - Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  - abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
  - 1. Observations by Engineer;
  - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
  - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  - 4. Use or occupancy of the Work or any part thereof by Owner;
  - 5. Any review and approval of a Shop Drawing or Sample submittal;
  - 6. The issuance of a notice of acceptability by Engineer;
  - 7. The end of the correction period established in Paragraph 15.08;
  - 8. Any inspection, test, or approval by others; or

- 9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

# 7.18 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

# 7.19 Delegation of Professional Design Services

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

#### ARTICLE 8—OTHER WORK AT THE SITE

#### 8.01 Other Work

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

### 8.02 Coordination

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

## 8.03 Legal Relationships

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
  - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
  - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

#### **ARTICLE 9—OWNER'S RESPONSIBILITIES**

- 9.01 Communications to Contractor
  - A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.
- 9.02 Replacement of Engineer
  - A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.
- 9.03 Furnish Data
  - A. Owner shall promptly furnish the data required of Owner under the Contract Documents.
- 9.04 Pay When Due
  - A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

- 9.05 Lands and Easements; Reports, Tests, and Drawings
  - A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
  - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
  - C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

#### 9.06 Insurance

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

## 9.07 Change Orders

A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

## 9.08 Inspections, Tests, and Approvals

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

# 9.09 Limitations on Owner's Responsibilities

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

### 9.10 Undisclosed Hazardous Environmental Condition

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

## 9.11 Evidence of Financial Arrangements

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

## 9.12 Safety Programs

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

#### ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

# 10.01 Owner's Representative

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

## 10.02 Visits to Site

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

## 10.03 Resident Project Representative

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

## 10.04 Engineer's Authority

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

## 10.05 Determinations for Unit Price Work

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

## 10.06 Decisions on Requirements of Contract Documents and Acceptability of Work

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

## 10.07 Limitations on Engineer's Authority and Responsibilities

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

## 10.08 Compliance with Safety Program

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

#### ARTICLE 11—CHANGES TO THE CONTRACT

## 11.01 Amending and Supplementing the Contract

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

## 11.02 Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
  - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

## 11.03 Work Change Directives

A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
  - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 Field Orders

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

### 11.05 Owner-Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

# 11.06 Unauthorized Changes in the Work

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

## 11.07 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

- 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
- 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
- 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. Contractor's Fee: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
  - 1. A mutually acceptable fixed fee; or
  - 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
    - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
    - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
    - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

## 11.08 Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

## 11.09 Change Proposals

A. Purpose and Content: Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

## B. Change Proposal Procedures

- 1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
- 2. Supporting Data: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
  - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
  - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. Engineer's Initial Review: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
- 4. Engineer's Full Review and Action on the Change Proposal: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

- 5. Binding Decision: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. Resolution of Certain Change Proposals: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 Notification to Surety

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

#### **ARTICLE 12—CLAIMS**

# 12.01 Claims

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
  - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
  - Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
  - 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. Submittal of Claim: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

- and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. Review and Resolution: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.

#### D. Mediation

- At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
- 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
- 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. Partial Approval: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. Denial of Claim: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. Final and Binding Results: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

#### ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

# 13.01 Cost of the Work

- A. Purposes for Determination of Cost of the Work: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

- 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. Costs Included: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
  - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
  - 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  - 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
  - Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
  - 5. Other costs consisting of the following:
    - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
    - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

# c. Construction Equipment Rental

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. Costs Excluded: The term Cost of the Work does not include any of the following items:
  - 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
  - 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
  - 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  - 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  - Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  - 6. Expenses incurred in preparing and advancing Claims.
  - 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

#### D. Contractor's Fee

- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
  - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
    - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
    - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
- 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

E. Documentation and Audit: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

#### 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. Cash Allowances: Contractor agrees that:
  - the cash allowances include the cost to Contractor (less any applicable trade discounts)
    of materials and equipment required by the allowances to be delivered at the Site, and
    all applicable taxes; and
  - Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. Owner's Contingency Allowance: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

#### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

#### E. Adjustments in Unit Price

- 1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
  - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
- The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
- 3. Adjusted unit prices will apply to all units of that item.

# ARTICLE 14-TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

#### 14.01 Access to Work

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

#### 14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
  - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  - 3. by manufacturers of equipment furnished under the Contract Documents;
  - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 Defective Work

- A. Contractor's Obligation: It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. Notice of Defects: Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. Correction, or Removal and Replacement: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. Costs and Damages: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

# 14.04 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

# 14.05 Uncovering Work

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 Owner May Stop the Work

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

# ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

#### 15.01 *Progress Payments*

A. Basis for Progress Payments: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

# **B.** Applications for Payments

- At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
- If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

- 3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
- 4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

# C. Review of Applications

- Engineer will, within 10 days after receipt of each Application for Payment, including each
  resubmittal, either indicate in writing a recommendation of payment and present the
  Application to Owner, or return the Application to Contractor indicating in writing
  Engineer's reasons for refusing to recommend payment. In the latter case, Contractor
  may make the necessary corrections and resubmit the Application.
- 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
- 3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

- 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work;
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
- 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
- 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
  - a. the Work is defective, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
  - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

# D. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

# E. Reductions in Payment by Owner

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
- c. Contractor has failed to provide and maintain required bonds or insurance;
- d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
- e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
- f. The Work is defective, requiring correction or replacement;
- g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
- h. The Contract Price has been reduced by Change Orders;
- i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
- Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
- k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
- I. Other items entitle Owner to a set-off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
- Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

#### 15.02 Contractor's Warranty of Title

A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

# 15.03 Substantial Completion

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

- submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 Partial Use or Occupancy

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

- At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
- At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
- 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
- 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

#### 15.05 Final Inspection

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 15.06 Final Payment

# A. Application for Payment

- After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
- 2. The final Application for Payment must be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
- e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- 3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. Engineer's Review of Final Application and Recommendation of Payment: If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. Notice of Acceptability: In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. Completion of Work: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. Final Payment Becomes Due: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

# 15.07 Waiver of Claims

A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

- appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

#### 15.08 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such adjacent areas;
  - 2. correct such defective Work:
  - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

#### ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

# 16.01 Owner May Suspend Work

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

# 16.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
  - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 Owner May Terminate for Convenience

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

#### 16.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

#### **ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

#### 17.01 Methods and Procedures

- A. *Disputes Subject to Final Resolution*: The following disputed matters are subject to final resolution under the provisions of this article:
  - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
  - 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes*: For any dispute subject to resolution under this article, Owner or Contractor may:
  - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
  - agree with the other party to submit the dispute to another dispute resolution process;
  - if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

#### **ARTICLE 18—MISCELLANEOUS**

# 18.01 Giving Notice

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
  - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

# 18.02 Computation of Times

A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

#### 18.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

# 18.04 Limitation of Damages

A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

#### 18.05 No Waiver

A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

## 18.06 Survival of Obligations

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

# 18.07 Controlling Law

A. This Contract is to be governed by the law of the state in which the Project is located.

# 18.08 Assignment of Contract

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

#### 18.09 Successors and Assigns

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

#### 18.10 Headings

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.



# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

#### Article 1—DEFINITIONS AND TERMINOLOGY

SC-1.01 Defined Terms

Amend Paragraph 1.01.A.8 by adding the following sentence at the end of the paragraph.

The Change Order from to be used on this Project is EJCDC C-941 (2018). Agency approval is required before Change Orders are effective.

Amend Paragraph 1.01.A.30 by adding the following sentence at the end of the paragraph.

For the purposes of Rural Development, this term is synonymous with the term "applicant" as defined in 7 CFR 1780.7 (a) (1), (2) and (30 and is an entity receiving financial assistance from the federal programs.

Amend Paragraph 1.01.A.50 by adding the following sentence at the end of the paragraph.

The work Change Directive form to be used on this Project is EJCDC C-940 (2018). Agency approval is required before a Work Change Directive is issued.

Add the following new paragraphs immediately after paragraph 1.01.A.50

51. Agency – The Project is financed in whole or in part by the New Mexico Finance Authortiy Add the following new paragraph with the title "American Iron and Steel Definitions" immediately after Paragraph 1.01.A.51:

#### 52. American Iron and Steel Definitions

a. American Iron and Steel (AIS) - Requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference for "iron and steel products," meaning the following products, if 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. AIS requirements apply in each of the several states, the District of Columbia, and each federally recognized Tribe, but not the U.S. Territories.

- b. Coating A covering that is applied to the surface of an object. If a Coating is applied to the external surface of a domestic iron or Steel component, and the application takes place outside of the United States, said product would be considered a compliant product under the AIS requirements. Any Coating processes that are applied to the external surface of Iron and Steel components that would otherwise be AIS compliant would not disqualify the product from meeting the AIS requirements regardless of where the Coating processes occur, provided that final assembly of the product occurs in the United States. This exemption only applies to Coatings on the external surface of Iron and Steel components. It does not apply to Coatings or linings on internal surfaces of Iron and Steel products, such as the lining of lined pipes. All Manufacturing Processes for lined pipes, including the application of pipe lining, must occur in the United States for the product to be compliant with AIS requirements.
- c. Construction Materials Those articles, materials, or supplies made primarily of iron and/or steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered "structural steel". Note: Mechanical and electrical components, equipment and systems are not considered Construction Materials. See definitions of Mechanical Equipment and Electrical Equipment.
- d. *Contractor's Certification* Documentation submitted by the Contractor upon Substantial Completion of the Contract that all Iron and Steel products installed were Produced in the United States.
- e. De Minimis Various miscellaneous, incidental low-cost components that are essential for, but incidental to, the construction and are incorporated into the physical structure of the project. Examples of De Minimis components could include small washers, screws, fasteners (such as "off the shelf" nuts and bolts), miscellaneous wire, corner bead, ancillary tube, signage, trash bins, door hardware etc. Costs for such De Minimis components cumulatively may comprise no more than a total of five percent of the total cost of the materials used in and incorporated into a project; the cost of an individual item may not exceed one percent of the total cost of the materials used in and incorporated into a project.
- f. Electrical Equipment Typically any machine powered by electricity and includes components that are part of the electrical distribution system. AIS does not apply to Electrical Equipment.
- g. *Engineer's Certification* Documentation submitted by the Engineer that Drawings, Specifications, and Bidding Documents comply with AIS.
- h. Iron and Steel products 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. Only items on the above list made primarily of iron or steel, permanently incorporated into the project must be Produced in the United States. For example, trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. iron or steel.

- Manufacturer A Supplier, fabricator, distributor, materialman, or vendor is an entity with which the Owner, Contractor or any subcontractor has contracted to furnish materials or equipment to be incorporated in the project by the Owner, Contractor or a subcontractor.
- j. Manufacturer's Certification Documentation provided by the Manufacturer stating that the Iron and Steel products to be used in the project are produced in the United States in accordance with American Iron and Steel (AIS) Requirements. If items are purchased via a Supplier, distributor, vendor, etc. from the Manufacturer directly, then the Supplier, distributor, vendor, etc. will be responsible for obtaining and providing these certifications to the parties purchasing the products.
- k. Manufacturing Processes Processes such as melting, refining, pouring, forming, rolling, drawing, finishing, and fabricating. Further, if a domestic Iron and Steel product is taken out of the United States for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the material(s), if any, being applied as a Coating are similarly not covered. Non-iron or Steel components of an Iron and Steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-Iron and Steel components do not have to be of domestic origin. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-U.S. sources.
- 1. *Mechanical Equipment* Typically equipment which has motorized parts and/or is powered by a motor. AIS does not apply to Mechanical Equipment.
- m. Minor Components Components within an iron and/or Steel product otherwise compliant with the American Iron and Steel requirements; this waiver is typically used by Manufacturers. It differs from the De Minimis definition in that De Minimis pertains to the entire project and the minor component definition pertains to a single product. This waiver allows use of non-domestically produced miscellaneous Minor Components comprising up to five percent of the total material cost of an otherwise domestically produced Iron and Steel product. However, unless a separate waiver for a product has been approved, all other Iron and Steel components in said product must still meet the AIS requirements. This waiver does not exempt the whole product from the AIS requirements only Minor Components within said product and the iron or Steel components of the product must be produced domestically. Valves and hydrants are also subject to the cost ceiling requirements described here. Examples of Minor Components could include items such as pins and springs in valves/hydrants, bands/straps in couplings, and other low-cost items such as small fasteners etc.
- n. Municipal Castings Cast iron or Steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and solid waste infrastructure.
- o. Primarily Iron or Steel A product is made of greater than 50 percent iron or Steel on a materials cost basis. An exception to this definition is reinforced precast concrete (see Definitions). All technical specifications and applicable industry standards (e.g. NIST, NSF, AWWA) must be met. If a product is determined to be less than 50 percent iron and/or steel, the AIS requirements do not apply. For example, the cost of a fire hydrant includes:

<ul> <li>The cost of materials used for the iron portion of a fire hydrant (e.g. bonnet, body and shoe); and</li> </ul>
□ The cost to pour and cast to create those components (e.g. labor and energy).
Not included in the cost are:
<ul> <li>□ The additional material costs for the non-iron or Steel internal workings of the hydrant (e.g. stem, coupling, valve, seals, etc.); and</li> <li>□ The cost to assemble the internal workings into the hydrant body.</li> </ul>
Draduced in the United States. The production in the United States of the iron or State

- p. Produced in the United States The production in the United States of the iron or Steel products used in the project requires that all Manufacturing Processes must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives.
- q. Reinforced Precast Concrete Reinforced Precast Concrete structures must comply with AIS, regardless of whether it consists of at least 50 percent iron or steel. The reinforcing bar and wire must be Produced in the United States and meet the same standards as for any other iron or Steel product. Additionally, the casting of the concrete product must take place in the United States. The cement and other raw materials used in concrete production are not required to be of domestic origin. If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered Construction Materials and must be Produced in the United States.
- r. Steel An alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of Steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of Steel covers carbon steel, alloy steel, stainless steel, tool steel, and other specialty steels.
- s. Structural Steel Rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees, and zees. Other shapes include but are not limited to, H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

# **Article 2—PRELIMINARY MATTERS**

SC-2.02 Copies of Documents

Amend the first sentence of Paragraph 2.02.A. to read as follows:

Owner shall furnish to Contractor five printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

#### Article 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE-NOT USESD

#### Article 4—COMMENCEMENT AND PROGRESS OF THE WORK

SC-4.05 Delays in Contractor's Progress

SC-4.01.A - Delete the last sentence of paragraph

Amend Paragraph 4.05.C by adding the following subparagraphs:

- 5. Weather-Related Delays
  - a. If "abnormal weather conditions" as set forth in Paragraph 4.05.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following:
    - 1) that weather conditions were abnormal for the period of time in which the delay occurred,
    - 2) that such weather conditions could not have been reasonably anticipated, and
    - 3) that such weather conditions had an adverse effect on the Work as scheduled. Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered abnormal weather conditions. Requests for time extensions due to abnormal weather conditions will be submitted to the Engineer within five days of the end of the abnormal weather condition event. It is the responsibility of the Contractor to provide the information listed in SC 4.05.C.5.b
  - b. The existence of abnormal weather conditions will be determined on a month-bymonth basis in accordance with the following:
    - Every workday on which one or more of the following conditions exist will be considered a "bad weather day":
      - i) Total precipitation (as rain equivalent) occurring between 7:00 p.m. on the preceding day (regardless of whether such preceding day is a workday) through 7:00 p.m. on the workday in question equals or exceeds [threshold precipitation quantity] of precipitation (as rain equivalent, based on the snow/rain conversion indicated in the table entitled Foreseeable Bad Weather Days; such table is hereby incorporated in this SC-4.05.C by reference.
      - ii) Ambient outdoor air temperature at 11:00 a.m. is equal to or less than the following low temperature threshold: [temperature] degrees Fahrenheit; or, at 3:00 p.m. the ambient outdoor temperature is equal to or greater than the following high temperature threshold: [temperature] degrees Fahrenheit.
    - 2) Determination of actual bad weather days during performance of the Work will be based on the weather records measured and recorded by [name of the entity operating the weather station] weather monitoring station at [location of the weather monitoring station].

- Contractor shall anticipate the number of foreseeable bad weather days per month indicated in the table in Exhibit [exhibit number]—Foreseeable Bad Weather Days.
- 4) In each month, every bad weather day exceeding the number of foreseeable bad weather days established in the table in Exhibit [exhibit number]— Foreseeable Bad Weather Days will be considered as "abnormal weather conditions." The existence of abnormal weather conditions will not relieve Contractor of the obligation to demonstrate and document that delays caused by abnormal weather are specific to the planned work activities or that such activities thus delayed were on Contractor's then-current Progress Schedule's critical path for the Project.

# Article 5—SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS

# SC-5.03 Subsurface and Physical Conditions

Add the following new paragraphs immediately after Paragraph 5.03.D:

E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Date of Report	Technical Data
GEOTECHNICAL EVALUATION REPORT - WATER SYSTEM IMPROVEMENTS	February 18, 2020	Subsurface conditions Groundwater Foundation design parameters Lateral earth pressures Seismic considerations Drainage Pavements Excavation conditions Earthwork, including site preparation, fill placement, and suitability of existing soils for fill materials, and compaction

# Article 6-BONDS AND INSURANCE

- 6.01 Performance, Payment, and Other Bonds
- SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.A:
  - 1. Required Performance Bond Form: The performance bond that Contractor furnishes will be in the form of EJCDC® C-610, Performance Bond (2010, 2013, or 2018 edition).
  - 2. Required Payment Bond Form: The payment bond that Contractor furnishes will be in the form of EJCDC® C-615, Payment Bond (2010, 2013, or 2018 edition).
- 6.03 Contractor's Insurance

- SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:
  - D. Other Additional Insureds: As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following:

#### **NMDOT**

E. Workers' Compensation and Employer's Liability: Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Jones Act (if applicable)	<u> </u>
Bodily injury by accident—each accident	\$ 1,000,000
Bodily injury by disease—aggregate	\$ 1,000,000
Employer's Liability	
Each accident	\$ 1,000,000
Each employee	\$ 1,000,000
Policy limit	\$ 1,000,000
Stop-gap Liability Coverage	-
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	\$

- F. Commercial General Liability—Claims Covered: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
  - damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
  - 2. damages insured by reasonably available personal injury liability coverage, and
  - 3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. Commercial General Liability—Form and Content: Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:

- 1. Products and completed operations coverage.
  - a. Such insurance must be maintained for three years after final payment.
  - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
- 2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
- 3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
- 4. Underground, explosion, and collapse coverage.
- 5. Personal injury coverage.
- 6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
- For design professional additional insureds, ISO Endorsement CG 20 32 07 04
   "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named
   Insured" or its equivalent.
- H. Commercial General Liability—Excluded Content: The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
  - 1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
  - 2. Any exclusion for water intrusion or water damage.
  - 3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
  - 4. Any exclusion of coverage relating to earth subsidence or movement.
  - 5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).
  - 6. Any limitation or exclusion based on the nature of Contractor's work.
  - 7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.
- 1. Commercial General Liability—Minimum Policy Limits

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$ 2,000,000
Products—Completed Operations Aggregate	\$ 1,000,000
Personal and Advertising Injury	\$ 1,000,000

Commercial General Liability	Policy limits of not less than:
Bodily Injury and Property Damage—Each Occurrence	\$ 1,000,000

J. Automobile Liability: Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Each Person	\$ 1,000,000
Each Accident	\$ 1,000,000
Property Damage	
Each Accident	\$ 1,000,000
[or]	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$ 1,000,000

K. Umbrella or Excess Liability: Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not
	less than:
Each Occurrence	\$ 5,000,000
General Aggregate	\$ 5,000,000

L. Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements: Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of \$[5,000,000.00] after accounting for partial attribution of its limits to underlying policies, as allowed above.

# Article 7—CONTRACTOR'S RESPONSIBILITIES

SC-7.04 Services, Materials, and Equipment

Add the following new paragraph immediately after Paragraph 7.04.C:

D. All Iron and Steel products must meet American Iron and Steel requirements.

Add the following new paragraph immediately after Paragraph 7.04.D:

E. For projects utilizing a De Minimis waiver, Contractor shall maintain an itemized list of non-domestically produced iron or steel incidental components and ensure that the cost is less than 5% of total materials cost for project.

SC- 7.05 "Or Equal"

Amend the third sentence of Paragraph 7.05.A by striking out the following words:

Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item is permitted,

Amend the last sentence of Paragraph 7.05.A.1.a.3 by striking out "and;" and adding a period at the end of Paragraph 7.05.A.1.a.3.

Delete Paragraph 7.05.A.1.a.4 in its entirety and insert "Deleted."

Add the following at the end of paragraph 7.05.B:

Contractor shall include a Manufacturer's Certification letter for compliance with American Iron and Steel requirements in support data, if applicable. Refer to Manufacturer's Certification Letter provided in these Contract Documents.

SC-7.06 Substitutions

Remove "and" from the end of Paragraph 7.06.A.3.a.2.

Add "; and" to the end of Paragraph 7.06.A.3.a.3.

Add the following new paragraph immediately after Paragraph 7.06.A.3.a.4:

Comply with American Iron and Steel by providing Manufacturer's Certification letter
of American Iron and Steel compliance, if applicable. Refer to Manufacturer's
Certification Letter provided in these Contract Documents.

SC-7.07 Concerning Subcontractors and Suppliers

Amend by adding the following to the end of the Paragraph 7.07.A:

The total amount of work subcontracted by the Contractor shall not exceed fifty percent of the Contract price without prior approval from the Owner, Engineer and Agency.

Delete Paragraph 7.07.B in its entirety and insert "Deleted".

Delete the second sentence of Paragraph 7.07.E and insert the following in its place:

Owner may not require that Contractor use a specific replacement.

SC-7.12 Record Documents

Amend paragraph 7.12.A by adding the following after "written interpretations and clarifications,":

Manufacturers' Certifications.

SC-7.16 Submittals

Amend Paragraph 7.16.A.1.c by deleting the last period and adding:

, including Manufacturer's Certification letter for any item in the submittal subject to American Iron and Steel requirements and include the Certificate in the submittal. Refer to Manufacturer's Certification Letter provided in these Contract Documents.

Add new paragraph immediately after Paragraph 7.16.C.8:

 Engineer's review and approval of a Shop Drawing or Sample shall include review of Manufacturers' Certifications in order to document compliance with American Iron and Steel requirements, as applicable.

# SC-7.17 Contractor's General Warranty and Guarantee

Add new paragraph immediately after Paragraph 7.17.E:

F. Contractor shall certify upon Substantial Completion that all Work and Materials have complied with American Iron and Steel requirements as mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference. Contractor shall provide said Certification to Owner. Refer to General Contractor's Certification Letter provided in these Contract Documents.

Article 8—OTHER WORK AT THE SITE - NOT USED

Article 9—OWNER'S RESPONSIBILITIES - NOT USED

#### Article 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.03 Resident Project Representative

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:

- C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:
  - Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
  - Safety Compliance: Comply with Site safety programs, as they apply to RPR, and if
    required to do so by such safety programs, receive safety training specifically related to
    RPR's own personal safety while at the Site.

## 3. Liaison

- a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
- Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
- c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.

# 4. Review of Work; Defective Work

- a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.
- b. Observe whether any Work in place appears to be defective.
- c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.

# 5. Inspections and Tests

- a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.
- b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.
- 6. Payment Requests: Review Applications for Payment with Contractor.

#### 7. Completion

- a. Participate in Engineer's visits regarding Substantial Completion.
- b. Assist in the preparation of a punch list of items to be completed or corrected.
- c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- d. Observe whether items on the final punch list have been completed or corrected.

#### D. The RPR will not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
- Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
- 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.
- Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
- 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
- 7. Authorize Owner to occupy the Project in whole or in part.

#### Article 11—CHANGES TO THE CONTRACT

SC-11.02 Change Orders

Add new paragraph immediately after Paragraph 11.02.B:

C. The Engineer or Owner shall contact the Agency for concurrence on each Change Order prior to issuance. All Contract Change Orders must be concurred on (signed) by Agency before they are effective.

SC-11.03 Work Change Directives

Add new Paragraph 11.03.A.2 immediately after Paragraph 11.03.A, which shall be renamed Paragraph 11.03.A.1:

2. The Engineer or Owner shall contact the Agency for concurrence on each Work Change Directive prior to issuance. Once authorized by Owner, a copy of each Work Change Directive shall be provided by Engineer to the Agency.

SC-11.05 Owner-Authorized Changes in the Work

Add the following at the end of this Paragraph 11.05.B:

For Owner-authorized changes in the Work, the Contractor will provide the Manufacturer's Certification(s) for materials subject to American Iron and Steel requirements except when sole source is specified, in which case the Engineer will provide the Manufacturer's Certification(s).

SC-11.09 Change Proposal

Add new paragraph immediately after Paragraph 11.09.B.2.b:

c. Change orders involving materials subject to American Iron and Steel requirements shall include supporting data (name of Manufacturer, city and state where the product was manufactured, description of product, signature of authorized Manufacturer's representative) in the Manufacturer's Certification Letter, as applicable.

Article 12—CLAIMS - NOT USED

#### Article 13—COST OF WORK; ALLOWANCES, UNIT PRICE WORK

SC-13.02 Allowances

Delete Paragraph 13.02.C in its entirety and insert "Deleted".

SC 13.03 Unit Price Work

Delete Paragraph 13.03.E in its entirety and insert the following in its place:

- E. Adjustments in unit price
  - 1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
    - a. The extended price of a particular item of unit price work amounts to [5] percent or more of the contract price (based on estimated quantities at the time of contract formation) and the variation in the quantity of that particular item of unit price work actually furnished or performed by contractor differs by more than [25] percent from the estimated quantity of such item indicated in the agreement; and

- b. Contractor's unit costs to perform the item of unit price work have changed materially and significantly as a result of the quantity change.
- 2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of work, and in contractor's costs to perform such other work, such that the resulting overall change in contract price is equitable to owner and contractor.
- 3. Adjusted unit prices will apply to all units of that item.

# Article 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCCEPTANCE OF DEFECTIVE WORK

SC-14.03 Defective Work

Add new paragraph immediately after Paragraph 14.03.F:

G. Installation of materials that are non-compliant with American Iron and Steel requirements shall be considered defective work.

#### Article 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

SC-15.01 Progress Payments

Add the following language at the end of paragraph 15.01.B.4:

No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage or invest the retainage for the benefit of the Contractor.

Add new paragraph immediately after Paragraph 15.01.B.4:

5. The Application for Payment form to be used on this Project is EJCDC® C-620. The Agency must approve all Applications for Payment before payment is made.

Add new paragraph immediately after Paragraph 15.01.B.5:

6. By submitting an Application for Payment based in whole or in part on furnishing equipment or materials, Contractor certifies that such equipment and materials are compliant with American Iron and Steel requirements. Manufacturer's Certification letter for materials satisfy this requirement. Refer to Manufacturer's Certification Letter provided in these Contract Documents.

Add the following new paragraph immediately after Paragraph 15.01.C.2.c:

d. The materials presented for payment in an Application for Payment comply with American Iron and Steel requirements.

Delete Paragraph 15.01.D.1 in its entirety and insert the following in its place:

The Application for Payment with Engineer's recommendations will be presented to the Owner and Agency for consideration. If both the Owner and Agency find the Application for Payment acceptable, the recommended amount less any reduction under the provisions of Paragraph 15.01.E will become due twenty (20) days after the Application for Payment is presented to the Owner, and the Owner will make payment to the Contractor.

SC-15.02 Contractor's Warranty of Title

Amend Paragraph 15.02.A by striking out the following text: "7 days after".

SC-15.03 Substantial Completion

Modify Paragraph 15.03.A by adding the following after the last sentence:

Contractor shall also submit the General (Prime) Contractor's Certification of Compliance certifying that to the best of the Contractor's knowledge and belief all substitutes, equals, and all Iron and Steel products proposed in the Shop Drawings, Change Orders, and Partial Payment Estimates, and those installed for the Project, are either Produced in the United States or are the subject of an approved waiver under Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

Article 16—SUSPENSION OF WORK AND TERMINATION - NOT USED

Article 17—FINAL RESOLUTION OF DISPUTES - NOT USED

Article 18 -- MISCELANEOUS - NOT USED

**Article 19—FEDERAL REQUIRMENTS** 

SC-19 – Add the following new Article 19 immediately after Article 18

19.01 Agency Not a Party

A. This Contract is expected to be funded in part with funds provided by Agency. Neither Agency, nor any of its departments, entities, or employees, is a party to this Contract.

#### 19.02 Contract Approval

- A. Owner and Contractor will furnish Owner's attorney such evidence as required so that Owner's attorney can complete and execute the "Certificate of Owner's Attorney" (Exhibit G of this Bulletin) before Owner submits the executed Contract Documents to Agency for approval.
- B. Agency concurrence is required on both the Bid and the Contract before the Contract is effective.

#### 19.03 Conflict of Interest

- A. Contractor may not knowingly contract with a Supplier or Manufacturer if the individual or entity who prepared the Drawings and Specifications has a corporate or financial affiliation with the Supplier or Manufacturer. Owner's officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
  - (i) the employee, officer or agent;
  - (ii) any member of their immediate family;

#### (iii) their partner or

(iv) an organization that employs, or is about to employ, any of the above, has a financial interest or other interest in or a tangible personal benefit from the Contractor. Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractor or subcontractors.

#### 19.04 Gratuities

- A. If Owner finds after a notice and hearing that Contractor, or any of Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of Owner or Agency in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, Owner may, by written notice to Contractor, terminate this Contract. Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.
- B. In the event this Contract is terminated as provided in paragraph 19.04.A, Owner may pursue the same remedies against Contractor as it could pursue in the event of a breach of this Contract by Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, Owner may pursue exemplary damages in an amount (as determined by Owner) which shall not be less than three nor more than ten times the RUS Bulletin 1780-26 Exhibit B, Attachment 6 Page 10 costs Contractor incurs in providing any such gratuities to any such officer or employee.

#### 19.05 Small, Minority and Women's Businesses

- A. If Contractor intends to let any subcontracts for a portion of the work, Contractor will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps will include:
  - 1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists:
  - 2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - 4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

19.06 Anti-Kickback

- A. Contractor shall comply with the Copeland Anti-Kickback Act (40 USC 3145) as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States"). The Act provides that Contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. Owner shall report all suspected or reported violations to Agency.
- 19.07 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended
  - A. Contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

#### 19.08 Equal Employment Opportunity

A. The Contract is considered a federally assisted construction contract. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to RUS Bulletin 1780-26 Exhibit B, Attachment 6 Page 11 Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

#### 19.09 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

A. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification (RD Instruction 1940-Q Exhibit A-1). The Contractor certifies to the Owner and every subcontractor certifies to the Contractor that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining the Contract if it is covered by 31 U.S.C. 1352. The Contractor and every subcontractor must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

#### 19.10 Environmental Requirements

- A. When constructing a Project involving trenching and/or other related earth excavations, Contractor shall comply with the following environmental conditions:
  - Wetlands When disposing of excess, spoil, or other Construction Materials on public or private property, Contractor shall not fill in or otherwise convert wetlands.

- Floodplains When disposing of excess, spoil, or other Construction Materials on public or private property, Contractor shall not fill in or otherwise convert 100year floodplain areas (Standard Flood Hazard Area) delineated on the latest Federal Emergency Management Agency Floodplain Maps, or other appropriate maps, e.g., alluvial soils on NRCS Soil Survey Maps.
- 3. Historic Preservation Applicants shall ensure that Contractors maintain a copy of the following inadvertent discovery plan onsite for review:
  - a. If during the course of any ground disturbance related to any Project, any post review discovery, including but not limited to, any artifacts, foundations, or other indications of past human occupation of the area are uncovered, shall be protected by complying with 36 CFR § 800.13(b)(3) and (c) and shall include the following:
    - i. All Work, including vehicular traffic, shall immediately stop within a 50 ft. radius around the area of discovery. The Contractor shall ensure barriers are established to protect the area of discovery and notify the Engineer to contact the appropriate RD personnel. The Engineer shall engage a Secretary of the Interior (SOI) qualified professional archeologist to quickly assess the nature and scope of the discovery; implement interim measures to protect the discovery from looting and vandalism; and establish broader barriers if further historic and/or precontact properties, can reasonably be expected to occur.
    - ii. The RD personnel shall notify the appropriate RD environmental staff member, the Federal Preservation Officer (FPO), and State Historic Preservation Office RUS Bulletin 1780-26 Exhibit B, Attachment 6 Page 12 (SHPO) immediately. Indian tribe(s) or Native Hawaiian Organization (NHOs) that have an interest in the area of discovery shall be contacted immediately. The SHPO may require additional tribes or NHOs who may have an interest in the area of discovery also be contacted. The notification shall include an assessment of the discovery provided by the SOI qualified professional archeologist.
    - iii. When the discovery contains burial sites or human remains, the Contractor shall immediately notify the appropriate RD personnel who will contact the RD environmental staff member, FPO, and the SHPO. The relevant law enforcement authorities shall be immediately contacted by onsite personnel to reduce delay times, in accordance with tribal, state, or local laws including 36 CFR Part 800.13; 43 CFR Part 10, Subpart B; and the Advisory Council on Historic Preservation's Policy Statement Regarding treatment of Burial Sites, Human Remains, or Funerary Objects (February 23, 2007).
    - iv. When the discovery contains burial sites or human remains, all construction activities, including vehicular traffic shall stop within a 100 ft. radius of the discovery and barriers shall be established. The evaluation of human remains shall be conducted at the site of discovery by a SOI qualified professional. Remains that have been removed from their primary context and where that context may be in question may be

- retained in a secure location, pending further decisions on treatment and disposition. RD may expand this radius based on the SOI professional's assessment of the discovery and establish broader barriers if further subsurface burial sites, or human remains can reasonably be expected to occur. RD, in consultation with the SHPO and interested tribes or NHOs, shall develop a plan for the treatment of native human remains.
- v. Work may continue in other areas of the undertaking where no historic properties, burial sites, or human remains are present. If the inadvertent discovery appears to be a consequence of illegal activity such as looting, the onsite personnel shall contact the appropriate legal authorities immediately if the landowner has not already done so.
- vi. Work may not resume in the area of the discovery until a notice to proceed has been issued by RD. RD shall not issue the notice to proceed until it has determined that the appropriate local protocols and consulting parties have been consulted.
- vii. Inadvertent discoveries on federal and tribal land shall follow the processes required by the federal or tribal entity.
- 4. Endangered Species Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of Contractor, Contractor will immediately report this evidence to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the U.S. Fish and Wildlife Service. RUS Bulletin 1780-26 Exhibit B, Attachment 6 Page 13
- 5. Mitigation Measures The following environmental mitigation measures are required on this Project: [Insert mitigation measures from the Letter of Conditions here].
- 19.11 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
  - A. Where applicable, for contracts awarded by the Owner in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor will comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor will compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic will be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 19.12 Debarment and Suspension (Executive Orders 12549 and 12689)

A. A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

#### 19.13 Procurement of recovered materials

A. The Contractor will comply with 2 CFR Part 200.322, "Procurement of recovered materials."

#### 19.14 American Iron and Steel

- A. 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 an American Iron and Steel requirement to this project. All iron and steel products used in this project must be produced in the United States. 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.
- B. The following waivers apply to this Contract:
  - 1. De Minimis,
  - 2. Minor Components, and
  - 3. Pig iron and direct reduced iron.

#### LABOR RELATIONS DIVISION

121 Tijeras Ave NE, Suite 3000 Albuquerque, NM 87102 Phone: 505-841-4400 Fax: 505-841-4424

# **PUBLIC WORKS PROJECT REQUIREMENTS**

As a participant in a Public Works project valued at more than \$60,000 in the state of New Mexico, the following list addresses many of the responsibilities that are defined by statute or regulation to each project stakeholder.

# **Contracting Agency**

- Ensure that all contractors wishing to bid on a Public Works project when the project is \$60,000 or more are actively registered with the Public Works and Apprenticeship Application (PWAA) website: <a href="http://www.dws.state.nm.us/pwaa">http://www.dws.state.nm.us/pwaa</a> (Contractor Registration) prior to bidding.
- Please submit Notice of Award (NOA) and Subcontractor List(s) to the PWAA website promptly after the project is awarded.
- Please update the Subcontractor List(s) on the PWAA website whenever changes occur.
- All sub-contractors and tiers (excluding professional services) regardless of contract amount must be listed on the Subcontractor List and must adhere to the Public Works Minimum Wage Act.
- Ninety days after project completion please go into the PWAA system and close the project.
   Only contracting agencies are allowed to close the project. Agents or contractors are not allowed to close projects.

#### **General Contractor**

- Provide a complete Subcontractor List and Statements of Intent (SOI) to Pay Prevailing
   Wages for all contractors, regardless of amount of work, to the contracting agency within 3 (three) days of award.
- Ensure that all subcontractors wishing to bid on a Public Works project have an active
  Contractor Registration with the Public Works and Apprenticeship Application (PWAA)
  website: <a href="http://www.dws.state.nm.us/pwaa">http://www.dws.state.nm.us/pwaa</a> prior to bidding when their bid will exceed
  \$60,000.
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- Confirm the Wage Rate poster, provided in PWAA, is displayed at the job site in an easily accessible place.
- When the project has been completed, make sure the Affidavits of Wages Paid (AWP) are sent to the contracting agency.
- All subcontractors and tiers (excluding professional services) regardless of contract amount must pay prevailing wages, be listed on the Subcontractor List, and adhere to the Public Works Minimum Wage Act.

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#### **Subcontractor**

- Ensure that all subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <a href="http://www.dws.state.nm.us/pwaa">http://www.dws.state.nm.us/pwaa</a> prior to bidding when their bid will exceed \$60,000.
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- All subcontractors and tiers (excluding professional services) regardless of contract amount must pay prevailing wages, be listed on the Subcontractor List, and adhere to the Public Works Minimum Wage Act.

## **Additional Information**

Reference material and forms may be found in the New Mexico Department of Workforce Solutions Public Works web pages at: <a href="https://www.dws.state.nm.us/Labor-Relations/Labor-Relations/Labor-Relations/Labor-Relations/Public-Works">https://www.dws.state.nm.us/Labor-Relations/Labor-

#### **CONTACT INFORMATION**

Contact the Labor Relations Division for any questions relating to Public Works projects by email at <a href="mailto:public.works@state.nm.us">public.works@state.nm.us</a> or call (505) 841-4400.



## **LABOR RELATIONS DIVISION**

401 Broadway NE Albuquerque, NM 87102 Phone: 505-841-4400 Fax: 505-841-4424 226 South Alameda Blvd Las Cruces, NM 88005 Phone: 575-524-6195 Fax: 575-524-6194

#### WWW.DWS.STATE.NM.US

1596 Pacheco St, Suite 103 Santa Fe, NM 87505 Phone: 505-827-6817 Fax: 505-827-9676

# **Wage Decision Approval Summary**

1) Project Title: Main Street District Waterlines

Requested Date: 07/30/2021 Approved Date: 08/12/2021

Approved Wage Decision Number: SI-21-1564-A

#### Wage Decision Expiration Date for Bids: 12/10/2021

2) Physical Location of Jobsite for Project: Job Site Address: Downtown/Main Street Job Site City: Truth or Consequences

Job Site County: Sierra

3) Contracting Agency Name (Department or Bureau): City of Truth or Consequences

Contracting Agency Contact's Name: Carol Kirkpatrick

Contracting Agency Contact's Phone: (575) 894-6673 Ext. 320

4) Estimated Bid Opening Date: 11/18/2021

5) Estimated total project cost: \$8,000,000.00

a. Are any federal funds involved?: Yes - \$8,000,000.00

b. Does this project involve a building?: No

c. Is this part of a larger plan for construction on or appurtenant to the property that is subject to this project?: No

d. Are there any other Public Works Wage Decisions related to this project?: No

e. What is the ultimate purpose or functional use of the construction once it is completed?: Potable water system.

6) Classifications of Construction:

Classification Type and Cost Total	Description
Highway/Utilities (A) Cost: \$8,000,000.00	Replace 23,600-feet of waterline in the Main Street District (MSD) of the City of Truth or Consequences with 6, 8, and 12-inch PVC waterline via open trench, pipe bursting, and horizontal directional drilling. All service connections replaced with new service lines, meter cans, and meters. Upgrades to the Cook Street Booster Station site to include gas chlorination system, VFD booster pumps with electrical, diesel generator, meter and chlorination injection vaults, SCADA system, and a 300,000 - gallon steel ground water storage tank.



# TYPE "A" - STREET, HIGHWAY, UTILITY & LIGHT ENGINEERING

Please refer to the base and fringe rate columns that pertain to the date your wage decision was approved. For instance, if your wage decision was approved on April 1, 2021, you will use the rates in the first two columns. If your wage decision was approved on May 10, 2021, use the third and fourth columns.

Effective January 1, 2021 Through May,4 2021 Effective May 5, 2021

Trade Classification	Base Rate	Fringe Rate	Base Rate	Fringe Rate
Bricklayer/Block layer/Stonemason	24.46	8.81	24.46	8.81
Carpenter/Lather	25.63	11.74	24.63	11.24
Carpenter- Los Alamos County	28.37	13.44	27.80	13.19
Cement Mason	17.42	6.81	17.42	6.81
Ironworker	27.35	17.49	27.00	15.75
Painter- Commercial	17.25	7.75	17.00	6.88
Plumber/Pipefitter	31.52	12.90	30.76	11.62
Electricians- Outside Classifications:				
Zone 1				
Ground man	23.74	13.16	23.27	12.67
Equipment Operator	34.06	15.94	33.39	15.35
Lineman/ Technician	40.07	17.57	39.28	16.91
Cable Splicer	44.08	18.65	43.21	17.95
Electricians-Outside Classifications: Zone 2			3 8	
Ground man	23.74	13.16	23.27	12.67
Equipment Operator	34.06	15.10	33.39	15.35
Lineman/ Technician	40.07	17.57	39.28	16.91
Cable Splicer	44.08	18.65	43.21	17.95
Electricians-Outside Classifications:	44.00	10.00	43.21	17.95
Los Alamos				
Ground man	24.42	13.34	23.94	12.85
Equipment Operator	35.04	16.21	34.35	15.60
Lineman/ Technician	41.22	17.88	40.41	17.21
Cable Splicer	45.34	18.99	44.45	18.28



Laborers				-
Group I- Unskilled	12.26	6.22	12.26	6.22
Group II- Semi-Skilled	12.56	6.22	12.56	6.22
Group III- Skilled	12.96	6.22	12.96	6.22
Group IV- Specialty	13.21	6.22	13.21	6.22
Operators				
Group I	19.15	6.54	18.79	6.34
Group II	20.11	6.54	19.72	6.34
Group III	20.21	6.54	19.82	6.34
Group IV	20.33	6.54	19.93	6.34
Group V	20.43	6.54	20.03	6.34
Group VI	20.62	6.54	20.21	6.34
Group VII	20.78	6.54	20.37	6.34
Group VIII	21.08	6.54	20.66	6.34
Group IX	28.80	6.54	28.16	6.34
Group X	32.15	6.54	31.41	6.34
Truck Drivers				
Group I-IX	16.67	8.27	16.45	7.87

NOTE: All contractors are required to pay SUBSISTENCE, ZONE AND INCENTIVE PAY according to the trade. Details are in a PDF attachment at <a href="https://www.bws.state.nm.us">www.bws.state.nm.us</a>. Search Labor Relations/Labor Information/Public Works/Prevailing Wage Rates.

For more information about the Subsistence, Zone, and Incentive Pay rates, or to file a wage claim, contact the Labor Relations Division at (505) 841-4400 or visit us online at <a href="https://www.dws.state.nm.us">www.dws.state.nm.us</a>.

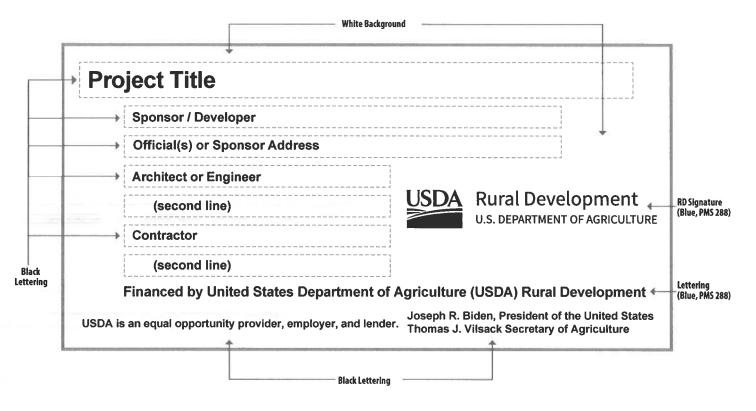
# **NOTICE TO PROCEED**

Owner:	Owner's Project No.:
Engineer:	Engineer's Project No.:
Contractor:	Contractor's Project No.:
Project:	
Contract Name:	
Effective Date of Contract:	
run on [date Contract Times are to start] pursuant	
will be done at the Site prior to such date.	obligations under the Contract Documents. No Work
In accordance with the Agreement:	
the date stated above for the commencement o Completion of [date, calculated from comme achieve readiness for final payment is [number	impletion is [number of days, from Agreement] from of the Contract Times, resulting in a date for Substantial encement date above]; and the number of days to r of days, from Agreement] from the commencement er for readiness for final payment of [date, calculated]
Before starting any Work at the Site, Contractor mu	ast comply with the following:
[Note any access limitations, security procedu	res, or other restrictions]
_	
Owner:	
By (signature):	
Name (printed):	
Title:	
Date Issued:	
Copy: Engineer	

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	EJCDC® C-550, Notice to Proceed.

# TEMPORARY CONSTRUCTION SIGN FOR RURAL DEVELOPMENT PROJECTS

Recommended Fonts: Helvetica or Arial



SIGN DIMENSIONS : 1200 mm x 2400 mm x 19 mm (approx. 4' x 8' x 3/4")
PLYWOOD PANEL (APA RATED A-B GRADE-EXTERIOR)



Contractor's Application for Payment								
Owner:	Owner's Project N							
Engineer:		Engineer's Project No.:						
Contractor:	Contractor's Proje	ct No.:						
Project:								
Contract:								
Application No.:	Application Date:							
Application Period: From	to							
1. Original Contract Price		\$						
<ol><li>Net change by Change Orders</li></ol>		\$	1					
3. Current Contract Price (Line 1	-	\$						
4. Total Work completed and ma		1007-011-010-011-011						
·	Total and Column J Unit Price Total)	\$						
5. Retainage		SON THE PROPERTY AND IN						
a. X \$ b. X \$	- Work Completed	\$						
		\$	**************************************					
c. Total Retainage (Line 5.a	•	\$						
6. Amount eligible to date (Line	•	\$						
7. Less previous payments (Line	6 from prior application)							
8. Amount due this application		\$						
9. Balance to finish, including ret	cainage (Line 3 - Line 4)	\$						
prior Applications for Payment; (2) Title to all Work, materials and equipme Application for Payment, will pass to Owner encumbrances (except such as are covered liens, security interest, or encumbrances); a	's legitimate obligations incurred in connecti nt incorporated in said Work, or otherwise li r at time of payment free and clear of all lien by a bond acceptable to Owner indemnifying and for Payment is in accordance with the Conti	isted in or covered s, security interes g Owner against a	d by this its, and iny such					
Contractor:								
Signature:		Date:						
Recommended by Engineer	Approved by Owner							
Ву:	Ву:							
Title: Title:								
Date: Date:								
Approved by Funding Agency								
Ву:	By:							
Title:	Title:							
Date: Date:								

Progress	Estimate - Unit Price Work										Contractor's	Applicat	ion for Payment
Owner:									Owner's Project No	.:			
Engineer:									Engineer's Project &				
Contractor:									Contractor's Project				
Project:								-					
Contract:	<u></u>							-					
Application	No.: Application Period	l: From		to						Application Date			
A	8	C	D	E	F	G	н	1	1	K	L	M	N
			Contract	t Information		Previous Period	s Work Completed	Current Period	Work Completed	A VICTOR DIE	Messalle and		
8ld item	Description	Item Quantity	Units	Unit Price (\$)	Value of Bid Item (C X E) (\$)	Estimated Quantity Incorporated in the Work		Estimated Quantity Incorporated in the Work		Materials Currently Stored (not in G) (\$)	Work Completed and Materials Stored to Date (H+J+K) (S)	% of Value of Item (L/F) (%)	Balance to Finish (F - J) (\$)
140.	Description	1 rorm cleanury	Units		Original Contract	I rise sanisr	(5)	T TOTAL	(9)	(5)		(%)	(5)
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Progress E	stimate - Unit Price Work							_			Contractor's	Applicat	ion for Payment
Owner: Engineer:								-	Owner's Project No Engineer's Project P	Vo.:			
Contractor:								_	Contractor's Projec	t No.:			
Project:								-					
Contract:								-					
Application N	io.: Application Perio	d: From		to				-		Application Date:			
A	B	C	0	E	F	G	н	2000	J	K	The state of	M	N
		DOSES DE LA CONTRACTION DE LA	Contrac	t Information		Previous Period	Is Work Completed	Current Period \	Work Completed				
Bid Item No.	Description	Item Quantity	Units	Unit Price (\$)	Value of Bid Item (C X E) (\$)	Estimated Quantity Incorporated in the Work	Value of Work Completed to Date	Estimated Quantity Incorporated in the Work		Materials Currently Stored (not in G) (\$)	Work Completed and Materials Stored to Date {H+J+K} (\$)	% of Value of Item (L/F) (%)	Balance to Finish (F - J) (\$)
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Stored Materia	ıls Summary									Contr	ractor's Applicati	on for Payment
Owner:										Owner's Project No.		
Engineer: Contractor:										Engineer's Project No Contractor's Project		
Project:									-	compactor s respect	-	
Contract:												
Application No.:				Application Period	From		to				Application Date:	
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Item No. (Lump Sum Teb) or Bid Item No. (Unit Price Tab)	Supplier Invoice No.	Submittel No. (with Specification Section No.)	Description of Materials or Equipment Stored	Storage Location	Application No. When Materials Placed in Storage	Previous Amount Stored (\$)	Amount Stored this Period (\$)	Amount Stored to Date (G+H) (\$)	Amount Previously Incorporated in the Work (\$)	Amount Incorporated in the Work this Period (\$)	Total Amount Incorporated in the Work (J+K) (\$)	Materials Remaining in Storage (I-L) (\$)
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# WORK CHANGE DIRECTIVE NO.: [Number of Work Change Directive]

Owner: Engineer: Contractor: Project: Contract Name:		Owner's Project No.:  Engineer's Project No.:  Contractor's Project No.:
Date Issued:	Effective I	Date of Work Change Directive:
Contractor is direct	cted to proceed promptly with the fo	ollowing change(s):
Description:		
[Description of	of the change to the Work]	
Attachments:		
[List documer	nts related to the change to the Wor	k]
Purpose for the W	ork Change Directive:	
[Describe the	purpose for the change to the Worl	k]
•	eed promptly with the Work describ t Time, is issued due to:	ed herein, prior to agreeing to change in Contract
Notes to User—C	heck one or both of the following	
☐ Non-agreemen	t on pricing of proposed change. $\Box$ [	Necessity to proceed for schedule or other reasons.
Estimated Change	in Contract Price and Contract Time	s (non-binding, preliminary):
Contract Price:	\$	[increase] [decrease] [not yet estimated].
Contract Time:	days	[increase] [decrease] [not yet estimated].
Basis of estimated	I change in Contract Price:	
☐ Lump Sum ☐ L	Init Price $\square$ Cost of the Work $\square$ Oth	ner
Recomm	ended by Engineer	Authorized by Owner
Ву:		
Title:		
Date:		

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# **CHANGE ORDER NO.: [Number of Change Order]**

Owner Engine Contrac Project	er: ctor:	Owner's Project No.:  Engineer's Project No.:  Contractor's Project No.:
Date Is	ct Name: E	ffective Date of Change Order:
The Con	tract is modified as follows upon execution of	f this Change Order:
Descript	ion:	
[Des	scription of the change]	
Attachm	nents:	
[List	documents related to the change]	
	Change in Contract Price	Change in Contract Times [State Contract Times as either a specific date or a number of days]
Original	Contract Price:	Original Contract Times: Substantial Completion:
\$		Ready for final payment:
-	se] [Decrease] from previously approved Change No. 1 to No. [Number of previous Change	[Increase] [Decrease] from previously approved Change Orders No.1 to No. [Number of previous Change Order]: Substantial Completion: Ready for final payment:
Contrac \$	t Price prior to this Change Order:	Contract Times prior to this Change Order: Substantial Completion: Ready for final payment:
(Increas	se] [Decrease] this Change Order:	[Increase] [Decrease] this Change Order: Substantial Completion: Ready for final payment:
	t Price incorporating this Change Order:	Contract Times with all approved Change Orders: Substantial Completion: Ready for final payment:
By: Title:	Recommended by Engineer (if required)	Authorized by Owner
Date:	Authorized by Owner	Approved by Funding Agency (if applicable)
Title:		-
Date:		

EJCDC® C-941, Change Order.

# **FIELD ORDER NO.:** [Number of Field Order]

Owner:	Owner's Project No.:
Engineer:	Engineer's Project No.:
Contractor:	Contractor's Project No.:
Project:	
Contract Name:	
Date Issued:	Effective Date of Field Order:
accordance with Pachanges in Contract	by directed to promptly perform the Work described in this Field Order, issued in aragraph 11.04 of the General Conditions, for minor changes in the Work without ct Price or Contract Times. If Contractor considers that a change in Contract Price or equired, submit a Change Proposal before proceeding with this Work.
Reference:	
Specification S	ection(s):
Drawing(s) / D	etails (s):
Description:	
(Description o	f the change to the Work]
Attachments:	
	to cumporting changel
į List documen	ts supporting change]
Issued by Engineer	r
Ву:	
Title:	
Date:	
====	

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# INFORMATIONAL CHECKLIST FOR PROJECT-SPECIFIC WAIVER REQUESTS

Notes to User: This exhibit is a checklist that is to be completed by the Owner and/or Engineer to help ensure that all appropriate and necessary information is submitted with the request to USDA. All information presented in waiver requests are subject to evaluation. Waiver requests deliberately containing false information will be rejected.

# INFORMATIONAL CHECKLIST FOR PROJECT SPECIFIC WAIVER REQUEST

Information	
General	
Waiver request includes the following information:	
- Description of the foreign and domestic Construction Materials	
- Unit of measure	
- Quantity	
- Price	
- Date that product is needed (e.g. time of delivery or availability)	
- Location of the construction project	
- Name and address of the proposed Supplier	
- A detailed justification for the use of foreign Construction Materials	
<ul> <li>Waiver request was submitted according to the instructions in the memorandum</li> </ul>	
<ul> <li>Assistance recipient made a good faith effort to solicit bids for domestic Iron and Steel products, as</li> </ul>	
demonstrated by language in requests for proposals, contracts, and communications with the prime	
Public Interest Waiver Request	
<ul> <li>Applicants and their Engineers will submit a written justification demonstrating definitive impacts on the</li> </ul>	
community if a specified product is not utilized.	
Cost Waiver Requests	
<ul> <li>Waiver request includes the following information:</li> </ul>	
<ul> <li>Comparison of overall cost of project with domestic Iron and</li> </ul>	
Steel products to overall cost of project with foreign Iron and Steel products	
<ul> <li>Relevant excerpts from the bid documents used by the Contractors to complete the comparison</li> </ul>	
<ul> <li>Supporting documentation indicating that the Contractor made a reasonable survey of the market,</li> </ul>	
such as a description of the process for identifying Suppliers and a list of contacted Suppliers	
Availability Waiver Requests	************
Waiver request includes the following supporting documentation necessary to demonstrate the availability greatile and (an available for a policy of the materials for a high the available for a policy of the materials for a high the available	
availability, quantity, and/or quality of the materials for which the waiver is requested: - Supplier information or pricing information from a reasonable number of domestic Suppliers	_
indicating availability/delivery date for Construction Materials	
- Documentation of the assistance recipient's efforts to find available domestic sources, such as a	
description of the process for identifying Suppliers and a list of contacted Suppliers.	
- Date that product is needed (e.g. time of delivery or availability) to provide justification	
- Relevant excerpts from project Drawings, Specifications, and permits indicating the required	
quantity and quality of Construction Materials	
Waiver request includes a statement from the prime Contractor and/or Supplier confirming	
the non-availability of the domestic Construction Materials for which the waiver is sought	
<ul> <li>Has the State received other waiver requests for the materials described in this waiver request for comparable</li> </ul>	_
projects?	

#### AMERICAN IRON AND STEEL DE MINIMIS LIST FORMAT

Notes to User: This exhibit is an example format for Contractors to use in maintaining a list of items to document the use of the De Minimis waiver of the American Iron and Steel requirements. This list or similar is required to be filled out throughout the construction Contract as needed. The State Engineer may periodically ask to review this information. At the Contract completion, this list, along with all Manufacturers' certifications, are to be given to the Engineer for delivery to the Owner.

DE .	MINIMIS COSTING WORKSHEET Project Name:			-
	Contract Name/# (if more than one)			
	Contractor (Company Name):			
	Representative:			
	Date:			
	Total Cost of All Materials (or Estimated Value at 50% of the Installed Bid Price):			\$
	Allowable Total De Minimis Costs (5% of all materials)			\$
	Total Cost of all De Minimis Items			\$
	Remaining Amount Allowed for Future De Minimis Items			\$
	Note: No single De Minimis item can be more than 1% of the total material cost.			
No.	Detailed Description and Manufacturer or Local Source of <i>De Minimis</i> Material	Quantity	Cost Per Item	Total Item Cost
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				

## GENERAL (PRIME) CONTRACTOR'S CERTIFICATION OF COMPLIANCE

Notes to User: This exhibit is the sample General (Prime) Contractor's Certification of Compliance with the American Iron and Steel requirements to be provided by all General (Prime) Contractors to Engineer for delivery to the Owner at Substantial Completion.

GENERAL (PRIME) CONTRACTOR'S CERTIFICATION OF COMPLIANCE WITH PROVISIONS OF THE AMERICAN IRON AND STEEL REQUIREMENTS OF 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

DATE:

RE: PROJECT NAME APPLICANT CONTRACT NUMBER

I hereby certify that to the best of my knowledge and belief all Iron and Steel products installed for this project by my company and by any and all subcontractors and Manufacturers my company has contracted with for this project comply with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference or are the subject of a waiver approved by the Secretary of Agriculture or designee.

Name of Construction Company (PRINT)
By Authorized Representative (SIGNATURE)
Title

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#### MANUFACTURER'S CERTIFICATION OF COMPLIANCE

Notes to User: This exhibit is the sample Manufacturer's Certification of Compliance with the American Iron and Steel requirements to be provided by all Manufacturers of American Iron and Steel covered items, to be submitted by Contractor to the Engineer with the corresponding Shop Drawing submittal for delivery to the Owner at Substantial Completion.

EXAMPLE OF A MANUFACTURER'S CERTIFICATION OF COMPLIANCE WITH PROVISIONS OF THE AMERICAN IRON AND STEEL (AIS) REQUIREMENTS OF 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

Date:

Company Name:
Company Address:
Subject: American Iron and Steel (AIS) Certification for Project (X), Owner's Name, and Contract Number
I, (company representative), certify that the (melting, bending, galvanizing, cutting, etc.) processes for (manufacturing or fabricating) the following products and/or material shipped or provided for the subject project is in full compliance with the AIS requirement as mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.  Item, Products and/or Materials, and location of delivery (City, State):
1.
2.
Such processes for AIS took place at the following location:
(City, State)
Authorized Company Representative Signature
Notes: Authorized signature will be Manufacturer's representative, not the material distributor or

Notes: Authorized signature will be Manufacturer's representative, not the material distributor of Supplier. If any of the above compliance statements change while providing materials to this project, please immediately notify the person(s) who is requesting to use your product(s).

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#### **CERTIFICATE OF SUBSTANTIAL COMPLETION**

Owner: Engineer: Contractor: Project: Contract Name:	Owner's Project No.:  Engineer's Project No.:  Contractor's Project No.:
This 🗆 Preliminary	☐ Final Certificate of Substantial Completion applies to:
☐ All Work ☐	The following specified portions of the Work:
[Describe the p	ortion of the work for which Certificate of Substantial Completion is issued]
Date of Substantial	Completion: []
Contractor, and Eng the Work or portion Contract pertaining of Substantial Com	this Certificate applies has been inspected by authorized representatives of Owner, gineer, and found to be substantially complete. The Date of Substantial Completion of a thereof designated above is hereby established, subject to the provisions of the to Substantial Completion. The date of Substantial Completion in the final Certificate pletion marks the commencement of the contractual correction period and es required by the Contract.
inclusive, and the fa	is to be completed or corrected is attached to this Certificate. This list may not be all- ailure to include any items on such list does not alter the responsibility of the olete all Work in accordance with the Contract Documents.
	ntractual responsibilities recorded in this Certificate should be the product of mutual er and Contractor; see Paragraph 15.03.D of the General Conditions.
utilities, insurance,	between Owner and Contractor for security, operation, safety, maintenance, heat, and warranties upon Owner's use or occupancy of the Work must be as provided in as amended as follows:
Amendments to Ov	vner's Responsibilities:   None  As follows:
(List amendme	nts to Owner's Responsibilities]
Amendments to Co	ntractor's Responsibilities: 🗆 None 🗆 As follows:
[List amendme	nts to Contractor's Responsibilities]
The following docu	ments are attached to and made a part of this Certificate:
[List attachme	nts such as punch list; other documents]
	s not constitute an acceptance of Work not in accordance with the Contract it a release of Contractor's obligation to complete the Work in accordance with the ts.
Engineer	
By (signature):	
Name (printed):	
Title:	

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#### **NOTICE OF ACCEPTABILITY OF WORK**

to Contractor, and that the Work furnished and performed by Contractor under the Construction Contracts a acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents "Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated [	Ow		-		Owner's Project No.:
Project: Contract Name: Notice Date:  Effective Date of the Construction Contract:  The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment of Contractor, and that the Work furnished and performed by Contractor under the Construction Contract os acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents "Contract Documents") and of the Agreement between Owner and Engineer for Professional Services lated  [["Owner-Engineer Agreement"]. This Notice of Acceptability of Work Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:  1. This Notice has been prepared with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.  2. This Notice has been prepared to the best of Engineer's professional opinion.  3. This Notice has been prepared to the best of Engineer's knowledge, information, and belief as of the Notice Date.  4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's Work) under the Owner-Engineer Agreement, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner-Engineer Agreement.  5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to therwise comply with the Contract Documents	Eng	gine	eer:		
Contract Name: Notice Date:  Effective Date of the Construction Contract:  The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract's Contract Documents "Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated [					Contractor's Project No.:
Notice Date: Effective Date of the Construction Contract:  The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents "Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated [		-			
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<ul> <li>engineering profession practicing under similar conditions at the same time and in the same locality.</li> <li>This Notice reflects and is an expression of the Engineer's professional opinion.</li> <li>This Notice has been prepared to the best of Engineer's knowledge, information, and belief as of the Notice Date.</li> <li>This Notice is based entirely on and expressly limited by the scope of services Engineer has beer employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's Work) under the Owner-Engineer Agreement, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner-Engineer Agreement.</li> <li>This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.</li> <li>This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and fina payment.</li> <li>Engineer</li> <li>By (signature):</li> <li>Name (printed):</li> </ul>	o Co s ac "Co date Not	ont ce ntr d [ ice	ractor, and tha ptable, expres act Document ) is made expre	at the Work furnished and performed by sly subject to the provisions of the C(s'') and of the Agreement between O(1) ("Owner-Engineer Agree	Contractor under the Construction Contract onstruction Contract's Contract Documents wher and Engineer for Professional Services ment"). This Notice of Acceptability of Work
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FICDC® C-626 Notice of Accentability of Work	

#### **GENERAL REQUIREMENTS**

#### GR 1.0 SUMMARY OF WORK:

The project work includes the installation of approximately 11,800 LF of 6-inch, 8-inch and 12-inch PVC waterline and appurtenances within public right-of-way. 7,700 LF by open trench method, 1,800 LF by Horizontal Directional Drilling, 2,300 LF by pipe bursting method and. The project also includes the installation of water service lines, connections to the existing system and site work to include roadway asphalt removal and replacement.

The Cook street facility improvements include the replacement of the existing gas chlorination system including fiberglass chlorine shelter, installation of new equipment at the booster station, including a water meter vault and a chlorination meter/injection vault. The project also includes new piping direct bury from the new chlorination building to the new chlorination meter/injection vault. A generator will be replaced and designed to operate the chlorination system and booster pump. A new additional ground 300,000-gallon steel water storage tank will be installed and will be equipped with impressed- current cathodic protection.

In addition, the project comprises install new variable frequency drive booster pumps at the Cook Street Facility, upgrade drinking water SCADA/HMI system which is located at the wastewater treatment plant, and remote terminal units at the following sites: Cook Street Facility (Well #1, Tanks and Booster Station), Well #2, Well #6, Well #7, Well #8, Morgan Tank & Booster Station, and Cemetery Road Tanks

#### GR 2.0 TEMPORARY SANITATION FACILITIES:

The Contractor shall provide and maintain necessary sanitary conveniences for the use of those employed on or about the Work, properly secluded from public observation in such a manner and at such points as shall be approved by the Owner and their use shall be strictly enforced.

GR 3.0 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES AND IMPROVEMENTS:

The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the Work, which are not to be removed and which do not unreasonably interfere with the Work required under this contract. The Contractor shall remove trees only when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Owner.

The Contractor shall protect from damage all existing improvements and utilities (1) at or near the Work and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The existence and location of utilities are not guaranteed by the Owner and shall be investigated and verified in the

field by the Contractor before commencing construction activities in any particular area. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Owner may have the necessary work performed and charge the cost to the Contractor.

#### GR 4.0 MAINTAIN UTILITY SERVICES:

# EXHIBIT A GEOTECHNICAL REPORT

### **GEOTECHNICAL EVALUATION REPORT**

#### **WATER SYSTEM IMPROVEMENTS**

Truth or Consequences, New Mexico WT Reference No. 3220JJ001

#### PREPARED FOR:

Wilson & Company Inc. 4401 Masthead Street NE, Suite 150 Albuquerque, New Mexico Attn: J. Alfredo Holguin, P.E.

February 18, 2020

Kyel Newberry, E.I. **Project Engineer** 

Kyel Nunlan

Jeff M. Boyd, P.E. Senior Geotechnical Engineer

> **Geotechnical Environmental Inspections**



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## GEOTECHNICAL EVALUATION WATER SYSTEM IMPROVEMENTS TRUTH OR CONSEQUENCES, NEW MEXICO WT JOB NO. 3220JJ001

#### 1.0 PURPOSE

This report contains the results of our geotechnical evaluation for the proposed water system, and was performed in general accordance with our contract. The purpose of our services is to provide information and recommendations regarding:

- Subsurface conditions
- Groundwater
- Foundation design parameters
- Lateral earth pressures
- Seismic considerations
- Drainage
- Pavements
- Excavation conditions
- Earthwork, including site preparation, fill placement, and suitability of existing soils for fill materials, and compaction

Results of the field exploration, field and laboratory tests are presented in the Appendices.

#### 2.0 PROJECT DESCRIPTION

Project information supplied by J. Alfredo Holguin, P.E. on November 26, 2019 indicates that the project will consist of water system improvements, including street crossing and jack and bore crossing. The project also includes a 56 foot diameter by 16 foot tall steel water tank. Final site grading plans were not available at the time of this report. Should our assumptions not be correct, we should be notified immediately.

#### 3.0 SCOPE OF SERVICES

#### 3.1 Field Exploration

One boring was drilled to a depth of 21.5 feet below existing grade in the proposed water tank area. In addition, Twenty-two borings were drilled to depths of 5 to 11.5 feet in the proposed water system improvement areas. The borings were drilled at the approximate locations shown on the attached Boring Location Diagram. A field log was prepared for each boring. These logs contain visual classifications of the materials encountered during drilling as well as interpolation of the subsurface conditions between samples. Final logs, included in Appendix A, represent our interpretation of the field logs and may include modifications based on laboratory observations and tests of the field samples. The final logs describe the materials encountered, their thicknesses, and the locations where samples were obtained.

The Unified Soil Classification System was used to classify soils. The soil classification symbols appear on the boring logs and are briefly described in Appendix A. Local and regional geologic characteristics were used to estimate the seismic design criteria.

#### 3.2 <u>Laboratory Analysis</u>

Laboratory analyses were performed on representative soil samples to aid in material classification and to estimate pertinent engineering properties of the on-site soils for preparation of this report. The following tests were performed in general accordance with applicable procedures, and the results are presented in Appendix B.

- Field moisture content
- In-situ soil density
- -#200 Sieve
- Liquid limit and plasticity index
- Compression

#### 3.3 Analyses and Report

Analyses were performed and this report was prepared for the exclusive purpose of providing geotechnical engineering and/or testing information and recommendations. The scope of services for this project does not include, either specifically or by implication, any environmental assessment of the Site or identification of contaminated or hazardous materials or conditions. If the owner is concerned about the potential for such



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contamination, other studies should be undertaken. We are available to discuss the scope of such studies with you.

This geotechnical engineering report includes a description of the project, a discussion of the field and laboratory testing programs, a discussion of the subsurface conditions, and design recommendations as required to satisfy the purpose previously described.

#### 4.0 SITE CONDITIONS

#### 4.1 Surface

At the time of our exploration, the Tank Site was partially developed as an existing water tank area with a gravel surface. The other boring locations were located throughout the town of T or C within the roadways. The ground surface was asphalt concrete ranging from 1.5 to 4 inches thick, with three of the borings containing base course ranging from 4 to 5 inches thick. Site drainage trended to the south to southeast as surface sheet flow along a gradual slope.

#### 4.2 **Subsurface**

The predominant near surface soil encountered was loose to medium dense Poorly Graded SAND with Silt and Silty SAND. Clayey SAND, Sandy Lean CLAY, and Sandy SILT were also encountered as interbedded alluvial/fluvial deposits. Near surface soils are predominately of low to medium plasticity, with a few areas of medium to high plasticity.

#### 4.3 **Groundwater**

Groundwater was encountered in boring numbers 5, 6, 11 12, 14 thru 18, and 20, at a depths ranging from 3 to 11 feet below existing grade at the time of exploration. These observations represent the groundwater conditions at the time of measurements and may not be indicative of other times. Groundwater levels can be expected to fluctuate with varying flow within the Rio Grande, seasonal and weather conditions, groundwater withdrawal and recharge, local irrigation practices, and future development.



#### 5.0 GEOTECHNICAL PROPERTIES & ANALYSIS

#### 5.1 <u>Laboratory Tests</u>

Laboratory test results (see Appendix B) indicate that native subsoils near shallow foundation level at the tank site exhibit slight compressibility at existing water contents. High amounts of additional compression occurs when the water content is increased.

Near-surface soils range from non-plastic to high plasticity. In-situ moisture contents ranged from 3.8 to 27.3 percent.

#### 5.2 Field Tests

Existing subsoils exhibited low to moderate resistance to penetration using test method ASTM D1586 and ASTM D3550. Penetration resistance values exhibited some variability between test locations. In conjunction with higher moisture contents, this represents a potential for subgrade pumping and/or unstable conditions.

The boring logs included in this report are indicators of subsurface conditions only at the specific location and date noted. Variations from the field conditions represented by the borings may become evident during construction. If variations appear, we should be contacted to re-evaluate our recommendations.

#### 6.0 RECOMMENDATIONS

#### 6.1 General

Recommendations contained in this report are based on our understanding of the project criteria described in **Section 2.0**, and the assumption that the soil and subsurface conditions are those disclosed by the borings. Others may change the plans, final elevations, number and type of structures, foundation loads, and floor levels during design or construction. Substantially different subsurface conditions from those described herein may be encountered or become known. Any changes in the project criteria or subsurface conditions shall be brought to our attention in writing.

#### 6.2 **Design Considerations**

The borings indicate the presence of clay soils among the borings. The clay soils may become unstable at high water contents.



Groundwater was encountered during the current explorations at elevations of approximately 3 to 11 feet in 10 of the borings. It is likely that dewatering will be required to facilitate construction of some below grade areas. Contractors should satisfy themselves as to the necessity of dewatering and the necessary dewatering methods. Stabilization of soft, wet soils near or below the groundwater level may be required and recommendations are presented in the **EARTHWORK** section of this report.

Cobbles and boulders were encountered in the borings. These oversized materials, greater than three inches, could present construction difficulties for foundation, utility trenches and other excavations. In cut areas and excavations, exposed oversized materials should be removed and wasted.

#### 6.3 Tank Foundation

We understand that a concrete or steel ring wall foundation confining structural fill and/or a concrete slab will be used to support the storage tank. Foundations may be proportioned using an allowable bearing capacity of up to 3,500 pounds per square foot (psf). Foundations and slab elements should be supported engineered fill prepared as described in the **Earthwork** section of this report.

An at-rest earth pressure coefficient of 0.50 should be used to determine the lateral ring wall pressures. For the backfill behind the ring wall, a compacted unit weight of 120 pcf should be used.

For shallow foundations subject to lateral forces, a coefficient of friction of 0.45 may be used for the interface between the foundation and the supporting rock.

Post tank filling settlements should be less than one-half of one inch, provided that the site is prepared in accordance with the recommendations contained in this report. Settlement response of the foundation system will be influenced more by the quality of construction than by rock-structure interaction.

All footings and ring walls should be reinforced to reduce the potential for distress caused by differential foundation movements.

We recommend that the geotechnical engineer or his representative observe the footing excavations before reinforcing steel and concrete are placed. This observation is to assess whether the materials exposed are similar to those anticipated for support of the footings. Any soft, loose or unacceptable soils should be undercut to suitable materials



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and backfilled with approved fill materials or lean concrete. Soil backfill should be properly compacted.

Fill against footings and ring walls should be compacted to densities specified in **Earthwork**. Compaction of each lift adjacent to walls should be accomplished with hand-operated tampers or other lightweight compactors. Overcompaction may cause excessive lateral earth pressures that could result in wall movements.

#### 6.4 <u>Seismic Considerations</u>

For structural designs based upon the 2012/2015 International Building Code, the following criteria will apply. The soil site class is C.  $S_s$ , the spectral acceleration for short periods, is 0.28g.  $S_1$ , the spectral acceleration for a 1-second period, is 0.087g.  $F_a$  and  $F_v$ , are 1.2 and 1.7, respectively.

#### 6.5 Drainage

The major cause of soil problems in this vicinity is moisture increase in soils below structures. Therefore, it is extremely important that positive drainage be provided subdivision. Infiltration of water into utility or foundation excavations must be prevented during construction.

Protective slopes should be provided with an outfall of five percent for at least 10 feet from perimeter of the water tank. Backfill against footings and in utility line trenches should be well compacted and free of all construction debris to minimize the possibility of moisture infiltration.

#### 6.6 Pavements

The on-site soils are considered as poor to fair quality materials for support of pavements. Street patches for water line installation may be installed on a matching basis with the existing pavement thickness structure. Where full depth reconstruction is necessary, the following criteria was utilized. A daily traffic value of 5 Equivalent 18-kip Single Axle Loads (ESAL) was estimated for the roads. A resilient modulus (M<sub>r</sub>) of 8,000 pounds per square inch was assigned to the on-site soil. A reliability value of 80 percent was assigned to the roads that corresponds to occasional interruption of traffic for pavement repairs. Based upon these parameters, the resulting pavement sections according to the AASHTO procedure for a 20-year design life are:



Traffic Area	Asphaltic Concrete (in.)	Base Course (in.)
Residential roads	3.0	6.0

The "design life" of a pavement is defined as the expected life at the end of which reconstruction of the pavement will need to occur. Normal maintenance, including crack sealing, slurry sealing, and/or chip sealing, should be performed during the life of the pavement.

Bituminous surfacing should be constructed of dense-graded, central plant-mix, asphalt concrete. Base course, portland cement, and asphalt concrete should conform with New Mexico Department of Transportation (NMDOT) specifications.

Material and compaction requirements should conform to recommendations presented in the **Earthwork** section of this report. The gradient of paved surfaces should ensure positive drainage. Water should not pond in areas directly adjoining paved sections.

#### 7.0 EARTHWORK

#### 7.1 General

The conclusions contained in this report for the proposed construction are contingent upon compliance with recommendations presented in this section. Any excavating, trenching, or disturbance that occurs after completion of the earthwork must be backfilled, compacted and tested in accordance with the recommendations contained herein. It is not reasonable to rely upon our conclusions and recommendations if any future unobserved and untested trenching, earthwork activities or backfilling occurs.

Although fills or underground facilities such as septic tanks, cesspools, basements, utilities, and dry wells were not observed, such features might be encountered during construction. These features should be demolished in accordance with the recommendations of the geotechnical engineer. Any loose or disturbed soils resulting from demolition should be removed or recompacted as engineered fill and any excavations should be backfilled in accordance with recommendations presented herein.



#### 7.2 Site Clearing

Strip and remove any existing vegetation, organic topsoils, debris, and any other deleterious materials from the building and pavement areas. The building area is defined as that area within the building footprint plus five feet beyond the perimeter of the footprint. All exposed surfaces should be free of mounds and depressions that could prevent uniform compaction.

#### 7.3 Excavation

On-site clayey soils will pump or become unworkable at high water contents. Workability may be improved by scarifying and drying. Overexcavation of wet zones and replacement with granular materials may be necessary. The use of lightweight excavation and compaction equipment may be required to minimize subgrade pumping. It may be necessary to remove the existing subgrade to a depth of 24 inches below subgrade elevation and replace with a granular subbase material, and/or the use of a woven or non-woven separation fabric such as Marifi RS380i, 700X, or 140N, or approved equivalent, potentially in combination with a geogrid such as Tensar Triax or BX1200. With very soft subgrade conditions, it may be necessary for a combination of removal and the use of a separation fabric.

The soils to be penetrated by the proposed excavations may vary significantly across the site. Our soil classifications are based solely on the materials encountered in widely spaced exploratory test borings. The contractor should verify that similar conditions exist throughout the proposed area of excavation. If different subsurface conditions are found at the time of construction, we should be contacted immediately to evaluate the conditions encountered.

#### 7.4 Foundation Preparation

In foundation and tank pad areas, remove existing soils to a minimum depth of 5 feet below existing site grades, or 5 feet below the bottom of the foundation, whichever is deeper. Removal should extend a minimum horizontal distance of 5 feet beyond the tank foundation perimeter. Following the removal, the exposed materials should be scarified a minimum depth of 10 inches, moisture conditioned, and recompacted as recommended herein. Replace the overexcavated soil with properly placed and compacted engineered fill material. The on-site soil is suitable for reuse as engineered fill.



#### 7.5 Pavement Preparation

The subgrade should be scarified, moistened as required, and recompacted for a minimum depth of 10 inches prior to placement of fill and pavement materials.

#### 7.6 Materials

Clean on-site native soils with low-expansive potentials or imported materials may be used as fill material for the following:

- Foundation areas
- Pavement areas
- Backfill

Imported soils should conform to the following:

Gradation (ASTM C136):

		percent finer by weight
	6"	100
	4"	85-100
	3/4"	70-100
	No. 4 Sieve	50-100
	No. 200 Sieve	40 (max)
•	Maximum soluble sulfates (%)	0.10
•	Maximum Plasticity Index (PI)	10

Base course, pipe bedding, and backfill should conform to NMDOT or New Mexico Standard Specifications for Public Works specifications.

#### 7.7 Placement and Compaction

- a. Place and compact fill in horizontal lifts, using equipment and procedures that will produce recommended water contents and densities throughout the lift.
- b. Uncompacted fill lifts should not exceed 10 inches.
- c. Frozen soil should not be used as fill and no fill should be placed over frozen ground.



#### d. Materials should be compacted to the following:

## Minimum Percent Material Compaction (AASHTO T180)

•	On-site soil, reworked and fill	95
•	Imported soil	95
	Aggregate base course below slabs-on-grade	
	Aggregate base below pavement	
	Nonstructural backfill	

On-site clayey soils should be compacted within a water content range of one percent below to three percent above optimum. Imported and on-site granular soils with low expansion potential should be compacted within a water content range of two percent below to three percent above optimum.

#### 7.8 Compliance

Recommendations for foundations, slabs-on-grade, and pavements supported on compacted fills or prepared subgrade depend upon compliance with the **EARTHWORK** recommendations. To assess compliance, observation and testing should be performed under the direction of a WT geotechnical engineer. Please contact us to provide these observation and testing services.

#### 8.0 LIMITATIONS

This report has been prepared assuming the project criteria described in Section 2.0. If changes in the project criteria occur, or if different subsurface conditions are encountered or become known, the conclusions and recommendations presented herein shall become invalid. In any such event, contact WT to assess the effect that such variations may have on our conclusions and recommendations. If WT is not retained for the construction observation and testing services to determine compliance with this report, our professional responsibility is accordingly limited.

The recommendations presented are based entirely upon data derived from a limited number of samples obtained from widely spaced borings. The attached logs are indicators of subsurface conditions only at the specific locations and times noted. This report assumes the uniformity of the geology and soil structure between borings, however variations can and often do exist. Whenever any deviation, difference or change is encountered or becomes known, WT should be contacted.



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This report is for the exclusive benefit of our client alone. There are no intended third-party beneficiaries of our contract with the client or this report, and nothing contained in the contract or this report shall create any express or implied contractual or any other relationship with, or claim or cause of action for, any third party against WT.

This report is valid until the earlier of one year from the date of issuance, a change in circumstances, or discovered variations. After expiration, no person or entity shall have any right to rely on this report without the express written authorization of WT.

#### 9.0 CLOSURE

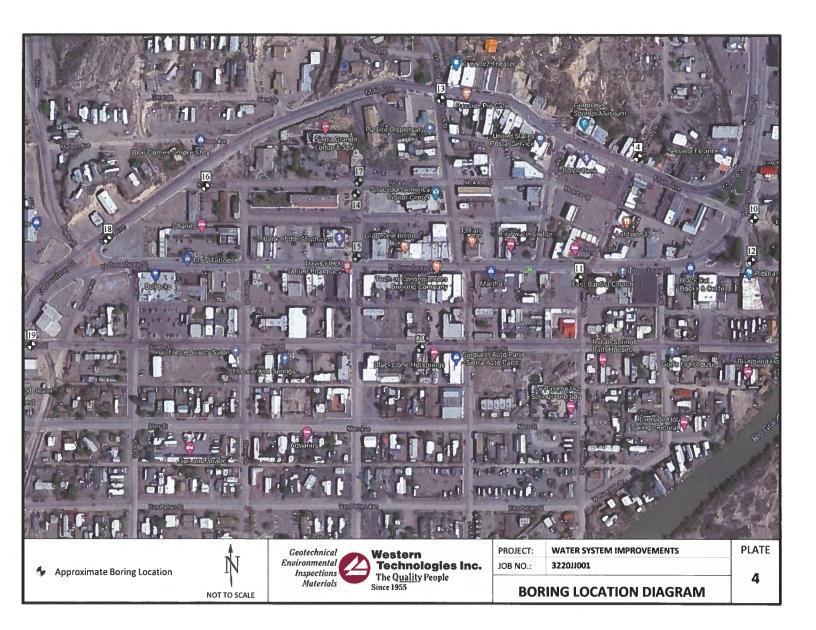
We prepared this report as an aid to the designers of the proposed project. The comments, statements, recommendations and conclusions set forth in this report reflect the opinions of the authors. These opinions are based upon data obtained at the location of the borings, and from laboratory tests. Work on your project was performed in accordance with generally accepted standards and practices utilized by professionals providing similar services in this locality. No warranty, express or implied, is made.

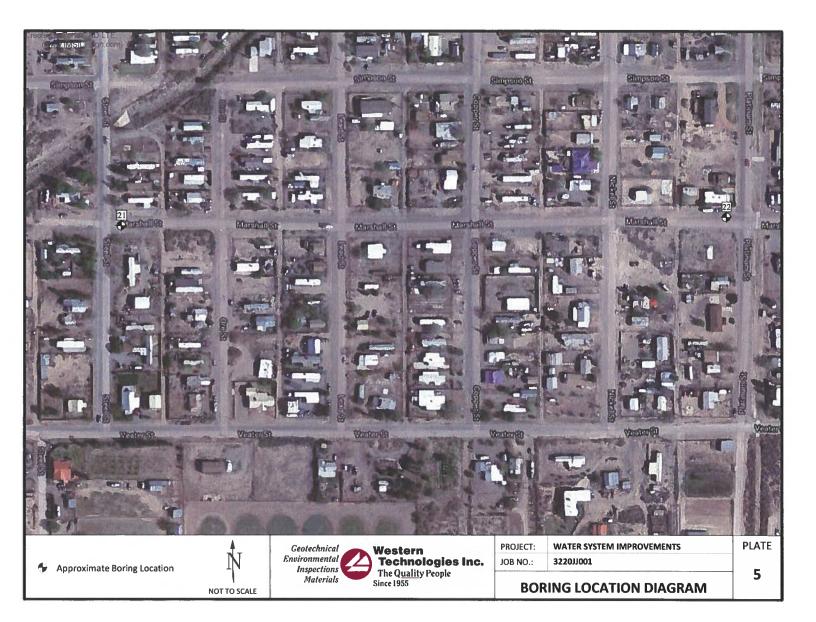












Allowable Soil Bearing Capacity The recommended maximum contact stress developed at the interface of the

foundation element and the supporting material.

Backfill A specified material placed and compacted in a confined area.

**Base Course** A layer of specified aggregate material placed on a subgrade or subbase.

Base Course Grade Top of base course.

Bench A horizontal surface in a sloped deposit.

Caisson/Drilled Shaft A concrete foundation element cast in a circular excavation which may have an

enlarged base (or belled caisson).

**Concrete Slabs-On-Grade** A concrete surface layer cast directly upon base course, subbase or subgrade.

**Crushed Rock Base Course** A base course composed of crushed rock of a specified gradation.

**Differential Settlement** Unequal settlement between or within foundation elements of a structure.

Engineered Fill Specified soil or aggregate material placed and compacted to specified density and/or

moisture conditions under observations of a representative of a soil engineer.

Existing Fill Materials deposited through the action of man prior to exploration of the site.

**Existing Grade** The ground surface at the time of field exploration.

**Expansive Potential** The potential of a soil to expand (increase in volume) due to absorption

of moisture.

Fill Materials deposited by the actions of man.

Finished Grade The final grade created as a part of the project.

**Gravel Base Course** A base course composed of naturally occurring gravel with a specified gradation.

Heave Upward movement.

Native Grade The naturally occurring ground surface.

Native Soil Naturally occurring on-site soil.

Rock A natural aggregate of mineral grains connected by strong and permanent cohesive

forces. Usually requires drilling, wedging, blasting or other methods of extraordinary

force for excavation.

Sand and Gravel Base Course A base course of sand and gravel of a specified gradation.

Sand Base Course A base course composed primarily of sand of a specified gradation.

**Scarify** To mechanically loosen soil or break down existing soil structure.

Settlement Downward movement.

Soil Any unconsolidated material composed of discrete solid particles, derived from the

physical and/or chemical disintegration of vegetable or mineral matter, which can be

separated by gentle mechanical means such as agitation in water.

**Strip** To remove from present location.

Subbase A layer of specified material placed to form a layer between the subgrade and base

course.

Subbase Grade Top of subbase.

**Subgrade** Prepared native soil surface.

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**DEFINITION OF TERMINOLOGY** 

**A-1** 

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#### **COARSE-GRAINED SOILS**

**LESS THAN 50% FINES** 

GROUP SYMBOLS	DESCRIPTION	MAJOR DIVISIONS	
GW	WELL-GRADED GRAVEL OR WELL-GRADED GRAVEL WITH SAND, LESS THAN 5% FINES	GRAVELS	
GP	POORLY-GRADED GRAVEL OR POORLY-GRADED GRAVEL WITH SAND, LESS THAN 5% FINES	MORE THAN HALF OF COARSE FRACTION IS LARGER THAN NO. 4	
GM	SILTY GRAVEL OR SILTY GRAVEL WITH SAND, MORE THAN 12% FINES		
GC	CLAYEY GRAVEL OR CLAYEY GRAVEL WITH SAND, MORE THAN 12% FINES	SIEVE SIZE	
sw	WELL-GRADED SAND OR WELL-GRADED SAND WITH GRAVEL, LESS THAN 5% FINES	SANDS	
SP	POORLY-GRADED SAND OR POORLY-GRADED SAND WITH GRAVEL, LESS THAN 5% FINES	MORE THAN HALF OF COARSE	
SM	SILTY SAND OR SILTY SAND WITH GRAVEL, MORE THAN 12% FINES	FRACTION IS SMALLER THAN	
sc	CLAYEY SAND OR CLAYEY SAND WITH GRAVEL, MORE THAN 12% FINES	NO. 4 SIEVE SIZE	

NOTE: Coarse-grained soils receive dual symbols if they contain 5% to 12% fines (e.g., SW-SM, GP-GC).

#### **SOIL SIZES**

COMPONENT	SIZE RANGE
BOULDERS	Above 12 in.
COBBLES	3 in. – 12 in.
GRAVEL	No. 4 – 3 in.
Coarse	% in. – 3 in.
Fine	No. 4 – ¼ in.
SAND	No. 200 – No. 4
Coarse	No. 10 – No. 4
Medium	No. 40 – No. 10
Fine	No. 200 – No. 40
Fines (Silt or Clay)	Below No. 200

NOTE: Only sizes smaller than three inches are used to classify soils

#### PLASTICITY OF FINE GRAINED SOILS

PLASTICITY INDEX	TERM
0	NON-PLASTIC
1 – 7	LOW
8 – 20	MEDIUM
Over 20	HIGH

#### **FINE-GRAINED SOILS**

MORE THAN 50% FINES

GROUP SYMBOLS	DESCRIPTION	MAJOR DIVISIONS
ML	SILT, SILT WITH SAND OR GRAVEL, SANDY SILT, OR GRAVELLY SILT	SILTS
CL	LEAN CLAY OF LOW TO MEDIUM PLASTICITY, SANDY CLAY, OR GRAVELLY CLAY	CLAYS
OL	ORGANIC SILT OR ORGANIC CLAY OF LOW TO MEDIUM PLASTICITY	LESS THAN 50
мн	ELASTIC SILT, SANDY ELASTIC SILT, OR GRAVELLY ELASTIC SILT	SILTS
СН	FAT CLAY OF HIGH PLASTICITY, SANDY FAT CLAY, OR GRAVELLY FAT CLAY	CLAYS
ОН	ORGANIC SILT OR ORGANIC CLAY OF HIGH PLASTICITY	MORE THAN 50
РТ	PEAT AND OTHER HIGHLY ORGANIC SOILS	HIGHLY ORGANIC SOILS

NOTE: Fine-grained soils may receive dual classification based upon plasticity characteristics (e.g. CL-ML).

#### CONSISTENCY

CLAYS & SILTS	BLOWS PER FOOT
VERY SOFT	0 3
	0 – 2
SOFT	3 – 4
FIRM	5 – 8
STIFF	9 – 15
VERY STIFF	16 – 30
HARD	OVER 30

#### **RELATIVE DENSITY**

SANDS & GRAVELS	BLOWS PER FOOT
VERY LOOSE	0 – 4
LOOSE	5 – 10
MEDIUM DENSE	11 - 30
DENSE	31 – 50
VERY DENSE	OVER 50

NOTE: Number of blows using 140-pound hammer falling 30 inches to drive a 2-inch-OD (1%-inch ID) split-barrel sampler (ASTM D1586).

#### **DEFINITION OF WATER CONTENT**

DRY	
SLIGHTLY DAMP	
DAMP	
MOIST	
WET	
SATURATED	

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**METHOD OF CLASSIFICATION** 

PLATE
A-2

The number shown in "BORING NO." refers to the approximate location of the same number indicated on the "Boring Location Diagram" as positioned in the field by pacing or measurement from property lines and/or existing features, or through the use of Global Positioning System (GPS) devices. The accuracy of GPS devices is somewhat variable.

"DRILLING TYPE" refers to the exploratory equipment used in the boring wherein HSA = hollow stem auger, and the dimension presented is the outside diameter of the HSA used.

"N" in "BLOW COUNTS" refers to a 2-inch outside diameter split-barrel sampler driven into the ground with a 140 pound drop-hammer dropped 30 inches repeatedly until a penetration of 18 inches is achieved or until refusal. The number of blows, or "blow count", of the hammer is recorded for each of three 6-inch increments totaling 18 inches. The number of blows required for advancing the sampler for the last 12 inches (2<sup>nd</sup> and 3<sup>rd</sup> increments) is defined as the Standard Penetration Test (SPT) "N"-Value. Refusal to penetration is considered more than 50 blows per 6 inches. (Ref. ASTM D1586).

"R" in "BLOW COUNTS" refers to a 3-inch outside diameter ring-lined split barrel sampler driven into the ground with a 140 pound drop-hammer dropped 30 inches repeatedly until a penetration of 12 inch is achieved or until refusal. The number of blows required to advance the sampler 12 inches is defined as the "R" blow count. The "R" blow count requires an engineered conversion to an equivalent SPT N-Value. Refusal to penetration is considered more than 50 blows per foot. (Ref. ASTM D3550).

"CS" in "BLOWS/FT." refers to a 2½-in. outside diameter California style split-barrel sampler, lined with brass sleeves, driven into the ground with a 140-pound hammer dropped 30 inches repeatedly until a penetration of 18 inches is achieved or until refusal. The number of blows of the hammer is recorded for each of the three 6-inch increments totaling 18 inches. The number of blows required for advancing the sampler for the last 12 inches (2<sup>nd</sup> and 3<sup>rd</sup> increments) is defined as the "CS" blow count. The "CS" blow count requires an engineered conversion to an equivalent SPT N-Value. Refusal to penetration is considered more than 50 blows for a 6-inch increment. (Ref. ASTM D 3550)

"SAMPLE TYPE" refers to the form of sample recovery, in which N = Split-barrel sample, R = Ring-lined sample, "CS" = California style split-barrel sample, G = Grab sample, B = Bucket sample, C = Core sample (ex. diamond bit rock coring).

"DRY DENSITY (LBS/CU FT)" refers to the laboratory-determined dry density in pounds per cubic foot. The symbol "NR" indicates that no sample was recovered.

"WATER (MOISTURE) CONTENT" (% of Dry Wt.) refers to the laboratory-determined water content in percent using the standard test method ASTM D2216.

"USCS" refers to the "Unified Soil Classification System" Group Symbol for the soil type as defined by ASTM D2487 and D2488. The soils were classified visually in the field, and where appropriate, classifications were modified by visual examination of samples in the laboratory and/or by appropriate tests.

These notes and boring logs are intended for use in conjunction with the purposes of our services defined in the text. Boring log data should not be construed as part of the construction plans nor as defining construction conditions.

Boring logs depict our interpretations of subsurface conditions at the locations and on the date(s) noted. Variations in subsurface conditions and characteristics may occur between borings. Groundwater levels may fluctuate due to seasonal variations and other factors.

The stratification lines shown on the boring logs represent our interpretation of the approximate boundary between soil or rock types based upon visual field classification at the boring location. The transition between materials is approximate and may be more or less gradual than indicated.



BORING LOG NOTES

PLATE

A-3

DATE DRILLED: 1-16-20 **EQUIPMENT TYPE: CME-75 BORING NO. 1T** LOCATION: See Location Diagram DRILLING TYPE: 7"HSA **ELEVATION: Not Determined** FIELD ENGINEER: K. Newberry DRY DENSITY (LBS/CU FT) SAMPLE TYPE MOISTURE CONTENT (% OF DRY WT.) DEPTH (FEET BLOW GRAPHIC SAMPLE uscs SOIL DESCRIPTION 6.0 G SM Silty SAND; brown, loose, moist, with gravel 7.5 92 11 R THIS SUMMARY APPLIES ONLY AT THIS LOCATION AND AT THE TIME OF LOGGING. CONDITIONS MAY DIFFER AT OTHER LOCATIONS AND MAY CHANGE AT THIS LOCATION WITH TIME. DATA PRESENTED IS A SIMPLIFICATION. 9.2 50/11" 97 R dense, with cobbles 10-50/3" R 0 very dense SP-Poorly Graded SAND with Silt; brown to light brown, moist, very SM dense, some gravel 15 10 Ν loose less gravel 20 14 Ν medium dense **BORING TERMINATED AT 21.5 FEET** N-STANDARD PENETRATION TEST NOTES: Groundwater Not Encountered R-RING SAMPLE NR-NO SAMPLE RECOVERY G-**GRAB SAMPLE BUCKET SAMPLE PLATE** PROJECT: WATER SYSTEM IMPROVEMENTS Geotechnical Western JOB NO.: 3220JJ001 Environmental Technologies Inc. **A-4** Inspections The Quality People Materials Since 1955 **BORING LOG** 

LOCAT	ORILLED: ION: See	Loca	tion	Diagra	ım			BORING NO. 1  EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry	
MOISTURE CONTENT (% OF DRY WT.)	DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	SAMPLE	BLOW	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION	
		N ZG Z		23	10-	SP-SM		2" Asphalt Sandy Lean CLAY; brown to dark brown, firm, moist, w gravel  Poorly Graded SAND with Silt; light brown, medium der damp  moist  BORING TERMINATED AT 11.5 FEET	
NR- G-	STAND RING S NO SA GRAB BUCKE	SAMP MPLE SAMI	LE RI PLE	ECOVE		I TES	ST	NOTES: Groundwater Not Encountered	
Enviro	technica nmenta		4	Wes	chno	log	ies	PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001	PLAT
	spection: Material:			The C Since 1	Quality	Peop	ole	BORING LOG	A-C

DATE D LOCATI ELEVAT	ON: See	Locate	tion	Diagra	1 ===	1		BORING NO. 2  EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry
MOISTURE CONTENT (% OF DRY WT.)	DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	SAMPLE	BLOW	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION
6)		S R N		19	5	SP-SM		2" Asphalt   Poorly Graded SAND with Silt; brown, medium dense, damp moist, with gravel   Silty, Clayey SAND; red brown, loose, moist, some gravel   light brown, medium dense   BORING TERMINATED AT 11.5 FEET
R- NR- G-	STAND RING S NO SAI GRABS	AMPI MPLE SAMF	LE RE PLE	COVE		ITES	ST.	NOTES: Groundwater Not Encountered
Geote Environ Insp	BUCKE echnical nmental pections laterials	2	)	Wes	tern chno	log	ies I	PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001  A-

ELEVATION	ON: See Lo		Diagra	am		t	ORING NO. 3  EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry	,
MOISTURE CONTENT (% OF DRY WT.)	(LBS/CU FT)	SAMPLE	BLOW	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION	
3.8		Z G Z	19 50/3"	10	SM		B" Asphalt Silty SAND; light brown, medium dense, damp  cobbles  BORING TERMINATED AT 5 FEET	
R- R NR- N G- G	STANDAR RING SAM NO SAMP BRAB SA BUCKET	/IPLE PLE RI MPLE	ECOVI		TES	ST .	NOTES: Groundwater Not Encountered	PLA
Geoteo Environi	chnical mental ections	2		tern		ies l	PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001	_ A-

DATE D LOCATI ELEVAT	ON: See	Location Location	n Diagra	am		В	DRING NO. 4  EQUIPMENT TYPE: CME-75  DRILLING TYPE: 7"HSA  FIELD ENGINEER: K. Newberry	
MOISTURE CONTENT (% OF DRY WT.)	DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	BLOW	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION	
		G N N N	7	10-	SM		Sandy Lean CLAY; light red brown, firm, moist Silty SAND; yellow brown, medium dense, wet, with grave BORING TERMINATED AT 11.5 FEET	vel
R- NR- G-	STAND RING S NO SA GRAB	AMPLE MPLE F SAMPL	E RECOVI		I TES	ST	NOTES: Groundwater Not Encountered	
Enviro	echnical nmental pections		Te	sterr	log	ies In	· · · · · · · · · · · · · · · · · · ·	PLA
	laterials		The Since I	Quality 1955	y Peo <sub>l</sub>	pie	BORING LOG	

DATE DRILLED: 1-17-20 **EQUIPMENT TYPE: CME-75 BORING NO. 5** LOCATION: See Location Diagram DRILLING TYPE: 7"HSA **ELEVATION: Not Determined** FIELD ENGINEER: K. Newberry DRY DENSITY (LBS/CU FT) SAMPLE TYPE MOISTURE CONTENT (% OF DRY WT.) DEPTH (FEET BLOW COUNTS SAMPLE GRAPHIC nscs SOIL DESCRIPTION 5.8 G 4" Asphalt 4" Base Course SM Silty SAND; brown, very loose, moist 3 Ν THIS SUMMARY APPLIES ONLY AT THIS LOCATION AND AT THE TIME OF LOGGING. CONDITIONS MAY DIFFER AT OTHER LOCATIONS AND MAY CHANGE AT THIS LOCATION WITH TIME. DATA PRESENTED IS A SIMPLIFICATION. 5 5 SP-Poorly Graded SAND with Silt; brown, loose, moist SM 10 8 Ν  $\bar{\Delta}$ saturated **BORING TERMINATED AT 11.5 FEET** 15 20 STANDARD PENETRATION TEST NOTES: Groundwater Encountered at 11 Feet R-RING SAMPLE NR-NO SAMPLE RECOVERY G-**GRAB SAMPLE BUCKET SAMPLE** B-**PLATE** PROJECT: WATER SYSTEM IMPROVEMENTS Geotechnical Western Environmental JOB NO.: 3220JJ001 Technologies Inc. **A-9** Inspections The Quality People Materials Since 1955 **BORING LOG** 

LOCAT	RILLED: ION: See	e Loca	tion	Diagra	am			BORING NO. 6  EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry	
MOISTURE CONTENT (% OF DRY WT.)	DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	SAMPLE	BLOW	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION	
		G	X			SP-		2" Asphalt	
			8			SM		Poorly Graded SAND with Silt; brown, loose, moist	
		N		8	-				
								red brown	
					5-				
		N		5	_				
					_			saturated	
					_	CL		Sandy Lean CLAY; light brown, firm, saturated	
					_				
		N		5	10-				
		'`			-				
					-		,,,,,	BORING TERMINATED AT 11.5 FEET	
					_				
					_				
					15-				
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		,							
					20-				
	OT 11:			NETE	A T/O:		<u></u>		
N- R-	STAND RING S	SAMP	LE			1 1 E S	) I	NOTES: Groundwater Encountered at 6 Feet	
NR- NO SAMPLE RECOVERY G- GRAB SAMPLE									
B-	BUCKE								51.1
	technica onmenta				tern		iec	PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001	PLA
Ins	spection. Material	s	7	The	chno Quality	y Peo	ple		<b>A-1</b>
	·zutertül			Since 1	955			BORING LOG	

DATE DRILLED LOCATION: SELEVATION: I	: See Location	Diagram		BORING NO. 7  EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry	
MOISTURE CONTENT (% OF DRY WT.) DRY DENSITY (LBS/CU FT)	(LBS/CU FT) SAMPLE TYPE SAMPLE	BLOW COUNTS DEPTH (FEET)	USCS	SOIL DESCRIPTION	
10.6	S G Z Z Z	18	SM	2" Asphalt Silty SAND; brown, medium dense, moist  saturated  Sandy Lean CLAY; light brown, firm, saturated  BORING TERMINATED AT 11.5 FEET	
R- RING NR- NO S G- GRAE		ECOVERY		NOTES: Groundwater Not Encountered  PROJECT: WATER SYSTEM IMPROVEMENTS JOB NO.: 3220JJ001	PLA

MOISTURE CONTENT (% OF DRY WT.)	DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	SAMPLE	BLOW	FEET)		l	
	_			<u>m</u> 0	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION
		N N		28 46	10-	SP		1.5" Asphalt   Poorly Graded SAND; brown, medium dense, damp, with grave and cobbles     dense     very dense     BORING TERMINATED AT 11.5 FEET
R- R NR- N G- G	STAND RING S NO SA GRAB S	SAMP MPLE SAMF	LE E RE PLE	COVE		   TES	ST	NOTES: Groundwater Not Encountered
Environ	echnical amental pections	1	2	Tec	tern chno	log	ies	PROJECT: WATER SYSTEM IMPROVEMENTS  PLA  JOB NO.: 3220JJ001  A-*

SITANDARD PENETRATION TEST R- RING SAMPLE RN- NO SAMPLE RECOVERY G- GRAB SAMPLE RN- NO SAMPLE RECOVERY G- GRAB SAMPLE RN- NO SAMPLE BOUCKET SAMPLE  GEORGAPICAL  GEORGAPICAL  GEORGAPICAL  GEORGAPICAL  GEORGAPICAL  GEORGAPICAL  MOSSEPTE  FECULIAN  MOSSEPTE  FECULIAN  GORDAP  FROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220,JU01  PLAT  A-1:	LOCAT	ORILLED: ION: See FION: No	Locat	tion	Diagra	ım			BOR	ING NO.	. 9	9	EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry	
Silty SAND; brown, loose, moist, with gravel medium dense  N	MOISTURE CONTENT (% OF DRY WT.)	DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	SAMPLE	BLOW	DEPTH (FEET)	nscs	GRAPHIC	=			SOI	L DESCRIPTION	
Geotechnical Environmental Inspections  Western Technologies Inc. The Quality People  PROJECT: WATER SYSTEM IMPROVEMENTS  PROJECT: WATER SYSTEM IMPROVEMENTS  A-1:			G N		33	10-			Silty	SAND; bro	ed l	brown,	dense, damp	
Geotechnical Environmental Inspections  Western Technologies Inc. The Quality People  PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001  A-1:	N- R- NR- G- B-	RING S NO SA GRAB	AMPLE SAMP	LE RE PLE	COVE		TES	ST.		NOTES: (	Groi	undwat	er Not Encountered	
	Geo. Enviro	onmental spections	1		Tec	hno	log	ies l	Inc.				M IMPROVEMENTS	

LOCAT	ORILLED: TON: Sec	e Loca	tion	Diagra	ım		E	BORING NO. 10  EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry	
MOISTURE CONTENT (% OF DRY WT.)	DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	SAMPLE	BLOW	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION	
		G	X				, ,	3" Asphalt 5" Base Course	
		N		5	_	SC- SM		Silty, Clayey SAND; brown, loose, moist, some grave	I
						SP- SM		Poorly Graded SAND with Silt; light red brown, loose	, damp
					5-				
		N		16					
					_				
					_				
					-				
		N		9	10-			loose	
					-				
					_			BORING TERMINATED AT 11.5 FEET	
					-				
					4.5				
					15—				
					_				
					_				
					20-	  -  -			
					_				
					_				
N- R-	STANE RING S	SAMP	LE			I TES	I ST	NOTES: Groundwater Not Encountered	
NR- G-	NO SA GRAB				ERY			*.	
B-	BUCKE								l er er
Enviro	technica onmenta spection:	l de		Tec	tern chno Quality	log	ies I	PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001	PLA
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LOCAT	RILLED: ION: See ION: No	Location	on Diagr	am		ВС	DRING NO. 11  EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry	
MOISTURE CONTENT (% OF DRY WT.)	DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	SAMPLE BLOW COUNTS	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION	
26.6		S G N N N	4	10-	ML		A" Asphalt 4" Base Course  Gandy SILT; dark brown, firm, moist  Saturated  Poorly Graded SAND; brown, very loose, saturated  BORING TERMINATED AT 11.5 FEET	
N- R- NR- G- B-	RING S	SAMPL MPLE SAMPL	RECOV _E		V TES	ST	NOTES: Groundwater Encountered at 5 Feet	
Enviro	technica onmenta spections		Te	sterr	log	ies In	PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001	PLAT
	Materials		The Since	Q <u>ualit</u> 1955	y Peo <sub>l</sub>	ple	BORING LOG	Α-1

LOCAT	RILLED: ION: Sec ION: No	e Loca ot Det	tion	Diagra	am	1	E	EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry	
MOISTURE CONTENT (% OF DRY WT.)	DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	SAMPLE	BLOW	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION	
6.6		Z ZG Z		17	10-	SM SP-SM		Asphalt Silty SAND; brown, medium dense, damp, with gravel  Poorly Graded SAND with Silt; brown, loose, moist  black, gray dense saturated  BORING TERMINATED AT 11.5 FEET	
R- NR- G-	STANE RING S NO SA GRAB BUCKE	SAMP MPLE SAMF	LE RE PLE	COVI		I TES	T	NOTES: Groundwater Encountered at 11 Feet	
Enviro	technica nmenta spections			Tec	tern chno	log	ies I	PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001	PLA
	Materials			Since 1		, , , ,	,10	BORING LOG	

DATE DRILLE LOCATION: SELEVATION:	ee Locatio	n Diagra	am			PRING NO. 13  EQUIPMENT TYPE: CME-75  DRILLING TYPE: 7"HSA  FIELD ENGINEER: K. Newberry
MOISTURE CONTENT (% OF DRY WT.) DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	BLOW	DEPTH (FEET)	SOSO	GRAPHIC	SOIL DESCRIPTION
	N NG N	21	10-	CL		BORING TERMINATED AT 11.5 FEET
R- RING NR- NO S G- GRAI	IDARD PI SAMPLE AMPLE F 3 SAMPL (ET SAM	E RECOVI E		TES	ST .	NOTES: Groundwater Not Encountered
Geotechnic Environmen Inspectio	tal		tern chno	log	ies I	PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001  A

DATE D LOCATI ELEVAT	ON: Sec	e Loca	tion	Diagra	am		В	EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry
MOISTURE CONTENT (% OF DRY WT.)	DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	SAMPLE	BLOW	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION
12.4		G	X			sc		3" Asphalt
			8		_			Clayey SAND; dark brown, medium dense, moist
		N		15	_			
			Ź		_	SP- SM		Poorly Graded SAND with Silt; light brown, medium dense, saturated
						0		Saturated
		N		12	5-			
			20		10-			
		N		26	_			gravel
					_		::111:	BORING TERMINATED AT 11.5 FEET
					_			
					15-	i		
					_			
					_			
					_			
					_			
					20-			
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					_			
					_			
					_			
	STANE			NETR	ATION	TES	T	NOTES: Groundwater Encountered at 3 Feet
NR-	RING S NO SA	MPLE	E RE		ERY			
	GRAB BUCKE							
	echnica				tern			PROJECT: WATER SYSTEM IMPROVEMENTS PLA
	nmenta pections		4	Tec	hno Quality	log	ies I	nc. JOB NO.: 3220JJ001
	aterials			Since 1		, reo]	Ν¢	BORING LOG

DATE D LOCATI ELEVAT	ON: Sec	Loca	tion	Diagra	am		E	BORING NO. 15  EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry
MOISTURE CONTENT (% OF DRY WT.)	DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	SAMPLE	BLOW	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION
		S G N N		20	5- - - 10- - - 15- - - 20-	SC SM		3.5" Asphalt Clayey SAND; dark brown, medium dense, moist, with gravel  Silty SAND; light brown, medium dense, saturated  Poorly Graded SAND with Silt; brown, loose, saturated  BORING TERMINATED AT 11.5 FEET
NR-	STANE RING S NO SA GRAB BUCKE	SAMP MPLE SAMI	LE E RE PLE	ECOVI		l TES	ST	NOTES: Groundwater Encountered at 4 Feet
Enviro Ins	echnica nmenta spections	4		Tec	stern chno Quality	log	ies I	PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001  A-1
^	Materials	5		Since 1	955			BORING LOG

DATE D LOCATI ELEVAT	ON: Se	e Loca	tion	Diagra	ım		E	BORING NO. 16  EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry
MOISTURE CONTENT (% OF DRY WT.)	DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	SAMPLE	BLOW	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION
6.6		S G N		5	10-	SP-SM		¬3" Asphalt Poorly Graded SAND with Silt; brown, loose, damp, with gravel light brown, no gravel  Sandy Lean CLAY; brown, soft, wet saturated  firm  BORING TERMINATED AT 11.5 FEET
R- NR- G-	STANE RING S NO SA GRAB BUCKE	SAMP MPLE SAM	PLE E RI PLE	ECOV		I TES	ST	NOTES: Groundwater Encountered at 6 Feet
Enviro	echnica nmenta pection:	1		Tec	tern	log	ies i	PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001  A-2
	Iaterial:			Since 1	Quality 955	y reo	pie	BORING LOG

SITY SITY	NOT DEL	erm	ined	ım			DRILLING TYPE: <b>7"HSA</b> FIELD ENGINEER: <b>K. Newberry</b>	
MOISTURE CONTENT (% OF DRY WT.) DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	SAMPLE	BLOW	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION	
	G N		17	10-	SM		Clayey SAND; dark brown, medium dense, moist, with gravand cobbles  Silty SAND; light brown, loose, saturated  Poorly Graded SAND; brown, loose, saturated, with gravel  BORING TERMINATED AT 11.5 FEET	
R- RING NR- NO S G- GRA	NDARD SAMPLE SAMINES S	LE E RE PLE	ECOVE		I TES	<u>I</u>	NOTES: Groundwater Encountered at 3 Feet	
Geotechnic Environmen Inspectio	tal	2)	Tec	tern hno Quality	log		PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001  A	

LOCATION: S		on Diagra	am			EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry	
MOISTURE CONTENT (% OF DRY WT.) DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	BLOW	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION	
21.5	G Z Z Z	9	10-	SC		Clayey SAND; dark brown, loose, moist  Silty SAND; brown, very loose, wet saturated  BORING TERMINATED AT 11.5 FEET	
R- RING NR- NO S G- GRAE	IDARD F SAMPL AMPLE S SAMPL	E RECOV .E		TES	ST	NOTES: Groundwater Encountered at 7 Feet	
Geotechnic Environment			stern		ios I	PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001	PLA

DATE DRILLED LOCATION: SE ELEVATION: N	e Location	n Diagra	m		В	DRING NO. 19  EQUIPMENT TYPE: CME-75  DRILLING TYPE: 7"HSA  FIELD ENGINEER: K. Newberry	
MOISTURE CONTENT (% OF DRY WT.) DRY DENSITY (LBS/CU FT)	MOISTURE CONTENT (% OF DRY WT.) DRY DENSITY (LBS/CU FT) SAMPLE SAMPLE BLOW COUNTS USCS USCS GRAPHIC			nscs	GRAPHIC	SOIL DESCRIPTION	
N- STAN R- RING NR- NO SA G- GRAB B- BUCK	G Z Z	8	5- - 10- - - 20- -	SM		3.5" Asphalt Silty SAND; brown, loose, moist to damp, with gravel  less gravel  BORING TERMINATED AT 11.5 FEET	
N- STAN R- RING: NR- NO SA G- GRAB B- BUCK	DARD PE SAMPLE MPLE R SAMPLE ET SAMF	ECOVE		TES	T	NOTES: Groundwater Not Encountered	
Western					ies II	PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001	PLAT A-2

DATE DRILLED LOCATION: SE	e Location	n Diagrai	m		BOR	ING NO. 20  EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry	
MOISTURE CONTENT (% OF DRY WT.) DRY DENSITY (LBS/CU FT)	SAMPLE TYPE SAMPLE	BLOW	DEPTH (FEET)	USCS		SOIL DESCRIPTION	
27.3	G N N N	3 17	5-	CL	Sar	" Asphalt indy Lean CLAY; brown, soft, moist  urated  y stiff  BORING TERMINATED AT 11.5 FEET	
R- RING NR- NO SA G- GRAB	il 🗾	ECOVE E PLE Wes	RY tern	ogie	s Inc.	NOTES: Groundwater Encountered at 3.5 Feet  PROJECT: WATER SYSTEM IMPROVEMENTS JOB NO.: 3220JJ001	PLA

DATE DRILLED: 1-16-20 **BORING NO. 21 EQUIPMENT TYPE: CME-75** LOCATION: See Location Diagram DRILLING TYPE: 7"HSA **ELEVATION: Not Determined** FIELD ENGINEER: K. Newberry DRY DENSITY (LBS/CU FT) SAMPLE TYPE MOISTURE CONTENT (% OF DRY WT.) DEPTH (FEET SAMPLE BLOW GRAPHIC USCS SOIL DESCRIPTION G 2.5" Asphalt SM Silty SAND; light brown to brown, loose, damp 5 5 5 10 5 N **BORING TERMINATED AT 11.5 FEET** 15 20 N-STANDARD PENETRATION TEST **NOTES:** Groundwater Not Encountered R-RING SAMPLE NR-NO SAMPLE RECOVERY **GRAB SAMPLE** G-B-**BUCKET SAMPLE PLATE** PROJECT: WATER SYSTEM IMPROVEMENTS Geotechnical Western Environmental JOB NO.: 3220JJ001 Technologies Inc. **A-25** Inspections The Quality People Materials Since 1955 **BORING LOG** 

THIS SUMMARY APPLIES ONLY AT THIS LOCATION AND AT THE TIME OF LOGGING. CONDITIONS MAY DIFFER AT OTHER LOCATIONS AND MAY CHANGE AT THIS LOCATION WITH TIME. DATA PRESENTED IS A SIMPLIFICATION.

LOCAT	RILLED: ION: See	e Loca	tion	Diagra	ım		E	BORING NO. 22  EQUIPMENT TYPE: CME-75 DRILLING TYPE: 7"HSA FIELD ENGINEER: K. Newberry	
MOISTURE CONTENT (% OF DRY WT.)	DRY DENSITY (LBS/CU FT)	SAMPLE TYPE	SAMPLE	BLOW	DEPTH (FEET)	nscs	GRAPHIC	SOIL DESCRIPTION	
		Ñ		4		SP- SM		¬2.5" Asphalt Poorly Graded SAND with Silt; brown to light brown, looddamp	se,
20.6		N G		5	5	CL	1111	Sandy Lean CLAY; dark brown, firm, moist	
= = =	N 7 10-			BORING TERMINATED AT 11.5 FEET					
					15— — —				
					20-				
NR-	STANE RING S NO SA GRAB	SAMP MPLE	LE Re	ECOVE		TES	ST.	NOTES: Groundwater Not Encountered	
B- Georgian	BUCKE technica nmenta	T SA	MP	Wes	tern	log		PROJECT: WATER SYSTEM IMPROVEMENTS  JOB NO.: 3220JJ001	PLA
	spections Materials			The ( Since 1	Quality 955	Peop	ole	BORING LOG	A-2

					Com	pression Pr	ression Properties		Properties	Plas	ticity			
Boring No.	Depth (ft.)	USCS Class.	Initial Dry	Initial Water	Surcharge	Total Co	ompression (%)	Sureborgo	Expansion	Liquid Pla	Plasticity	Percent Passing	R Value	Remarks
			Density (pcf)	Content (%)	(ksf)	In-Situ	After Saturation	Surcharge (ksf)	(%)	Limit	Index	#200		
1T	0-5	SM		6.0						-	NP	24		
1														
1T	2-3	SM	92	7.5	0.5	1.7		ļ						
1					1.0	2.1		ļ				}		
1					2.0	2.3	12.4							2
1					4.0		14.2							2
1											:			
3	4-5	SC-SM		3.8						19	5	24		
1														
5	0-5	SM		5.8							NP	14		
1														
7	0-5	SM		10.6							NP	20		
1														
9	0-5	SM		5.7							NP	13		
11	0-5	ML		26.6							NP	66	23	
12	5-10	SP-SM		6.6						••	NP	9		

	Materials Since 1955 wt-us.com	SOIL PROPERTIES				
Submerged to approximate saturation.     Slight rebound after saturation.     Sample disturbance observed.	Slight rebound after saturation.  Slight rebound after saturation.  Support of the saturation of the s					
emarks . Compacted density (approx. 95% of ASTM D1557 max. density at moisture content slightly below optimum.)						
Note: Initial Dry Density and Initial Water Content a  NP = Non-Plastic						

					Com	pression Pr	operties	Expansion	Properties	Plas	ticity			
Boring No.	Depth (ft.)	USCS Class.	Initial Dry	Initial Water	Surchargo	Total Co	mpression (%)	Surcharge	Europeien	Lincolal	Plasticity	Percent Passing #200	R Value	Remarks
			Density (pcf)	Content (%)	Surcharge (ksf)	In-Situ	After Saturation	(ksf)	Expansion (%)	Liquid Limit	Index	#200		
14	0-3	sc		12.4						34	18	26		
16	0-5	SP-SM		6.6							NP	9		
18	0-5	sc		21.5						30	14	28	53	
20	0-5	CL		27.3						44	24	59	24	
22	5-10	CL		20.6						47	36	54		
						!								
									,					
		:												

Note: Initial Dry Density and Initial Water Content are in-situ values unless otherwise noted.  NP = Non-Plastic							
Remarks 1. Compacted density (approx. 95% of ASTM D1557 max. density at moisture content slightly below optimum.)							
Submerged to approximate saturation.     Slight rebound after saturation.     Sample disturbance observed.	3. Slight rebound after saturation.  4. Sample disturbance observed.  Environmental Technologies Inc. JOB NO.: 3220JJ001						
·	Materials Since 1955 wt-us.com		SOIL PROPERTIES	B-2			

# EXHIBIT B NMDOT PERMIT

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### NEW MEXICO DEPARTMENT OF TRANSPORTATION

#### UTILITY PERMIT CONSTRUCTION NOTIFICATION FORMS

The permit applicant shall complete these forms in order to notify the District One Traffic Section permit agent on the status of all utility construction activities. The "Notice of Utility Construction" shall be mailed, delivered or faxed to the Department prior to the construction of the utility and the "Notice of Utility Construction Completion" shall be mailed, delivered or faxed to the Department upon the completion of the utility. The District's Permit Unit mailing address is as follows:

### NEW MEXICO DEPARTMENT OF TRANSPORTATION

District One Traffic Section 2912 East Pine Street Deming, NM 88030 Attn: Bernie Sotelo

FAX NUMBER 1-575-546-0272 bernardino.sotelo@state.nm.us

#### NOTICE OF UTILITY CONSTRUCTION COMPLETION

Wilson & Company 4401 Masthead St. NE Suite 150 Albuquerque, NM 87109

Attn: Mr. Nasi,

Subject: Utility Permit'(s) # 1-21-22 on Loop 11 @ MM(s) 2.60 to 3.50 in Sierra County.

#### NOTICE OF UTILITY CONSTRUCTION

Wilson & Company 4401 Masthead St. NE Suite 150 Albuquerque, NM 87109

Attn: Mr. Nasi,

Subject: Utility Permit'(s) # 1-21-22 on Loop 11 @ MM(s) 2.60 to 3.50 in Sierra County.

This utility construction will begin on //
Also contact maintenance patrol at 575-494-0770

Notify five (5) days before your actual construction date.

WARNING: Failure to properly notify the Department, concerning your utility

Construction activities may be grounds to revoke your permit.

Michelle Lujan Grisham

Governor

Michael R. Sandoval Cabinet Secretary

Commissioners

Jennifer Sandoval Commissioner District 1

Bruce Ellis Commissioner District 2

Hilma E. Chynoweth Commissioner District 3

Walter G. Adams Commissioner District 4

Vacant Commissioner District 5

Charles Lundstrom Commissioner District 6

88030



March 8, 2021

Wilson & Company 4401 Masthead St. NE Suite 150 Albuquerque, NM 87109

ATTN: Mr. Nasi,

Subject: Utility Permit Approval for PERMIT(s) #1-21-22 on Loop 11 MM(s) 2.60 to 3.50 in Sierra County.

Please accept this correspondence as your authorization to proceed with the subject work required to accommodate your facility within NMDOT right-of-way. This approval is contingent on the following CONDITION'(s):

- Submittal of Contractor's and all Sub contractor's Certificates of insurance
  with the NMDOT listed as additional insured and with the amounts as stated
  in the NMDOT Railroads and Utilities Manual once the contractor has been
  hired.
- 2. Any vegetation that is dug up shall be removed & deposed of outside NMDOT ROW.

Should you find it necessary to revise the work specified in your proposal, any such revision is required in writing for our approval before you proceed.

ALL EXCAVATION WITHIN THE ROADWAY SHALL BE COMPACED TO 95% OF MAXIMUM DRY DENSITY (MODIFIED PROCTOR, METHOD"C", T-99)

Utility installations within the highway right-of-way shall be performed in accordance to the revised construction plans. Within 30 days of completion the project, two sets of hard copy as-built plans and electronic file (disk) to be submitted to this office. The plans shall be plotted on NMSHTD AutoCAD DWG (3D) or Microstation DBN (3D) format. The Standard horizontal datum shall be North American Datum 1983 (NAD 83) and the projections shall be the New Mexico State Plane Coordinate System 1983 (NMSPCS). Also, vertical elevations and horizontal locations must be included with the plans. The as-built plans, with the utility location information shall be tied to Department monuments and referenced to the highway mileposts and/or to highway construction project stationing, and stamped by a New Mexico Registered Land Surveyor. Once this information has been submitted, and all requirements have been met, the permit will be issued.

Right of way shall be reseeded and restored to original condition. No open trenches/pits or storage of equipment or materials will be allowed within the right of way over night.

Utility construction shall commence within six (6) months of the date of utility permit approval, otherwise permit shall become null and void. Work not started within the first six (6) months period shall require a new permit with all associated documentation.

Michelle Lujan Grisham Governor

Michael R. Sandoval Cabinet Secretary

#### Commissioners

Jennifer Sandoval
Commissioner
District 1

Bruce Ellis Commissioner District 2

Hilma E. Chynoweth Commissioner District 3

Walter G. Adams Commissioner District 4

Vacant Commissioner District 5

Charles Lundstrom Commissioner District 6 Written notice is required for an extension before the first six (6) month period expires from date of approval.

TRAFFIC CONTROL DEVICES WILL BE IN ACCORDANCE WITH MUTCD SPECIFICATIONS.

Complete Utility Permit Application Shall Be At Worksite When Work Is In Progress.

## NOTIFY THE DISTRICT OFFICE 5 DAYS PRIOR TO CONSTRUCTION

575-494-3216 and the Williamsburg Maintenance Patrol Office @ 575-494-0770

Sincerely:

Bernardino Sotelo,

District One Permit Agent

cc: Jason Polanco, Patrol Supervisor 41-53

## APPLICATION FOR PERMIT TO INSTALL UTILITY FACILITIES WITHIN PUBLIC RIGHT OF WAY

го	NEW MEXICO DEPARTMENT OF 1 P.O. Box 1149 SANTA FE, NEW MEXICO 87504-1149	ransporation			Permit No. Permit R Relocati Remain X New Ins	ion in Place stallation	~ 2 2	2
	Pursuant to New Mexico Statutes Anno the undersigned	tated, 1978 Compilat	ion, Sections 67-8-1	3 and 55-2-7,	and 17.4.2 NMA(	С		
CI	ty of truth or Consequences							_
	Address: 505 Sims Street herein makes application to use highwa Size and Type of Facility Approximately			Waterline Sec	e attachments for t	further exi	olanation.	
								_
	in the following location: N.M. Project N	Vo		Route No	US HVVY 85 Z	<del>-0</del> 0	PI	_
	Highway MP/GPS MP 2.60 on Main	n Ave/ MP 2.60 on	to Highway MP/G	PS MP 3.50 o	n Main Ave/ MP 3	.02 on N I	Broadway s	st
	Sierra County. Section	10way st	Township	138	, Range	4W		_
	For the purpose of this application "wir a. "Engineer" shall be construed as a District Engineer's Representative h. "Applicant shall be construed as a organization making application, c. "Facility" shall be construed as an governmentally owned facility us derived therefrom, sewage, stream conveyors or other methods. d. If application is for a parallel insta	neaning the District Es.  neaning the individual  or the successors of a  eaning, but not limite  and for carriage, district  n or other projects car  allation, justification a	ingineer of the New II, firm, corporation, ny of the above, d to any publicly, pr oution or transmission ried by means of pil as to why private rig	association, g rivately, coope on or water, ga pelines, condu tht may be util	governmental subderatively, municipals or electricity, oints, wires, culverts	division, of ally or il and pro- s, ditches, tished.	or other ducts	
3.	Applicant proposes to Drelocate in	stall  leave facility	Approx.8,370 LI			_fcct with	hin the	
	right of way line.	The proposed install	lation shall be:					
	Crossing and Parallel	Subsu	face	Bori	ing, Jacking,Paver Horizontal Directio	ment cuts, onal Drillin	, and g	
	(Crossing or Parallel)	(Subsurface of	r Overhead)	(Bi	oring, Jacking, or	Pavemen	t Cuts)	
	If applicant requests installation     Where application for pavemen amount to be fixed by the Engire	t cut us justified, the a	mplete justification application may be h	therefore shall neld in abeyan	l be submitted by a ce pending receip	attachmer t of cash l	nt. bond in an	
4.	There is attached hereto a diagramma referenced to roadway and right of wabelow grade, highway stationing, ideninstallation, nature of adjacent land us installation of any structures, shall reconstructures.	ay, right of way lines, stification of material se must be shown. Pr quire detailed structur	any access control sto be used an any of coposed installations all drawings.	tines, distance other pertinent on or in bridg	t data. If applicati ges or other structi	ion is for ures, or fo	parallel or the	
5.	Applicant desired this permit to be in and must be renewed upon expiration engineer of actual commencement an Engineer of removal or abandonment	d completion of cons	truction of the instat	nation. The A	sued for a period l he Applicant shall pplicant shall also	longer tha I formally o formally	in 25 years, notify the notify the	,

- This application shall be validated as a permit upon the signing of the application by the Engineer and returned it to the Applicant. The granting if this permit shall not be construed as granting any easement of property right.
- 7. Servicing of facilities shall not be permitted within the access control lines on any controlled access project. Should an emergency occur, the Applicant shall notify the Engineer and shall provide such flagmen, flashers, warning or other safely devices as required by the Engineer. All routine maintenance shall be performed from outside any access control lines.
- 8. The relocation or installation of facilities within public right of way shall be in strict conformance with all application provisions of regulations of the New Mexico Department of Transportation 17.4.2 NMAC, all provisions of this application, drawing and the Instructions for Utility Permits, as they may be modified by the Engineer, and no departure therefrom may be made without the written consent of the Engineer. All facilities shall be so placed that they will not interfere with or endanger any roadway features or other existing facilities. All construction of facilities shall be subject to the inspection and approval of the Engineer. All such work shall be performed so that danger, inconvenience and delay to the traveling public will be held to a minimum. Protection and handling of traffic during the installation are the responsibility of the Applicant and must be approved by the Engineer.
- 9. The Applicant shall, except as otherwise ordered by the Engineer, restore the right of way, and all bridges or other structures thereon or adjacent thereto which have been altered or affected by facility installation performed hereunder, in accordance with sound construction practices and the Engineer's specifications, and shall cause the work to be done in a workmanlike manner, if any damage is caused to the highway right of way or to any bridge, structure or improvement thereon or adjacent thereto by reason of the design installation, maintenance alteration or removal of such facilities or other appurtenances, the Applicant shall reimburse the Engineer the full amount thereof promptly upon demand by the Engineer provided, however, that the obligation imposed under this paragraph shall not apply in the event the damage resulted from causes beyond the control of the Applicant or its contractors or its consultants. All such facilities located with the right of way shall at all times be kept in such repair so as not to damage the highway, inconvenience or endanger the traveling public and shall be kept free advertisement, posters and the like.
- 10. Should the Applicant at the time fail to promptly and fully perform any of the obligations imposed hereby and after thirty (30) days written notice thereof, the Engineer may, at his option (a) cause the obligations to be fully carried out and performed, and the Applicant shall promptly reimburse the Engineer for all costs and expenses incident thereto, or (b) summarily order the removal of such facility and if the Applicant fails to comply with that removal order within a reasonable time, the Engineer may direct the removal of the facility with all costs and expenses thereto to be borne by Applicant.
- 11. If by reason of any change in the location, construction, grade or by any other matter affecting the highway upon which any facility is located because of changing traffic conditions or otherwise, it shall become advisable in the opinion of the engineer that said facility be removed, relocated or otherwise modified, the utility, upon written notice from the engineer, shall provide all horizontal and vertical datum including pothole information, size and type of material, and condition of material. If necessary the utility shall remove, relocate or modify such facility without undue delay in such manner as the engineer may direct or approve, at the utility's expense and at no cost to the engineer. All facilities located on public right-of-way under the dual jurisdiction of the state and a subordinate governmental entity shall comply with all applicable rules and regulations of such entity properly and lawfully in force and including but not limited to provisions of local franchises not in conflict with the rules and regulations of the engineer. The engineer makes no warranty, either express or implied, as to the continued existence of any highway in any particular location and expressly assumes no obligation with regard to the facility upon change, vacation or abandonment of any highway or portions thereof.
- 12. Neither the making of this application nor anything herein contained shall constitute a waiver on the part of the Applicant of any rights or claims had or made by some with respect to the occupancy of the streets and highways under the Constitution and Laws of the State of New Mexico. nor shall anything herein contained in any prejudice or impair any rights or claims existing independent of this application with respect to the construction, operation, and maintenance of the Applicant's facilities in the State of New Mexico.
- 13. The utility owner must indemnity and hold harmless the New Mexico Department of Transportation from loss due to any negligent act of the utility, the utility's employees, any agent acting on the utility's behalf, and anyone else engaged by the utility to work on the utility installations, maintenance or relocations of their facilities. Any contractor or subcontractor engaged by the utility to perform utility installations or relocations in conjunction with or prior to highway construction must also indemnify and hold harmless the New Mexico Department of Transportation from loss due to any negligent act of the utility's contractor or subcontractor.
- 14. Each copy of the application shall be signed by the Applicant as an individual owner or by any official designated to execute such Documents.

15. Utility owners shall carry insurance in amounts not less than those below specified and as outlined in 17.4.2 NMAC and the Standard Specifications for Highway and Bridge Construction. 2019 Edition, (hereinafter, "Specifications"), as may be updated from time to time. In the event of conflict between the specification, and the regulations, owner shall carry the largest amount of insurance. If a utility is self-insured, the utility shall provide an Owner's Protective Liability Insurance Policy, in favor of the Department, in the amounts below specified. Department as additional named insured: The utility, is contractor or subcontractor shall have the New Mexico Department of Transportation added as an additional named insured on the Comprehensive General Liability Form or Commercial General Liability Form furnished by the Utility.

This application is hereby granted subject to all provisions herein and including the following special provisions, changes or amendments:

The utility shall provide "as-built" horizontal and vertical location information in hard copy and electronic file (AutoCAD DWG (3D). The standard horizontal datum shall be North American Datum 1983 (NAD83) and the standard projections shall be the New Mexico State Plane Coordinate System 1983 (NMSPCS83). The standard vertical datum shall be North American Vertical Datum 1988 (NAVD 1988). The utility location information shall be tied to Department monuments and referenced to highway mileposts and/or GIS coordinates and certified by a New Mexico Registered Land Surveyor. Metadata or "data about the data" shall be submitted with each utility's as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include: 1. District Utility Permit Number. 2. Name, address and phone number of the responsible land surveyor. 3. Date of completion of survey. 4. Equipment used to conduct the Survey. 5. Horizontal and vertical control marks used to tie the survey to the NMSPC83 and NAVD88. 6. Ground to Grid combined scale factor used. 7. Elevations shall be provided every 500 feet and at all survey break points, including all high and low points.

Note: Highway projects are time sensitive therefore, permit information requested from Authorization to Engineer Letters must be returned by the date indicated within the Authorization to Engineer letter.

16.	Any utility qualifying for reimbursement shall relocate in accordance with and pursuant to MAP-21;
	http://www.fhwa.dol.gov/construction/contreacts/buyam-ga.cfm and (23U.S.C313)
	Applicant/Utility Owner certifies we are in compliance with Buy America for said facility and agrees and understands
	non-adherence will void said permit.
	City of Truth or Consequences

Applicant City of Truth or Consequences  By Mr. Morris Madrid, City Manager	Chambarn ans	
Title		
Approval of this permit is hereby given this	day of	. 20
	NEW MEXICO DEPART	MENT OF TRANSPORTATION
	Ву	

NOTES:

\*Per DOT request, please find attached below individual information for the existing crossings and parallel installations regarding the Main Street District Waterlines Improvements project.
\*Project plan set with appropriate crossing information will be included with the final permit.



4401 Masthead Street NE Suite 150 Albuquerque, NM 87109 505 348 4000 (phone) 505 348 4055 (fax) wilsonco.com

#### 1.Main Ave - N Broadway St.

Size and Type of facility Approximately 116 LF of 12-in PVC Waterline

In the following location Route No.: US HWY 85 Highway MP/GPS: MP 2.60 on Main Ave To Highway MP/GP5: MP 2.62 on Main Ave

County, Section, Township, Range: Sierra, 34,135,4W

Purpose: Install

Distance within the right of way line: Approx. 116 LF

Crossing or Parallel: Crossing Subsurface or Overhead: Subsurface

Boring, Jacking or Pavement cuts: Horizontal Directional Drilling

Note: See page CU-210 on Plan set

2.Main Ave- McAdoo St

Size and Type of facility Approximately 90 LF of 6-in PVC Waterline

In the following location Route No.: US HWY 85 Highway MP/GPS: MP 2.71 on Main Ave. To Highway MP/GPS: MP 2.73 on Main Ave.

County, Section, Township, Range: Sierra, 34,135,4W

Purpose: Install

Distance within the right of way line: Approx. 90 LF

Crossing or Parallel: Crossing Subsurface or Overhead: Subsurface

Boring, Jacking or Pavement cuts: Horizontal Directional Drilling

Note: See page CU-224 on Plan set

#### 3.Main Ave

Size and Type of facility: Approximately 43 LF of 12-in PVC Waterline

In the following location Route No.: US HWY 85 Highway MP/GPS: MP 2.89 on Main Ave. To Highway MP/GPS: MP 2.89 on Main Ave.

County, Section, Township, Range: Sierra, 34,135,4W

Purpose: Install

Distance within the right of way line: Approx; 43 LF

Crossing or Parallel: Crossing
Subsurface or Overhead: Subsurface

Boring, Jacking or Pavement cuts: Horizontal Directional Drilling

Note: See page CU-206 on Plan set

#### 4. Main Ave - N Date St.

Size and Type of facility: Approximately 93 LF of 12-in PVC Waterline

In the following location Route No.: US HWY 85 Highway MP/GPS: MP 3.15 on Main Ave. To Highway MP/GPS: MP 3.17 on Main Ave

County, Section, Township, Range: Sierra, 34,135,4W

Purpose: Install

Distance within the right of way line: Approx. 93 LF

Crossing or Parallel: Crossing
Subsurface or Overhead: Subsurface

Boring, Jacking or Pavement cuts: Horizontal Directional Drilling

Note: See page CU-209 on Plan set

Application for Permit to Install Utility Facilities Within Public Right of Way 1/4/2021 pg. 2



#### 5. N Broadways St 1

Size and Type of facility Approximately 36 LF of 12-in PVC Waterline

In the following location Route No.: US HWY 85 Highway MP/GPS: MP 2.62 on N Broadway St. To Highway MP/GPS: MP 2.62 on N Broadway St. County, Section, Township, Range: Sierra, 34,135,4W

Purpose: Install

Distance within the right of way line: Approx. 36 LF

Crossing or Parallel: Crossing
Subsurface or Overhead: Subsurface

Boring, Jacking or Pavement cuts: Horizontal Directional Drilling

Note: See page CU-217 on Plan set

6. N Broadways St 2

Size and Type of facility Approximately 36 LF of 12-in PVC Waterline

In the following location Route No.: US HWY 85 Highway MP/GPS: MP 2.96 on N Broadway St. To Highway MP/GPS: MP 2.96 on N Broadway St. County, Section, Township, Range: Sierra, 34,135,4W

Purpose: Install

Distance within the right of way line: Approx. 36 LF

Crossing or Parallel: Crossing
Subsurface or Overhead: Subsurface

Boring, Jacking or Pavement cuts: Horizontal Directional Drilling

Note: See page CU-223 on Plan set

#### 7. Main Ave North

Size and Type of facility: Approximately 1,921 LF of 12-in PVC Waterline

In the following location Route No.: US HWY 85 Highway MP/GPS: MP 2.50 on Main Ave. To Highway MP/GPS: MP 2.86 on Main Ave.

County, Section, Township, Range: Sierra, 34,135,4W

Purpose: Install

Distance within the right of way line: Approx. 1,921 LF

Crossing or Parallel: Parallel
Subsurface or Overhead: Subsurface

Boring, Jacking or Pavement cuts: Boring, Jacking and Pavement cuts

Note: See page CU-201 to CU-206 on Plan set

#### 8. Main Ave South

Size and Type of facility Approximately 1,552 LF of 12-in PVC Waterline

In the following location Route No.: US HWY 85 Highway MP/GPS: MP 3.20 on Main Avenue North To Highway MP/GPS: MP 3.50 on Main Avenue North County, Section, Township, Range: Sierra, 34,135,4W

Purpose: Install

Distance within the right of way line: Approx. 1,552 LF

Crossing or Parallel: Parallel

Subsurface or Overhead: Subsurface

Boring, Jacking or Pavement cuts: Pavement Cut Note: See page CU-206 to CU-209 on Plan set Application for Permit to Install Utility Facilities Within Public Right of Way 1/4/2021 pg. 3



#### 9. N Broadways St - NORTH

Size and Type of facility Approximately 2,338 LF of 12-in PVC Waterline

In the following location Route No.: US HWY 85
Highway MP/GPS: MP 2.6 on N Broadway St. - North
To Highway MP/GPS: MP 3.02 on N Broadway St. - North
County, Section, Township, Range: Sierra, 34,135,4W

Purpose: Install

Distance within the right of way line: Approx. 2,338 LF

Crossing or Parallel: Parallel

Subsurface or Overhead: Subsurface

Boring, Jacking or Pavement cuts: Pavement Cuts Note: See page CU-210 to CU-216 on Plan set

#### 10. N Broadways St-SOUTH

Size and Type of facility Approximately 2,138 LF of 8-in PVC Waterline

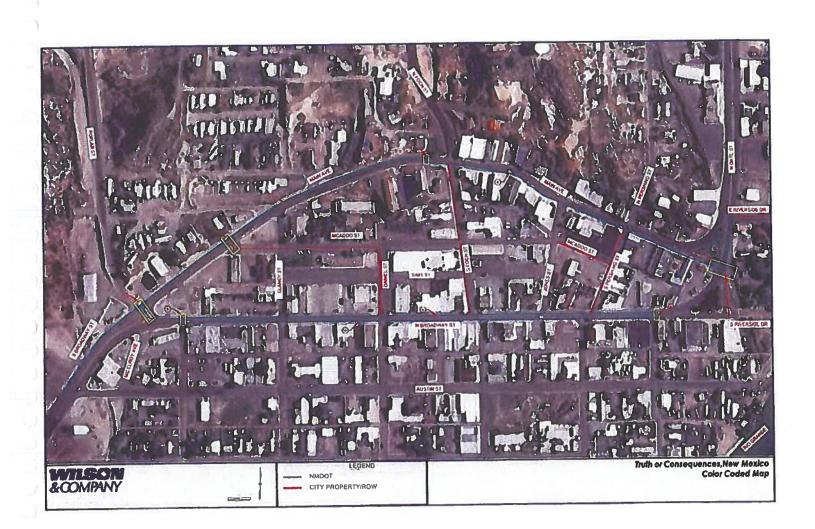
In the following location Route No.: US HWY 85 Highway MP/GPS: MP 2.62 on N Broadway St. - South. To Highway MP/GPS: MP 3.02 on N Broadway St. - South County, Section, Township, Range: Sierra, 34,13S,4W

Purpose: Install

Distance within the right of way line: Approx. 2,135 LF

Crossing or Parallel: Parallel
Subsurface or Overhead: Subsurface

Boring, Jacking or Pavement cuts: Pavement Cuts
Note: See page CU-217 to CU-223 on Plan set



## ENVIRONMENTAL CLEREANCE REQUEST



4401 Masthead Street NE, Suite 150 Albuquerque, NM 87109 505 348 4000 (phone) 505 348 4055 (fax)

No Cultural Resource Survey Required

No Environmental Survey Required

December 10, 2020

Gary Funkhouser NMDOT – Environmental Bureau P.O Box 1149 Santa Fe, NM 87504-1149

REVIEWED

By Gary Funkhouser at 2:22 pm, Dec 30, 2020

Re: Truth or Consequences MSD Project - NMDOT Environmental

Dear Mr. Funkhouser,

On behalf of the c City of Truth or Consequences, please find the following information in accordance with the NMDOT Environmental Clearance Request form for the T or C MSD Waterline Improvements project for your review and concurrence.

1. Purpose and Nature of undertaking. Describe the undertaking along with width, length and depth of ground disturbance. Include the methods and machinery to be used.

The project consists of approximately 8360 linear feet of 6-in, 8-in and 12-in water line installation through a combination of open trench, horizontal directional drilling, and pipe bursting methods. Open trenching ground disturbance is estimated at 4-ft in width and 4-ft in depth utilizing standard backhoes and excavation equipment.

2. Is your project resulting from a NMDOT project? If so, provide the control and/or project number, *Not applicable; not a NMDOT project.* 

3. Funding Source. Is the funding private, state or federal? If state and/or federal, list agency(s).

Federal funded; Main Street District Waterlines Improvements project funded through USDA.

4. Land status. Is the project on the right-of-way owned by BLM, Forest Service, Tribal land or State Trust land? (NMDOT does not own all highway rights-of-way!)

City of Truth or Consequences right-of-way.

Permitting agencies. List other permitting agencies involved besides NMDOT.
 City of Truth or Consequences, USDA Rural Development and NMED Drinking Water Bureau.

6. County. List the county or counties in which the project is located.

The project is located in Sierra County.

)



7. Highway number. Indicate the highway, the project will cross or parallel.

The project crosses along US HWY 85 in multiple locations from Milepost 2.60 to Milepost 3.15 on Main Avenue, as well as crosses along with US HWY 85 twice on milepost 2.62 to milepost 2.96 on N Broadway St.

The project runs parallel along US HWY 85 from Milepost 2.5 to Milepost 3.16 on Main Ave. Additionally runs parallel to USHWY 85 from Milepost 2.6 to 3.02 on the North side of N Broadway and Milepost 2.62 to 3.02 on the south side of N Broadway

- 8. BOP and EOP. Provide the milepost locations for the beginning of the project area (BOP) and the end of the project area (EOP). If highway crossing only, list the milepost location, indicate BOP and EOP on quadrangle maps as well.
  - 1. Project crosses US HWY 85 at milepost 2.6 on Main St. (crosses Main St. along N Broadway St.).
  - 2.Project crosses US HWY 85 at milepost 2.71 on Main St. (crosses Main St. along McAdoo St.).
  - 3. Project crosses US HWY 85 at milepost 2.85 on Main St. (crosses Main St.).
  - 4. Project crosses US HWY 85 at milepost 3.15 on Main St. (crosses Main St. along N Date St.).
  - 5. Project crosses US HWY 85 at milepost 2.6 on N Broadway St. (crosses N Broadway St. along Post St.).
  - 6.Project crosses US HWY 85 at milepost 2.6 on N Broadway St. (crosses N Broadway St. along Mims St.).
  - 7 &8. Project Parallel US HWY 85 at BOP milepost 2.5 to EOP milepost 3.16 on Main Ave.
  - 9.Project Parallel US HWY 85 at BOP milepost 2.60 to EOP milepost 3.02 on N Broadway St. (North)
  - 10.Project Parallel US HWY 85 at BOP milepost 2.62 to EOP milepost 3.02 on N Broadway St. (South)
- 9. Side(s) of the road. Indicate of which side of the road the project will be located using cardinal directions (north, south, east, west). List all project crossings of the highway by milepost.
  - 1.Project crosses US HWY 85 at milepost 2.6 on Main St. (crosses west of Main St. along N Broadway St.).
  - 2.Project crosses US HWY 85 at milepost 2.71 on Main St. (crosses west of Main St. along McAdoo St.).
  - 3. Project crosses US HWY 85 at milepost 2.85 on Main St. (crosses west to east of Main St.).
  - 4. Project crosses US HWY 85 at milepost 3.15 on Main St. (crosses east of Main St. along N Date St.).
  - 5.Project crosses US HWY 85 at milepost 2.6 on N Broadway St. (crosses north to south of N Broadway St. along Post St.).
  - 6.Project crosses US HWY 85 at milepost 2.6 on N Broadway St. (crosses north to south N Broadway St. along Mims St.).



- 7. Project Parallel US HWY 85 at north BOP milepost 2.5 to EOP milepost 3.16on Main Ave.
- 8. Project Parallel US HWY 85 at south BOP milepost 2.86 to EOP milepost 3.16 on Main Ave.
- 9.Project Parallel US HWY 85 at north BOP milepost 2.60 to EOP milepost 3.02 on N Broadway St. (North)
- 10.Project Parallel US HWY 85 at south BOP milepost 2.62 to EOP milepost 3.02 on N Broadway St. (South)
- 10. Length of the project. Indicate the length of the project within NMDOT right-of-way in terms of feet and/or miles.
  - 1.Project crosses US HWY 85 at milepost 2.6 on Main St. (crosses west of Main St. along N Broadway St.). Approximately: 117 ft.
  - 2.Project crosses US HWY 85 at milepost 2.71 on Main St. (crosses west of Main St. along McAdoo St.). Approximately: 90 ft.
  - 3.Project crosses US HWY 85 at milepost 2.85 on Main St. (crosses west to east of Main St.). Approximately: 43 ft.
  - 4.Project crosses US HWY 85 at milepost 3.15 on Main St. (crosses east of Main St. along N Date St.). Approximately: 93 ft.
  - 5.Project crosses US HWY 85 at milepost 2.6 on N Broadway St. (crosses north to south of N Broadway St. along Post St.). Approximately: 36 ft.
  - 6. Project crosses US HWY 85 at milepost 2.6 on N Broadway St. (crosses north to south N Broadway St. along Mims St.). Approximately: 36 ft.
  - 7Project Parallel US HWY 85 at north BOP milepost 2.5 to EOP milepost 2.86 on Main Ave. Approximately:  $1921\,\mathrm{ft}$
  - 8. Project Parallel US HWY 85 at south BOP milepost 2.86 to EOP milepost 3.16 on Main Ave. Approximately:  $1553\,\mathrm{ft}$
  - 9.Project Parallel US HWY 85 at north BOP milepost 2.60 to EOP milepost 3.02 on N Broadway St. (North). Approximately: 2338 ft.
  - 10.Project Parallel US HWY 85 at south BOP milepost 2.62 to EOP milepost 3.02 on N Broadway St. (South) Approximately: 2135ft.
- 11. Provide the legal description of the project area: Township, Range, and Section(s).

Project Area: Township 135, Range 4W, Section 3

Truth or Consequences MSD Project - NMDOT Environmental 12/10/2020 pg. 4



12. USGS 1:24,000(7.5') Quadrangle map. List the name(s) of the USGS quadrangle map(s) on which the project is located.

"USGS US Topo 7.5-minute map for Cuchillo, NM 2017"

Please feel free to contact either of the undersigned at the phone or by e-mail should you have any comments, questions or need additional information.

Sincerely, Wilson & Company, Inc.

Mark a. Nasi, PE Sr. Project Manager Mark.Nasi@wilsonco.com (505) 348-4170

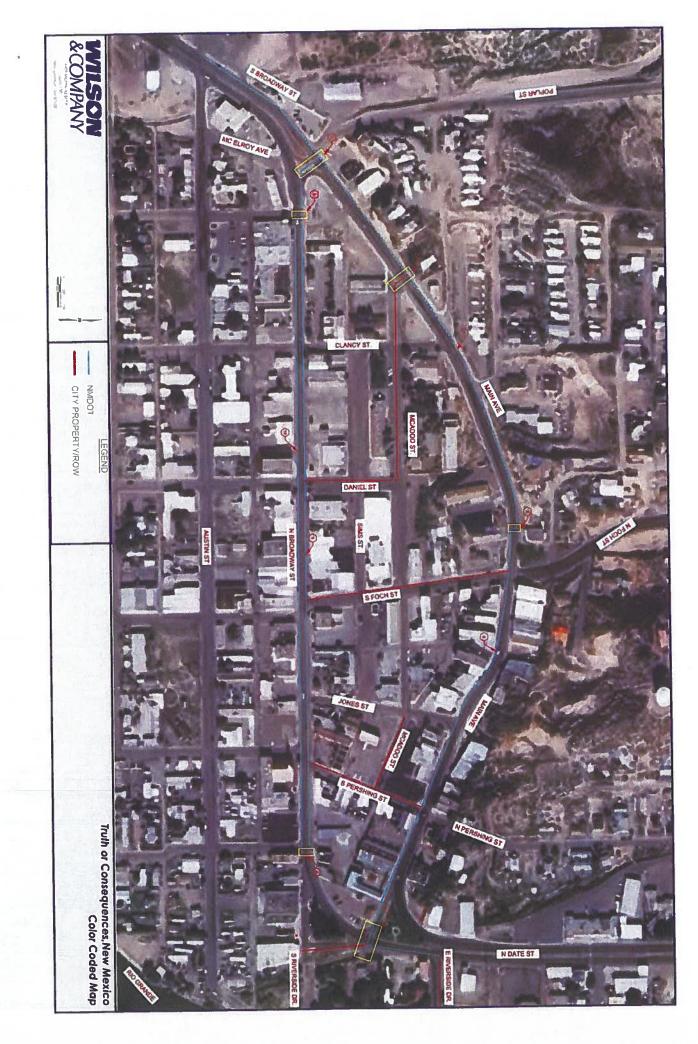
MILAR

#### Attachments:

MSD Color Coded map location.pdf

Daniela Ducon Project Engineer Daniela.Ducon@Wilsonco.com (505) 348-4131

Landy Low, V



**COVER LETTER** 



4401 Masthead Street NE, Suite 150 Albuquerque, NM 87109 505 348 4000 (phone) 505 348 4055 (fax) wilsonco.com

January 19, 2021

Bernic Sotelo New Mexico Department of Transportation District One 2912 E. Pinc St. Deming, New Mexico 88030

Re: Truth or Consequences - Main Street District Water System Improvements Project

Mr. Sotelo,

On behalf of the City of Truth or Consequences, please find attached a permit application package in accordance with the NMDOT Application for Permit to Install Utility Facilities within Public Right of Way for the T or C MSD Waterline Improvements project for your review and approval.

In an effort to clearly present the proposed project, a brief project description is as follows:

The project includes ten (10) NMDOT ROW crossings and parallel installations that will consist of approximately 8,370 LF of 6-in, 8-in and 12-in PVC waterline installation, with minor appurtenances within the NMDOT ROW through a combination of open trench and trenchless methods. The project also includes connections to the existing system and roadway asphalt removal and replacement. See attachment for further information on each individual crossing and parallel installation.

The Certificate of Insurance and Traffic Control Plan are to be submitted by the Contractor once an agreement is in place. Also, we have only included the plan and profile sheets in the attached design plans applicable to the NMDOT ROW for efficiency.

Please feel free to contact either of the undersigned at 505-348-4170 or by e-mail should you have any comments, questions or need additional information.

Sincerely

Wilson & Company, Inc., Engineers & Architects

MAR

Sr. Project Manager

Mark.Nasi@wilsonco.com

Attachments:

Four (4) Copies of the Utility Permit Application

Four (4) Copies of Signed & Sealed Design Plans (NMDOT ROW only)

Four (4) Copies of the Approved Environmental Clearance

# EXHIBIT C ADDENDUMS AND CONTRACTOR BID SUBMITTAL

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#### BIDDER'S LISTING of SUBCONTRACTORS

for

#### COMPLIANCE with SUBCONTRACTORS FAIR PRACTICES ACT

PROJECT:TorC MSD Water System Improvements	5
BIDDER must list all Subcontractors to be used f Conditions, when the subcontract amount exceeds th [Use additional sheets if necessary.]	1.1
NAME OF SUBCONTRACTOR and LOCATION OF PLACE OF BUSINESS  LE Electric  (Name)	CATEGORY of WORK of SUBCONTRACTOR Electrical (Category)
(Location) Yeally (Abbe (Name) Q). Nm	(Category)
(Location) (Name)	Pine Burshing (Category)
(Location)  Name)	Tank / CP (Category)
(Location) Me tal Craft (Name) Cas Cures, NM	HVA-C (Category)
(Location)	CONTRA LORGON
NOTICE TO BIDDER  The above listing must include the NAME,	CONTRACTOR: FIRM: Smithco Construction, Inc.
LOCATION OF PLACE OF BUSINESS and CATEGORY OF WORK, which will be done by each subcontractor on the list. List only one subcontractor for each category of work.  FAILURE TO COMPLY WITH THESE REQUIREMENTS WILL MAKE THE BID NON-RESPONSIVE and the Bid will be rejected.	By: / wh Sff  Title: President  Date: 7-7-ZZ

#### BIDDER'S LISTING of SUBCONTRACTORS

for

#### COMPLIANCE with SUBCONTRACTORS FAIR PRACTICES ACT

PROJECT: 1 or CMSD water System Improvement	ents
BIDDER must list all Subcontractors to be used Conditions, when the subcontract amount exceeds [Use additional sheets if necessary.]	
NAME OF SUBCONTRACTOR and LOCATION OF PLACE OF BUSINESS  (Name)  (Name)  (Name)  (Name)  (Name)	CATEGORY of WORK of SUBCONTRACTOR  Instr- Values (Category)  (Category)
(Location)  (Name) (Location)	Well Drilling (Category)
(Name)	(Category)
(Location)  (Name)	(Category)
(Location)  NOTICE TO BIDDER	CONTRACTOR:
The above listing must include the NAME, LOCATION OF PLACE OF BUSINESS and CATEGORY OF WORK, which will be done by each subcontractor on the list. List only one subcontractor for each category of work. FAILURE TO COMPLY WITH THESE REQUIREMENTS WILL MAKE THE BID NON-RESPONSIVE and the Bid will be	FIRM: Smithco Construction, Inc.  By:

07) LISTING of SUBCONTRACTORS.doc SFPA-1

rejected.

2 of 2

List of Proposed Suppliers				
Category of Work	Company Name	Location Of Business		
pipe	Core + Marin	las Cruss, NM		
FPVC	Acgin	Poway, CA		
Pumps	JEH	El Paso, Tx		
Pre cost	HA	El Paso, TX		
Gravel Concrete	Bertoo	Tor C, NM		
Cl7 Egro Blog	Pire Ops	Cas Cries, NM		
Meters	Pure Ops	Cas Civies, NW		
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USDA Form RD 400-6 (Rev.12-09)

#### COMPLIANCE STATEMENT

This statement relates to a proposed contract with
City of Truth or Consequences
(Name of borrower or grantee)
who expects to finance the contract with assistance from either the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), or the Rural Utilities Service (RUS) or their successor agencies, United States Department of Agriculture (whether by a loan, grant, loan insurance, guarantee, or other form of financial assistance). I am the undersigned bidder or prospective contractor, I represent that:
1. I  have,  have not, participated in a previous contract or subcontract subject to Executive Order 11246 (regarding equal employment opportunity) or a preceding similar Executive Order.
2. If I have participated in such a contract or subcontract, I  have, have not, filed all compliance reports that have been required to file in connection with the contract or subcontract.
If the proposed contract is for \$50,000 or more: or If the proposed nonconstruction contract is for \$50,000 or more and I have 50 or more employees, I also represent that:
3. I ☐ have, ✓ have not previously had contracts subject to the written affirmative action programs requirements of the Secretary of Labor.
4. If I have participated in such a contract or subcontract, ✓ I have, ☐ have not developed and placed on file at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor.
I understand that if I have failed to file any compliance reports that have been required of me, I am not eligible and will not be eligible to have my bid considered or to enter into the proposed contract unless and until I make an arrangement regarding such reports that is satisfactory to either the RHS, RBS or RUS, or to the office where the reports are required to be filed.

I also certify that I do not maintain or provide for my employees any segregated facilities at any of my establishments, and that I do not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I certify further that I will not maintain or provide for my employees any segregated facilities at any of my establishments, and that I will not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I agree that a breach of this certification is a violation of the Equal Opportunity clause in my contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and wash rooms, restaurants and other eating areas time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. I further agree that (except where I have obtained identical certifications for proposed subcontractors for specific time periods) I will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that I will retain such certifications in my files; and that I will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays the valid OMB control number. The valid OMB control number for this information collection is 0575-0018. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, guthering and maintaining the data needed, and completing and reviewing the collection of information.

### NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NON-SEGREGATED FACILITIES

A certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32F.R. 7439, may 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$ 10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

DATE 7/7/2022

(Signature of Bidder or Prospective Contractor)

6 King Canyon Loop/Box 45, Caballo, NM 87931

Address (including Zip Code)

Form Approved – OMB No. 0505-0027 Expiration Date: 12/31/2018



#### United States Department of Agriculture

AD 1048

#### Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552(a), as amended). This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 C.F.R. §§ 180.300, 180.355, Participants' responsibilities. The regulations were amended and published on August 31, 2005, in 70 Fed. Reg. 51865-51880. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

According to the Paperwork Reduction Act of 1995 an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0027. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal and civil fraud privacy, and other statutes may be applicable to the information provided.

#### (Read Instructions On Page Two Before Completing Certification)

- A. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
- B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ORGANIZATION NAME PR/AWARD NUMBER OR PROJECT NAME Smithco Construction, Inc. NAME(S) AND TITLE(S) OF AUTHORIZED REPRESENTATIVE(S) Twister Smith, President and Brett-Smith, Vice President/Secretary/Treasurer

SIGNATURE(S) DATE 7/7/2022

The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and

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#### CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- 3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

12/	7/7/2022
(name)	(date)
/	
President	
(title)	

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4401 Masthead Street NE Suite 150, Albuquerque, NM 87109 505-348-4000 phone 505-348-4055 fax

# ADDENDUM NO. #1. A CITY OF TRUTH OR CONSEQUENCES MAIN STREET DISTRICT (MSD) WATER SYSTEM IMPROVEMENTS

May 12, 2022

**TO:** All Holders of Contract Documents For:

FOR: CITY OF TRUTH OR CONSEQUENCESMAIN STREET DISTRICT (MSD)WATER SYSTEM IMPROVEMENTS

FROM: Wilson & Company Inc.

The following Addendum #1. A shall be incorporated into the Contract Documents for the above-referenced project.

#### **ADDENDUM NUMBER ONE A (1. A):**

- The Construction method for the following waterlines on the planset is changed to OPEN
  TRENCH construction, instead of what is designated on the planset. All quantities in the bid
  form has been adjusted for the change. The waterline and water service line construction as
  designated below will not require any asphalt, sidewalk, or curb and gutter replacement:
  - o Sheet CU-225 "Macadoo-Daniel St" from station 17+33.46 to Station 18+50.00.
  - o Sheet CU-226 "Macadoo-Daniel St" from station 18+50.00 to Station 21+76.73.
  - o Sheet CU-229 "Pershing St." from station 10+18.15 to Station 14+14.62.
  - o Sheet CU-233 "Mcadoo East." from station 10+02.98 to Station 12+77.20.

#### **CONTRACTOR QUESTIONS & ANSWERS:**

- Question: What is the material of the existing water system, mostly AC?
   Answer: The predominant material in the existing water system is asbestos cement (AC) with 96% and remaining 4% is Cast Iron (CI) and PVC.
- 2. Question: Is dewatering permit needed?

**Answer:** Discharged permit might be required per Contractor's discharge plan; contractor shall plan appropriately.

3. Question: If pavement cut goes wider than what it is currently designed, who is responsible for that pavement replacement?

Answer: This project was designed to have the waterlines replacement located shoulder of the road with the purpose avoid payment cut in the main roadway (I-25 Business Route). If contractor exceeds current design width in the pavement cut, contractor is responsible for the additional cut and replacement at no charge to the owner.





4. Question: As it appears in specification section 01 0200 3.01 D, please verify the reference to 50 6700 4.6A detailing required work included in bid item #10 pricing to be furnished and/or installed by the owner's SCADA contractor.

**Answer:** Replace section 01 0200 3.01 D, with SCADA Allowance: allow the amount of \$150,000.00 for specification 50 6700"Control Panel" section 2.03A and the entire specification 50 9433 "SCADA Software and Hardware" for details.

5. Question: The new water tank depicted on drawing D-204 will require new pressure transducer. Specification 33 1623 does not include section for furnishing this instrument. Please identify requirements for furnishing a submersible pressure transducer as described on drawing I-602 in the above grade water storage tanks paragraph.

Answer: The specifications for the Transducer for the new tank shall be GE Druck Submersible Pressure Sensors model: PDCR/PTX 1830 w/ STE Sensor Termination Enclosure, STE Desiccant Silica Gel pack, Slimline Sink Weight 17.5 mm – 1830/UNIK 5000 (\*PJ), Cable Clamp System, Economical G1/8 Pressure adaptor – 1830 to DPI620, and 1830 Nose Cone.

6. Question: Drawing D-101 does not depict flowmeter FM-W1 shown on ES-110 and identified on I-410 as new. Please identify the new flowmeter size.

**Answer:** Sheet D-101 is shown labeled as A8/D-202. Flowmeter size is shown in D-202.

7. **Question:** The flowmeter schedule calls for a 12 in mags and a 10 in mag. The gas specs call out for an 18in mag. How many mag meters are to be provided for the project?

**Answer:** Two flowmeters are to be provided for the project, Refer to sheet D-101

8. Question: Can we price Subs to the E&H that is in the spec?

Answer: Yes, Contractor to bid on equipment as specified. Substitution per the Instruction to Bidders C-200, Article 10.

Question: Where are the discharge points for the Dewatering in Item #52?
 Answer: Discharge points will be determined by the Contractor's discharge plan; contractor shall plan appropriately.

10. Question: Drawing I-602 (dated May 2021) identifies I&C Solutions as the owner's SCADA integrator responsible for programming and integration. Specification (dated January 2022) sections 50 6700 2.01 A & 50 6700 2.03 A 1 identify Yukon and Associates for control panel fabrication and programming. Please clarify which company will be responsible for performing work related to bid item #10.

Answer: The Contractor referenced is incorrect, the SCADA programming is to be done by current City programming SCADA company, I&C Solutions.



11. Question: As it appears in specification section 01 0200 3.01 D, please verify the reference to 50 6700 4.6A

**Answer:** Replace section 01 0200 3.01 D, with SCADA Allowance: allow the amount of \$150,000.00 for specification 50 6700"Control Panel" section 2.03A and the entire specification 50 9433 "SCADA Software and Hardware" for details.

12. Question: On the drawings the mags at the wells say new but the keyed note says existing, can you clarify the total amount of mags and sizes that are to be provided?

Answer: The total amount of mag meters; two mag meters located at Cook St Facility; sizes shown on sheet D-202. Mag meters located at well No.1 and No.2 are existing.

13. Question: The PC specs also call out printers. Are they needed for this project?

Answer: No printer required.

14. Question: The Electrical & Instrumentation series plans are stamped by the engineer on 5/11/2021. The specifications are dated January 2022. In the case of conflicting information between plans and specifications, please identify which documents shall take precedence.

Answer: Based on the contract documents, Specifications shall take precedence over plans. If conflict between specifications and plans Bidders shall notify the engineer for clarification.

15. Question: Please clarify if furnishing of the new RTU cabinets and antennas are to be included in the bid item #10 SCADA allowance pricing, with the WWTP SCADA workstation, SCADA control panel and all associated new and transferred programming?

Answer: No, the allowance for bid item #10 has been defined in item #9 of this addendum.

16. Question: The question remains whether I&C Solutions (drawing I-602) or Yukon and Associates (specification sections 506700 2.01 & 5067 2.03) will be responsible for performing work as the owner's SCADA contractor. Please verify and advise.

**Answer:** The Contractor referenced is incorrect, the SCADA programming is to be done by 1&C Solutions.

17. Question: Drawing I-702 includes detailed information for furnishing a new fiber optic panel. Keyed note 2 on drawing I-108 directs the existing fiber optic panel to be relocated. Please clarify if a new fiber optic panel shall be furnished.

**Answer:** The owner has decided to re-use existing fiber optic panel in place. Contractor to field verify existing fiber panel condition and inform owner of any repairs needed. Route new fiber connection to new SCADA panel from existing fiber optic panel.



18. Question: If a new fiber optic control panel is required, please verify the enclosure must be NEMA3R rated as scheduled on drawing I-702 and include a fan. Floor plans depict the control panel being installed in an indoor dry server room. NEMA1, NEMA12 or an open rack may be sufficient for the room atmosphere

Answer: The owner has decided to re-use existing fiber optic panel in place. Refer to response to Question 17.

19. Question: Drawing I-701 schedules a 316 stainless steel enclosure for the SCADA control panel being installed in an indoor dry server room. NEMA1, NEMA12 or an open rack may be sufficient for the room atmosphere. Please verify the enclosure must be NEMA4X 316SS with an enclosure mounted air conditioner as depicted on drawing I-700. NEMA1, NEMA12 or an open rack may be sufficient for the room atmosphere.

Answer: The owner has decided to re-locate the new SCADA panel within close proximity of existing fiber optic switch. Contractor shall provide wall mounted lockable enclosure with ventilation to existing environmental controlled room. New SCADA panel can be a NEMA 1 rated rack.

20. Question: Drawing I-704 requires all RTU enclosures to utilize 316 stainless steel enclosures. With the RTU at Cook Street being installed indoors, please indicate if a more cost effective NEMA4 enclosure would be acceptable. Please indicate if a more cost effective 304 Stainless Steel or NEMA4 would be acceptable in outdoor locations for the other RTUs.

Answer: For the purposes of cost effectiveness, NEMA 4 enclosures will be acceptable for all RTU site panels.

21. Question: Drawing I-704 identifies a CompactLogix 5480 controller while 50 6700 2.02 C specifies Micrologix 1400 PLCs with no substitutions accepted. Please verify.

**Answer:** Micrologix 1400PLC is preferred but other substitutions may be submitted. The owner has requested all PLC's be of the same manufacture and type for ease of future maintenance.

All substitutions are to have the same functionality and options as those shown on the bid documents. Substitution per the Instruction to Bidders C-200, Article 10.

22. Question: Drawing I-704 identifies Schneider Trio Ethernet radios while 50 6700 2.02 C specifies MDS radios with no substitutions accepted. Please verify.

**Answer:** Schneider Trio Ethernet radios are to be used.

23. Question: Drawing I-704 identifies Red Lion touchscreens while 50 6700 2.02 C specifies Automation Direct with no substitutions accepted. Please verify.

Answer: Cmore EA9 Series touchscreens. Substitution per the Instruction to Bidders C-200, Article 10.

24. Question: Please identify the required size of new magnetic flowmeter FM-W2 on drawing I-120. Answer: Refer to sheet D-101 and sheet D-202.



25. Question: Floor plans I-160, I-170, and I-180 all depict the term (NEW) adjacent to the flow meters with a keyed note 5. Keyed note 5 on each of the three drawings describe the flowmeters as existing. Please clarify if new magnetic flowmeters shall be furnished at wells 6, 7, & 8 and identify the new flowmeter sizes.

Answer: No new mag meters at well 6,7, and 8. Refer to Sheet D-101 and Sheet D-202.

26. Question: The computer/server spec is referencing Citec which is incorrect. Software purchased under the allowance will be Geo Scada.

Answer: The SCADA software will be Geo SCADA (ClearSCADA).

- 27. Question: There is a new transducer that is to be supplied for the new tank, but there is no spec for it.
  Answer: The specifications for the Transducer for the new tank shall be GE Druck Submersible Pressure Sensors model: PDCR/PTX 1830 w/ STE Sensor Termination Enclosure, STE Desiccant Silica Gel pack, Slimline Sink Weight 17.5 mm 1830/UNIK 5000 (\*PJ), Cable Clamp System, Economical G1/8 Pressure adaptor- 1830 to DPI620, and 1830 Nose Cone
- 28. Question: The HMI on the RTU panel is showing up in the BOM as a Red Lion the City is currently using the Cmore EA9 Series.

**Answer:** For bidding purposes, please provide Cmore EA9 Series touchscreens. Contractor to bid on equipment as specified, substitution per the Instruction to Bidders C-200, Article 10.

29. Question: the fiber optic control panel asks for a fiber to Ethernet switch, but references you to the notes to provide per utility requirements, but the requirements are not in the specs. This poses another issue as the city has all of their current desktops connected to their existing switch, for network access. If the switch is moved from its current location who will provide all of the new network connections to the existing desktops and equipment? (I recommend that this panel is deleted.)

Answer: The owner has decided to re-use existing fiber optic panel in place. Refer to response to Question 17. Rerouting new network cabling to existing desktops from the switch located in the server rack will be covered under the specification 01 0200 "SCADA Allowance" 3.0.1 D.

30. Question: Yukon is listed as the Integrator. Yukon has NOT performed any work on this system in past. DWG #I-602 has the correct info.

Answer: The Contractor referenced is incorrect, the SCADA programming is to be done by I&C Solutions.

31. Question: The hardware listed for the radio is incorrect. The listed MDS 9810 is obsolete. The radio in service is a Schneider Electric Trio JR900 Ethernet Radio.

**Answer:** Please provide Schneider Electric Trio JR900 Ethernet Radios.

32. Question: The SCADA Software listed is Schneider Electric Citec NOT Schneider Electric Geo SCADA (Clear SCADA). DWG #I-602 has the correct info.

**Answer:** The Software for the SCADA software is Clear SCADA.



33. Question: There is not a schedule for what is to be provided for the servers or PCs. Looks like a single workstation and 1 server. Is this correct?

**Answer**: The Owner has determined to have two (2) servers and one workstation. Refer to the attached revised specifications for requirements.

- 34. Question: What does the SCADA allowance include? This is not specified. Looks Like Just Development of SCADA and Software and possibly RTU programming? Is this Correct
  - Answer: Allowance definition was redefined as follows. Replace section 01 0200 3.01 D, with SCADA Allowance: allow the amount of \$150,000.00 for specification 50 6700"Control Panel" section 2.03A and the entire specification 50 9433 "SCADA Software and Hardware" for details.
- 35. Question: The 1st items are the specification section 50 94 33 for the Workstation and server requirements. The reason for the high cost is the 1st line item that calls for a Platinum processor and 38MB of CACHE. This requirement puts the workstation into a build that now requires 2 processors with all of the internals to support 2 processors. This is probably more computer than what is needed to run a SCADA software system. This is also true for the Server that is specified on item b.1.

Answer: The Owner updated server requirements per the attached specification. Per the attached requirements, two (2) mirrored redundant servers will serve as the SCADA hardware.

36. Question: A item that is going to add cost to the project that needs to be addressed is the PLC processors that are called out for the Wells. The processor called out is a 20MB 5069 (Drawings say 5480 not a good part number) which is the biggest processor you can get, it adds motion control and an extended amount of IO support. These processors are controlling wells and don't require a lot of memory or programming memory. The part number that would best suit this project would be a 5069-L310ER just for 1 part of the project.

Answer: Requirements will be one each of model Allen Bradley Micrologix 1400 at the cook street facility and all other PLC processors will be a 5069-L310ER.

37. Question: This appears to be a standard municipal domestic water storage tank; however, NFPA 22 is called out on Sheet D-204 as the design standard rather than AWWA D100. NFPA 22 is the standard used for private fire protection tanks. NFPA is a more rigorous and more expensive standard than AWWA D100. Should this tank be designed to AWWA D100?

Answer: Yes, tank shall be designed to AWWAD100.

38. Question: The drawings show the overflow as both 8" and 12". However, the inlet is 18" so the overflow cannot be smaller than the inlet. Which size overflow is desired?

Answer: Desired overflow at 18".

39. Question: Can the cleanout door be eliminated? Since there are 2 manways, the cleanout is unnecessary and adds significant cost to the project.



**Answer:** Yes, cleanout door can be eliminated.

40. Question: Is a drain desired?

Answer: Yes

41. Question: Anchor bolts are not required per seismic or wind calculations. Are anchor bolts desired even though they are not needed?

Answer: No, anchor bolts are not desired.

42. Question: Fall protection is only required by OSHA for tanks 24 feet and taller, this tank is shorter than that. In addition, ladder cages are no longer considered acceptable fall protection by OSHA. Do you wish to eliminate the ladder cage?

Answer: No, ladder cage must be kept

43. If fall protection is still desired, we recommend eliminating the cage and adding a safety rail system with a ladder guard for ladder security.

**Answer:** Fall protections are still desired and concur with recommendation

44. Question: This Bid item 16 specified a cathodic protection system, but the drawings and specifications do not mention a cathodic protection system. Please specify the system.

Answer: Impressed-current cathodic protection shall be used as stated in Specification 33-1623, Section 1.04.E.

45. Question: This We recommend placing the overflow pipe on the outside of the tank. Is this acceptable? Overflow pipes installed inside the tank can leak if they corrode since they are submerged in water.

**Answer:** Yes, overflow pipe can be placed on the outside of the tank.

46. Question: This TNEMEC Series 20 paint is no longer available; therefore, in lieu of Series 20, we recommend using TNMEMEC Series 22 on the inside and TNEMEC series 66 on the outside. Is this acceptable.

**Answer**: Yes, project will use the TNMEMEC Series 22 on the inside and TNEMEC series 66 on the outside.

47. Question: There are various places where 6" pipe is installed at connection points Via open cut. Under which item will this pipe be paid and will it be regular 6" C900 DR18 (G) pipe?

Answer: 6" pipe installed at connection points via Open Trench will be paid under line item 34" 6"

Waterline C-900 DR-18 PVC Pipe Installed" unless specified otherwise.



- Line item 27 "Generator, 1MW, 480/277V, 3 Phase, 4W, Diesel Unit, and Generator Pad, including subgrade prep reinforcement, installed", incorporates the following changes:
  - 1. EPA emissions to the required system to comply with NM EPA requirements. Contractor will be responsible for all coordination and permitting to satisfy the minimum requirements of the AHJ
  - 2. Fuel tank for 14 hours of continuous service at generator full load.

ALL OTHER PROVISIONS OF THE CONTRACT DOCUMENTS SHALL REMAIN UNCHANGED. THIS ADDENDUM IS HEREBY MADE A PART OF THE CONTRACT DOCUMENTS TO THE SAME EXTENT AS THOSE PROVISIONS CONTAINED IN THE ORIGINAL DOCUMENTS AND ALL ITEMIZED LISTINGS THEREOF.

Each bidder shall acknowledge receipt of Addendum No. ONE A (1.A) on the Bid Form in the space provided.

Mark A. Nasi P.E. # 13076

Wilson & Company

DATE: 05/12/2022

#### **SECTION 40 68 13**

#### **HUMAN-MACHINE (OPERATOR) INTERFACES**

#### PART 1 GENERAL

#### 1.01 SECTION INCLUDES

- A. Server System:
  - 1. Two SCADA System Servers with RAID.
  - 2. Windows Server® 2019 Operating System.
  - 3. 5000 Tag VTScada HMI Dual Server Premium Software Bundle.
  - 4. Uninterruptible Power Supply.
  - 5. NAS.
  - Firewall Hardware and Software
- B. Operator Interface Unit (OIU):
  - 1. Workstation Client, personal computer, keyboard, mouse, and monitor.
  - 2. Printer.
  - 3. Interconnecting signal cables.
  - 4. Client Software.

#### 1.02 ABBREVIATIONS

- A. HMI Human Machine Interface Software.
- B. I/O Input/Output.
- C. OIU Operator Interface Unit such as an Operator Workstation.
- D. OIP Operator Interface Panel such as a panel mounted touchscreen.
- E. OIS Complete Operator Interface System including servers, workstations, OIPs, hardware and HMI software.
- F. PLC Programmable Logic Controller.

#### 1.03 SUBMITTALS

- A. Make combined submittal as specified in Section 40 61 13 Control System Documents and Procedures.
- B. Manufacturer's literature.
- C. Literature for operator interface software.
- D. Literature for other software.
- E. Training syllabus.

#### 1.04 OPERATION AND MAINTENANCE DATA

- A. Make combined submittal as specified in Section 40 61 13 Control System Documents and Procedures.
- B. Manufacturer's literature.
- C. Copies of all display screens developed for Operator Interface with plant systems.
- D. Instruction manual for operator interface software.
- E. Instruction manual for other software.
- F. Full set of complete operational instructions on SCADA functionality for all plant systems. Data shall include a System Architecture Drawing and details of how to operate and troubleshoot all aspects of the SCADA system.
- G. Printed copy of:
  - 1. Tag Data Base for each PLC in the system.
  - 2. Training syllabus.
- H. Original publisher's media of the operator interface software and of other software.
- I. On DVD or Thumbdrive provide:
  - 1. Tag Data Base.
  - 2. Custom software.
  - 3. Training syllabus.

#### 1.05 SYSTEM REQUIREMENTS

A. Provide OIS that is fully compatible with the PLC.

#### 1.06 EXTRA MATERIALS

- A. Provide three unopened packages of high quality ink jet paper (500 sheets per package) of a type specifically recommended by the manufacturer of the printer. Provide other paper as needed during testing and startup.
- B. Provide six spare black ink cartridges and six spare color ink cartridges, manufactured by the manufacturer of the printer.

#### PART 2 PRODUCTS

#### 2.01 SERVER SYSTEM

A. This system requires two servers and three workstations. Should some of the following server and workstation equipment be unavailable due to obsolescence or equipment updates, contractor shall upgrade with the latest and more improved version of equipment as required.

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#### B. Server:

- 1. Base: Dell PowerEdge R440 Rack Mounted Server.
- 2. Chassis: 2.5" Chassis with up to 8, 3.5" Hot Plug Hard Drives.
- 3. Processor: Each with Intel Xeon Silver 4215 2.5G, 8C/16T, 9.6GT/s, 11M Cache, Turbo, HT (85W) DDR4-2400.
- 4. Memory DIMM Type and Speed: 3200MT/s RDIMMs.
- 5. Memory Configuration Type: Performance Optimized.
- 6. Memory: Four 32 GB RDIMM, 3200MT/s, Dual Rank.
- 7. RAID: RAID 1 for HDDs or SSDs in pairs (Matching Type/Speed/Capacity).
- 8. RAID/Internal Storage Controllers: PERC H730P RAID Controller.
- 9. Hard Drives: Four 1.2 TB 10K RPM SAS 12 Gbps 512n 2.5" Hot-plug Hard Drive, 3.5" HYB CARR.
- 10. Operating System: VMware ESXi 6.7 U3 Embedded Image on Flash Media (Include Licenses).
- 11. Licenses: One ESXi License (covers three hosts).
- 12. Licenses: Windows Server 2019 (downgradeable to 2016).
- 13. OS Media Kits: No Media Required.
- 14. Embedded Systems Management: iDrac9,Enterprise.
- 15. Group Manager: iDRAC Group Manager, Disabled.
- 16. Password: iDRAC, Factory Generated Password.
- 17. Removable Storage: None.
- 18. Additional Network Cards: On-Board Broadcom 5720 Dual Port 1Gb LOM.
- 19. Additional Network Cards: Intel Ethernet I350 Quad Port 1GbE BASE-T Adapter, PCle Full Height.
- 20. IDSDM and VFlash Card Reader: ISDM and Combo Card Reader.
- 21. Internal SD Module: 2x 16GB microSDHC/SDXC Card.
- 22. Internal Optical Drive: No Internal Optical Drive.
- 23. Fans: As recommended.
- 24. Power Supply: Dual, Hot-plug, Redundant Power Supply (1+1), 1100W.
- 25. Power Cords: (2) NEMA 5-15P to C13 Wall Plug, 125 Volt, 15 AMP, 10' (3m), Power Cord, North America.
- 26. Bezel: No Bezel.
- 27. BIOS and Advanced System Configuration Settings: Performance BIOS Setting.
- 28. Advanced System Configurations: UEFI BIOS Boot Mode with GPT Partition.
- 29. Rack Rails: No Rack Rails, No Cable Management Arm, No Casters.
- 30. System Documentation: Standard.
- 31. Warranty: Basic Next Business Day 12 Months.
- 32. Extended Services: ProSupport and Next Business Day Onsite Service, 36 Month(s).
- 33. Dell Services: On-site Diagnosis Service: None.
- 34. Dell Services: Data Protection: None.
- 35. Deployment Services: No Installation.
- 36. Remote Consulting Services: Declined Remote Consulting Service.
- 37. 3-year business plan warranty.

#### C. Network Attached Storage (NAS)

- 1. BUFFALO TeraStation WS5220DN 8TB.
- 2. Intel Atom C3338, 8GB DDR4 with ECC.

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- 3. Hard Drive: 2 x 4 TB SATA 6Gb/s. Total 8 TB storage.
- 4. On-Board 1 GbE Network Card one port.
- 5. Add On: Network Interface Card (NIC) Dual Port 1GbE Network Card.
- 6. NEMA 5-15P to C13 Wall Plug, 125 Volt, 15 AMP, 10'(3m), Power Cord.
- 7. Windows 10 or Window Server® 2016.
- 8. Nova Backup Server License.
- 9. 3-year business plan warranty.

#### D. Rack Enclosure:

- 1. The rack equipment enclosure shall be an 18 RU (Rack Unit) by Video Mount Products, Model EREN-18, or Engineer Reviewed Equivalent and shall work with all EIA compliant 19" rack equipment and accessories.
- 2. Unit shall come with transparent door and casters and leveling feet.

#### E. Network Switch:

1. Managed Ethernet network switch shall be Phoenix Contact 2891072 or equivalent.

#### F. Uninterruptible Power Supply:

UPS shall be rack mounted type, APC 3000 VA Smart UPS with configurable alarm relays.

#### G. Surge Protection:

1. Rack mounted surge protection shall be CPS1220RMS Rackbar Surge Protection Unit by CyberPower.

#### H. Firewall:

- 1. Firewall unit shall be Fortinet FortiGate 60E-DSL, suitable for rack mounting.
- I. Provide mounting hardware for installation inside Server Rack Enclosure.

#### 2.02 OPERATOR INTERFACE UNIT (OIU) WORKSTATION

A. Contractor to furnish, install and configure two workstations for the Control Room, one for the Plant Manager's office, and one for the Electrical Room in the Processing Building. Workstations in the Control Room shall be supplied with dual monitors. Workstations shall meet the following criteria:

#### B. Workstation Computer:

- 1. Processor: Intel Core i7-9700, 8 Core, 12 MB Cache, 3.0 GHz, 4.7 GHz Turbo w/UHD Graphics 630.
- 2. Memory: 16 GB 2X8 GB DDR4 2666 MHz UDIMM Non-ECC.
- 3. Hard Drive: 2.5" 512 GB SATA Class 20 Solid State Drive.
- 4. Spare identical hard drive.
- 5. Graphics: NVIDIA(R) Quadro(R) P620, 2 GB, 4 mDP to DP adapter.
- 6. 8x DVD+/-RW 9.5mm Optical Disk Drive.
- 7. External speakers.
- 8. Network Adapter: 10/100/1000 Gigabit Ethernet controller-PCI express card.
- 9. Keyboard: MultimediaWireless.
- 10. Mouse: Logitech MouseMan® Dual Optical Wireless.

- 11. 3-year business plan warranty.
- 12. Microsoft Windows 10 PRO.
- 13. Dell Precision T3640 Workstation or Engineer reviewed equivalent.

#### C. Workstation in the Electrical Room in the Processing Building:

- 1. Computer: As specified in Part B of this section.
- 2. Industrial Keyboard
- 3. Optical Mouse
- 4. Monitor: As specified in Part D of this section.
- 5. Free-standing Computer Workstation Enclosure, Globalindustrial.com, Model T9A249190ABK, black with LCD monitor storage and writing surface.
  - a. Monitor storage area shall provide security for flat panel screens up to 27" diagonal.
  - b. Unit shall be built using 12 and 16 gauge steel with channel reinforcements for extra strength.
  - c. Doors shall feature foam seals to keep out dust and debris.
  - d. Unit shall have full access door in rear for ease of wiring and shall be louvered for ventilation.
  - e. Doors shall include cylinder locks for security; all locks shall be keyed alike (one lock on lower compartment, two on rear).
  - f. Computer enclosure shall include two filtered air intake fans (one in top and one in bottom compartment).
  - g. Top compartment shall have break resistant acrylic window.
  - h. Unit shall be equipped with a 30" W x 18-1/4" D sloped writing surface and lockable 24" W x 22" D slide-out keyboard/mouse tray with full extension drawer glides.
  - i. Lower compartment shall include one 23" W x 26" D height adjustable slide-out shelf that adjusts at 2" increments and shall be constructed to hold up to 90 lbs.
    - Unit shall have powder coat finish and ship fully assembled.

#### D. Monitor:

- 1. 27" Full HD monitor.
- 2. True Resolution: 1920 x 1080.
- 3. Brightness: 300 cd/m<sup>2</sup>.
- 4. Static Contrast Ratio: 1,000:1.
- 5. Viewing Angle: 178 degree horizontal, 178 degree vertical.
- 6. Glass Surface: Anti-glare, hard coating (3H).
- 7. Video: HDMI In(1), VGA(1), Display Port(1).
- 8. Frequency Fh: 24-82 kHz, Fv: 50-75 Hz.
- 9. PC VGA up to 1280 x 1024 non-interlaced.
- 10. Voltage: 100 to 240 VAC, 50/60 Hz (auto switch), 35W (typical).
- 11. 8 mS response time.
- 12. 3-year limited warranty on parts, labor, and back light.
- 13. ViewSonic VX2776-SMHD or Engineer approved substitute.

#### E. Printer:

- 1. One 600 x 600 DPI, color laser for the Control Room.
- 2. 550 sheet tray for letter paper or better.

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- 3. Speed, Pages Per Minute (ppm): 40 color.
- 4. 1 GB memory.
- 5. Lexmark CS521dn Color LaserJet, or Engineer approved substitute.
- F. Provide displays that have access to all control and monitoring points as programmed into the office workstation.

#### 2.03 OTHER HARDWARE

A. Provide other hardware as needed for a complete and functional SCADA system.

#### 2.04 HUMAN MACHINE INTERFACE (HMI) SOFTWARE

- A. The HMI software shall be 5000 point, dual redundant server, unlimited thin clients, with development and runtime option. Software shall be VTScada by Trihedral.
- B. This software shall include the following:
  - 1. Five-pack of Windows Server® 2019 Remote Desktop Services.
  - 2. New workstations shall use VTScada Thin Client software.
  - 3. VTScada Alarm Notification System software with the ability to send email, text and/or dial out.

#### C. Provide software that can:

- 1. Utilize distributed, client / server system architecture.
- 2. Be configured as a fully redundant server pair with real-time replication of all configuration, historical and alarms data, and realtime-datapoint state, to ensure no data loss or interruption of operations in the event that either server experiences an out-of-service occurrence. Any data gathered by the running server while one server is out of service shall be backfilled to the latter server when it is again returned to service, thereby returning to a state of exact replication of the SCADA data and configuration.
- 3. Be configured so the failure of any one computer will not affect the operation of others on the network.
- D. The software shall exhibit strong compliance with Microsoft's Windows Open Systems Architecture (WOSA) standards, such as in its use of dialog boxes and menus. The system must support running as a service under Windows Operating System.
- E. Storage, retrieval, and archiving of historical information:
  - 1. Configure to store all process information (alarms, equipment state, analog values, miscellaneous) on a server which is dedicated to historical files. Configure the OIU as an operator seat with the ability to obtain information from the dedicated historical file server with no process information stored at the operator seat.
  - 2. Ability to manage the size of the Historical Data Files, by adjusting how many days/months are in a file, by adjusting the sample rate from one per mS to one per day, and by storing a sample only upon an adjustable percent change of the value.

- 3. Provide for the storage of real-time and historical data for each analog, discrete, or string tag name. Also store summary, event, alarm, and configuration data.
- 4. Configurable "on-line" without the need to stop and re-start data historian.
- 5. I/O device communications program will perform error checking on messages. These error checks will include lost response (time-out) and data error (checksum, LRC, CRC, etc.). Should communications errors be detected, the software shall automatically indicate that the data (on graphic displays, in historical files, etc.) is no longer valid.
- 6. Store historical information in Microsoft SQL server or in an imbedded ODBC compatible data base from which information is easily extracted for viewing, off-line analysis, and printing.
- 7. Means to manage the total size of each historical file.
- 8. Assure preservation of historical data by providing built-in store and forward functionality between the data collector(s) and the historical files in case the data server or the local area is out of service. Automatically detect when the data server is available and forward data from the buffer files while simultaneously collecting all incoming data.
- 9. Use UTC for time stamping of data so that it is unaffected by daylight savings time or regional time differences.
- 10. Historical trends. Allow user to:
  - a. View any or all of the tag names in either a trend chart or tabular format.
  - b. Easily select tag names using a Windows Explorer-like browser with a search filter to quickly find tag names in a data historian with thousands of points.
  - c. Easily switch from the real time to the historical viewing mode.
- 11. Real time trends. Allow user to:
  - a. Trend up to 16 different tag names in real time including analog, discrete, string or event tag names within the same trend.
  - b. Easily select tag names using a Windows Explorer-like browser with a search filter to quickly find tag names.
  - c. Configure the time span and vertical range of the trend.
  - d. Include a Microsoft Excel tool bar so that users can readily extract data and develop reports using Excel. The Excel interface shall be supplied with sample reports that can be customized by the user. Excel report capability shall be accessible remotely over an Ethernet network. Do not require users to write macros to retrieve data.
- 12. Software to include reporting software. Software shall be Sytech XLReporter, which shall generate template reports from the VTScada Historian database based on schedule or on demand and publish to email or to a web portal.
- 13. Allow Users To:
  - a. Easily select tag names from the real time or historical database and then utilize them in a standard Microsoft Excel spreadsheet for reporting.
  - b. Select tag names by use of drag and drop or point and click commands.
  - c. Choose real time for the most recent data values in seconds or minutes or select historical data for the most recent values in minutes or hours or go back and select any start or stop time as far back as the data is available.
  - d. Retrieve raw historical data or summarized data such as the minimum, maximum or average over a predetermined time period.

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- F. Include scripting language capability to provide flexibility and interoperability. Acceptable languages include VTScada Script.
- G. Provide I/O driver module(s) which can communicate with (read/write) multiple PLCs (Floating point/Integer register data), including the ability to create Tags in the PLC software to implement efficient communications. For future purposes, have available drivers for communications with other brands of PLC via wire and/or radio.
- H. Include means to run scripts based on logical events and/or time.
- I. Have available as software capabilities, which may be added later by purchase of additional licenses or software modules:
  - 1. Software to run on other computers of the local network to provide the same OIU capability as that furnished for this project.
  - 2. Software to run on other computers of a remote network, linked by radio, such as at City Hall. Any given computer must have the ability to see all information if so programmed.
- J. Object oriented graphics development package. Integral graphics productivity tools, such as symbols for motors, pumps, valves, and other process equipment, such as templates for features like a HOA-Start/Stop window. The object graphics will consist of an image and image attributes, such as size, color, and position that will define the properties of the object.

#### K. Alarms:

- 1. Provide configuration of alarms by use of a user-defined alarm summary object, which may be placed by itself or along with other objects in a window.
- 2. The alarm object configuration shall include parameters with check boxes to select and enable or disable how the alarms appear at runtime. Alarms shall be color coded according to the state and priority of the alarm including an acknowledged alarm, unacknowledged alarm, and an alarm that has returned to normal but is not yet acknowledged.
- 3. Provide capability to display, for each alarm: Time and date, description, Owner's variable tag number, alarm state, alarm type (Low, Low-Low, High, High-High, Rate-of-Change, etc.), value, acknowledging operator, acknowledging node priority level and class.
- 4. Allow operators to filter alarms based upon location, priority and other user-selectable criteria.
- 5. When a new alarm is detected, all client machines will immediately see the new alarm. If the alarm is acknowledged in the field or on one PC then all machines will see that it was acknowledged.
- L. Provide built-in change management capability to provide an audit trail of all engineering changes to the database and the graphics. Each time a user makes a change to the application in the development environment, log the change in a database and includes the time and date of the change, who made the change and a comment field to document the changes.

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- M. Easy and intuitive means to export analog information, such as a flow history, to Excel for analysis. Easy and intuitive means to export discrete information, such as the off-on state of a pump to Excel for analysis.
- N. Easy and intuitive means to print analog trend graphs and off-on state graphs.
- O. Product Required:
  - 1. Provide one run-time license for each module of software.
  - 2. Provide one full development package.
  - 3. Evaluate the "tag count" and "screen count" requirements for the current system (process areas as shown on the Tag List), add 300 points for future plant process areas. To allow for additions, furnish software that can accommodate at least 15 additional process areas.
- P. Provide UPS interface software.
- Q. Do not install Windows Outlook.

#### PART 3 EXECUTION

#### 3.01 TRAINING

- A. Provide 2 hours of training on the use of the OIU software on three different occasions. Arrange the schedule with the Owner.
- B. Provide the services of a representative of the software vendor to present a single, 4 hour, formal training session to familiarize the operations staff with how to modify existing screens and how to use the historical data file in order to produce trend graphs of any combination of process variables. Provide a training syllabus in advance. Arrange the schedule for the training with the Owner.

#### 3.02 SYSTEM DEMONSTRATION

- A. Demonstrate proper operation of the OIU software.
- B. Also demonstrate proper interface with other PLCs and proper operation of OIU in conjunction with that equipment.
- C. Arrange the schedule with the Engineer.

#### END OF SECTION

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4401 Masthead Street NE Suite 150, Albuquerque, NM 87109 505-348-4000 phone 505-348-4055 fax

# ADDENDUM NO. 2.A CITY OF TRUTH OR CONSEQUENCES MAIN STREET DISTRICT (MSD) WATER SYSTEM IMPROVMENTS

May 16, 2022

**TO:** All Holders of Contract Documents For:

FOR: CITY OF TRUTH OR CONSEQUENCESMAIN STREET DISTRICT (MSD)WATER SYSTEM IMPROVMENTS

FROM: Wilson & Company Inc.

The following Addendum #2.A shall be incorporated into the Contract Documents for the above-referenced project.

#### **ADDENDUM NUMBER TWO (2.A):**

- 1. The pre-bid conference for the Project will be held on Thursday, June 02, 2022, at 2:00 pm MST at the City of Truth or Consequences Commission Chambers 405 W 3rd Street Truth or Consequences, NM 87901.
- 2. Bids for the construction of the project will be received at the City of Truth or Consequences Finance Department located at 505 Sims Street, Truth or Consequences, NM, until Thursday, July 07, 2022, at 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 and will be publicly opened and read.

ALL OTHER PROVISIONS OF THE CONTRACT DOCUMENTS SHALL REMAIN UNCHANGED. THIS ADDENDUM IS HEREBY MADE A PART OF THE CONTRACT DOCUMENTS TO THE SAME EXTENT AS THOSE PROVISIONS CONTAINED IN THE ORIGINAL DOCUMENTS AND ALL ITEMIZED LISTINGS THEREOF.

Each bidder shall acknowledge receipt of the Addendum No. TWO.A (2.A) on the Bid Form in the space provided.

Mark A. Nasi P.E. # 13076

Wilson & Company

HIGHER
Relationships

discipline | intensity | collaboration
shared ownership | solutions

DATE: 05/16/2022

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4401 Masthead Street NE Suite 150, Albuquerque, NM 87109 505-348-4000 phone 505-348-4055 fax

# ADDENDUM NO. 3. A CITY OF TRUTH OR CONSEQUENCES MAIN STREET DISTRICT (MSD) WATER SYSTEM IMPROVEMENTS

**JUNE 09, 2022** 

**TO:** All Holders of Contract Documents For:

FOR: CITY OF TRUTH OR CONSEQUENCESMAIN STREET DISTRICT (MSD)WATER SYSTEM IMPROVEMENTS

FROM: Wilson & Company Inc.

The following Addendum #3. A shall be incorporated into the Contract Documents for the above-referenced project.

#### ADDENDUM NUMBER THREE A (3. A):

#### 1. Pre-bid meeting minutes attached

ALL OTHER PROVISIONS OF THE CONTRACT DOCUMENTS SHALL REMAIN UNCHANGED. THIS ADDENDUM IS HEREBY MADE A PART OF THE CONTRACT DOCUMENTS TO THE SAME EXTENT AS THOSE PROVISIONS CONTAINED IN THE ORIGINAL DOCUMENTS AND ALL ITEMIZED LISTINGS THEREOF.

Each bidder shall acknowledge receipt of the Addendum No. THREE A (3. A) on the Bid Form in the space provided.

Mark A. Nasi P.E. # 13076

Wilson & Company

DATE: 06/09/2022



### **PRE-BID MINUTES**



### **City of Truth or Consequences – MSD Waterlines**

DATE: 06/02/2022 TIME: N/A

LOCATION: City of Truth or Consequences Commission Chambers 405 W 3rd Street Truth

or Consequences, NM 87901.

ATTENDEES: Attendee list will be attached to meeting minutes and issued via addenda.

#### I. SIGN-IN AND INTRODUCTION

a. Sign in sheet.

b. Owner: City of Truth or Consequences

505 Sims Street

Truth or Consequences, NM 87901

Bruce Swingle, City Manager

Traci Alvarez, Assistant City Manager / Community Development Director

OJ Hechler, Community Services Director Jesse Cole, Water/Wastewater Director

c. Engineer: Wilson & Company, Inc.

4401 Masthead St. NE, Suite 150

Albuquerque, NM 87109

(505) 348-4130

Brian J. Ambrogi, PE- OPS Manager

Mark A. Nasi, PE – Senior Water/Wastewater Project Manager Daniela Ducon-Walk MSSE- Water/Wastewater Designer

d. Agencies: Elizabeth Ybarra, Rural Development United States Department

Of Agriculture (RD-USDA)

Robert Garcia, Rural Development United States Department

Of Agriculture (RD-USDA)

#### II. GENERAL REQUIREMENTS

- a. Bid Requirements
  - i. Bid date: Thursday, July 7, 2022, 2:00 PM
  - ii. Hard-Copy of bids must be submitted to the City of Truth or Consequences Finance, 505 Sims Street, Truth or Consequences, NM,87901.
  - iii. Public Bid Opening July 7, 2022 2:30 PM, City of Truth or Consequences Commission Chambers 405 W 3rd Street Truth or Consequences, NM 87901.
  - iv. See "Instruction to Bidders" EJCDC Form C-200 for bid requirements
  - v. Contract requirements and Addendum are available from the Wilson & Company Planroom Website, <a href="https://www.wilsonco.com/plan-room">https://www.wilsonco.com/plan-room</a>
    - 1. Construction Drawings
    - 2. Contract Documents
    - 3. Technical Specifications
    - 4. All Addendums will be issued through this Planroom and registered users will be notified.



- vi. Project is funded through the Rural Development United States Department Of Agriculture (RD-USDA).
- vii. Contractor shall comply with state wage rates, Included in the contract documents.

#### III. PROJECT REQUIREMENTS

a. Project Overview:

The Main Street District Waterlines Replacement consists of Waterline replacement with appurtenances, meters, and roadway replacement. Additionally, the project includes the improvement of the Cook Street facility equipment, pipeline, and software to interface with the city's different wells, tanks, and pump stations. The bids for this project will be evaluated on the total cost for the Base Bid-Main Street District Waterlines Replacement+ Additive Alternate 1-Cook St .3000 Gallon Tank+ Additive Alternate 2-Cook St. Generator

I. Base Bid- Main Street District Waterlines Replacement: The project work includes the installation of approximately 11,500 LF of 6-ich, 8-inch, and 12-inch PVC waterlines and appurtenances within the public right-of-way. 8,495 LF by open trench method, 773 LF by Horizontal Directional Drilling, and 1993 LF by pipe bursting method. The project also includes the installation of new meter cans and water service lines and connections to the existing system. Site work to include roadway asphalt removal and replacement.

The Cook Street facility improvements include the replacement of the existing gas chlorination system including a fiberglass chlorine shelter, installation of new equipment at the booster station, including a water meter vault and a chlorination meter/injection vault. The project also includes new piping direct bury from the new chlorination building to the new meter/injection vault.

In addition, the project comprises of replacement of the existing booster pumps and motors with variable frequency drives at the existing Cook Street Facility, upgrading drinking water SCADA/HMI system which is located at the wastewater treatment plant, and remote terminal units at the following sites: Cook Street Facility (Well #1, Tanks and Booster Station), Well #2, Well #6, Well #7, Well #8, Morgan Tank & Booster Station, and Cemetery Road Tanks.

- II. Additive Alternate 1- Cook St .3000 Gallon Tank: The Cook Street facility improvements include the installation of a new additional ground 300,000-gallon steel water storage tank will be installed and will be equipped with impressed- current cathodic protection with new piping direct bury from the new chlorination building to the new meter/injection vault
- III. Additive Alternate 2- Cook St. Generator: The Cook Street facility improvements include the replacement of a new generator designed to operate the chlorination system and booster pumps.

#### IV. CONTRACT REQUIREMENTS

- a. Contract Times
  - i. Substantial Completion: 360 Day
- b. Liquidated Damages:
  - i. \$1,075/Calendar Day
- c. Permits:
  - i. New Mexico Department of Transportation (NMDOT)
- d. Requirement:
  - i. American Iron and Steel (AIS)



#### V. POTENTIAL ADDENDA ITEMS

- a. Pre-Bid Meeting Minutes
- b. Response to Contractors Questions last day for questions is 5:00 pm, Thursday, June 16, 2022 Questions received after this time may not be answered.
- c. Final Addenda issued Friday, June 24, 2022.

#### VI. QUESTIONS/COMMENTS

- a. Please send all questions in writing to Daniela Ducon-Walk, at daniela.ducon@wilsonco.com
- b. Only questions that are asked in writing will be answered in addenda. Any questions answered at this meeting or verbally outside of this meeting are for discussion purposes only and deemed non-binding.

#### Pre-Bid Questions to be responded to in Addendum:

- 1. In the locations where the construction method changed from HDD and Pipe Bursting to open trench, will the roadway need to be replaced?
  - No, just based course. The city is repaying these sections.
- 2. Has the water table changed since the report was completed?
  - Unknown
- 3. Has the generator spec changed?
  - Yes, see Addendum 1. A
- 4. On lead items, will there be an amendment to the contract dates?
  - Only if can be justified per the contract documents.
- 5. How much funding is available for the project?
  - Not disclosed

#### **Pre-Bid Additional Comments:**

- 1. Substitution will be considered by following the process set out in the contract documents.
- 2. Buy American currently does not apply to this contract per the USDA. If this requirement changes, bidders will be notified.

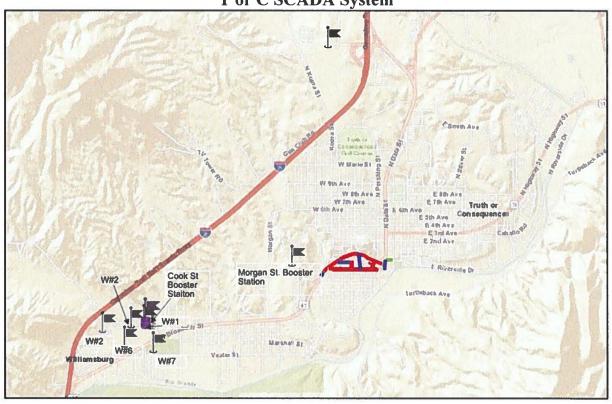


Waterline Replacement Method





T or C SCADA System





4401 Masthead Street NE Suite 150, Albuquerque, NM 87109 505-348-4000 phone 505-348-4055 fax

# ADDENDUM NO. #4.A CITY OF TRUTH OR CONSEQUENCES MAIN STREET DISTRICT (MSD) WATER SYSTEM IMPROVEMENTS

June 24, 2022

**TO:** All Holders of Contract Documents For:

FOR: CITY OF TRUTH OR CONSEQUENCESMAIN STREET DISTRICT (MSD)WATER SYSTEM IMPROVEMENTS

FROM: Wilson & Company Inc.

The following Addendum #4. A shall be incorporated into the Contract Documents for the above-referenced project.

#### **ADDENDUM NUMBER FOUR (4. A):**

**STS 802.6.1 - Part Number Clarification**: Master Meter Sonata Ultrasonic Meter Part Number should be Master Meter 5/8" x 3/4" Sonata Ultrasonic Meter with Landis+Gyr Endpoint P/N: S112-B00-A11-A1-05A-LG

**De-watering Discharge Clarification:** For Bidding purposes, assume the de-watering discharge will be in the drainage area of the project, with no more than 500-ft of discharge piping required.

### STS 27 0528.29 - Hangers and Supports for Communications Systems: Revise the specification section 3.04 PAINTING:

A. Touchup: Clean field welds and abraded areas of shop paint. Paint exposed areas immediately after erecting hangers and supports. Use the same painting materials as used for shop painting. Comply with SSPC-PA 1 requirements for touching up field-painted surfaces. 1. Apply paint by brush or spray to provide a minimum dry film thickness of 2.0 mils (0.05 mm).

#### Remove Item B.

B. Touchup: Comply with requirements in Section 099113 "Exterior Painting", Section 099123 "Interior Painting" and Section 099600 "High Performance Coatings for cleaning and touchup painting of field welds, bolted connections, and abraded areas of shop paint on miscellaneous metal.

#### Revise Item C. to B.

B. Galvanized Surfaces: Clean welds, bolted connections, and abraded areas, and apply galvanizing-repair paint to comply with ASTM A 780.





### STS 33 1623- Section 2.03.C Paint Materials: Clarification, Paint scheme has changed as it follows *Interior:*

**Surface Preparation:** SSPC-SP10/NACE 2 Near White Metal Blast Cleaning. A 2.0 mil minimum angular anchor profile is required. On steel surfaces where interior epoxy lining is field applied directly to steel a 3.0 mil minimum angular anchor profile is required. All surfaces to be clean and dry.

**Prime Coat**: Tnemec Series 91-H20 Hydro-Zinc at 2.5 to 3.5 dry mils. Thin only with approved Thinner, Tnemec No. 41-2 or 41-3 Thinner

*Stripe Coat:* Themec Series 22 Epoxoline applied immediately prior to the application of the finish coat. *Finish Coat:* Themec Series 22 Epoxoline at 20 to 30 dry mils

#### Exterior:

Surface Preparation: SSPC-SP10/NACE 2 Near White Metal Blast Cleaning. A 2.0 mil minimum angular anchor profile is required. All surfaces to be clean and dry.

**Prime Coat:** Themec Series 91-H20 Hydro-Zinc at 2.5 to 3.5 dry mils. Thin only with approved thinner, Themec No. 41-2 or 41-3 Thinner

*Stripe Coat/Field Touch-Up:* Themec Series 66 Hi-Build Epoxoline at 3.0 to 5.0 dry mils or brushed and scrubbed into weld seams. Thin only with approved thinner, Themec No. 41-4 Thinner.

*Intermediate:* Themec Series 66 Hi-Build Epoxoline at 3.0 to 5.0 dry mils. Thin only with approved thinner, Themec No. 41-4 Thinner.

Finish Coat: Tnemec Series 1094 Endura-Shield at 2.0 to 3.0 dry mils. Thin only with approved thinner, Tnemec No. 41-10 Thinner

For cold weather applications use Series 44-710 Urethane Accelerator with Series 91-H20; and Series 44-456 Urethane Accelerator for Series 1094. For cold weather applications substitute Series 161 for Series 66

#### **CONTRACTOR QUESTIONS & ANSWERS:**

1. Question: Section 09 9123 -Interior Painting, section 099113 - Exterior Painting, and 099600 High-Performance Painting are referred to, but not provided in the documents. Will those spec sections are provided?

Answer: Listed specification references will not apply to this project. Revised 27 0528.29 – "Hangers and Supports for Communications Systems" Section 3.04 PAINTING (Above).

- **2. Question:** Please confirm whether or not exposed piping is to be coated (booster station, inside vaults, chlorination piping inside new shelter)
  - **Answer:** No exposed piping is to be coated.
- 3. Question: The Geotechnical Report states to use the following for bedding and backfill for the pipe. "Base course, pipe bedding, and backfill should conform to NMDOT or New Mexico Standard Specifications for Public Works specifications. "Can you please confirm what spec



number in the New Mexico Standard Specifications for Public Works Construction applies and what materials will be required for bedding and backfill for the pipe installation?

Answer: All construction in the NMDOT ROW must meet the NMDOT Specifications all other bedding and backfill for the pipe installation Refer to New Mexico Standard Specifications for Public Works Construction specification 701 "Trenching, Excavation and Backfill" and Section 302 "Aggregate Base Course Construction".

4. Question: Is fractured rock needed where the project requires dewatering for bedding and backfill. If so what size of rock?

Answer: All construction in the NMDOT ROW must meet the NMDOT Specifications all other bedding and backfill requirement must meet New Mexico Standard Specifications for Public Works Construction specification 701 "Trenching, Excavation and Backfill".

ALL OTHER PROVISIONS OF THE CONTRACT DOCUMENTS SHALL REMAIN UNCHANGED. THIS ADDENDUM IS HEREBY MADE A PART OF THE CONTRACT DOCUMENTS TO THE SAME EXTENT AS THOSE PROVISIONS CONTAINED IN THE ORIGINAL DOCUMENTS AND ALL ITEMIZED LISTINGS THEREOF.

Each bidder shall acknowledge receipt of the Addendum No. FOUR A (4. A) on the Bid Form in the space provided.

Mark A. Nasi P.E. # 13076

Wilson & Company

DATE: 06/24/2022

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## City of Truth or Consequences AGENDA REQUEST FORM

MEETING DATE: September 14, 2022

Agenda Item #: <u>I.3</u>

SUBJECT:	Approval of Purchase Requisitions Over \$20,000					
DEPARTMENT:						
DATE SUBMITTED: September 6, 2022  SUBMITTED BY: Carol Kirkpatrick, Finance Director						
						WHO WILL PRESENT THE ITEM: Carol Kirkpatrick, Finance Director
Summary/Backgro	ound:					
	46 20/21 Execution of Contracts; Grant Agreements; Memoranda of Understanding; Joint is; Settlement Agreements; Purchases (Contract and Purchases More Than \$20,000)					
Recommendation:						
Approval Recommo	ended by Finance Director					
Attachments:						
_	urchase Requisitions \$20,000 or More equisitions, Procurement Documentation					
Fiscal Impact (Fina	nce): Yes					
As Per Total on List	ing of Purchase Requisitions					
Legal Review (City	Attorney): Yes					
-						
Approved For Subr	nittal 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					
	Tok here to enter text. Ordinance No. Click here to enter text.  Tok here to enter a date. Referred To: Click here to enter text.  Denied  Other: Ofick here to enter text.  2022 CC Agenda					

#### **PURCHASE REQUISITION APPROVAL**

#### 2022-23 FISCAL YEAR

**COMMISSION MEETING 9/14/22** 

Number	Vendor Name	Description	Requested By	Department	Funding Source	Total Amount	Procurement Type
88416	NM Self Insurers Fund	Annual Property Insurance Premium	Carol Kirkpatrick	Finance	Various	\$ 71,820.00	Forgot to add to the 2022-23 annual purchase requisitions for approval
ATTEST:						\$ 71,820.00	
		Angela Torres, Clerk-Treasurer	Date	<del></del>			

Date

Amanda Forrester, Mayor

### **REQUISITION**



Requisition #:

88416

Date:

09/06/2022

Vendor #:

0538

**ISSUED TO:** NM SELF INSURERS FUND

P.O. BOX 846

SANTA FE, NM 87504

**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 ANNUAL PROPERTY INSURANCE PREMIUI		0.00 101-1018-46731	17,000.00
2	0 ANNUAL PROPERTY INSURANCE PREMIUI		0.00 216-4503-46731	4,300.00
3	0 ANNUAL PROPERTY INSURANCE PREMIUI		0.00 502-3601-46731	20.00
4	O ANNUAL PROPERTY INSURANCE PREMIUI		0.00 503-3702-46731	9,400.00
5	O ANNUAL PROPERTY INSURANCE PREMIUI		0.00 504-3803-46731	5,500.00
6	O ANNUAL PROPERTY INSURANCE PREMIU		0.00 505-3904-46731	3,500.00
7	0 ANNUAL PROPERTY INSURANCE PREMIUI		0.00 506-4005-46731	24,500.00
8	0 ANNUAL PROPERTY INSURANCE PREMIUI		0.00 509-4403-46731	7,600.00

PO Description: ANNUAL PROPERTY INSURANCE PREMIUM

**Detailed Description:** 

PENDING COMMISSION APPROVAL 9/14/22

THIS PO WAS LEFT OUT OF THE 7/1/22 REQUESTS FOR ANNUAL PURCHASE ORDERS

**Authorized By:** 

SUBTOTAL:	71,820.00
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	71 820 00



File Name: CC Agendas 9-14-22

## City of Truth or Consequences AGENDA REQUEST FORM

MEETING DATE: September 14, 2022

Agenda Item #: I.4

SUBJECT:	Contract renewal with Wilson and Company, Inc				
DEPARTMENT:	Finance				
	September 6, 2022				
SUBMITTED BY: Carol Kirkpatrick, Finance Director WHO WILL PRESENT THE ITEM: Carol Kirkpatrick, Finance Director					
Summary/Backgro					
,,					
Architectural, Surv	renew the contract with Wilson and Company, Inc. for three (3) additional years for on call eying, Planning, Engineering and Landscape Architectural Services award via RFP 20-21-011. was 10/27/21 through 10/26/22.				
Recommendation:					
contract for years total.					
Staff recommends	approval				
Attachments:					
<ul><li>Contract wi</li><li>Click here to</li></ul>	ith Wilson and Company, Inc. 10-27-22 through 10-26-25, including RFP 20-21-001 enter text.				
Fiscal Impact (Fina	unce): Choose an item.				
Cost per task order	·.				
Legal Review (City	Attorney): Yes				
Click here to enter te	xt.				
Approved For Subi	mittal By: 🗵 Department Director				
Reviewed by:	City Clerk   Finance Legal  Other: Click here to enter text.				
Final Approval: 🗵					
	CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN				
	lick here to enter text. Ordinance No. Click here to enter text.  lick here to enter a date. Referred To: Click here to enter text.  Denied Dother: Click here to enter text.				

### CITY OF TRUTH OR CONSEQUENCES PROFESSIONAL SERVICES CONTRACT

#### FOR

### ARCHITECTURAL, SURVEYING, PLANNING, ENGINEERING AND LANDSCAPE ARCHITECTURAL SERVICES

THIS PROFESSIONAL SERVICES CONTRACT (the "Contract") is made and entered into this 14<sup>th</sup> day of September 2022 ("Effective Date") by and between the City of Truth or Consequences ("City"), a political subdivision in the State of New Mexico, whose address is 505 Sims Street, Truth or Consequences, New Mexico 87901, and Wilson and Company, Inc. ("Contractor"), with its principal place of business at 414 N Main Street, Suite A, Las Cruces, NM 88001, (herein referred to individually as "Party" or collectively as "Parties").

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

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

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

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

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

#### 1. TERM

The Term of this Contract commences on October 27, 2022 and ends on October 26, 2025.

#### 2. INCORPORATION

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

#### 3. CONTRACT DOCUMENTS

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

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

#### 4. SCOPE OF WORK

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

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

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

#### 5. CONTRACTOR'S REPRESENTATIONS

- 5.1 Contractor represents to the City that it: (a) is an organization of professionals experienced in the type of services the City is engaging the Contractor to perform; (b) is authorized, licensed and registered to do business in the State of New Mexico; (c) is qualified, willing and able to perform professional services for the City; and, (d) has the expertise, training and ability to provide professional services which will meet the City's objectives and requirements. Furthermore, Contractor represents that Contractor will perform the Work in a manner consistent with the professional skill and care ordinarily provided by firms practicing in the same or similar locality under the same or similar circumstances (hereinafter the "Standard of Care").
- 5.2 Contractor represents that each and every Contractor's employee engaged in the services provided under this Contract is fully qualified, able, and has the expertise and training to provide such services to the City.
- 5.3 Contractor represents that it has sufficient resources and personnel to perform the obligations set forth in this Contract, including, without limitation, performing the services, and procuring alternative capability in the event that Contractor's primary resources in performing the services change in such a manner that such primary resources would reasonably be unable to fulfill Contractor's obligations pursuant to this Contract.

- 5.4 Contractor represents that it will exercise a professional Standard of Care in performing the Work in a manner that does not violate any applicable law, rules or regulation. Contractor further represents that Contractor shall comply and shall cause each and every of its employees who perform services under this Contract to comply with all laws of all applicable governmental authorities in the conduct of Contractor's activities pursuant to, and arising from, this Contract.
- 5.5 Contractor represents that it will exercise a professional Standard of Care in performing the Work in a manner that and holds and maintains all permits, licenses, and/or other regulatory requirements necessary to provide the services.
- To the extent that the City is held financially responsible for any deficiencies in the services performed by the Contractor, Contractor agrees to cure such deficiencies at the sole cost to the Contractor.
- 5.7 Contractor represents that each individual signing this Contract on behalf of Contractor represents that he or she has the power and authority to bind the Contractor and that no further action, resolution, or approval is necessary to enter into this binding Contract. Contractor further represents that this Contract has been duly executed and delivered by the Contractor and constitutes a legal, valid and binding agreement of the Contractor enforceable against the Contractor in accordance with its terms.
- 5.8 Contractor covenants, represents that Contractor is duly registered as an employer under the New Mexico Workers' Compensation Act and is in good standing with respect to all filings and the payment of assessments or contributions required to be made under that Act.
- 5.9 Contractor represents that Contractor is financially solvent and able to pay its debts as they mature.

#### 6. SITE INVESTIGATION

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

#### 7. CHANGED CONDITIONS

Contractor shall, as soon as practicable and before such physical conditions are disturbed, notify

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

#### 8. WORKMANSHIP

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

#### 9. COMPENSATION

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

- 9.1 Compensation for the Services shall be negotiated between the CITY and CONTRACTOR prior to initiating the Services and shall be specified in the applicable TASK ORDER.
- 9.2 Monthly progress payments shall be made in proportion to services rendered and as indicated within this Agreement and shall be due and owing within thirty (30) days of the CONTRACTOR's submittal of its monthly statement. Past due amounts owed shall include a charge at 1.5 percent per month.
- 9.3 Contractor will mail all monthly invoices to: The City of Truth or Consequences, Attention:

  Accounts Payable, 505 Sims Street, Truth or Consequences, NM 87901. After approval of the Contractor's monthly invoice, and provided there are no disputes regarding the invoice, the City will pay the Contractor for satisfactorily performed Work within thirty (30) working days of receipt of the monthly invoice from the Contractor.

- 9.4 If the CITY fails to make monthly payments due the CONTRACTOR, the CONTRACTOR may, after giving seven (7) days written notice to the CITY, suspend services under this Agreement.
- 9.5 No deductions shall be made from the CONTRACTOR's compensation on account of penalty, liquidated damages, or other items withheld from payments to CONTRACTORs.
- 9.6 If the Project is delayed or if the CONTRACTOR's services for the Project are delayed or suspended for more than six (6) months for reasons beyond the CONTRACTOR's control, the CONTRACTOR may, after giving seven (7) days written notice to the CITY, terminate this Agreement and the CITY shall compensate the CONTRACTOR in accordance with the termination provision contained in this Agreement.
- 9.7 In the event that the City terminates this Contract for Contractor's breach, the City will pay Contractor for work performed before the termination date less any setoff to which the City is entitled if and only if Contractor performed such Work in accordance with this Contract and to the City's satisfaction.
- 9.8 The City shall have a right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the City to recover excessive and/or illegal payments.
- 9.9 The Contractor's acceptance of final payment of the amount due under this Contract shall operate as a full release of the City, its board of education, employees and agents from all liabilities, claims and obligations whatsoever arising from or under this Contract.

#### 10. CONTRACTOR'S PERSONNEL

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

#### 11. PROTECTION OF WORK AND PROPERTY

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

#### 12. LICENSES, PERMITS, AND REGULATIONS

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

claims, damage, and expense arising from the violation by Contract of any such law, rule regulation or ordinance.

#### 13. RECORDS

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

#### 14. INSURANCE

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

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

#### 14.2. Automobile Liability Insurance

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

#### 14.3. Automobile Liability Insurance

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

#### 14.4. Additional Insureds

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

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

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

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

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

#### 15. INDENMIFICATION/HOLD HARMLESS

- 15.1 Contractor shall defend, indemnify, and hold harmless the City, its Commissioners, employees, and agents from any liability for injury, death, loss, accident, or damage to any persons, or to property, and from any claims, actions, proceedings, and costs in connection therewith, including reasonable attorney fees, arising or alleged to have arisen out of any negligent act or omission of Contractor or of anyone directly or indirectly employed by Contractor, or arising in any way from the activities of or services provided by Contractor under this Contract. Contractor shall defend all such claims and litigation, including the payment of the City's attorney's fees and costs, whether such claims and litigation are frivolous or not. The City shall have the right to choose its own legal counsel. Contractor hereby waives all rights of subrogation against the City.
- 15.2 Contractor expressly and specifically assumes potential liability and agrees to indemnify, defend (including reasonable attorneys' fees) and hold harmless the City for claims or actions brought by the Contractor's own employees against the City, its Commissioners, employees or agents. Solely for the purpose of this indemnification and defense, Contractor expressly and specifically waives any immunity under the New Mexico Statutes Annotated, Chapter 52, Workers' Compensation.

- 15.3 These indemnifications shall survive the termination of this Contract.
- 15.4 The parties do not intend, and this provision should not be construed, to waive, alter or modify any immunities or protections afforded by the New Mexico Tort Claims Act.

#### 16. PROFESSIONAL RESPONSIBILITY

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

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

#### 17. BONDS

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

#### 18. RELEASE

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

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

#### 19. CONTRACTOR STATUS

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

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

#### 20. SUBCONTRACTORS

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

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

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

Contractor shall remain fully responsible for all performances required of it under this Contract, including those that the Contractor has determined to subcontract, notwithstanding the City's

approval of the Contractor's proposed subcontract.

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

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

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

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

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

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

#### 21. USE OF PREMISES

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

#### 22. CLEANING UP

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

#### 23. TRESPASS

Contractor shall be solely responsible and liable for any act of trespass or any injury to adjacent property, resulting from or in connection with the operations under this Contract. Contractor

shall be liable for any claims that arise from the deposit of any debris of any kind upon adjacent property.

#### **24. LIENS**

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

#### 25. APPROPRIATIONS

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

#### 26. CONFLICT OF INTEREST

Contractor represents that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Contractor agrees to comply with the requirements of the New Mexico Financial Disclosure Act (Section 1016Al, et seq., NMSA 1978) and the Governmental Conduct Act (Section 10161 et seq. NMSA 1978) as applicable. Contractor represents and warrants that the services to be performed under this Contract shall not result in a conflict of interest prohibited by state or federal laws, rules or regulations.

#### 27. NONDISCRIMINATION

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

#### 28. FOREIGN CORRUPT PRACTICES ACT

Contractor represents and warrants to the City that it is aware of the requirements of the United States Foreign Corrupt Practices Act (the "FCPA") and will not take any action that could violate the FCPA or expose the City to liability under the FCPA. Specifically, Contractor

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

#### 29. NOTICE OF PENALTIES

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

#### 30. FORCE MAJEURE

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

#### 31. TERMINATION

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

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

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

Notwithstanding any of the above provisions of this Termination section of this Contract, the City may terminate this Contract immediately by written notice to the Contractor upon

cancellation, denial, suspension, revocation or non-renewal of any license, permit or certificate, including, without limitation, insurance policy or Certificate of Insurance, that Contractor must hold to provide services under this Contract.

#### 32. DISPUTE RESOLUTION

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

#### 33. NOTICES

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

To City:

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

**To Contractor:** 

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

#### 34. INVALID TERM OR CONDITION AND SEVERABILITY

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

#### 35. NO WAIVER

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

#### **36. APPLICABLE LAW**

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

#### 37. IMMUNITIES AND DEFENSES

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

#### 38. NO ASSIGNMENT

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

#### 39. NO THIRD PARTY BENEFICIARIES

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

#### 40. OTHER CONTRACTORS

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

#### 41. ENTIRE AGREEMENT

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

#### 42. ATTACHMENTS

#### **EXHIBIT A: SCOPE OF WORK**

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

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

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

Approved by the City of Truth or Consequences City Commission on		
CITY:	CONTRACTOR:	
City of Truth or Consequences	Wilson and Company, Inc.	
By:Signature	By: Signature	
Print Name	Print Name	
Title	Title	
Date	Date	

### EXHIBIT A SCOPE OF WORK

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

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

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

#### **ARTICLE 1: BASIC SERVICES**

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

#### 1.1 SCHEMATIC DESIGN

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

#### 1.2 DESIGN DEVELOPMENT

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

#### 1.3 CONSTRUCTION DOCUMENTS

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

#### 1.4 BIDDING PHASE

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

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

#### 1.5 CONSTRUCTION ADMINISTRATION

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

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

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

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

the CONTRACTOR shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of construction. The CONTRACTOR will coordinate the site visits with the CITY. The CONTRACTOR's representatives are to meet with the representatives of the CITY to discuss the project's progress and to identify known deviations from the Contract Documents, or defects and deficiencies observed in the construction. The CONTRACTOR will prepare and distribute notes from the visit.

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

#### **ARTICLE 2: SPECIAL SERVICES**

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

- Funding applications
- Reimbursement requests for funding
- c. Disadvantaged Business Enterprise (DBE) Plan assistance
- d. Airport Layout Plan (ALP) revisions
- e. Property Map revisions
- f. Environmental Overview or Statements

- g. Preparation of Record Drawings
- h. Assistance with funding and coordination of other contracts
- i. Bid Alternates
- j. Planning Services
- k. Environmental Services
- I. Land Acquisition Services

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

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

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

#### **ARTICLE 3: ENGINEERING SERVICES**

The CONTRACTOR shall:

- 3.1 Discuss and explain the purpose, need and financial requirements of the project, review available data and help the City to achieve supplementary data; Analyze government regulations and make sure the design is meeting conditions of all government agencies.
- 3.2 Establish the general size, scope and location of the project. Revise preliminary report and available data and discuss general scheduling; Prepare documents of preliminary design such as final design requirements, initial drawing and the whole project report.

- 3.3 Assist in preparing contract plan drawings and specifications, present an idea of project construction cost, review construction practicality to specify possible problems. Prepare essential documents for review and acceptance by the City.
- 3.4 Help the City in bidding achievement, receiving and processing deposits for bidding documents, explaining, expanding and changing bidding documents as necessary. Help the City to specify qualifications and acceptability of potential contractor, subcontractor and material testing and equipment providers. Propose alternative materials and testing equipment suggested by perspective contractors and assist the City in evaluating proposals.
- 3.5 Act as a representative for the City. Visit construction regularly to monitor both executed work progression and quality, make sure that the construction is conducted in accordance with drawings and specifications. Explain and clarify contract documents, conduct specific inspection and testing, offer instruction to tackle field issues. Monitor performance tests and initial operation of the project. Carry out final inspection and generate a report on the completion of the project and provide recommendation regarding the acceptance of the final product.

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

#### **ARTICLE 4: ARCHITECTURAL SERVICES**

The CONTRACTOR shall provide:

- 4.1 Architectural design, including design development phase, construction documents, phase bidding and negotiations.
- 4.2 Generation of architectural drawings and other documents required by the general contractor, based on agreed upon design.
- 4.3 Phase construction administration and post construction phase.
- 4.4 Interior Design.
- 4.5 Engineering Services- mechanical, electrical, civil and structural engineering.
- 4.6 Construction project management, administration and oversight.
- 4.7 Provide Landscape Architectural Services.

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

#### **ARTICLE 5: SURVEYING SERVICES**

The CONTRACTOR shall perform or provide:

- 5.1 Control surveys, which will be the basis for all future design and construction surveying services.
- 5.2 Topographic surveys of proposed and existing roadway corridors to include the location of all natural and physical features of the roadway.
- 5.3 Right-of-way surveys to establish the limits of the existing documented and/or occupied right-of-way to include the determination of a centerline survey.
- 5.4 Property surveys to determine the location of adjacent property lines relative to the existing and/or proposed property.
- 5.5 Preparation of right-of way design plans and legal descriptions for acquisition parcels pursuant to current NMDOT standards and specifications.
- 5.6 Final documentation and preparation of documentation maps for final construction pursuant to current relevant standards and specifications.
- 5.7 Provide construction staking services to include the layout of horizontal and vertical alignments grade stakes, and other roadway features, drainage systems, utility and building construction as necessary.

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

#### **ARTICLE 6: PLANNING STUDIES**

The CONTRACTOR shall perform or provide:

- 6.1 Help the City to develop a Comprehensive Plan for all projects that are proposed.
- 6.2 Make a Strategic plan (issue specific) for all projects that are proposed.
- 6.3 Any other Planning tasks that are deemed necessary by the City for all proposed projects.

#### ARTICLE 7: SCHEDULE FOR DELIVERY OF WORK BY CONTRACTOR

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

- 7.1 It is understood that the CONTRACTOR is to proceed on the project after a Notice-to-Proceed from the CITY. The schedule is to be outlined in each TASK ORDER once the scope of the project(s) has been clearly defined.
- 7.2 Construction progress is to be monitored by the CONTRACTOR in an effort to keep the construction on schedule. The CONTRACTOR is to be notified in writing when its progress falls behind its progress schedule.
- 7.3 The CONTRACTOR is to endeavor to complete the work in accordance with the schedule; however, it will not be penalized for delays beyond its control such as CITY's requirements, review periods, testing, adverse weather, surveying, war, Acts of God, etc.

#### **ARTICLE 8: CITY'S RESPONSIBILITIES**

The CITY shall:

- 8.1 Provide to the CONTRACTOR all criteria, design, and construction standards and full information as to the CITY's requirements for the Project. The CONTRACTOR shall be entitled to rely on the accuracy and completeness of information furnished by the CITY.
- 8.2 Designate in writing a person authorized to act as the CITY's representative. The CITY or its representative shall receive and examine documents submitted by the CONTRACTOR, interpret and define CITY's policies, and render decisions and authorization in writing promptly to prevent unreasonable delay in progress of the CONTRACTOR's services.
- 8.3 Furnish to the CONTRACTOR all existing drainage, survey, layout data, and prior reports available for the Project.
- 8.4 Furnish laboratory tests, air and water pollution tests, reports and inspections of samples, materials, or other items required by law or by the governmental authorities having jurisdiction over the Project.
- 8.5 Provide legal, accounting, and insurance counseling services necessary for the Project, legal review of the Contract Documents, and such auditing services as the CITY may require to account for expenditures of sums paid to the CONTRACTOR(s) and others.
- 8.6 Furnish permits and approvals from all governmental authorities having jurisdiction over this Project and from others as may be necessary for completion of the Project.
- 8.7 Provide surveys, subsurface and materials testing, printing, and/or administrative

- services necessary for the project shall be contracted by the CITY unless designated to be provided by the CONTRACTOR in individual TASK ORDERS.
- 8.8 Furnish the services described in Sections 3.1 through 3.7 at the CITY's expense and in such manner that the CONTRACTOR may rely upon them in the performance of its services under this Agreement.
- 8.9 Obtain bids or proposals from contractors for work relating to this Project and bear all costs relating thereto.
- 8.10 Protect and preserve all survey stakes and markers placed at the Project site prior to the assumption of this responsibility by the CONTRACTOR(s) and bear all the costs of replacing stakes or markers damaged or removed during said time interval.
- 8.11 Arrange full and free access for the CONTRACTOR to enter upon all property required for the performance of the CONTRACTOR's services under this Agreement.
- 8.12 Give prompt written notice to the CONTRACTOR whenever the CITY observes or otherwise becomes aware of any defect in the Project or other event which may substantially affect the CONTRACTOR's performance of services under this Agreement.
- 8.13 Compensate the CONTRACTOR for services rendered under this Agreement.

#### **EXHIBIT B**

#### **REQUEST FOR PROPOSALS (RFP) FOR PROFESSIONAL DESIGN SERVICES**

RFP No.		20-21-011		
Packet	No.			



Project Name: Projects under a Single Contract City of Truth or Consequences 505 Sims Street Truth or Consequences, NM 87901 575-894-6673

Multiple Engineering and Architecture

Date: January 25, 2021

Contracting Agency:

Address:

Telephone:

Funding Type: Federal, State, Local

This form was prepared by City of Truth or Consequences and is endorsed by the Professional Technical Advisory Board (PTAB), which is comprised of the American Council of Engineering Companies (ACEC) New Mexico, New Mexico Society of Professional Engineers (NMSPE), American Institute of Architects (AIA) New Mexico Chapter, New Mexico Professional Surveyors (NMPS), and American Society of Landscape Architects (ASLA) New Mexico Chapter; Local Government Division, Department of Finance and Administration; Rural Utilities Service, US Department of Agriculture; New Mexico Environmental Department; and New Mexico Finance Authority.

For information and suggestions on how to fill out this RFP, please refer to the "OWNER'S MANUAL FOR QUALIFICATIONS-BASED SELECTION (QBS)" at www.ptabnm.org.

#### NOTICE OF REQUEST FOR PROPOSALS (RFP)

Qualifications-based competitive sealed proposals for professional design services will be received by the Contracting Agency, <u>City of Truth or Consequences</u> for RFP No.20-21-011

The Contracting Agency is requesting proposals for professional  $\bowtie$ architectural services  $\bowtie$ engineering services  $\boxtimes$  $\bowtie$ surveying services landscape architectural services  $\boxtimes$ planning services for: Multiple Engineering and Architecture Contract Project No. \_\_\_\_ Proposals will be received at 505 Sims Street, Truth or Consequences, NM 87901 until Tuesday, February 16, 2021, no later than 2:00 pm. Due to the current COVID-19 restrictions, please contact Chief Procurement Officer/Administrative Assistant, Kristin Saavedra by phone: (575) 894-6672 ext. 309 or by email: Kristins@torcnm.org, to schedule a specific date and time to submit Proposals or proposals can be submitted electronically by email to Kristins@torcnm.org or mailed to the Chief Procurement Officer. Please limit the file size to 5 MB. Copies of the Request for Proposals (RFPs) can be obtained in person at the office of Kristin Saavedra Chief Procurement Officer/Administrative Assistant at 505 Sims Street, Truth or Consequences, NM 87901 or will be mailed or emailed upon request to Kristin Saavedra at 575-894-6672 ext. 309 or Kristins@torcnm.org. A ☐ mandatory ☒ non-mandatory pre-proposal meeting ☐ will ☒ will not be held \_\_\_. Interviews May be held will not be held for this project after the evaluation of proposals is completed. PURCHASING AGENT: Kristin Saavedra \_\_\_\_\_ Date: January 25, 2021 (for Contracting Agency's Use Only)

Newspaper: Sierra County Sentinel Publish: 01/29/21-02/16/21 P.O. No.

Newspaper:	Albuquerque Journal	Publish:	01/28/21-02/16/21	P.O. No.	
Newspaper:	Las Cruces Sun	Publish:	01/26/21-02/16/21	P.O. No.	

[Note: This Notice is issued pursuant to the requirements of § 13-1-104 NMSA 1978 and must be published not less that 10 calendar days prior to the date set for the receipt of proposals (§ 13-1-113) and published in a newspaper of general circulation in the area.]

1. PR	OJEC	CT DESCRIPTION	
to pro	vide Je co	full on-call as-needed planning, design, and ontract. Services may include, but are not	osals from qualified Engineering and Architecture firms disconstruction phase services of multiple projects under limited to, planning, environmental services, landscape gincluding civil, electrical, mechanical, and structural.
2.	sco	OPE OF WORK	
	The	Offeror shall perform the following profession	onal services:
	2.1	Provide standard Basic Design Servic	es, consisting of:
		Architects/Landscape Architects	<u>Engineers</u>
		□ Programming Phase	Study and Report Phase (PER)
		⊠ Schematic Phase	Preliminary Design Phase
		□ Design Development Phase	⊠ Final Design Phase
		□ Construction Documents Phase	
		⊠ Bidding and Negotiations Phase	Construction Administration Phase
		□ Construction Administration Phase	Operational Phase
		□ Post-Construction Phase	
		<u>Surveyors</u>	Planning Studies
		□ Property Boundary Survey	
		⊠ Topographic Survey	⊠ Strategic (i.e. issue specific) Plan
		⊠ Easement Survey	
		⊠ Right-of-Way Survey	Other Planning Tasks
		Additional Services	
		⊠ Environmental Documentation	
		□ Permitting	
		☐ Grant Administration	
		⊠ Right-of-Way Acquisition	
	2.2 obs	☑ Periodic or ☑ Full-time ervation during construction.	
	2.3	Other (list):	

#### **INSTRUCTIONS TO OFFERORS**

#### 1. DEFINITIONS AND TERMS

- 1.1. Addendum: a written or graphic instrument issued prior to the opening of proposals, which clarifies, corrects, or changes the Request for Proposals. Plural: addenda.
- 1.2. **Consultant**: means the Successful Offeror awarded the Agreement/Contract.
- 1.3. Determination: means the written documentation of a decision of the procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains (§ 13-1-52 NMSA 1978).
- 1.4. Offeror: any person, corporation, or partnership legally licensed to provide professional design services in this state who chooses to submit a proposal in response to this Request for Proposals.
- 1.5. Procurement Manager: means the person or designee authorized by the Contracting Agency to manage or administer a procurement requiring the evaluation of proposals.
- 1.6. **Request for Proposals**: or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals (§ 13-1-81 NMSA 1978).
- 1.7. Responsible Offeror of Proposer: means an offeror or proposer who submits a responsive proposal and who has furnished, when required, information and data to prove that the proposer's financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal (§ 13-1-83 NMSA 1978).
- 1.8. Responsive Offer or Proposal: means an offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements (§ 13-1-85 NMSA 1978).
- 1.9. The terms must, shall, will, is required, or are required, identify a mandatory item or factor that will result in the rejection of the offeror's proposal.
- 1.10. The terms can, may, should, preferably, or prefers identify a desirable or discretionary item or factor.

#### 2. REQUEST FOR PROPOSAL DOCUMENTS

- 2.1. COPIES OF REQUEST FOR PROPOSALS (RFP)
- A. A complete set of the RFP may be obtained from the Contracting Agent.
- B. A complete set of the RFP shall be used in preparing proposals; the Contracting Agency assumes no responsibility for errors or misinterpretations resulting from the use of an incomplete set of the RFP.
- C. The Contracting Agency in making copies of RFP available on the above terms, does so only for the purpose of obtaining proposals on the Project and does not confer a license or grant for any other use.
- A copy of the RFP shall be made available for public inspection and shall be posted at the Administration Building of the Contracting Agency.

#### 2.2. INTERPRETATIONS

- A. All questions about the meaning or intent of the RFP shall be submitted to the Procurement Manager of the Contracting Agency in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the Contracting Agency as having received the RFP. Questions received less than five days prior to the date for opening of proposals will not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- B. Offerors should promptly notify the Contracting Agency of any ambiguity, inconsistency, or error, which they may discover upon examination of the RFP.

#### 2.3. ADDENDA

- A. Addenda will be emailed, mailed, faxed,or hand delivered to all who are known by the Contracting Agency to have received a complete copy of the RFP.
- B. Copies of Addenda will be made available for inspection wherever RFPs are on file for that purpose.
- C. No Addenda will be issued later than five days prior to the date for receipt of proposals, except an Addendum withdrawing the RFP or one which includes postponement of the date for receipt of proposals.
- D. Each Offeror shall ascertain, prior to submitting the Proposal, that the Offeror has received all Addenda issued and shall

acknowledge their receipt in the Proposal Cover Letter.

#### 3. PROPOSAL SUBMITTAL PROCEDURES

- NUMBER, FORM AND STYLE OF PROPOSALS
- A. Offerors shall provide <u>5</u> copies of their proposal to the location specified on Page 2 on or before the closing date and time for receipt of proposals.
- B. All proposals must be typewritten on standard 8-1/2" x 11" paper and bound on the left-hand margin.
- C. A maximum of <u>25</u> pages, not including front and back covers, cover letter, table of contents, Resident Business or Resident Veteran Business Certificates/Certification Form, and Campaign Contribution Disclosure Form.
- D. The proposal must be organized in the following format and must contain, as a minimum, all listed items in the sequence indicated:
- 1) Cover Letter
- Response to Evaluation Criteria included in this RFP.
- Other supporting or resource material
- E. Any proposal that does not adhere to this format, and which does not address each specification and requirement within the RFP, may be deemed non-responsive and rejected on that basis.
- F. Offerors may request in writing nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. A request stating the entire proposal is confidential will not be acceptable. Only matters, which clearly are of a confidential nature, will be considered.
- G. Any cost incurred by the Offeror in preparation, transmittal, and presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

#### 3.2. SUBCONSULTANTS

- A. The Offeror shall list and state the qualifications for each subconsultant the Offeror proposes to use for all subcontracted work.
- B. The Offeror is specifically advised that any person or other party to whom it is proposed

to award a subcontract under this proposal, must be acceptable to the Contracting Agency after verification by the Contracting Agency of the current eligibility status, including, but not limited, to suspension or debarment by the Contracting Agency.

#### 3.3. PREQUALIFICATION PROCESS

A business may be pre-qualified by the Purchasing Agent as an Offeror for particular types of service. Mailing lists of potential Offerors shall include but shall not be limited to such pre-qualified businesses (§ 13-1-134 NMSA 1978). For purposes of this RFP, if pre-qualification is utilized, special instructions will be attached as an exhibit to this RFP.

# 3.4. DEBARRED OR SUSPENDED CONTRACTORS

A business (contractor, subcontractor or supplier) that has either been debarred or suspended pursuant to the requirements of § 13-1-177 through § 13-1-180, and § 13-3-11 through § 13-4-17 NMSA 1978 as amended, shall not be permitted to do business with the Contracting Agency and shall not be considered for award of the contract during the period for which it is debarred or suspended with the Contracting Agency.

#### 3.5. SUBMITTAL OF PROPOSALS

- A. Proposals shall be submitted at the time and place indicated in the Notice of Request for Proposals and shall be included in an opaque sealed envelope marked with the Project title and name and address of the Offeror and accompanied by the documents listed in the Request for Proposal.
- B. The envelope shall be addressed to the Purchasing Agent/Procurement Officer of the Contracting Agency. The following information shall be provided on the front lower left corner of the envelope: project title, project number, RFP number, date of opening, and time of opening. If the proposal is sent by mail, the sealed envelope shall have the notation "SEALED PROPOSAL ENCLOSED" on the face thereof.
- C. Proposals received after the date and time for receipt of proposals will be returned unopened.
- D. The Offeror shall assume full responsibility for timely delivery of proposals at the Purchasing Agent's office, including those proposals submitted by mail. Handdelivered proposals shall be submitted to the Purchasing Agent or the Purchasing Agent's designee and will be clocked

- in/time stamped at the time received, which must be prior to the time specified.
- E. After the date established for receipt of proposals, a register of proposals will be prepared which includes the name of each Offeror, a description sufficient to identify the service, the names and addresses of the required witnesses, and such other information as may be specified by the Purchasing Agent.
- F. Oral, telephonic, or telegraphic proposals are invalid and will not receive consideration.
- 3.6. CORRECTION OR WITHDRAWAL OF PROPOSALS
- A. A proposal containing a mistake discovered before proposal opening may be modified or withdrawn by an Offeror prior to the time set for proposal opening by delivering written or telegraphic notice to the location designated in the RFP as the place where proposals are to be received.
- B. Withdrawn proposals may be resubmitted up to the time and date designated for the receipt of proposals, provided they are then fully in conformance with the RFP.
- 3.7. NOTICE OF CONTRACT REQUIREMENTS BINDING ON OFFEROR
- A. In submitting this proposal, the Offeror represents that the Offeror has familiarized itself with the nature and extent of the RFP dealing with federal, state, and local requirements, which are a part of these RFP.
- B. Laws and Regulations: The Offeror's attention is directed to all applicable federal and state laws, local ordinances and regulations, and the rules and regulations of all authorities having jurisdiction over the services of the project.
- 3.8. REJECTION OR CANCELLATION OF PROPOSALS

This RFP may be canceled, or any or all proposals may be rejected in whole or in part, when it is in the best interest of the Contracting Agency. A determination containing the reasons therefore shall be made part of the project file (§13-1-131 NMSA 1978).

#### 4. CONSIDERATION OF PROPOSALS

- 4.1. RECEIPT, OPENING AND RECORDING
- A. Proposals received on time will be opened publicly or in the presence of one or more

- witnesses and the name of the Offeror and address will be read aloud.
- B. The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, final ranking and evaluation scores for all proposals shall become public information. (§13-1-120 NMSA 1978). The contents of any proposal shall not be disclosed so as to be available to competing Offerors during the negotiation process (§ 13-1-116 NMSA 1978).

#### 4.2. PROPOSAL EVALUATION

- A. Proposals shall be evaluated on the basis of demonstrated competence and qualifications for the type of service required and shall be based on the evaluation factors set forth in this RFP. Price, including costs or fees, cannot be considered in the evaluation of proposals for professional services (architecture, engineering, surveying, and landscape architecture, §13-1-120 NMSA 1978). For the purpose of conducting discussions, proposals may initially be classified as:
- 1) Acceptable,
- Potentially acceptable, that is, reasonably assured of being made acceptable, or
- Unacceptable (Offerors whose proposals are unacceptable shall be notified promptly).
- B. The Contracting Agency shall have the right to waive technical irregularities in the form of the proposal of the Offeror, which do not alter the quality or quantity of the services (§ 13-1-132 NMSA 1978).
- If an Offeror who otherwise would have been awarded a contract is found not to be a responsible Offeror, a Determination that the Offeror is not a responsible Offeror, setting forth the basis of the finding, shall be prepared by the Purchasing Agent/Procurement Manager. The unreasonable failure of the Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a responsible Offeror (§ 13-1-133 NMSA 1978). Businesses, which have not been selected, shall be so notified in writing within twenty-one days after an award is made (§ 13-1-120 NMSA 1978).
- D. Selection Process: (§ 13-1-120 NMSA 1978).

- An evaluation committee composed of representatives selected by the Contracting Agency will perform an evaluation of proposals. The committee shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project, and their ability to provide the required services.
- 2) If fewer than three businesses have submitted a statement of qualifications for a particular project, the committee may:
  - Rank in order of qualifications and submit to the local governing body for award those businesses which have submitted a statement of qualifications; or
  - Recommend termination of the selection process and sending out of new notices of the proposed procurement pursuant to § 13-1-104 NMSA 1978.

#### 4.3. NEGOTIATIONS (§13-1-122 NMSA 1978)

- A. The Contracting Agency's designee shall negotiate a contract with the highest qualified business for the services contemplated under this RFP at compensation determined in writing to be fair and reasonable. In making this decision, the designee shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services.
- B. Should the designee be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The designee shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee shall formally terminate negotiations with that business.
- The designee shall then undertake negotiations with the third most qualified business.
- D. Should the designee be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their

- qualifications, and the designee shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new RFP is initiated.
- E. The Contracting Agency shall publicly announce the business selected for award.

#### 4.4. NOTICE OF AWARD

After award by the local governing body, a written notice of award shall be issued by the Contracting Agency after review and approval of the proposal and related documents by the Contracting Agency with reasonable promptness (§ 13-1-100 and § 13-1-108 NMSA 1978).

#### 5. POST-PROPOSAL INFORMATION

#### 5.1. PROTESTS

- A. Any Offeror who is aggrieved in connection with a solicitation or award of a Agreement may protest to the Contracting Agency's Purchasing Agent and the Chief Administrator/Clerk in accordance with the requirements of the Contracting Agency's Procurement Regulations and the state Procurement Code. The protest should be made in writing within 24 hours after the facts or occurrences giving rise thereto, but in no case later than 15 calendar days after the facts or occurrences giving rise thereto (§ 13-1-172 NMSA 1978).
- B. In the event of a timely protest under this section, the Purchasing Agent and the Contracting Agency shall not proceed further with the procurement unless the Purchasing Agent makes a determination that the award of Agreement is necessary to protect substantial interests of the Contracting Agency (§ 13-1-173 NMSA 1978).
- C. The Purchasing Agent or the Purchasing Agent's designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (§ 13-1-174 NMSA 1978).
- D. The Purchasing Agent or the Purchasing Agent's designee shall promptly issue a determination relating to the protest. The determination shall:
- 1) State the reasons for the action taken; and

- Inform the protestant of the right to judicial review of the determination pursuant to § 13-1-183 NMSA 1978.
- E. A copy of the determination issued under § 13-1-175 NMSA 1978 shall immediately be mailed to the protestant and other Offerors involved in the procurement (§ 13-1-176 NMSA 1979).

# 5.2. EXECUTION AND APPROVAL OF AGREEMENT

The Agreement shall be signed by the Successful Offeror and returned within an agreed time frame after the date of the Notice of Award. No Agreement shall be effective until it has been fully executed by all of the parties thereto.

#### 5.3. NOTICE TO PROCEED

The Contracting Agency will issue a written Notice to Proceed to the Consultant.

# 5.4. OFFEROR'S QUALIFICATION STATEMENT

Offeror to whom award of an Agreement is under consideration shall submit, upon request, information and data to prove that their financial resources, production or service facilities, personnel, and service reputation and experience are adequate to make satisfactory delivery of the services described in the Request for Proposals (§ 13-1-82 NMSA 1978).

#### 6. OTHER INSTRUCTIONS TO OFFERORS

#### Resident Business Preference or Resident Veteran Business Preference (required by House Bill 93, 2016):

Points will be awarded based on Offeror's ability to provide a copy of a current Resident Business certificate or Resident Veteran Business certificate.

6.1 Resident Business Preference
For the Offeror to receive a Resident
Business Preference, the business shall
submit, with this proposal, a copy of a valid
Resident Business certificate issued by the
New Mexico Taxation & Revenue
Department. The application for preference
may be downloaded at the following
website:

http://www.tax.newmexico.gov/forms-and-publications/pages/recently-updated.aspx.

An Offeror who qualifies as a Resident Business shall receive a 5% preference added to the total possible points of the selection process.

- Resident Veteran Business Preference For the Offeror to receive a Resident Veteran Business Preference, the business shall complete, sign, and include with the proposal the attached certification form. along with a copy of a valid Resident Veteran Business Preference certificate issued by the New Mexico Taxation & Revenue Department. The application for preference may be downloaded at the following website: http://www.tax.newmexico.gov/forms-andpublications/pages/recently-updated.aspx. Offerors seeking a Resident Veteran Business Preference will be evaluated as follows:
  - A. Resident Veteran Businesses with annual gross revenues of up to \$3M shall receive a 10% preference added to the total possible points of the selection process.

Preference points are added only once to the total possible points of the overall selection process.

Example: A selection process has total possible points of 1,000 points. Five proposals are received: one from a Resident Business, one from a Resident Veteran Business, and three non-resident businesses. The Resident Business would receive 50 points (5% of 1,000 possible points) and the Resident Veteran Business would receive 100 points (10% of 1,000 possible points) which would be added to the total of their evaluated scores, thereby making it possible for the highest possible total points to be 1,100.

An additional example of the scoring process is attached to this RFP.

Note: Neither the Resident Business Preference nor the Resident Veteran Business Preference can be awarded for any project/contract if it includes federal funds.

6.3 <u>Campaign Contribution Disclosure Form</u>
The Offeror shall submit, with its proposal, the signed Campaign Contribution Disclosure Form with the name(s) of applicable public official(s) filled in on the form.

#### **GENERAL TERMS AND CONDITIONS**

#### 1. GOVERNING LAW

The Agreement shall be governed exclusively by the laws of the State of New Mexico as the same from time to time exists.

#### 2. INDEPENDENT CONTRACTORS

The Consultant (design professionals) and the Consultant's agents and employees are independent Contractors and are not employees of the Contracting Agency. The Consultant and Consultant's agents and employees shall not accrue leave, retirement, insurance, bonding, use of Contracting Agency vehicles, or any other benefits afforded to employees of the Contracting Agency as a result of the Agreement.

#### 3. BRIBES, GRATUITIES AND KICK-BACKS

Pursuant to §13-1-191 NMSA 1978, reference is hereby made to the criminal laws of New Mexico (including § 30-14-1, § 30-24-2, and § 30-41-1 through § 30-41-3 NMSA 1978) which prohibits bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (§ 13-1-28 through § 13-1-199 NMSA 1978) imposes civil and criminal penalties for its violation.

# 4. STANDARD FORM OF AGREEMENT BETWEEN CONTRACTING AGENCY AND CONSULTANT (Design Professional)

The form of agreement required by the funding agency or issued by the Contracting Agency will be used for this project. Copies are available and may be reviewed upon request.

#### 5. FEES

A lump sum fixed fee for Basic Services will be negotiated with the Offeror selected.

Additional Services may also be negotiated with the Offeror selected.

#### 6. FUNDING

This solicitation is subject to the availability of funds to accomplish the work.

#### 7. DESIGN PROFESSIONAL REGISTRATION

All work shall be under the direction of the applicable design professional legally licensed and registered by the State.

#### 8. PROFESSIONAL LIABILITY INSURANCE

The Offeror ⋈ will will not be required to carry professional liability (errors and omissions) insurance. If required to carry such insurance, the amount of coverage will be \$1,000,000.00.

#### Note to Owner Regarding Evaluation Criteria

The Request for Proposal must include each of the following Evaluation Criteria\* as required by statute (§ 13-1-120.B NMSA 1978). Each proposal submitted must address the required Evaluation Criteria. Based on the complexity of the project, the Owner may add additional items to be evaluated. The Owner must assign a weight factor to each of the Evaluation Criteria to communicate to Offerors the relative importance of each.

#### **EVALUATION CRITERIA:**

#### 1. Specialized Design and Technical Competence\*

Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required.

#### 2. Capacity and Capability\*

Capacity and capability of the business, including any consultants, their representatives, qualifications, and locations, to perform the work, including any specialized services, within the time limitations.

#### 3. Past Record of Performance\*

Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules.

#### 4. Familiarity with the Contracting Agency\*

Proximity to or familiarity with the area in which the project is located.

#### 5. Work to be Done in New Mexico\*

The amount of design work that will be produced by a New Mexico business within this state. **Note: Not allowed for federally funded projects.** 

#### 6. Current Volume of Work with the Contracting Agency Not 75% Complete\*

The volume of work previously done for the entity requesting proposals which is not seventy-five percent complete with respect to basic professional design services [through bidding phase], with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring the interest of the public in having available a substantial number of qualified businesses is protected; however, that the principal of selection of the most highly qualified business is not violated.

Indicate the volume of work currently underway with the Contracting Agency that is less than seventy-five percent complete. An example of how points can be assigned is provided below:

Value of work not yet completed on projects that are not 75% Complete	(Example) Points to be allowed for this item
None	5
\$1 to \$ 25,000	4
25,001 to 50,000	3
50,001 to 75,000	2
75,001 to 100,000	1
100,001 or more	0

#### 7. Other Contracting Agency Criteria

The Owner may add additional elements to be evaluated, such as Public Involvement Experience, and assign points according to their importance. *Note: Price cannot be a factor (§ 13-1-120.B NMSA 1978).* Price of any type, i.e. fees, fee schedule, etc., cannot be included with the proposal. This includes a separate sealed envelope, which also is not allowed.

#### **RFP EVALUATION CRITERIA**

#### **EVALUATION CRITERIA AND POINT VALUES**

#### OFFERORS:

Proposal must address each of the following criteria. Each proposal may be awarded points up to the amount listed.

	licant	POSSIBLE	SCORE
		POINTS	SCORE
PLA	NNING & DESIGN SERVICES		
1.	Specialized Design and Technical Competence*		
		(30)	
2.	Capacity and Capability*		
		(25)	
3.	Past Record of Performance*		
		(25)	
4.	Familiarity with the Contracting Agency *		
		(10)	
5.	Work to be Done in New Mexico* Note: Not allowed for federally funded projects.	V	<u> </u>
	Assign Possible Points of 0 if federal funds are involved.	(0)	
6.	Current Volume of Work with the Contracting Agency Not 75% Complete*		
		(5)	
7.	Other Contracting Agent Criteria (if desired)		
		(0)	
	SUBTOTAL		
	(total possible points for PLANNING & DESIGN SERVICES)	(95)	

<sup>\*</sup>Items required by statute (§ 13-1-120.B NMSA 1978).

RATING SHEET (CONTINUED) FOR: Applicant			
	ITEM	POSSIBLE POINTS	SCORE
CON	STRUCTION OBSERVATION SERVICES		
1.	Construction observation experience.	(5)	
2.	Experience with start up assistance to the Owner of new facilities, if applicable.	(5)	
3.	Capacity and capability of the consultant to provide strategies to assist in meeting the Owner's construction timeframe.	(5)	
4.	History of past performance, including the record of bid amount versus final close out contract amount.		
5.	History of legal claims, if applicable, on similar construction projects and their resolution. The consultant should detail their claims avoidance approach and construction observation philosophy.	(5)	
6.	Other	(0)	
7.	Other	(0)	
	SUBTOTAL (total possible points for CONSTRUCTION OBSERVATION SERVICES)	(25)	
	TOTAL SCORE (total possible points for PLANNING & DESIGN SERVICES and CONSTRUCTION OBSERVATION SERVICES)	(120)	

Interviews	$\boxtimes$	may be held		] will not be held for this project,	
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#### **INTERVIEW EVALUATION CRITERIA**

	ITEM	POSSIBLE POINTS	SCORE
1.	Describe your project manager's and project team's experience specifically relevant to this project.	(10)	
2.	What unique experience does your project team have that can be applied to the successful completion of this project?	(15)	
3.	Describe the approach your project team will take to successfully complete this project.	(20)	
4.	What are the project's critical issues, and how will your project team approach and address them?	(15)	
5.	What challenges do you foresee for this project, and how will your project team address and overcome them?	(15)	
6.	What innovative ideas or concepts will your project team apply to this project?	(15)	
7.	Describe the strengths and weaknesses of your project team?	(10)	•••
6.	Other	(0)	
7.	Other	(0)	
	TOTAL SCORE	(100)	

The above are suggested EVALUATION CRITERIA and POSSIBLE POINTS for interviews.

#### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

- "Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.
- "Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.
- "Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.
- "Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"Prospective contractor" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

"Representative of a prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any:

Mayor Sandra Whitehead, Mayor Pro-tem Amanda Forrister, Commissioner Paul Baca, Commissioner Francis Luna, Commissioner Randall Aragon

DISCLOSURE OF CONTRIBUTIONS	BY PROSPECTIVE CON	NTRACTOR:	
Contribution Made By:	<del></del>		
Relation to Prospective Contractor:	<u></u>		
Date Contribution(s) Made:			
Amount(s) of Contribution(s)			
Nature of Contribution(s)			
Purpose of Contribution(s)			
(Attach extra pages if necessary)			
Signature	Date		
Title (position)			
	OR		
NO CONTRIBUTIONS IN THE AGGI MADE to an applicable public official	REGATE TOTAL OVER T by me, a family member o	WO HUNDRED FIFTY DOLLAR or representative.	S (\$250) WERE
Signature		Date	
Title (Position)	-		

# **Veterans Preference Certification**

	application of the resident veteran preference to this form	al request for proposals process:
Pleas	e check one box only:	
	I declare under penalty of perjury that my business prior y December 31 is less than \$3M allowing me the 10% prefe understand that knowingly giving false or misleading infor	erence discount on this bid or proposal. I
Depar Decer	"I agree to submit a report, or reports, to the State Purch tment declaring under penalty of perjury that during the las nber 31, the following to be true and accurate:	asing Division of the General Services at calendar year starting January 1 ending
NMSA report indicat	"In conjunction with this procurement and the requirement and Business Preference/Resident Veteran Contractor Prefer 1978, when awarded a contract which was on the basis of the State Purchasing Division of the General Services It is in the report the award amount as a purchase from a purbody as the case may be."	erence under Sections 13-1-21 or 13-1-22 of having such veterans preference, I agree to Department the awarded amount involved. I will
that gi	"I declare under penalty of perjury that this statement is to ving false or misleading statements about material fact reg	true to the best of my knowledge. I understand parding this matter constitutes a crime."
(signa	ture of Business Representative)*	(Date)
*Must	be an authorized signatory for the Business.	

The representation made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or unaward of the procurement involved if the statements are proven incorrect.

#### **EXAMPLE OF SCORING**

	Total Possible Points	Consultant Firm A (Resident Veteran Business)	Consultant Firm B (Resident Business)	Consultant Firm C
Score from PLANNING & DESIGN SERVICES Section	100	90	85	80
Score from CONSTRUCTION OBSERVATION SERVICES Section (N/A if Section not included)	25	20	25	20
Score from INTERVIEW Section (N/A if Section not included)	100	90	85	80
Subtotal Score		200	195	180
Total Possible Points (of all Sections included)	225			
Total Preference Points Applied, if applicable (total preference points for Resident Business is equal to 5% of the Total Possible Points or Resident Veteran Business is equal to 10% of the total possible points); only one can apply		22.5 Because Consultant Firm A is a Resident Veteran Business, 22.5 points (10% of the Total Possible Points of 225) are added to the firm's Subtotal	11.25 Because Consultant Firm B is a Resident Business, 11.25 points (5% of the Total Possible Points of 225) are added to the firm's Subtotal	0 Because Consultant Firm C is neither a Veteran Resident Business nor a Resident Business, 0 points are added to the firm's Subtotal
Total Score		222.5	206.25	180

#### Notes:

Neither the Resident Business Preference nor the Resident Veteran Business Preference can be awarded for any project/contract if it includes **federal funds**.

Either the Resident Business Preference or the Resident Veteran Business Preference is applied. Both cannot be applied to the score of an individual Consultant Firm.



# City of Truth or Consequences 505 Sims Street Truth or Consequences, New Mexico 87901 City (575) 894-6673 • Fax (575) 894-7767

# Multiple Engineering and Architecture Projects under a Single Contract RFP #20-21-011

#### ADDENDUM NO 1.

This addendum No. 1 shall be incorporated into the above Request for Proposals documents the same as if originally contained therein.

Each proposer shall acknowledge receipt of this Addendum No. 1. Failure to do so could render the proposer non-responsive.

#### INSERT THE FOLLOWING TO FUNDING TYPE:

1. Federal Aviation Administration

All other provisions of the Request for Proposals shall remain unchanged. This Addendum No. 1 is hereby made a part of the Request for Proposals Documents to the same extent as those provisions contained in the original documents and listing thereof.

City of Truth or Consequences

Kristin Saavedra, Chief Procurement Officer Date

# CITY OF TRUTH OR CONSEQUENCES

### **AGENDA REQUEST FORM**

MEETING DATE: September 14, 2022 | Agenda Item #: 1.5

SUBJECT:	Approval of the El Terrero Construction Company Rental Agreement.
DEPARTMENT:	Clerk's Office
DATE SUBMITTED:	September 8, 2022
SUBMITTED BY:	Angela A. Torres, City Clerk
WHO WILL PRESEN	IT THE ITEM: City Manager Swingle
Summary/Backgro	ound:
	nt between the City of Truth or Consequences and El Terrero Construction Company for the
	y located at the "Solar Field" on South Broadway Street for the purpose of temporary staging
and stock piling of	construction equipment and material for the Williamsburg Interchange Re-Construction
Project.	
Recommendation:	
Approval of Agreer	nent.
Attachments:	
Agreement	
<ul> <li>Letter of int</li> </ul>	ent
Fiscal Impact (Fina	nce): N/A
•	
Legal Review (City	Attorney): Yes
•	
Approved For Subr	mittal By: 🗵 Department Director
Reviewed by:	City Clerk
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 Ag	

# CITY OF TRUTH OR CONSEQUENCES

# AGENDA REQUEST FORM

MEETING DATE: September 14, 2022 | Agenda Item #: 1.5

	pproval of the El Terrero Construction Company Rental Agreement.	
	Clerk's Office	
<b>DATE SUBMITTED:</b> Se	•	
	ngela A. Torres, City Clerk	
	THE ITEM: City Manager Swingle	
Summary/Backgroui		
<del>-</del>	between the City of Truth or Consequences and El Terrero Construction Company for the	
	ocated at the "Solar Field" on South Broadway Street for the purpose of temporary staging	
. •	onstruction equipment and material for the Williamsburg Interchange Re-Construction	
Project.		
Recommendation:		
Approval of Agreeme	ent.	
Attachments:		
Agraamant		
Agreement.	nt.	
Letter of inter	nt	
Fiscal Impact (Finance	ra). N/A	
riscui impuct (rilland	CE). N/M	
•		
Legal Review (City A	ttorneyl. Ves	
Legal neview (city A	ttorney). 163	
•		
Approved For Submi	ttal By: 🗵 Department Director	
Reviewed by: 🛛 Ci	ty Clerk 🛮 Finance 🖾 Legal 🗀 Other: Click here to enter text.	
•		
Final Approval: 🗵 C	ity wanager	
	CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN	
Resolution No Ordinance No		
Continued To: . Referred To: .		
	Denied Other: Click here to enter text.	
File Name: CC Ager	ndas 9-14-2022	

# LETTER OF INTENT TO NEW MEXICO DEPARTENT OF TRANSPORTATION AND EL TERRERO CONSTRUCTION:

In reference to the use of the property as Staging Area for NMDOT Project CN 1100990 shown in the attached Rental Agreement, I state the following:

I, City of Truth or Consequences as the Owner/ Representative of the referenced property acknowledge the landowner's right to have revegetation performed as per New Mexico Department of Transportation (NMDOT) Specifications Section 632.3.6. As noted in Condition #5 on the Rental Agreement, I hereby waive the revegetation right and neither the Contractor nor NMDOT shall be responsible for any claims, including but not limited to fugitive dust, noxious weeds, and siltation of waterways, related to my decision to forgo revegetation. The final clean-up of the staging area upon vacating the property is addressed in the Rental Agreement.

Owner / Representative	e Name		
Signature			
		-	
Date:			

#### **Rental Agreement for Construction Yard**

Name: El Terrero Construction, LLC

Address: "Solar Field" S Broadway St. Truth or Consequences, NM 87942

RE: Project # 1100990 Williamsburg Interchange Reconstruction

This is an agreement between <u>El Terrero Construction</u>, <u>LLC</u>. (Contractor) and <u>City of Truth or Consequences</u>(Owner) concerning the use of the Owner's property located at "Solar Field" S Broadway St. Truth or Consequences, NM 87942 for purposes of temporary staging, stock piling of construction equipment and materials. The size of the property is described to be approximately 8.44 acres, the contractor will occupy solely what is necessary for temporary staging and construction purposes. The compensation to the owner for use of the property will be \$750 per month for a 2 year lease with an option to extend monthly or terminate early with a 14 day notice. Contractor has the option to make advanced payments on monthly rent.

The Occupancy of the site is yet to be determined, communication between Contractor and City of Truth or Consequences will be made prior to occupancy. Targeted occupancy may be expected to begin December of 2022. Once Occupancy date is finalized, rental payment shall begin.

#### The conditions are as follows:

- 1.) The site is to be used as a temporary construction staging and storage yard, to include parking of vehicles and equipment, and other construction related items and activities.
- 2.) The Contractor will be responsible for maintaining a clean area, any spills of hazardous materials shall be dealt with appropriately.
- 3.) Contractor will be allowed to stockpile materials, for and from the project.
- 4.) The Contractor will be allowed to add material to the property to create an adequate driving surface as needed
- 5.) Following the site use, El Terrero shall remove it's materials, equipment, and debris.
- 6.) Re-vegetation to the yard will not be necessary.
- 7.) El Terrero Construction, LLC agrees to indemnify and save harmless the property owner from and against any and all demands, claims, lawsuits, losses, liabilities, and expenses including reasonable attorney's fees, arising by use of the property covered hereby.
- 8.) At the moment of final payment, Owner is required to sign a "Yard Release Form" stating that El Terrero Construction complied with the contract and is no longer responsible for the property.

El Terrero Construction, LLC	City of Truth of Consequences/Representative			
	Name			
	Signature			
Date:		Date:		



# CITY OF TRUTH OR CONSEQUENCES

#### **AGENDA REQUEST FORM**

MEETING DATE: September 14, 2022

Agenda Item #: 1.6

SUBJECT: Approval of City Attorney Contract Renewal for Jaime F. Rubin, LLC
<b>DEPARTMENT:</b> City Manager's Office
DATE SUBMITTED: September 8, 2022
SUBMITTED BY: Tammy Gardner
WHO WILL PRESENT THE ITEM: Bruce Swingle, City Manager
Summary/Background:
Agreement for legal services.
Recommendation:
Annual of Burfacional Continue Annual
Approval of Professional Services Agreement
Attachments:
Attachments:
Professional Services Agreement
Froiessional Services 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 Ordinance No
Continued To: . Referred To: .
☐ Approved ☐ Denied ☐ Other: .
File Name: CC Agendas 9-14-2022

# CITY OF TRUTH OR CONSEQUENCES PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the <u>City of Truth or Consequences New Mexico</u> (the "City"), a municipal corporation and political subdivision of the State of New Mexico, and <u>Jaime F. Rubin, LLC Attorney at Law</u> (the "Contractor") and is effective as of the date set forth below upon which it is executed.

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 et. seq. and Procurement Code Regulations, NMAC 1.4.1 et. seq. the Contractor has held itself out as an entity with the ability to provide the required services to implement the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the City of Truth or Consequences; and

WHEREAS, all terms and conditions of the <u>Request For Proposal Number 21-22-002 Annual Legal Services</u> and the Contractor's response to such document(s) are incorporated herein by reference (Exhibit B).

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUALLY AGREED BETWEEN THE PARTIES:

#### 1. Scope of Work.

- a. The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.
- b. This contract is year two (2) of a possible four year contract.

#### 2. Compensation.

- a. The City shall pay to the Contractor an hourly rate of Two Hundred Dollars (\$200.00), plus New Mexico Gross Receipts Tax not to exceed an annual amount of Sixty-Six Thousand Dollars plus New Mexico Gross Receipts Tax for services satisfactorily performed.
- b. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. All invoices MUST BE received by the City no later than fifteen (15) days after the termination of the Fiscal Year (the fiscal year is July 1 to June 30) in which the services were delivered.
- c. Contractor must submit a detailed statement accounting for all services performed and expenses incurred to the City Manager at 505 Sims Street, Truth or Consequences, NM 87901. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining

the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

#### 3. Term.

- a. This Agreement shall be in effect as of <u>October 1, 2022</u> and will expire on <u>September 30, 2023</u>.
- b. This contract is year two (2) of a possible four year contract.

#### 4. Contract Renewal.

a. This contract may be renewed up to two (2) additional years after this contract per response to RFP #21-22-002 Annual Legal Services as follows:

Year 3 (10/01/2023 thru 9/30/2024) \$200.00 per hour plus GRT Year 4 (10/01/2024 thru 9/30/2025) \$200.00 per hour plus GRT

b. Renewal can only be initiated by the City after approval of the City Commission.

#### 5. Termination.

a. <u>Termination</u>. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination along with contractors expenses to comply with City's termination notice, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City, and fails to implement corrective action within ten (10) business days of the City's notice, or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein and contractors failure to implement corrective actions for fault. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

b. Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

#### 6. Appropriations.

a. The terms of this Agreement are contingent upon sufficient appropriations and authorization. If sufficient appropriations and authorization do nto exist, this Agreement shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

#### 7. Status of Contractor

a. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City of Truth or Consequences. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the City of Truth or Consequences as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment, and business income tax. The Contractor agrees not to purport to bind the City of Truth or Consequences unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

#### 8. Discrimination Prohibited

a. In performing the services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, physical handicap or disability.

#### 9. ADA Requirement

a. In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the regulations, (the "ADA"), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents, and employees from and against any claims, actions, suits or proceedings of any kind brought against the Contractor as a result of any act or omissions of the Contractor or its agents in violation.

#### 10. Reports and Information

a. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered in this Agreement. (additional requirements may be added)

#### 11. Establishment and Maintenance of Records

a. Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by City, such records shall be maintained for a period of three years after receipt of final payment under this Agreement. Copies and originals of pertinent documents shall be provided to the City as directed by the City Manager.

#### 12. Publication, Reproduction and Use of Materials

a. No material(s) produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. The City and the Contractor acknowledge that the above is not meant to affect the attorney/client privilege unless waived by the City Commission.

#### 13. Construction and Severability

a. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforcement of any part of this Agreement, so long as the remainder of the Agreement is reasonably capable of completion.

#### 14. Claims

a. The Contractor shall defend, save and hold harmless the City from claims to the extent caused or allegedly caused by negligence on the part of the Contractor in

performance of Contractor's scope of work under this Agreement.

#### 15. Subcontracting

a. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

#### 16. Release

a. Final payment of the amounts due under this Agreement shall operate as a release of the City, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

#### 17. Confidentiality

a. Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

#### 18. Product of Service - Copyright.

a. All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

#### 19. Conflict of Interest; Governmental Conduct Act.

- a. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
- b. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

#### 20. Merger.

a. This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

#### 21. Penalties for Violation of Law.

- a. The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
- b. The parties hereto affirmatively state that no illegal bribes, gratuities or kickbacks of any sort have been or will be made or requested in connection with this Agreement.

#### 22. Equal Opportunity Compliance.

a. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

#### 23. Applicable Law.

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

#### 24. Workers Compensation.

a. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the

Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

#### 25. Records and Audits

a. The Contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Agreement and such other records as may be deemed necessary by the City and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the City or any authorized representative, and will be retained for three (3) years after the payment for the work under this Agreement unless permission to destroy them is granted by the City and the funding City.

#### 26. Indemnification.

a. The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source to the extent caused by the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor or City the receiving party shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the other party by certified mail.

#### 27. Invalid Term or Condition.

a. If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

#### 28. Enforcement of Agreement.

a. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

#### 29. Notices.

a. 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 or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

#### b. To the City:

- i. City Manager,505 Sims StreetTruth or Consequences, NM 87901
- c. To the Contractor:
  - ii. Jaime F. Rubin, LLCPO Drawer 151Truth or Consequences, NM 87901

#### 30. Authority.

a. If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

#### 31. Insurance

a. Contractor shall maintain the types and amounts of insurance required by the New Mexico State Tort Claims Act for the term of this Agreement.

#### 32. Assignability

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

#### 33. Amendment

- a. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.
- b. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement,

pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

#### 34. Entire Agreement:

a. This Agreement shall be governed and construed and enforced in accordance with the laws of the State of New Mexico and the ordinances of the City of Truth or Consequences.

IN WITNESS V		parties have	executed	this Agreeme	ent as of
CITY OF TRUTH	OR CONSEQUENC	CES			
SIGNED BY:		<del></del>		DATE:	
NAME AND TITLE	:				-
SIGNED BY:			]	DATE:	
CITY'S LEGAL CO	UNCEL-CERTIFYI	NG LEGAL SU	FFICIENCY		
CONTRACTOR: COMPANY NAME:	JAIME F. RUBIN	, LLC ATTOR	NEY AT LA	<u>.W</u>	
SIGNED BY:				DATE:	
NAME AND TITLE	:				-
Attest:					
Date:					

#### EXHIBIT A SCOPE OF WORK ANNUAL LEGAL SERVICES

#### Day to Day and Routine

- Provision of legal opinion and guidance- but will ultimately leave final decisions to the City Commission and Administration- and continue to provide legal support based on those decisions.
- Advise the City Commission and the City Manager on all matters including Policies and Procedures, Open Meetings, Inspection of Public Records, Elections, Procurement, Administrative Proceedings and Hearings, Meetings Rules, Personnel Matters, Tort, and Criminal Litigations matters that may arise.
- Provide general legal services to the City Commission, City Manager, and Authorized City Staff as needed.
- Research and submission of legal counsel on municipal or other legal matters as requested by the City Manager.
- Shall notify appropriate staff of new laws, legislative mandatory requirements or other when knowledge of such changes are incurred
- Draft and send basic correspondence to individual(s) upon request.
- Perform necessary legal research and prepare briefs when required.
- Review of matters relating to municipal utility operations.
- Advise Elected officials.
- Experience with New Mexico Local Government
- Employment Laws
- Timely response to inquiries

#### **Meeting Attendance**

- Participate in authorized Meetings and/or telephone conversations with Mayor, Commission Members, or City Manager for legal consultation.
- Attend, as requested, Commission Meetings to include, but not limited to, executive sessions, planning sessions, conferences, and department meetings and advise Mayor, City Commission, or City Manager on legal matters.

#### Resolutions, Codes, Ordinances, Policies

- Development and drafting of municipal codes, resolutions, ordinances, and rules and regulations relating to all facets of City operations as directed by the City Manager or the City Commission.
- Provision of legal review of policy recommendations, rules and regulations relating to all facets of City operations as directed by the City Manager or the City Commission.
- Render written opinions on law when requested, including interpretation of statutes, ordinances, rules and regulations.
- Provision of legal advice regarding land use and planning and zoning issues.
- Prepare and/or evaluate developer agreements and contracts, subdivision agreements.
- Subdivision, property and road experience.

- Prepare and/or evaluate documents necessary for routine land purchases and/or sales.
- Provision of legal advice on code enforcement and related issues.
- Representation of the City on economic development related issues as may be requested.
- Represent the City, when required, in matters related to the enforcement of City buildings, subdivisions, easements maintenance and zoning codes.
- Review ordinances, resolutions, bonds, deeds, securities, and insurance requirements required by or for the City as needed.

#### **Contracts and Procurement**

- Review Procurement documents as needed.
- Draft and review of municipal contracts, including contracts for lease agreements,
  Memorandums of Understanding, Memorandums of Agreement, Joint Powers Agreements,
  public improvements, developments, subdivisions, construction, and the approval of
  content, form, legality, and execution as requested.

#### Litigation

- Representation of the City before Courts of competent jurisdiction in any pending legal actions against the City or those initiated by the City.
- Prosecution of criminal matters in City Municipal Court.
- Representation of the City before administrative agencies when requested by the City Manager.
- Represent the City at all pre-trial motions when necessary.
- Draft and review Notices of Contemplated Actions.
- Provide written legal opinions and advise City on methods to avoid civil litigation.
- Examine and advise regarding the legality of all proceedings and actions of the City Commission as may be requested.
- Prepare criminal complaints where facts warrant.
- Receive and evaluate assessment appeals as deemed necessary.
- Preparation of trial.
- Negotiate and enter plea bargains where deemed advisable.
- Investigate and evaluate claims by the City against others and recommend appropriate course of action.
- Handle disputes between the City and other governmental units, including litigation as deemed necessary.
- Examine, evaluate, and provide representation for appeals to Appellate Courts.
- Prosecution of criminal matters in the City Municipal Courts.
- Defend in court litigation where insurance coverage is unavailable. This includes but is not limited to: human rights claims, condemnation, zoning and land use regulation matters, permits and administrative actions, administrative citations, code enforcement issues, labor and employment matters.
- Handle various legal matters under construction contracts and any resulting litigation.

#### **Employee Issues**

- Provision of legal advice or opinion in respect to personnel matters of the City.
- Attend grievance hearings if requested by the City Manager.

#### **Other Services**

• Perform other legal services as necessary to protect the city.

#### **Invoicing and Fees**

- Submit a monthly invoice to the City Manager that includes the service performed, the requester, the time involved, and the specific question or matter addressed.
- Provide all of the services listed above for an hourly rate as listed in contract.