

Amanda Forrister
Mayor

Rolf Hechler
Mayor Pro-Tem

Merry Jo Fahl
Commissioner



Destiny Mitchell
Commissioner

Shelly Harrelson
Commissioner

Bruce Swingle
City Manager

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REGULAR MEETING

THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3RD ST., ON WEDNESDAY, APRIL 26, 2023; 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. PUBLIC COMMENT (3 Minute Rule Applies)

D. REPORTS

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

E. CONSENT CALENDAR

1. Acknowledge Regular Planning & Zoning Minutes, March 13, 2023

F. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Resolution No. 40 22/23 Budget Adjustment Request. Kristie Wilson, Finance Director

F. ORDINANCES/RESOLUTIONS/ZONING Continued...

2. Discussion/Action: Resolution No. 41 22/23 Approval of a Planning & Zoning Commission Rules of Procedure Manual. City Attorney Rubin
3. Discussion/Action: Approval of Ordinance No. 747 an Ordinance authorizing the lease of real property (Sun State Towers III (ballfield site) pursuant to section 3-54-1 NMSA 1978. City Manager Swingle
4. Discussion/Action: Publication of the Repeal of Ordinance No. 748 of the City of Truth or Consequences, New Mexico. City Manager Swingle
5. Discussion/Action: Publication of Ordinance No. 750 an Ordinance authorizing the assignment of the lease of real property to American Tower (Kopra St. tower) pursuant to section 3-54-1 NMSA 1978. City Manager Swingle
6. Discussion/Action: Publication of Ordinance No. 751 an Ordinance authorizing the lease of real property to Tower Point (Water tank site on Pershing) pursuant to section 3-54-1 NMSA 1978. City Manager Swingle

G. NEW BUSINESS

1. Discussion/Action: Approval of the FY 2024 Tourism Marketing Proposed Plan. Joanie Griffin, Sunny 505
2. Discussion/Action: Variance/Special Use permit at 120 Winston, T or C, NM. Assistant City Manager Alvarez
3. Discussion/Action: Recommendation of Award for the Main Street District (MSD) Roadway and Drainage Improvements. Assistant City Manager Alvarez
4. Discussion/Action: Re-allocation request of the NM Department of Economic Development FY21 Capital Outlay Grant 419-A20E2046-2101. Assistant City Manager Alvarez

H. 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 MAY 10, 2023



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: April 26, 2023

Agenda Item #: E.1

SUBJECT: Acknowledge Regular Planning & Zoning Minutes, March 13, 2023.

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: April 20, 2023

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

WHO WILL PRESENT THE ITEM: Consent Calendar

Summary/Background:

Acknowledge Minutes.

Recommendation:

Acknowledge minutes.

Attachments:

Minutes

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): N/A

None.

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 4-26-23

**CITY OF TRUTH OR CONSEQUENCES
PLANNING & ZONING COMMISSION
MINUTES
Monday, MARCH 13, 2023**

REGULAR MEETING

Regular meeting of the Planning & Zoning Commission of the City of Truth or Consequences, New Mexico to be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, on Monday, March 13, 2023 at 4:00 p.m.

INTRODUCTION:

ROLL CALL:

Chris Sisney, Chairman
Susan Buhler, Vice Chairman
Esther Luchini, Member
Eduardo Alicea, Member - **ABSENT**

ALSO PRESENT:

Bruce Swingle, City Manager
Traci Alvarez, Assistant City Manager
Jay Rubin, City Attorney – Via Phone
Angela Torres, City Clerk
Lisa Gabaldon, Deputy Clerk

1. APPROVAL OF AGENDA

Chairman Sisney made a motion to approve the agenda.
Member Luchini seconded the motion.
Motion carried unanimously.

2. APPROVAL OF MINUTES:

- a) January 9, 2023
- b) February 13, 2023

Chairman Sisney made a motion to approve the minutes for both January 9, 2023 and February 13, 2023.
Vice Chairman Buhler seconded the motion.
Motion carried unanimously.

3. COMMENTS FROM THE PUBLIC (3 Minute Rule Applies)

No comments.

4. PUBLIC HEARINGS (5 Minute Rule Applies)

- a. Public Hearing/Discussion/Action – Request for a Special Use Permit at 804 N. Elm for the purpose of a Multi Animal Permit. Assistant City Manager Alvarez

Deputy Clerk Gabaldon swore in all who were present for the Public Hearing.

Assistant City Manager Alvarez: Chairman, members of the board the applicant submitted an application for a Special Use/Multi Animal Permit at 804 N. Elm Street. Application is for 5 dogs. Animal Control and Code Enforcement have inspected the residence and have approved the application. Both the applicant as well as animal control and code enforcement are here if you have any questions. With that, I stand for questions.

City Attorney Rubin: One question that I have, actually because I'm doing this by telephone is, I know that you swore in witnesses; is there anyone there that is opposed to this?

Deputy Clerk Gabaldon: No

City Attorney Rubin: There's no opposition?

Chairman Sisney: There is not Jay.

City Attorney Rubin: Ok. Is the applicant there?

Chairman Sisney: Yes

City Attorney Rubin: Alright, the applicant is actually a manager at McDonald's and my daughter works there; he the supervisor of my daughter. If there was opposition, I might have a potential conflict here, but there's no opposition, so I don't have to worry about it.

Chairman Sisney: Thank you Jay.

Vice-Chairman Buhler: Jay, one other question. My dad was sent a letter; apparently his property is close to there, but I don't think that he had any problems and I personally don't have any problems, but it was sent to my dad.

Chairman Sisney: Suzie Buhler is speaking, by the way.

City Attorney Rubin: Yah, its standard procedure and what should happen is that when there's an application for a public hearing then the City will then send copies of the notice to the parties that are in the vicinity of the area or have some interest in the proceedings.

Chairman Sisney: So, Jay, her question was her dad was on that list. She doesn't see any reason to recuse herself, do you?

City Attorney Rubin: I see, I see, well I guess your father has no objection to this, correct?

Vice-Chairman Buhler: Correct.

City Attorney: I would also assume that you have no interest in this matter financially and it's not your personal property or property rights, correct?

Vice-Chairman Buhler: Correct.

City Attorney Rubin: Well, sometimes I do get the opinion that there could be an appearance of impropriety but I don't think that we really have to go there in this particular case; there's clearly no interest that Ms. Buhler has so I think that she can sit on this thing.

Vice-Chairman Buhler: Thank you Jay.

Chairman Sisney: Thank you.

Assistant City Manager Alvarez: With that I stand for any questions. Applicants, code enforcements, and animal control are here to answer questions as well.

Member Luchini: This is a renewal, right?

Brandi Henderson: No, first time.

Assistant City Manager Alvarez: It's a new application.

Chairman Sisney: Animal control, is there any reason why this should not be approved?

Animal Control Officer Knull: No sir. As far as the inspection date, there was nothing of concern. I have not had a call to this property for dogs barking, running at large, cruelty, anything like that; everything as it stands is good to go and there's no concerns or anything like that that I have.

Chairman Sisney: Thank you Officer Knull, that's all I needed to know. Anyone else have any questions?

Member Luchini: How long have you had the fifth dog?

Brandi Henderson: Which dog are we talking about?

Member Luchini: Whatever the last dog to come.

Brandi Henderson: The last dog to come would've been Angel and I have had her for going on 3 years. She's a Chihuahua.

Vice-Chairman Buhler: Are they all fixed?

Brandi Henderson: They are all fixed.

Vice-Chairman Buhler: Very good.

Brandi Henderson: The 2 females are not marked as fixed because I got them fixed at CAATS and they never answered my email on getting me some kind of record that says that they were fixed, because I lost everything in a house fire. They're marked unfixed, but they are fixed.

Member Luchini: You've had her for 2 years, maybe? You have her a 2 years old...Angel.

Brandi Henderson: She's going on 3. I've lived at this house for 3 years so going on 3 years.

Member Luchini: You live at the home?

Brandi Henderson: Yes.

Member Luchini: And Sid is your husband?

Brandi Henderson: Husband, yes.

Member Luchini: And you're getting a permit now because you were not in compliance before?

Brandi Henderson: So the house that we lived at, we weren't in City limits so we didn't have one or didn't need one; so when that burned down, we came into City limits. We didn't have any issues. We had an issue with a neighbor's dog running at large so he said something about ours; we didn't know that we were supposed to get a permit so that's why we're doing that.

Member Luchini: Do you know the law or the ordinance or whatever it's called is 4 animals?

Brandi Henderson: Yes, well, I found that out.

Member Luchini: Ok, so in the future if one of these dogs passes away or...

Brandi Henderson: No more dogs.

Member Luchini: Ok.

Chairman Sisney: Does anyone else have any more questions? If not, would someone like to make a motion on this item?

Vice-Chairman Buhler made a motion that to approve a request for a special use permit for 804 N. Elm Street.

Chairman Sisney seconded the motion.

Roll call vote was taken. Chairman Sisney and Vice-Chairman Buhler: Aye. Member Luchini: No

Member Luchini: Off the record, why have a rule that only allow 4 animals. This is a new permit.

Chairman Sisney: She had the dogs before the rules in this case. And there's no complaints.

Brandi Henderson: Most of my dogs are rescue dogs, the only one that isn't is Jen, she is turning 5; she is my daughter's therapy dog, she helps with night terrors and stuff and her son unfortunately couldn't get rid of. I made sure everybody was fixed so I didn't have any more puppies running around because I don't like puppies; everybody loves puppies but they turn into big dogs.

Member Luchini: I appreciate all of the care that you give them and that you're responsible for them and that you're getting it done correctly now.

Assistant City Manager: Chairman & members of the board, just make sure that you're very familiar with the animal ordinance. The animal ordinance does not say that you're not allowed to have 4 animals period in the City; it says you're allowed to have up to 4 animals without having a special use permit. Anybody that wants to have more than 4 animals, needs to come to the Planning & Zoning Commission for a special use permit for between 4-7 animals. I just want to make sure that you have that clarification. The ordinance does not state that can't have more than 4 animals, it just gives us a guidance for what to do between 4-7 animals and how to proceed forward.

Member Luchini: Basically with all of these approvals of between 4-7 animals...

Assistant City Manager: Which is what the code says that the ordinance says they have to do it; if they have more than 4 animals, they have to go to the Planning & Zoning Commission for a multi-animals use permit so that we can start getting some type of information for animal control to have on hand that there's a large amount of animals and that way we can start regulating if complaints are coming in and that type of stuff. I just want that clarification because they are allowed to have more than 4 animals if they go through this process, that's what the code says.

Chairman Sisney: Thank you.

Vice-Chairman Buhler: Esther Sue, you can change your vote too, if you want to, it's up to you.

Chairman Sisney: It doesn't make a difference if you do or don't.

Member Luchini: Sure, I'll change it to I agree after the explanation.

Deputy Clerk Gabaldon: Motion carried unanimously.

City Attorney Rubin: I may not have heard the motion correctly. Did you put in there that we're voting to recommend to the City Commission for approval?

Vice-Chairman Buhler: Yes.

Chairman Sisney: Thank you for the clarification.

City Attorney Rubin: Also, I applaud Ms. Buhler for asking me about the issue of conflict of interest. You always have to think about these things very carefully. The key here is that Ms. Buhler advised us that her father didn't take a position one way or the other. If he was saying that he's a proponent or an opponent then my advice would have been different but since he was neutral in this I didn't see a conflict of interest.

Chairman Sisney: Thank you Mr. Rubin, I understand.

b. Public Hearing/Discussion/Action – Request for a Summary Plat Amendment at 1227 E. Riverside Drive. Assistant City Manager Alvarez

City Clerk Torres: So at this point Ms. Alvarez is already sworn in, is there anybody who would like to speak on this item?

Assistant City Manager Alvarez: The applicant is here.

City Clerk Torres: Our clerk will go ahead and swear you in at this time.

Deputy Clerk Gabaldon swore in the applicant.

Assistant City Manager Alvarez: Chairman & members of the board, this is for a summary plat amendment at 1227 E. Riverside. The applicant wishes to split the parcel. The parcel is located in the Riverside residential or the RR1 district. Both lots meet standards for the district. The amendment doesn't affect the impacts on any of our utilities, drainage, traffic and both parcels will have access to the City maintained street. Everything has been submitted and all fees have been paid. With that, I'll stand for questions. Our Applicant is in the audience as well.

Chairman Sisney: I have a question for the City on this. Chairman Sisney was asking about the blue line and the red lines on the drawing/map.

Assistant City Manager Alvarez: Chairman, I couldn't tell you the difference on those; it's a parcel map from the Sierra County Assessor's parcel and there lines don't necessarily match up on their parcel map. I do this for a visual so that you can see the property. I don't know what the lines mean; some of them have to do with the whole area, the township versus a parcel. The one that you need to look at for the lot lines is the actual summary plot that's in your agenda and it tells you the width each one of those parcels will be and that's the standard that you need to go by; not necessarily the lines that show up on the parcel. If you go on the Sierra County Assessor's website, those lines do not always line up; they have to adjust their imagery and everything like that, it's a whole new system.

Chairman Sisney: Is there an access between the lot lines. When you divide this, are you going to put a fence on it between the two properties?

Assistant City Manager Alvarez: I don't know that that's relevant Chairman, I'm not sure what the question for that would be. They're dividing a parcel; one parcel is going to be 50 wide at the narrow and it'll 58 on the backside. And then the other one would be 54 and 54; that meets the requirements of the standards for that district for the width.

Chairman Sisney: Right, but it doesn't take into consideration the easement between the property line and building, and that's the question that I'm asking.

Assistant City Manager Alvarez: So the buildings fit within the allowable amounts for their setbacks.

Vice-Chairman Buhler: What's the setback for that?

Assistant City Manager Alvarez: It's probably a 25 from the Riverside on the front and then usually it's a 5 foot side with a 10 or 15 in the back, depending on the district.

Chairman Sisney: Ok, it's going to take me a little while to figure out if there's 5 feet on each side of this building from this drawing, it's not clear.

Judah Mondello: There is 5 feet on all side of the buildings.

Chairman Sisney: How much is there on each side?

Judah Mondello: Probably one building is at least 5-6, the other side is around 10. On the parcel 2 it's a 5 foot on both sides of that house. And then on parcel one, it's a lot bigger. Parcel 2 has maybe 5-6 feet on both sides of that house.

Chairman Sisney: So will you be putting a fence between the two properties?

Judah Mondello: I might sell one and I would fence it so there would be a clear definition.

Chairman Sisney: so you're planning on holding onto both parcels?

Judah Mondello: Yah, right. I would live in one now and fix the other one up for something in case I wanna sell, it'll be ready.

Chairman Sisney: Alright, I didn't see the utilities recommendation for the utility company. Do you have separate utilities at both properties now?

Judah Mondello: No, I don't have separate utilities at the properties. It's all on one, so that's what I'm working on, so once it's approved then I've already contacted them for a new sewer with the City. I want to get this approved so then I can get separate utilities.

Vice-Chairman Buhler: What is on the other property? A trailer?

Judah Mondello: It's a house.

Vice-Chairman Buhler: It's 2 houses? So a house on one side and a house on the other?

Judah Mondello: Yes.

Chairman Sisney: Alright, thank you for the information. Does anyone else have any questions for anyone?

Chairman Sisney made a motion to approve this request and forward it on to the City Council.

Member Luchini seconded the motion.

Roll call vote was taken by Deputy Clerk Gabaldon.

Motion carried unanimously.

5. NEW BUSINESS:

- a) Discussion/Action – Planning of the creation of a Planning & Zoning Commission Rules of Procedure Manual. Susan Buhler

Vice-Chairman Buhler suggested to set up a meeting/workshop in favor of adopting rules of procedure for the City Commission to consider.

City Clerk Torres suggested that Deputy Clerk Gabaldon look at the calendar to see what date looks good to the board and set up a meeting for the workshop. She went on to say that she will have to advertise for the workshop.

City Attorney Rubin thanked Susan Buhler for bringing this item to their attention. He went on to say that he is in favor of the workshop but for a different reason than what she is articulating. When you have your public hearings at the Planning & Zoning level and then it goes to the City Commission and then the City Commission will actually review the minutes to actually see what happened at the Planning & Zoning level before they will make a decision. I want to ensure himself that the Planning & Zoning board followed a due process procedure when they have public hearings. The reason why you think that is because when the City Commission makes a ruling that one of the parties disagrees with and end up in district court, the district judge will ask him what procedure was followed here, and I want to be able to say that the Planning & Zoning board looked at this and here are the rules of procedure that they have and here's what was done. Something to keep in mind, the City Commission actually has rules of procedure which includes some discussion of public hearings; it's not as detailed as what you have here from Sandoval County but there are some rules in there. Although the City Commission never adopted this, when the City Commission is handling public hearings for Planning & Zoning matters, we're following what is called the Battershell Process. The Battershell Process is similar but not exact to the rules of procedure which are discussed here, so an idea might be that the City Commission would have the final say so on what the rulings are going to be after they get a recommendation from you, it might make sense for us to put this on the agenda at the City Commission level and let them know that

we want to adopt rules for the Planning & Zoning and he can put something together from the Battershell Process we've been talking about, the rules of procedure from the City Commission and get the City Commissioners on board and then once they are ok with that, then we can schedule your workshop at your level.

Vice Chairman Buhler stated that she thinks that's a good idea but she does think that they should have some input in it too. They should be able to reconsider, they should be able to table an item for lack of evidence or information or whatever, and they should have some say. She doesn't have any problem with the City Commission, they're the ultimate people anyway, but they should have some say. She thinks they should have Robert's Rules.

City Attorney Rubin reiterated that he thinks they should get the City Commission involved. Sandoval County rules are not quite the Battershell Process but there is some good stuff. He agrees that the Commission will take action that they should put together rules and that they should have their input.

Vice-Chairman Buhler stated that if they don't have rules then there's really no reason for them to be there.

City Attorney Rubin stated that he doesn't disagree with that. He thinks that they should put it on the agenda for the next City Commission meeting and let them know that the board is wanting to do this. You can take action tonight to recommend that they enact these rules of procedure for Planning & Zoning.

Vice-Chairman Buhler stated that she wants to be positive that it would be accepted and that people would vote for that.

City Attorney Rubin stated that his recommendation is for the City Commission to instruct them to prepare rules of procedure for the Planning & Zoning.

Vice-Chairman Buhler asked if he would propose that the Sandoval County with maybe a little bit of fine tuning, you would submit that to them to look over.

City Clerk Torres stated that she doesn't think that they would necessarily submit anything to them at this point. What Jay is saying is we just want to bring it to their attention and let them know that you guys are wanting to have a workshop and that you guys are going to work on something, just to make sure that they're on board so that you guys don't go through all of that work and then they don't approve it. At this point, we won't have anything submitted to the Commission because you guys really don't have anything to work with. I know that you do want to go with this, but you guys might make changes to it too. I do want you to put the section 11-2-2 into it since it is already adopted in our City code, so at this point, we're just going to go ahead and make the Commission aware of it and not submit anything.

City Attorney Rubin assured the board that he will let them be aware that they did submit these rules from Sandoval County; we do like some of the stuff in here and that will give him a chance to compare them to our Battershell Rules that they're been following.

Member Luchini stated that she sees his point and she agrees.

Vice-Chairman Buhler stated that all that they are is a recommendation anyway. She stated that she is going to become real stiff if they can't table something, if they don't have some Robert's Rules in here that they can follow.

City Clerk Torres advised the board that they are allowed to table stuff.

Vice-Chairman Buhler stated she was told that they weren't allowed to table stuff for the lawsuit for the Mayor.

City Clerk Torres answered that it has to pertain to the item that is presented to the board.

Vice-Chairman Buhler stated that if she had it to do over again, she would have brought up that they did not see the animals; we had no knowledge of the condition of the animals.

Assistant City Manager Alvarez stated that the permit wasn't for the animals, the permit was for the kennel. The animals aren't always the same animals on site for the kennel.

Vice-Chairman Buhler stated even still they have a responsibility that animals are well cared for; it's in the deal and I've read it.

Assistant City Manager Alvarez stated that she understood that but maybe when they do the workshops maybe Jay can come and they could get some really good clarification on what you're approving versus what...

City Clerk Torres stated that a kennel permit versus a multi-animal because they're two different things.

Vice-Chairman Buhler stated that right now they really don't have any rules and they really need them. Everyone else operates under rules and if you don't have rules it's the jungle.

City Clerk Torres stated that she's not opposed to that, she just wants to let the board know that they can table stuff, just on that particular item that she's referring to, the reason why they couldn't it like you wanted to is because what you're wanting to table it for had nothing to do with what was being presented.

Assistant City Manager Alvarez mentioned that the only thing she would ask on tabling is just to take into consideration, first of all, anytime you get your agenda packets, if you have questions or concerns please reach out to her and she would be happy to help address them before the meeting but on the public hearing notices if you table an item, that means it's an additional cost to the City because now we have to re-mail out all of the certified letters and then it has to be another 15 days, the applicant has sometimes already waited 90 days and they're trying to get through a sale, her only request is that if it's something that she can answer beforehand or get the information to bring to the meeting, please let her know because she's much rather do that than have to put out more money for certified mailings when the general fund is also already really tight. Also, having to put the applicant off for a whole other month or so behind, because we have to have a minimum of a 15 day notice for a public hearing, and then we have to wait for it to coincide, get the minutes done and for it to go to the City Commission meeting for final approval, so that really delays the process for them if it can be answered and not tabled. She hates tabling public hearings.

Vice-Chairman Buhler stated that's why she wanted to be able to vote today for the people that wanted the permit because otherwise it's another deal. But there are going to be some things with the town growing the way it is and things happening, there's going to be lots of things coming forward and she wants to make sure that when she approves something, that she has all of the facts and that she feels good about it. Not that she goes home and feels like she's behind the 8 ball somehow.

City Clerk Torres stated that rules of procedure is a very good idea.

Vice-Chairman Buhler made a motion that they recommend to the City Council to adopt rules of policy and procedure for the Planning & Zoning Commission.
Chairman Sisney seconded the motion.
Motion carried unanimously.

6. REPORTS FROM THE BOARD

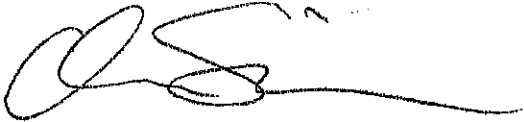
Nothing to report at this time.

7. REPORTS FROM STAFF

Nothing to report at this time.

8. ADJOURNMENT

Chairman Sisney made a motion to adjourn the meeting.
Member Luchini seconded the motion.
Motion carried unanimously.

A handwritten signature in black ink, appearing to be 'Sisney', with a long horizontal line extending to the right.



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: April 26, 2023

Agenda Item #: F.1

SUBJECT: Resolution No. 40 22/23 Budget Adjustment Request

DEPARTMENT: Finance Department

DATE SUBMITTED: April 26, 2023

SUBMITTED BY: Kristie Wilson, Finance Director

WHO WILL PRESENT THE ITEM: Kristie Wilson, 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. 40 22/23 Budget Adjustment Requests for Fiscal Year 2022-2023

Attachments:

Resolution No 40 22/23

- Schedule of Budget Adjustments, Supporting Documentation

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

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 4-26-2023



RESOLUTION NO. 40 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 **26th day of April, 2023**.

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

For Local Government Division use only:

ENTITY NAME: City of Truth or Consequences
FISCAL YEAR: 2022-23 4/26/2023
DFA Resolution Number: 40 22/23
BAR NUMBER 11

DOCUMENT NUMBER	FUND	ACCOUNT STRING	ACCOUNT NAME	REVENUE, EXPENDITURE, or TRANSFER (TO or FROM)	APPROVED BUDGET	ADJUSTMENT / INCREASE	ADJUSTMENT / DECREASE	ADJUSTED BUDGET	PURPOSE
1	101	101-1099-32380	Local/State Grants/Loans JJAC Grants	Revenue	\$ 213,000	\$ 449,019.00	\$ -	\$ 662,019	Grant #22ZG1023-7 Ralph Edwards Park Improvements
1	101	101-1009-80845	Capital Improvements Equipment	Expense	\$ 213,000	\$ 449,019.00		\$ 662,019	Ralph Edwards Park Improvements
2	403	403-1203-90810	Debt Service Interest	Expense	\$ 177,483	\$ 30,000.00		\$ 207,483	Increase Interest Debt due to loan interest
2	504	504-3803-49830	Transfer Out	Expense	\$ 654,541	\$ 30,000.00		\$ 684,541	Transfer out to Debt Service Interest
2	403	403-1203-39835	Transfer In	Revenue	\$ 571,392	\$ 30,000.00		\$ 601,392	Transfer in from Water for Interest

ATTEST:

Angela Torres, Clerk-Treasur (Date)

Amanda Forrister, Mayor

(Date)

MICHELLE LUJAN GRISHAM
GOVERNOR



DEBORAH K. ROMERO
CABINET SECRETARY

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION
Bataan Memorial Building ♦ 407 Galisteo St. ♦ Suite 202 ♦ Santa Fe, NM 87501
PHONE (505) 827-4950 ♦ FAX (505) 827-4948

December 20, 2022

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

RE: Regional Recreation Centers/Quality of Life Grant

Dear Mayor Amanda Forrister:

On behalf of the State of New Mexico, please accept this as your notice of award of funding from the Regional Recreation Centers/Quality of Life Grant in the amount of \$449,019.00.

A grant agreement will be issued between the state of New Mexico, Department of Finance and Administration, Local Government Division, and your local entity in January 2023.

It is further understood that as a subrecipient of these federal funds a training will be provided to further outline the requirements of this funding and your responsibilities.

If you have any questions or concerns, please contact Lynda Martinez, Project Manager at Lynda.Martinez@dfa.nm.gov or Carmen Morin, CDB Bureau Chief at CarmenB.Morin@dfa.nm.gov.

Respectfully,

DocuSigned by:

Deborah K. Romero

DCA2D2A1284C454

Deborah K. Romero

Cabinet Secretary

Department of Finance and Administration

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
REGIONAL RECREATION CENTERS/QUALITY OF LIFE GRANT EXHIBIT 2

Notice of Obligation to Reimburse Grantee # 1

DATE: 4/13/23

TO: Department Representative: Alison Gillette, Project Manager

FROM: Grantee Entity: City of Truth or Consequences

Grantee Official Representative: Traci Alvarez, Assistant City Manager

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: 22-ZG1023-7

Grant Termination Date: 6/30/25

As the designated representative of the Department for Grant Agreement number 22-ZG1023-7 entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: Cooperative Education Services (Creative Recreational Designs #17-011AN-C142-ALL)

Third Party Obligation Amount: \$ 158,611.75

Vendor or Contractor: Cooperative Education Services (ECL Enterprises, Inc. #2020-04N-C108-4)

Third Party Obligation Amount: \$ 81,375.00

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

Grant Amount: \$ 449,019.00

The Amount of this Notice of Obligation: \$ 239,986.75

The Total Amount of all Previously Issued Notices of Obligation: \$ 0.00

The Total Amount of all Notices of Obligation to Date: \$ 239,986.75

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: Alison Gillette

Title: Project Manager

Signature: _____

Date: _____

403-1203-90910		Fiscal		Balance		135 692.13			
DEBT SERVICE INTEREST		7/1/2022 - 6/30/2023		Pending		0.00			
General	Post Date	Packet	Description	Amount	Module	Process	Period	Vendor Name	Cash Transact
Segmentation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> interest payment	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Report Groups	7/15/2022	GLPKT15085	INTEREST PAYMENTS MSD WATER SYS IMP LOAN	4,537.74	Accounts Payabl	APPayable	July	BANK OF THE S	
Notes	8/17/2022	GLPKT15298	INTEREST PAYMENTS MSD WATER SYS IMP LOAN	4,678.20	Accounts Payabl	APPayable	August	BANK OF THE S	
Authorization	9/16/2022	GLPKT15539	INTEREST PAYMENTS MSD WATER SYS IMP LOAN	4,685.33	Accounts Payabl	APPayable	September	BANK OF THE S	
Budget	10/14/2022	GLPKT15706	INTEREST PAYMENTS MSD WATER SYS IMP LOAN	4,612.96	Accounts Payabl	APPayable	October	BANK OF THE S	
Summary	11/10/2022	GLPKT15895	INTEREST PAYMENTS MSD WATER SYS IMP LOAN	4,882.81	Accounts Payabl	APPayable	November	BANK OF THE S	
Detail	12/14/2022	GLPKT16092	INTEREST PAYMENTS MSD WATER SYS IMP LOAN	4,788.86	Accounts Payabl	APPayable	December	BANK OF THE S	
Period Distributio	1/10/2023	GLPKT16260	INTEREST PAYMENTS MSD WATER SYS IMP LOAN	7,117.47	Accounts Payabl	APPayable	January	BANK OF THE S	
Adjustments	2/14/2023	GLPKT16475	INTEREST PAYMENTS MSD WATER SYS IMP LOAN	9,358.97	Accounts Payabl	APPayable	February	BANK OF THE S	
Budget Notes	3/14/2023	GLPKT16686	INTEREST PAYMENTS MSD WATER SYS IMP LOAN	8,036.29	Accounts Payabl	APPayable	March	BANK OF THE S	
History	4/17/2023	GLPKT16875	INTEREST PAYMENTS MSD WATER SYS IMP LOAN	11,340.87	Accounts Payabl	APPayable	April	BANK OF THE S	
Totals				64,039.50					

**CITY OF TRUTH OR CONSEQUENCES**

505 Sims St.

Truth or Consequences, NM 87901

PH: (575) 894-6673

FAX: (575) 894-0363

PURCHASE ORDER

PO Number: 76487

Date: 07/01/2022

Requisition #: 87649

Vendor #: 2172

ISSUED TO: BANK OF THE SOUTHWEST
AT T. OR C.
P.O. BOX 872
T. OR C., NM 87901

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

ITEM	UNITS	VENDOR PART	DESCRIPTION	PLANT /	PROJECT /	PRICE	AMOUNT
1	0		INTEREST PAYMENTS MSD WATER SYS IMP LOAN 403-1203-90910 INTERIM LOAN FOR MSD WATER SYSTEM IMPROVEMENTS. USDA WILL ASSUME LOAN UPON COMPLETION COMMISSION APPROVED 6/22/22			0.00	55,200.00

SUBTOTAL:	55,200.00
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	55,200.00

Chief Purchasing Office

Date:

7/1/22

Director of Finance:

Requisition approved electronically.

City Manager:

Requisition approved electronically.

1. Send INVOICE to Accounts Payable, address as noted above.
2. Prepay all transportation charges, and attach recalc'd freight bill to invoice.
3. Show our Purchase Order number on all invoices, Bills of Lading, Packages, etc.
4. This order must NOT be filled in greater or lesser quantities than shown without our written permission.
5. This order is issued with the understanding that if material is not according to our specifications, same will be returned at seller's expense.
6. The right is reserved to cancel this order if not filled within a reasonable length of time.
7. The City is exempt from all federal excise and state tax - ID# 01-405755-007



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: April 26, 2023

Agenda Item #: F.2

SUBJECT: Resolution No. 41 22/23 Approval of a Planning & Zoning Commission Rules of Procedure Manual

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: April 19, 2023

SUBMITTED BY: Angela A. Torres, Clerk-Treasurer

WHO WILL PRESENT THE ITEM: City Attorney Rubin

Summary/Background:

On March 13, 2023, the Planning & Zoning Commission requested the implementation of a rules of procedure manual for their board. The request was reviewed by the Governing Body on March 22nd and they requested that City Attorney Rubin prepare a manual for the board. On April 10, 2023 the board recommended the adoption of the Planning & Zoning Commission Rules of Procedure Manual prepared by City Attorney Rubin, and now it is being brought before the governing body for final adoption.

Recommendation:

- Approval of Proposed P & Z Rules of Procedure Manual

Attachments:

- P & Z Rules of Procedure Manual
- Chapter XII Complying with Battershell Procedures
- City of T or C Battershell Procedures

Fiscal Impact (Finance): No

\$0.00

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 4-26-2023



CITY OF TRUTH OR CONSEQUENCES

RESOLUTION NO. 41 22/23

RESOLUTION ADOPTING RULES OF PROCEDURE FOR THE CITY OF TRUTH OR CONSEQUENCES, PLANNING AND ZONING COMMISSION

WHEREAS, the City Commission finds it necessary and desirable to adopt Rules of Procedure for the City of Truth or Consequences Planning and Zoning Commission, and

WHEREAS, the Powers and duties of the City Planning and Zoning Commission are set forth in the City Code of Ordinances in Section 11-2-2, et seq. The specific powers and duties are described in 11-2-2(c). The purpose of these rules are to facilitate the implementation of the aforesaid ordinances.

NOW THEREFORE, BE IT RESOLVED that the following Rules and Procedure are adopted for the City's Planning and Zoning Commission:

I. General Rules of Conduct and Procedures

1. A Planning & Zoning Commissioner shall not engage in Ex Parte communication about any filed or prospective application requiring a quasi-judicial proceeding with any person or organization interested in such an application. For purposes of these rules, an *ex parte* communication shall be defined as a substantive communication, outside the public hearing process, between a member of the Planning & Zoning Commission and any member of the public. Ex Parte communication by a Planning & Zoning Commissioner shall be grounds for recusal.
2. Any material received by a Planning & Zoning Commissioner from any person or organization concerning an issue that may be considered by the Commission shall be forwarded to the Planning and Zoning staff for distribution to the Planning & Zoning Commission.
3. In quasi-judicial proceedings, all communications, written or verbal, with Planning & Zoning Commission must be made through the Planning and Zoning staff, not directly with any member of the Planning & Zoning Commission.
4. Planning & Zoning Commissioners shall not conduct independent fact finding investigations for any property that is subject to quasi-judicial proceedings before the Planning & Zoning Commission. However, driving by the subject property to familiarize themselves with the

location and environs of such property does not constitute an independent fact finding investigation and is permitted.

5. Planning & Zoning Commissioners shall confine their remarks to the question under discussion or debate, avoiding personalities. No Planning & Zoning Commissioner shall engage in private discourse or commit any other act tending to distract the attention of the Planning & Zoning Commission from the business before it.
6. Actions by the Commission are in the form of an approved motion. No motions shall be entertained or debated until announced by the Chair, and every motion shall be seconded to be considered for action. The following additional motion(s) may also be propounded:
 - a) To reconsider
 - b) To table an item in order to conduct a further investigation of relevant items
 - c) To move the previous question
 - d) To postpone to a time certain (to defer)
 - e) To amend or substitute
 - f) To postpone indefinitely
 - g) To adjourn
 - h) To recess
 - i) Any other motion

7. Voting

The votes during all Planning & Zoning Commission meetings should be transacted as follows:

- a) Except for the election of the Chair and Vice Chair, when the chair calls for a vote on a motion, every member, in the Commission Chambers, must give his/her vote.
- b) The passage of any motion shall require the affirmative vote of at least a majority of a quorum of the entire Planning & Zoning Commission. In case of a tie in votes on any proposal, the proposal shall be considered lost.
- c) The New Mexico Zoning Act (3-21-1 et. seq.) requires certain votes of the Planning & Zoning Commission to be determined by more than simple majority of the Planning & Zoning Commission's quorum (e.g. 3-21-6; 3-21-14).
- d) Planning & Zoning Commission shall be allowed to change his/her vote, but only before the result has been announced.
- e) Any Planning & Zoning Commissioner shall have the right to express dissent from, or protests against, any item being acted on by the Planning & Zoning Commission, and to have the reason therefore entered in the minutes.
- f) If a motion is not carried by at least a majority of Planning & Zoning Commission's quorum, the proposal shall be considered lost.
- g) A record of each Planning & Zoning Commissioners vote shall be entered in the minutes of each meeting.

8. Agendas

- a) The City Administration and the City Clerk shall prepare and disseminate the agenda.
- b) A copy of the agenda and supporting materials shall be prepared for Commissioners and made available to them within a reasonable time before the hearing but no later than 72 hours prior to the Regular Administrative hearing. The agenda, as well as supporting documents that are a part of agenda documentation, shall be available for review.
- c) Planning & Zoning Commissioners shall attend meetings prepared to conduct business. This shall include a diligent review of the agenda packet before the meetings.
- d) Attendance at meetings and punctuality are of paramount importance. If a Commissioner is more than fifteen (15) minutes late for a meeting, and such Commissioner's attendance is required in order to achieve a quorum, such meeting shall be canceled. Where practical, the agenda items will be assigned to the City Commission's agenda for their next regular meeting.

II. Public Meeting Procedure

All Public Hearings shall be conducted in accordance with the "Battershell Procedure" which is attached hereto as **EXHIBIT 1**.

In order to facilitate compliance with the Battershell Procedure, the City Commission has also included a publication known as "Complying with Battershell", which is attached hereto as **EXHIBIT 2**.

PASSED, APPROVED AND ADOPTED this 26th day of April, 2023.

Amanda Forrister, Mayor

ATTEST:

Angela A. Torres, City Clerk

CHAPTER XIII

COMPLYING WITH *BATTERSHELL*

In 1989, the Court of Appeals in New Mexico decided *Battershell v. City of Albuquerque* 108 N.M. 658, 777 P.2d 386 (Ct. App. 1989) which expanded a long line of cases dealing with Due Process requirements in land use decisions. *Duke City Lumber v. Environmental Improvement Division* 95 N.M. 401, 622 P.2d 709 (Ct. App. 1980) was one of the first of such decisions. In *Duke City*, the Court of Appeals announced a new definition for "quasi judicial":

Quasi-judicial is a term applied to administrative boards or officers empowered to investigate facts, weigh evidence, and draw conclusions as a basis for official actions.

There is no question that planning and zoning commissions engage in such activities when considering special exemptions, variances, and conditional uses, it is less clear when large scale zone changes are considered. What does this mean for planning and zoning commissions?

New Mexico courts have consistently required that procedural due process be afforded the parties before an administrative body acting in an adjudicatory or quasi-judicial role. In affording procedural due process, the body must swear the witnesses and provide for cross examination of witnesses. The body must also avoid *ex parte* contacts that would improperly interfere with its role. In addition, all evidence that is presented and admitted into the record must be considered by the body.

A. Swearing of Witnesses

Battershell made it clear that in quasi judicial proceedings, any person giving testimony will be required to do so under oath or affirmation. Although it is far from a unanimous position among the several states, the general rule with respect to zoning hearings is that witnesses should be sworn, and their testimony taken only on an oath or affirmation. The purpose for the oath is to awaken the witnesses' conscience and impress the witnesses' mind with the duty to tell the truth in both direct testimony and cross examination. See SCRA 11-603. *Duke City* was the first case to hold that witnesses before quasi judicial bodies must be sworn:

Under NMSA 1978, Evid. R. 603, every witness, before testifying, must declare by oath or affirmation that he will do so truthfully. The parties have not cited us to any authority in New Mexico exempting witnesses at an administrative hearing from that rule, and we have found none.

The Hearing Examiner or Commission may, in its discretion impose reasonable limitations on the number of witnesses to be heard, and on the nature and length of their testimony.

B. Cross Examination

The cross examination of all witnesses giving testimony is another essential element of procedural due process. In *Battershell*, the Albuquerque EPC denied the parties the right of cross examination. The Court of Appeals held that it was error for the EPC to refuse to permit reasonable cross examination of witnesses. This does not mean that an exhaustive, long-winded and comprehensive cross examination is required. A

reasonable opportunity to confront and cross examine witnesses is all that is required by the Due Process Clause. In conducting the hearing, the body need not adhere strictly to the evidentiary standards applied by a court for examination and cross examination, but the body must adhere to the fundamental principles of fairness and due process. A reasonable opportunity to cross examine involves the right to ask questions bearing on the testimony presented or the position taken by the witness. It might include exploration of motivation or bias on the part of the witness, and might even touch on issues involving conflicts of interest. Cross examination must always be conducted politely and professionally; a witness should never be subjected to badgering or unreasonable attack by the cross examiner.

The Hearing Examiner or Commission may, in its discretion impose reasonable limitations on the number of people entitled to cross examine witnesses (may be limited to parties only) and on the nature and length of their cross examination.

C. Parties

It is important, for a variety of reasons for the Hearing Examiner or Commission to determine who the parties are early in the proceedings, preferably before the commencement of the hearing. In an effort to streamline the hearing process it is permissible to limit the right of cross examination to interested people designated as parties. A person who is a party is also entitled, as a matter of law to receive a copy of the written decision and order of the Commission. Parties may also be afforded extra presentation time over those individuals who simply want to state their support or opposition to a proposed project or measure.

A party may include the applicant, or his/her agent or representative, an owner of property located within a short distance of the property that is the subject of the hearing (usually within 100 feet), an organized neighborhood association that has adopted by-laws and that includes the area affected by the hearing or land within 100 feet, the municipality or county, and any other people or organizations that can demonstrate a significant interest in the subject matter of the hearing. This interest may be pecuniary or some other direct interest in the outcome of the hearing. The decision concerning whether a person is a party is going to rest largely on the level of participation and involvement of the particular individual.

A Hearing Examiner or Commission should first undertake to establish who the respective parties to the hearing are in order to properly preserve the parties right to participate in the hearing. Non-parties to the hearing will still be entitled to express their views and opinions on the proposed action that is the subject of the public hearing, they simply may not have the opportunity to cross examine other witnesses and may not be automatically entitled to receipt of the final written decision of the Commission.

D. *Ex Parte* Communications

Ex Parte communications by, with, or among Commissioners is strictly prohibited during the pendency of quasi-judicial matters. The prohibition against *ex parte* communications is not applicable if the decision making process is Legislative in nature.

1. An *ex parte* communication is any communication, whether oral or written that:

- a) Involves fewer than all the parties having a legal interest in the matter;
 - b) is about a pending or impending matter within the jurisdiction of the administrative body;
 - c) made to or initiated by a commission member having jurisdiction over the matter;
2. An *ex parte* communication may include:
- a) communications with people involved in the subject matter pending before the commission;
 - b) communications with people not involved in the pending matter at all;
 - c) independent investigations such as visiting the site proposed for development;
 - d) communications made with the best of intentions.
3. Permissible *ex parte* communications include:
- a) communications for the purpose of scheduling, administrative matters or emergency purposes;
 - b) communications with the municipal attorney;
 - c) communications with commission staff (if any)

NOTE: This is not to be confused with communications with the municipal planning and zoning department; which usually has a position on planning and zoning matters and with whom such *ex parte* communications would be IMPERMISSIBLE.

4. *Ex Parte* communications are prohibited for a variety of reasons:

- a) It is not fair to the other party because the decision maker may be improperly influenced;
- b) It is not fair to the other party because the decision maker may be inaccurately informed;
- c) It is not fair to the other party because the decision maker is only provided with one side of the issue;
- d) In the absence of actual influence or misinformation, the other side may nevertheless feel cheated and believe the proceedings have been tainted;
- e) The commission can acquire a reputation for being susceptible to improper influence;
- f) Improper *ex parte* communications can invalidate the actions of the commission.

E. Sample Provisions for Implementation of *Battershell* Proceedings

1. Designation of Parties

The Hearing Examiner or Chair of the Commission should determine, prior to the commencement of the hearing, the parties to the hearing, because the parties will be afforded certain rights that do not extend to other participants. Clearly announce that the applicant or the applicant's agent or representative as well as the municipality are parties to the hearing. Other people may be designated as parties by the Hearing Examiner or Commission if they can demonstrate eligibility.

2. Testimony under oath. All people (other than New Mexico licensed attorneys appearing on behalf of a client and presenting only legal arguments) giving testimony before the Commission shall be sworn in under oath before the proceeding by the Commission Administrator, Commission staff member, Chairman of the Commission, or other qualified notary public, and shall be obligated thereby to testify in a truthful manner. To assist in the orderly presentation of evidence, people giving testimony will be divided into three groups: (1) proponents; (2) opponents; and (3) interested people. To further assist in the orderly presentation of testimony and preparation of the minutes of the Commission, all people wishing to testify, (as well as attorneys representing clients) will be required to provide their names and addresses in written form to the Commission staff prior to being permitted to testify or address the Commission.

3. Manner of presentations to the Commission.

a) Applicants. Applicants are asked to address and explain the material which is the subject of their application in a succinct manner, confining their comments to matters relevant to the application and the Commission's jurisdiction and decision making responsibilities. At the conclusion of the applicant's testimony, Commissioners may question the applicant to assist in the Commissioner's understanding of the matter to be considered. This may be followed by cross examination by municipal staff. Following questions by the Commissioners and staff, other parties may pose questions in the nature of cross examination to the applicant. (NO TESTIMONY WILL BE TAKEN AT THIS TIME).
If the Commission has not restricted the right of cross examination to parties,

members of the public may pose questions to the applicant. If the right of cross examination is reserved to parties, omit this final step]

b) **Staff.** Municipal staff will present their direct testimony and position with respect to the application or matter at hand. In the same manner, the staff will stand for questions by the Commissioners and cross examination by the applicant and other parties. [Some Commission have staff proceed first to set out the issues for the Commission. This is in the discretion of the Commission]

c) **Opponents.** Opponents to the application will proceed with their direct testimony. In the same manner, the opponents will stand for questions by the Commissioners and cross examination by the staff, applicant and other parties.

d) **Members of the public.** Similarly, any interested member of the public may make a statement concerning the application pending before the Commission. Anyone making such a statement will be sworn, and subject to questioning by members of the Commission, staff, the applicant, opponents and other parties to the hearing.

e) **All people giving testimony.** All testimony and all questioning of witnesses will be confined to matters relevant to the application pending before the Commission and the Commission's decision making authority concerning the pending application. No questions shall be asked of any individual Commissioner by applicants or others testifying before the Commission except through the Chair of the Commission. All people participating in the proceedings are expected to conduct themselves in a courteous manner,

4. Evidence. The Chair of the Commission shall mark for Identification and enter into evidence, to be made a part of the record, any relevant written document tendered by any person during the course of the proceedings.

CITY OF TRUTH OR CONSEQUENCES NEW MEXICO

BATTERSHELL PROCEDURE FOR PUBLIC HEARINGS BEFORE THE CITY PLANNING AND ZONING COMMISSION

The agenda item referencing this procedure requires that the City Planning and Zoning (P & Z) Commission hold a hearing where it acts in an adjudicatory or quasi-judicial role as to the matter being brought before it. While acting in such role, the City P & Z Commission is required to afford parties appearing before it, procedural due process. Procedural due process requires that City P & Z Commission swear the witnesses and provide for cross examination of witnesses. This does not mean, however, that an exhaustive, long-winded and comprehensive cross examination is required. A reasonable opportunity to confront and cross examine witnesses is all that is required by the Due Process Clause. The City P & Z Commission must also avoid ex-parte contacts. Further, all evidence that is presented and admitted into evidence must be considered by the City P & Z Commission. The role of the City P & Z Commission is to serve as unbiased decision makers. The hearing is intended to protect the due process rights of all parties and to provide for the orderly conduct of the hearing.

The following procedures are mandated by the New Mexico Court of Appeals in the case styled as *Battershell v. City of Albuquerque*, 108 N.M. 658, 777 P.2d 386 (Ct. App. 1989) and will apply only to the agenda item referencing this procedure.

Presiding Officer

In order to assist in the orderly conduct of the hearing, the Chairperson, or in his/her absence, the Vice-Chair, shall serve as the presiding officer who will ensure that the hearing is followed and enter into evidence any relevant written document tendered by any person during the course of the proceedings. No questions shall be asked of any individual Commissioners except through the Chairperson serving as presiding officer. It is the duty of the presiding officer to keep the questioning and testimony on track and to avoid irrelevant issues and endless repetition of the same arguments or testimony.

Testimony Limited To Subject Matter

Testimony will be limited to the relevant matter of the agenda item referencing this procedure.

Cross Examination

Cross examination should always be conducted politely and professionally; a witness should not be subjected to badgering or unreasonable attack by the cross examiner.

Oath

The Chairperson, Clerk, or a duly authorized designee, shall conduct the oath on all witnesses substantively as follows:

"Do you swear to tell the truth, the whole truth, and nothing but the truth"

To assist in the preparation of the minutes of the City P & Z Commission meeting, all persons wishing to testify, (as well as attorneys representing clients) shall be required to state their name and address to City P & Z Commission prior to being permitted to testify or address City P & Z Commission.

Protocol

In order to assist in the orderly presentation of evidence, people giving testimony will be divided into four (4) groups: (1) staff, (2) proponents, (3) opponents, and (4) public.

STAFF PRESENTATION:

- Staff is sworn in
- Staff presentation
- Commission questions staff to assist in their understanding of the matter to be considered
- Proponents may cross-examine staff
- Opponents may cross-examine staff
- Continue same process for each individual staff member

PROPOSERS PRESENTATION:

- Proponents are sworn in
- Proponents presentation
- Commission questions the proponents to assist in their understanding of the matter to be considered
- Staff may cross-examine the proponents
- Opponents may cross-examine the proponents
- Continue same process for each individual proponent

OPONENTS PRESENTATION:

- Opponents are sworn in
- Opponents presentation
- Commission questions opponents to assist in their understanding of the matter to be considered
- Staff may cross-examine the opponents
- Proponents may cross-examine opponents
- Continue same process for each individual opponent

PUBLIC PRESENTATION:

- Individual public members are sworn in
- Public members presentation
- Commission questions individual public members to assist in their understanding of the matter to be considered
- Staff may cross-examine the individual public members
- Proponents may cross-examine the individual public members
- Opponents may cross-examine the individual public members
- Continue same process for each individual public member

COMMISSION ACTION:

- A Commission Member makes a motion
- There is a second to the motion
- There is discussion of the motion
- The Commission is prepared to vote
- The City Clerk takes roll call of the Commission
- The motion passes or fails



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: April 26, 2023

Agenda Item #: F.3

SUBJECT: Approval of Ordinance No. 747 an Ordinance authorizing the lease of real property (Sun State Towers III (ballfield site) pursuant to section 3-54-1 NMSA 1978

DEPARTMENT: City Manager's Office

DATE SUBMITTED: April 17, 2023

SUBMITTED BY: Tammy Gardner

WHO WILL PRESENT THE ITEM: Bruce Swingle

Summary/Background:

Approval of Ord. No. 747 for the lease of real property to Sun State Towers III (the ballfield site).

Recommendation:

Approve of Ordinance No. 747

Attachments:

- Ordinance 747
- [Click here to enter text.](#)

Fiscal Impact (Finance): Yes

\$175,000.00

Legal Review (City Attorney): Yes

[Click here to enter text.](#)

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. [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 4-26-2023

ORDINANCE No. 747

**AN ORDINANCE AUTHORIZING THE LEASE OF REAL
PROPERTY, PURSUANT TO SECTION 3-54-1 NMSA 1978.**

A. WHEREAS, the City of Truth or Consequences, New Mexico (the "City") is a legally created, established, organized and existing incorporated municipality under the constitution and laws of the State of New Mexico; and

B. WHEREAS, the City owns certain real property located within its boundaries specifically described as follows:

A .230 acre tract of land in the NE ¼, SE ¼ of Section 6, Township 14 South, Range 4 West, NMPM, commonly referred as "the Ballfield Site". The location is further summarized as being on Veater Street directly south of and adjacent to the City ball fields, western part of Truth or Consequences, Sierra County, New Mexico.

Please see attached as Exhibit 1 a legal description dated March 30, 2022 from Chaparral Surveying, LLC.

C. WHEREAS, the City has negotiated a Lease Agreement with Sun State Towers III ("Tenant"), whereby the City shall lease its interest in and to the above-described property to the Tenant; and

D. WHEREAS, under Section 3-54-1 NMSA 1978, the City is required to obtain an appraisal from a qualified appraiser of any property to be leased, and said appraisal was prepared by Lee Morris of Morris Appraisal Services, Inc. dated August 25, 2022; and

E. According to the aforesaid appraisal, the appraiser opined as follows: "Therefore, by reason of my research of the current market, and by virtue of my experience, I have formed the opinion that the market rent for the ground lease as stated as of the effective date of this report was: **FIFTEEN THOUSAND DOLLARS (\$15,000.00)** per year.

F. The contemplated rental is a one-time up front payment of \$175,000.00 to be paid at the inception of the Lease. The Lease shall be for a 99 year term commencing upon the effective date of this Ordinance.

G. The Lessee of the proposed agreement shall be Sun State Towers III, a Delaware Limited Liability Company. A copy of the following documents are attached hereto as **EXHIBITS A and B**, and are incorporated into this Ordinance by reference.

1. Purchase and Sale Agreement.

2. Communications Facility Easement and Assignment of Tower-Related Ground Lease.

H. The City Commission has determined that it is in the best interests of the City to consummate the proposed transaction. Several of the reasons in support of proceeding with the proposed transaction include the following:

1. As noted above, the proposed payment of \$175,000.00 would be "up-front" at the inception of the Lease.
2. Proceeding with the proposed transaction represents the best use of the property. It would be otherwise difficult and costly to develop the property.
3. In the absence of entering into the proposed long term Lease Agreement, it is very speculative if the property could be used as a cell tower site in the distant future.
4. Operating and maintaining the property in its current use has been a labor-intensive endeavor the City. Entering into this proposed transaction would relieve the City of a significant, time-consuming burden.

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

Section 1. Authority. The City is authorized to lease interests in real property pursuant to the provisions of Section 3-54-1, N.M.S.A. (1978).

Section 2. Material Terms Lease Agreement.

A. The City shall lease the above-described property to the tenant in accordance with the terms described in **EXHIBITS A and B above.**

B. The Tenant acknowledged that it is leasing the property in an "as is" condition, and the City has made no warranties or representations regarding the Real Property, the status of its title, or its feasibility for development.

Section 3. Effective Date. This Ordinance shall be effective forty-five (45) days after its adoption.

Section 4. Severability. If any section, paragraph, clause or provision shall be held to be valid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

PASSED, ADOPTED, SIGNED AND APPROVED THIS ____ DAY OF
____ 2023.

CITY OF TRUTH OR CONSEQUENCES

By _____
AMANDA FORRISTER, Mayor

ATTEST:

By _____
ANGELA TORRES, City Clerk

Chaparral Surveying, LLC

P.O. Box 828
Elephant Butte, New Mexico 87835
(575) 744-0334

March 30, 2022

LEGAL DESCRIPTION

(0.230 ACRES, 10,000 SQ. FT.)

A tract of land situate in the NE1/4 SE1/4 of Section 6, Township 14 South, Range 4 West, N.M.P.M., bounded on the south by Venter Street, in the City of Truth or Consequences, Sierra County, New Mexico, and more particularly described as follows, to-wit:

Beginning at the NE corner of this tract, whence the east 1/4 corner of Section 6, Township 14 South, Range 4 West, a "brass-cap" monument stamped "City of T. or C.-1971" bears N23°21'50"E, a distance of 1262.76 feet;

Thence, S00°15'30"E, a distance of 100.00 feet to the SE corner of this tract, a point on Venter Street;

Thence, continuing along Venter Street, S89°44'30"W, a distance of 100.00 feet to the SW corner of this tract;

Thence, N00°15'30"W, a distance of 100.00 feet to the NW corner of this tract;

Thence, N89°44'30"E, a distance of 100.00 feet to the point of beginning of the tract hereon described, containing 0.230 acres, (10,000 sq. ft.), of land, more or less.

This legal description was prepared from a field survey by David M. Scum, NMPLS 12129, (re: Chaparral Surveying, LLC, Plat dated March 29, 2022).

Legal



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: April 26, 2023

Agenda Item #: F4.

SUBJECT: Publication of the Repeal of Ordinance No. 748 of the City of Truth or Consequences, New Mexico.

DEPARTMENT: City Manager's Office

DATE SUBMITTED: April 17, 2023

SUBMITTED BY: Tammy Gardner

WHO WILL PRESENT THE ITEM: Bruce Swingle

Summary/Background:

An ordinance to repeal Ordinance No. 748 pertaining to the sale of the water tank tower on Pershing St. and declaring the same to be null and void and of no effect.

Recommendation:

Approval of Publication

Attachments:

- Ordinance No. 748
- Click here to enter text.

Fiscal Impact (Finance): No

Click here to enter text.

Legal Review (City Attorney): Yes

Click here to enter text.

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. 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 4-26-2023

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, PROVIDING FOR THE **REPEAL OF ORDINANCE NO. 748** PERTAINING TO THE SALE OF THE WATER TANK TOWER ON PERSHING STREET AND DECLARING THE SAME TO BE NULL AND VOID AND OF NO EFFECT.

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

Section 1. That Ordinance No. 748 of the Code of Ordinances of the City of Truth or Consequences is hereby repealed, and declared null and void and of no effect.

Section 2. This Ordinance shall take effect on the ____ day of _____, 2023

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2023.

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO

BY: _____
AMANDA FORRISTER – Mayor

ATTEST:

ANGELA TORRES – City Clerk

ORDINANCE No. 748

AN ORDINANCE AUTHORIZING THE LEASE OF REAL PROPERTY, PURSUANT TO SECTION 3-54-1 NMSA 1978.

A. WHEREAS, the City of Truth or Consequences, New Mexico (the "City") is a legally created, established, organized and existing incorporated municipality under the constitution and laws of the State of New Mexico; and

B. WHEREAS, the City owns certain real property located within its boundaries specifically described as follows:

East ½ Corner of Section 28, Township 13 South, Range 4 West,
commonly referred to as the Kopra Street Tower Site in Truth or
Consequences, Sierra County, New Mexico.

C. WHEREAS, the City has negotiated a Lease Agreement with American Tower ("Tenant"), whereby the City shall lease its interest in and to the above-described property to the Tenant; and

D. WHEREAS, under Section 3-54-1 NMSA 1978, the City is required to obtain an appraisal from a qualified appraiser of any property to be leased, and said appraisal was prepared by Lee Morris of Morris Appraisal Services, Inc. dated August 25, 2022; and

E. According to the aforesaid appraisal, the appraiser opined as follows: "Therefore, by reason of my research of the current market, and by virtue of my experience, I have formed the opinion that the market rent for the ground lease as stated as of the effective date of this report was: **FIFTEEN THOUSAND DOLLARS (\$15,000.00)** per year.

F. The contemplated rental is a one-time up front payment of \$480,000.00 to be paid at the inception of the Lease. The Lease shall be for a 99 year term commencing upon the effective date of this Ordinance.

G. The Lessee of the proposed agreement shall be American Tower Corporate Limited Liability Company. A copy of the following documents are attached hereto as **EXHIBITS A and B**, and are incorporated into this Ordinance by reference.

1. Purchase and Sale Agreement.

2. Communications Facility Easement and Assignment of Tower-Related Ground Lease.

H. The City Commission has determined that it is in the best interests of the City to consummate the proposed transaction. Several of the reasons in support of proceeding with the proposed transaction include the following:

1. As noted above, the proposed payment of \$480,000.00 would be "up-front" at the inception of the Lease.

2. Proceeding with the proposed transaction represents the best use of the property. It would be otherwise difficult and costly to develop the property.

3. In the absence of entering into the proposed long term Lease Agreement, it is very speculative if the property could be used as a cell tower site in the distant future.

4. Operating and maintaining the property in its current use has been a labor-intensive endeavor the City. Entering into this proposed transaction would relieve the City of a significant, time-consuming burden.

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

Section 1. Authority. The City is authorized to lease interests in real property pursuant to the provisions of Section 3-54-1, N.M.S.A. (1978).

Section 2. Material Terms Lease Agreement.

A. The City shall lease the above-described property to the tenant in accordance with the terms described in **EXHIBITS A and B above.**

B. The Tenant acknowledged that it is leasing the property in an "as is" condition, and the City has made no warranties or representations regarding the Real Property, the status of its title, or its feasibility for development.

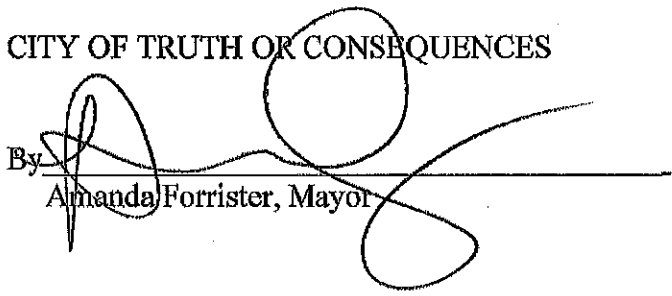
Section 3. Effective Date. This Ordinance shall be effective forty-five (45) days after its adoption.

Section 4. Severability. If any section, paragraph, clause or provision shall be held to be valid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

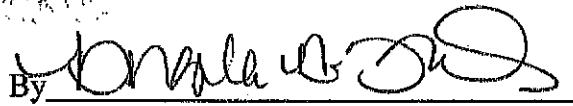
PASSED, ADOPTED, SIGNED AND APPROVED THIS 12th DAY OF APRIL,
2023.

CITY OF TRUTH OR CONSEQUENCES

By


Amanda Forrister, Mayor

By


Angela A. Torres, City Clerk

Chaparral Surveying, LLC

P.O. Box 629
Alapaha Station, New Mexico 87033
(505) 749-0304

January 13, 2022

LEGAL DESCRIPTION
(0.230 ACRES-10,000 SQ. FT.)

A tract of land situate in the SW 1/4 of Section 28, Township 13 South, Range 4 West, N.M.P.M., in the City of Truth or Consequences, Sierra County, New Mexico, and more particularly described as follows, to-wit:

Beginning at the north corner of this tract, where the NW corner of Section 28, Township 13 South, Range 4 West, is 363' north, bears N17°33'43"W, a distance of 2194.92 feet.

Thence, S45°00'00"E, a distance of 100.00 feet to the east corner of this tract.

Thence, S45°00'00"W, a distance of 100.00 feet to the south corner of this tract.

Thence, N05°00'00"W, a distance of 100.00 feet to the west corner of this tract.

Thence, N45°00'00"E, a distance of 100.00 feet to the point of beginning of the tract herein described, containing 0.230 acres, (10,000 sq. ft.), of land, more or less.

This legal description was prepared from a field survey by David M. Serna, NMLS 17172, for Chaparral Surveying, LLC. This dated January 12, 2022.

Legal

EXHIBIT "1"



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: April 26, 2023

Agenda Item #: F.5

SUBJECT: Publication of Ordinance No. 750 an Ordinance authorizing the assignment of the lease of real property to American Tower (Kopra St. tower) pursuant to section 3-54-1 NMSA 1978

DEPARTMENT: City Manager's Office

DATE SUBMITTED: April 17, 2023

SUBMITTED BY: Tammy Gardner

WHO WILL PRESENT THE ITEM: Bruce Swingle

Summary/Background:

Publication of Ord. No. 750 for the lease of real property to American Tower (Kopra St. tower).

Recommendation:

Approval of publication of ord. no/ 750

Attachments:

- Ordinance No. 750
- Click here to enter text.

Fiscal Impact (Finance): Yes

\$480,000.00

Legal Review (City Attorney): Yes

Click here to enter text.

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. 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 4-26-2023

ORDINANCE No. 750

**AN ORDINANCE AUTHORIZING THE LEASE OF REAL
PROPERTY, PURSUANT TO SECTION 3-54-1 NMSA 1978.**

A. WHEREAS, the City of Truth or Consequences, New Mexico (the "City") is a legally created, established, organized and existing incorporated municipality under the constitution and laws of the State of New Mexico; and

B. WHEREAS, the City owns certain real property located within its boundaries specifically described as follows:

.230 acre tract in the SE¼, NW ¼ of Section 28, Township 13 South, Range 4 West, NMPM, commonly referred to as the Kopra Site in Truth or Consequences, Sierra County, New Mexico, more particularly, described in **EXHIBIT 1** which is the survey from Chaparral Surveying, LLC, dated July 1, 2022.

C. WHEREAS, the City entered into a Lease Agreement with Comm Net Cellular Inc., d/b/a, Verizon Wireless ("Tenant") dated December 9, 2020.

D. WHEREAS, the City has negotiated an Agreement with American Tower ("Assignee"), whereby the City shall assign the aforesaid said Lease of the above-described property to American Tower; and

E. WHEREAS, under Section 3-54-1 NMSA 1978, the City is required to obtain an appraisal from a qualified appraiser of any property to be leased, and said appraisal was prepared by Lee Morris of Morris Appraisal Services, Inc. dated April 3, 2023; and

F. According to the aforesaid appraisal, the appraiser opined as follows: "Therefore, by reason of my research of the current market, and by virtue of my experience, I have formed the opinion that the market rent for the ground lease as stated as of the effective date of this report was: **FIFTEEN THOUSAND DOLLARS (\$15,000.00)** per year.

G. The contemplated Assignment is a one-time payment of \$480,000.00 to be paid within six (6) months of the Assignment of the Lease. The Assignment shall be made in conjunction with the granting of an exclusive easement for a 99 -year term commencing upon the effective date of this Ordinance.

H. The Assignee of the proposed agreement and Grantee of the 99-year exclusive easement shall be American Tower. A copy of the following documents are attached hereto as **EXHIBITS A, B and C:**

1. Option Agreement to Purchase Communication Easement
2. Assignment Agreement
3. Easement Agreement

I. The City Commission has determined that it is in the best interests of the City to consummate the proposed transaction. Several of the reasons in support of proceeding with the proposed transaction include the following:

1. As noted above, the proposed payment of \$480,000.00 would be paid within six (6) months of the inception of the Lease.
2. Proceeding with the proposed transaction represents the best use of the property. It would be otherwise difficult and costly to develop the property.
3. In the absence of entering into the proposed long term Agreement, it is very speculative if the property could be used as a cell tower site in the distant future.
4. Operating and maintaining the property in its current use has been a labor-intensive endeavor the City. Entering into this proposed transaction would relieve the City of a significant, time-consuming burden.

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

Section 1. Authority. The City is authorized to lease interests in real property pursuant to the provisions of Section 3-54-1, N.M.S.A. (1978). The Mayor is authorized to execute the documents attached hereto as EXHIBITS A, B and C.

Section 2. Material Terms Assignment Agreement.

A. The City shall lease the above-described property to the tenant in accordance with the terms described in **EXHIBITS A, B and C attached.**

B. The Assignee acknowledged that it is leasing the property in an "as is" condition, and the City has made no warranties or representations regarding the Real Property, the status of its title, or its feasibility for development.

Section 3. Effective Date. This Ordinance shall be effective forty-five (45) days after its adoption.

Section 4. Severability. If any section, paragraph, clause or provision shall be held to be valid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

PASSED, ADOPTED, SIGNED AND APPROVED THIS ____ DAY OF
____ 2023.

CITY OF TRUTH OR CONSEQUENCES

By _____
AMANDA FORRISTER, Mayor

ATTEST:

By _____
ANGELA TORRES, City Clerk

OPTION AGREEMENT TO PURCHASE COMMUNICATIONS EASEMENT

THIS AGREEMENT (this "**Option Agreement**") is made effective as of the latter signature date hereof (the "**Option Effective Date**") by and between **ATC Sequoia LLC**, a Delaware limited liability company ("**Buyer**") and **The City of Truth or Consequences, New Mexico**, a municipal corporation ("**Seller**") (Buyer and Seller being collectively referred to herein as the "**Parties**").

In consideration of the foregoing recitals and the mutual covenants set forth herein, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Seller hereby grants to Buyer an exclusive option (the "**Option**") to purchase a ninety-nine (99) years term exclusive communications easement and non-exclusive access and utility easement (collectively, the "**Easements**"), which Easements shall be memorialized in an easement agreement, the form and substance of which shall be substantially similar to the agreement attached hereto as **Exhibit A** and incorporated herein by reference (the "**Easement Agreement**"). The Easement Agreement shall grant, convey, and transfer to Buyer certain rights as described in the Easement Agreement over, across, in, and under that certain real property owned by Seller in the County of Sierra, State of New Mexico (the "**Premises**"), and on which Buyer currently operates or manages a communications facility. Seller shall also assign to Buyer, or an affiliate of Buyer, all of Seller's right, title and interest in, to and under all of the existing leases, licenses, or other agreements for use and occupancy of the Premises, including but not limited to those agreements listed on the **Current Agreement Addendum** attached hereto and incorporated by this reference (collectively, the "**Current Agreement**" or "**Current Agreements**"), including without limitation, the right to receive any and all rents and other monies payable to Seller thereunder, arising or accruing on or after the Closing (as herein defined). The Seller shall also assign to Buyer and Buyer shall assume from Seller all rights and obligations of Seller as landlord under the third party lease (the "**Third Party Lease**") listed on the **Assigned Lease Addendum**, attached hereto and by this reference incorporated herein, arising or accruing on or after the Closing, true, correct and complete copies of which have been provided to Buyer. With the assignment of the Third Party Lease, Seller grants to Buyer an additional **nine hundred point eight (900.8) square feet** contiguous to the land which Buyer currently leases or subleases (the "**Expansion Area**"), to be incorporated into the exclusive easement area referenced in the Easement Agreement. The Buyer shall have the sole, exclusive and absolute right to exercise the Option as provided herein. Seller hereby represents and warrants that it has the full power and authority to enter into this Option Agreement and the person(s) executing this Option Agreement on behalf of Seller, as the case may be, have the authority to enter into and deliver this Option Agreement on behalf of Seller. If applicable, Seller shall execute a resolution and consent affidavit prepared by Buyer evidencing proper signing authority, or Seller must otherwise demonstrate, in Buyer's sole and absolute discretion, the person(s) executing this Option Agreement on behalf of Seller, have the authority to enter into and deliver this Option Agreement on behalf of Seller.
2. ~~Subject to the terms of this Option Agreement, Buyer may exercise the Option by paying to Seller an amount equal to Four Hundred Eighty Thousand and 00/100 Dollars (\$480,000.00) (the "Purchase Price") by check or by wire transfer of funds. The day on which payment is made to Seller is referred to herein as the "Closing". Buyer shall pay the sum of Four Hundred Eighty Thousand and 00/100 Dollars (\$480,000.00) (the "Purchase Price") to the Seller within one hundred and eighty (180) days of the execution of this Agreement, the day on which payment is made to Seller is referred to herein as the "Closing".~~ Buyer shall have the right to deduct from the Purchase Price, on a prorated basis, any prepaid monthly and/or annual rental payments made pursuant to the Current Agreement, which are attributable to the period subsequent to the first day of the next calendar month following the date of Closing. Seller agrees to accept the Purchase Price as full and final compensation for conveying the Easements to Buyer. The Purchase Price shall be paid to, and all taxable income shall be reported by, **The City of Truth or Consequences, New Mexico**. From and after the Effective Date, Seller shall not (and hereby agrees not to) solicit or accept any offers to purchase, lease, license, or otherwise transfer, convey, and/or assign any easement or other interests, rights, and/or title in and/or to all or any portion of the Premises, or continue negotiations with other potential purchasers or other third parties with respect to the same, until the expiration of this Option Agreement.
3. The Parties shall use best efforts to close the transaction contemplated herein within ninety (90) days of the Option Effective Date. Unless otherwise agreed to in writing by the Parties, this Option Agreement shall automatically

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Site No: 413074

Site Name: City of Consequences NM

terminate upon the earlier of the date of Closing or the 180th day following the Option Effective Date (said date being referred to herein as the "**Termination Date**"). Between the Option Effective Date and the Termination Date, Buyer and its agents, employees, contractors, and designees may hereafter enter the Premises for the purposes of inspecting, surveying or otherwise evaluating the Premises to determine whether Buyer will, in its sole and absolute discretion, exercise the Option. Seller shall provide Buyer with any reasonable documentation requested by Buyer to facilitate payment to Seller or to otherwise assist in expediting Buyer's completion of its due diligence. If all or any portion of the Premises is encumbered by a mortgage or other security instrument, Seller agrees to obtain a Non-Disturbance Agreement ("**NDA**") from the applicable lender(s) on a form to be provided by Buyer. If, despite Seller's best efforts, Seller is unable to obtain the NDA, Seller may request a risk assessment to determine whether Buyer will exercise the Option without an NDA, in which case Seller shall provide Buyer with authorization to verify Seller's credit worthiness and any additional documentation and/or information requested by Buyer in connection with such risk assessment.

4. Seller shall execute and deliver to Buyer the Easement Agreement, together with any other documents reasonably necessary for Buyer to record the Easement Agreement with the appropriate recorder's office and to obtain title insurance. In the event Seller executes and delivers the Easement Agreement to Buyer prior to Closing, said documents shall be held in escrow by Buyer until the earlier of Closing or termination of this Option Agreement as provided hereunder.
5. Seller hereby acknowledges and agrees that Buyer has not made any representations or warranties to Seller, including, without limitation, Buyer's likelihood of exercising the Option or the tax implications of the contemplated transaction, and the Parties further agree that all terms and conditions of the Option Agreement are expressly stated herein.
6. The Parties agree and intend for this Option Agreement to be a legally binding contract and for the terms of this Option Agreement (as well as any information furnished to Seller by Buyer in connection herewith) to remain confidential. Except for Seller's family, attorney or broker, if any, or if required pursuant to a court action or applicable law, Seller shall not disclose the terms of this Option Agreement without the prior written consent of Buyer, which may be withheld or conditioned in Buyer's sole and absolute discretion. This provision shall survive Closing and/or the termination of this Option Agreement.
7. This Option Agreement may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this Option Agreement by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Option Agreement by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Option Agreement by all Parties to the same extent as an original signature. This Option Agreement shall be governed and construed by the laws of the State or Commonwealth in which the Premises is located without regard to the conflicts of laws provisions of such State or Commonwealth. Buyer may assign its rights, title, and interest in and to this Option Agreement to an affiliate or subsidiary of Buyer without the consent or approval of (or notice to) Seller.
8. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein; To Seller at: 505 Sims, Truth or Consequences, NM 87901; To Buyer at: Attn: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn: Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the Parties, by thirty (30) days prior written notice to the others in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
9. Unless extended by Buyer, in Buyer's sole and absolute discretion, this Option Agreement shall automatically become null and void and of no further force and effect if it is not executed by Seller and actually received by Buyer on or before May 12th 2023.

Site No: 413074

Site Name: City of Consequences NM

[SIGNATURES FOLLOW ON FOLLOWING PAGES]

Site No: 413074
Site Name: City of Consequences NM

BUYER:

ATC Sequoia LLC,
a Delaware limited liability company,

Signature: _____

Print Name: _____

Title: _____

Date: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Site No: 413074

Site Name: City of Consequences NM

SELLER:

The City of Truth or Consequences, New Mexico,
a municipal corporation,

Signature: _____

Print Name: **Bruce Swingle**

Title: **City Manager**

Date: _____

Site No: 413074

Site Name: City of Consequences NM

CURRENT AGREEMENT ADDENDUM

That certain Option And Lease Agreement dated May 23, 2023 by and between The City of Truth or Consequences, New Mexico, as Lessor, and New Mexico RSA 3 Limited Partnership d/b/a Verizon Wireless, By: GTE Mobilnet of the Southwest LLC, Its General Partner, By: Celloo Partnership, Its Sole Member, as Lessee, as amended by that certain The First Amendment to the Option and Lease Agreement dated December 9, 2020, by and between The City of Truth or Consequences, New Mexico, a municipal corporation, as Landlord, and CommNet Cellular Inc. d/b/a Verizon Wireless, as Tenant. Evidenced by that certain Memorandum of Lease dated December 9, 2020, recorded January 15, 2021, as Instrument No. 2002100124 Book 134, Page 3249, in the records of Sierra County, New Mexico.

Site No: 413074

Site Name: City of Consequences NM

ASSIGNED LEASE ADDENDUM

That certain Additional Equipment Space Lease Agreement, dated October 21, 2005 by and between The City of Truth or Consequences, New Mexico, a municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant. As evidenced by that certain Memorandum of Lease dated October 21, 2005 and recorded January 9, 2006 in Book 105, Page 1041, in Sierra County, New Mexico.

Site No: 413074

Site Name: City of Consequences NM

EXHIBIT A

[EASEMENT AGREEMENT TO FOLLOW]

Site No: 413074

Site Name: City of Consequences NM

Prepared by and Return to:
Attorney, Karla Disla, Land Management
Site No: 413074
Site Name: City of Consequences NM
c/o American Tower
10 Presidential Way
Woburn, MA 01801

Prior Recorded Lease Reference:
Instrument No. 2002100124
Book 134, Page 3249
State of New Mexico
County of Sierra

(Recorder's Use Above this Line)

STATE OF NEW MEXICO

Assessor's Parcel No.: 3022077439295

COUNTY OF SIERRA

EASEMENT AND ASSIGNMENT AGREEMENT

This Easement Agreement ("**Agreement**") dated as of _____, 202_ (the "**Effective Date**"), by and between **The City of Truth or Consequences, New Mexico** a municipal corporation ("**Grantor**") and **ATC Sequoia LLC**, a Delaware limited liability company ("**Grantee**").

BACKGROUND

Grantor is the owner of the real property described in **Exhibit "A"** attached hereto and by this reference made a part hereof (the "**Premises**"). Grantor desires to grant to Grantee certain easement rights with respect to the Premises, as more particularly described below, and subject to the terms and conditions of this Agreement.

AGREEMENTS

For and in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Grant of Easements.** Grantor, for itself and its heirs, personal representatives, successors and assigns, hereby grants, bargains, sells, transfers and conveys to Grantee, its successors and/or assigns: (i) a ninety-nine (99) years term exclusive easement (the "**Exclusive Easement**") in and to that portion of the Premises more particularly described on **Exhibit "B"** attached hereto which shall include portions of the Premises upon which Grantee's fixtures, structures, equipment or other personal property are located as of the date of this Agreement, in addition to **nine hundred point eight (900.8) square feet** contiguous to such land (the "**Expansion Area**") consisting of Grantor's assignment to Grantee and Grantee assumption from Grantor of all rights and obligations of Grantor as landlord under the third party lease (the "**Third Party Lease**") listed on **Exhibit "E"** attached hereto and by this reference incorporated herein, and by this reference made a part hereof (the "**Exclusive Easement Area**"); and (ii) a non-exclusive easement (the "**Access and Utility Easement**"; the Exclusive Easement and Access and Utility Easement, collectively, the "**Easements**") in and to that portion of the Premises more particularly described on **Exhibit "C"** attached hereto and by this reference made a part hereof (the "**Access and Utility Easement Area**";

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the Access and Utility Easement Area and Exclusive Easement Area, collectively, the "**Easement Areas**"). The Easement Areas shall be used for the purposes set forth herein and shall expressly include that portion of the Premises upon which any of Grantee's fixtures, structures, equipment or other personal property are located as of the date of this Agreement.

2. **Private Easement.** Nothing in this Agreement shall be deemed to be a dedication of any portion of the Easement Areas for public use. All rights, easements and interests herein created are private and do not constitute a grant for public use or benefit.

3. **Successors Bound.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, lessees, successors and assigns. It is the intention of the parties hereto that all of the various rights, obligations, restrictions and easements created in this Agreement shall run with the affected lands and shall inure to the benefit of and be binding upon all future owners and lessees of the affected lands and all persons claiming any interest under them.

4. **Duration.** The duration of this Agreement and the Easements granted herein (the "**Term**") shall be ninety-nine (99) years from the Effective Date, unless Grantee provides written, recordable notice of Grantee's intent to terminate this Agreement and the Easements described herein, in which event this Agreement, the Easements, and all obligations of Grantee hereunder shall terminate upon Grantee's recordation of any such notice. For the avoidance of doubt, Grantee may, in its sole and absolute discretion, unilaterally terminate this Agreement, the Easements, and all of Grantee's obligations hereunder without the approval of or consent of Grantor as provided in the immediately preceding sentence.

5. **Easement Consideration.** Grantor hereby acknowledges the receipt, contemporaneously with the execution hereof, of all consideration due hereunder. Accordingly, no additional consideration shall be due during the Term.

6. **Use of Easement Areas.**

a. **Exclusive Easement.** The Exclusive Easement Area may be used by Grantee and any of its affiliates, customers, tenants, subtenants, lessees, licensees, successors, and/or assigns together with any of the employees, contractors, consultants, and/or agents of the foregoing (collectively, the "**Permitted Parties**") for the purposes of installing, constructing, maintaining, operating, modifying, repairing and/or replacing improvements, equipment, structures, fixtures, antennae and other personal property as Grantee may deem necessary or appropriate, which may be located on or in the Exclusive Easement Area from time to time, for the facilitation of communications and other related uses. Any such property, including any equipment, structures, fixtures and other personal property currently on or in the Exclusive Easement Area, shall not be deemed to be part of the Premises, but instead shall remain the property of Grantee or the applicable Permitted Parties. At any time during the Term and at any time within 180 days after the termination of this Agreement, Grantee and/or any applicable Permitted Parties may remove their equipment, structures, fixtures and other personal property from the Easement Areas. Grantee may make, without the consent or approval of Grantor, any improvements, alterations or modifications to the Exclusive Easement Area as are deemed appropriate by Grantee, in its sole and absolute discretion. Grantee shall have the unrestricted and exclusive right, exercisable without the consent or approval of Grantor, to lease, sublease, license, or sublicense any portion of the Exclusive Easement Area, but no such lease, sublease or license shall relieve or release Grantee from its obligations under this Agreement. Grantor shall not have the right to use the Exclusive Easement Area for any reason and shall not disturb Grantee's nor any Permitted Parties' right to use the Exclusive Easement Area in any manner. Grantee may, at Grantee's sole and exclusive option, construct a fence around all or any part of the Exclusive Easement Area and shall have the right to prohibit anyone, including Grantor, from entry into such Exclusive Easement Area.

b. **Access and Utility Easement.** The Access and Utility Easement shall be used by Grantee and the Permitted Parties for pedestrian and vehicular (including trucks) ingress and egress to and from the Exclusive Easement Area at all times during the Term on a seven (7) days per week, twenty-four (24) hours per day basis. Grantee shall have the non-exclusive right to construct, reconstruct, add, install, improve, enlarge, operate, maintain and remove overhead and underground utilities, including, without limitation, electric, fiber, water, gas, sewer, telephone, and data transmission lines (including wires, poles, guys, cables, conduits and appurtenant equipment) in, on, or under the Access and Utility Easement Area in order to connect the same to utility lines located in a publicly dedicated right of way. Notwithstanding the foregoing, Grantor shall not in any manner prevent, disturb, and/or limit access to the Access and Utility Easement Area or use of the Access and Utility Easement by Grantee or any of the Permitted Parties, and Grantor shall not utilize the Access and Utility Easement Area in any manner that interferes

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with Grantee's or any of the Permitted Parties' use of such area as expressly provided herein. Grantor agrees to maintain the existing access road in a manner sufficient to allow pedestrian and vehicular access to the Exclusive Easement Area at all times except that Grantee shall be responsible for repairing any damage caused by the use of the road by Grantee and/or the Permitted Parties, reasonable wear and tear excepted. In the event the Access and Utility Easement Area cannot, does not, or will not fully accommodate the access and utility needs of the Grantee during the Term, or if it is reasonably determined by Grantor or Grantee that any utilities that currently serve the Exclusive Easement Area are not encompassed within the description of the Access and Utility Easement Area as set forth herein, Grantor and Grantee agree to amend the description of the Access and Utility Easement Area provided herein to include the description of such areas and/or to relocate the Access and Utility Easement, for no additional consideration, and to create a revised legal description for the Access and Utility Easement Area that will reflect such relocation. The Access and Utility Easement and the rights granted herein with respect to the same shall be assignable by Grantee to any public or private utility company to further effect this provision without the consent or approval of Grantor.

7. Non-Compete. During the Term, Grantor shall not sell, transfer, grant, convey, lease, and/or license by deed, easement, lease, license or other legal instrument, an interest in and to, or the right to use or occupy any portion of the Premises or Grantor's contiguous, adjacent, adjoining or surrounding property to any person or entity directly or indirectly engaged in the business of owning, acquiring, operating, managing, investing in or leasing wireless telecommunications infrastructure (any such person or entity, a "Third Party Competitor"), without the prior written consent of Grantee, which may be withheld, conditioned, and/or delayed in Grantee's sole, reasonable discretion.

8. Assignment. Grantee may assign this Agreement, in whole or in part, to any person or entity at any time without the prior written consent or approval of, or notice to, Grantor, including, but not limited to, an affiliate of Grantee. If any such assignee agrees to assume all of the obligations of Grantee under this Agreement, then Grantee will be relieved of all of its obligations, duties and liabilities hereunder.

9. Covenants, Representations, Warranties.

- a. Grantor hereby represents and warrants to Grantee the following: (i) Grantor is the owner in fee simple of the Easement Areas, free and clear of all liens and encumbrances; (ii) Grantor has the full authority and power to enter into and perform its obligations under this Agreement, and, to the extent applicable, the person or persons executing this Agreement on behalf of Grantor have the authority to enter into and deliver this Agreement on behalf of Grantor; (iii) to the best of Grantor's knowledge, there is no condemnation proceeding pending or threatened against all or any portion of the Premises; (iv) no claim, litigation, proceeding, or investigation is pending or, to the best of Grantor's knowledge, threatened against Grantor or all or any portion of the Premises that could affect Grantee's use of the Easement Areas as contemplated herein; (v) Grantor has not filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors or suffered the appointment of a receiver to take possession of substantially all of its assets; (vi) to the best of Grantor's knowledge, the Premises is in compliance with all applicable laws, ordinances and regulations, including those governing Hazardous Materials (as defined below); (vii) to the best of Grantor's knowledge, there is no proceeding pending or threatened to change the zoning status of the Premises; (viii) Grantor is not indebted to any party, including, without limitation, any local or state or the federal government for which a lien or claim of lien has been or could be asserted against all or any portion of the Premises; (ix) there are no leases, written or oral, affecting all or any portion of the Easement Areas, except for any agreements entered into between Grantee or its affiliates and third parties and/or the Current Agreement(s) and Third Party Lease (as defined below); (x) the Easement Areas do not constitute or form a part of Grantor's homestead, or, in the event that the Easement Areas are located upon homestead property, then Grantor's spouse (if applicable) shall join in the execution of this Agreement; (xi) Grantor has paid all taxes, assessments, charges, fees, levies, impositions and other amounts relating to the Premises due and payable prior to the Effective Date; and (xii) Grantee shall peaceably and quietly hold, exercise, and enjoy the Easements during the Term without any hindrance, molestation or ejection by any party whomsoever.
- b. During the Term, Grantor shall pay when due all real property, personal property, and other taxes, fees and assessments attributable to the Premises, including the Easement Areas. Grantee hereby agrees to reimburse Grantor for any personal property taxes in addition to any increase in real property taxes levied against the Premises that are directly attributable to Grantee's improvements on the Easements (but not, however, taxes or other assessments attributable to periods prior to the Effective Date), provided, however, that Grantor must

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furnish written documentation (the substance and form of which shall be reasonably satisfactory to Grantee) of such personal property taxes or real property tax increase to Grantee along with proof of payment of the same by Grantor. Anything to the contrary notwithstanding, Grantor shall not be entitled to reimbursement from Grantee for any costs associated with an increase in the value of Grantor's real property calculated based on any monetary consideration paid from Grantee to Grantor. Additionally, Grantor is only eligible for reimbursement by Grantee for any applicable taxes if Grantor requests such reimbursement within one (1) year after the date such taxes became due. Grantor shall submit requests for reimbursement in writing to: *American Tower Corporation, Attn: Landlord Relations, 10 Presidential Way, Woburn, MA 01801* unless otherwise directed by Grantee from time to time. Subject to the requirements set forth in this Section, Grantee shall make such reimbursement payment within forty-five (45) days of receipt of a written reimbursement request from Grantor. Grantee shall pay applicable personal property taxes directly to the local taxing authority to the extent such taxes are billed and sent directly by the taxing authority to Grantee. If Grantor fails to pay when due any taxes affecting the Premises as required herein, Grantee shall have the right, but not the obligation, to pay such taxes on Grantor's behalf and: (i) deduct the full amount of any such taxes paid by Grantee on Grantor's behalf from any future payments required to be made by Grantee to Grantor hereunder; (ii) demand reimbursement from Grantor, which reimbursement payment Grantor shall make within ten (10) days of such demand by Grantee; and/or (iii) collect from Grantor any such tax payments made by Grantee on Grantor's behalf by any lawful means.

- c. Without Grantee's prior written consent, which consent may be withheld or conditioned in Grantee's sole and absolute discretion, Grantor shall not (i) cause any portion of the Easement Areas to be legally or otherwise subdivided from any master tract of which it is currently a part, or (ii) cause any portion of the Easement Areas to be separately assessed for tax purposes.
 - d. Grantor shall not suffer, grant, create, transfer, or convey (or cause to be suffered, granted, created, transferred, or conveyed) any claim, lien, encumbrance, easement, interest, restriction or other charge or exception to title to the Easement Areas or any other portion of the Premises that would adversely affect Grantee's use of the Easement Areas as contemplated herein.
 - e. Grantor shall not, and shall not permit any third party to use, generate, store, or dispose of any Hazardous Materials on, under, about, or within the Premises in violation of any Environmental Laws (as defined below). As used herein, "**Hazardous Materials**" shall mean any: contaminants, oils, asbestos, PCBs, hazardous substances, or wastes as defined by federal, state, or local environmental laws, regulations, or administrative orders or other materials the removal of which are required or the maintenance of which are prohibited or regulated by any federal, state, or local governmental authorities having jurisdiction over all or any portion of the Premises. As used herein, "**Environmental Laws**" shall mean any laws, regulations, ordinances, and/or administrative orders applicable to all or any portion of the Premises, which govern Hazardous Materials.
 - f. Grantee shall not, and shall not permit any third party to use, generate, store, or dispose of any Hazardous Materials on, under, about, or within the Easement Areas in violation of any Environmental Laws.
 - g. Grantor hereby agrees to and does indemnify and shall defend and hold harmless Grantee and its officers, directors, shareholders, agents, contractors, and attorneys for, from, and against all damages asserted against or incurred by any of them by reason of or resulting from a breach by Grantor of any representation, warranty or covenant of Grantor contained herein.
 - h. The representations, warranties, covenants, agreements, and indemnities contained in this section shall survive the execution and delivery of this Agreement indefinitely.
10. **Non-Disturbance.** During the Term, Grantor will not improve or alter the Premises or grant, convey, transfer, or otherwise enter into any other easement, ground lease, lease, license, or similar agreement or contract with respect to any portion of the Premises if the same would interfere with, disturb, limit, or impair Grantee's permitted use of the Easement Areas. Grantor hereby acknowledges that Grantee and the Permitted Parties are currently utilizing the Exclusive Easement Area for the purpose of transmitting and receiving communication signals, including, but not limited to, wireless telecommunications signals. Grantor and Grantee recognize and acknowledge that Grantee's use of the Easement Areas set forth in this Agreement would be materially frustrated if the communications signals were blocked or otherwise interfered with, or if access and/or utilities to and from the Exclusive Easement Area were inhibited, even if temporarily. Grantor, for itself, its successors and assigns, hereby agrees to use its best efforts to prevent the occurrence of any of the

foregoing and shall promptly undertake any remedial action necessary to comply with the terms and provisions of this Section. Grantee shall have the express right, among others, to seek an injunction to prevent any of the activities prohibited by this Section.

11. Grantee's Securitization Rights; Estoppel. Grantor hereby consents to the granting by Grantee of one or more leasehold mortgages, collateral assignments, liens, and/or other security interests (collectively, a "*Security Interest*") in Grantee's interest in this Agreement and all of Grantee's property and fixtures attached to and lying within the Exclusive Easement Area and further consents to the exercise by Grantee's mortgagee ("*Grantee's Mortgagee*") of its rights to exercise its remedies, including without limitation foreclosure, with respect to any such Security Interest. Grantor shall recognize the holder of any such Security Interest of which Grantor is given prior written notice (any such holder, a "*Holder*") as "Grantee" hereunder in the event a Holder succeeds to the interest of Grantee hereunder by the exercise of such remedies. Grantor further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Grantee or Holder.

12. Notices. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth below:

To Grantee: ATC Sequoia LLC
c/o American Tower
10 Presidential Way
Woburn, MA 01801

To Grantor: The City of Truth or Consequences, New Mexico
505 Sims
Truth or Consequences, NM 87901

With copy to: ATC Sequoia LLC
c/o American Tower
116 Huntington Avenue
Boston, MA 02116
Attn: Legal Department

Grantor or Grantee, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.

13. Force Majeure. The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement shall automatically be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Grantor or Grantee, as the case may be.

14. Miscellaneous. This Agreement shall be recorded at the sole expense of Grantee and shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth. The captions and headings herein are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions, scope or intent of this Agreement. This Agreement and any other documents executed in connection herewith, constitute the entire understanding between the parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or other provisions other than those expressly set forth herein. Grantee has not provided any legal or tax advice to Grantor in connection with the execution of this Agreement. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement that is signed by each of the parties hereto.

15. Cumulative Remedies. Except as otherwise expressly provided herein, each and every one of the rights, benefits and remedies provided to Grantor or Grantee in this Agreement, or in any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies and benefits allowed by law or equity to Grantor or Grantee.

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16. Counterparts. This Agreement may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though Grantor and Grantee are not signatories to the original or the same counterpart.

17. Severability. Should any part or provision of this Agreement be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or provision shall not invalidate the remaining portions of the Agreement, and they shall remain in full force and effect and this Agreement shall be construed as if such part or provision had been so limited or as if such provision had not been included herein, as the case may be. Additionally, if any laws, rules or regulations promulgated by any state, county or local jurisdiction, including without limitation those concerning zoning, subdivision or land use, or should any court of competent jurisdiction, make the sale of the Easements herein either void or voidable, Grantor agrees that upon the written request of Grantee, the parties shall execute a reasonably acceptable ground lease between Grantor, as landlord, and Grantee, as tenant (with the Exclusive Easement area being the leased premises therein, and the Access and Utility Easement area remaining a non-exclusive easement for access and utility purposes) for uses consistent with those set forth herein. The parties agree that no additional consideration shall be paid to Grantor for entering into such a lease and said lease must (a) expressly provide that Grantee shall not be required to obtain the consent of Grantor to enter into any sublease or license of any portion of the leased premises or to permit sublessees or licensees to utilize the non-exclusive easement for access and utilities, (b) be for a term of ninety-nine (99) years, or as long as permitted by applicable law.

18. Attorney's Fees. If there is any legal action or proceeding between Grantor and Grantee arising from or based on this Agreement, the non-prevailing party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees and disbursements, actually incurred by such prevailing party in connection with such proceeding and in any appeal in related thereto. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorney's fees and disbursements shall be included in and as a part of such judgment.

19. Government Approvals/Applications. Grantor hereby covenants and agrees that (a) neither Grantor nor any affiliate of Grantor shall at any time oppose in any manner (whether at a formal hearing, in written documentation, or otherwise) any zoning, land use or building permit application of Grantee and (b) Grantor shall promptly cooperate with Grantee in making application for and/or otherwise obtaining all licenses, permits, and any other necessary approvals that may be required for Grantee's intended use of the Easement Areas.

20. Assignment of Ground Leases. Grantor hereby assigns to Grantee all of Grantor's beneficial rights, title and interest in, to and under all of the existing leases, licenses and other agreements for use or occupancy of the Easements, including, but not limited to, those agreements listed on Exhibit "D" attached hereto (the "**Current Agreement**" or "**Current Agreements**"), and those agreements listed on Exhibit "E" attached hereto (the "**Third Party Lease**"), including without limitation, the right to receive any and all rents and other monies payable to Grantor thereunder and including during any and all extensions thereof ("**Contract Revenues**"). Grantor hereby represents and warrants that as of the Effective Date there are no leases, license or other agreements pertaining to the Premises other than the Current Agreement(s) and Third Party Lease. Notwithstanding the foregoing assignment to Grantee, Grantor agrees that Grantor remains the fee owner of the Premises and Grantor remains obligated to comply with all obligations of the lessor or Grantor under the Current Agreement(s) and Third Party Lease, as the same may be extended or renewed, which relate to the ownership, maintenance, operation and use of the Premises. Such obligations are hereby expressly excluded from the foregoing assignment. Grantor hereby acknowledges that as of the Effective Date none of the improvements constructed pursuant to the Current Agreement(s) and Third Party Lease encroach outside the Premises. Grantor hereby certifies to Grantee that to the best of Grantor's knowledge the Current Agreement(s) and Third Party Lease are in full force and effect, that Grantor is not in default or breach of any of its obligations under the Current Agreement(s) and Third Party Lease, that Grantor has received no notices alleging a default under the Current Agreement(s) and Third Party Lease, and that as of the date hereof the lessee under the Current Agreement(s) and Third Party Lease has no claim against Grantor. Grantor agrees to indemnify and hold Grantee harmless from and against all loss, cost, damage, and expense, including, without limitation, reasonable attorney fees, arising out of any act, omission, or default by Grantor under the Current Agreement(s) and Third Party Lease that occurred prior to the Effective Date.

21. Further Acts; Attorney-in-Fact. Grantor, at Grantee's sole cost and expense, shall cooperate with Grantee in executing any documents necessary to protect Grantee's rights under this Agreement or Grantee's use of the Easements and to take such action as Grantee may be reasonably required to effect the intent of this Agreement. Grantor hereby irrevocably appoints Grantee as Grantor attorney-in-fact coupled with an interest to prepare, execute, deliver, and submit

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land-use, building permit and zoning applications related to Grantee's permitted use of the Easement Areas, on behalf of Grantor, to federal, state and local governmental authorities.

22. Survey. Grantee may elect, at Grantee's expense, to cause a boundary, as-built or similar survey of all or any portion of the Easement Areas (the "Survey") to be prepared by a surveyor duly licensed under the laws of the state in which the Premises is located. Grantor further agrees that Grantee may elect, in Grantee's sole and absolute discretion, to replace Exhibit B and Exhibit C with a revised Exhibit B and Exhibit C depicting and/or describing the Exclusive Easement Area and Access and Utility Easement Area, as applicable, in accordance with the Survey prepared at Grantee's election.

23. Waiver. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL GRANTOR OR GRANTEE BE LIABLE TO THE OTHER FOR, AND GRANTOR AND GRANTEE HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE RIGHT TO RECOVER INCIDENTAL, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE OR LOSS OR BUSINESS OPPORTUNITY), PUNITIVE, EXEMPLARY, AND SIMILAR DAMAGES.

24. Condemnation. In the event Grantor receives notification of any condemnation proceeding affecting the Easement Areas, or any portion thereof, Grantor shall provide notice of the proceeding to Grantee within forty-eight (48) hours. If a condemning authority takes all of the Easement Areas, or any portion thereof, Grantee shall be entitled to pursue Grantee's own award in the condemnation proceeds, which for Grantee will include, where applicable, the value of its communications facility, moving expenses, consideration paid to Grantor for the Easements, and business dislocation expenses.

[END OF DOCUMENT – SIGNATURE PAGES AND EXHIBITS TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year set forth below.

GRANTOR:

2 WITNESSES

The City of Truth or Consequences, New Mexico,
a municipal corporation,

Signature: _____

Print Name: **Bruce Swingle**

Title: City Manager

Date: _____

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of _____

County of _____

On this ____ day of _____, 202__, before me, the undersigned Notary Public, personally appeared **Bruce Swingle**, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

Print Name: _____

My commission expires: _____

[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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GRANTEE:

2 WITNESSES

ATC Sequoia LLC,
a Delaware limited liability company

Signature: _____
Print Name: _____
Title: _____
Date: _____

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

WITNESS AND ACKNOWLEDGEMENT

Commonwealth of Massachusetts

County of Middlesex

On this the ____ day of _____, 202__, before me, the undersigned Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
My Commission Expires: _____

{Seal}

Attachments:

Exhibit "A" – Premises
Exhibit "B" – Exclusive Easement Area
Exhibit "C" – Access and Utility Easement Area
Exhibit "D" – Current Agreement(s)
Exhibit "E" – Third Parties Lease

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EXHIBIT "A"
The Premises

*This Exhibit A may be replaced by descriptions and/or depictions from an As-Built Survey conducted by Grantee at
Grantee's option that depict and/or describe the Premises*

A TRACT OF LAND SITUATE TO SIERRA COUNTY, NEW MEXICO LYING PARTIALLY WITHIN THE NW 1/4 SW 1/4 NE 1/4 SW 1/4, AND SW 1/4 NW 1/4 OF SECTION 28, T136 R4W, N.M.P.M. AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:
BEGINNING AT A CONCRETE MONUMENT SET FOR THE SOUTHEAST CORNER OF THIS TRACT AT A POINT ON THE WEST RIGHT OF WAY OF INTERSTATE HIGHWAY NO. 25 (N.M.P. 1-025-2(8)68) WHENCE A HIGHWAY RIGHT OF WAY RAIL MARKED STATION 757 + 00 BEARS S40°18'30"W. A DISTANCE OF 213.55 FEET AND WHENCE THE WEST ONE QUARTER CORNER OF SECTION 28, T13S, R4W, BEARS N54°54'30"W. A DISTANCE OF 1792.63 FEET; THENCE N89°07'30"W. 466.78 FEET; THENCE N81°59'W. 668.08 FEET TO A CONCRETE MONUMENT AT THE SOUTHWEST CORNER OF THIS TRACT; THENCE N00°10'W. 1034.90 FEET TO THE NORTHWEST CORNER MARKED BY A CONCRETE MONUMENT; THENCE N64°34'E. 995.60 FEET TO THE NORTHEAST CORNER OF THIS TRACT MARKED BY A CONCRETE MONUMENT; THENCE S24°24'E. 208.62 FEET; THENCE SOUTH 342.32 FEET; THENCE EAST 155.20 FEET; THENCE S24°24'E. 87.98 FEET TO A POINT OF CURVATURE; THENCE AROUND THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 350 FEET, THROUGH A CENTRAL ANGLE OF 65°49' AN ARC LENGTH OF 402.05 FEET AND WHOSE LONG CHORD BEARS S57°18'30"E. 380.31 FEET TO A POINT OF TANGENCY; THENCE N89°47'E. 92.45 FEET TO A POINT OF A CURVE; THENCE AROUND THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 230 FEET THROUGH A CENTRAL ANGLE OF 21°26'58". AN ARC LENGTH OF 86.10 FEET AND WHOSE LONG CHORD BEARS S.13°40'31"E. 85.60 FEET TO A POINT OF TANGENCY; THENCE S24°24'E. 53.58 FEET TO A POINT OF CURVATURE; THENCE AROUND THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 399.44 FEET THROUGH A CENTRAL ANGLE OF 20°21'31". AN ARC LENGTH OF 141.93 FEET AND WHOSE LONG CHORD BEARS S.14°13'16"E. 141.19 FEET TO THE WEST RIGHT OF WAY OF INTERSTATE HIGHWAY NO. 25 MARKED BY A CONCRETE MONUMENT. THENCE ALONG THE RIGHT OF WAY S.48°16'13"W. 716.02 FEET TO THE PLACE OF BEGINNING, CONTAINING 40.000 ACRES OF LAND MORE OR LESS.
LESS AND EXCEPT ALL THAT PROPERTY CONVEYED TO FRED COMSTOCK AND BETTY COMSTOCK FROM THE CITY OF TRUTH OR CONSEQUENCES IN A DEED, DATED APRIL 17, 2001 AND RECORDED NOVEMBER 16, 2001 AS BOOK 94 PAGE 4700.
PARCEL ID 3022077439295
THIS BEING A PORTION OF THE SAME PROPERTY CONVEYED TO CITY OF TRUTH OR CONSEQUENCES, A MUNICIPAL CORPORATION FROM JAMES V. CAUGHRAN AND ELSIE CAUGHRAN, HIS WIFE AND FREDERIC G. COMSTOCK AND BETTY J. COMSTOCK, HIS WIFE IN A DEED, DATED DECEMBER 29, 1975 AND RECORDED JANUARY 15, 1976 AS BOOK 39 PAGE 389.
THIS BEING A PORTION OF THE SAME PROPERTY CONVEYED TO CITY OF TRUTH OR CONSEQUENCES, A MUNICIPAL CORPORATION FROM JAMES V. CAUGHRAN AND ELSIE CAUGHRAN, HIS WIFE AND FREDERIC G. COMSTOCK AND BETTY J. COMSTOCK, HIS WIFE IN A DEED, DATED DECEMBER 29, 1975 AND RECORDED JANUARY 15, 1976 AS BOOK 39 PAGE 389.

Site No: 413074
Site Name: City of Consequences NM

Exclusive Easement Area

This Exhibit B may be replaced with descriptions and/or depictions from an As-Built Survey conducted by Grantee at Grantee's option that depict and/or describe the Exclusive Easement Area, and if applicable, guy wire and guy anchor easements

A PARCEL OF LAND WITHIN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 13 SOUTH, RANGE 4 WEST OF THE N.M.P.M. BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WESTERLY RIGHT-OF-WAY FOR INTERSTATE 25 WHICH BEARS N47°43'41", 213.43 FEET FROM A RAILROAD RAIL STAMPED "RW STA 767'-00", AND ALSO BEARS S47°44'50"W, 286.38 FEET FROM A RAILROAD RAIL STAMPED "RW STA 702'-00", TO THE POINT OF BEGINNING; THENCE S89°37'44"W, 355.70 FEET; THENCE N02°22'16" ALONG A LINE PERPENDICULAR TO SAID SOUTH LINE, 95.64 FEET TO THE POINT OF BEGINNING; THENCE N01°02'11"W, 50.00 FEET; THENCE N88°57'23"E, 55.00 FEET; THENCE S01°02'29"E, 25.00 FEET; THENCE S64°30'52"W, 60.42 FEET TO THE POINT OF BEGINNING.

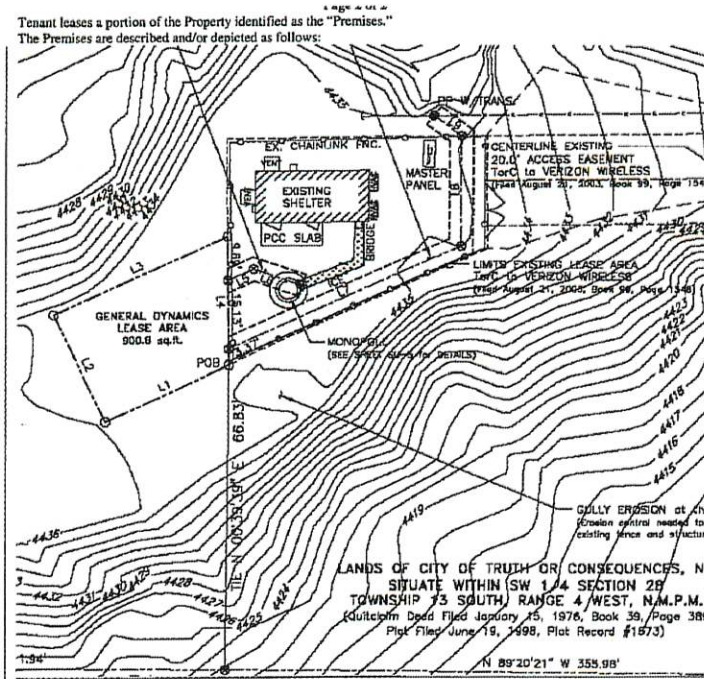
CONTAINING A TOTAL CALCULATED AREA OF 2.06255 SQUARE FEET OR 0.047 ACRES, MORE OR LESS.

(NOTE: AT TIME OF SURVEY, NO WRITTEN LEGAL INSTRUMENT ATTACHED TO THIS DEED. A METES AND BOUNDS IS SHOWN ON A SURVEY MAP OF THE PROPERTY, THE METES AND BOUNDS OPTION AND LEASE AGREEMENT DATED MAY 23, 2003, WHICH IS USED AS THE BASIS FOR THE AS-SURVEYED LEASE AREA DESCRIPTION, BUT THE SURVEYED LEASE AREA HAS BEEN SHIFTED TO THE WEST 3.89 FEET IN ORDER TO SURROUND THE EXISTING FENCE SURROUNDING THE COMPOUND.)

Together with :

Expansion Area

Expanded Easement Area by approximately nine hundred point eight (900.8) square feet.



Site No: 413074

Site Name: City of Consequences NM

EXHIBIT "C"

Access and Utility Easement Area

This Exhibit C may be replaced with descriptions and/or depictions from an As-Built Survey conducted by Grantee at Grantee's option that depict and/or describe the Access and Utilities Easement Area

All existing utility and access easements from Exclusive Easement Area to a public right of way including but not limited to:

A 20 FOOT WIDE STRIP OF LAND WITHIN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 13 SOUTH, RANGE 4 WEST OF THE N.M.P.M. LYING 10 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT A POINT ON THE WESTERLY RIGHT-OF-WAY FOR INTERSTATE 25 WHICH BEARS N47°43'41"E, 213.43 FEET FROM A RAILROAD RAIL STAMPED "RW STA 757+00", AND ALSO BEARS S47°44'50"W, 286.38 FEET FROM A RAILROAD RAIL STAMPED "RW STA 702+00"; THENCE ALONG THE SOUTH LINE OF A PARCEL RECORDED IN BOOK 39, PAGE 389 IN THE RECORDS OF SIERRA COUNTY, NEW MEXICO, N89°37'44"W, 301.33 FEET; THENCE N00°22'16"E, 93.19 FEET; THENCE N01°02'29"W, 15.00 FEET TO THE POINT OF BEGINNING; THENCE N88°19'56"E, 52.52 FEET; THENCE S88°09'36"E, 87.57 FEET; THENCE N88°13'10"E, 240.89 FEET; THENCE S32°54'46"E, 35.05 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE FOR INTERSTATE 25 AND THE POINT OF TERMINUS.

CONTAINING A TOTAL CALCULATED AREA OF 8,320.10 SQUARE FEET OR 0.191 ACRES, MORE OR LESS.

(NOTE: AT TIME OF SURVEY, NO WRITTEN LEGAL DESCRIPTION OF AN ACCESS EASEMENT WAS PROVIDED. A METES AND BOUNDS FOR ACCESS AND UTILITY EASEMENT IS SHOWN ON A SURVEY ATTACHED AS "EXHIBIT A" TO AN UNRECORDED OPTION AND LEASE AGREEMENT DATED MAY 23, 2003. THE SURVEYED ACCESS EASEMENT IS WRITTEN TO FOLLOW THE EXISTING ROAD AND TO TERMINATE AT THE INTERSTATE 25 RIGHT-OF-WAY.)

A PARCEL OF LAND WITHIN THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 13 SOUTH, RANGE 4 WEST OF THE N.M.P.M. BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WESTERLY RIGHT-OF-WAY FOR INTERSTATE 25 WHICH BEARS N47°43'41"E, 213.43 FEET FROM A RAILROAD RAIL STAMPED "RW STA 757+00", AND ALSO BEARS S47°44'50"W, 286.38 FEET FROM A RAILROAD RAIL STAMPED "RW STA 702+00"; THENCE ALONG THE SOUTH LINE OF A PARCEL RECORDED IN BOOK 39, PAGE 389 IN THE RECORDS OF SIERRA COUNTY, NEW MEXICO, N89°37'44"W, 355.70 FEET; THENCE N00°22'16"E, 66.84 FEET; THENCE N01°02'11"W, 50.00 FEET; THENCE N88°57'23"E, 31.64 FEET TO THE POINT OF BEGINNING; THENCE N01°02'37"W, 8.00 FEET; THENCE N89°20'04"E, 163.69 FEET; THENCE N88°13'10"E, 202.41 FEET; THENCE N88°30'54"E, 62.00 FEET; THENCE S01°46'50"E, 7.00 FEET; THENCE S86°06'30"W, 18.46 FEET; THENCE S88°13'10"W, 246.21 FEET; THENCE N88°09'36"W, 87.83 FEET; THENCE S88°18'37"W, 52.46 FEET; THENCE S88°57'23"W, 23.36 FEET TO THE POINT OF BEGINNING.

CONTAINING A TOTAL CALCULATED AREA OF 3,133.87 SQUARE FEET OR 0.072 ACRES, MORE OR LESS.

(NOTE: AT TIME OF SURVEY, NO WRITTEN LEGAL DESCRIPTION OF A UTILITY EASEMENT WAS PROVIDED. A METES AND BOUNDS FOR ACCESS AND UTILITY EASEMENT IS SHOWN ON A SURVEY ATTACHED AS "EXHIBIT A" TO AN UNRECORDED OPTION AND LEASE AGREEMENT DATED MAY 23, 2003. NO VISIBLE SURFACE EVIDENCE OF UTILITIES EXISTS WITHIN THE PROVIDED METES AND BOUNDS; THEREFORE, THIS UTILITY EASEMENT IS WRITTEN TO INCLUDE THE ADJACENT UTILITIES THAT COULD BE DETERMINED TO SERVICE THE TOWER COMPOUND.)

Site No: 413074

Site Name: City of Consequences NM

EXHIBIT "D"
Current Agreement(s)

That certain Option And Lease Agreement dated May 23, 2023 by and between The City of Truth or Consequences, New Mexico, as Lessor, and New Mexico RSA 3 Limited Partnership d/b/a Verizon Wireless, By: GTE Mobilnet of the Southwest LLC, Its General Partner, By: Celloo Partnership, Its Sole Member, as Lessee, as amended by that certain The First Amendment to the Option and Lease Agreement dated December 9, 2020, by and between The City of Truth or Consequences, New Mexico, a municipal corporation, as Landlord, and CommNet Cellular Inc. d/b/a Verizon Wireless, as Tenant. Evidenced by that certain Memorandum of Lease dated December 9, 2020, recorded January 15, 2021, as Instrument No. 2002100124 Book 134, Page 3249, in the records of Sierra County, New Mexico.

Site No: 413074
Site Name: City of Consequences NM

EXHIBIT "E"

Third Parties Lease

That certain Additonal Equipment Space Lease Agreement, dated October 21, 2005 by and between The City of Truth or Consequences, New Mexico, a municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant. As evidenced by that certain Memorandum of Lease dated October 21, 2005 and recorded January 9, 2006 in Book 105, Page 1041, in Sierra County, New Mexico.

Site No: 413074

Site Name: City of Consequences NM

Instructions for completing the Resolution and Consent Affidavit

****IMPORTANT INFORMATION BELOW****

In order to avoid delays in the completion of this transaction, the Resolution and Consent Affidavit must be signed by **ALL** Members, Partners, Directors, Shareholders, Officers or Trustees of the organization. Section 6 of this form allows for the organization to appoint one person to sign the remaining documents but **ONE HUNDRED PERCENT (100%)** of the ownership or voting interest of the organization must sign this first. Failure to comply with these instructions or properly indicate the percentage of ownership and/or voting interest will result in delays and could require the documents to be re-executed. If you have any questions, please contact your land lease representative.

Site No: 413074

Site Name: City of Consequences NM

Prepared by and Return to:
Attorney Karla Disla, Land Management
c/o American Tower
10 Presidential Way
Woburn, MA 01801
Tax Parcel ID No: 3022077439295

RESOLUTION AND CONSENT AFFIDAVIT

The City of Truth or Consequences, New Mexico, a municipal corporation

Be it known that, under the pains and penalties of perjury, the undersigned Members, Partners, Directors, Shareholders, Officers or Trustees (collectively "**Affiants**") of the above referenced entity (the "**Seller**"), hereby declare and resolve the following:

1. ATC Sequoia LLC, a Delaware limited liability (hereinafter "**Buyer**") currently manages or operates a communications tower on a portion of real property on land owned by the Seller.
2. Seller and Buyer desire to enter into an Option Agreement to Purchase Communications Easement and an Easement and Assignment Agreement (collectively, the "**Easement**") which will grant Buyer a ninety-nine year (99) term easement in, over, under, across and through land owned by the Seller and Buyer will provide a one-time, lump-sum payment to Seller as more fully set forth in the Easement.
3. Seller is a legal entity and in full compliance with all applicable laws required by the state in which Seller is located and originally created, or if not in compliance, the Affiants listed hereunder are all the only legal and equitable interest owners of Seller and are the only Members, Partners, Directors, Shareholders or Trustees of Seller.
4. The Affiants hereby consent to the Easement and all provisions therein and declare that Seller is hereby authorized to enter into the Easement with Buyer.
5. The Affiants also declare that they have full legal authority to bind Seller under the laws of the State or Commonwealth upon which Seller's property is located and Affiants have the full authority to execute any and all agreements on behalf of Seller and to nominate individuals to act on Seller's behalf.
6. The Affiants hereby nominate the below listed individual (the "**Nominee**") as attorney-in-fact to execute the Easement on behalf of Affiants and Seller, as well as any other documents necessary to complete the Easement transaction and comply with the provisions therein. The Nominee shall have full power and authority to act on

Site No: 413074
Site Name: City of Consequences NM

behalf of Affiants and on behalf of Seller for the sole purpose of completing the Easement transaction. In addition, the Nominee shall have full authority to direct the manner in which all payments will be made by Buyer to Seller pursuant to the Easement, including identifying which bank accounts to transfer funds to in the event a wire payment is made by Buyer.

NOMINEE: (Print Name) _____
(Address) _____

7. This document shall become effective as of the date of the last notarized signature of Affiants listed below.
8. Buyer and any third party may rely on a faxed, scanned or otherwise electronically reproduced fully-executed copy of this document as if it were an original.
9. This document can only be amended by addendum or other instrument that is fully executed and notarized by all Affiants listed hereunder.

[SIGNATURE AND NOTARY PAGES NEXT]

Site No: 413074
Site Name: City of Consequences NM

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW:

AFFIANT NO. 1

2 WITNESSES

Signature: _____

Print Name: _____

Date: _____

Title: *(circle one)* Member, Partner, Director,
Shareholder, Officer, Trustee

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

Percentage Ownership or Voting Interest: _____%

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of _____

County of _____

On this ____ day of _____, 202__, before me, the undersigned Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

Print Name: _____

My commission expires: _____

{Seal}

Site No: 413074

Site Name: City of Consequences NM

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW:

AFFIANT NO. 2

2 WITNESSES

Signature: _____
Print Name: _____
Date: _____

Signature: _____
Print Name: _____

Title: (*circle one*) Member, Partner, Director,
Shareholder, Officer, Trustee

Signature: _____
Print Name: _____

Percentage Ownership or Voting Interest: _____%

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of _____

County of _____

On this ____ day of _____, 202__, before me, the undersigned Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

{Seal}

Site No: 413074
Site Name: City of Consequences NM

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW:

AFFIANT NO. 3

2 WITNESSES

Signature: _____
Print Name: _____
Date: _____

Signature: _____
Print Name: _____

Title: *(circle one)* Member, Partner, Director,
Shareholder, Officer, Trustee

Signature: _____
Print Name: _____

Percentage Ownership or Voting Interest: _____%

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of _____

County of _____

On this ____ day of _____, 202__, before me, the undersigned Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

{Seal}

Site No: 413074
Site Name: City of Consequences NM

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW:

AFFIANT NO. 4

2 WITNESSES

Signature: _____

Print Name: _____

Date: _____

Signature: _____

Print Name: _____

Title: *(circle one)* Member, Partner, Director,
Shareholder, Officer, Trustee

Signature: _____

Print Name: _____

Percentage Ownership or Voting Interest: _____%

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of _____

County of _____

On this ____ day of _____, 202__, before me, the undersigned Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

Print Name: _____

My commission expires: _____

{Seal}

Site No: 413074

Site Name: City of Consequences NM

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW:

AFFIANT NO. 5

2 WITNESSES

Signature: _____

Print Name: _____

Date: _____

Title: (*circle one*) Member, Partner, Director,
Shareholder, Officer, Trustee

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

Percentage Ownership or Voting Interest: _____%

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of _____

County of _____

On this ____ day of _____, 202____, before me, the undersigned Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

Print Name: _____

My commission expires: _____

{Seal}

Site No: 413074

Site Name: City of Consequences NM

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW:

AFFIANT NO. 6

2 WITNESSES

Signature: _____

Print Name: _____

Date: _____

Signature: _____

Print Name: _____

Title: (*circle one*) Member, Partner, Director,
Shareholder, Officer, Trustee

Signature: _____

Print Name: _____

Percentage Ownership or Voting Interest: _____%

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of _____

County of _____

On this ____ day of _____, 202__, before me, the undersigned Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

Print Name: _____

My commission expires: _____

{Seal}

Site No: 413074

Site Name: City of Consequences NM



AMERICAN TOWER[®]
CORPORATION

DISCLOSURE AND AUTHORIZATION FORM

I, _____, ("**Grantor**") hereby authorize American Tower and its subsidiaries ("**ATC**") to obtain my credit report and any other personal financial information.

I understand that after ATC obtains and reviews my information and assesses the financial risks involved in entering a transaction with me, that ATC has the right, in its sole and absolute discretion, to refuse to enter into any contemplated transactions and that the financial investigation to be performed by ATC is no guarantee that a pending transaction will be approved by ATC.

My Social Security Number is: _____

My Address is: _____

GRANTOR:

Signature: _____

Print Name: _____

Date: _____

Site No: 413074
Site Name: City of Consequences NM

Chaparral Surveying, LLC

P.O. Box 629

Elephant Butte, New Mexico 87935

(575) 740-0334

July 1, 2022

LEGAL DESCRIPTION

(0.230 ACRES-10,000 SQ. FT.)

A tract of land situate in the SE1/4 NW1/4 SW1/4 of Section 28, Township 13 South, Range 4 West, N.M.P.M., in the City of Truth or Consequences, Sierra County, New Mexico, and more particularly described as follows, to-wit;

Beginning at the NW corner of this tract, whence the west ¼ corner of Section 28, Township 13 South, Range 4 West, N.M.P.M., a USGLO "brass-cap" monument, bears N50°19'50"W, a distance of 1395.92 feet; thence, DUE EAST, a distance of 100.00 feet to the NE corner of this tract;

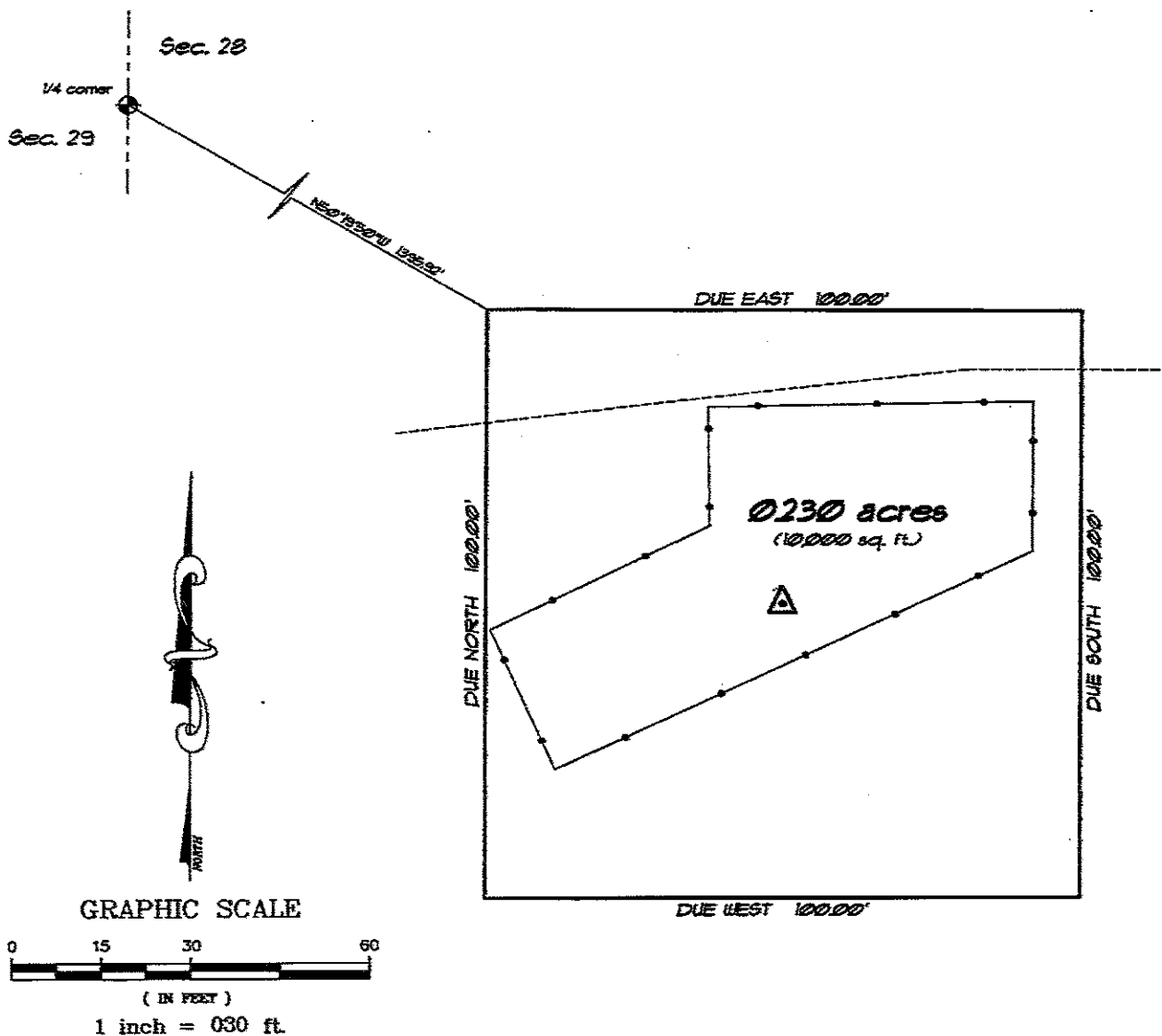
Thence, DUE SOUTH, a distance of 100.00 feet to the SE corner of this tract;

Thence, DUE WEST, a distance of 100.00 feet to the SW corner of this tract;

Thence, DUE NORTH, a distance of 100.00 feet to the point of beginning of the tract hereon described, containing 0.230 acres, (10,000 sq. ft.), of land, more or less.

This legal description was prepared from a field survey by David M. Senn, NMPLS 12129, (re: Chaparral Surveying, LLC, Plat dated June 30, 2022).

PLAT OF
of a 0.230 acre, (10,000 sq. ft.), tract of land
in the SE1/4 NW1/4 SW1/4 of Section 28, Township 13 South, Range 4 West, NMPM,
in the City of Truth or Consequences, Sierra County, New Mexico



Notes:

This tract is subject to easements, restrictions and reservations of record

The tract shown hereon is located within the boundaries of Flood Zone X, "area determined to be outside 500-year flood plain"

Basis of bearings is US584, Geodetic North in ground distances based on GPS observation

Use drawing scale to determine measurements when not labeled

Reference:

Account No. 206660

LFC 302-207-743-9295

American Tower Corporation Site #43014

National Flood Insurance Program, Flood Insurance Rate Map Community-Federal No. 350073 0005 C, (map revised July 16, 1996)

Legend:

Found USGLO "brass-cap" monument, (1971) 

American Tower Corporation tower in place 

chain link fence 

overhead power lines 

June 30, 2022

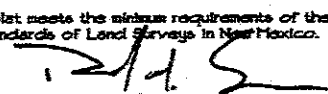
Chaparral Surveying, LLC
Professional Land Surveying

P.O. Box 629 Elephant Butte, New Mexico 87835

CERTIFICATE

This is to certify that I am a registered Professional Land Surveyor, that this plat is prepared from notes of field surveys made by me or under my supervision, that said surveys and this plat are true and correct to the best of my knowledge and belief.
I further certify that this survey is not a land division or subdivision as defined in the New Mexico Subdivision Act and that this plat represents an area for lease agreement.

This plat meets the minimum requirements of the Standards of Land Surveys in New Mexico.


David M. Sam
New Mexico Professional Surveyor
License Number 2229

INDEXING INFORMATION FOR COUNTY CLERK
City of Truth or Consequences (20661)
Section 28
Township 13 South, Range 4 West, NMPM



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: April 26, 2023

Agenda Item #: F.6

SUBJECT: Publication of Ordinance No. 751 an Ordinance authorizing the lease of real property to Power Point (Water tank site on Pershing) pursuant to section 3-54-1 NMSA 1978

DEPARTMENT: City Manager's Office

DATE SUBMITTED: April 17, 2023

SUBMITTED BY: Tammy Gardner

WHO WILL PRESENT THE ITEM: Bruce Swingle

Summary/Background:

Publication of Ord. No. 751

Recommendation:

Approval of publication

Attachments:

- Ordinance No. 751
- [Click here to enter text.](#)

Fiscal Impact (Finance): Yes

\$300,000.00

Legal Review (City Attorney): Yes

[Click here to enter text.](#)

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. [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 4-26-2023

ORDINANCE No. 751

AN ORDINANCE AUTHORIZING THE LEASE OF REAL PROPERTY, PURSUANT TO SECTION 3-54-1 NMSA 1978.

A. WHEREAS, the City of Truth or Consequences, New Mexico (the "City") is a legally created, established, organized and existing incorporated municipality under the constitution and laws of the State of New Mexico; and

B. WHEREAS, the City owns certain real property located within its boundaries specifically described as follows:

.230 acre in S½, SE¼ of Section 28, Township 13 South, Range 4 West, NMPM, commonly referred to as the Water Tank Site on Pershing Street in Truth or Consequences, Sierra County, New Mexico, more particularly, described in **EXHIBIT 1** which is the survey from Chaparral Surveying, LLC, dated January 13, 2022.

C. WHEREAS, the City has negotiated a Lease Agreement with Tower Point ("Tenant"), whereby the City shall lease its interest in and to the above-described property to the Tenant; and

D. WHEREAS, under Section 3-54-1 NMSA 1978, the City is required to obtain an appraisal from a qualified appraiser of any property to be leased, and said appraisal was prepared by Lee Morris of Morris Appraisal Services, Inc. dated August 25, 2022; and

E. According to the aforesaid appraisal, the appraiser opined as follows: "Therefore, by reason of my research of the current market, and by virtue of my experience, I have formed the opinion that the market rent for the ground lease as stated as of the effective date of this report was: **FIFTEEN THOUSAND DOLLARS (\$15,000.00)** per year.

F. The contemplated rental is a one-time up front payment of \$300,000.00 to be paid at the inception of the Lease. The Lease shall be for a 99 year term commencing upon the effective date of this Ordinance.

G. The Lessee of the proposed agreement shall be Tower Point. A copy of the Lease and related documents are attached hereto as **EXHIBIT A**.

H. The City Commission has determined that it is in the best interests of the City to consummate the proposed transaction. Several of the reasons in support of proceeding with the proposed transaction include the following:

1. As noted above, the proposed payment of \$300,000.00 would be "up-front" at the inception of the Lease.

2. Proceeding with the proposed transaction represents the best use of the property. It would be otherwise difficult and costly to develop the property.

3. In the absence of entering into the proposed long term Lease Agreement, it is very speculative if the property could be used as a cell tower site in the distant future.

4. Operating and maintaining the property in its current use has been a labor-intensive endeavor the City. Entering into this proposed transaction would relieve the City of a significant, time-consuming burden.

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

Section 1. Authority. The City is authorized to lease interests in real property pursuant to the provisions of Section 3-54-1, N.M.S.A. (1978).

Section 2. Material Terms Lease Agreement.

A. The City shall lease the above-described property to the tenant in accordance with the terms described in **EXHIBIT A attached.**

B. The Tenant acknowledged that it is leasing the property in an "as is" condition, and the City has made no warranties or representations regarding the Real Property, the status of its title, or its feasibility for development.

Section 3. Effective Date. This Ordinance shall be effective forty-five (45) days after its adoption.

Section 4. Severability. If any section, paragraph, clause or provision shall be held to be valid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

PASSED, ADOPTED, SIGNED AND APPROVED THIS ____ DAY OF _____ 2023.

CITY OF TRUTH OR CONSEQUENCES

By _____
AMANDA FORRISTER, Mayor

ATTEST:

By _____
ANGELA TORRES, City Clerk

Chaparral Surveying, LLC

P.O. Box 625
Chaparral, New Mexico 87935
(505) 740-9394

January 13, 2022

LEGAL DESCRIPTION (0.230 ACRES-10,000 SQ. FT.)

A tract of land situate in the S/2 SE/4 of Section 28, Township 13 South, Range 4 West, N M P M., in the City of Truth or Consequences, Sierra County, New Mexico, and more particularly described as follows, to-wit:

Beginning at the north corner of this tract, whence the east 1/4 corner of Section 28, Township 13 South, Range 4 West, a 5/8" rebar, bears N37°53'14"E, a distance of 2194.92 feet,

Thence, S45°00'00"E, a distance of 100.00 feet to the east corner of this tract;

Thence, S45°00'00"W, a distance of 100.00 feet to the south corner of this tract;

Thence, N45°00'00"W, a distance of 100.00 feet to the west corner of this tract;

Thence, N45°00'00"E, a distance of 100.00 feet to the point of beginning of the tract hereon described, containing 0.230 acres, (10,000 sq. ft.), of land, more or less.

This legal description was prepared from a field survey by David M. Sana, NMPLS 12129, (re: Chaparral Surveying, LLC, Plat dated January 12, 2022).

Legal

EXHIBIT "1"



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: April 26, 2023

Agenda Item #: G.1

SUBJECT: FY 2024 Tourism Marketing Proposed Plan/New Mexico True Cooperative Advertising
DEPARTMENT: City Manager's Office
DATE SUBMITTED: April 17, 2023
SUBMITTED BY: Tammy Gardner
WHO WILL PRESENT THE ITEM: Joanie Griffin

Summary/Background:

The proposed marketing plan will reach many different platforms and people through billboards, social media, and many printed ads. The total will be \$39,321.00 towards the NM True Cooperative Advertising and \$120,000.00 towards additional advertising outside of the NM True Coop.

Recommendation:

Approve

Attachments:

- FY 2024 Tourism Marketing Proposed Plan
- Click here to enter text.

Fiscal Impact (Finance): Yes

\$159,321.00

Legal Review (City Attorney): N/A

Click here to enter text.

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: Click here to enter a date. Referred To: Click here to enter text.

☐ Approved ☐ Denied ☐ Other: Click here to enter text.

File Name: CC Agendas 4-26-2023



FY2024 Tourism Marketing Proposed Plan

Contributors:

Elephant Butte:	\$5,000
Sierra County:	\$10,000
TorC:	\$159,321 + NMGR

New Mexico True Cooperative Advertising:

Once again the New Mexico Tourism Department is giving communities a 2:1 match on all advertising, meaning we pay 33 cents on the dollar for advertising.

Contribution from all entities is \$54,321 for \$162,963 in advertising which includes:

- A video and photo shoot (we desperately need new assets for our advertising)
- A seasonal InstaMeet (with Instagram Influencers)
- Facebook and Programmatic Digital Advertising
- Google Ad Words
- A full-page ad in the New Mexico True Adventure Guide
- 3 Full Page New Mexico Magazine ads and digital ads
- 12-week Albuquerque billboard campaign
- 12-week El Paso billboard campaign

Additional Advertising Outside of NM True

\$60,000 for Television Advertising on Albuquerque TV stations (that reaches the entire state except for Las Cruces)

\$40,000 for Television Advertising on El Paso TV stations (that reaches the El Paso area as well as Las Cruces)

\$20,000 for Sunny505 fees for managing the grant and TV placement as well as developing advertising and handling public relations.



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: April 26, 2023

Agenda Item #: G.2

SUBJECT: Discussion/Action: 120 Winston Variance/Special Use permit

DEPARTMENT: Community Development

DATE SUBMITTED: April 21, 2023

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

Applicant is requesting a Variance/Special use permit to allow for a Community Club House/Sound and Video Recording Studio/Gift Shop/Weekly Swap Meets/Special Events at 120 Winston Street. Property is located in the T-1 Zone. Public Hearing was held at P & Z Meeting on 4-10-23. P & Z voted unanimously to recommend approval of the Special Use and Variance request.

Recommendation:

Accept/Deny P & Z recommendation

Attachments:

- P & Z Packet
- Draft P & Z Meeting Minutes 4-10-23

Fiscal Impact (Finance): N/A

[Click here to enter text.](#)

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 4-26-2023



CITY OF TRUTH OR CONSEQUENCES
PLANNING AND ZONING COMMISSION ACTION FORM
DATE: 4-10-2023

ITEM: Public Hearing/Discussion/Action: 120 Winston Variance/Special Use permit

BACKGROUND:

Applicant is requesting a Variance/Special use permit to allow for a Community Club House/Sound and Video Recording Studio/Gift Shop/Weekly Swap Meets/Special Events at 120 Winston Street. All property owners within a 300ft radius were notified of public hearing. All applicable documents have been submitted and fees paid. Property is located in the T-1 Zone.

SUPPORT INFORMATION:

Application
Site Plan
Site Maps
Notice of Public Hearing
Applicable Code References
Finding of Facts Checklist

Name of Drafter: Traci Alvarez	: Assistant City Manager	Meeting date 3-13-2023
E-mail: talvarez@torcnm.org	Phone: 575-894-6673	



COMMUNITY DEVELOPMENT DEPARTMENT
Voice - (575) 894-6673 x 353 talvarez@torcnm.org
505 Sims Street - Truth or Consequences, NM 87901

(Staff Use Only)
Case No

Spec. Use - \$25.00
4x \$7.00 per Cert. - 2800
\$53.00

Related Case(s)

PLANNING APPLICATION FORM

The completeness of this application, which includes accompanying plans, shall be subject to the review of the Building/Planning Department. This application is used for a variety of application processes and not all items may apply to your project. If you feel a requirement is not applicable to your project, write "N/A." If you have any questions while completing this application please ask a member of the Planning Department for assistance. Incomplete applications will not be accepted (or the process may be delayed.) (PLEASE PRINT OR TYPE) ITEMS REQUIRING PUBLIC HEARINGS MAY TAKE UP TO 90 DAYS

CHECK APPLICATION TYPE(S) REQUESTED:

- | | | |
|--|--|--|
| <input type="checkbox"/> Master Plan (\$100 + \$200/lot) | <input type="checkbox"/> Public Right-of-Way Use (\$0) | <input checked="" type="checkbox"/> CUP/SUP (\$25) |
| <input type="checkbox"/> Master Plan Amendment (\$200) | <input type="checkbox"/> Annexation (\$100 or \$10/ac. Max. \$250) | <input type="checkbox"/> Home Occupation Level _____ |
| <input type="checkbox"/> Change of Zone (\$100 or \$10/ac. Max. \$250) | <input type="checkbox"/> Appeal (\$50) | <input type="checkbox"/> Final Plat (\$50) |
| <input type="checkbox"/> Certified Mailing Fees (\$7 per letter) _____ | <input type="checkbox"/> Variance/Waiver/Vacate (\$25) | <input type="checkbox"/> Re-Plat (\$50) |
| | <input type="checkbox"/> Zone Ordinance Amendment (\$250) | <input type="checkbox"/> Plat Amendment (\$50) |

Special Use for:
Weekly Swapmeet / Community Clubhouse

PROJECT SUMMARY:

Project/Business Name (if any):

Galactic Compound

Project Description (add extra page(s) if needed):

Sound and Video Recording Studio / Gift Shop / Fruit-Veggies
Weekend Swap meet / special events

from
Green
base

Property Address/Location: _____

Assessor's Parcel Number(s): _____

Total Gross Lot Area: _____

Total Net Lot Area: _____

Existing Master Plan/Comprehensive Plan Designation: _____

Existing Zoning Designation: _____

Proposed Master Plan Designation (if applicable): _____

Proposed Zoning Designation: _____

Existing Uses and/or Structures on Site: 3

Surrounding Uses:

North: _____

South: _____

East: _____

West: _____

APPLICANT/ REPRESENTATIVE Name:		Telephone No.: 575.740.8399	
Address: 120 Winston St		Fax No.: -	
City: TORC		State: NM	Zip Code: 87901
Contact Person: Dena Bellelli		E-mail Address: Cindy.bellelli@gmail.com	
I certify under penalty of perjury that all the application information is true and correct:			
Applicant's Signature: Dena Bellelli		Date: _____	
PROPERTY OWNER/ AGENT Name: Dena Bellelli		Telephone No.: 575.740.8399	
Address: 120 Winston St		Fax No.: -	
City: TORC		State: NM	Zip Code: 87901
Contact Person: Dena		E-mail Address: Cindy.bellelli@gmail.com	
The City will provide the applicant with hearing notices and staff reports unless another party is identified.			
Date/Time Received:		Receipt No(s):	
Received By: _____		Amount Received: \$ _____	

PLANNING APPLICATION FORM -page 2

I, Dena Bellelli am the owner of the property described in this application and hereby authorize
Print Name

to act on my behalf on matters pertaining to this application.
Name of applicant or representative

Property Owner's Signature: _____ Date: _____

Note: If more than one owner, a separate page must be attached listing the names and addresses of all persons (if a corporation, list officers, and principals) having interest in the property ownership.

ARCHITECT Name: _____ Telephone No.: _____
Address: _____ Fax No.: _____
City: _____ State: _____ Zip Code: _____
Contact Person: _____ E-mail Address: _____

ENGINEER Name: _____ Telephone No.: _____
Address: _____ Fax No.: _____
City: _____ State: _____ Zip Code: _____
Contact Person: _____ E-mail Address: _____

APPLICANT'S AGREEMENT:

Processing of this application will not begin unless this application is complete and all signatures are provided: I, the undersigned as project Applicant or Representative of the project Applicant, hereby authorize the City of Truth or Consequences to review the submitted plans and specifications for this Application in accordance with the City of Truth or Consequences Municipal Code.

Applicant(s) acknowledge and agree that by filing this application City staff may enter upon the subject property and make examinations and surveys, provided that the entries, examinations and surveys do not unreasonably interfere with the use of the land by those persons lawfully entitled to the possession thereof.

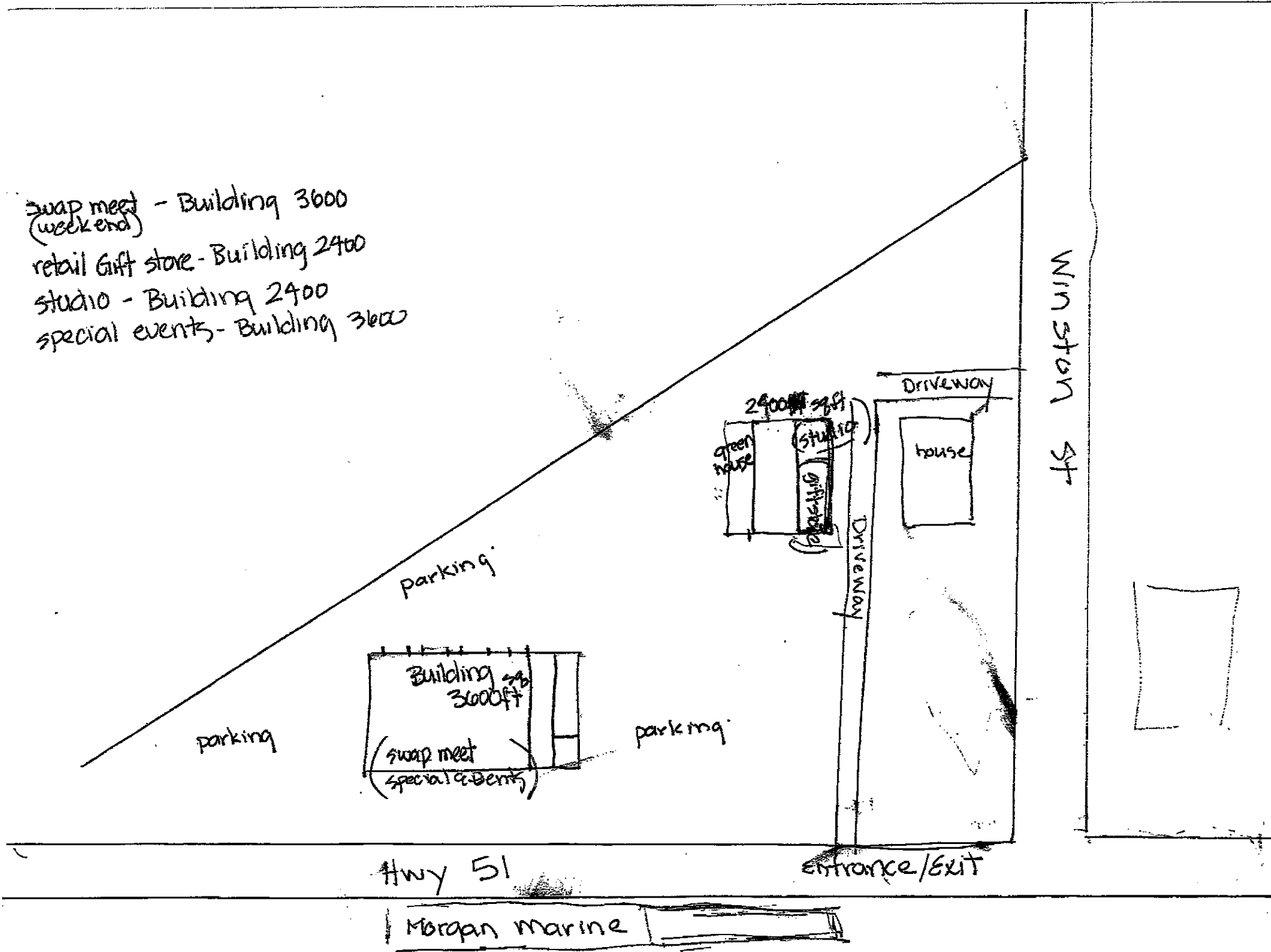
Applicant(s) certify under penalty of perjury that I am the legal owner(s) (all individual owners must sign as they appear on the deed to the land), Corporate Officer(s) empowered to sign for the corporation, Owner's Legal Agent having power of Attorney (a notarized Power of Attorney document must accompany this application), or the owner's authorized representative (include a notarized consent form from the owner).

Applicant(s) acknowledge and agree that I have included all of the required items and understand that missing items may result in delaying the processing of my application. Applicants) agree to defend, indemnify and hold harmless the City of Truth or Consequences ("City") and its agents, officers, consultants, independent contractors and employees ("City's Agents") from any and all claims, actions or proceedings against the City or the City's Agents to attack, set aside, void, or annul an approval by the City, or the City's Agents concerning the Project (collectively "Claim"). The City shall promptly notify the Applicant of any Claim and the City shall cooperate fully in the defense. If the City fails to promptly notify the Applicant of any Claim or if the City fails to cooperate fully in the defense, the Applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City. Nothing in this paragraph shall obligate the City to defend any Claim and the City shall not be required to pay or perform any settlement arising from any such Claim not defended by the City, unless the settlement is approved in writing by the City. Nothing contained in this paragraph shall prohibit the City from independently defending any Claim, and if the City does decide to independently defend a Claim, the City shall bear its own attorney's fees, expenses of litigation and costs for that independent defense. The Applicant may agree to reimburse the City for attorney's fees, expenses of litigation and costs for that independent defense. Should the City decide to independently defend any Claim, the Applicant(s) shall not be required to pay or perform any settlement arising from any such Claim unless the settlement is approved by the Applicant.

IT IS SO AGREED:

Dena Bellelli 1/23/23 Dena Bellelli
Applicant's Signature Date Name of Applicant (Print)

swap meet - Building 3600
(week end)
retail Gift store - Building 2400
studio - Building 2400
special events - Building 3600



**CITY OF TRUTH OR CONSEQUENCES
PLANNING & ZONING COMMISSION
MINUTES
MONDAY, APRIL 10, 2023**

REGULAR MEETING

Regular meeting of the Planning & Zoning Commission of the City of Truth or Consequences, New Mexico to be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, on Monday, April 10, 2023 at 4:00 p.m.

INTRODUCTION:

ROLL CALL:

Chris Sisney, Chairman - **LATE**
Susan Buhler, Vice Chairman
Esther Luchini, Member

ALSO PRESENT:

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

1. APPROVAL OF AGENDA:

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

2. APPROVAL OF MINUTES:

a) March 13, 2023

Member Luchini made a motion to approve the minutes.
Vice-Chairman Buhler seconded the motion.
Motion carried unanimously.

3. COMMENTS FROM THE PUBLIC (3 Minute Rule Applies)

Chris Devlin spoke about the bridge across the river. He asked if this item would go before this board and if they had any recommendations. He thinks the plans need to be researched more.

4. PUBLIC HEARINGS (5 Minute Rule Applies)

- a. Public Hearing/Discussion/Action: 120 Winston Variance/Special Use permit to allow for a Community Club House/Sound and Video Recording Studio/Gift Shop/Weekly Swap Meets/Special Events. Assistant City Manager Alvarez

Deputy Clerk Gabaldon swore in everyone.

Assistant City Manager Alvarez: Applicant is requesting a Special Use Permit for the purpose of a Community Club House/Sound and Video Recording Studio/Gift Shop/Weekly Swap Meets/Special Events per the provisions of 11-5-6. All property owners within a 300ft radius were notified of public

hearing. Property is located in the T-1 Zone – Commission has been provided applicable code references in your packet.

A special use permit is required for a special land use, which is not permitted by right within the District wherein it is requested.

In making a decision on a Special Use Permit Commission shall review the following factors and accord each factor the necessary weight on a case-by-case basis.

The increase in congestion of streets and other rights-of-way;

Diminishment of safety from fire, panic and other dangers;

Diminishment to the health and general welfare of the public;

Degradation of light and air for all properties in the immediate area of the proposed Permit; increases of overcrowding of land and undue concentrations of populations;

Adverse effects on provisions for transportation, water, sewer, schools, parks and other public facilities or increases in the effects of natural hazards;

Increases or facilitation of the unlawful use of structures, buildings or land; and

Promote the use or waste of energy in the use of structures, buildings, and land.

In addition, in considering each request, Commission shall make their recommendation based on the Finding of Facts as to the impacts of the proposal using the criteria listed on their findings of facts checklist.

Special Use Permits shall not be granted in such cases where the use will result in negative impacts, which substantially outweigh the positive impacts of the proposed use.

Community Club House – Requires Special Use permit

Sound and Video Recording Studio – Not specified in the Code

Gift Shop – Not specified in code

Special Events — Not specified in the Code

Weekly Swap Meets – Requires Special Use/Potential Variance

T-1 Zone permitted uses include garage or yard sale or similar use. There (3) sales are permitted in a one (1) year period at a single address. A sale shall not exceed three (3) consecutive days, applicant is requesting to host weekly swap meets.

With that, I stand for questions. The applicant is on the phone for any questions as well.

Chairman Sisney: And there is no one here to speak on either side, correct?

Assistant City Manager Alvarez: I have not received any proponents or opponents via email, phone calls, and no one has signed up.

Chairman Sisney: Alright, is there any discussion.

City Attorney Rubin: I think you should hear from the applicant. I think you did a good thing by identifying that there is no opposition. I applaud Ms. Alvarez for taking the step of notifying all of the property owners within a 300ft radius which is required by our ordinance. I'm assuming that no one has contacted you no one has indicated any opposition to this. And just for record, you might want to get some testimony from the applicant also and then you can proceed.

Chairman Sisney: Alright, thank you Mr. Rubin. And the applicant is Cindy. Would you go ahead and tell us just for the record so that we have it.

Cindy Bellelli: Sure. We're looking at doing a community club house. It's basically gonna be for a karaoke group with a karaoke system. We wanted to do a little club house for an optional place for people to do karaoke that does not have alcohol. Also a family recording studio that kind of goes with the karaoke so people can record themselves singing, that would be an option. Gift shop; a really small gift shop that would have t-shirts and local made stuff for the tourists. It would be a small little area for a small gift shop. The weekly swap meets would be either a Saturday or a Sunday with different people to rent out a table space and it would be a covered area. We have 3600 foot building with 3 big RV doors that we can open

up so that people can have shade. Special events would be maybe having a band; something really small for like a talent show for locals to showcase their talents.

Chairman Sisney: Is there any questions from anyone on the board.

Member Luchini: Is there a noise ordinance for the music and the sound?

Assistant City Manager Alvarez: We do have a noise ordinance.

City Attorney Rubin: I do believe it is called a nuisance ordinance.

Assistant City Manager Alvarez: It could apply to really anything; anybody could call in.

Cindy Bellelli: I plan on wrapping things up early as an afternoon thing. There would be evening events.

Vice-Chairman Buhler: When you're having swap meets, would you be leaving things out from one swap meet to the next or would you be putting things away?

Cindy Bellelli: The swap meet would be held indoors and that would be an option if we did do a 2 day swap meet; the option would be that they could keep the stuff in but I'm probably looking at 1 day a week and everything is all locked up in a huge building.

Vice-Chairman Buhler: So it would be inside then, it wouldn't be outside.

Cindy Bellelli: Correct.

Vice-Chairman Buhler: Ok, thank you.

Member Luchini: You're using buildings that are existing there now?

Cindy Bellelli: Currently, we just bought the property in November. There's a greenhouse attached to one of the buildings, there's an apartment in one of the buildings, other than that, they're pretty much empty. I have heard that they have had multiple types of businesses here before.

Chairman Sisney: Any other questions.

Member Luchini: What is 300 feet in this picture?

Assistant City Manager Alvarez: No, we do it off of the County Assessors site and we do it 300 feet from their property points, not from the center of the property, but from the edges of the property we go out 300 feet to make sure that we get everybody. Otherwise, with a property this large, 300 feet would probably only include the applicant. We go from the edge of the property. I can tell you that all certified mailings went out and were signed off.

Member Luchini made a motion to make a recommendation to allow for 120 Winston Variance/Special Use permit to allow for a Community Club House/Sound and Video Recording Studio/Gift Shop/Weekly Swap Meets/Special Events.

Vice-Chairman Buhler seconded the motion.

Motion carried unanimously.

OLD BUSINESS:

- a. Discussion/Action: Review and recommendation of the adoption of a Planning & Zoning Commission Rules of Procedure

City Attorney Rubin read the draft adoption of Planning & Zoning Commission Rules of Procedure that he created to the board and went over the Battershell procedures with the board and he explained the information to them.

Chairman Sisney asked what a quorum is.

City Manager Swingle added that if they had a 2-1 vote on an item that does not meet the quorum.

City Attorney Rubin explained that it's a 5 person board, you have to have a minimum of 3 people present in order to conduct business. He went on to explain that should an occasion arise where there isn't a unanimous vote, it would go to the City Commission for them to make the ultimate decision.

Chairman Sisney made a motion to recommend the adoption of Planning & Zoning Commission Rules of Procedure.

Vice-Chairman Buhler seconded the motion.

Motion carried unanimously.

5. REPORTS FROM THE BOARD:

Chairman Sisney asked about Chris Devlin's comment about the bridge and why nothing has been brought before the board.

Assistant City Manager Alvarez stated that no plans have been submitted at this time that would come to the commission; as far as any development plans. If it's a subdivision development, it would come to the board; if it's an individual personal property that someone is developing, that doesn't come to planning & zoning. She clarified what a subdivision is to the board.

6. REPORTS FROM STAFF:

Assistant City Manager Alvarez stated that with the board now only having 3 members at this time, until they can solicit and get a couple of members, if one of the members are unable to attend a meeting, that cancels the entire meeting. Any public hearings that are scheduled and there isn't a quorum, it cancels everything for everyone and they have to start all over again. She asked the board to advise the City in advance if they will be unable to attend any future meetings so that they can take the public hearings directly to the City Commission. June 12, 2023 will be the next meeting as they are canceling the meeting for May 2023 due to budget meetings.

City Manager Swingle took the time to introduce Angie Gonzalez as the incoming City Manager.

Deputy Clerk Gabaldon advised the board that she gave the board a copy of the resignation letter from Member Alicea.

7. ADJOURNMENT:

Member Luchini made a motion to adjourn the meeting.

Chairman Sisney seconded the motion.

Motion carried unanimously.



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: April 26, 2023

Agenda Item #: G.3

SUBJECT: Discussion/Action: Recommendation of Award, Main Street District (MSD) Roadway and Drainage Improvements

DEPARTMENT: Community Development

DATE SUBMITTED: April 21, 2023

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

City was awarded Colonias funding in July 2020 for the purpose of MSD Roadway and Drainage Improvements to coincide with the MSD water project. Project was originally bid out in December and again in February. December request for Bids garnered no submissions. Project was rescope and February bids came in above available funding amount. Project was rescope again with further breakdown to allow for funding restrictions. Bids were received April 11, 2023. 1 bid was received, from Spartan Construction of NM. Wilson and Co. has reviewed the Bid for compliance and recommends awarding a contract to include the following: McAdoo Street from Jones to Pershing; Daniel Street from McAdoo to Broadway; Pershing Street from Main to McAdoo and Pershing Street from McAdoo to Broadway for a total contract award amount of \$765,766.01, including NMGR. This recommendation fits within the allowable funding source.

Recommendation:

Accept Engineer recommendation of award

Attachments:

- Recommendation of Award Letter with supporting documents
-

Fiscal Impact (Finance): Yes

CIF 5192 Grant Funding

Legal Review (City Attorney): Choose an item.

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 4-26-2023

April 18, 2023

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

Re: Recommendation of Award, Main Street District (MSD) Roadway and Drainage Improvements

Bids were received at the City of Truth or Consequences Finance Department located at 505 Sims Street, Truth or Consequences, NM, on Tuesday, April 11, 2023, until 3:00 pm MST local time. At 3:30 pm MST, April 11, 2023, the bids will be moved to the Commission Chambers at 405 W 3rd Street, Truth or Consequences, NM to be publicly opened and read. The following bid was received and is presented in table below:

No.	Company	Bid Lot 1 McAdoo St from Foch to Jones (excl. NMGRT)	Bid Lot 2 McAdoo St from Jones to Pershing (excl. NMGRT)	Bid Lot 3 Daniel St from McAdoo to Broadway (excl. NMGRT)	Bid Lot 4 Pershing St from N. of Main to Main (excl. NMGRT)	Bid Lot 5 Pershing St from Main to McAdoo (excl. NMGRT)	Bid Lot 6 Pershing St from McAdoo to Broadway (excl. NMGRT)
1	SPARTAN CONSTRUCTION OF NM, LLC.	\$331,738.15	\$174,617.89	\$264,788.41	\$141,019.27	\$127,893.19	\$138,475.64

A complete tabulation of the bid is attached. The evaluation of the bid is based on the amount of each of the bid lots.

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

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

Included with the signed Bid Proposal form, Spartan Construction of NM, LLC. submitted the following:

- Required Bid Security
- List Of Proposed Subcontractors
- List of Proposed Suppliers
- Evidence of authority to do business in the state of the Project
- Contractor's license number

- Required Bidder Qualification Statement with supporting data
- Bid Bond

Based on the information provided, the responsible bidder is Spartan Construction of NM, LLC. We, therefore, recommend the construction contract for the Main Street District (MSD) Roadway and Drainage Improvements Project, Bid Lots 2, 3, 5, and 6 be awarded to Spartan Construction of NM, LLC for a total contract award amount of \$765,766.01, including NMGRT.

Sincerely,



Brigitte Fuller, PE

Operations Manager

Wilson & Company, Inc., Engineers & Architects

Enclosures:

Main Street District (MSD Roadway and Drainage Improvements Bid Tabulation

Required Bid Documents Checklist

Sign-in Sheet

BID TABULATION

Project: MSD Roadway and Drainage Improvements
 Owner: City of Truth or Consequences NM
 Engineer: Wilson & Company
 Date: 4/12/2023

BID ITEM NO.	SPEC. NO.	ITEM DESCRIPTION	UNIT	EST. QTY.	ENGINEERS ESTIMATE		SPARTAN	
BID LOT 1					UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
MCADOO ST FROM FOCH ST TO JONES ST - 20+98.20 TO 24+52.75								
1	203000	UNCLASSIFIED EXCAVATION	C.Y.	198	\$ 21.64	\$ 4,284.72	\$ 72.60	\$ 14,374.80
2	207000	SUBGRADE PREPARATION	S.Y.	1100	\$ 4.41	\$ 4,851.00	\$ 5.28	\$ 5,808.00
3	303160	BASE COURSE 6"	S.Y.	1100	\$ 14.15	\$ 15,565.00	\$ 15.84	\$ 17,424.00
4	408100	PRIME COAT MATERIAL	TON	2	\$ 1,000.00	\$ 2,000.00	\$ 1,980.00	\$ 3,960.00
5	416107	MINOR PAVEMENT TYPE I HMA SP-IV	S.Y.	1100	\$ 40.00	\$ 44,000.00	\$ 33.00	\$ 36,300.00
6	601000	REMOVAL OF OBSTRUCTIONS AND STRUCTURES	L.S.	1	\$ 2,500.00	\$ 2,500.00	\$ 9,240.00	\$ 9,240.00
7	601110	REMOVAL OF SURFACING	S.Y.	1112	\$ 10.00	\$ 11,120.00	\$ 17.16	\$ 19,081.92
8	603281	SWPPP PLAN PREPARATION AND MAINTENANCE	L.S.	1	\$ 1,666.67	\$ 1,666.67	\$ 9,900.00	\$ 9,900.00
9	604001	GEOTEXTILE CLASS 1	S.Y.	1100	\$ 5.50	\$ 6,050.00	\$ 6.60	\$ 7,260.00
10	604300	GEOGRID REINFORCEMENT	S.Y.	1100	\$ 5.50	\$ 6,050.00	\$ 6.60	\$ 7,260.00
11	608004	CONCRETE SIDEWALK 4"	S.Y.	29	\$ 75.00	\$ 2,175.00	\$ 204.60	\$ 5,933.40
12	608106	DRIVE PAD 6"	SY	52	\$ 75.00	\$ 3,900.00	\$ 217.80	\$ 11,325.60
13	609200	HEADER CURB	L.F.	22	\$ 47.45	\$ 1,043.90	\$ 52.80	\$ 1,161.60
14	609424	CONCRETE VERTICAL CURB & GUTTER B 6" X 24" TYPE B	LF	661	\$ 34.88	\$ 23,055.68	\$ 50.16	\$ 33,155.76
15	609636	CONCRETE VALLEY GUTTER 6"X36"	L.F.	65	\$ 37.66	\$ 2,447.90	\$ 237.60	\$ 15,444.00
16	613000	CLEANING CULVERTS AND DRAINAGE STRUCTURES	L.S.	1	\$ 2,500.00	\$ 2,500.00	\$ 9,240.00	\$ 9,240.00
17	618000	TRAFFIC CONTROL MANAGEMENT	L.S.	1	\$ 5,000.00	\$ 5,000.00	\$ 6,600.00	\$ 6,600.00
18	621000	MOBILIZATION	L.S.	1	\$ 5,000.00	\$ 5,000.00	\$ 71,940.00	\$ 71,940.00
19	662400	MANHOLE ADJUSTMENT	EACH	1	\$ 1,615.69	\$ 1,615.69	\$ 792.00	\$ 792.00
20	701000	PANEL SIGNS	S.F.	25	\$ 24.12	\$ 603.00	\$ 52.80	\$ 1,320.00
21	701100	STEEL POST AND BASE POST FOR ALUMINUM PANEL SIGNS	L.F.	60	\$ 12.61	\$ 756.60	\$ 33.00	\$ 1,980.00
22	702810	TRAFFIC CONTROL DEVICES FOR CONSTRUCTION	L.S.	1	\$ 3,333.33	\$ 3,333.33	\$ 19,800.00	\$ 19,800.00
23	704004	RETROREFLECTORIZED PAINTED MARKINGS 12"	L.F.	24	\$ 3.50	\$ 84.00	\$ 39.60	\$ 950.40
24	704005	RETROREFLECTORIZED PAINTED MARKINGS 24"	L.F.	100	\$ 7.00	\$ 700.00	\$ 66.00	\$ 6,600.00
25	801000	CONSTRUCTION STAKING BY THE CONTRACTOR	L.S.	1	\$ 2,000.00	\$ 2,000.00	\$ 7,920.00	\$ 7,920.00
26	802000	POST CONSTRUCTION PLANS	L.S.	1	\$ 2,000.00	\$ 2,000.00	\$ 3,300.00	\$ 3,300.00
27	STS001	UTILITY ALLOWANCE	ALLOW	1	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00
28	STS002	MATERIAL TESTING ALLOWANCE	ALLOW	1	\$ 1,166.67	\$ 1,166.67	\$ 1,166.67	\$ 1,166.67
BID LOT 1 TOTAL						\$ 157,969.16		\$ 331,738.15
BID LOT 1 TOTAL INCLUDING NEW MEXICO GROSS RECEIPT TAX @ 8.5% (NMGR - TRUTH OR CONSEQUENCES, NM)						\$ 171,396.54		\$ 359,935.89

BID ITEM NO.	SPEC. NO.	ITEM DESCRIPTION	UNIT	EST. QTY.
BID LOT 2				
MCADOO ST FROM JONES ST TO PERSHING ST - 21+81.46 TO 27+35.39				
1	203000	UNCLASSIFIED EXCAVATION	C.Y.	178
2	207000	SUBGRADE PREPARATION	S.Y.	800
3	303160	BASE COURSE 6"	S.Y.	800
4	408100	PRIME COAT MATERIAL	TON	2
5	416107	MINOR PAVEMENT TYPE I HMA SP-IV	S.Y.	800
6	601000	REMOVAL OF OBSTRUCTIONS AND STRUCTURES	L.S.	1
7	601110	REMOVAL OF SURFACING	S.Y.	767
8	603281	SWPPP PLAN PREPARATION AND MAINTENANCE	L.S.	1
9	604001	GEOTEXTILE CLASS 1	S.Y.	800
10	604300	GEOGRID REINFORCEMENT	S.Y.	800
11	608004	CONCRETE SIDEWALK 4"	S.Y.	19.5
12	608106	DRIVE PAD 6"	SY	27
13	609200	HEADER CURB	L.F.	28
14	609424	CONCRETE VERTICAL CURB & GUTTER B 6" X 24" TYPE B	LF	262
15	609636	CONCRETE VALLEY GUTTER 6"X36"	L.F.	45
16	618000	TRAFFIC CONTROL MANAGEMENT	L.S.	1
17	621000	MOBILIZATION	L.S.	1
18	662400	MANHOLE ADJUSTMENT	EACH	1
19	663855	ADJUST VALVE BOX TO GRADE	EACH	1
20	701000	PANEL SIGNS	S.F.	22
21	701100	STEEL POST AND BASE POST FOR ALUMINUM PANEL SIGNS	L.F.	24
22	702810	TRAFFIC CONTROL DEVICES FOR CONSTRUCTION	L.S.	1
23	704004	RETROREFLECTORIZED PAINTED MARKINGS 12"	L.F.	14
24	801000	CONSTRUCTION STAKING BY THE CONTRACTOR	L.S.	1
25	802000	POST CONSTRUCTION PLANS	L.S.	1
26	STS001	UTILITY ALLOWANCE	ALLOW	1
27	STS002	MATERIAL TESTING ALLOWANCE	ALLOW	1
BID LOT 2 TOTAL				
BID LOT 2 TOTAL INCLUDING NEW MEXICO GROSS RECEIPT TAX 8.5% (NMGR - TRUTH OR CONSEQUENCES, NM)				

ENGINEERS ESTIMATE	
UNIT PRICE	AMOUNT
\$ 21.64	\$ 3,851.92
\$ 4.41	\$ 3,528.00
\$ 14.15	\$ 11,320.00
\$ 1,000.00	\$ 2,000.00
\$ 40.00	\$ 32,000.00
\$ 2,500.00	\$ 2,500.00
\$ 10.00	\$ 7,670.00
\$ 1,666.67	\$ 1,666.67
\$ 5.50	\$ 4,400.00
\$ 5.50	\$ 4,400.00
\$ 75.00	\$ 1,462.50
\$ 75.00	\$ 2,025.00
\$ 47.45	\$ 1,328.60
\$ 34.88	\$ 9,138.56
\$ 37.66	\$ 1,694.70
\$ 5,000.00	\$ 5,000.00
\$ 5,000.00	\$ 5,000.00
\$ 1,615.69	\$ 1,615.69
\$ 926.80	\$ 926.80
\$ 24.12	\$ 530.64
\$ 12.61	\$ 302.64
\$ 3,333.33	\$ 3,333.33
\$ 3.50	\$ 49.00
\$ 2,000.00	\$ 2,000.00
\$ 2,000.00	\$ 2,000.00
\$ 2,500.00	\$ 2,500.00
\$ 1,166.67	\$ 1,166.67
\$ 112,244.05	
\$ 121,784.80	

SPARTAN	
UNIT PRICE	AMOUNT
\$ 72.60	\$ 12,922.80
\$ 5.28	\$ 4,224.00
\$ 16.50	\$ 13,200.00
\$ 1,980.00	\$ 3,960.00
\$ 35.64	\$ 28,512.00
\$ 9,240.00	\$ 9,240.00
\$ 19.80	\$ 15,186.60
\$ 6,600.00	\$ 6,600.00
\$ 6.60	\$ 5,280.00
\$ 6.60	\$ 5,280.00
\$ 204.60	\$ 3,989.70
\$ 217.80	\$ 5,880.60
\$ 52.80	\$ 1,478.40
\$ 50.16	\$ 13,141.92
\$ 237.60	\$ 10,692.00
\$ 3,300.00	\$ 3,300.00
\$ 13,200.00	\$ 13,200.00
\$ 792.00	\$ 792.00
\$ 528.00	\$ 528.00
\$ 52.80	\$ 1,161.60
\$ 33.00	\$ 792.00
\$ 6,600.00	\$ 6,600.00
\$ 26.40	\$ 369.60
\$ 3,300.00	\$ 3,300.00
\$ 1,320.00	\$ 1,320.00
\$ 2,500.00	\$ 2,500.00
\$ 1,166.67	\$ 1,166.67
\$ 174,617.89	
\$ 189,460.41	

BID ITEM NO.	SPEC. NO.	ITEM DESCRIPTION	UNIT	EST. QTY.
BID LOT 3				
DANIEL ST FROM MCADOO ST TO BROADWAY ST - 9+76.05 TO 13+14.89				
1	203000	UNCLASSIFIED EXCAVATION	C.Y.	225
2	207000	SUBGRADE PREPARATION	S.Y.	1600
3	303160	BASE COURSE 6"	S.Y.	1600
4	408100	PRIME COAT MATERIAL	TON	3
5	416107	MINOR PAVEMENT TYPE I HMA SP-IV	S.Y.	1600
6	601000	REMOVAL OF OBSTRUCTIONS AND STRUCTURES	L.S.	1
7	601110	REMOVAL OF SURFACING	S.Y.	1603
8	603281	SWPPP PLAN PREPARATION AND MAINTENANCE	L.S.	1
9	604001	GEOTEXTILE CLASS 1	S.Y.	1600
10	604300	GEOGRID REINFORCEMENT	S.Y.	1600
11	608004	CONCRETE SIDEWALK 4"	S.Y.	21.5
12	609200	HEADER CURB	L.F.	40
13	609324	CONCRETE SLOPED CURB AND GUTTER 6" X 24" TYPE A	LF	100
14	609424	CONCRETE VERTICAL CURB & GUTTER B 6" X 24" TYPE B	LF	49
15	613000	CLEANING CULVERTS AND DRAINAGE STRUCTURES	L.S.	1
16	618000	TRAFFIC CONTROL MANAGEMENT	L.S.	1
17	621000	MOBILIZATION	L.S.	1
18	663855	ADJUST VALVE BOX TO GRADE	EACH	2
19	701000	PANEL SIGNS	S.F.	39
20	701100	STEEL POST AND BASE POST FOR ALUMINUM PANEL SIGNS	L.F.	48
21	702810	TRAFFIC CONTROL DEVICES FOR CONSTRUCTION	L.S.	1
22	704004	RETROREFLECTORIZED PAINTED MARKINGS 12"	L.F.	40
23	704005	RETROREFLECTORIZED PAINTED MARKINGS 24"	L.F.	320
24	801000	CONSTRUCTION STAKING BY THE CONTRACTOR	L.S.	1
25	802000	POST CONSTRUCTION PLANS	L.S.	1
26	STS001	UTILITY ALLOWANCE	ALLOW	1
27	STS002	MATERIAL TESTING ALLOWANCE	ALLOW	1
BID LOT 3 TOTAL				
BID LOT 3 TOTAL INCLUDING NEW MEXICO GROSS RECEIPT TAX @ 8.5% (NMGR - TRUTH OR CONSEQUENCES, NM)				

ENGINEERS ESTIMATE	
UNIT PRICE	AMOUNT
\$ 21.64	\$ 4,869.00
\$ 4.41	\$ 7,056.00
\$ 14.15	\$ 22,640.00
\$ 1,000.00	\$ 3,000.00
\$ 40.00	\$ 64,000.00
\$ 2,500.00	\$ 2,500.00
\$ 10.00	\$ 16,030.00
\$ 1,666.67	\$ 1,666.67
\$ 5.50	\$ 8,800.00
\$ 5.50	\$ 8,800.00
\$ 75.00	\$ 1,612.50
\$ 47.45	\$ 1,898.00
\$ 34.88	\$ 3,488.00
\$ 34.88	\$ 1,709.12
\$ 2,500.00	\$ 2,500.00
\$ 5,000.00	\$ 5,000.00
\$ 5,000.00	\$ 5,000.00
\$ 926.80	\$ 1,853.60
\$ 24.12	\$ 940.68
\$ 12.61	\$ 605.28
\$ 3,333.33	\$ 3,333.33
\$ 3.50	\$ 140.00
\$ 7.00	\$ 2,240.00
\$ 2,000.00	\$ 2,000.00
\$ 2,000.00	\$ 2,000.00
\$ 2,500.00	\$ 2,500.00
\$ 1,166.67	\$ 1,166.67
\$ 177,348.85	
\$ 192,423.51	

SPARTAN	
UNIT PRICE	AMOUNT
\$ 72.60	\$ 16,335.00
\$ 5.28	\$ 8,448.00
\$ 15.84	\$ 25,344.00
\$ 1,980.00	\$ 5,940.00
\$ 33.00	\$ 52,800.00
\$ 9,240.00	\$ 9,240.00
\$ 17.16	\$ 27,507.48
\$ 6,600.00	\$ 6,600.00
\$ 6.60	\$ 10,560.00
\$ 9.90	\$ 15,840.00
\$ 204.60	\$ 4,398.90
\$ 52.80	\$ 2,112.00
\$ 50.16	\$ 5,016.00
\$ 48.84	\$ 2,393.16
\$ 9,240.00	\$ 9,240.00
\$ 3,300.00	\$ 3,300.00
\$ 26,400.00	\$ 26,400.00
\$ 528.00	\$ 1,056.00
\$ 52.80	\$ 2,059.20
\$ 33.00	\$ 1,584.00
\$ 6,600.00	\$ 6,600.00
\$ 26.40	\$ 1,056.00
\$ 39.60	\$ 12,672.00
\$ 3,300.00	\$ 3,300.00
\$ 1,320.00	\$ 1,320.00
\$ 2,500.00	\$ 2,500.00
\$ 1,166.67	\$ 1,166.67
\$ 264,788.41	
\$ 287,295.42	

BID ITEM NO.	SPEC. NO.	ITEM DESCRIPTION	UNIT	EST. QTY.
BID LOT 4				
PERSHING ST FROM 280 FT N OF MAIN AVE TO MAIN AVE - 10+37.78 TO 12+81.45				
1	203000	UNCLASSIFIED EXCAVATION	C.Y.	151
2	207000	SUBGRADE PREPARATION	S.Y.	800
3	303160	BASE COURSE 6"	S.Y.	800
4	408100	PRIME COAT MATERIAL	TON	1.5
5	416107	MINOR PAVEMENT TYPE I HMA SP-IV	S.Y.	800
6	601000	REMOVAL OF OBSTRUCTIONS AND STRUCTURES	L.S.	1
7	601110	REMOVAL OF SURFACING	S.Y.	760
8	603281	SWPPP PLAN PREPARATION AND MAINTENANCE	L.S.	1
9	604001	GEOTEXTILE CLASS 1	S.Y.	800
10	604300	GEOGRID REINFORCEMENT	S.Y.	800
11	609424	CONCRETE VERTICAL CURB & GUTTER B 6" X 24" TYPE B	LF	30
12	609636	CONCRETE VALLEY GUTTER 6"X36"	L.F.	1
13	618000	TRAFFIC CONTROL MANAGEMENT	L.S.	1
14	621000	MOBILIZATION	L.S.	1
15	663855	ADJUST VALVE BOX TO GRADE	EACH	1
16	701000	PANEL SIGNS	S.F.	17
17	701100	STEEL POST AND BASE POST FOR ALUMINUM PANEL SIGNS	L.F.	12
18	702810	TRAFFIC CONTROL DEVICES FOR CONSTRUCTION	L.S.	1
19	704004	RETROREFLECTORIZED PAINTED MARKINGS 12"	L.F.	30
20	704005	RETROREFLECTORIZED PAINTED MARKINGS 24"	L.F.	130
21	801000	CONSTRUCTION STAKING BY THE CONTRACTOR	L.S.	1
22	802000	POST CONSTRUCTION PLANS	L.S.	1
23	STS001	UTILITY ALLOWANCE	ALLOW	1
24	STS002	MATERIAL TESTING ALLOWANCE	ALLOW	1
BID LOT 4 TOTAL				
BID LOT 4 TOTAL INCLUDING NEW MEXICO GROSS RECEIPT TAX @ 8.5% (NMGRT - TRUTH OR CONSEQUENCES, NM)				

ENGINEERS ESTIMATE	
UNIT PRICE	AMOUNT
\$ 21.64	\$ 3,267.64
\$ 4.41	\$ 3,528.00
\$ 14.15	\$ 11,320.00
\$ 1,000.00	\$ 1,500.00
\$ 40.00	\$ 32,000.00
\$ 2,500.00	\$ 2,500.00
\$ 10.00	\$ 7,600.00
\$ 1,666.67	\$ 1,666.67
\$ 5.50	\$ 4,400.00
\$ 5.50	\$ 4,400.00
\$ 34.88	\$ 1,046.40
\$ 37.66	\$ 37.66
\$ 5,000.00	\$ 5,000.00
\$ 5,000.00	\$ 5,000.00
\$ 926.80	\$ 926.80
\$ 24.12	\$ 410.04
\$ 12.61	\$ 151.32
\$ 3,333.33	\$ 3,333.33
\$ 3.50	\$ 105.00
\$ 7.00	\$ 910.00
\$ 2,000.00	\$ 2,000.00
\$ 2,000.00	\$ 2,000.00
\$ 2,500.00	\$ 2,500.00
\$ 1,166.67	\$ 1,166.67
\$ 96,769.53	
\$ 104,994.94	

SPARTAN	
UNIT PRICE	AMOUNT
\$ 72.60	\$ 10,962.60
\$ 5.28	\$ 4,224.00
\$ 15.84	\$ 12,672.00
\$ 1,980.00	\$ 2,970.00
\$ 33.00	\$ 26,400.00
\$ 9,240.00	\$ 9,240.00
\$ 17.16	\$ 13,041.60
\$ 6,600.00	\$ 6,600.00
\$ 6.60	\$ 5,280.00
\$ 6.60	\$ 5,280.00
\$ 50.16	\$ 1,504.80
\$ 3,300.00	\$ 3,300.00
\$ 13,200.00	\$ 13,200.00
\$ 792.00	\$ 792.00
\$ 528.00	\$ 528.00
\$ 52.80	\$ 897.60
\$ 33.00	\$ 396.00
\$ 6,600.00	\$ 6,600.00
\$ 66.00	\$ 1,980.00
\$ 52.80	\$ 6,864.00
\$ 3,300.00	\$ 3,300.00
\$ 1,320.00	\$ 1,320.00
\$ 2,500.00	\$ 2,500.00
\$ 1,166.67	\$ 1,166.67
\$ 141,019.27	
\$ 153,005.91	

BID ITEM NO.	SPEC. NO.	ITEM DESCRIPTION	UNIT	EST. QTY.
BID LOT 5				
PERSHING ST FROM MAIN AVE TO PAST MCADOO INTERSECTION - 13+11.35 TO 14+93.00				
1	203000	UNCLASSIFIED EXCAVATION	C.Y.	129
2	207000	SUBGRADE PREPARATION	S.Y.	600
3	303160	BASE COURSE 6"	S.Y.	600
4	408100	PRIME COAT MATERIAL	TON	1
5	416107	MINOR PAVEMENT TYPE I HMA SP-IV	S.Y.	600
6	601000	REMOVAL OF OBSTRUCTIONS AND STRUCTURES	L.S.	1
7	601110	REMOVAL OF SURFACING	S.Y.	629
8	603281	SWPPP PLAN PREPARATION AND MAINTENANCE	L.S.	1
9	604001	GEOTEXTILE CLASS 1	S.Y.	600
10	604300	GEOGRID REINFORCEMENT	S.Y.	600
11	608106	DRIVE PAD 6"	SY	27
12	609424	CONCRETE VERTICAL CURB & GUTTER B 6" X 24" TYPE B	LF	36
13	618000	TRAFFIC CONTROL MANAGEMENT	L.S.	1
14	621000	MOBILIZATION	L.S.	1
15	662400	MANHOLE ADJUSTMENT	EACH	2
16	663855	ADJUST VALVE BOX TO GRADE	EACH	1
17	701000	PANEL SIGNS	S.F.	17
18	701100	STEEL POST AND BASE POST FOR ALUMINUM PANEL SIGNS	L.F.	12
19	702810	TRAFFIC CONTROL DEVICES FOR CONSTRUCTION	L.S.	1
20	801000	CONSTRUCTION STAKING BY THE CONTRACTOR	L.S.	1
21	802000	POST CONSTRUCTION PLANS	L.S.	1
22	STS001	UTILITY ALLOWANCE	ALLOW	1
23	STS002	MATERIAL TESTING ALLOWANCE	ALLOW	1
BID LOT 5 TOTAL				
BID LOT 5 TOTAL INCLUDING NEW MEXICO GROSS RECEIPT TAX @ 8.5% (NMGR - TRUTH OR CONSEQUENCES, NM)				

ENGINEERS ESTIMATE	
UNIT PRICE	AMOUNT
\$ 21.64	\$ 2,791.56
\$ 4.41	\$ 2,646.00
\$ 14.15	\$ 8,490.00
\$ 1,000.00	\$ 1,000.00
\$ 40.00	\$ 24,000.00
\$ 2,500.00	\$ 2,500.00
\$ 10.00	\$ 6,290.00
\$ 1,666.67	\$ 1,666.67
\$ 5.50	\$ 3,300.00
\$ 5.50	\$ 3,300.00
\$ 75.00	\$ 2,025.00
\$ 34.88	\$ 1,255.68
\$ 5,000.00	\$ 5,000.00
\$ 5,000.00	\$ 5,000.00
\$ 1,615.69	\$ 3,231.38
\$ 926.80	\$ 926.80
\$ 24.12	\$ 410.04
\$ 12.61	\$ 151.32
\$ 3,333.33	\$ 3,333.33
\$ 2,000.00	\$ 2,000.00
\$ 2,000.00	\$ 2,000.00
\$ 2,500.00	\$ 2,500.00
\$ 1,166.67	\$ 1,166.67
\$ 84,984.45	
\$ 92,208.13	

SPARTAN	
UNIT PRICE	AMOUNT
\$ 72.60	\$ 9,365.40
\$ 5.28	\$ 3,168.00
\$ 15.84	\$ 9,504.00
\$ 1,980.00	\$ 1,980.00
\$ 50.16	\$ 30,096.00
\$ 9,240.00	\$ 9,240.00
\$ 17.16	\$ 10,793.64
\$ 6,600.00	\$ 6,600.00
\$ 6.60	\$ 3,960.00
\$ 6.60	\$ 3,960.00
\$ 217.80	\$ 5,880.60
\$ 51.48	\$ 1,853.28
\$ 3,300.00	\$ 3,300.00
\$ 13,200.00	\$ 13,200.00
\$ 792.00	\$ 1,584.00
\$ 528.00	\$ 528.00
\$ 52.80	\$ 897.60
\$ 33.00	\$ 396.00
\$ 3,300.00	\$ 3,300.00
\$ 3,300.00	\$ 3,300.00
\$ 1,320.00	\$ 1,320.00
\$ 2,500.00	\$ 2,500.00
\$ 1,166.67	\$ 1,166.67
\$ 127,893.19	
\$ 138,764.11	

BID ITEM NO.	SPEC. NO.	ITEM DESCRIPTION	UNIT	EST. QTY.
BID LOT 6				
PERSHING ST FROM MCADOO INTERSECTION TO BROADWAY ST - 14+93.00 TO 17+11.34				
1	203000	UNCLASSIFIED EXCAVATION	C.Y.	129
2	207000	SUBGRADE PREPARATION	S.Y.	700
3	303160	BASE COURSE 6"	S.Y.	700
4	408100	PRIME COAT MATERIAL	TON	1.5
5	416107	MINOR PAVEMENT TYPE I HMA SP-IV	S.Y.	700
6	601000	REMOVAL OF OBSTRUCTIONS AND STRUCTURES	L.S.	1
7	601110	REMOVAL OF SURFACING	S.Y.	629
8	603281	SWPPP PLAN PREPARATION AND MAINTENANCE	L.S.	1
9	604001	GEOTEXTILE CLASS 1	S.Y.	700
10	604300	GEOGRID REINFORCEMENT	S.Y.	700
11	608106	DRIVE PAD 6"	SY	54
12	609424	CONCRETE VERTICAL CURB & GUTTER B 6" X 24" TYPE B	LF	32
13	618000	TRAFFIC CONTROL MANAGEMENT	L.S.	1
14	621000	MOBILIZATION	L.S.	1
15	662400	MANHOLE ADJUSTMENT	EACH	1
16	701000	PANEL SIGNS	S.F.	17
17	701100	STEEL POST AND BASE POST FOR ALUMINUM PANEL SIGNS	L.F.	12
18	702810	TRAFFIC CONTROL DEVICES FOR CONSTRUCTION	L.S.	1
19	704004	RETROREFLECTORIZED PAINTED MARKINGS 12"	L.F.	12
20	704005	RETROREFLECTORIZED PAINTED MARKINGS 24"	L.F.	70
21	801000	CONSTRUCTION STAKING BY THE CONTRACTOR	L.S.	1
22	802000	POST CONSTRUCTION PLANS	L.S.	1
23	STS001	UTILITY ALLOWANCE	ALLOW	1
24	STS002	MATERIAL TESTING ALLOWANCE	ALLOW	1
BID LOT 6 TOTAL				
BID LOT 6 TOTAL INCLUDING NEW MEXICO GROSS RECEIPT TAX @ 8.5% (NMGRT - TRUTH OR CONSEQUENCES, NM)				

ENGINEERS ESTIMATE	
UNIT PRICE	AMOUNT
\$ 21.64	\$ 2,791.56
\$ 4.41	\$ 3,087.00
\$ 14.15	\$ 9,905.00
\$ 1,000.00	\$ 1,500.00
\$ 40.00	\$ 28,000.00
\$ 2,500.00	\$ 2,500.00
\$ 10.00	\$ 6,290.00
\$ 1,666.67	\$ 1,666.67
\$ 5.50	\$ 3,850.00
\$ 5.50	\$ 3,850.00
\$ 75.00	\$ 4,050.00
\$ 34.88	\$ 1,116.16
\$ 5,000.00	\$ 5,000.00
\$ 5,000.00	\$ 5,000.00
\$ 1,615.69	\$ 1,615.69
\$ 24.12	\$ 410.04
\$ 12.61	\$ 151.32
\$ 3,333.33	\$ 3,333.33
\$ 3.50	\$ 42.00
\$ 7.00	\$ 490.00
\$ 2,000.00	\$ 2,000.00
\$ 2,000.00	\$ 2,000.00
\$ 2,500.00	\$ 2,500.00
\$ 1,166.67	\$ 1,166.67
\$ 92,315.44	
\$ 100,162.26	

SPARTAN	
UNIT PRICE	AMOUNT
\$ 72.60	\$ 9,365.40
\$ 5.28	\$ 3,696.00
\$ 15.84	\$ 11,088.00
\$ 1,980.00	\$ 2,970.00
\$ 35.64	\$ 24,948.00
\$ 9,240.00	\$ 9,240.00
\$ 17.16	\$ 10,793.64
\$ 6,600.00	\$ 6,600.00
\$ 6.60	\$ 4,620.00
\$ 6.60	\$ 4,620.00
\$ 217.80	\$ 11,761.20
\$ 50.16	\$ 1,605.12
\$ 3,300.00	\$ 3,300.00
\$ 13,200.00	\$ 13,200.00
\$ 528.00	\$ 528.00
\$ 52.80	\$ 897.60
\$ 33.00	\$ 396.00
\$ 3,300.00	\$ 3,300.00
\$ 66.00	\$ 792.00
\$ 92.40	\$ 6,468.00
\$ 3,300.00	\$ 3,300.00
\$ 1,320.00	\$ 1,320.00
\$ 2,500.00	\$ 2,500.00
\$ 1,166.67	\$ 1,166.67
\$ 138,475.63	
\$ 150,246.06	

*Indication of calculation error on submitted bid form

I, Brigitte Fuller, P.E. do hereby certify that this bid tabulation was prepared under my supervision and I am a duly registered professional engineer under the laws of the State of New Mexico.



BID OPENING CONFERENCE



DATE: 04/11/2023
TIME: 3:30 PM
OWNER: CITY OF TRUTH OR CONSEQUENCES
PROJECT: MSD ROADWAY AND DRAINAGE IMPROVEMENTS PROJECT
ADDENDA ISSUED: ADDENDUM #1 (04/07/2023)

X	Bid Form (EJCDC 410)	In State Pref. * 5% (if Applicable)	Veterans Pref.* 10% (if applicable)	Bid Bond	List of Sub- contractors & Suppliers	NM Contractor's License	Qualification Statement (EJCDC 451)	Bid Lot 1 Total Excluding NMGR	Bid Lot 2 Total Excluding NMGR	Bid Lot 3 Total Excluding NMGR	Bid Lot 4 Total Excluding NMGR	Bid Lot 5 Total Excluding NMGR	Bid Lot 6 Total Excluding NMGR
Spartan Contractors of NM, LLC	X			X	X	X	X	\$331,738	\$174,618	\$264,788	\$141,019	\$127,893	\$138,476

*Cannot apply both In State and Veterans Preference



New Mexico E-Services for Contractor Licensing



[Home Page](#)

Company Details

Company Name	SPARTAN CONSTRUCTION OF NEW MEXICO, LLC.	License Number	360973
Phone Number	9157606171	License Status	Active
Issue Date	04/03/2009	Expiry Date	06/30/2024
Volume	\$1000000.00 +		
Principal Place of Business Address			
5780 N MESA ST			
City	EL PASO		
State	TX	Zip Code	79912

QP Details

Name	Certificate No	Classification	Attach Date	Status
STEVE M ALLEN	373104	GF03	02/03/2012	Attached
STEVE M ALLEN	373105	GF04	02/03/2012	Attached
ERNIE UZZELL	104767	GF09	04/03/2009	Attached
ERNIE UZZELL	104767	GA01	04/03/2009	Attached
ORREY ANDREW ALLEN	394321	GB98	02/16/2018	Attached
ORREY ANDREW ALLEN	397676	GF98	03/11/2019	Attached

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Entity Registration

Core Data

Business Information

Entity Types

Financial Information

Points of Contact

Assertions

Reps and Certs (FAR/DFARS)

Reps and Certs (Financial Assistance)

Exclusions

Responsibility / Qualification

SPARTAN CONSTRUCTION OF NEW MEXICO LLC

Unique Entity ID

MZT2S2MSZME5

CAGE/NCAGE

6JGJ7

Registration Status

Expiration Date

Active Registration

Nov 1, 2023

Purpose of Registration

All Awards

Physical Address

1541 Appaloosa DR

Unit 3

Sunland Park, New Mexico

88063-9284, United States

Mailing Address

1541 Appaloosa DR**Unit 3****Sunland Park, New Mexico****88063-9284, United States****Version**

Current Record

BUSINESS INFORMATION

Doing Business As

(blank)

URL

(blank)

State / Country of Incorporation

New Mexico, United States

Division Name

(blank)

Division Number

(blank)

Congressional District

New Mexico 02**Registration Dates**

Activation Date

Nov 21, 2022

Submission Date

Nov 1, 2022

Initial Registration Date

Sep 15, 2011**Entity Dates**

Entity Start Date

Jul 1, 2007

Fiscal Year End Close Date

Jul 11**Immediate Owner**

CAGE

(blank)

Legal Business Name
(blank)

Highest Level Owner

CAGE
(blank)

Legal Business Name
(blank)

Executive Compensation

Registrants in the System for Award Management (SAM) respond to the Executive Compensation questions in accordance with Section 6202 of P.L. 110-252, amending the Federal Funding Accountability and Transparency Act (P.L. 109-282). This information is not displayed in SAM. It is sent to USAspending.gov for display in association with an eligible award. Maintaining an active registration in SAM demonstrates the registrant responded to the questions.

Proceedings Questions

Registrants in the System for Award Management (SAM.gov) respond to proceedings questions in accordance with FAR 52.209-7, FAR 52.209-9, or 2. C.F.R. 200 Appendix XII. Their responses are displayed in the responsibility/qualification section of SAM.gov. Maintaining an active registration in SAM.gov demonstrates the registrant responded to the proceedings questions.

SAM Search Authorization

I authorize my entity's non-sensitive information to be displayed in SAM public search results:

Yes

ENTITY TYPES

Business Types

Entity Structure
Corporate Entity (Tax Exempt)

Organization Factors
Limited Liability Company

Entity Type
Business or Organization

Profit Structure
For Profit Organization

Socio-Economic Types

Check the registrant's Reps & Certs, if present, under FAR 52.212-3 or FAR 52.219-1 to determine if the entity is an SBA-certified HUBZone small business concern. Additional small business information may be found in the SBA's Dynamic

FINANCIAL INFORMATION

Accepts Credit Card Payments
Yes

Debt Subject To Offset [\(What is this?\)](#)
No

Account Details

EFT Indicator
0000

CAGE Code
6JGJ7

POINTS OF CONTACT

Electronic Business

 **Nicole Alarcon**

1541 Appaloosa DR STE 3
Sunland Park, New Mexico 88063
United States

Government Business

 **Nicole Alarcon**

1541 Appaloosa DR STE 3
Sunland Park, New Mexico 88063
United States


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General Services Administration

This is a U.S. General Services Administration Federal Government computer system that is **"FOR OFFICIAL USE ONLY."** This system is subject to monitoring. Individuals found performing unauthorized activities are subject to disciplinary action including criminal prosecution.

[Bureau of the Fiscal Service](#) > [Surety Bonds](#) > List of Certified Companies

List of Certified Companies

View the List of Certified Companies in the following ways:

1. Download the original listing published on July 1, 2022 ([Certified Companies PDF](#)) and related [Supplemental Changes to the C570](#).
2. Download a current listing of [Certified Companies Excel](#) (inclusive of supplemental changes).
3. View the current listing below.

Note: For company listings published in prior years, please see the archives section on <https://www.fiscal.treasury.gov/surety-bonds/downloads.html>

[A](#) [B](#) [C](#) [D](#) [E](#) [F](#) [G](#) [H](#) [I](#) [J](#) [K](#) [L](#) [M](#) [N](#) [O](#) [P](#) [Q](#) [R](#) [S](#) [T](#) [U](#) [V](#) [W](#) [X](#) [Y](#) [Z](#)

Cincinnati Insurance Company (The)

(NAIC #10677)

BUSINESS ADDRESS: P.O. BOX 145496, CINCINNATI, OH 45250 - 5496.

PHONE: (513) 870-2000.

UNDERWRITING LIMITATION b/: \$712,110,000.

SURETY LICENSES c/f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY.

INCORPORATED IN: Ohio.

Bid Open - Sign-In Sheet
April 11, 2023

**WILSON
& COMPANY**

PROJECT: MSD Roadway and Drainage Improvements Project

TIME: 3:30 PM

VENUE: Commission Chambers at 405 W 3rd, Truth or Consequences, New Mexico 87901

	REPRESENTATIVE	COMPANY NAME	PHONE NUMBER	EMAIL ADDRESS
1.	Traci Alvarez	TorC	575-952-0565	talvarez@torcnm.org
2.	Mindee Higgins	TorC	575-952-0490	procurement@torcnm.org
3.	Angie Gonzales	TorC	575-571-8455	
4.	Bruce Swingle	TorC	575-894-6673	bswingle@torcnm.org
5.	O.J. Hechler	TorC	575-740-6716	orrin.hechler@torcnm.org
6.	Robert Curry	SPARTAN Const.	(915) 670-6171	ROBERT@SPARTAN-CONST.COM
7.	Ivan Rodriguez	Wilson & Company	432-295-1480	iarodriguez@wilsonco.com
8.				
9.				
10.				
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13.				
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17.				
18.				



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: April 26, 2023

Agenda Item #: G.4

SUBJECT: Discussion/Action: Reallocation Request of NM Department of Economic Development FY21 Capital Outlay Grant 419-A20E2046-2101

DEPARTMENT: Community Development

DATE SUBMITTED: April 21, 2023

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

City Commission accepted a grant award from the NM Department of Economic Development in partnership with T or C MainStreet for the purpose of Foch Street Renovation in the amount of \$1M. Economic Development is asking to transfer the remaining balance of \$986,908 back to the department so they can reallocate it to another municipality that is in construction and short of funding. City Project is in design and permitting process and has not gone to bid. Economic Development would then allocate a new grant this FY for \$600,000.00 and then execute another grant FY 23/24 for the difference with a potential to receive additional funding due to expected cost overruns for the project.

Recommendation:

Accept the Reallocation request from NM Department of Economic Development

Attachments:

- Email from Economic Development
-

Fiscal Impact (Finance): TBD

[Click here to enter text.](#)

Legal Review (City Attorney): Choose an item.

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 4-26-2023

From: [Gutierrez, Daniel, EDD](#)
To: [Traci Alvarez](#)
Cc: [Swingle, Bruce](#); Ldemarino@hotmail.com; director@torcmainstreet.org; [Blanke, Julie, EDD](#); [Pedraza, Lucas, EDD](#)
Subject: RE: NMMS CO funding for Foch Street Project
Date: Friday, April 21, 2023 10:02:56 AM
Attachments: [image001.png](#)
[image002.png](#)
Importance: High

Hello Traci, I'm following up on our conversation yesterday about T or C's NM MainStreet Capital Outlay Grant award of \$100,000,000 (grant # 419-A20E2046-2101) that expires on June 30, 2024, and currently has a balance of \$986,908.33. I know we are still waiting for some approvals from NMDOT before the project can go out to BID and that we are likely a little short on funding due to construction price increases.

In an attempt to relieve some of the pressure of getting the award spent down by the 6/30/24 reversion date and losing the funding I have proposed a realignment or swap of funding for another project in Gallup that is ready to go out to BID right now and is assured of being completed by the reversion deadline. Gallup's has a \$600,000 award from last year's NMMS CO allocation that has a reversion date of 6/30/25 so it will give us more time to complete the project. They have also experienced some cost overruns due to an increase in construction costs so they could use the extra funding. I understand there is a difference in the amount originally allocated to the two projects, but I can make up the difference and add some additional funding to complete the Foch Street project from our NMMS FY24 CO allocation that will be available on July 1, 2023.

In short, my plan would be as follows:

1. Rescind the remaining balance of \$986,908.33 for grant # 419-A20E2046-2101 (reversion date of 6/30/24) and reallocate that funding to the Gallup project.
2. Rescind the \$600,000 balance of the Gallup project for grant # 419-A21F2103-2205 (reversion date of 6/30/25) and reallocate it to the T or C Foch Street project.
3. Award T or C \$400,000 plus additional funding to complete the Foch Street project from NMMS's FY2024 CO allocation that becomes available on July 1, 2023.

T or C still has the \$320,000 (grant # 419-A21F2103-2210) that reverts on 6/30/25 that you can draw down for any outstanding expenses.

Thanks for your time and flexibility as we all know that project delays can happen, but we want to do everything we can to make sure the funding doesn't get reverted or have to ask for a reappropriation. I understand you must talk to Bruce Swindle about this first and then take it to the City Commission for approval but let me know asap if you and Bruce are amenable to my proposal so I can follow through with Gallup. Also, let me know if Bruce has any questions or wants to talk with me directly or if you think it would be helpful or needed for me to attend the Commission meeting.

Thanks and take care, Daniel

Daniel J. Gutierrez

Director, New Mexico MainStreet
New Mexico Economic Development Department
Office: (505) 827-0151

Cell: (505) 629-5270

daniel.gutierrez2@edd.nm.gov

