

*Amanda Forrister  
Mayor Pro-Tem*

*Destiny Mitchell  
Commissioner*

*Merry Jo Fahl  
Commissioner*



*Rolf Hechler  
Commissioner*

*Shelly Harrelson  
Commissioner*

*Bruce Swingle  
City Manager*

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

## REGULAR MEETING

THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3<sup>RD</sup> ST., ON WEDNESDAY, JANUARY 12, 2022; TO START AT 9:00 A.M.

### A. CALL TO ORDER

### B. INTRODUCTION

#### 1. ROLL CALL

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

#### 2. SILENT MEDITATION

#### 3. PLEDGE OF ALLEGIANCE

#### 4. APPROVAL OF AGENDA

#### 5. DISCUSSION/ACTION/RE-ORGANIZATION: SELECTION OF A MAYOR & MAYOR PRO-TEM

### C. PRESENTATIONS (10 Minutes):

1. Presentation: Presentation of Retirement Plaque to Kenneth Moran. Bo Easley, Electric Department Director
2. Presentation: Update on the Geronimo Trails Scenic Byways and Visitor's Center. LaRena Miller, Geronimo Trail Scenic Byway

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

#### E. REPORTS

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

#### F. CONSENT CALENDAR

1. City Commission Regular Minutes, December 15, 2021
2. Acknowledge Regular Planning & Zoning Commission Minutes, December 2, 2021
3. Acknowledge Regular Public Utility Advisory Board Minutes, November 15, 2021
4. Accounts Payable, December 2021

#### G. PUBLIC HEARINGS

1. Discussion/Action: Final Adoption of Ordinance No. 723 authorizing the execution and delivery of loan No. PPRF-5652, between the City of Truth or Consequences and the New Mexico Finance Authority for the purpose of purchasing a new electrical transformer. City Manager Swingle
2. Discussion/Action: Final Adoption of Ordinance No. 724 authorizing the execution and delivery of a promissory note and commercial security agreement by and between the City of Truth or Consequences, New Mexico and the Bank of the Southwest. Traci Alvarez, Assistant City Manager and Chris Muirhead, Modrall Sperling

#### H. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Resolution No. 40 21/22 Budget Adjustment Resolution. Carol Kirkpatrick, Finance Director
2. Discussion/Action: Resolution No. 41 21/22 for the Sale of Surplus Property to be sold at the February 5, 2022 Auction through Willard Hall Auctions. Angela A. Torres, City Clerk
3. Discussion/Action: Publication of Ordinance No. 725 amending Chapter 3 of the Municipal Code of Ordinances pertaining to animals. Traci Alvarez, Assistant City Manager and Victor Rodriguez, Chief of Police

#### I. NEW BUSINESS

1. Discussion/Action: Request for a Summary Plat Amendment and Variance Request at 212 Silver Street, Truth or Consequences, NM, pursuant to Chapter 15, Sec. 15-17. Traci Alvarez, Assistant City Manager
2. Discussion/Action Aging & Long-Term Services Department Junior Bill Appropriations Agreement (ALTSD). City Manager Swingle
3. Discussion/Action: State of New Mexico Aging & Long-Term Services Department Fund 89200 Capital Appropriation Project. Grant Agreement A21F2057. City Manager Swingle
4. Discussion/Action: State of New Mexico Aging & Long-Term Services Department Fund 89200 Capital Appropriation Project. Grant Agreement A21F2058. City Manager Swingle
5. Discussion/Action: State of New Mexico Aging & Long-Term Services Department Fund 89200 Capital Appropriation Project. Grant Agreement A21F2059. City Manager Swingle
6. Discussion/Action: State of New Mexico Aging & Long-Term Services Department Fund 89200 Capital Appropriation Project. Grant Agreement A21F2060. City Manager Swingle



**NEW BUSINESS Continued...**

7. Discussion/Action: Approval of Purchase Requisitions over \$20,000. Carol Kirkpatrick, Finance Director
8. Discussion/Action: Approval of Contract with Bixby Electric. Carol Kirkpatrick, Finance Director
9. Discussion/Action: Extension on Contract with Tech 45 Enterprises. Carol Kirkpatrick, Finance Director
10. Discussion/Action: Approval of Contract with South Central Solid Waste Authority (SCSWA). Carol Kirkpatrick, Finance Director
11. Discussion/Action: Approval of Contract with Public Sector Personnel Consultants, Inc. Carol Kirkpatrick, Finance Director
12. Discussion/Action: Appointment of Joe McClintock as a Member on the Sierra Joint Office on Aging Board. City Manager Swingle
13. Discussion/Action: Appointment of 3 Board Members and 1 Alternate Member to serve on the Sierra Vista Hospital Joint Powers Commission (JPC). Angela A. Torres, City Clerk
14. Discussion/Action: Appointment of a Board Member and an Alternate Board Member to serve on the South Central Council of Governments Board (SCCOG). Angela A. Torres, City Clerk
15. Discussion/Action: Appointment of a Board Member and an Alternate Board Member to serve on the Regional Planning Organization (RPO). Angela A. Torres, City Clerk
16. Discussion/Action: Appointment of a Board Member to serve on the Spaceport America Committee. Angela A. Torres, City Clerk
17. Discussion/Action: Appointment of a Board Member to serve on the Sierra County Recreation & Tourism Advisory Board. Angela A. Torres, City Clerk

**J. EXECUTIVE SESSION**

1. Threatened & Pending Litigation (City of T or C vs. Hot Springs Land Development) pursuant to 10-15-1(H.7).
2. Threatened & Pending Litigation (Ron Fenn & Ariel Dougherty vs. City of T or C) pursuant to 10-15-1(H.7).
3. Threatened & Pending Litigation (Erica Baker vs. City of T or C) pursuant to 10-15-1(H.7).

**K. ADJOURNMENT**

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

**If you do not wish to attend the meeting, but would like to give public input, please submit your comments to [torcpubliccomment@torcnm.org](mailto:torcpubliccomment@torcnm.org), by fax at (575) 894-6690, or a hard copy can be dropped off at the City Clerk's Office, 505 Sims Street, Truth or Consequences, NM. Please submit your comments no later than Monday, January 10, 2022.**

*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 JANUARY 26, 2021**



## City of Truth or Consequences

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

Agenda Item #: C.1

**SUBJECT:** Presentation of Retirement Plaque to Kenneth Moran  
**DEPARTMENT:** Electric Department  
**DATE SUBMITTED:** January 4, 2022  
**SUBMITTED BY:** Bo Easley, Electric Department Director  
**WHO WILL PRESENT THE ITEM:** Bo Easley, Electric Department Director

**Summary/Background:**

Presentation of Retirement Plaque to Kenneth Moran.

**Recommendation:**

N/A

**Attachments:**

- N/A

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

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

**Approved For Submittal By:** ☒ Department Director

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

**Final Approval:** ☐ City Manager

#### CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agenda 01-12-2022



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

Agenda Item #: C.2

**SUBJECT:** Presentation: Update on the Geronimo Trails Scenic Byways and Visitor's Center.  
**DEPARTMENT:** City Clerk's Office  
**DATE SUBMITTED:** December 17, 2021  
**SUBMITTED BY:** Angela A. Torres, City Clerk Treasurer  
**WHO WILL PRESENT THE ITEM:** LaRena Miller, Geronimo Trail Scenic Byway

#### **Summary/Background:**

LaRena Miller from the Geronimo Trail Scenic Byway would like to report on the number of visitors in 2021.

#### **Recommendation:**

None. Presentation only

#### **Attachments:**

- Agenda Request Form
- Presentation

#### **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 1-12-2022

**Commission report 1-12-22**

**Mayor, Commissioners, Mr. Swingle,**

**I am LaRena Miller, executive director of Geronimo Trail National Scenic Byway and director of the Geronimo Trail Visitors Center. With me is Joey Perry, our board secretary and statistician. We keep a detailed account of where our visitors come from by City in New Mexico, State outside of New Mexico, and Foreign Countries.**

**We have an ongoing contract with the City of Truth or Consequences to provide visitor information services. We receive subrecipient funds from the City's portion of Lodgers Tax for operating expenses. This contract has been renewed annually since 2013 so that we could also greet visitors to Spaceport America's visitors center in the same building. We promote Truth or Consequences, Sierra County, and have information from all over the State of New Mexico. We are all volunteers putting in 42 hours per week. At the volunteer rate of \$17.00 per hour, this is a donation to the City in excess of \$36,700 per year.**

**We closed March 16, 2020 for Covid. We reopened for a small part of September, October and November before we closed again due to a resurgence of Covid. Therefore our 2020 numbers have little bearing on our overall visitation statistics. For historical accuracy, 2020 numbers will be inserted at a later time. During these three months we shortened our hours of operation.**

**We did not reopen in 2021 until the last weekend of January. During 2021 we had 33% less visitation than we had in 2019. We did have 5,911 sign-ins during 2021, which with the continuation of Covid**

restrictions was a significant number. Since some of our volunteers were unable or unwilling to come back in 2021, we have kept the shortened hours but are still open 7 days a week. Monday through Thursday we are open from 10am to 3pm, Friday and Saturday 9am – 4:30 pm and Sunday 9am to 2:30pm. When there is a Spaceport America tour bus going out on Saturday we open at 8am. Whoever is on duty that day stays until after the bus gets back in, sometimes 5:30 or 6:00 pm.

We require masks and have extras to give out, use antiseptic wipes and antiseptic spray to keep things disinfected and follow covid-safe practices.

In 2021, we answered 470 telephone calls asking for information, sometimes phone number, inquiry if something was open, questions about Spaceport America and questions we could refer to the proper authority. We replied to 1,799 email requests for information. We sent out 117 visitor information packets, 2 relocation packets and either shipped or delivered 6 cases to visitors centers in other towns. We have several visitors coming in who are either thinking of moving here, or just moved here, and provide them with relocation information. We do not count them separate from just visitors who sign in.

Since the Spaceport Visitors Center is not staffed, we voluntarily open and close that room, turn the electronics on and off, and answer questions about them. We provide information on Spaceport America, and as the tours go out from their visitors center we open extra early on tour days so people can come inside while they wait for the bus.

**We “tell people where to go”, sending them to places in Sierra County and asking where they are going next, so we can refer them to the old highways that are more scenic, and give them information on other destinations. We have information on destinations throughout the State that we hand out.**

**We have some souvenir items for sale, both for Truth or Consequences and for Spaceport America. We buy them wholesale for retail, and do pay gross receipts taxes on items that we sell. Our bookkeeping system is compliant with accounting practices, even though we operate on a small budget and are underfunded for what all we do. We are an all-volunteer staff and many of our necessary operating expenses are partially funded by donations from our board members. As we are a 501c4 non-profit, we are required to pay grt on sales. Donations made to us, while not taxable income, cannot be used as a tax deduction by the donator.**

**Ruanna Waldrum is our webmaster and has upgraded our website recently using City Lodgers Tax funding. The address is [www.geronimotrail.com](http://www.geronimotrail.com).**

**I would like to invite the commissioners to come and visit to see what we have. I put my working hours on the back of my business cards, and if those hours are not convenient for you, my home phone number is on the card so call me and set up an appointment. I would love to visit with each of you on an individual basis and answer any questions you might have about our operations.**

**I would like to thank Mr. Swingle and the previous commission for all their assistance to us, and look forward to working with this new commission for further tourism in Sierra County.**

**Thank you for your time and this opportunity to talk to you.**

**Questions?**

**Geronimo Trail  
National Scenic Byway**

P O Box 1072 - 301 S Foch St  
Truth or Consequences, NM 87901  
Ph 575-894-1968 575-894-2255



[www.geronimotrail.com](http://www.geronimotrail.com)  
email [larena@geronimotrail.com](mailto:larena@geronimotrail.com)

LaRena Miller  
Executive Director



# GERONIMO TRAIL VISITORS CENTER

## TIONS by MONTH and PERCENT CHANGE from PRECEDING 2015 - CURRENT

	2015	% Change Year-to- Year	2016	% Change Year-to- Year	2017	% Change Year-to- Year	2018	% Change Year-to- Year	2019	% Change Year-to- Year	2020	% Change Year-to- Year	2021	% Change Year-to- Year	2022	% Change Year-to- Year
JAN	318	19%	433	36%	561	30%	656	17%	632	-4%	671	6%	13	-98%		
FEB	416	24%	587	41%	573	-2%	699	22%	731	5%	847	16%	117	-86%		
MAR	506	-19%	786	55%	858	9%	1,030	20%	1,035	0%	487	-53%	533	9%		
APR	397	5%	671	69%	689	3%	694	1%	877	28%	0	-100%	504	100%		
MAY	334	8%	595	78%	665	12%	822	24%	757	-8%	0	-100%	532	100%		
JUN	296	40%	493	67%	463	-6%	529	14%	599	13%	0	-100%	452	100%		
JUL	453	86%	459	1%	480	5%	564	18%	596	6%	0	-100%	556	100%		
AUG	365	45%	371	2%	414	12%	442	7%	565	28%	0	-100%	529	100%		
SEP	421	73%	492	17%	514	4%	544	6%	586	8%	80	-86%	477	94%		
OCT	535	12%	749	40%	754	1%	801	6%	906	13%	120	-87%	875	98%		
NOV	461	69%	552	20%	699	27%	661	-5%	787	19%	14	-98%	653	98%		
DEC	394	41%	488	24%	670	37%	675	1%	743	10%	0	-100%	670	100%		
TOTALS	4,896	26%	6,676	36%	7,340	10%	8,117	11%	8,814	9%	2,219	-75%	5,911	166%	0	-100%

# GERONIMO TRAIL SCENIC BYWAY VISITOR STATISTICS: NEW MEXICO

GTSB Visitor Statistics: New Mexico															
	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2019
	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	YTD	TOTALS	
SIERRA COUNTY	5	13	31	39	61	36	50	46	21	50	30	37	419	643	
Abiqui			2										2	0	
Alamogordo					5				7	3	3	7	25	47	
Albuquerque		14	48	49	64	55	66	52	58	86	65	83	640	966	
Alto													0	0	
Angel Fire													0	0	
Animas													0	0	
Anthony				2						2			4	0	
Aragon													0	4	
Artesia													0	0	
Aztec													0	0	
Bayard													0	0	
Belen									1	5	4	2	12	76	
Bernalillo							1						1	15	
Bingham													0	0	
Bloomfield													0	0	
Blanco													0	0	
Blue Water													0	0	
Bosque Farms								1					1	4	
Capitan										2			2	0	
Carlsbad									1				1	10	
Carrizozo													0	2	
Cedar Crest													0	0	
Cerrillos													0	0	
Chama			2						1				3	2	
Chamberino													0	0	
Chaparral													0	2	
Chillili													0	0	
Clayton													0	1	
Cliff													0	0	
Cloudcroft			2			1				3			6	13	
Clovis												2	2	7	
Cochiti													0	0	
Columbus													0	0	
Corona				1									1	0	
Corrales												2	4	12	
Crownpoint													0	0	
Cuba													0	2	
Datil													0	0	
Deming				2		4	2		1	4		1	14	27	
Dexter													0	0	
Dona Ana			2										2	4	
Eagle Nest													0	5	
Edgewood				2	2					3			7	18	
Espanola					2				1				3	2	
Estancia			2										2	2	
Eunice													0	0	
Fair Acres													0	0	
Farmington			2		2						2	2	8	18	
Ft Stanton													0	0	
Ft Sumner													0	0	
Garfield													0	0	
Gallup		2										4	6	7	
Glenwood													0	0	
Grants				4				4					12	5	
Hatch													4	2	
Hagerman				2									2	0	
High Rolls													0	0	
Hobbs													0	8	
Hondo													0	2	
Horse Springs													0	0	
Hurley					1							1	2	1	
Jemez								3					3	2	
Kirtland													0	0	
La Cueva													0	0	
La Joya													0	0	
La Luz													0	2	
La Mesa													0	0	
La Plata													0	0	
La Union													0	0	
Las Cruces	2	7	24	18	17	21	17	18	12	21	22	28	207	364	
Las Vegas													0	15	
Lamy													0	0	

# GERONIMO TRAIL SCENIC BYWAY VISITOR STATISTICS: NEW MEXICO

	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2019
	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	YTD	TOTALS
Lincoln												2	2	2
Lordsburg										3			3	3
Los Alamos					2			2				6	10	37
Los Lunas				4	2		2	1	2	4			15	44
Lovington			2										2	2
Luna													0	0
Madrid										1			1	2
Magdalena							3				2		5	5
Mayhill													0	0
McIntosh													0	0
McDonald													0	0
Mescalero					1								1	5
Mesilla													0	3
Mesquite													0	0
Mimbres													0	4
Moriarty				1						2			3	0
Navajo Dam													0	0
Mountainaire			2		2			3		2			9	5
Pecos													0	0
Pie Town												2	2	0
Pine Hill													0	0
Pinos Altos													0	0
Peralta							1						1	0
Placitas				8						2		2	12	8
Portales													0	0
Puertocito													0	0
Quemado													0	0
Questa											2		2	0
Radium Springs			2										2	0
Ramah													0	0
Raton													0	2
Reserve													0	0
Rincon													0	0
Rio Rancho					2	5	2	8	3		8	4	32	77
Rodeo													0	0
Roswell							4		2		2	2	10	32
Roy													0	0
Ruidoso		3	1	2	3			2	5	6			22	22
Sabinal													0	0
Salem													0	0
San Antonio				2									2	4
Sandia Park			2		2								4	6
Santa Ana Pueblo													0	2
Santa Cruz													0	0
Santo Domingo Pueblo													0	0
Santa Fe		14	28	15	32	15	12	10	20	25	18	20	209	341
Santa Rita													0	0
Santa Rosa										1			1	0
Santa Theresa													0	3
Shiprock													0	0
Silver City			3	2	8		6	5	1	2	6	7	40	54
Socorro		2		1	5	7	2		2	3			22	37
Springer						2					3		5	2
Stanley													0	0
Sunland Park		2											2	3
Taos		1	2	6			4	1	2	13	5	4	38	46
Tesuque													0	0
Thoreau													0	0
Tijeras					2			1					3	5
Tome													0	0
Tularosa		1											1	1
Tucumcari													0	2
Veguita													0	0
Weed													0	0
White Sands													0	0
White Oaks													0	0
Zuni							1						1	6
Not Elsewhere Listed	2	2	20	14	16	2	9	8	8	18	8	5	112	345
New Mexico Totals	9	61	179	173	230	149	189	158	152	271	185	215	1,971	3,400

**GERONIMO TRAIL SCENIC BYWAY VISITOR STATISTICS: UNITED STATES**

<b>GTSB Visitor Statistics: United States</b>														
	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2021	2019
	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	YTD	TOTAL
Alabama			4	1	2	7	2	2	5	2		2	27	25
Alaska		3		4				2		6	2	3	20	29
Arizona		6	24	22	22	26	43	64	36	55	35	37	370	358
Arkansas			2		2			2	2		2		10	22
California	1	9	32	25	32	9	50	28	37	70	62	32	387	435
Colorado		8	83	43	15	14	18	17	19	38	41	45	341	422
Connecticut			2			1				1			4	38
Delaware							5						5	3
Florida		1	3	13	9	14	13	12	5	25	10	15	120	138
Georgia			5	7	3	6	5	2	5	2	9		44	26
Hawaii			2		1		3			1	3		10	22
Idaho			2	2	6							4	14	33
Illinois		5	7	8	7		11	6	18	12	2	20	98	127
Indiana			8	1	6		4		2	8	5	3	37	63
Iowa	1		4	3	8	7	1	6	9	7	12	2	60	67
Kansas				2	6	7	3	5		6	2	2	33	60
Kentucky					2	8		5	4	6	1		26	30
Louisiana				2	4		1				2	4	13	36
Maine				10	2				1		1	2	16	20
Maryland			2	1	3	4	2		5	6	6	3	32	52
Massachusetts			2	1	2	6	7	6	4	5	10	3	46	58
Michigan		2	7	12	2	3		7	7	11	21	10	82	137
Minnesota	2	4	8	10	6	6	3	2	2	14	12	18	87	225
Mississippi			2	2			4	3	5		2		18	14
Missouri			3		4	6	10	3	2	12	5	8	53	85
Montana			3		2	10	7	5		6	4	3	40	47
Nebraska			3		3	6	4		6	1	6	6	35	52
Nevada			10	1	3	2		6	7	10	3	8	50	39
New Hampshire				2						4	2	2	10	13
New Jersey			2	2	3	3		3	1	2	4	10	30	60
New York		4	2	12	5	5	10	15	11	16	5	5	90	141
No. Carolina				2	9	6		2		4	5	5	33	65
No. Dakota		2	2		3	2				6			15	7
Ohio				4	8		3	9	2	11		2	39	79
Oklahoma			9	6	3	2	6	5	1	4	6	7	49	36
Oregon			2	8	12	2	6	4	3	9	9	3	58	80
Pennsylvania			4	5	5	7	1	9	7	8	2	4	52	75
Rhode Island							5			2			7	3
So. Carolina			2	2	3					8		1	16	25
So. Dakota			4	2	4	3		8		1	7	2	31	49
Tennessee			2	6	7	8		10	5	9		8	55	20
Texas		10	74	64	52	98	108	98	77	119	97	80	877	918
Utah			3	2	6	14	1	3	5	7	6	7	54	18
Vermont				6			1		1	1	5	1	15	25
Virginia			2		2		8	2	6	7	5		32	51
Washington		1	6	13	20	3	10	9	7	30	19	35	153	173
West Virginia				6	1	2	2			5			16	9
Wisconsin			16	13	2	2	2	4	4	23	9	16	91	171
Wyoming			1	2					2	2	4	1	12	32
Washington D.C.			2			1	4		2	8	2	4	23	33
<b>TOTAL</b>	<b>4</b>	<b>55</b>	<b>351</b>	<b>327</b>	<b>297</b>	<b>300</b>	<b>363</b>	<b>364</b>	<b>315</b>	<b>590</b>	<b>445</b>	<b>423</b>	<b>3,834</b>	<b>4,746</b>
													-	-

# GERONIMO TRAIL SCENIC TRAIL VISITOR STATISTICS: INTERNATIONAL

GTSB Visitor Statistics: International														2019 TOTALS
	2021 Jan	2021 Feb	2021 March	2021 April	2021 May	2021 June	2021 July	2021 Aug	2021 Sept	2021 Oct	2021 Nov	2021 Dec	2021 YTD	
Africa						1							1	3
Argentina										1			1	0
Australia			2	2									4	50
Austria												2	2	11
Belgium													0	3
Brazil										2			2	0
Burma													0	0
Canada					2			4	5	3	13	11	38	251
Chile										3			3	0
China										2	1		3	1
Columbia							2						2	4
Costa Rica													0	0
Croatia												2	2	6
Denmark										2	1		4	63
England		1											0	4
Finland													0	31
France												2	2	62
Germany							1		1	2	2	2	8	0
Guatemala													0	0
Greece													0	4
Hungary													0	0
India													0	0
Indonesia													0	0
Iraq										2			2	1
Ireland													1	2
Israel					1								0	25
Italy													0	15
Japan													0	0
Korea													0	0
Lithuania											1		3	54
Mexico												2	5	10
Netherlands				2								3	3	10
New Zealand													0	6
Norway													2	0
Panama					2								0	0
Philippines													0	2
Poland													0	1
Puerto Rico													0	0
Romania													2	0
Russia									2				0	0
Saudi Arabia													0	5
Scotland													0	0
S. Africa													0	0
Singapore												2	2	3
Spain													0	7
Sweden												2	2	1
Switzerland												3	5	4
Taiwan													0	0
Thailand													0	0
Turkey													0	4
Wales													0	0
US Virgin Islands													0	0
Vanuatu													0	0
Unlisted/Other			1			2		1				3	7	25
Total International	0	1	3	4	5	3	3	7	10	15	23	32	106	668

**Geronimo Trail Scenic Byway Inc**  
**Balance Sheet**  
 As of December 31, 2021

	Dec 31, 21
<b>ASSETS</b>	
Current Assets	
Checking/Savings	
GTSB Checking	68.72
Petty cash	25.00
Special Projects Account	208.89
Total Checking/Savings	302.61
Other Current Assets	
Inventory	2,803.41
Prepaid Expenses	564.51
Total Other Current Assets	3,367.92
Total Current Assets	3,670.53
Fixed Assets	
Furniture/Fixtures	540.89
Total Fixed Assets	540.89
<b>TOTAL ASSETS</b>	<b>4,211.42</b>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabilities	
Accounts Payable	
*Accounts Payable	416.66
Accts payable	211.68
Total Accounts Payable	628.34
Total Current Liabilities	628.34
Total Liabilities	628.34
Equity	
Opening Balance Equity	3,883.61
Net Income	-300.53
Total Equity	3,583.08
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>4,211.42</b>

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01/06/22

Accrual Basis

# Geronimo Trail Scenic Byway Inc

## Profit & Loss

January through December 2021

	Jan - Dec 21
<b>Income</b>	
City funding	5,000.00
Donations brochures delivery	201.00
Donations Unrestricted	1,728.89
Taxable income	2,948.68
<b>Total Income</b>	9,878.57
<b>Cost of Goods Sold</b>	
Cost of Goods Sold	1,889.67
<b>Total COGS</b>	1,889.67
<b>Gross Profit</b>	7,988.90
<b>Expense</b>	
Advertising GTNSB	20.93
Advertising visitors center	570.00
Brochure delivery	300.00
Dues/fees	543.38
Gross Receipts tax on sales	89.73
Postage unrestricted	77.40
Postage visitors center	376.20
Renters Insurance	853.77
Supplies unrestricted	23.65
Supplies visitors center	2,993.59
Telephone visitors center	2,344.35
Uncategorized Expenses	96.43
<b>Total Expense</b>	8,289.43
<b>Net Income</b>	<b>-300.53</b>

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01/06/22

Accrual Basis

**Geronimo Trail Scenic Byway Inc**  
**Profit & Loss**  
**December 2021**

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	<u>Dec 21</u>
<b>Income</b>	
City funding	418.66
Donations Unrestricted	42.00
Taxable income	<u>431.00</u>
<b>Total Income</b>	891.66
<b>Cost of Goods Sold</b>	
Cost of Goods Sold	<u>417.45</u>
<b>Total COGS</b>	<u>417.45</u>
<b>Gross Profit</b>	474.21
<b>Expense</b>	
Dues/fees	45.78
Postage visitors center	18.32
Renters Insurance	63.83
Supplies unrestricted	2.05
Supplies visitors center	898.96
Telephone visitors center	<u>197.55</u>
<b>Total Expense</b>	<u>1,226.49</u>
<b>Net Income</b>	<u><u>-752.28</u></u>





# CITY OF TRUTH OR CONSEQUENCES

## AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

Agenda Item #: F.1

**SUBJECT:** City Commission Regular Minutes, December 15, 2021  
**DEPARTMENT:** City Clerk's Office  
**DATE SUBMITTED:** January 6, 2022  
**SUBMITTED BY:** Angela A. Torres, Clerk-Treasurer  
**WHO WILL PRESENT THE ITEM:** City Clerk Torres

### Summary/Background:

Minutes approval.

### Recommendation:

Approve the minutes.

### Attachments:

- CC Minutes

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

\$0.00

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

None.

**Approved For Submittal By:** ☐ Department Director

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

**Final Approval:** ☒ City Manager

### CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 1-12-2022

**CITY COMMISSION MEETING MINUTES  
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO  
CITY COMMISSION CHAMBERS, 405 W. 3<sup>RD</sup> St.  
WEDNESDAY, DECEMBER 15, 2021**

**OPENING CEREMONIES:**

**A. ADMINISTRATION OF THE OATH OF OFFICE BY THE HONORABLE MUNICIPAL JUDGE BEATRICE SANDERS. TERMS WILL BEGIN JANUARY 1, 2022:**

Position I      City Commissioner – Destiny Mitchell  
Position II     City Commissioner – Shelly Harrelson  
Position III    City Commissioner - Merry Jo Fahl  
Position IV    City Commissioner - Rolf Hechler

**Honorable Municipal Judge Beatrice Sanders administered the Oath of Office to Destiny Mitchell, Shelly Harrelson, Merry Jo Fahl, and Rolf Hechler.**

**A. CALL TO ORDER:**

The regular meeting was called to order by Mayor Sandra Whitehead at 9:08 a.m., who presided and Angela A. Torres, City Clerk-Treasurer, acted as Secretary of the meeting.

**B. INTRODUCTION:**

**1. ROLL CALL:**

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

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

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

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

**2. SILENT MEDITATION:**

Mayor Whitehead called for fifteen seconds of silent meditation and asked that everyone keep the family of Commissioner Paul Baca in their thoughts and prayers. His grandmother and uncle have passed away recently. She also asked that we keep all other families who suffered a loss from COVID-19 in our thoughts and prayers.

**3. PLEDGE OF ALLEGIANCE:**

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

**4. APPROVAL OF AGENDA:**

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

**C. PRESENTATIONS:**

- 1. Public Service Awards to Mayor Sandra Whitehead, Commissioner Paul Baca, and Commissioner Frances Luna in recognition of their outstanding dedication, commitment, and support to the City of Truth or Consequences:**

Mayor Pro-Tem Forrister administered the Public Service Awards to Mayor Sandra Whitehead, Commissioner Paul Baca, and Commissioner Frances Luna in recognition of their outstanding dedication, commitment, and support to the City of Truth or Consequences.

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

Mark Filosa addressed the Commission with various comments. (Complete copy attached hereto, and made a part hereof).

Ron Pacourek addressed the Commission with comments related to:

- (1) He wished everyone a Merry Christmas and a happy healthy, and prosperous New Year.

Susanne Carlstedt addressed the Commission with various comments. (Complete copy attached hereto, and made a part hereof).

Steven Zeschke addressed the Commission with comments related to:

- (1) He thanked the Commissioners for their service, and congratulated the newly elected officials.
- (2) He commented on the survey he received in his electric bill regarding the Riverwalk. He suggested that there be an ATV ban in the area of the Riverwalk.

**E. REPORTS:**

**City Manager Swingle reported the following:**

- He thanked the outgoing Commissioners for their service. It has been a privilege working with all of you. It has been a very difficult time with the financials and infrastructure of the city, as well as some of the community members coming in and making off the chart comments and remarks. We need to bond together to move forward. The dissent that you have been subject to for years is not healthy for this community or for the government. So many people who come here are mortified with what they see in that aspect, so he hopes we can get past that.
- Jim Brannon notified him that they want to hold off another year for Fiesta. They would like COVID to diminish before they move forward with future Fiesta plans.
- He reviewed the city department accomplishments for 2021. (Complete copy attached hereto, and made a part hereof). The departments have done tremendous work and he can't express how proud he is of all of the departments and what they have done for this community. The Commissioners have also accomplished a lot.

**City Attorney Rubin reported the following:**

- He feels that City Manager Swingle should share the credit of all of the accomplishments.
- He thanked Commissioner Baca, Commissioner Luna, and Mayor Whitehead for their service. He enjoyed working with them.
- He has been working on a title suit for the Rotary Park, and it appears that he is nearing a successful inclusion of the law suit. The history is as you know, the City of Truth or Consequences has been maintaining that park for several years on an off and on basis. There has always been a question as to whether or not we were rightfully in possession of the property and if we had the ownership interest to do the things that we were doing. We went through the process of having a survey done. We filed a law suit, it has been published, and we have received the necessary disclaimers from the adjacent property owners, and the best part is that he has been able to reach an agreement with the Bureau of Reclamation. They are not contesting our right to claim legal ownership and title to the property, and we will cooperate with them as they maintain the river.

**City Commission Reports:**

**Commissioner Baca reported the following:**

- He thanked everyone for letting him be in this position for the last 4 years. He has enjoyed it.
- Happy Holidays to everyone.
- He liked Mr. Fenn better as a stranger.

**Commissioner Luna reported the following:**

- She thanked her fellow Commissioners for allowing her to serve as Commissioner because they are the ones who appointed her. Until you sit here you really don't know what juggling chainsaws feels like. It's easy to judge, but juggling chainsaws is not fun at all. Since she was a child, some of her earliest childhood memories are going to Commission Meetings with her late grandfather, so she has always felt comfortable in a Commission room as a child, a reporter and as a commissioner, but in the future, it will be as a constituent, and she will be more pleasant than others have been to her because she knows what it feels like to sit here. Ironically when we hired Bruce, and he started sifting through layer one, he said these are problems that we won't solve. These are problems our grandchildren will still be dealing with. As the infrastructure issues keep coming and rearing their ugly heads, she believes that more and more every day. She is glad to see the new Commission that is coming in. She has full confidence in you all, and she will be blowing up your phones. She has utmost respect and trust in Bruce, and she hopes that you all will do the same. There is not a better Manager in this state than the one that we have right here. She remembers when she interviewed him as the County Manager, she didn't think it was going to last because he wasn't from here, but as Mark Filosa said, he made this his home. He cares with a passion about this community, the same as us who were born and raised here. With the legal advice of Jay Rubin, and the hard work of our city staff, and department heads, and our new Chief of Police, she thinks we are in a good place, but it is not going to be easy. The road ahead is not paved. It has pot holes, water leaks and infrastructure problems, and that comes with making tough decisions at budget time. She thanked everyone for letting her be in this position as Commissioner.

**Mayor Pro-Tem Forrister reported the following:**

- She stated that it was a pleasure working with her fellow Commissioners. It has been really nice because we agree on a lot of things, but we also disagree on a lot of things, and she doesn't ever feel that anyone has repercussions when we want to challenge each other. She feels that it brings out the best in them when they have the hard discussions and they are not just all in on the same thing. She hopes that the new Commissioners can continue to do the same as well.
- She wishes that we had a full audience today to hear all of the city's accomplishments because we are ridiculed time and time again about things that we have not accomplished and she feels that it stems from Bruce's leadership. Hiring him was one of the best decisions they could have made as a Commission. He is worth his weight in gold so she hopes that the new Commission appreciates him as much as they do.
- She expressed to her fellow Commissioners how much she appreciates all of them.
- Toys for Tots led by Denise Addie has collected over 125 bikes. They collected 74 last year. If the public would still like to donate anything for the toys for kids, she is asking for Legos, mind craft or any little toys, and they can be dropped off at Bullocks, Tractor Supply, Bank of the Southwest, First Savings Bank, and La

## CITY COMMISSION DECEMBER 15, 2021 REGULAR MEETING MINUTES

Cocina. With that being said, living and being raised in this community is one of the best places we can be. We pull together and this community is just amazing.

- She has the pleasure of leading the countdown to light the tree at the Old-Fashioned Christmas event. She thanked the city workers for all of their time and effort putting up all of the lights. It looked truly amazing.
- She wished everyone a Merry Christmas and a Happy New Year.

### **Mayor Whitehead reported the following:**

- She said thank you. She had the pleasure of serving for a little over 9 years. She served off and on as Mayor, and Mayor Pro-Tem and she really enjoyed it. She had the pleasure of working with several different groups of Commissioners. Commissioners three great managers of course Bruce is her favorite. She has known him the longest. She knew him through the New Mexico association of counties and she thought that he did an outstanding job as you have done with the city. According to the accomplishments you've done a great job in just the short time you have been here. Not only you but our staff. She has worked close with the staff, and just watching and seeing what they've done and what they've accomplished, and learned, and with a good they have done for our community. She appreciates that. There has been a lot of negativities and it is really sad that there is so much of that out there because we try to do the best that we can. Like Commissioner Luna stated earlier, until you sit in this seat you really don't know what's going on. She was always one of those people who wanted to run for every office there was, which she did. She had that opportunity with the county, and she served on the school board. The reason why she wanted to serve on the school board was because her as a mother and a parent of a child that was going to school knew how the school worked from the outside in, but she didn't know how it worked from the inside out. That was her goal, and she learned a lot. She feels that the new group of Commissioners will do an outstanding job. She wished everybody well, and wished everyone a happy, safe, and blessed Merry Christmas, and a Happy New Year.
- She thanked the community because they were the ones who elected her to this seat.

### **F. CONSENT CALENDAR:**

1. **City Commission Regular Minutes, November 17, 2021**
2. **City Commission Special Minutes, November 29, 2021**
3. **Acknowledge Regular Planning & Zoning Commission Minutes, November 4, 2021**
4. **Accounts Payable, November 2021**

**Commissioner Luna moved to approve the Consent Calendar as submitted.**

**Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

**G. ORDINANCES/RESOLUTIONS/ZONING:**

- 1. Discussion/Action: Approval of the amendment of Resolution No. 35 21/22 for the Sale of Surplus Property to be sold at the January 18, 2022 online Auction through J.J. Kane Associates, Inc. dba J.J. Kane Auctioneers:**

City Clerk Torres explained that this resolution was approved at our last meeting. We are bringing it back today because we have one vehicle that we want to remove, and two vehicles that we are wanting to add. We are removing the 2008 Ford Crown Victoria because our Chief is still able to use the vehicle. The two vehicles that were added to the list were from the Fire Department. The auction will be held online on January 18, 2022 through J.J. Kane Associates. The publication will be on December 17<sup>th</sup> and December 24<sup>th</sup> which meets the 14-day publication requirement.

**Commissioner Luna moved to approve amendment of Resolution No. 35 21/22 for the Sale of Surplus Property to be sold at the January 18, 2022 online Auction through J.J. Kane Associates, Inc. dba J.J. Kane Auctioneers. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

- 2. Discussion/Action: Resolution No. 38 21/22 Budget Adjustment Resolution:**

City Manager Swingle reviewed the Budget Adjustments that were included in the packet. He noted that the minimum wage raises are included in the budget adjustments. Minimum Wage increases January 1, 2022. We have a number of employees who we need to increase their salaries to put them at minimum wage.

**Commissioner Luna moved to approve Resolution No. 38 21/22 Budget Adjustment Resolution. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

- 3. Discussion/Action: Approve Resolution No. 39 21/22, and sign the NMFA Loan/Grant agreement and closing documents for the Cantrell Dam Design/Rehabilitation Project:**

Traci Alvarez, Assistant City Manager explained that this is the final step to proceed with our Water Trust Board Project. We were awarded that project, and the City Commission approved that project back in June of 2021. Staff requests to approve the resolution to proceed forward with the design and rehabilitation of the Cantrell Dam.

**Commissioner Luna moved to approve Resolution No. 39 21/22, and sign the NMFA Loan/Grant agreement and closing documents for the Cantrell Dam Design/Rehabilitation Project. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

- 4. Discussion/Action: Publication of Ordinance No. 723 authorizing the execution and delivery of loan No. PPRF-5652, between the City of Truth or Consequences and the New Mexico Finance Authority for the purpose of purchasing a new electrical transformer:**

City Manager Swingle explained that this is a request to publish the ordinance, and moving forward with purchasing a new north transformer. This is the transformer at the substation. As you know, during the summer it had gone down, and things were pretty dicey as far as the integrity of the grid. We were able to get it up and functioning again. However, it failed again about two weeks ago. We brought in another contractor to work on it, and it is up and running again. However, it needs to be replaced. We are looking at approximately \$1,320,907 for the purchase of the new transformer. It has been ordered and it takes about 8 months to have it constructed.

**Mayor Pro-Tem Forrister made a motion for the publication of Ordinance No. 723 authorizing the execution and delivery of loan No. PPRF-5652, between the City of Truth or Consequences and the New Mexico Finance Authority for the purpose of purchasing a new electrical transformer. Commissioner Luna seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

- 5. Discussion/Action: Publication of Ordinance No. 724 authorizing the execution and delivery of a promissory note and commercial security agreement by and between the City of Truth or Consequences, New Mexico and the Bank of the Southwest:**

Chris Muirhead, Modrall Sperling explained that this relates to USDA financing for the water system improvements that was the subject of the letter of conditions in the USDA and September of 2019. That was a mix of a loan for \$5,487,000 and a grant for \$3,930,000. The last few years is the New Mexico office of USDA consistent with their national practices has instead of financing the construction through these loans, has asked the grantees which is the city to get interim financing or a construction loan to handle the construction of the improvements, and then they pay it off with their loan once the construction is complete. What you have in front of you is the first process of Bank of the Southwest. They have agreed to lend the loan amount to the city for the construction for the water system improvements and then have that paid off with the USDA loan. From a legal standpoint you need to do this interim financing the same as you do with any other financing. State law requires that you have an ordinance that approves the amount, and three pledge of the revenues. If you didn't have those special pledges, it would be subject to an election, but because it is a special pledge, you can do it through a majority vote of



the City Commission. This ordinance relates to this interim financing, and approves the loan documents from Bank of the Southwest in the amount of getting out of \$5,487,000 with an interest rate of 4.25%. The good news is that a USDA loan is no worse than a 2.15% and extends for 4 years subject to re-payment at any time.

**Mayor Pro-Tem Forrister made a motion for the publication of Ordinance No. 724 authorizing the execution and delivery of a promissory note and commercial security agreement by and between the City of Truth or Consequences, New Mexico and the Bank of the Southwest. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

**6. Discussion/Action: Publication of Ordinance No. 725 amending Chapter 3 of the Municipal Code of Ordinances pertaining to animals:**

Traci Alvarez, Assistant City Manager explained that Chapter 3 of the Municipal Code of Ordinances pertaining to animals really needed to be updated so it fits the needs of our current day operations at the Animal Shelter and through Animal Control. The shelter portion was some wording changes. We removed the fees from the ordinance because we will be bringing back a resolution to re-assess the fees at the Animal Shelter.

Victor Rodriguez, Chief of Police explained that there were a lot of changes to the Animal Control portion so we can streamline a lot of the issues our officers were running into with the enforcement, restraining animals, animals running at large, safe keep of animals which is a huge thing that we do when we have individuals who for whatever circumstances cannot care for the animals and at some point the city ends up taking those animals, and sometimes we stay with them for months, so this really defines that after 72 hours, the animal can become property of the city. We can extend an additional 72 hours, but the goal is to make sure that it is defined in the ordinance. The other big thing that you will see in there is penalties for a lot of our habitual violators of rabies, animals running at large. We are really trying to get the point across. There was a dog that had been at the shelter 15-20 times in a year and we are trying to get away from that. We also made changes to the livestock portion because we have had some situations with livestock in the Municipal limits so this mimics the livestock state statute.

**Mayor Pro-Tem Forrister made a motion for the publication of Ordinance No. 725 amending Chapter 3 of the Municipal Code of Ordinances pertaining to animals. Commissioner Luna seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

**H. NEW BUSINESS:**

**1. Discussion/Update: Update on Financial Reports as of November 30, 2021:**

City Manager Swingle reviewed the financial reports that were provided in the packet.

**2. Discussion/Action: Approval of Emergency Purchase for Testing on the North Transformer:**

Donna Gardner, Chief Procurement Officer explained that the Electric Department had to have emergency testing done to the north transformer. On November 16, 2021 the north transformer was lost due to the transformer differential sudden pressure lock-out relay tripped. The whole town is currently running off the south transformer and should it go out, we will be without power. We had to do an emergency procurement for the transformer in the amount of \$29,963.46 to be able to test and fix the transformer.

**Commissioner Luna moved to approve the Emergency Purchase for Testing on the North Transformer. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

**3. Discussion/Action: Award Recommendation for RFP 21-22-005 12.47KV Distribution Line:**

Bo Easley, Electric Department Director explained that this was brought up about 6 months ago that we were going out for RFP for the 12.47KV Distribution Line so we can replace 19 poles from where Andy's Bar used to be all the way down the alley behind Bullocks. We received 2 bids. One was extremely high and the other one was right where we thought it should be so we are going with them.

Donna Gardner, Chief Procurement Officer then proceeded to explain that we received 2 bid proposals on November 16<sup>th</sup>. One was from Bixby Electric, and one was from DND Industries. The scoring within the RFP included past performance and the cost of the highest weighted factor. Bixby Electric achieved the highest score with 83 points and DND Industries was 78 points. We would like to offer the award to Bixby Electric for RFP 21-22-005 for the 12.47 KV Distribution Line Renovations.

**Mayor Pro-Tem Forrister moved to award the recommendation of RFP 21-22-005 12.47KV Distribution Line to Bixby Electric. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

**4. Discussion/Action: Extension of Contract with Tech 45 Enterprises:**

Donna Gardner, Chief Procurement Officer explained that a contract was entered into with Tech 45 Enterprises for Airport Management Services on 7/1/2021 through 9/30/2021. An extension was then entered into for 10/1/2021 through 12/31/2021. The city posted a Request for Proposals for those services; however, canceled the RFP until further information can be gathered. Therefore, the city needs to extend services through 6/30/2022.

**Commissioner Luna moved to approve the Extension of Contract with Tech 45 Enterprises. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

**5. Discussion/Action: Extension of Contract with Integrated Technologies:**

Donna Gardner, Chief Procurement Officer explained that the original extended contracts with Integrated Technologies Group were from 7/1/2021 through 9/30/2021 and 10/1/2021 through 12/31/2021. This is to extend the contract from 1/1/2022 through 6/30/2022. A Request for Proposals for Integrated Technology Support Services was issued. However, only two responses were received. The city rejected those responses due to concerns over budget and lack of on-site services. The city intends to issue another RFP in the future.

**Mayor Pro-Tem Forrister moved to approve the Extension of Contract with Integrated Technologies. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

**6. Discussion/Action: Approval of Contract with Sunny 505:**

Donna Gardner, Chief Procurement Officer explained that Sunny 505 provides account management and graphic design to the city among other services. The contractor also attends quarterly meetings on behalf of the city for the NM Tourism Department Cooperative Advertising Grant.

**Mayor Pro-Tem Forrister moved to approve the Approval of Contract with Sunny 505. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer.**

**Hon. Amanda Forrister, Mayor Pro-Tem voted aye  
Hon. Frances Luna, Commissioner abstained  
Hon. Paul Baca, Commissioner voted aye  
Hon. Sandra Whitehead, Mayor voted aye  
Motion carried with a 3-0 vote with 1 vote abstained.**

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

Donna Gardner, Chief Procurement Officer and Paul Tooley Fire Chief reviewed the Purchase Requisitions over \$20,000 that were provided in the packet.

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

**Hon. Amanda Forrister, Mayor Pro-Tem voted aye**

**Hon. Frances Luna, Commissioner abstained**

**Hon. Paul Baca, Commissioner voted aye**

**Hon. Sandra Whitehead, Mayor voted aye**

**Motion carried with a 3-0 vote with 1 vote abstained.**

**8. Discussion/Action: Appointment of Steven Zeschke to the Planning & Zoning Commission:**

City Clerk Torres explained that Steven Zeschke was a former member on the Planning and Zoning Commission. On July 12, 2021, Mr. Zeschke resigned due to him moving out of town for a short period of time. He is now again a resident of Truth or Consequences, and wishes to serve again as member on the board. On December 2, 2021, the Planning & Zoning Commission unanimously voted to re-appoint Mr. Zeschke to the board. We currently have two vacancies on the board. If Mr. Zeschke is appointed, he will become the 4th member, only leaving one vacancy to fill.

**Commissioner Luna made a motion to table this item and have City Clerk Torres seek additional applicants and let the new Commission appoint the vacant positions. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

**9. Discussion/Action: Sierra County Arts Council Lodger's Tax Application:**

Tammy Gardner, Executive Assistant explained that the Sierra County Arts Council requested \$1,150.00 for brochures. The Lodger's Tax Advisory Board approved \$450.00 at the November 15<sup>th</sup> meeting because they wanted other quotes. The request was for \$1,200.00 for 1 year of website maintenance and development. The board approved \$700.00 to pay for the remainder of the Fiscal Year at their November 15<sup>th</sup> meeting.

**Mayor Pro-Tem Forrister moved to approve the Sierra County Arts Council Lodger's Tax Application with the amounts noted by Tammy Gardner.**

**Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

**10. Discussion/Action: Geronimo Trails Scenic Byway Lodger's Tax Application:**

Tammy Gardner, Executive Assistant explained that the Geronimo Trails Scenic Byway requested \$2,500.00 for reprinting of brochures, and the Lodger's Tax Advisory Board approved \$2,500.00 at the November 15<sup>th</sup> meeting. The request for \$1,500.00 is for updates and maintenance to the website. The Lodgers Tax Advisory Board approved \$1,500.00 at the October 26<sup>th</sup> meeting.

**Mayor Pro-Tem Forrister moved to approve the Geronimo Trails Scenic Byway Lodger's Tax Application with the amounts noted by Tammy Gardner. Commissioner Luna seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

**11. Discussion/Action: Commitment of Local Funds for the SJOA Senior Citizens Program:**

City Manager Swingle explained that this is a commitment of funds that the SJOA Senior Citizens Program sends out pre-budget every year. They do it as a requirement from the state. They are asking for the city to commit the same funds that we did last year for \$47,000 to the SJOA Senior Citizens Program to provide food and services to our seniors. This is not in stone. This is just a commitment letter that the state requires. If we are financially unable to pay the full \$47,000 to SJOA, we just need to notify them in writing what that amount is going to be, and we will do that during the budget process.

**Commissioner Luna moved to approve the Commitment of Local Funds for the SJOA Senior Citizens Program. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

**12. Discussion/Action: Accept donation from the County of Sierra for the Generac SG0100 105kW LP backup generator located on Water Tank Hill:**

City Manager Swingle explained with the county transitioning over to the new building, and communications will be down there. All of the county communications will be moved to SCRDA's tower. We will still have fire and our utility frequencies on tank hill. The county received a community wide grant years ago to install that generator as a backup for our communications. We would like for the Commission to accept the generator. The county graciously spent a lot of money doing maintenance and ensuring the integrity of the

generator before extending this offer to us. We very much appreciate the county allowing us to keep the generator.

**Commissioner Luna made a motion to accept donation from the County of Sierra for the Generac SG0100 105kW LP backup generator located on Water Tank Hill. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

**13. Discussion: Discussion regarding the use of the Ralph Edwards Civic Center:**

City Manager Swingle explained that this was put on the agenda to have a discussion and get an idea of what we want to do with the Civic Center. Right now, the Civic Center is being used mainly for what we refer to as senior programs. He is not sure what all of them are, but we have a lot of them going on at the facility. We have been receiving a lot of requests from others who want to use the facility for recreational purposes. Do we want to extend the use of the facility from just senior programs? We have youth basketball that want to play basketball a couple days a week in the evenings and we have had other requests for religious classes, and services being provided there, so it really is generating a lot of attention from a lot of people other than senior programs. It really limits our ability to rent it out. I know Angela does a great job of trying to rent it out, and then contacting the senior programs that are there to cancel their events for whatever days that she can rent the facility out, but if we get into programs like youth basketball, and things like that, we're going to have to have staff there because we can't just let bunch of kids play basketball unattended. We need to have staff working there to take care of things and control the activities that are going on, as well as secure the facility. Many months ago, probably prior to him coming on board, we had some theft of some audio equipment at the Civic Center. He wanted to discuss this today because he wanted to get a feel from the Commission of what you want as far as religious classes. Those things will require payment for the facility, and like they would have to rent it like everyone else if they have a religious class or a class on knitting, that's up to them, but for the Commission to allow the religious practices to take place in the facility, and it be at no charge really just puts the Commissioners in a bad position. I'm trying to get your thoughts on where you want to go with the Civic Center.

Commissioner Luna explained that the Commission moved the senior programs from the Lee Belle Johnson Center where they were held, to the Civic Center before Bruce even moved into town. That was the compromise as to eliminating the senior recreation services. She doesn't know if there is a different place where we could make them a new home. She thinks their ultimate desire is not having to move their stuff for any activities, and she thinks that the city is losing money from not being able to rent it out completely, because nobody wants to kick them out from their pickleball and all of their fun stuff. Having done Miss fiesta and watch them play pickleball it is pretty exciting, and she wants to grow old, and go play, but she thinks that's a decision that the new Commission needs to make because they're going to be the ones getting those phone calls. As far as going all the way back to when she was a little girl in the Civic Center, the money was found to

renovate the Civic Center. It was to become a venue for the community. Not to be utilized for basketball leagues and such like that. The school and the city had partnered at that time for the community to be able to utilize those gyms. Even though it was the old gymnasium, they did not want to just throw away the money, and it be vandalized and deteriorate due to basketballs being bounced off the acoustic tiles and such. Si she does not think that is the best resource personally, but she thinks that's something the new Commission needs to make a final decision on.

City Clerk Torres asked, if the new Commission does decide that they want to keep the senior activities there. One thing that needs to be determined is what is going to be considered senior activities. Is it only going to be for those that were transferred over from the Lee Belle Johnson Center, because we have a lot of groups who come in and are saying that they are a senior activity group? We need to think about how we are going to monitor that? There are even some senior activities now who have younger individuals there, so I think that's just something that we're going to have to maybe consider and maybe think about when this is brought up again.

City Manager Swingle explained that the community's trying to turn it into a recreation center for everybody, and doesn't believe that was ever the intent. This is probably premature and it should go to the next Commission, but he wanted to hear kind of a historical perspective on it as well.

**I. EXECUTIVE SESSION:**

- 1. Threatened & Pending Litigation (City of T or C vs. Hot Springs Land Development) pursuant to 10-15-1(H.7).**
- 2. Threatened & Pending Litigation (McCleskey vs. City of T or C) pursuant to 10-15-1(H.7).**

**Commissioner Baca made a motion to go into executive session at 11:09 a.m. to discuss Threatened & Pending Litigation (City of T or C vs. Hot Springs Land Development) pursuant to 10-15-1(H.7) and Threatened & Pending Litigation (McCleskey vs. City of T or C) pursuant to 10-15-1(H.7). Mayor Pro-Tem Forrister seconded the motion. Roll call vote was taken by the Clerk-Treasurer. Motion carried unanimously.**

Mayor Whitehead reconvened the meeting in open session at 11:27 a.m.

**Commissioner Luna certified that only matters pertaining to Threatened & Pending Litigation (City of T or C vs. Hot Springs Land Development) pursuant to 10-15-1(H.7) and Threatened & Pending Litigation (McCleskey vs. City of T or C) pursuant to 10-15-1(H.7) was discussed in Executive Session.**

**No action was taken.**

CITY COMMISSION DECEMBER 15, 2021 REGULAR MEETING MINUTES

**J. ADJOURNMENT:**

**Mayor Whitehead moved to adjourn at 11:28 a.m. Mayor Pro-Tem Forrister seconded the motion. Motion carried unanimously.**

**Passed and Approved this 12th day of January, 2022.**

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Amanda Forrister, Mayor Pro-Tem

ATTEST:

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Angela A. Torres, CMC, City Clerk



Fire set on porch at 519 Austin  
Street 12/7/21 7 p.m.

Christopher Stonewall  
734-718-1351

Believes he was targeted as a  
gay man and/or for displaying  
Biden and rainbow flags.

MARK FILOSA -  
Comment

So I wish to thank Mayor Whitehead and Commissioners Baca and Luna for their service on the Commission.

You know when I arrived here 40 years ago, a kid after being raised and educated in Chicago, I had no property; no money. Two broken down old cars, a good wife, and a new baby was all I had! Thus, I owe everything I have to this town. It saddens me that some people have disrespect for the town. Even though I have been here this long, I am a guest here. I was not born or raised here. This town contains people whose families have been here for generations. We guests should be gracious and not try to tear the town and its ethos down.

While some people like to berate you folks who have been elected to serve as Commissioners, their criticism is hardly fair and not sincere. I do not know who their mothers were but I am certain those women did not raise them this way --- that is to be just plain mean and disrespectful to people.

They have no true love for this town; they just want to raise hell. You know, when Jay and I came to this town when I first met him nearly 40 years ago coincidentally from two parts of the country, I was often afraid to speak out about something wrong because I was afraid it would affect business. How gutless I was! I really do not give a damn anymore now at my age, and I have concluded one is supposed to say something when you see something wrong.

So to you Mr. Finn and your ilk; I trust you might remember what I told your leader Brother Finn a few years ago. If you want to do something for this community, why don't you get involved in the Sierra County Fair, the annual scholarship night, the Grad Bash which keeps our kids safe on graduation night. Now this helps kids in our community; so let me ask you Ron, have you ever done anything for the kids in this community; a truly selfless act of kindness?

Now grant you, you do not get your name in the paper, you do not get to raise hell, you do not get to climb on top of the building and act like an nut, but you get to do something that is intrinsically right and moral.

I bet even your moms would approve; how about it Ron and you Fennites? I'll be watching; why don't you surprise me and do the right thing.

Thank you for your time, Commissioners, and Happy and blessed Holidays.

God Bless you all.



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

Agenda Item #: F.2

**SUBJECT:** Acknowledge Regular Planning & Zoning Commission Minutes, December 2, 2021.

**DEPARTMENT:** City Clerk's Office

**DATE SUBMITTED:** January 6, 2022

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

**WHO WILL PRESENT THE ITEM:** City Clerk Torres

**Summary/Background:**

Acknowledge Minutes.

**Recommendation:**

Acknowledge minutes.

**Attachments:**

Minutes

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

\$0.00

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

None.

**Approved For Submittal By:** ☐ Department Director

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

**Final Approval:** ☒ City Manager

#### CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 1-12-2022

**CITY OF TRUTH OR CONSEQUENCES  
PLANNING & ZONING COMMISSION  
THURSDAY, DECEMBER 2, 2021**

**MINUTES**

**REGULAR MEETING**

Regular meeting of the Planning & Zoning Commission of the City of Truth or Consequences, New Mexico to be held at the City Commission Chambers at 405 W. Third Street, Truth or Consequences, New Mexico, on Thursday, December 2, 2021 at 5:30pm.

**CALL TO ORDER:** The meeting was called to order by Chairman Hogg.

**ROLL CALL:**

Michael Hogg, Chairman  
Chris Sisney, Vice-Chairman  
James Bush, Member

**ALSO PRESENT:**

Bruce Swingle, City Manager  
Orrin Hechler, Community Service Director  
Dawn C. Barclay, Deputy City Clerk

**1. APPROVAL OF AGENDA:**

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

**2. APPROVAL OF MINUTES:**

- a. Regular meeting of Thursday, November 4, 2021.

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

**3. COMMENTS FROM THE PUBLIC:**

Diana Gunning – Presented her concerns to the board with a handout, which has been made part of these minutes. She is not in favor of the current dirt work that is being done at a neighboring property. She also stated that there are plans for a proposed bridge to be constructed at the end of her dead-end road. Once the bridge is installed, it will create continuous traffic and access to a planned housing subdivision.

**George Henderson - Addressed the same issues Ms. Gunning previously presented.**

**4. NEW BUSINESS:**

- a. Discussion/Action: Recommendation to appoint Steven Zeschke to serve as a member on the board.**

**Mr. Zeschke - Spoke to the board describing his background and his interest in returning to serve on the Planning & Zoning Commission.**

**The board had no questions for Mr. Zeschke.**

**Dawn C. Barclay, Deputy City Clerk – Explained, if the board approves Mr. Zeschke request, it will be submitted to the City Commission for final approval.**

**Chairman Hogg made a motion to approve Mr. Zeschke's request to serve on the Planning & Zoning Commission. Member Bush seconded the motion. Motion carried unanimously.**

**5. REPORTS FROM THE BOARD:**

**There were no reports from the staff.**

**6. REPORTS FROM STAFF:**

**Bruce Swingle, City Manager – Gave an update on last month's agenda item (Request for a Summary Plat Amendment and Variance Request at 128 Broadway) that went on to the City Commission for approval. He reported that the Commission denied the request, but the owners will be working on bringing the property up to code and will be requesting approval at a later date.**

**7. ADJOURNMENT:**

**There being no further business to come before the Planning & Zoning Commission. Member Bush called to adjourn the meeting. Vice-Chairman Sisney seconded the motion. Motion carried unanimously.**

**PASSED AND APPROVED ON THIS 6<sup>TH</sup> DAY OF JANUARY 2022.**

  
**Michael Hogg, Chairman**  
**Planning & Zoning Commission**

2 December 2021

For the City Planning/Zoning Committee:

Nathanael Stephens says he is building 24 connected small homes on the land he own, Block 30 Lots 1-12 of Palomas Hot Springs Townsite, see map #1. Currently there is no actual road to this location.

Nathanael says he is going to build a bridge over the arroyo from the dead end of Wyona St in order to have access to these homes.

It will be bad enough for all of us all living on the block between Post St and the dead end of Wyona St, when the recently purchased land on the other side of Wyona, now a large vacant field, will be developed. Nathan says that six large homes are to be built by another developer across the street from us between the corner of Post St and the dead end of Wyona. This was to be expected.

If this is allowed to happen, there will be a drastic increase of traffic on this street, turning it from a quiet residential area to a busy thoroughfare! This was NOT to be expected when I bought my home!!

Diane Gunning  
709 Wyona St  
Truth or Consequences, NM 87901  
[diane.tominaga@gmail.com](mailto:diane.tominaga@gmail.com)  
(304) 680-2673

Diane Gunning  
1 of 14 pages





I lived in Austin, TX, and worked full time military (AGR) at the Headquarters of the Texas Army National Guard for the last 15 years of my almost 30 years military service. I retired there in 2008.

After 20 years in Austin I could not afford a house in town, and rents were going up and up. I was forced to move.



I found an old house in Morgantown, WV that I loved. But I was not so happy with the town after awhile.

I finished up my bachelor's degree using the VA and the Post 9/11 GI Bill in 2018, and decided to take a four day vacation to Truth or Consequences, NM.

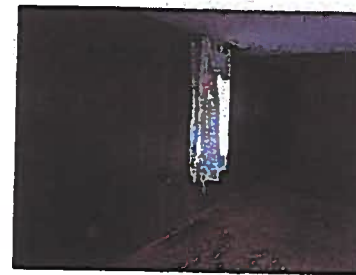
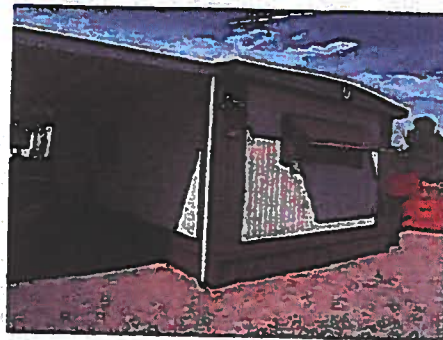
I wanted to see the stars and to use the hot springs, and to figure out what to do next with my life.



The first day, Labor Day, I met Sid Bryan. He offered to show me some houses in T or C. I told him I had no intention to buy anything, but sure!



The third house was a mobile home in the hot springs district with a view of Turtleback Mountain. It needed a lot of work but the price was so good, I decided to think about it over night.



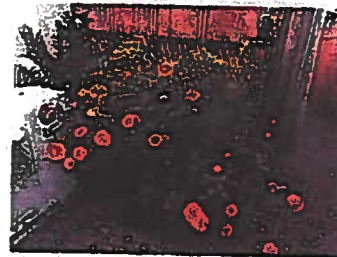
The next day I decided to take a walk and have one more look before I decided.





I sold my house in Morgantown, WV and moved here in February, 2019. I lived in the Pelican Annex on Broadway and set to work getting the house renovated.

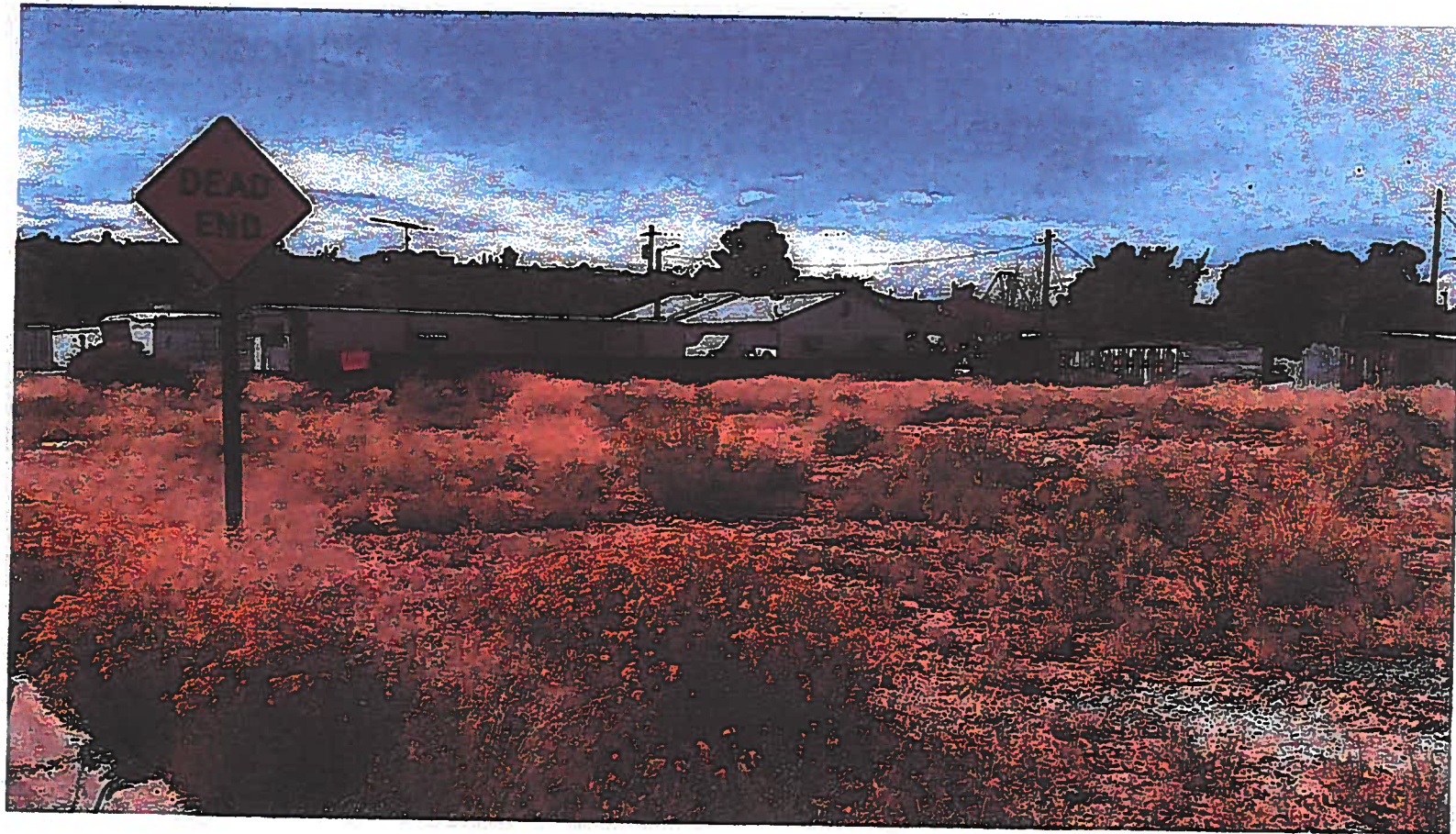
One of the workers stood out from the rest. So much so that we were married March 10, 2020.



Our bedroom with window that opens onto Wyona St



This is what I saw that made me decide to buy the house:



It was on a **dead end street**! It would be quiet with no thru traffic!

## The Idea

Nathanael claims that because a map from 1929, see map # 2, that is up on the wall in the County Building opposite the Tax Assessor's Office shows Wyona St going all the way through to Broadway (then called Hobbs Ave), he is helping to fulfill the City's plan for the area.

He claims that he cannot build up the dirt road that goes along the culvert perpendicular to and opening to Van Patten St, because other people own some of the land and because there is a main gas line that runs along there.

However, there is no water diversion *culvert* shown on the 1929 map, nor is there a main gas pipe shown running on that map. See map #3 for a Google Earth view that shows the culvert existing since at least 1996.

Does this mean that the city also plans to extend Wyona St and Charles St out to Broadway? Will they be building Mc Elroy St, that Nathanael could use to access his property easily? Yes there is a gas main there now, could it not be moved?

This indicates that the City had no intention of casting in stone this idealized plan from 1929. It may have been someone's dream then, but things have changed now. Nathanael should change his plans, too! No bridge at the end of Wyona St!

## CARS and Traffic

In 1929, how many families had a car? Going by the Census of 2020 there were 329.5 million people in this country and according to Hedges Company there were 286.9 million registered cars on the US. That give the number of **0.871** cars per person.

The Census for 1930 shows 123,202,624 people in the US in 1930, and a government summary at <https://www.fhwa.dot.gov/ohim/summary95/mv200.pdf> shows 22,972,745 cars as well as commercially owned vehicles that year. That gives the number of cars per person at less than **0.186** per person. Even a larger number found that stated there were 26,562,713 registered vehicles in the US in 1930 would be **0.215** cars per person.

It is very likely that each of the six large houses to be built on Wyona St between Post and the current dead end will have two cars per household, if not more. The 24 houses Nathanael plans to build would likely have two people living in at least half of those homes, or 36 people at one car each. This gives a total of at least 48 more vehicles owned on this street in addition to those we the current residents have.

IF each of those vehicles comes and goes just **once** a day, that is **96 times** another vehicle will go up and down the road. And that is just with **ONE** trip a day. How many times a day do you leave and return to your driveway?

And every trip except for those belonging to the two new corner two houses planned across the street from us that are closest to the corner, will go directly past our house! We are at the bottleneck of the traffic in and out.

Furthermore, when it rains, we here call the intersection of Post St and Wyona St "Lake Post" and "Lake Wyona". It is filled with water for some time after the rain. Cars coming and going will be slowed down considerably. Some may even decide to use our driveway to turn around and go back home.

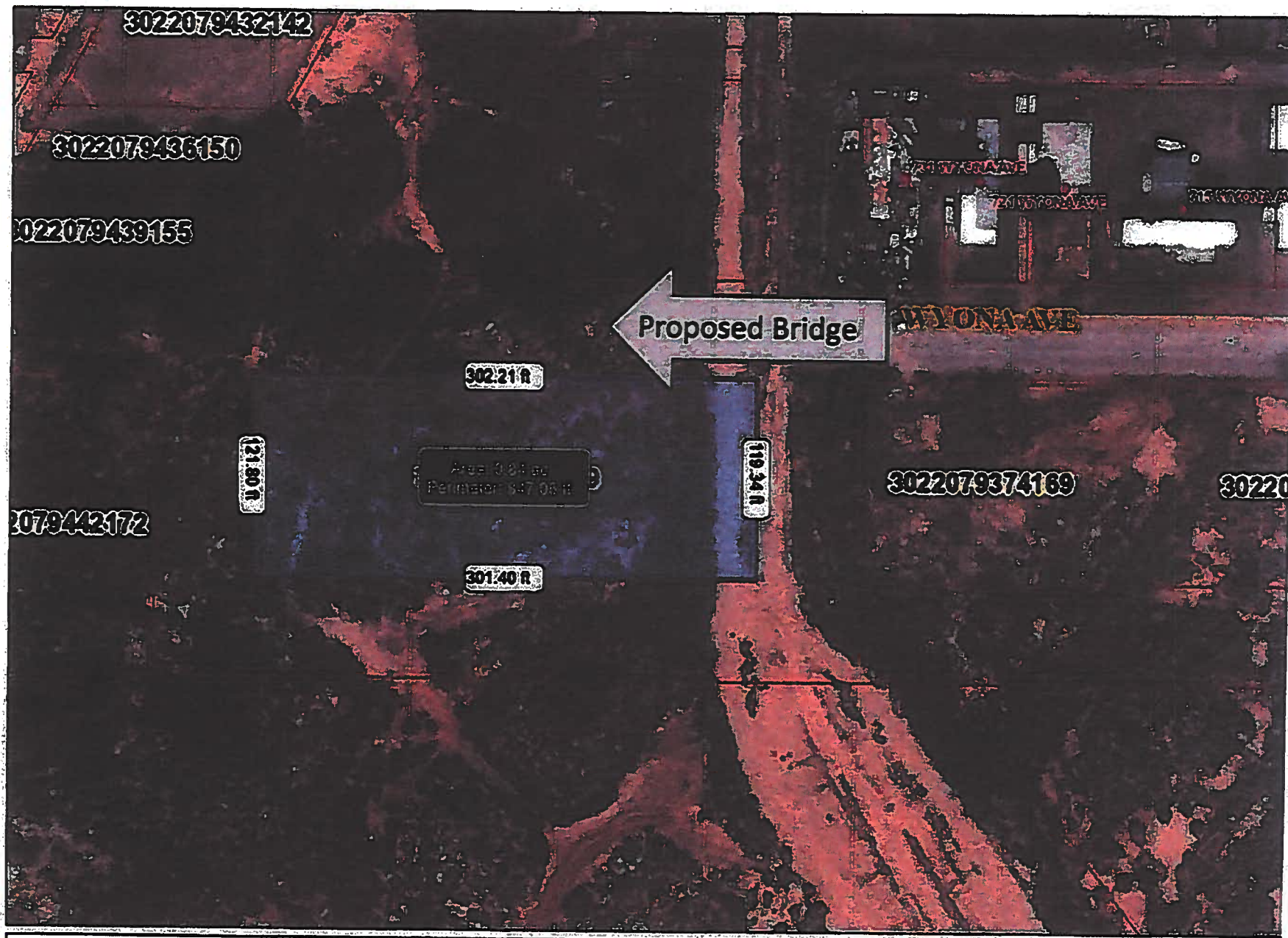
Nathanael has already begun clearing the land. His construction equipment got to his property by using the dirt road by the waste water plant. If he can use that road for his equipment, can he not improve it and use it to access his land? Why should he ruin our street by building a bridge and adding 24 new homes and the additional cars to our street?



If Nathanael Stephen's plan is allowed to materialize, we will still technically be living on a dead end street. However, now our dead end street will have Nathanael's additional 24 homes and occupants and their vehicles to contend with.

How many other dead end streets in Truth or Consequences will have as much traffic as ours?

**Please, City Planning and Zoning  
Committee, address this issue and save  
our street!**



3022079432142

3022079436150

3022079439155

Proposed Bridge

302:21 R

Area 0.04 sq  
Perimeter 0.87 0.6 R

121:80 R

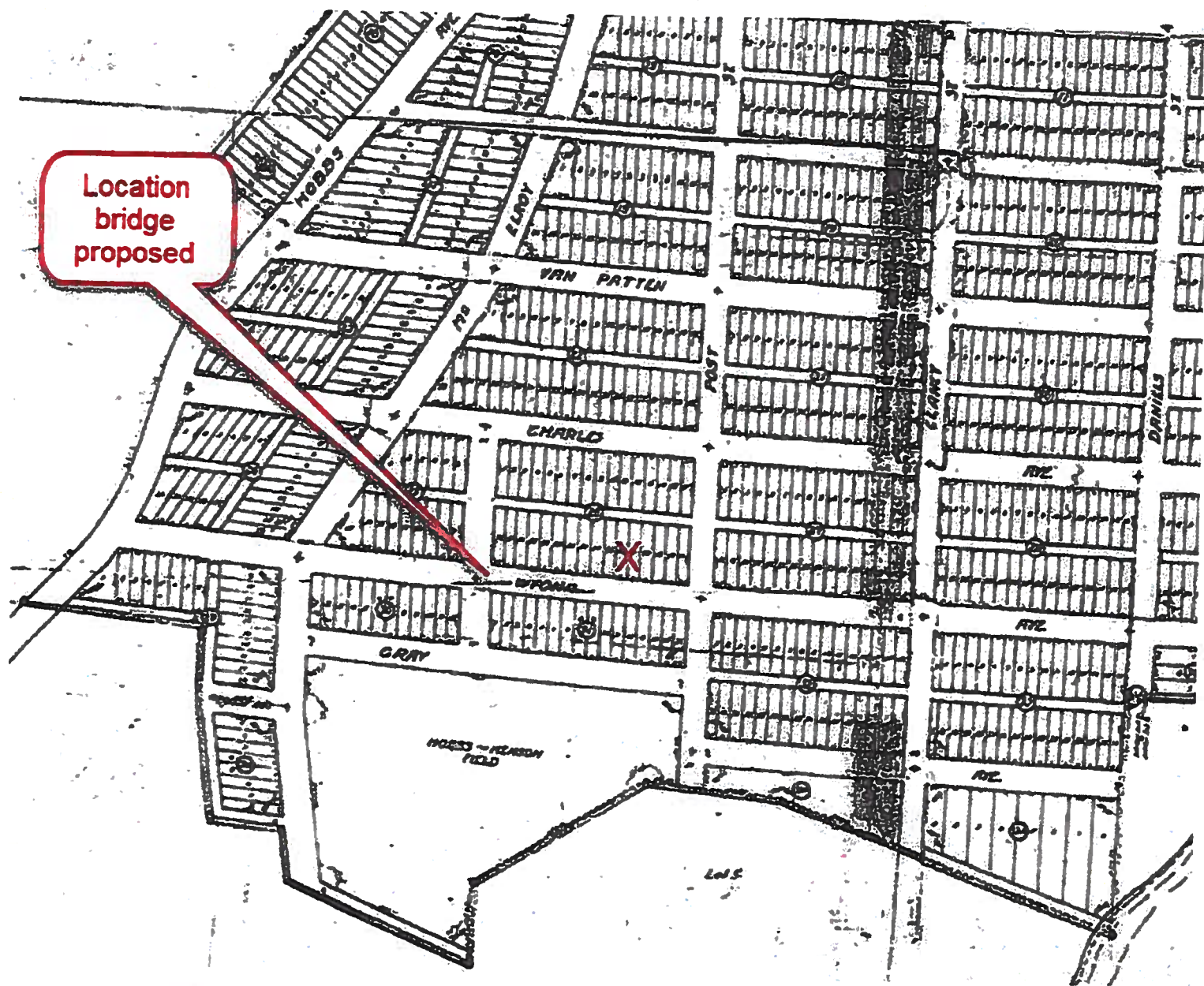
119:34 R

3022079374169

30220

3079442172

301:40 R



Map #2 circa 1929

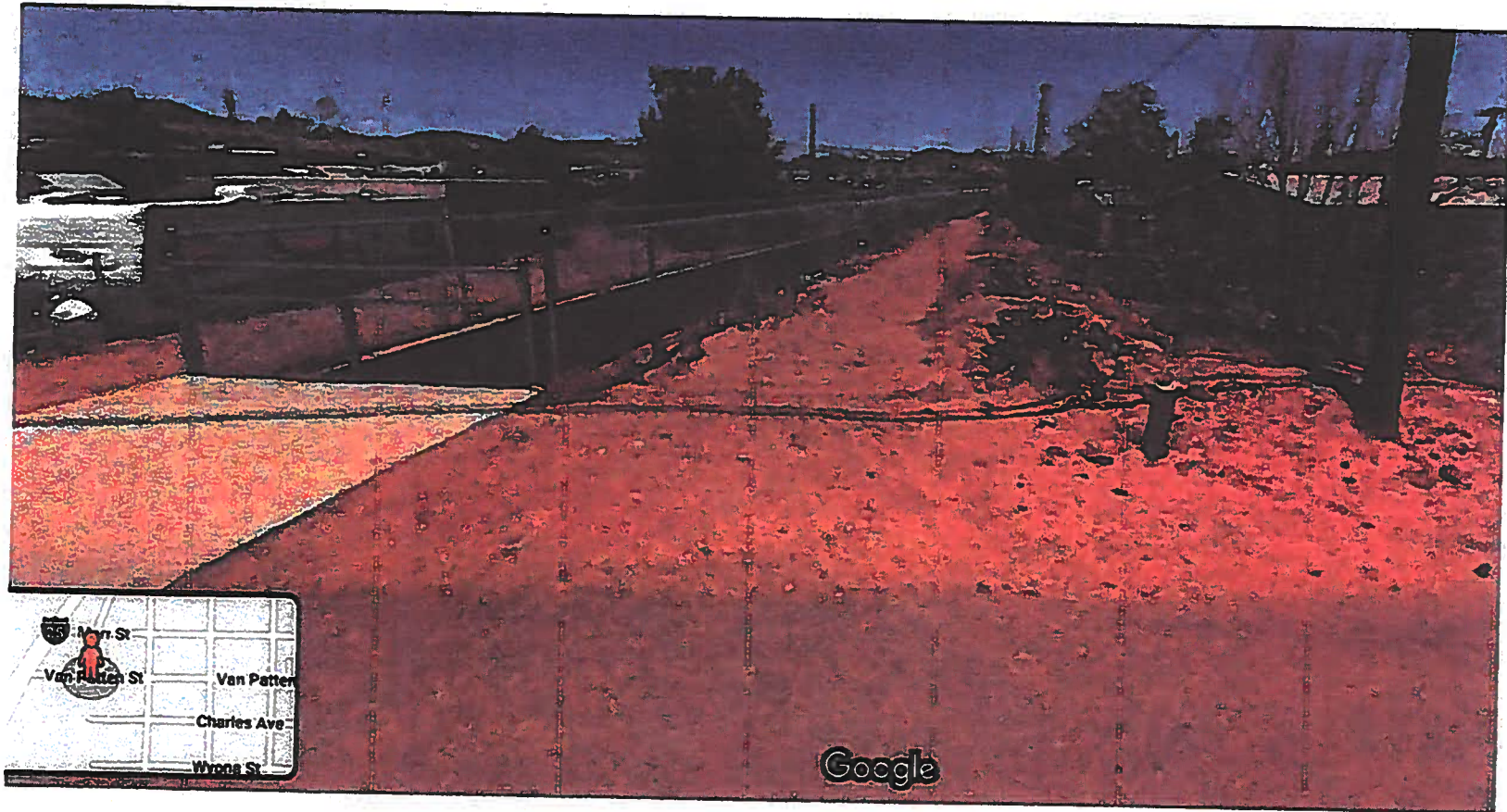
"X" = 709 Wyona St



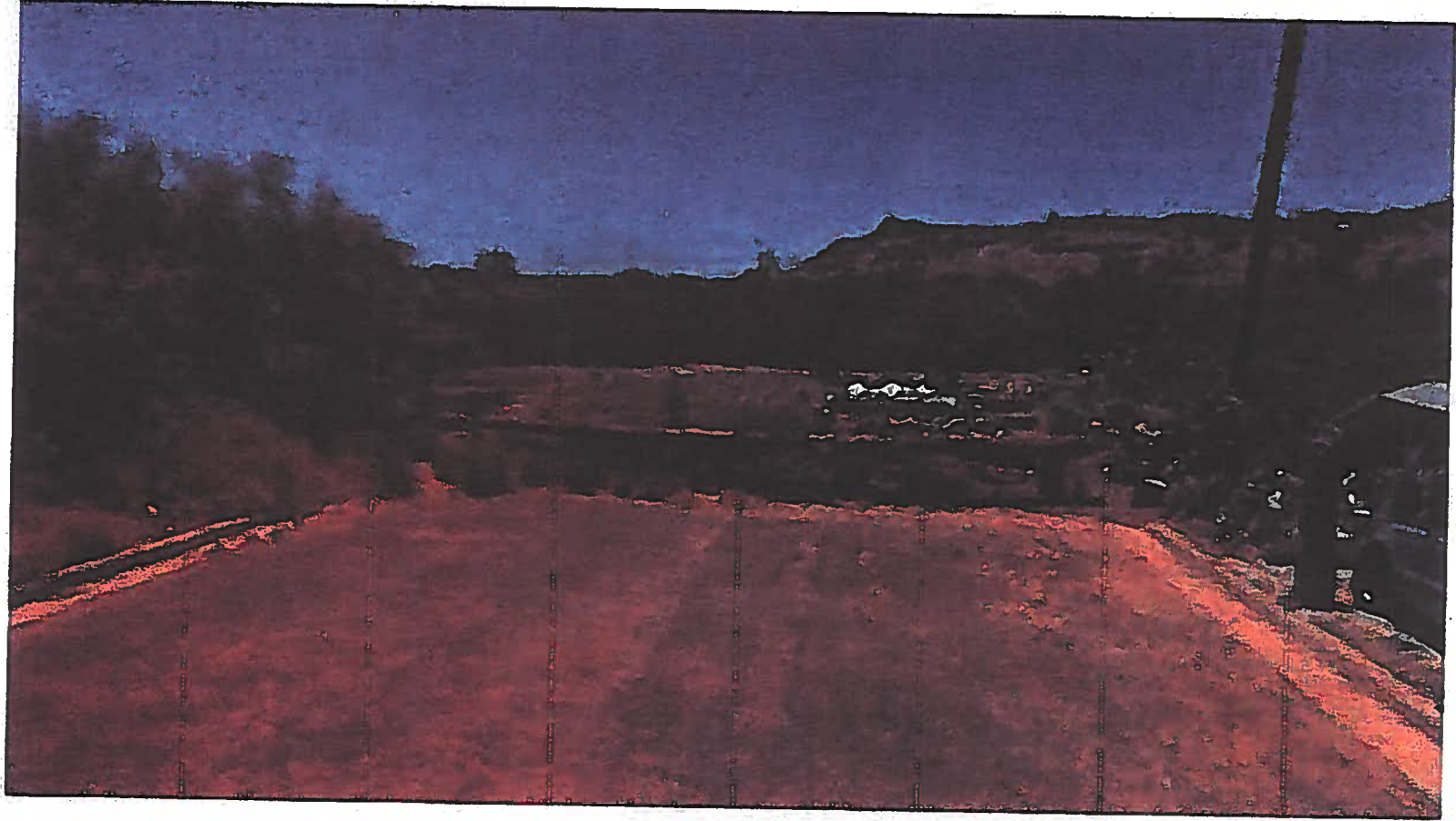


**Map #3 Google Earth 1996 showing culvert**





Van Patten St looking into opening of dirt road next to arroyo  
(Google 2008)



Dead end of Wyona St,  
(Google 2008)



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

Agenda Item #: F.3

**SUBJECT:** Acknowledge Regular Public Utility Advisory Board Minutes, November 15, 2021.

**DEPARTMENT:** City Clerk's Office

**DATE SUBMITTED:** January 6, 2022

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

**WHO WILL PRESENT THE ITEM:** City Clerk Torres

**Summary/Background:**

Acknowledge Minutes.

**Recommendation:**

Acknowledge minutes.

**Attachments:**

Minutes

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

\$0.00

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

None.

**Approved For Submittal By:** ☐ Department Director

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

**Final Approval:** ☒ City Manager

#### CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 1-12-2022



**CITY OF TRUTH OR CONSEQUENCES  
PUBLIC UTILITY ADVISORY BOARD  
MONDAY, NOVEMBER 15, 2021**

**MINUTES**

**REGULAR MEETING**

Regular meeting of the Public Utility Advisory Board of the City of Truth or Consequences, New Mexico to be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, on Monday, November 15, 2021 at 5:30 pm.

**CALL TO ORDER:**

The meeting was called to order by Chairman Szigeti.

**ROLL CALL:**

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

**ALSO PRESENT:**

Bruce Swingle, City Manager  
Traci Alvarez, Assistant City Manager  
Bo Easley, Electric Department Head  
Jesse Cole, Water/Wastewater Department Head  
Dawn C. Barclay, Deputy City Clerk

**1. APPROVAL OF AGENDA:**

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

**2. APPROVAL OF MINUTES:**

- a. Regular meeting of October 18, 2021.

Member Pacourek made a motion to approve the October 18, 2021 minutes. Member Avelar seconded the motion. Motion carried unanimously.

### **3. COMMENTS FROM THE PUBLIC:**

**Ariel Dougherty** – Began by thanking the water department for fixing two major leaks in her neighborhood, and is now concerned about repairs to the disturbed areas. She also voiced her comments in regards to the recommendation of amendments to Ordinance 664. Her handout is attached and has been made a part of these minutes.

**Ron Fenn** – Presented his handouts to the board, one was titled “Potential Press Releases Headlines” and the other was in regards to recommendations amending Ordinance 664. Both handouts are attached and have been made a part of these minutes.

### **4. OLD BUSINESS:**

#### **a. Discussion/Action: Recommendation of Amendments to Ordinance No. 664 – Customer Generated Renewable Energy. George Szigeti, Chairman**

Attorney John Appel joined the meeting via telephone. Bruce Swingle, City Manager, began the meeting by thanking Mr. Appel for his attendance and gave a brief overview on Mr. Appel’s concerns with the amendments to Ordinance No. 664. His two concerns were the Batement Act and Procurement process. The board had interactions with Mr. Appel through back and forth conversations. The board decided it would be best to table this topic until further research can be conducted by reaching out to other Municipalities.

**Chairman Szigeti made a motion to table the Recommendation of Amendments to Ordinance No. 664 – Customer Generated Renewable Energy. Member Armijo seconded the motion. Motion carried unanimously.**

#### **b. Discussion/Action: Changes to Quarterly Utility Department Reports.**

The board discussed and agreed to keep the same “Quarterly Utility Department Reports” that was submitted at last month’s meeting (copies attached and made part of the minutes) along with the following additions to be added and included in future reports;

##### **Utility Department:**

- Violations of any kind.
- Prudent Reserve (Emergency operation funds)
- Accounts in arrears.
- Accounts red tagged.
- Fuel costs.

##### **Electric Department:**

- Violations of any kind.
- Prudent Reserve (Emergency operation funds)
- Comparison of total electricity purchased vs total sold.
- Fuel costs.

**Water/Wastewater Department:**

- Static levels for wells.
- Wells in service.
- Number of leaks addressed.
- Production amounts for individual wells.
- Production amounts for lift stations.
- Prudent Reserve (Emergency operation funds)
- Violations of any kind.
- Fuel costs.

**Sanitation Department:**

- Violations of any kind.
- Prudent Reserve (Emergency operation funds)
- Fuel costs.

**The board discussed options but no action was taken.**

**5. NEW BUSINESS:**

- a. **Discussion/Review: Verbiage for 5% Increase Each Year on “Residential/Commercial Poly Carts and Dumpsters” (Solid Waste) Ordinance No. 648 and “Village of Williamsburg Wastewater Treatment Charges” Ordinance No. 667.**

Member Pacourek spoke about solid waste rates for polycarts. He made a comparison using the “City Codes & Ordinances” section to the rates that are posted on the City’s “Utilities” webpage. He pointed out that the collection fee does not match. Chairman Szigeti explained that the discrepancy is normal due to the wording in Ordinance No. 648 which states a beginning rate and then increases as follows; *“Each July of every year hereafter the fees shall be adjusted automatically to reflect a five (5) percent increase.”* This yearly 5% increase wording also applies to Ordinance No. 667.

**The board decided they would like to table this topic for further discussion.**

- b. **Discussion/Action: Set New Meeting Date & Time. George Szigeti, Chairman**

The board discussed and agreed it would be a benefit to each Utility Department, including the City Manager’s office, to change the meeting time from 5:30pm to 3:30pm. This would allow city staff to attend meetings during business hours.

**Chairman Szigeti made a motion to change the meeting time for the Public Utility Advisory Board to the third Monday at 3:30pm. Vice-Chairman Dornbusch seconded the motion. Roll call votes were taken.**

**George Szigeti - Aye  
Jeff Dornbusch - Aye  
Ron Pacourek - Aye  
Gil Avelar - Aye  
Don Armijo - Aye**

**Motion passes in favor for, with a 5 to 0 vote.**

**6. REPORTS FROM THE BOARD:**

**Member Pacourek – Made reference to Ordinance 664. He was pleased to see the wording addressed rates, structures, and charges. He also made reference to the City Code for Solid Waste Management – Section 11.2; applying this code to local RV and mobile home parks in regards to how the solid waste fees apply to these particular businesses.**

**7. REPORTS FROM STAFF:**

**No reports from the staff.**

**8. ADJOURNMENT:**

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

**PASSED AND APPROVED ON THIS 20<sup>th</sup> DAY OF DECEMBER 2021.**

  
**George Szigeti, Chairman  
Public Utility Advisory Board**



Ariel Dougherty  
1 of 5

Public Utility Advisory Board – November 15, 2021  
Ariel Dougherty – Public Comment

First, I would like to thank the water department for fixing two major leaks in my neighborhood. But now the road down Arrowhead is an utter mess. When will that get repaired? Oh! And now there's a new leak on West Riverside between Foch and Pershing.

On the redo of 664 – which I have been discussing with the City for two years now – all I can say is that at least the 90% issue is GONE. But that is solely because it has been found to violate state law. The rest of the rewrites are highly questionable.

FIRST, and foremost, I URGE the additional changes I sent you all earlier this afternoon to the new (3) which I have renamed NET METERING.

As Ron has so aptly pointed out on his comments – in RED – there are no provisions for “grandfathering” in those on the current 664. Despite numerous attempts to bring up this issue all along, addressing it has been IGNORED in every City redraft.

In Section 2 Applicability the language is utterly negative. Who added this? It completely ignores the Comprehensive Plan about renewables and a primary reason why citizens want renewables. It is to get off of fossil fuels – to mitigate, personally, to reduce greenhouse gases. If the City had its own goals on Climate Change and renewables maybe the ordinance would have an entirely different flavor. Maybe then, the City would see citizen use of renewables as an asset to its own renewable portfolio. As such, it would gladly be paying locals for renewable energy, reaching its own goals faster. And not having long distance transmission loss and cost. I URGE striking this section ALTOGETHER. My suggested preamble many versions ago would have avoided this negativity.

The City Attorney's 4 (a) v., as I understand it, completely negates what net-metering is about and is a violation of both Federal and State law.

Mostly it is sad, frustrating and a crying shame, that the good intentions of citizens like myself are entirely ignored. Four or five good working sessions that are an EXCHANGE of ideas and words could have produced a fine, workable and positive Ordinance. This draft is not that. I urge you not to pass it until you have DIRECTLY considered these and other suggestions we have made, repeatedly.

Ariel Dougherty  
205

How are Current Solar producers to be treated? Major investments were made under the current Ord 664 which is not being operated under its specified component features, but has no provision for denying credit.

ORDINANCE NO. 664

AN ORDINANCE OF THE CITY OF TRUTH OR CONSEQUENCES, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF TRUTH OR CONSEQUENCES, BE AMENDED BY AMENDING SECTION 14-48 PERTAINING TO THE CUSTOMER GENERATED RENEWABLE ENERGY PROGRAM:

RED = comments of Ron Fenn

Sec. 14-48. Customer generated renewable energy program shall be amended in its entirety to read as follows:

There is no "Grandfather provision in this version."

#### a) CUSTOMER GENERATED RENEWABLE ENERGY PROGRAM

##### 1) Overview

a. The City of Truth or Consequences (City) Customer Generated Renewable Energy Program is available to any City electric customer, residential or commercial, that installs a qualified renewable energy system and has it interconnected to the City's power grid. A Qualifying Facility means a cogeneration or a small power production facility which meets the criteria for qualification contained in 18 C.F.R. Section 292.203, or such other criteria as may be reasonably prescribed by rule by the City. Application is to be made to the Electrical Department Manager. Blank application copies can be obtained from the electrical department or on the City website. All supporting technical, design and support documentation for the interconnection application must be submitted in writing via hard copy or electronic format. Review and approval of system design and size will be per the T or C Electrical Department and permitted through the Planning & Zoning Department and must conform to:

i. The standards and procedures as described in Rule 17.9.568 NMAC and the most recent version of the New Mexico Interconnection Manual as approved by the Public Regulatory Commission.

ii. Provisions of Sec. 14-33, tampering with meters, of the City of Truth or Consequences, existing municipal code.

b. The City reserves the right, but not the duty, to inspect any system to ensure the system complies with all existing regulations.

c. The City reserves the right to deny interconnection for non-compliant systems. Denial of a customer's interconnection application can be appealed to the City's Electric Department Manager. The appeal must specifically explain the basis of the appeal. If the City's Electric Department Manager denies the appeal, the customer may appeal to the City Manager. If the City Manager denies the appeal, the customer may appeal to the City Commission. In such event, the procedure shall be in accordance with the rules applicable to 14-30 (e) appeals.

##### 2) Applicability

STRIKE

a. This ordinance applies to any customer of the City of Truth or Consequences Electric Department that installs a solar, wind or other renewable energy system to generate electricity for onsite use, with the intent of reducing their electric bill. Who determines intent?

Ariel Dougherty  
3 of 5

~~writing once and must be done within 30 days from the notice of denial. The appeal is to be sent to City of T or C City Commission. The City reserves the right, but not the duty, to inspect any system to ensure the system complies with all existing regulations.~~

- c. The City reserves the right to deny interconnection for non-compliant systems. Denial of a customer's interconnection application can be appealed to the City's Electric Department Manager. The appeal must specifically explain the basis of the appeal. If the City's Electric Department Manager denies the appeal, the customer may appeal to the City Manager. If the City Manager denies the appeal, the customer may appeal to the City Commission. In such event, the procedure shall be in accordance with the rules applicable to 14-30 (e) appeals.

ARIEL  
REVISIONS

(3) NET

(2) Metering.

- a. ~~Systems~~ Customers participating in the customer generated renewable energy program will be billed monthly from receive a bi-directional or net main meter at the specific facility or residence. The Each monthly on the bill will reflect a net reading which will show customer usage in excess of customer generation as positive kWh, or customer generation in excess of customer usage as negative kWh. Positive kWh can potentially carry over for numerous months, recognizing that weather fluctuates to counter months when renewables reseed. The customer will be billed per existing City of Truth or Consequences municipal code Sec. 14-43 for installation of the net meter by the City and those costs will be billed to the customer on the first billing cycle post net meter installation.

(3) Rates

- a. Customers will be billed for service in accordance with the rate structure and monthly service charges that the customer would be assigned if the customer had not interconnected a qualifying facility.
- b. Customer kilowatt hour generation will be used to displace a customer's own kilowatt hour consumption.
- c. If electricity supplied by the City exceeds the electricity generated by the customer during a billing period, the customer will be billed for the net energy supplied by the City under the applicable rate.
- d. If electricity generated by the customer exceeds the electricity supplied by the City during a billing period, ~~the City will credit the customer on the next billing cycle for the excess kWh generated at the rate of \$0.05 per kWh with a maximum credit of \$20.00 per month.~~ the customer will not be entitled to a credit. This Ordinance does not affect the base rate.
- e. ~~Each year, at the January billing, any credit in excess of \$20.00 on the customer's account after current charges are paid shall be refunded to the~~



Ariel Dougherty  
4.2.5

### **What Ordinance applies to this section**

b. This ordinance does not apply to any entity that installs a deliberately over-sized system with the intent of selling the overage to the Electric Department or any other entity.

#### **3) Metering**

a. Customers participating in the customer generated renewable energy program will be billed monthly from a bi-directional or net main meter at the specific facility or residence. The monthly bill will reflect a net reading which will show customer usage in excess of customer generation as positive kWh, or customer generation in excess of customer usage as negative kWh. The customer will be billed per existing City of Truth or Consequences municipal code Sec. 14-43 for installation of the net meter by the City and those costs will be billed to the customer on the first billing cycle post net meter installation.

#### **4) Rates**

a. Residential and small non-residential installations.

i. Definition: This category includes systems of any size supporting a single family home, a single dwelling unit in a multifamily structure with its own electric meter, or any non-residential system with a generating capacity less than or equal to 10 kilowatts.

ii. Customers will be billed for service in accordance with the rate structure and monthly service charges that the customer would be assigned if the customer had not interconnected a qualifying facility.

iii. Customer kilowatt hour generation will be used to displace a customer's own kilowatt hour consumption.

iv. If electricity supplied by the City exceeds the electricity generated by the customer during a billing period, the customer will be billed for the net energy supplied by the City under the applicable rate.

#### **----- PUAB recommendation:**

v. If electricity generated by the customer exceeds the electricity supplied by the City during a billing period, the City will credit the customer on the next billing cycle for the excess kWh generated at the rate of \$0.05 per kWh with a maximum credit of \$20.00 per month. **Will excess credit over \$20.00 be merely STOLEN?**

vi. Each year, at the January billing, any credit in excess of \$20.00 on the customer's account after current charges are paid shall be refunded to the customer. If the credit amount is less than \$20.00, the credit will be carried over to the next billing cycle.

vii. In the event a customer disconnects from the City's system with a credit for excess production, the City will pay the customer for all credits. This amount will be first deducted from the customers final utility bill and then from any additional fees or fines that the customer owes to the City. Any remaining balance will be reimbursed to the

Ariel Dougherty  
5 of 5

customer by check or electronic transfer.

----- City Attorney recommendation:

v. If electricity generated by the customer exceeds the electricity supplied by the City during a billing period the customer will not be entitled to a credit. This Ordinance does not affect the base rate.

**This appears to be "Theft of (In Kind) Service" from Solar Producers!**

**Violation of Sec. 14-31. - Taking service—Without authority.**

**b. Large non-residential installations. and will the City legislate Theft?**

i. Definition: This category includes systems with a generating capacity greater than 10 kilowatts that support a non-residential facility.

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**How to discourage investment 101**

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

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

**Section 2.** This Ordinance shall take effect on the \_\_\_\_\_ day of 2021.

**PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.**

**CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO**

Ron Fenn  
1044

**Potential Press Releases Headlines**  
following PUAB discussion/action on Proposed Ordinance 664 revision.

**Want Solar? Avoid Truth or Consequences, NM. We don't want You, says PUAB.**

**T or C City Attorney proposes "CREDIT THEFT" from Private Solar Producers!**

**New Mexico ~~True~~ False... at least in Truth or Consequences!**

**T or C Cordially Invites You to go back where you came from. Input unwanted!**

**Etc,**

**Etc**

**Etc.**

**Copy will likely come from the mouths of the Board Members ( self appointed ).**

**prepared by Ron Fenn for anyone's use.**

Ron Fenn

2 of 4

**How are Current Solar producers to be treated? Major investments were made under the current Ord 664 which is not being operated under its specified component features, but has no provision for denying credit.**

**ORDINANCE NO. 664**

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**Sec. 14-48. Customer generated renewable energy program shall be amended in its entirety to read as follows:** **There is no "Grandfather provision in this version."**

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Ron Fenn  
4 of 4

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**PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.**

**CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO**

**City of Truth or Consequences Utility Office**  
**July, August, September 2021**

**Number of Active Accounts- 3765**

**Total Utilities paid- \$2,907,205.55**

**Current Electric Cost Adjustment- .0414 per KWH**

**Number of delinquent Accounts- 460**

**Total amount in Arrears- \$70,754.94**

**All receipts from 2019-2020- \$9,694,654.15**

**All receipts from 2020-2021- \$10,145,521.44**

**Total Increase- \$450,867.29**

**Billing issues- Still working on having bill format updated with current service dates (meter read dates preferably).**



**City of Truth or Consequences  
ELECTRIC DEPARTMENT  
505 Sims Street  
Truth or Consequences, New Mexico 87901  
(575) 894-6673**

## ELECTRIC QUARTERLY REPORTS

JULY 2021		
SOURCE	TOTAL PURCHASED	COST
SSA Solar of NM 4	320,660 kWh	\$27,993.62
Tri-State- Wheeling Sales	5,6031 kW	\$38,519.86
Western Area Power Administration	5,603 kW & 1,903,309 kWh	\$49,929.37
Sierra Electric Cooperative Inc.	3,403,729 kWh	\$273,812.99
<b>Total: \$390,255.84</b>		

AUGUST 2021		
SOURCE	TOTAL PURCHASED	COST
SSA Solar of NM 4	251,870 kWh	\$21,988.25
Tri-State- Wheeling Sales	5,6031 kW	\$39,401.37
Western Area Power Administration	5,603 kW & 1,901,011 kWh	\$48,903.11
Sierra Electric Cooperative Inc.	3,314,327 kWh	\$266,621.04
<b>Total: \$376,913.77</b>		

SEPTEMBER 2021		
SOURCE	TOTAL PURCHASED	COST
SSA Solar of NM 4	285,250 kWh	\$24,902.33
Tri-State- Wheeling Sales	5,6031 kW	\$38,033.25
Western Area Power Administration	5,603 kW & 1,590,970 kWh	\$45,359.34
Sierra Electric Cooperative Inc.	2,818,712 kWh	\$199,452.62
<b>Total: \$307,747.54</b>		

JULY 2021 - SEPTEMBER 2021	
TOTAL DELIVERED	
Service Consumption	12,644,567 kW
Demand Consumption	13,847
Revenue	\$1,861,000.95

# SOLAR CUSTOMERS	TOTAL CAPACITY
63 Completed	1,751 kW PV
18 Pending Completion	-

PROJECTS	STATUS
----------	--------



**City of Truth or Consequences**  
**ELECTRIC DEPARTMENT**  
**505 Sims Street**  
**Truth or Consequences, New Mexico 87901**  
**(575) 894-6673**

<b>Aerial Med. Voltage Distribution</b>	<b>RFP currently being advertised</b>
<b>Substation Transformer</b>	<b>RFP completed, waiting on funding.</b>
<b>Car Charging Station</b>	<b>On hold</b>
<b>Roundabouts</b>	<b>Waiting for permission from DOT to begin work</b>
<b>White Sands Building</b>	<b>Waiting on transformer</b>
<b>NM State Veteran Center Service Upgrade</b>	<b>Waiting on engineer plans</b>
<b>Sacred Winds</b>	<b>Scheduled to begin soon</b>
<b>Williamsburg Interstate Interchange Plans</b>	<b>Received 60% drawings</b>



**Water and Wastewater Departments  
1<sup>st</sup> Quarter Report  
July-September 2021**

**WATER DEPARTMENT**

**Total water pumped, by well:**

- July- Wells 1, 2, 6 & 7 total 51,963,000 gallons
- August- Wells 1, 2, 6 & 7 total 43,947,000 gallons
- September- Wells 1, 2, 6 & 7 total 41,538,000 gallons

**Well static levels and condition- Well conditions are fair.**

**Total water delivered and revenue:**

- 83,145 gallons delivered
- \$370,355.61 revenue total

**Major projects and status- Corbett St. water line upgrade project; 336 ft. complete, while 1,061 ft. in progress. Staff waiting on parts to complete project.**

**WASTEWATER DEPARTMENT**

**Total wastewater treated:**

- July- 13.5 MGD
- August- 14.1 MGD
- September- 15.3 MGD

**Effluent water use:**

- July- 9,435,700 gal
- August- 8,030,820 gal
- September- 5,779,880 gal

**Major projects and status- none**



## **City of Truth or Consequences**

**505 Sims Street**

**Truth or Consequences, New Mexico 87901**

**City (575) 894-6673 Fax (575) 894-0363**

### **Sanitation Department utility report**

**For Fiscal: 2021 – 2022**

**Total waste collected and shipped – 3,044.68 Tons**

**Revenue - \$159,642.79**

**Disposal cost - \$ 166,335.54**

**From January 2021 to October 2021**

**Recycling totals – 217.10 Tons**

**Revenue - \$17,503.45**

**No major projects and status**

**Sanitation Director,**

A handwritten signature in black ink, appearing to read "Charles A. Olney".





## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

*Agenda Item #: F.4*

**SUBJECT:** December 2021 Accounts Payable  
**DEPARTMENT:** Finance  
**DATE SUBMITTED:** December 30, 2021  
**SUBMITTED BY:** Ruby Otero-Vallejos, Accounts Payable  
**WHO WILL PRESENT THE ITEM:** N/A

***Summary/Background:***

According to Sec. 2-28 of the Municipal Code related to Publication of expenditures:  
Each month there may be published a summary of expenditures made during the preceding calendar month, which shall include a list of the total expenditures during the month, the amount spent in connection with each budgetary item, and a summary of all receipts; provided, however, that the publication mentioned in this section shall be made only at the discretion of the Commission if it shall deem such publication necessary in the public interest.

***Recommendation:***

Approve the Accounts Payable summary for December 2021

***Attachments:***

- End of Month Accounts Payable Report by Fund

***Fiscal Impact (Finance):*** Yes

All Funds Summary is a total of \$ 985,646.00

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

N/A

***Approved For Submittal By:*** ☐ Department Director

***Reviewed by:*** ☒ City Clerk ☒ Finance ☐ Legal ☒ Other: Ruby Otero-Vallejos, Account Payable

***Final Approval:*** ☐ City Manager

#### CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. N/A Ordinance No. N/A

Continued To: - Referred To: -

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

File Name: CC Agendas 1-12-2022

**Accounts Payable Transfer Sheet - 21-22 FY**
**Post Date Ending: 12/03/21,12/10/21,12/17/21,12/21/21,12/30/21**

<u>Fund</u>	<u>Fund Description</u>	<u>Fund Totals</u>					<u>GRAND TOTAL</u>	<u>Fund Numbers</u>
		12/3/2021	12/10/2021	12/17/2021	12/21/2021	12/30/2021	TRANSFERS	
101	General	\$61,432.15	\$3,403.04	\$45,609.74	\$8,793.04	\$39,874.75	\$159,112.72	101
201	Local Government Corrections	\$270.00		\$4,400.00			\$4,670.00	201
209	State Fire	\$12,989.45		\$477.83		\$4,982.01	\$18,449.29	209
211	Law Enforcement Protection	\$119.82					\$119.82	211
214	Lodger's Tax	\$1,114.54		\$1,884.31		\$5,324.92	\$8,323.77	214
216	Street Renovation	\$52,086.79	\$48,643.80	\$3,503.79		\$16,370.64	\$120,605.02	216
217	Municipal Recreation							217
292	Federal Seizure Share							292
293	Veterans Wall Perpetual							293
294	State Library	\$194.57		\$2,725.61		\$208.46	\$3,128.64	294
295	Municipal Pool	\$2,566.95	\$28.80	\$1,056.52	\$28.80	\$61.68	\$3,742.75	295
296	PD-GRT Fund	\$900.44		\$18,703.28			\$19,603.72	296
298	PD-Donations	\$1,019.58				\$2,209.93	\$3,229.51	298
302	Electrical Construction							302
303	Veterans Memorial					\$160.51	\$160.51	303
304	SJOA - Grants							304
305	Capital Improvement General							305
306	Capitla Improvement Joint Utility							306
307	Golf Course Improvements	\$764.00					\$764.00	307
308	USDA -Sweeper							308
309	USDA-Wastewater							309
310	R&R-Emergency							310
311	R&R-Sewer							311
312	R&R-Airport							312
313	R&R-Water							313
314	CDBG - Grant							314
315	CI Reserve- Non Capital Equipment	\$7,421.07	\$20,315.00	\$22,000.00		\$7,419.12	\$57,155.19	315
316	Emergency Reserve							316
320	USDA Water System Improvements				\$11,215.85		\$11,215.85	320
360	NMFA PROJECTS				\$21,222.11		\$21,222.11	360
403	Pledge State Tax	\$18,834.93	\$10,270.00				\$29,104.93	403
501	Cemetery	\$191.42				\$189.37	\$380.79	501
502	Utility Office	\$6,493.97	\$276.00	\$1,486.34	\$276.00	\$964.75	\$9,497.06	502
503	Electric Dept	\$90,546.03	\$124,395.09	\$135,870.91	\$499.80	\$2,839.63	\$354,151.46	503
504	Water Dept	\$4,442.92	\$1,711.49	\$15,486.13	\$172.80	\$3,566.09	\$25,379.43	504
505	Solid Waste	\$4,591.64	\$1,019.60	\$58,157.38	\$459.60	\$24,874.96	\$89,103.18	505
506	WasteWater	\$6,596.70	\$4,902.35	\$3,641.67	\$246.86	\$5,893.20	\$21,280.78	506
507	Solid Waste Landfill/Collection							507
508	Golf Course	\$3,884.60	\$85.20	\$345.78	\$85.20	\$3,636.19	\$8,036.97	508
509	Municipal Airport	\$4,805.93	\$74.52	\$2,126.58	\$32.40	\$4,171.81	\$11,211.24	509
600	Internal Service Fund	\$1,990.69		\$558.90		\$3,447.67	\$5,997.26	600
700	PD Bond							700
	<b>Grand Total-Accounts Payable</b>	<b>\$283,258.19</b>	<b>\$215,124.89</b>	<b>\$318,034.77</b>	<b>\$43,032.46</b>	<b>\$126,195.69</b>	<b>\$0.00</b>	<b>\$985,646.00</b>





Truth or Consequences

# Expense Approval Report

By Fund

Payable Dates 12/1/2021 - 12/31/2021

## PAYABLE APPROVAL

I hereby approve the issuance of these payments.

FINANCE DIRECTOR OR DESIGNEE

DATE:

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
<b>Fund: 101 - General</b>					
KING'S LOCKSMITH	007985	12/02/2021	KEYS FOR THE FRONT AND SIDE...	101-1007-44606	21.95
XEROX CORP.	014748799	12/02/2021	BASE CHARGE/METER USAGE...	101-1001-43465	450.70
XEROX CORP.	014748800,014748797	12/02/2021	BASE CHARGE/METER USAGE - ...	101-1004-43465	543.94
XEROX CORP.	014748801	12/02/2021	BASE CHARGE - METER USAGE ...	101-1007-43465	296.10
XEROX CORP.	014748803	12/02/2021	XEROX CHARGE/METER USAGE	101-1040-43465	201.49
XEROX CORP.	014748819	12/02/2021	METER USAGE OPEN PO 21/22	101-1003-43465	326.75
XEROX CORP.	014853450	12/02/2021	XEROX CHARGE/METER USAGE	101-1040-43465	49.99
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	101-1001-41226	151.20
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	101-1002-41226	81.07
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	101-1003-41226	221.66
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	101-1004-41226	238.74
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	101-1006-41226	106.80
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	101-1007-41226	820.15
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	101-1008-41226	102.00
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	101-1009-41226	107.06
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	101-1010-41226	64.80
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	101-1011-41226	260.23
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	101-1012-41226	112.80
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	101-1013-41226	77.30
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	101-1014-41226	190.80
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	101-1016-41226	180.74
INTERNAL SERVICE FUND	062796	12/02/2021	MAINTENEANCE FOR DEPT VEH...	101-1007-43316	55.13
INTERNAL SERVICE FUND	062796	12/02/2021	MAINTENEANCE FOR DEPT VEH...	101-1007-47420	240.83
INTERNAL SERVICE FUND	062796	12/02/2021	MAINTENEANCE FOR DEPT VEH...	101-1008-47420	20.00
INTERNAL SERVICE FUND	062796	12/02/2021	MAINTENEANCE FOR DEPT VEH...	101-1009-47420	102.04
PUBLIC SAFETY PSYCHOLOGICAL..075-027		12/02/2021	PSYCH EVAL FOR NEW OFFICER	101-1007-48598	350.00
PUBLIC SAFETY PSYCHOLOGICAL..075-027		12/02/2021	NMGRT	101-1007-48598	24.28
ARENAS VALLEY ANIMAL CLINIC,...10002958/325307		12/02/2021	GETTING ANIMALS FIXED	101-1006-48598	161.46
MANANA	111-21	12/02/2021	OPEN PO-LANDSCAPING SERVI...	101-1009-47415	900.00
CITY UTILITIES	111621	12/02/2021	CITY UTILITIES CYCLE A&B/OPEN..	101-1018-43780	3,217.42
WINDSTREAM CORPORATION	111821	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	101-1003-43775	117.31
SIERRA VISTA HOSPITAL / SIERR...	11292021	12/02/2021	GRT DISTRIBUTION FY 21/22 OP...	101-1017-48599	25,116.90
SIERRA COUNTY CLERK	11302021	12/02/2021	OPEN PO FOR FY 21/22 - RECO...	101-1001-43740	25.00
TDS	113021	12/02/2021	TDS FIBER INTERNET OPEN PO ...	101-1018-43780	4,687.82
NEW MEXICO GAS COMPANY, I...	12012021	12/02/2021	GAS BILLS/NM WORKFORCE C...	101-1018-43780	28.06
NEW MEXICO GAS COMPANY, I...	12012021	12/02/2021	GAS BILLS/ANIMAL SHELTER	101-1018-43780	243.42
NEW MEXICO GAS COMPANY, I...	12012021	12/02/2021	GAS BILLS/GENERAL	101-1018-43780	774.03
JAIME F. RUBIN, LLC	120121	12/02/2021	OPEN PO FOR LEGAL SERVICES	101-1000-43597	5,928.02
EWING IRRIGATION	15668509	12/02/2021	BURLAP SQUARE WRAP	101-1009-44607	109.90
BAKER & TAYLOR, INC.	2026255583,4,5;2036279605,6,7	12/02/2021	LIBRARY MATERIALS FOR PUBLI...	101-1016-44830	217.23
BAKER & TAYLOR, INC.	2036306917,18,19	12/02/2021	LIBRARY MATERIALS FOR PUBLI...	101-1016-44830	104.97
BAKER & TAYLOR, INC.	2036309927	12/02/2021	LIBRARY MATERIALS FOR PUBLI...	101-1016-44830	531.13
COOPERATIVE EDUCATIONAL S...	24-121071	12/02/2021	FINANCIAL MANAGEMENT SUITE	101-1004-48599	491.99
COOPERATIVE EDUCATIONAL S...	24-121305	12/02/2021	NM LGBMS CHART OF ACCOUN...	101-1004-48599	136.66
VALLEY VET SUPPLY	259166	12/02/2021	MICROCHIP SCANNER	101-1006-44613	375.00
ARENAS VALLEY ANIMAL CLINIC,...326048/326588		12/02/2021	GETTING ANIMALS FIXED	101-1006-48598	539.26

## Expense Approval Report

Payable Dates: 12/1/2021 - 12/31/2021

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
TESTON'S FREEWAY CHEVRON	3854	12/02/2021	OPEN PO FY21/22 FUEL PURCH...	101-1013-43316	105.71
TESTON'S FREEWAY CHEVRON	3862	12/02/2021	TESTOS FUEL/OIL OPEN P.O. FY ...	101-1009-43316	490.43
TESTON'S FREEWAY CHEVRON	3863	12/02/2021	OPEN PO UNLEADED FUEL POLI...	101-1007-43316	162.71
SIERRA VISTA HOSPITAL / SIERR...	41627,41684,41604,41383	12/02/2021	COLLECTION FEE FY21-22 OPEN...	101-1004-48599	250.00
TALON SEPTIC & POTTY SERVICE	428	12/02/2021	RENTAL OF PORTABLE TOILETS ...	101-1009-43465	800.00
SILVERSKY, INC.	444483-SI	12/02/2021	EMAIL SERVICE OPEN PO FY21/...	101-1018-43815	163.71
TYLER BUSINESS FORMS	65191	12/02/2021	1099-NEC 4 PART EZ PACK 50	101-1004-44606	186.08
TYLER BUSINESS FORMS	65191	12/02/2021	SHIPPING	101-1004-44606	69.50
TYLER BUSINESS FORMS	65191	12/02/2021	1099- MISC 4 PART EZ PACK-25	101-1004-44606	62.23
TYLER BUSINESS FORMS	65191	12/02/2021	1096 SUMMARY & TRANSMITT...	101-1004-44606	6.65
INTEGRATED TECHNOLOGIES G...	7286	12/02/2021	IT SERVICES OCTOBER 1, 2021 ...	101-1018-48598	984.84
STAPLES CONTRACT & COMME...	8064231372	12/02/2021	PERMANENT MARKERS	101-1006-44606	7.01
STAPLES CONTRACT & COMME...	8064231372	12/02/2021	COMMAND HANGING STRIPS	101-1006-44606	4.91
STAPLES CONTRACT & COMME...	8064231372	12/02/2021	HIGHLIGHTER	101-1006-44606	4.86
STAPLES CONTRACT & COMME...	8064231372	12/02/2021	GEL PENS	101-1006-44606	9.70
STAPLES CONTRACT & COMME...	8064231372	12/02/2021	PUSH PINS	101-1006-44606	4.22
STAPLES CONTRACT & COMME...	8064231372	12/02/2021	HANGING FOLDER TABS	101-1006-44606	3.37
STAPLES CONTRACT & COMME...	8064231372	12/02/2021	LAUNDRY DETERGENT	101-1006-44607	48.32
QUEST DIAGNOSTICS, INC.	9196075516	12/02/2021	SCREENING & MRO FEE FY21-22...	101-1004-48599	217.60
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	101-1001-43775	277.29
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	101-1002-43775	184.83
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	101-1003-43775	232.64
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	101-1004-43775	249.24
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	101-1006-43775	109.75
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	101-1007-43775	1,000.35
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	101-1008-43775	177.01
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	101-1009-43775	259.00
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	101-1010-43775	93.32
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	101-1011-43775	69.74
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	101-1012-43775	85.68
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	101-1014-43775	119.95
BANK OF AMERICA	10282021	12/03/2021	QUART ZIPLOCK BAGS	101-1007-44607	10.74
BANK OF AMERICA	11102021	12/03/2021	ABBOTT BINAX NOW COVID-19 ...	101-1003-44606	1,561.75
BANK OF AMERICA	112221	12/03/2021	C9 CERAMIC LIGHTS	101-1009-44607	13.92
BANK OF AMERICA	112221	12/03/2021	C9 WHITE LED LIGHTS	101-1009-44607	56.46
BANK OF AMERICA	112221	12/03/2021	ICECICLE LIGHTS	101-1009-44607	79.84
BANK OF AMERICA	112221	12/03/2021	ROPE LIGHTS	101-1009-44607	41.88
BANK OF AMERICA	112321	12/03/2021	CHRISTMAS DECOR FOR PARKS	101-1009-44607	671.97
SIERRA AUTO/CARQUEST	291851	12/03/2021	GOOF OFF	101-1012-44607	7.78
SIERRA AUTO/CARQUEST	292295	12/03/2021	BATTERIES FOR PD SPEED SIGN ...	101-1007-47420	120.19
SIERRA AUTO/CARQUEST	292296	12/03/2021	OIL 0W20 FULL SYNTHETIC	101-1007-47420	36.96
SIERRA AUTO/CARQUEST	292296	12/03/2021	OIL FILTER LD	101-1007-47420	2.42
SIERRA AUTO/CARQUEST	292297	12/03/2021	ALTERNATOR - REMAN	101-1009-47420	217.63
SIERRA AUTO/CARQUEST	292299	12/03/2021	DUAL FAN XD	101-1007-47420	282.98
SIERRA AUTO/CARQUEST	292633	12/03/2021	12 V COMMERCIAL BATTERY	101-1009-47420	263.40
SIERRA AUTO/CARQUEST	293067	12/03/2021	OIL SEAL	101-1007-47420	7.21
SIERRA AUTO/CARQUEST	293067	12/03/2021	TRANS FILTER	101-1007-47420	11.20
SIERRA AUTO/CARQUEST	293067	12/03/2021	LIFT SUPPORT	101-1007-47420	33.32
SIERRA AUTO/CARQUEST	293067	12/03/2021	TRANS FILTER KIT	101-1007-47420	21.18
SIERRA AUTO/CARQUEST	293067	12/03/2021	FUEL FILTER	101-1007-47420	6.96
SIERRA AUTO/CARQUEST	293067	12/03/2021	AIR FILTER	101-1007-47420	5.77
BANK OF AMERICA	2950779	12/03/2021	NMP 205 ADVANCED CONTRAC...	101-1004-42720	70.00
BANK OF AMERICA	2950779	12/03/2021	NMP 202B REQUEST FOR PROP...	101-1004-42720	70.00
BANK OF AMERICA	2950779	12/03/2021	NMP 207 PROTEST PROCESS IN...	101-1004-42720	70.00
BANK OF AMERICA	2950779	12/03/2021	NMP 202A REQUEST FOR PRO...	101-1004-42720	70.00
BANK OF AMERICA	2950779	12/03/2021	NMP 204 ROLES AND RESPONSI...	101-1004-42720	70.00
BANK OF AMERICA	2950779	12/03/2021	NMP 208 ADVANCED PURCHAS...	101-1004-42720	70.00
BANK OF AMERICA	2950779	12/03/2021	NMP 206 ADVANCED CONSTRU...	101-1004-42720	70.00
BANK OF AMERICA	2950779	12/03/2021	NMP 209 ADVANCED RFP	101-1004-42720	70.00
ARENAS VALLEY ANIMAL CLINIC,...	327530	12/03/2021	GETTING ANIMALS FIXED	101-1006-48598	134.28

## Expense Approval Report

Payable Dates: 12/1/2021 - 12/31/2021

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
INTEGRATED TECHNOLOGIES G...	7294	12/03/2021	ADOBE ACROBAT DC PRO - 1 YR...	101-1003-43815	232.00
CRUCES TROPHY & AWARDS CE...	84388	12/03/2021	RETIREMENT BADGE EMBEDM...	101-1008-44606	195.00
BANK OF AMERICA	BF98BD43-0004	12/03/2021	RING MULTICAM	101-1002-43770	108.50
BANK OF AMERICA	CS1576480	12/03/2021	STORAGE SLEEVE	101-1003-44606	12.95
BANK OF AMERICA	CS1576480	12/03/2021	HER POINT OF VIEW 2022 REFILL	101-1003-44606	47.95
BANK OF AMERICA	CS1576480	12/03/2021	STORAGE BINDER	101-1003-44606	12.95
BANK OF AMERICA	CS1576480	12/03/2021	TAX	101-1003-44606	7.04
BANK OF AMERICA	CS1576480	12/03/2021	SHIPPING	101-1003-44606	8.99
JAMIE SWEENEY	12/14,12/15/21	12/10/2021	TRAINING- ALBUQ.12/14/21,12...	101-1008-42720	77.60
REVIZE, LLC	12392	12/10/2021	EMAIL SERVICE OPEN PO FY21/...	101-1018-43815	560.00
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	101-1001-41226	151.20
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	101-1002-41226	81.07
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	101-1003-41226	221.66
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	101-1004-41226	238.74
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	101-1006-41226	106.80
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	101-1007-41226	870.24
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	101-1008-41226	102.00
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	101-1009-41226	107.06
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	101-1010-41226	64.80
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	101-1011-41226	260.23
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	101-1012-41226	112.80
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	101-1013-41226	77.30
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	101-1014-41226	190.80
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	101-1016-41226	180.74
ADVANTAGE LASER PRODUCTS, ..	107722	12/16/2021	CP605-BP CHECKS STOCK/BOTT...	101-1004-44606	500.24
CITY UTILITIES	11/23/21	12/16/2021	CITY UTILITIES CYCLE C&D/OPE...	101-1018-43780	6,094.00
COPPLER LAW FIRM, P.C.	11214/11221	12/16/2021	OPEN PO FOR LEGAL SERVICES	101-1000-43597	1,413.48
ALARM CONTROL TECHNOLOGI...	22658/22657	12/16/2021	FIRE ALARM MONITORING	101-1014-47410	53.94
JESSICA BOWLES	522945	12/16/2021	REIMBURSEMENT-INVOICE 633...	101-1006-48598	35.33
DESERT GRAPHICS INC.	6294	12/16/2021	SIGN FOR GUN RANGE	101-1009-44607	500.00
BRADY INDUSTRIES, LLC	7108649	12/16/2021	TOILET PAPER	101-1014-44607	714.17
BRADY INDUSTRIES, LLC	7108649	12/16/2021	CENTER PULL PAPER HAND TO...	101-1014-44607	135.00
CRUCES TROPHY & AWARDS CE...	84579	12/16/2021	ACRYLIC AWARD ON A ROSEW...	101-1018-44606	282.78
WEX BANK	.12012021	12/17/2021	FUEL FOR ANIMAL CONTROL/C...	101-1008-43316	706.46
KING'S LOCKSMITH	007947	12/17/2021	KEYS AND OTHER LOCKSMITH I...	101-1014-43403	94.56
SUN VALLEY, INC.	0160870/6	12/17/2021	BALANCE DUE 3.85 FOR PO# 75...	101-1012-44607	3.85
GEO-VISION AIR SERVICES,LLC	0198	12/17/2021	ARIAL PHOTOGRAPHY FOR LUIS...	101-1009-47415	162.75
WEX BANK	0496-00-2909661	12/17/2021	WEX FUEL CARD OPEN P.O.	101-1009-43316	97.87
SIERRA COUNTY SENTINEL	108193	12/17/2021	OPEN PO FOR FY 21/22 PUBLIC...	101-1001-43740	176.12
SIERRA COUNTY SENTINEL	108270	12/17/2021	HELP WANTED ADS FY21-22 - O...	101-1004-43740	484.66
WEX BANK	11302021	12/17/2021	UNLEADED FUEL WEX CARD	101-1014-43316	464.37
WEX BANK	12012021	12/17/2021	WEX FUEL POLICE DEPT-FY JULY...	101-1007-43316	4,887.26
TDS	12022021	12/17/2021	INTERNET SERVICE/PD OPEN PO...	101-1007-43775	149.00
TURTLEBACK PEST CONTROL, I...	12032021	12/17/2021	OPEN PO FOR PEST CONTROL S...	101-1014-43403	728.04
SNAP-ON TOOLS COMPANY, LLC	12142151576	12/17/2021	DIAGNOSTIC MOBILE WORKCE...	101-1012-80845	12,995.00
SNAP-ON TOOLS COMPANY, LLC	12142151576	12/17/2021	DISCOUNT: ZEUS FTA W/ 1 YR P...	101-1012-80845	-1,499.00
SIERRA COLLISION & TOWING	1371-1668456	12/17/2021	TAX	101-1007-48598	17.00
SUN VALLEY, INC.	160952/6	12/17/2021	OPEN PO - FIELD SUPPLIES NOV...	101-1009-44607	576.20
SHARE CORP.	184413	12/17/2021	BATHROOM CLEANER SPRAY	101-1009-44607	235.50
SHARE CORP.	184413	12/17/2021	CENTER PULL PAPER TOWELS	101-1009-44607	780.48
SHARE CORP.	184413	12/17/2021	BLACK HEAVY DUTY TRASH BAGS	101-1009-44607	1,290.30
SHARE CORP.	184413	12/17/2021	PAPER TOWEL DISPENSER	101-1009-44607	102.96
SHARE CORP.	184413	12/17/2021	KLEENEX BRAND TISSUE	101-1009-44607	114.32
SHARE CORP.	184413	12/17/2021	WASH RAGS	101-1009-44607	197.88
SHARE CORP.	184413	12/17/2021	SMALL LATEX GLOVES	101-1009-44607	391.87
SHARE CORP.	184413	12/17/2021	XL LATEX GLOVES	101-1009-44607	391.87
SHARE CORP.	184413	12/17/2021	TOILET TISSUE BIG ROLL	101-1009-44607	385.32
SHARE CORP.	184413	12/17/2021	MEDIUM LATEX GLOVES	101-1009-44607	391.87
SHARE CORP.	184413	12/17/2021	TOILET DEODERANT BLOCKS	101-1009-44607	282.00
SHARE CORP.	184413	12/17/2021	ECO SMALL ROLL TOILET PAPER	101-1009-44607	500.76

## Expense Approval Report

Payable Dates: 12/1/2021 - 12/31/2021

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
SHARE CORP.	184413	12/17/2021	LARGE LATEX GLOVES	101-1009-44607	391.87
STANTEC CONSULTING SERVICE...	1857365	12/17/2021	DEVELOPMENT REVIEW 528 W...	101-1010-48598	4,470.12
QUILL CORPORATION	20469065	12/17/2021	POST IT MEETING NOTES 8X6	101-1002-44606	12.86
QUILL CORPORATION	20469065	12/17/2021	PAPER MATE INK JOY PENS	101-1002-44606	6.83
QUILL CORPORATION	20469065	12/17/2021	HP OFFICE JET PRO 6978	101-1002-44606	161.99
QUILL CORPORATION	20469065	12/17/2021	INK CARTIDGE 4 PACK COMBO	101-1002-44606	133.21
QUILL CORPORATION	20469065	12/17/2021	QUILL FILE FOLDERS	101-1002-44606	58.74
QUILL CORPORATION	20469065	12/17/2021	DISPOSABLE KN95 MASK	101-1002-44606	59.00
QUILL CORPORATION	20469065	12/17/2021	2022 PLANNER	101-1002-44606	26.09
QUILL CORPORATION	20469065	12/17/2021	FACE MASK INDIVIDUALLY WRAP	101-1002-44606	24.99
QUILL CORPORATION	20469065	12/17/2021	2022 PLANNER	101-1002-44606	19.79
QUILL CORPORATION	20469065	12/17/2021	POST IT NOTES 4 PAD PACK	101-1002-44606	13.31
QUILL CORPORATION	20469065	12/17/2021	2022 WALL CALENDAR 12X23	101-1002-44606	56.67
QUILL CORPORATION	20469065	12/17/2021	POST IT BIG NOTES 11X11	101-1002-44606	8.90
QUILL CORPORATION	21044974	12/17/2021	SHARK PRO. STEAM MOP	101-1012-44607	118.99
QUILL CORPORATION	21136464	12/17/2021	22" DESK PAD CALENDAR	101-1001-44606	7.19
QUILL CORPORATION	21136464	12/17/2021	DRY ERASE WALL CALENDAR	101-1001-44606	53.98
QUILL CORPORATION	21136464	12/17/2021	MEDIUM BINDER CLIPS	101-1001-44606	13.98
QUILL CORPORATION	21136464	12/17/2021	PILOT G2 RETRACTABLE GEL PE...	101-1001-44606	7.19
QUILL CORPORATION	21136464	12/17/2021	MINI BINDER CLIPS	101-1001-44606	4.83
QUILL CORPORATION	21136464	12/17/2021	SMALL BINDER CLIPS	101-1001-44606	6.18
QUILL CORPORATION	21136464	12/17/2021	PILOT G2 RETRACTABLE GEL PE...	101-1001-44606	7.18
QUILL CORPORATION	21136464	12/17/2021	GLUE STICKS	101-1001-44606	3.05
QUILL CORPORATION	21136464	12/17/2021	9X12 CLASP ENVELOPE	101-1001-44606	56.67
QUILL CORPORATION	21136464	12/17/2021	NOTARY PUBLIC RECORD BOOK	101-1001-44606	46.68
QUILL CORPORATION	21136464	12/17/2021	DURACELL AA BATTERIES	101-1001-44606	27.99
QUILL CORPORATION	21136464	12/17/2021	MULTIPURPOSE COPY PAPER	101-1001-44606	174.95
QUILL CORPORATION	21136464	12/17/2021	SHARPIE ULTRA FINE TIP MARK...	101-1001-44606	8.99
QUILL CORPORATION	21136464	12/17/2021	LETTER SIZE MANILLA FOLDERS	101-1001-44606	29.37
QUILL CORPORATION	21136464	12/17/2021	JUMBO PAPER CLIPS	101-1001-44606	9.26
QUILL CORPORATION	21136464	12/17/2021	SHEET PROTECTORS	101-1001-44606	13.66
QUILL CORPORATION	21136464	12/17/2021	METALLIC CERTIFICATE PAPER	101-1001-44606	116.90
QUILL CORPORATION	21229533/21169860/21180418...	12/17/2021	KLEENEX 6/PK	101-1003-44606	28.98
QUILL CORPORATION	21229533/21169860/21180418...	12/17/2021	2022 WALL CALENDAR	101-1003-44606	22.49
QUILL CORPORATION	21229533/21169860/21180418...	12/17/2021	2"X10" WALL SIGN FOR OJ	101-1003-44606	13.49
QUILL CORPORATION	21229533/21169860/21180418...	12/17/2021	CREATIVE TEACHING PRESS POS...	101-1003-44606	11.24
QUILL CORPORATION	21229533/21169860/21180418...	12/17/2021	2"X8" NAME PLATE FOR OJ	101-1003-44606	8.54
QUILL CORPORATION	21229533/21169860/21180418...	12/17/2021	TREND EDUCATIONAL POSTER	101-1003-44606	7.91
QUILL CORPORATION	21229533/21169860/21180418...	12/17/2021	TREND ARGUS POSTER	101-1003-44606	7.10
QUILL CORPORATION	21260485	12/17/2021	CUSTOM ENVELOPES	101-1001-44606	251.95
STAPLES CONTRACT & COMME...	3488365550/3488365551/348...	12/17/2021	TISSUE FACIAL KLEENEX	101-1004-44606	21.36
STAPLES CONTRACT & COMME...	3488365550/3488365551/348...	12/17/2021	LOGITECH M575 TRACKBALL M...	101-1004-44606	37.49
STAPLES CONTRACT & COMME...	3488365550/3488365551/348...	12/17/2021	FOLDER CLASS 3 DIV LTR RED	101-1004-44606	36.82
STAPLES CONTRACT & COMME...	3488365550/3488365551/348...	12/17/2021	1080P FULL HD WEBCAM BLACK	101-1004-44606	47.98
STAPLES CONTRACT & COMME...	3488365550/3488365551/348...	12/17/2021	6 PK DYMO STANDARD D1 450...	101-1004-44606	78.79
STAPLES CONTRACT & COMME...	3488365550/3488365551/348...	12/17/2021	LETTER OPENER PLAS RZR 2 PK	101-1004-44606	3.84
STAPLES CONTRACT & COMME...	3488365550/3488365551/348...	12/17/2021	LOGI WIRELESS WAVE KEYBOA...	101-1004-44606	35.99
NU-WAY LAUNDRY & CLEANERS	36676	12/17/2021	CARPET CLEANING SERVICE	101-1014-44607	157.77
TRANS UNION RISK & ALTERNAT..	485949-202111-1	12/17/2021	MONTHLY CHARGE FOR TLO SO...	101-1007-43815	120.00
NORTHERN TOOL & EQUIPMEN...	49065068/49102211	12/17/2021	HOBART HANDLER WELDER	101-1012-44613	530.00
NORTHERN TOOL & EQUIPMEN...	49065068/49102211	12/17/2021	VACMASTER PROFESSIONAL SH...	101-1012-44613	224.98
V & V MANUFACTURING, INC	53406	12/17/2021	OB-1 ANIMAL CONTROL BADGE	101-1008-42620	192.90
INSTA-COPY IMAGING	561648	12/17/2021	#10 WINDOW WHITE ENVELOP...	101-1004-44606	303.86
SIERRA VETERINARY SERVICES,L...	63209/63240	12/17/2021	VETERINARY SERVICES	101-1006-48598	206.51
SIERRA VETERINARY SERVICES,L...	63365	12/17/2021	VETERINARY SERVICES	101-1006-48598	146.05
SIERRA VETERINARY SERVICES,L...	63410/63470	12/17/2021	VETERINARY SERVICES	101-1006-48598	119.90
SIERRA VETERINARY SERVICES,L...	63486/63528	12/17/2021	VETERINARY SERVICES	101-1006-48598	131.25
SIERRA VETERINARY SERVICES,L...	63747/63817	12/17/2021	PARVO TEST KITS	101-1006-44607	332.50
SIERRA VETERINARY SERVICES,L...	63747/63817	12/17/2021	FELV/FIV TEST KITS	101-1006-44607	443.41
STAPLES CONTRACT & COMME...	8064278833	12/17/2021	LOGITECH K350 WIRELESS KEY...	101-1004-44606	35.99

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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
STAPLES CONTRACT & COMME...	8064278833	12/17/2021	DURACELL COPPERTOP C BATT...	101-1004-44606	19.13
STAPLES CONTRACT & COMME...	8064278833	12/17/2021	POST-IT FLAGS VALUE PACK	101-1004-44606	6.48
STAPLES CONTRACT & COMME...	8064278833	12/17/2021	DIAL COMPLETE FOAMING H...	101-1004-44606	5.66
STAPLES CONTRACT & COMME...	8064278833	12/17/2021	POST-IT SIGN HERE FLAGS	101-1004-44606	5.58
STAPLES CONTRACT & COMME...	8064278833	12/17/2021	BIC ROUNDSTIC XTRA LIFE BALL...	101-1004-44606	4.78
STAPLES CONTRACT & COMME...	8064278833	12/17/2021	VERBATIM PINSTRIPE 32GB 2.0 ...	101-1004-44606	47.99
STAPLES CONTRACT & COMME...	8064278833	12/17/2021	SHARPIE CLEAR VIEW STICK HI...	101-1004-44606	7.20
STAPLES CONTRACT & COMME...	8064278833	12/17/2021	DURACELL COPPERTOP AA BAT...	101-1004-44606	17.55
STAPLES CONTRACT & COMME...	8064278833	12/17/2021	2022 BLUE SKY CLASSIC RED W...	101-1004-44606	17.99
VERIZON WIRELESS	9893667410	12/17/2021	PHONE BILLS/OPEN PO FY 21/22	101-1007-43775	247.08
VERIZON WIRELESS	9893667410	12/17/2021	PHONE BILLS/OPEN PO FY 21/22	101-1008-43775	123.54
LASTING PAWS PET MEMORIAL ...	LC10391-I-0021	12/17/2021	ANIMAL CREMATION	101-1006-48599	517.40
COOPERATIVE EDUCATIONAL S...	24-121935	12/21/2021	ENGINEERING SERVICES RIVER...	101-1010-48598	6,075.00
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	101-1001-41226	151.20
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	101-1002-41226	81.07
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	101-1003-41226	221.66
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	101-1004-41226	238.74
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	101-1006-41226	106.80
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	101-1007-41226	822.84
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	101-1008-41226	102.00
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	101-1009-41226	107.06
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	101-1010-41226	64.80
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	101-1011-41226	260.23
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	101-1012-41226	112.80
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	101-1013-41226	77.31
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	101-1014-41226	190.80
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	101-1016-41226	180.73
XEROX CORP.	014748821	12/29/2021	BASE CHARGE/METER USAGE F...	101-1009-43465	232.94
XEROX CORP.	014969567	12/29/2021	BASE CHARGE/METER USAGE-...	101-1001-43465	519.26
XEROX CORP.	014969568/014969565	12/29/2021	BASE CHARGE/METER USAGE - ...	101-1004-43465	605.94
XEROX CORP.	014969570	12/29/2021	BASE CHARGE - METER USAGE ...	101-1007-43465	288.99
XEROX CORP.	014969590	12/29/2021	METER USAGE OPEN PO 21/22	101-1003-43465	268.21
XEROX CORP.	014969592	12/29/2021	BASE CHARGE/METER USAGE F...	101-1009-43465	239.96
XEROX CORP.	015084833/014969572	12/29/2021	XEROX CHARGE/METER USAGE	101-1040-43465	245.44
BANK OF AMERICA	112421	12/29/2021	CHRISTMAS DECOR FOR PARKS	101-1009-44607	275.86
BANK OF AMERICA	1132797855	12/29/2021	256 DISINFECTANT	101-1006-44607	367.10
BANK OF AMERICA	1132797855	12/29/2021	KENNELSOL	101-1006-44607	283.15
BANK OF AMERICA	1132797855	12/29/2021	TAX	101-1006-44607	55.27
JAMIE SWEENEY	12/30/21	12/29/2021	TRAINING IN ALBUQ. DEC 14/15...	101-1008-42720	19.40
BANK OF AMERICA	1208607480	12/29/2021	TAX	101-1002-43770	19.39
BANK OF AMERICA	1208607480	12/29/2021	COURT USER GO TO MEETING	101-1002-43770	228.00
CITY UTILITIES	120921	12/29/2021	CITY UTILITIES CYCLE A&B/OPEN...	101-1018-43780	2,589.08
WINDSTREAM CORPORATION	121521	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	101-1003-43775	119.94
CITY UTILITIES	121521	12/29/2021	CITY LANDFILL BILLS/OPEN PO F...	101-1018-43780	59.76
SIERRA VISTA HOSPITAL / SIERR...	12282021	12/29/2021	GRT DISTRIBUTION FY 21/22 OP...	101-1017-48599	23,641.71
ADVANCED COMMUNICATIONS...	187538	12/29/2021	RENEWAL OF FCC LICENSE CALL...	101-1018-43770	211.21
TESTON'S FREEWAY CHEVRON	3909	12/29/2021	OPEN PO FY21/22 FUEL PURCH...	101-1013-43316	137.71
TESTON'S FREEWAY CHEVRON	3916	12/29/2021	TESTOS FUEL/OIL OPEN P.O. FY ...	101-1009-43316	501.54
TALON SEPTIC & POTTY SERVICE	460	12/29/2021	RENTAL OF PORTABLE TOILETS ...	101-1009-43465	800.00
TALON SEPTIC & POTTY SERVICE	485	12/29/2021	SEPTIC TANK SERVICE AT AIRPO...	101-1014-43403	919.59
KING'S LOCKSMITH	7868	12/29/2021	SECURITY KEYS	101-1009-44607	13.17
KING'S LOCKSMITH	7868	12/29/2021	COMBO LOCK ENTRY	101-1009-44607	130.00
KING'S LOCKSMITH	7868	12/29/2021	MASTER LOCKS COMBO LOCKS	101-1009-44607	269.40
KING'S LOCKSMITH	7868	12/29/2021	SIMPLEX DOOR LOCK	101-1009-44607	672.00
KING'S LOCKSMITH	7868	12/29/2021	PAD LOCKS	101-1009-44607	314.10
STAPLES CONTRACT & COMME...	8064499598	12/29/2021	POST IT NOTES 1 3/8" X 1 7/8 "	101-1004-44606	5.24
STAPLES CONTRACT & COMME...	8064499598	12/29/2021	AVERY WHITE FOLDER LABELS	101-1004-44606	4.06
STAPLES CONTRACT & COMME...	8064499598	12/29/2021	CLASP AND MOISTENABLE GLUE...	101-1004-44606	24.74
STAPLES CONTRACT & COMME...	8064499598	12/29/2021	POST IT NOTES 4"x6" LINED NO...	101-1004-44606	9.39
STAPLES CONTRACT & COMME...	8064499598	12/29/2021	POST IT 4"x4" NOTEPADS	101-1004-44606	10.10

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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
STAPLES CONTRACT & COMME...	8064499598	12/29/2021	SHARPIE CLEAR VIEW STICK HI...	101-1004-44606	7.20
STAPLES CONTRACT & COMME...	8064499598	12/29/2021	STAPLES SLIDE LOCKING REPOR...	101-1004-44606	5.64
STAPLES CONTRACT & COMME...	8064499598	12/29/2021	HP 78A BLACK TONER CARTRID...	101-1004-44606	150.52
STAPLES CONTRACT & COMME...	8064499598	12/29/2021	DYMO LETRA TAG LABEL TAPE ...	101-1004-44606	24.90
STAPLES CONTRACT & COMME...	8064499598	12/29/2021	TRU RED 6COMPARTMENT WIR...	101-1004-44606	12.50
CRUCES TROPHY & AWARDS CE...	84600	12/29/2021	SET-UP FEE	101-1007-44606	20.00
CRUCES TROPHY & AWARDS CE...	84600	12/29/2021	2 PLAQUES	101-1007-44606	76.00
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	101-1001-43775	277.29
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	101-1002-43775	184.83
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	101-1003-43775	232.64
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	101-1004-43775	249.24
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	101-1006-43775	109.75
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	101-1007-43775	1,000.35
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	101-1008-43775	177.01
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	101-1009-43775	145.30
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	101-1010-43775	93.32
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	101-1011-43775	69.74
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	101-1012-43775	85.68
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	101-1014-43775	117.19
<b>Fund 101 - General Total:</b>					<b>155,203.92</b>
<b>Fund: 201 - Corrections</b>					
ADMINISTRATIVE OFFICE OF	113021	12/02/2021	PAY DWI & COURT AUTO FEES ...	201-1903-44805	180.00
NM JUDICIAL EDUCATION CENT...	113021	12/02/2021	PAY JUDICIAL FEES FY 21/22 OP...	201-1903-44805	90.00
SIERRA COUNTY TREASURER	12012021	12/17/2021	PRISONER CARE OPEN PO FY JU...	201-1903-48710	4,400.00
<b>Fund 201 - Corrections Total:</b>					<b>4,670.00</b>
<b>Fund: 209 - Fire</b>					
XEROX CORP.	014748823	12/02/2021	BASE CHARGE/METER USAGE O...	209-1603-43465	267.96
CITY UTILITIES	111621	12/02/2021	CITY UTILITIES CYCLE A&B/OPEN..	209-1603-43780	257.70
WINDSTREAM CORPORATION	111821	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	209-1603-43775	119.16
IRON MAN CONSTRUCTION	111921	12/02/2021	Replace Water Heater at South ...	209-1603-47405	3,954.80
NEW MEXICO GAS COMPANY, I...	12012021	12/02/2021	GAS BILLS/FIRE SOUTH STATION	209-1603-43780	62.98
NEW MEXICO GAS COMPANY, I...	12012021	12/02/2021	GAS BILLS/FIRE STATION	209-1603-43780	66.66
SIERRA EMERGENCY VEHICLE O...	1371	12/02/2021	TAX	209-1603-47420	200.60
SIERRA EMERGENCY VEHICLE O...	1371	12/02/2021	DRIVE TIME	209-1603-47420	360.00
SIERRA EMERGENCY VEHICLE O...	1371	12/02/2021	PARTS-AIR FILTERS	209-1603-47420	556.50
SIERRA EMERGENCY VEHICLE O...	1371	12/02/2021	CLASS A PM SERVICE KIT	209-1603-47420	1,480.00
SIERRA EMERGENCY VEHICLE O...	1371	12/02/2021	PARTS-SECOND AIR FILTER	209-1603-47420	136.50
SIERRA EMERGENCY VEHICLE O...	1371	12/02/2021	CLASS A PM SERVICE	209-1603-47420	2,000.00
TESTON'S FREEWAY CHEVRON	3853	12/02/2021	FUEL ALL TRUCK - OPEN PO FY ...	209-1603-43316	77.37
ARMJO'S CASA BONITA	45518	12/02/2021	INSTALL NEW STEEL DOOR AT F...	209-1603-47405	2,983.75
LYNN'S LANDSCAPE	9486	12/02/2021	MONTHLY CLEAN UP AT NORTH...	209-1603-47415	396.03
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	209-1603-43775	188.60
CITY UTILITIES	11/23/21	12/16/2021	CITY UTILITIES CYCLE C&D/OPE...	209-1603-43780	127.83
SUN VALLEY, INC.	161191/6	12/17/2021	Fix Chain Saw	209-1603-47420	295.75
MEGAHERTZ COMPUTER CONS...	51020	12/17/2021	INTERNET SERVICE/NORTH FIRE...	209-1603-43775	54.25
XEROX CORP.	014969594	12/29/2021	BASE CHARGE/METER USAGE O...	209-1603-43465	258.91
CITY UTILITIES	120921	12/29/2021	CITY UTILITIES CYCLE A&B/OPEN..	209-1603-43780	227.01
WINDSTREAM CORPORATION	121521	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	209-1603-43775	119.16
ADVANCED COMMUNICATIONS...	187744	12/29/2021	SALES TAX	209-1603-43770	17.87
ADVANCED COMMUNICATIONS...	187744	12/29/2021	RENEWAL OF FCC LICENSE #KKT...	209-1603-43770	215.00
TESTON'S FREEWAY CHEVRON	3910	12/29/2021	FUEL ALL TRUCK - OPEN PO FY ...	209-1603-43316	204.18
DESERT GRAPHICS INC.	6312	12/29/2021	Decals for New Ladder Truck	209-1603-47420	1,589.00
LYNN'S LANDSCAPE	9548	12/29/2021	MONTHLY CLEAN UP AT NORTH...	209-1603-47415	396.03
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	209-1603-43775	188.60
MUNICIPAL EMERGENCY SERVI...	IN1656415	12/29/2021	SHIPPING	209-1603-44613	75.00
MUNICIPAL EMERGENCY SERVI...	IN1656415	12/29/2021	EXTRA LARGE RED GEAR BAG	209-1603-44613	1,691.25
<b>Fund 209 - Fire Total:</b>					<b>18,568.45</b>
<b>Fund: 211 - Law Enforce Prot</b>					
BANK OF AMERICA	786888088	12/03/2021	DAY ONE NOVEMBER 21	211-2003-42535	39.00



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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
BANK OF AMERICA	786888088	12/03/2021	DAY TWO NOVEMBER 22	211-2003-42535	80.82
ANTHONY ZAGORSKI	11/21/21	12/16/2021	ACTUALS- TRAINING ROSWELL,....	211-2003-42535	40.65
<b>Fund 211 - Law Enforce Prot Total:</b>					<b>160.47</b>
<b>Fund: 214 - Lodgers Tax</b>					
VETERANS MEMORIAL TRUST B...	112821	12/02/2021	OPEN PO FOR LODGERS TAX AD...	214-2503-47406	289.62
LINDMARK OUTDOOR MEDIA	INV23369/INV23372	12/02/2021	CITY ADVERTISING-OPEN PO-FY...	214-2503-47597	824.92
RUANNA WALDRUM	1091	12/17/2021	WEBSITE AND MULTI-MEDIA U...	214-2503-60596	472.65
GERONIMO TRAIL SCENIC BYW...	12621	12/17/2021	OPEN PO FOR LODGERS TAX SE...	214-2503-48599	416.66
THE GO TRAVEL SITES	14880	12/17/2021	MEDIA MAINT./UPDATES/ADVE...	214-2503-60596	995.00
CHAMBER OF COMMERCE	121521	12/29/2021	OPEN PO FOR LODGERS TAX AD...	214-2503-47406	4,500.00
LINDMARK OUTDOOR MEDIA	INV25366/INV25356	12/29/2021	CITY ADVERTISING-OPEN PO-FY...	214-2503-47597	824.92
<b>Fund 214 - Lodgers Tax Total:</b>					<b>8,323.77</b>
<b>Fund: 216 - Muni Street</b>					
INTERNAL SERVICE FUND	062796	12/02/2021	MAINTENEANCE FOR DEPT VEH...	216-4503-43316	21.28
INTERNAL SERVICE FUND	062796	12/02/2021	MAINTENEANCE FOR DEPT VEH...	216-4503-47420	66.00
JOSEPH SORG	10022021	12/02/2021	CDL TESTING	216-4503-42720	200.00
RED BUD SUPPLY, INC	175933	12/02/2021	GLOVES- 3 DOZEN, EXTRA LARGE	216-4503-44615	402.93
RED BUD SUPPLY, INC	175933	12/02/2021	GLOVES- 3 DOZEN, LARGE	216-4503-44615	378.00
TESTON'S FREEWAY CHEVRON	3861	12/02/2021	GAS/DIESEL FUEL PURCHASES- ...	216-4503-43316	876.15
FOXWORTH-GALBRAITH	551114	12/02/2021	CONCRETE	216-4503-43550	105.40
BARTOO SAND & GRAVEL, INC.	M37349	12/02/2021	ASPHALT HOTMIX- IN PLACE	216-4503-43550	49,688.66
BANK OF AMERICA	11052021	12/03/2021	STEEL TOE BOOTS- BOB WALD...	216-4503-44615	109.99
SIERRA AUTO/CARQUEST	291937	12/03/2021	BATTERY - GOLD	216-4503-47420	151.94
SIERRA AUTO/CARQUEST	292079	12/03/2021	AIR FILTER- PA1615	216-4503-47420	29.46
SIERRA AUTO/CARQUEST	292079	12/03/2021	AIR FILTER- PA1647	216-4503-47420	32.50
SIERRA AUTO/CARQUEST	293065	12/03/2021	1/4 BARRACADE HOSE	216-4503-47420	24.48
BARTOO SAND & GRAVEL, INC.	M37415,M37355	12/10/2021	ASPHALT HOTMIX- IN PLACE	216-4503-43550	48,643.80
CHERRILL'S WESTERN APPAREL	084263	12/16/2021	JEANS	216-4503-42620	144.00
CHERRILL'S WESTERN APPAREL	084263	12/16/2021	SHIRTS	216-4503-42620	174.00
CHERRILL'S WESTERN APPAREL	084267	12/16/2021	JACKET	216-4503-42620	89.00
CHERRILL'S WESTERN APPAREL	084267	12/16/2021	PANTS	216-4503-42620	156.00
CHERRILL'S WESTERN APPAREL	084267	12/16/2021	SHIRTS	216-4503-42620	174.00
CHERRILL'S WESTERN APPAREL	084267	12/16/2021	STEEL TOE BOOTS	216-4503-44615	179.00
B & H OIL CO.	52397/52395/52383/52389/52...	12/16/2021	RED DIESEL	216-4503-43316	1,093.00
SOUTHWEST CONSTRUCTION P...	91394	12/17/2021	CHEVRON BELT	216-4503-47420	1,494.79
TESTON'S FREEWAY CHEVRON	3915	12/29/2021	GAS/DIESEL FUEL PURCHASES- ...	216-4503-43316	174.82
GEO-TEST, INC.	96215	12/29/2021	ASPHALT/COMPACTION TESTI...	216-4503-48599	799.13
WAGNER EQUIPMENT CO.	C1379201	12/29/2021	RECLAIMER- RMS00 RENTAL(1...	216-4503-43550	15,396.69
<b>Fund 216 - Muni Street Total:</b>					<b>120,605.02</b>
<b>Fund: 294 - State Library</b>					
XEROX CORP.	014748816	12/02/2021	METER USAGE - OPEN PO FY 20...	294-5003-43465	17.16
XEROX CORP.	014853452	12/02/2021	METER USAGE - OPEN PO FY 20...	294-5003-43465	10.37
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	294-5003-43775	167.04
OCLC, INC.	1000174072	12/17/2021	INTERLIBRARY LOAN SERVICE FY...	294-5003-60834	201.66
TDS	12012021	12/17/2021	INTERNET SERVICE LIBRARY OP...	294-5003-60834	99.95
THE LIBRARY CORPORATION	2021110020	12/17/2021	LIBRARY.SOLUTION SOFTWARE ...	294-5003-60834	2,424.00
XEROX CORP.	014969587	12/29/2021	METER USAGE - OPEN PO FY 20...	294-5003-43465	33.44
XEROX CORP.	015084835	12/29/2021	METER USAGE - OPEN PO FY 20...	294-5003-43465	7.98
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	294-5003-43775	167.04
<b>Fund 294 - State Library Total:</b>					<b>3,128.64</b>
<b>Fund: 295 - Muni Pool</b>					
XEROX CORP.	014748807	12/02/2021	BASE CHARGE /METER USAGE	295-4803-43465	32.72
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	295-4803-41226	68.90
TDS	113021	12/02/2021	TDS FIBER INTERNET OPEN PO ...	295-4803-43780	600.00
NEW MEXICO GAS COMPANY, I...	12012021	12/02/2021	GAS BILLS/SWIMMING POOL	295-4803-43780	1,836.77
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	295-4803-43775	28.56
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	295-4803-41226	28.80
CITY UTILITIES	11/23/21	12/16/2021	CITY UTILITIES CYCLE C&O/OPE...	295-4803-43780	1,056.52
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	295-4803-41226	28.80

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XEROX CORP.	014969578	12/29/2021	BASE CHARGE /METER USAGE	295-4803-43465	33.12
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	295-4803-43775	28.56
<b>Fund 295 - Muni Pool Total:</b>					<b>3,742.75</b>
<b>Fund: 296 - PD GRT</b>					
SAFETY FLARE, INC.	123267	12/02/2021	B500 5LBS ABC FIRE EXTINGISH...	296-2403-44615	510.00
BANK OF AMERICA	387370576	12/03/2021	ABBOTT BINAX NOW COVID-19 ...	296-2403-44615	390.44
APEX TECHNOLOGIES LLC	25649	12/16/2021	WIRE, CONDUIT, CONNECTORS	296-2403-80810	800.00
APEX TECHNOLOGIES LLC	25649	12/16/2021	1 EACH RACK MOUNT UPS BAT...	296-2403-80810	250.00
APEX TECHNOLOGIES LLC	25649	12/16/2021	1 AND 2 MEGAPIXEL DOME WI...	296-2403-80810	275.00
APEX TECHNOLOGIES LLC	25649	12/16/2021	1 AND 2 MEGAPIXEL VANDEL D...	296-2403-80810	300.00
APEX TECHNOLOGIES LLC	25649	12/16/2021	ALARM PANEL WITH 1 DOOR	296-2403-80810	300.00
APEX TECHNOLOGIES LLC	25649	12/16/2021	4 AND 2 MEGAPIXEL CAMERA	296-2403-80810	600.00
APEX TECHNOLOGIES LLC	25649	12/16/2021	TAX AND LABOR	296-2403-80810	353.28
APEX TECHNOLOGIES LLC	25649	12/16/2021	1 EACH 24 PORT POE SWITCH	296-2403-80810	350.00
APEX TECHNOLOGIES LLC	25649	12/16/2021	5 AND 6 MEGAPIXEL FISHEYE C...	296-2403-80810	3,000.00
APEX TECHNOLOGIES LLC	25649	12/16/2021	1 EACH CUSTOM 30 TB SERVER	296-2403-80810	2,500.00
APEX TECHNOLOGIES LLC	25649	12/16/2021	6 AND 5 MEGAPIXEL CAMERA	296-2403-80810	2,400.00
APEX TECHNOLOGIES LLC	25649	12/16/2021	17 EACH CAMERA LICENSES	296-2403-80810	2,125.00
APEX TECHNOLOGIES LLC	25649	12/16/2021	LABOR TO PROGRAM AND INST...	296-2403-80810	4,250.00
NM DEPT. OF PUBLIC SAFETY T...	2022-A0170	12/17/2021	MEALS AND LODGING	296-2403-42720	750.00
NM DEPT. OF PUBLIC SAFETY T...	2022-A0170	12/17/2021	TUITION	296-2403-42720	450.00
WATCHGUARD INC.	BCMIN0013410	12/29/2021	EVIDENCE LIBRARY 4	296-2403-44613	300.00
WATCHGUARD INC.	BCMIN0013410	12/29/2021	VISTA BATTERY KIT	296-2403-44613	225.00
WATCHGUARD INC.	BCMIN0013410	12/29/2021	VISTA USB CHARGING BASE	296-2403-44613	190.00
WATCHGUARD INC.	BCMIN0013410	12/29/2021	VISTA SLIDE LATCH WIFI AND V2	296-2403-44613	49.00
WATCHGUARD INC.	BCMIN0013410	12/29/2021	VISTA HD WIFI EXTENDED WEA...	296-2403-44613	1,990.00
<b>Fund 296 - PD GRT Total:</b>					<b>22,357.72</b>
<b>Fund: 298 - PD Donations</b>					
BANK OF AMERICA	11052021	12/03/2021	MISCELLANEOUS TOYS	298-2103-45607	967.00
BANK OF AMERICA	11122021	12/03/2021	MISCELLANEOUS TOYS	298-2103-45607	523.65
AMAZON CAPITAL SERVICES, IN...	1HKM-J36Y-C6PT	12/03/2021	GRINCH COSTUME	298-2103-45607	52.58
BANK OF AMERICA	12102021	12/29/2021	TOYS, DECORATIONS, AND SNA...	298-2103-45607	981.81
BANK OF AMERICA	12132021	12/29/2021	SHOP WITH A COP CLOTHING F...	298-2103-45607	1,228.12
<b>Fund 298 - PD Donations Total:</b>					<b>3,753.16</b>
<b>Fund: 303 - Vet Wall</b>					
WINDSTREAM CORPORATION	111821	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	303-4703-43775	145.04
WINDSTREAM CORPORATION	121521	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	303-4703-43775	160.51
<b>Fund 303 - Vet Wall Total:</b>					<b>305.55</b>
<b>Fund: 307 - Golf Course Improv</b>					
BANK OF AMERICA	46810	12/03/2021	ELECTRIC STOVE FOR GOLF CO...	307-6203-44613	764.00
<b>Fund 307 - Golf Course Improv Total:</b>					<b>764.00</b>
<b>Fund: 315 - CI Reserve</b>					
MPG SERVICES, LLC	3595	12/02/2021	INSTALL NEW A/C COMBO UNIT...	315-8005-43403	7,421.07
LIGHTNING MECHANICAL, LLC	003338	12/10/2021	10 - 1 TO 1 SYSTEMS, ONE IND...	315-8005-43403	20,315.00
LIGHTNING MECHANICAL, LLC	003340	12/17/2021	10 - 1 TO 1 SYSTEMS, ONE IND...	315-8005-43403	22,000.00
MPG SERVICES, LLC	3737	12/29/2021	REPLACE A/C UNIT PARTS AND ...	315-8005-43403	7,419.12
<b>Fund 315 - CI Reserve Total:</b>					<b>57,155.19</b>
<b>Fund: 320 - USDA WATER SYSTEM IMPROVEMENTS</b>					
WILSON & COMPANY, INC. ENG...	99058	12/21/2021	ENGINEERING SERVICES MSD ...	320-6603-80860	11,215.85
<b>Fund 320 - USDA WATER SYSTEM IMPROVEMENTS Total:</b>					<b>11,215.85</b>
<b>Fund: 360 - NMFA PROJECTS</b>					
COOPERATIVE EDUCATIONAL S...	24-121667	12/21/2021	ENGINEERING SERVICES WATER...	360-7000-48598	21,222.11
<b>Fund 360 - NMFA PROJECTS Total:</b>					<b>21,222.11</b>
<b>Fund: 403 - Pledge State</b>					
NEW MEXICO FINANCE AUTHOR...	113021	12/02/2021	NMFA LOAN PYMT TORC 18	403-1203-12918	690.58
NEW MEXICO FINANCE AUTHOR...	113021	12/02/2021	NMFA LOAN PYMT TORC 19	403-1203-12919	7,598.76
NEW MEXICO FINANCE AUTHOR...	113021	12/02/2021	NMFA LOAN PYMT PPRF-4967	403-1203-12967	10,545.59

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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
CAPITAL ONE PUBLIC FUNDING	7883379	12/10/2021	CAPITAL ONE LOAN PMT INTER...	403-1203-90910	10,270.00
<b>Fund 403 - Pledge State Total:</b>					<b>29,104.93</b>
<b>Fund: 501 - Cemetary</b>					
CITY UTILITIES	111621	12/02/2021	CITY UTILITIES CYCLE A&B/OPEN...	501-1803-43780	191.42
CITY UTILITIES	120921	12/29/2021	CITY UTILITIES CYCLE A&B/OPEN...	501-1803-43780	189.37
<b>Fund 501 - Cemetary Total:</b>					<b>380.79</b>
<b>Fund: 502 - Util Office - Pool</b>					
XEROX CORP.	014792249	12/02/2021	OPEN PO XEROX CORP FISCAL 2...	502-3601-43465	523.20
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	502-3601-41226	276.01
INTERNAL SERVICE FUND	062796	12/02/2021	MAINTENEANCE FOR DEPT VEH...	502-3601-43316	13.95
INTERNAL SERVICE FUND	062796	12/02/2021	MAINTENEANCE FOR DEPT VEH...	502-3601-47420	38.31
PITNEY BOWES INC.	3314115782,3314703495,3314...	12/02/2021	RENTAL OF EQUIP PITNEY BOW...	502-3601-43465	4,880.49
TESTON'S FREEWAY CHEVRON	3860	12/02/2021	GAS/OIL FISCAL YEAR 21/22 UIT...	502-3601-43316	196.42
INTEGRATED TECHNOLOGIES G...	7293	12/02/2021	ADOBE ACROBAT 2020 STANDA...	502-3601-43815	375.00
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	502-3601-43775	190.59
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	502-3601-41226	276.00
CITY UTILITIES	11/23/21	12/16/2021	CITY UTILITIES CYCLE C&D/OPE...	502-3601-43780	282.86
BAKER UTILITY SUPPLY CORP.	175343	12/16/2021	MTR CAN CVR LID 12-5/8 SOLID...	502-3601-44607	222.20
PITNEY BOWES INC.	3314703495	12/17/2021	RENTAL OF EQUIP PITNEY BOW...	502-3601-43465	683.04
STAPLES CONTRACT & COMME...	8064307551/8064418692	12/17/2021	KLEENEX 3BOXES PER PACK	502-3601-44606	30.28
STAPLES CONTRACT & COMME...	8064307551/8064418692	12/17/2021	LYSOL PROFESSIONAL CLEANER	502-3601-44606	26.07
STAPLES CONTRACT & COMME...	8064307551/8064418692	12/17/2021	8 X 7 CALENDAR HANGING	502-3601-44606	21.80
STAPLES CONTRACT & COMME...	8064307551/8064418692	12/17/2021	CLOROX WIPES 3 PACK	502-3601-44606	19.24
STAPLES CONTRACT & COMME...	8064307551/8064418692	12/17/2021	CALENDAR DESK	502-3601-44606	14.69
STAPLES CONTRACT & COMME...	8064307551/8064418692	12/17/2021	STAPLES COPY PAPER	502-3601-44606	196.35
STAPLES CONTRACT & COMME...	8064307551/8064418692	12/17/2021	TAPE INVISIBLE REFILL 12 ROLLS	502-3601-44606	8.12
STAPLES CONTRACT & COMME...	8064307551/8064418692	12/17/2021	MOISTENER PENS 4/PACK	502-3601-44606	6.75
STAPLES CONTRACT & COMME...	8064307551/8064418692	12/17/2021	JUMBO PAPER CLIPS	502-3601-44606	4.02
STAPLES CONTRACT & COMME...	8064307551/8064418692	12/17/2021	DESK CALENDAR	502-3601-44606	3.81
STAPLES CONTRACT & COMME...	8064307551/8064418692	12/17/2021	17 X 22 CALENDAR	502-3601-44606	14.36
STAPLES CONTRACT & COMME...	8064460583	12/17/2021	COPY PAPER 8.5 X 11	502-3601-44606	174.95
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	502-3601-41226	276.00
XEROX CORP.	014969574/014969575/01496...	12/29/2021	OPEN PO XEROX CORP FISCAL 2...	502-3601-43465	574.48
TESTON'S FREEWAY CHEVRON	3919	12/29/2021	GAS/OIL FISCAL YEAR 21/22 UIT...	502-3601-43316	199.68
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	502-3601-43775	190.59
<b>Fund 502 - Util Office - Pool Total:</b>					<b>9,719.26</b>
<b>Fund: 503 - Electric</b>					
PETE'S EQUIPMENT, INC.	0031800	12/02/2021	46564 DEBRIS HOSE 8"x62"	503-3702-47420	462.21
PETE'S EQUIPMENT, INC.	0031800	12/02/2021	42594 CLAMP 8" DOUBLE KING...	503-3702-47420	109.24
PETE'S EQUIPMENT, INC.	0031800	12/02/2021	58795 HOSE END WELD 8"	503-3702-47420	106.72
PETE'S EQUIPMENT, INC.	0031800	12/02/2021	Freight	503-3702-47420	65.25
PETE'S EQUIPMENT, INC.	0031800	12/02/2021	16585 8" RUBBER GASKET	503-3702-47420	8.61
XEROX CORP.	014748820,014853453	12/02/2021	BASE CHARGE & METER USAGE...	503-3702-43465	137.93
TRIPLE H SOLAR, LLC	0278	12/02/2021	ENGINEERING SERVICES- OPEN ...	503-3702-48598	3,710.00
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	503-3702-41226	463.80
CITY UTILITIES	111621	12/02/2021	CITY UTILITIES CYCLE A&B/OPEN...	503-3702-43780	235.43
SAENZ CONSTRUCTION	11232021	12/02/2021	BALLARDS & CONCRETE PAD	503-3702-80846	1,627.50
TDS	113021	12/02/2021	TDS FIBER INTERNET OPEN PO ...	503-3702-43780	600.00
NEW MEXICO GAS COMPANY, I...	12012021	12/02/2021	GAS BILLS/ELECTRIC	503-3702-43780	32.81
TRI-STATE GENERATION & TRA...	303293	12/02/2021	POWER SERVICES- OPEN PO FY...	503-3702-50795	35,369.03
FARWEST LINE SPECIALTIES	346004	12/02/2021	SHIPPING	503-3702-44615	18.00
FARWEST LINE SPECIALTIES	346004	12/02/2021	SAFTEY BOOTS FOR TYSON KIM...	503-3702-44615	199.00
TESTON'S FREEWAY CHEVRON	3857	12/02/2021	GAS/DIESEL FUEL PURCHASES- ...	503-3702-43316	1,515.95
SILVERSKY, INC.	444483-SI	12/02/2021	EMAIL SERVICE OPEN PO FY21/...	503-3702-43815	163.71
WESTERN UNITED ELECTRIC	6048505	12/02/2021	45 FT. CLASS 4 DF PW WOOD P...	503-3702-44607	4,176.00
WESTERN UNITED ELECTRIC	6048505	12/02/2021	35FT CLASS 4 DF WOOD POLE	503-3702-44607	6,747.00
WESTERN UNITED ELECTRIC	6048505	12/02/2021	40 FT. CLASS 4 DF WOOD POLE	503-3702-44607	5,240.00
WESTERN UNITED ELECTRIC	6048505	12/02/2021	45 FT. CLASS 2 DF WOOD POLE	503-3702-44607	5,010.00
WESTERN UNITED ELECTRIC	6048505	12/02/2021	50 FT. CLASS 2 DF PW WOOD ...	503-3702-44607	4,676.00

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WESTERN UNITED ELECTRIC	6048713,6042758	12/02/2021	LED FIXTURE VERDEON	503-3702-44607	7,833.84
WESTERN UNITED ELECTRIC	6048713,6042758	12/02/2021	HOUSE SIDE SHIELD	503-3702-44607	1,200.00
WESTERN UNITED ELECTRIC	6048713,6042758	12/02/2021	LED FIXTURE 70 WATT	503-3702-44607	7,952.00
WESTERN UNITED ELECTRIC	6048715	12/02/2021	# 2 AWG STRANDED COOPER T...	503-3702-44607	705.00
WESTERN UNITED ELECTRIC	6048716	12/02/2021	TERMINAL 5/8" THREAD	503-3702-44607	686.64
INTEGRATED TECHNOLOGIES G...	7286	12/02/2021	IT SERVICES OCTOBER 1,2021 T...	503-3702-48598	984.85
GRAINGER, INC.	9121609326	12/02/2021	INVERTER, 115 VAC, 12VDC, 2 ...	503-3702-44607	74.77
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	503-3702-43775	192.28
BANK OF AMERICA	11182021	12/03/2021	SHIPPING OIL SAMPLES	503-3702-44606	55.16
SIERRA AUTO/CARQUEST	291928	12/03/2021	GROMMET	503-3702-47420	7.96
SIERRA AUTO/CARQUEST	291928	12/03/2021	3/4 GROMMET	503-3702-47420	5.00
SIERRA AUTO/CARQUEST	292449	12/03/2021	3/8 WRENCH SET	503-3702-44607	40.84
SIERRA AUTO/CARQUEST	292449	12/03/2021	PROPANE TANK	503-3702-44607	11.98
SIERRA AUTO/CARQUEST	292449	12/03/2021	RECEIVER PIN	503-3702-44607	7.42
SIERRA AUTO/CARQUEST	292449	12/03/2021	BALL MOUNT	503-3702-44607	114.10
SIERRA ELECTRIC CO-OP, INC.	12022021,12062021	12/10/2021	MIMS CITY LIGHTS- OPEN PO FY...	503-3702-43780	558.67
SIERRA ELECTRIC CO-OP, INC.	12022021,12062021	12/10/2021	POWER SERVICES- OPEN PO FY...	503-3702-50795	122,776.62
REVIZE, LLC	12392	12/10/2021	EMAIL SERVICE OPEN PO FY21/...	503-3702-43815	560.00
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	503-3702-41226	499.80
CITY UTILITIES	11/23/21	12/16/2021	CITY UTILITIES CYCLE C&D/OPE...	503-3702-43780	4,908.89
COOPERATIVE EDUCATIONAL S...	24-121744	12/16/2021	AERIAL MED-VOLTAGE DISTRIB...	503-3702-48598	2,111.08
CRUCES TROPHY & AWARDS CE...	84575	12/16/2021	RETIREMENT PLAQUE- KEN MO...	503-3702-44606	113.61
BORDER INTERNATIONAL TRUC...	X400070525.01	12/16/2021	VALVE TRAILER CONTROL TC-7	503-3702-47420	292.87
VILLAGE OF WILLIAMSBURG	12142021	12/17/2021	FRANCHISE TAX FY 21/22 OPEN...	503-3702-45796	4,571.47
QUILL CORPORATION	21210954/21212278	12/17/2021	FILE FOLDERS	503-3702-44606	57.58
QUILL CORPORATION	21210954/21212278	12/17/2021	D BATTERIES	503-3702-44606	53.98
QUILL CORPORATION	21210954/21212278	12/17/2021	AAA BATTERIES	503-3702-44606	35.99
QUILL CORPORATION	21210954/21212278	12/17/2021	AA BATTERIES	503-3702-44606	35.99
QUILL CORPORATION	21210954/21212278	12/17/2021	LABEL MAKER TAPE	503-3702-44606	31.12
QUILL CORPORATION	21210954/21212278	12/17/2021	19"x24" DESK CALENDAR	503-3702-44606	28.79
QUILL CORPORATION	21210954/21212278	12/17/2021	POP-UP NOTES	503-3702-44606	19.78
QUILL CORPORATION	21210954/21212278	12/17/2021	17"x22" DESK CALENDAR	503-3702-44606	14.38
QUILL CORPORATION	21210954/21212278	12/17/2021	11"x17" DESK CALENDAR	503-3702-44606	11.69
QUILL CORPORATION	21210954/21212278	12/17/2021	TITANIUM SCISSORS	503-3702-44606	8.45
TRI-STATE GENERATION & TRA...	303338	12/17/2021	POWER SERVICES- OPEN PO FY...	503-3702-50795	36,148.35
WESTERN UNITED ELECTRIC	6040791	12/17/2021	RECEPTACLE 105-305V	503-3702-44607	325.50
WESTERN UNITED ELECTRIC	6045347/6048717	12/17/2021	CUTOUT POLYMER 15kv 100 A...	503-3702-44607	1,584.60
WESTERN UNITED ELECTRIC	6045347/6048717	12/17/2021	4 SOLID BARE COPPER WIRE	503-3702-44607	1,536.00
WESTERN UNITED ELECTRIC	6045347/6048717	12/17/2021	MACHINE BOLT 5/8X12	503-3702-44607	97.20
WESTERN UNITED ELECTRIC	6045347/6048717	12/17/2021	CONN. COMPRESSION PG #2-#2	503-3702-44607	205.00
WESTERN UNITED ELECTRIC	6045347/6048717	12/17/2021	CLEVIS	503-3702-44607	336.60
WESTERN UNITED ELECTRIC	6045347/6048717	12/17/2021	HPS 70W LAMP	503-3702-44607	350.40
WESTERN UNITED ELECTRIC	6045347/6048717	12/17/2021	SQUARE WASHER 2.25"	503-3702-44607	112.00
WESTERN UNITED ELECTRIC	6045347/6048717	12/17/2021	INSULATED GUY STRAIN	503-3702-44607	39.24
WESTERN UNITED ELECTRIC	6045347/6048717	12/17/2021	INSULATED SPOOL	503-3702-44607	47.70
WESTERN UNITED ELECTRIC	6045347/6048717	12/17/2021	FUSE LINK K 15 AMP	503-3702-44607	76.00
WESTERN UNITED ELECTRIC	6045347/6048717	12/17/2021	FUSE LINK TYPE K 10 AMP	503-3702-44607	79.20
WESTERN UNITED ELECTRIC	6045347/6048717	12/17/2021	MACHINE BOLT 5/8X14	503-3702-44607	90.00
WESTERN UNITED ELECTRIC	6045347/6048717	12/17/2021	PHOTOCELL 105-305V	503-3702-44607	610.00
WESTERN UNITED ELECTRIC	6047582/6045815/6046364/60...	12/17/2021	ELBOW LOAD BREAK 15kv 4/0 ...	503-3702-44607	289.10
WESTERN UNITED ELECTRIC	6047582/6045815/6046364/60...	12/17/2021	BRACKET MOUNTING	503-3702-44607	187.60
WESTERN UNITED ELECTRIC	6047582/6045815/6046364/60...	12/17/2021	BRACKET STANDOFF 12"	503-3702-44607	147.69
WESTERN UNITED ELECTRIC	6047582/6045815/6046364/60...	12/17/2021	VENTILATOR CAP 1 HOLE 1.25"	503-3702-44607	138.45
WESTERN UNITED ELECTRIC	6047582/6045815/6046364/60...	12/17/2021	ELBOW PVC 4"	503-3702-44607	65.72
WESTERN UNITED ELECTRIC	6047582/6045815/6046364/60...	12/17/2021	4/0 STRANDED ALUMINUM WI...	503-3702-44607	7,827.50
WESTERN UNITED ELECTRIC	6047582/6045815/6046364/60...	12/17/2021	CONDUIT GCR 4" W/COUPLING...	503-3702-44607	1,900.40
WESTERN UNITED ELECTRIC	6047582/6045815/6046364/60...	12/17/2021	TERMINATION 15kv 4/0	503-3702-44607	1,580.50
WESTERN UNITED ELECTRIC	6047582/6045815/6046364/60...	12/17/2021	VENTILATION CAP 4" 3-HOLE 1...	503-3702-44607	680.00
LANDIS+GYR TECHNOLOGY, INC	90348841	12/17/2021	SaaS MONTHLY FLAT FEE	503-3702-43770	950.00
GRAINGER, INC.	9128437465	12/17/2021	26W998 INVERTER 115VAC	503-3702-44607	47.29

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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
VERIZON WIRELESS	9894232558	12/17/2021	PHONE BILLS/OPEN PO FY 21/22	503-3702-43775	50.04
WESTERN AREA POWER ADMIN	JJP81798A1121	12/17/2021	BASE DEMAND & BASE ENERGY...	503-3702-50795	49,035.30
SSA SOLAR OF NM 4, LLC	NM-14-015A-202111-1	12/17/2021	POWER SERVICES- OPEN PO FY ...	503-3702-50795	18,175.56
IRBY SUPPLY CO.	s012730619.001/s012730619.0...	12/17/2021	600-8 SCREW DRIVER	503-3702-44607	19.20
IRBY SUPPLY CO.	s012730619.001/s012730619.0...	12/17/2021	68202 BOX END RATCHET	503-3702-44607	22.30
IRBY SUPPLY CO.	s012730619.001/s012730619.0...	12/17/2021	CHANNEL 430 PLIERS	503-3702-44607	15.71
IRBY SUPPLY CO.	s012730619.001/s012730619.0...	12/17/2021	ESTE 181514HB2G TOOL BAG	503-3702-44607	106.85
IRBY SUPPLY CO.	s012730619.001/s012730619.0...	12/17/2021	44001 POCKET KNIFE	503-3702-44607	103.80
IRBY SUPPLY CO.	s012730619.001/s012730619.0...	12/17/2021	KT151T LINEMANS WRENCH	503-3702-44607	98.65
IRBY SUPPLY CO.	s012730619.001/s012730619.0...	12/17/2021	832-26 LINEMANS HAMMER	503-3702-44607	63.00
IRBY SUPPLY CO.	s012730619.001/s012730619.0...	12/17/2021	D507-12 ADJUSTABLE WRENCH	503-3702-44607	57.30
IRBY SUPPLY CO.	s012730619.001/s012730619.0...	12/17/2021	911-6 FIBERGLASS RULER	503-3702-44607	24.17
IRBY SUPPLY CO.	s012730619.001/s012730619.0...	12/17/2021	D2000-9NETH SDE CUTTING PLI...	503-3702-44607	48.00
IRBY SUPPLY CO.	s012730619.001/s012730619.0...	12/17/2021	68204 BOX END RATCHET	503-3702-44607	27.25
IRBY SUPPLY CO.	s012730619.001/s012730619.0...	12/17/2021	D507-10 ADJUSTABLE WRENCH	503-3702-44607	39.95
IRBY SUPPLY CO.	s012730619.001/s012730619.0...	12/17/2021	600-6 SCREW DRIVER	503-3702-44607	13.92
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	503-3702-41226	499.80
XEROX CORP.	014969591	12/29/2021	BASE CHARGE & METER USAGE...	503-3702-43465	93.66
XEROX CORP.	015084836	12/29/2021	BASE CHARGE & METER USAGE...	503-3702-43465	33.42
CITY UTILITIES	120921	12/29/2021	CITY UTILITIES CYCLE A&B/OPEN...	503-3702-43780	165.03
CITY UTILITIES	121521	12/29/2021	CITY LANDFILL BILLS/OPEN PO F...	503-3702-43780	6.00
TERRY'S TIRE & ALIGNMENT, IN...	25016	12/29/2021	TAX	503-3702-47420	4.25
TERRY'S TIRE & ALIGNMENT, IN...	25016	12/29/2021	TRUCK ALIGNMENT 07561-G	503-3702-47420	49.95
TESTON'S FREEWAY CHEVRON	3917	12/29/2021	GAS/DIESEL FUEL PURCHASES- ...	503-3702-43316	1,644.19
WESTERN UNITED ELECTRIC	6048755/6039805/6041870/60...	12/29/2021	PIN POLE TOP NYLON 1" THREAD	503-3702-44607	238.50
WESTERN UNITED ELECTRIC	6048755/6039805/6041870/60...	12/29/2021	ELBOW LOADBREAK 15KV 1/O P...	503-3702-44607	412.35
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	503-3702-43775	192.28
<b>Fund 503 - Electric Total:</b>					<b>353,929.26</b>
<b>Fund: 504 - Water</b>					
XEROX CORP.	014748811	12/02/2021	BASE COURSE CHARGE METERE...	504-3803-43465	180.79
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	504-3803-41226	159.36
INTERNAL SERVICE FUND	062796	12/02/2021	MAINTENEANCE FOR DEPT VEH...	504-3803-43316	14.98
INTERNAL SERVICE FUND	062796	12/02/2021	MAINTENEANCE FOR DEPT VEH...	504-3803-47420	163.63
CITY UTILITIES	111621	12/02/2021	CITY UTILITIES CYCLE A&B/OPEN...	504-3803-43780	767.66
TDS	113021	12/02/2021	TDS FIBER INTERNET OPEN PO ...	504-3803-43780	600.00
NEW MEXICO GAS COMPANY, I...	12012021	12/02/2021	GAS BILLS/WATER	504-3803-43780	60.47
TESTON'S FREEWAY CHEVRON	3858	12/02/2021	DIESEL FUEL	504-3803-43316	626.30
TESTON'S FREEWAY CHEVRON	3858	12/02/2021	UNLEADED FUEL	504-3803-43316	623.45
SILVERSKY, INC.	444483-SI	12/02/2021	EMAIL SERVICE OPEN PO FY21/...	504-3803-43815	163.70
INTEGRATED TECHNOLOGIES G...	7286	12/02/2021	IT SERVICES OCTOBER1,2021 TO...	504-3803-48598	984.85
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	504-3803-43775	69.74
BANK OF AMERICA	306896	12/03/2021	REESE 6IN RECEIVER TUBE EXT...	504-3803-44607	27.99
TAXATION AND REVENUE	11302021	12/10/2021	WATER CONSERVATION FEE FY ...	504-3803-43797	978.69
REVIZE, LLC	12392	12/10/2021	EMAIL SERVICE OPEN PO FY21/...	504-3803-43815	560.00
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	504-3803-41226	172.80
CITY UTILITIES	11/23/21	12/16/2021	CITY UTILITIES CYCLE C&D/OPE...	504-3803-43780	10,460.25
B & H OIL CO.	52384/52391	12/16/2021	DIESEL FOR TRANSFER TANK A...	504-3803-43316	203.76
AQUA TAP	7296	12/16/2021	HOLE SAW ADAPTERS LARGE B...	504-3803-44607	25.00
AQUA TAP	7296	12/16/2021	18" DRILL ROD	504-3803-44607	500.00
AQUA TAP	7296	12/16/2021	BIT KITS	504-3803-44607	350.00
AQUA TAP	7296	12/16/2021	11/16" CARBIDE TIPPED HOLE ...	504-3803-44607	91.00
AQUA TAP	7296	12/16/2021	HOLE SAW ADAPTER SMALL BL...	504-3803-44607	25.00
AQUA TAP	7296	12/16/2021	1/4 SET SCREWS 10 PACK	504-3803-44607	25.00
AQUA TAP	7296	12/16/2021	HOLE SAW ADAPTERS	504-3803-44607	7.00
DPC INDUSTRIES, INC.	747002813-21	12/16/2021	CHLORINE CYLINDERS	504-3803-44607	1,168.58
DPC INDUSTRIES, INC.	DE74000793-21	12/16/2021	DEMURRAGE	504-3803-43465	55.00
VILLAGE OF WILLIAMSBURG	12142021	12/17/2021	FRANCHISE TAX FY 21/22 OPEN...	504-3803-45796	1,078.06
SUN VALLEY, INC.	160937/161088/161102	12/17/2021	UNSTOCKED FIELD SUPPLIES FO...	504-3803-44607	228.92
RED WING SHOES OF LAS CRUC...	5276	12/17/2021	WORK BOOTS FOR ROCKY STARR	504-3803-44615	250.00
RED WING SHOES OF LAS CRUC...	5277	12/17/2021	WORK BOOTS FOR CHRISTOPH...	504-3803-44615	200.00

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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
MAULDIN DRILLING, LLC	7680	12/17/2021	REPACKING FOR WELL #2	504-3803-48598	651.00
GRAINGER, INC.	9116327017	12/17/2021	WORK BOOTS FOR JESSE COLE	504-3803-44615	167.56
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	504-3803-41226	172.80
XEROX CORP.	014969582	12/29/2021	BASE COURSE CHARGE METERE...	504-3803-43465	193.23
CHERRILL'S WESTERN APPAREL	084269	12/29/2021	LUIS SANCHEZ PANTS	504-3803-42620	300.00
CHERRILL'S WESTERN APPAREL	084269	12/29/2021	LUIS SANCHEZ SHIRTS	504-3803-42620	150.00
CITY UTILITIES	120921	12/29/2021	CITY UTILITIES CYCLE A&B/OPEN...	504-3803-43780	740.71
JAMES, COOKE & HOBSON, INC.	232078	12/29/2021	30R ELEMENT REXNORD (CUPPL...	504-3803-47421	516.00
TESTON'S FREEWAY CHEVRON	3912	12/29/2021	UNLEADED FUEL	504-3803-43316	737.01
BANK OF AMERICA	461343827858031	12/29/2021	WORK BOOTS FOR EZEKIEL ALV...	504-3803-44615	119.52
USA BLUEBOOK	793495	12/29/2021	7' HEAVY DUTY SERVICE VALVE ...	504-3803-44607	328.39
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	504-3803-43775	69.74
PURE OPERATIONS, LLC	NI214822	12/29/2021	ANNUAL WATER METER TESTI...	504-3803-47420	54.16
BORDER INTERNATIONAL TRUC...	R40002006001	12/29/2021	TAX	504-3803-47420	24.69
BORDER INTERNATIONAL TRUC...	R40002006001	12/29/2021	DIAGNOSITCS - SHOP-LABOR-H...	504-3803-47420	332.64
<b>Fund 504 - Water Total:</b>					<b>25,379.43</b>

## Fund: 505 - Solid Waste

XEROX CORP.	014748806	12/02/2021	METER USAGE & BASE CHARGE...	505-3904-43465	120.93
XEROX CORP.	014853451	12/02/2021	METER USAGE & BASE CHARGE...	505-3904-43465	35.26
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	505-3904-41226	459.60
INTERNAL SERVICE FUND	062796	12/02/2021	MAINTENEANCE FOR DEPT VEH...	505-3904-47420	541.76
TDS	113021	12/02/2021	TDS FIBER INTERNET OPEN PO ...	505-3904-43780	600.00
NEW MEXICO GAS COMPANY, I...	12012021	12/02/2021	GAS BILLS/RECYCLE CENTER	505-3904-43780	25.04
AUTOZONE STORES, LLC	2529968000	12/02/2021	AZ-DEF AUTOZONE	505-3904-43316	215.76
BORDER RECAPING, LLC	3007151	12/02/2021	11R225 SPREAD AXEL RAD.SPOT...	505-3904-44607	150.00
BORDER RECAPING, LLC	3007151	12/02/2021	11R225 SPREAD AXLE	505-3904-44607	150.00
SILVERSKY, INC.	444483-SI	12/02/2021	EMAIL SERVICE OPEN PO FY21/...	505-3904-43815	163.70
INTEGRATED TECHNOLOGIES G...	7286	12/02/2021	IT SERVICES OCTOBER1,2021 TO...	505-3904-48598	984.85
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	505-3904-43775	165.56
SIERRA AUTO/CARQUEST	291931	12/03/2021	XBO TRAILER JACK	505-3904-44607	39.99
SIERRA AUTO/CARQUEST	292300	12/03/2021	HYDRAULIC HOSE	505-3904-47420	455.95
SIERRA AUTO/CARQUEST	292635	12/03/2021	BATTERY- SILVER	505-3904-47420	132.20
SIERRA AUTO/CARQUEST	292743	12/03/2021	ALTERNATOR 22SI 130A	505-3904-47420	265.05
SIERRA AUTO/CARQUEST	292795	12/03/2021	BAT MARINE +1YR	505-3904-44607	85.99
REVIZE, LLC	12392	12/10/2021	EMAIL SERVICE OPEN PO FY21/...	505-3904-43815	560.00
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	505-3904-41226	459.60
CITY UTILITIES	11/23/21	12/16/2021	CITY UTILITIES CYCLE C&D/OPE...	505-3904-43780	641.12
BORDER RECAPING, LLC	3007246	12/16/2021	USED TIRE 8.25X22.5 WHEELS	505-3904-44607	260.00
CITY OF LAS CRUCES	82949	12/16/2021	SCSWA OPEN PO FY2021-2022	505-3904-45601	35,309.91
BORDER INTERNATIONAL TRUC...	X400070526.01	12/16/2021	SEAL REXROTH PUMP FLANGE	505-3904-47420	30.60
BORDER INTERNATIONAL TRUC...	X400070526.01	12/16/2021	SEAL AIRE COMPRESSOR O-RING	505-3904-47420	4.44
BORDER INTERNATIONAL TRUC...	X400070526.01	12/16/2021	GASKET PUMP P/S	505-3904-47420	11.63
PARKHILL SMITH & COOPER	01857921.007	12/17/2021	ENVIRONMENTAL LANDFILL M...	505-3904-48599	1,526.47
WEX BANK	076431017	12/17/2021	WEX DIESEL & GASOLINE OPEN ...	505-3904-43316	4,569.80
REED'S TIRE CENTER	10072	12/17/2021	11R22.5 HERCULES HRD TIRES	505-3904-44607	710.00
REED'S TIRE CENTER	10072	12/17/2021	315 80 225 TIRES	505-3904-44607	2,200.00
VILLAGE OF WILLIAMSBURG	12142021	12/17/2021	FRANCHISE TAX FY 21/22 OPEN...	505-3904-45796	1,492.73
SUN VALLEY, INC.	161245/6	12/17/2021	GT DH DIG DRAIN SPADE	505-3904-44607	43.98
SUN VALLEY, INC.	161245/6	12/17/2021	DISCOUNT	505-3904-44607	-2.20
RUSTY'S WEIGH SCALES & SERV...	2111231027	12/17/2021	QUARTERLY SCALE CALIBRATION	505-3904-47420	649.20
JACKSON COMPACTION	24059	12/17/2021	REPAIRS, LABOR TAX, PARTS, L...	505-3904-47420	10,117.50
NORTHERN TOOL & EQUIPMEN...	49072946	12/17/2021	TRASH LINERS 36X58,1.5MIL	505-3904-44607	202.20
RED WING SHOES OF LAS CRUC...	5278	12/17/2021	6692- 9D SAFETY BOOTS-SCOTT...	505-3904-44615	190.00
RED WING SHOES OF LAS CRUC...	5278	12/17/2021	83830- 12EE SAFETY BOOTS SC...	505-3904-44615	200.00
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	505-3904-41226	459.60
XEROX CORP.	014969577	12/29/2021	METER USAGE & BASE CHARGE...	505-3904-43465	122.34
XEROX CORP.	015084834	12/29/2021	METER USAGE & BASE CHARGE...	505-3904-43465	35.26
SOUTHWESTERN EQUIPMENT ...	040815	12/29/2021	PROXY SWITCH	505-3904-47420	177.76
CITY UTILITIES	121521	12/29/2021	CITY LANDFILL BILLS/OPEN PO F...	505-3904-45601	24,074.04
PARADIGM SOFTWARE, LLC	13360	12/29/2021	TCNM-ESCROW AGREEMENT	505-3904-43815	300.00



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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	505-3904-43775	165.56
Fund 505 - Solid Waste Total:					89,103.18
<b>Fund: 506 - WWTP</b>					
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	506-4005-41226	262.07
INTERNAL SERVICE FUND	062796	12/02/2021	MAINTENEANCE FOR DEPT VEH...	506-4005-43316	12.84
INTERNAL SERVICE FUND	062796	12/02/2021	MAINTENEANCE FOR DEPT VEH...	506-4005-47420	76.59
CITY UTILITIES	111621	12/02/2021	CITY UTILITIES CYCLE A&B/OPEN...	506-4005-43780	526.81
TDS	113021	12/02/2021	TDS FIBER INTERNET OPEN PO ...	506-4005-43780	600.00
NEW MEXICO GAS COMPANY, I...	12012021	12/02/2021	GAS BILLS/VACUUM STATION	506-4005-43780	26.91
POLYDYNE, INC.	1590348	12/02/2021	POLYMER 40LB PAILS	506-4005-44607	2,800.00
TESTON'S FREEWAY CHEVRON	3859	12/02/2021	UNLEADED FUEL	506-4005-43316	787.63
SILVERSKY, INC.	444483-SI	12/02/2021	EMAIL SERVICE OPEN PO FY21/...	506-4005-43815	163.70
INTEGRATED TECHNOLOGIES G...	7286	12/02/2021	IT SERVICES OCTOBER1,2021 TO...	506-4005-48598	984.85
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	506-4005-43775	355.30
VILLAGE OF WILLIAMSBURG	11302021	12/10/2021	SEWER RECEIPTS FY 21/22 OPEN...	506-4005-48798	4,118.87
REVIZE, LLC	12392	12/10/2021	EMAIL SERVICE OPEN PO FY21/...	506-4005-43815	560.00
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	506-4005-41226	223.48
CITY UTILITIES	11/23/21	12/16/2021	CITY UTILITIES CYCLE C&D/OPE...	506-4005-43780	602.00
B & H OIL CO.	52514/52388/52393	12/16/2021	DIESEL FOR TRANSFER TANK HE...	506-4005-43316	334.89
DPC INDUSTRIES, INC.	747002804-21	12/16/2021	SODIUM HYPOCHLORITE 12.5%...	506-4005-44605	850.50
DPC INDUSTRIES, INC.	747002804-21	12/16/2021	DRUM CLEANING FEE	506-4005-44605	25.00
DPC INDUSTRIES, INC.	747002804-21	12/16/2021	5% FUEL SURCHARGE	506-4005-44605	42.53
DPC INDUSTRIES, INC.	747002804-21	12/16/2021	REFUNDABLE DRUM DEPOSIT	506-4005-44605	120.00
SUN VALLEY, INC.	161044/161132	12/17/2021	UNSTOCKED FIELD SUPPLIES FO...	506-4005-44607	34.72
HALL ENVIRONMENTAL ANALYS...	2111269/2111307	12/17/2021	EPA METHOD 624 VOCs ACRYL...	506-4005-48598	270.00
HALL ENVIRONMENTAL ANALYS...	2111269/2111307	12/17/2021	SEPERATE LINE TO INCLUDE TAX	506-4005-48598	38.67
HALL ENVIRONMENTAL ANALYS...	2111269/2111307	12/17/2021	SM52108 BOD (M52108)	506-4005-48598	116.00
HALL ENVIRONMENTAL ANALYS...	2111269/2111307	12/17/2021	EPA 200.8 METALS CADMIUM ...	506-4005-48598	105.00
HALL ENVIRONMENTAL ANALYS...	2111593/2111890	12/17/2021	EPA 200.8 METALS CADMIUM ...	506-4005-48598	140.00
HALL ENVIRONMENTAL ANALYS...	2111593/2111890	12/17/2021	SEPERATE LINE TO INCLUDE TAX	506-4005-48598	39.38
HALL ENVIRONMENTAL ANALYS...	2111593/2111890	12/17/2021	EPA METHOD 624 VOCs ACRYL...	506-4005-48598	360.00
HALL ENVIRONMENTAL ANALYS...	2111593/2111890	12/17/2021	SM52108 BOD (M52108)	506-4005-48598	116.00
HALL ENVIRONMENTAL ANALYS...	2111644	12/17/2021	EPA METHOD 624 VOCs ACRYL...	506-4005-48598	90.00
HALL ENVIRONMENTAL ANALYS...	2111644	12/17/2021	EPA 200.8 METALS CADMIUM ...	506-4005-48598	35.00
HALL ENVIRONMENTAL ANALYS...	2111644	12/17/2021	SEPERATE LINE TO INCLUDE TAX	506-4005-48598	18.98
USA BLUEBOOK	786240	12/17/2021	USABB PH BUFFER PACK 4.00,7...	506-4005-44607	59.70
USA BLUEBOOK	786240	12/17/2021	SHIPPING	506-4005-44607	14.95
USA BLUEBOOK	786240	12/17/2021	WIDE MOUTH WASH BOTTLE PE...	506-4005-44607	37.70
USA BLUEBOOK	786240	12/17/2021	USA BLUEBOOK GLASS FIBER FI...	506-4005-44607	156.00
USA BLUEBOOK	786240	12/17/2021	ALCONOX CLEANING COMPOU...	506-4005-44607	34.65
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	506-4005-41226	246.86
COVE ENVIRONMENTAL, LLC	111-4-21	12/29/2021	QUARTERLY WET TEST	506-4005-48598	1,800.00
CITY UTILITIES	120921	12/29/2021	CITY UTILITIES CYCLE A&B/OPEN...	506-4005-43780	561.78
NM RURAL WATER ASSOC.	12282021	12/29/2021	2022 ANNUAL DUES	506-4005-43770	1,366.00
HALL ENVIRONMENTAL ANALYS...	2112544	12/29/2021	EPA METHOD 624 VOCs ACRYL...	506-4005-48598	180.00
HALL ENVIRONMENTAL ANALYS...	2112544	12/29/2021	SEPERATE LINE TO INCLUDE TAX	506-4005-48598	19.69
HALL ENVIRONMENTAL ANALYS...	2112544	12/29/2021	EPA 200.8 METALS CADMIUM ...	506-4005-48598	70.00
TESTON'S FREEWAY CHEVRON	3918	12/29/2021	UNLEADED FUEL	506-4005-43316	731.08
PINNACLE PROPANE	54570119	12/29/2021	PROPANE-WWTP-OPEN PO FOR...	506-4005-43780	274.46
TED D MILLER ASSOCIATES, INC	6378	12/29/2021	EACH ADDITIONAL FLOW METE...	506-4005-47420	125.00
TED D MILLER ASSOCIATES, INC	6378	12/29/2021	METER CALIBRATION OUTSIDE ...	506-4005-47420	400.00
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	506-4005-43775	365.19
Fund 506 - WWTP Total:					21,280.78
<b>Fund: 508 - Golf Course</b>					
XEROX CORP.	014853454	12/02/2021	BASE CHARGES METER USAGE F...	508-4303-43465	164.44
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	508-4303-41226	85.20
CITY UTILITIES	111621	12/02/2021	CITY UTILITIES CYCLE A&B/OPEN...	508-4303-43780	1,195.83
TDS	113021	12/02/2021	TDS FIBER INTERNET OPEN PO ...	508-4303-43775	600.00
BAKER UTILITY SUPPLY CORP.	294375	12/02/2021	4 INCH HYMAX CLAMPS	508-4303-44607	421.34
MASEK ROCKY MOUNTAIN GOL...	71399,70592,69873	12/02/2021	SOLID BUSHING	508-4303-44607	5.52

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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
MASEK ROCKY MOUNTAIN GOL...	71399,70592,69873	12/02/2021	CLEAR WINDSHEILD	508-4303-44607	186.65
MASEK ROCKY MOUNTAIN GOL...	71399,70592,69873	12/02/2021	THRUST COVER	508-4303-44607	23.64
MASEK ROCKY MOUNTAIN GOL...	71399,70592,69873	12/02/2021	SPACER	508-4303-44607	28.26
MASEK ROCKY MOUNTAIN GOL...	71399,70592,69873	12/02/2021	FRONT LOWER CONTROL ARM	508-4303-44607	52.34
MASEK ROCKY MOUNTAIN GOL...	71399,70592,69873	12/02/2021	STEERING KNUCKLE	508-4303-44607	27.80
MASEK ROCKY MOUNTAIN GOL...	71399,70592,69873	12/02/2021	SHIPPING	508-4303-44607	84.00
YAMAHA MOTOR FINANCE COR...	759205	12/02/2021	OPEN PO FOR FY 21/22 YAMAH...	508-4303-43465	903.51
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	508-4303-43775	80.39
SIERRA AUTO/CARQUEST	291853	12/03/2021	HAZARD WARNING SWITCH	508-4303-47420	25.68
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	508-4303-41226	85.20
REED'S TIRE CENTER	10109	12/17/2021	18-9.50-8 TIRE	508-4303-44607	88.00
SUN VALLEY, INC.	160958/6	12/17/2021	OPEN P.O. FOR NOVEMBER 2021	508-4303-44607	214.60
QUILL CORPORATION	21229533/21169860/21180418...	12/17/2021	CONTROLTEK BLACK PRINT RIB...	508-4303-44606	30.59
QUILL CORPORATION	21229533/21169860/21180418...	12/17/2021	PM COMPANY CASH REGISTER ...	508-4303-44606	12.59
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	508-4303-41226	85.20
XEROX CORP.	015084837	12/29/2021	BASE CHARGES METER USAGE F...	508-4303-43465	164.44
REED'S TIRE CENTER	10243	12/29/2021	1/2 GALLON OF TIRE SLIME	508-4303-44607	15.00
REED'S TIRE CENTER	10243	12/29/2021	FIX 2 TIRES	508-4303-44607	25.00
REED'S TIRE CENTER	10243	12/29/2021	LABOR TAX	508-4303-44607	3.28
CITY UTILITIES	120921	12/29/2021	CITY UTILITIES CYCLE A&B/OPEN...	508-4303-43780	876.49
SIMPSON NORTON CORPORATI...	1600161-1601912	12/29/2021	SOLENOIDS	508-4303-44607	892.00
SIMPSON NORTON CORPORATI...	1600161-1601912	12/29/2021	DRIVE ASSY.	508-4303-44607	610.00
SIMPSON NORTON CORPORATI...	1600161-1601912	12/29/2021	SHIPPING	508-4303-44607	66.08
YAMAHA MOTOR FINANCE COR...	761228	12/29/2021	OPEN PO FOR FY 21/22 YAMAH...	508-4303-43465	903.51
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	508-4303-43775	80.39
<b>Fund 508 - Golf Course Total:</b>					<b>8,036.97</b>

## Fund: 509 - Muni Airport

XEROX CORP.	014853455	12/02/2021	XEROX PRINTER OPEN PO FY 21...	509-4403-43465	41.69
NM RETIREE HEALTH CARE	036839	12/02/2021	RETIREE HEALTHCARE PPE 2021...	509-4403-41226	75.60
WINDSTREAM CORPORATION	111821	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	509-4403-43775	326.30
TESTON'S FREEWAY CHEVRON	3855	12/02/2021	OPEN PO FY 21-22 TESTONS FR...	509-4403-43316	171.06
VERIZON WIRELESS	9892889149	12/02/2021	PHONE BILLS/OPEN PO FY 21/22	509-4403-43775	107.07
CUTTER AVIATION ALBUQUER...	ABQ21008095	12/02/2021	VEEDER ROOT REGISTER TOTAL...	509-4403-44607	308.45
CUTTER AVIATION ALBUQUER...	ABQ21008095	12/02/2021	FREIGHT, TAX AND ELECTRICAL ...	509-4403-44607	41.16
TECH 45 ENTERPRISES	21-0967	12/03/2021	CONTRACTED MANAGEMENT ...	509-4403-48598	3,797.50
SIERRA AUTO/CARQUEST	292205	12/03/2021	12V COMMERCIAL BATTERY (C...	509-4403-47420	-54.00
SIERRA AUTO/CARQUEST	292205	12/03/2021	12V COMMERCIAL BATTERY	509-4403-47420	317.40
NM RETIREE HEALTH CARE	256980	12/10/2021	RETIREE HEALTHCARE PPE 2021...	509-4403-41226	74.52
ASCENT AVIATION GROUP, INC.	0342738-IN	12/16/2021	OPEN PO FOR FUEL AT THE AIR...	509-4403-34318	360.00
SIERRA ELECTRIC CO-OP, INC.	.. 2154	12/17/2021	OPEN PO FY21/22 SIERRA ELEC...	509-4403-43780	963.71
GENESIS LAMP CORP.	12804	12/17/2021	TAX/FREIGHT/SHIPPING COST	509-4403-44607	37.07
GENESIS LAMP CORP.	12804	12/17/2021	36" X 12' ORANGE NYLON WIN...	509-4403-44607	281.80
GENESIS LAMP CORP.	12804	12/17/2021	18" X 5' ORANGE NYLON WIND...	509-4403-44607	484.00
NM RETIREE HEALTH CARE	825541	12/21/2021	RETIREE HEALTHCARE PPE 2021...	509-4403-41226	32.40
XEROX CORP.	015084838	12/29/2021	XEROX PRINTER OPEN PO FY 21...	509-4403-43465	41.27
WINDSTREAM CORPORATION	121521	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	509-4403-43775	336.04
TESTON'S FREEWAY CHEVRON	3911	12/29/2021	OPEN PO FY 21-22 TESTONS FR...	509-4403-43316	37.43
TRAVERS & ASSOCIATES	93736	12/29/2021	AIRPORT LIABILITY RENEWAL P...	509-4403-46732	3,650.00
VERIZON WIRELESS	9895122103	12/29/2021	PHONE BILLS/OPEN PO FY 21/22	509-4403-43775	107.07
<b>Fund 509 - Muni Airport Total:</b>					<b>11,537.54</b>

## Fund: 600 - Internal Serv

XEROX CORP.	014853456	12/02/2021	XEROX RENTAL / OPEN PO 21/22	600-7003-43465	118.14
NORTHERN TOOL & EQUIPMEN...	49009189	12/02/2021	AIR FILTER BLASTER	600-7003-44607	359.99
SIERRA AUTO/CARQUEST	291854	12/03/2021	ALARM W/SWITCH	600-7003-44607	50.24
SIERRA AUTO/CARQUEST	292157	12/03/2021	DEGREASER	600-7003-44607	27.57
SIERRA AUTO/CARQUEST	292292	12/03/2021	WINDSHIELD WIPERS	600-7003-47420	2.90
SIERRA AUTO/CARQUEST	292292	12/03/2021	WINDSHIELD WIPERS	600-7003-47420	2.90
SIERRA AUTO/CARQUEST	292292	12/03/2021	GLUE	600-7003-47420	3.69
SIERRA AUTO/CARQUEST	292293	12/03/2021	SAW BLADES	600-7003-44607	15.99
SIERRA AUTO/CARQUEST	292293	12/03/2021	20 LB CO2	600-7003-44607	26.00

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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
SIERRA AUTO/CARQUEST	292293	12/03/2021	CO2 CYLINDER	600-7003-44607	250.00
SIERRA AUTO/CARQUEST	292496	12/03/2021	AIR FILTER	600-7003-44607	24.44
SIERRA AUTO/CARQUEST	292496	12/03/2021	OIL FILTER LD	600-7003-44607	8.98
SIERRA AUTO/CARQUEST	292634	12/03/2021	OXYGEN	600-7003-44607	34.50
SIERRA AUTO/CARQUEST	292634	12/03/2021	122 OXYGEN	600-7003-44607	22.00
SIERRA AUTO/CARQUEST	292744	12/03/2021	12V COMMERCIAL BATTERY	600-7003-44607	263.40
SIERRA AUTO/CARQUEST	292744	12/03/2021	BATTERY SILVER	600-7003-44607	264.40
SIERRA AUTO/CARQUEST	292744	12/03/2021	DEWALT PADDLESWITCH GRIN...	600-7003-44607	139.99
SIERRA AUTO/CARQUEST	292745	12/03/2021	BRAKE MASTER CYLINDER	600-7003-47420	61.66
SIERRA AUTO/CARQUEST	292797/292798	12/03/2021	RUST GLOSS SPRAY PAINT BLACK	600-7003-44607	30.84
SIERRA AUTO/CARQUEST	292797/292798	12/03/2021	AIR FILTER	600-7003-44607	9.98
SIERRA AUTO/CARQUEST	292797/292798	12/03/2021	SAND PAPER 320A	600-7003-44607	12.40
SIERRA AUTO/CARQUEST	292797/292798	12/03/2021	TUNEUP/ BRK BLEED KIT	600-7003-44607	57.93
SIERRA AUTO/CARQUEST	292875	12/03/2021	HEX BOLTS SCRWCP GR8 1/4" X...	600-7003-44607	0.81
SIERRA AUTO/CARQUEST	292875	12/03/2021	FLAT WASHER 1/4"	600-7003-44607	1.62
SIERRA AUTO/CARQUEST	292875	12/03/2021	LOCK NUT	600-7003-44607	10.80
SIERRA AUTO/CARQUEST	292875	12/03/2021	HEX BOLT SCRWCP GR5 1/4"X1 ...	600-7003-44607	5.04
SIERRA AUTO/CARQUEST	292937	12/03/2021	BOLT GR8 1/2-13X6	600-7003-44607	11.70
SIERRA AUTO/CARQUEST	292937	12/03/2021	BOLT GR8 1/2-13X5	600-7003-44607	7.38
SIERRA AUTO/CARQUEST	292968	12/03/2021	PROPANE BOTTLES	600-7003-44607	13.98
SIERRA AUTO/CARQUEST	292968	12/03/2021	OIL FILTER LD	600-7003-44607	8.46
SIERRA AUTO/CARQUEST	293066	12/03/2021	SEAL PULLER	600-7003-44607	12.68
SIERRA AUTO/CARQUEST	6016-291850	12/03/2021	CLEVIS	600-7003-44607	51.98
SIERRA AUTO/CARQUEST	6016-291850	12/03/2021	SOCKET SET	600-7003-44607	43.99
SIERRA AUTO/CARQUEST	6016-291850	12/03/2021	TORQUE SOCKET SET 3/8 DR TP...	600-7003-44607	17.16
SIERRA AUTO/CARQUEST	6016-291850	12/03/2021	INTERIOR DOOR HANDLE	600-7003-44607	17.15
BORDER INTERNATIONAL TRUC...	X400070486.01	12/16/2021	L/O FLTR, FILTER-LUBE OIL FILT...	600-7003-44607	23.94
SUN VALLEY, INC.	11574	12/17/2021	DISCOUNT	600-7003-44607	-1.31
SUN VALLEY, INC.	11574	12/17/2021	DUPLICATE KEYS FOR PADLOCKS	600-7003-44607	11.13
SUN VALLEY, INC.	11574	12/17/2021	1 3/4" PADLOCK	600-7003-44607	14.99
SUN VALLEY, INC.	11574	12/17/2021	PB TYLO COMBO LOCKS	600-7003-44607	43.99
SUN VALLEY, INC.	160973/6	12/17/2021	DISCOUNT	600-7003-44607	-1.45
SUN VALLEY, INC.	160973/6	12/17/2021	1 1/2" PADLOCK (4PK)	600-7003-44607	28.99
SUN VALLEY, INC.	160996/6	12/17/2021	US BANNER/POLE W/ BRACKET	600-7003-44607	38.99
SUN VALLEY, INC.	160996/6	12/17/2021	DISCOUNT	600-7003-44607	-1.95
SUN VALLEY, INC.	161224/6	12/17/2021	DISCOUNT	600-7003-44607	-0.40
SUN VALLEY, INC.	161224/6	12/17/2021	HEX BOLTS 1/4" X 1 1/2"	600-7003-44607	6.21
SUN VALLEY, INC.	161224/6	12/17/2021	PUMICE STICKS	600-7003-44607	7.98
WEX BANK	76431017	12/17/2021	GAS & OIL FY 2021-2022 (OPEN)	600-7003-43316	309.40
STAPLES CONTRACT & COMME...	8064576864	12/17/2021	STENO PADS 6" X 9" 12 PK	600-7003-44606	15.00
STAPLES CONTRACT & COMME...	8064576864	12/17/2021	2" 3-RING BINDERS 6PK	600-7003-44606	23.62
GRAINGER, INC.	9126809814	12/17/2021	VEHICLE INSP REPORT PK 10	600-7003-44607	7.18
GRAINGER, INC.	9126809814	12/17/2021	VEHICLE INSP DECAL PK 10	600-7003-44607	7.02
GRAINGER, INC.	9130389050	12/17/2021	PERM PAINT MARKER PK	600-7003-44607	25.57
BUD'S SMALL ENGINE REPAIR	00122321	12/29/2021	WATER PUMP	600-7003-47420	613.39
BUD'S SMALL ENGINE REPAIR	00122321	12/29/2021	LABOR	600-7003-47420	54.09
RELADYNE CONSERVANCY OIL ...	0050029-IN	12/29/2021	FUEL SURCHARGE	600-7003-43316	1.50
RELADYNE CONSERVANCY OIL ...	0050029-IN	12/29/2021	UNIVERSAL TRACTOR HYDRAUL...	600-7003-43316	1,119.95
BUD'S SMALL ENGINE REPAIR	0122321	12/29/2021	LABOR/LABOR TAX	600-7003-47420	162.28
BUD'S SMALL ENGINE REPAIR	0122321	12/29/2021	REPAIR FOR SERVICE CENTER P...	600-7003-47420	184.96
XEROX CORP.	015084839	12/29/2021	XEROX RENTAL / OPEN PO 21/22	600-7003-43465	118.14
BUD'S SMALL ENGINE REPAIR	122321	12/29/2021	GFCI BREAKER SWITCH	600-7003-44607	360.16
BUD'S SMALL ENGINE REPAIR	122321	12/29/2021	LABOR	600-7003-44607	108.19
BUD'S SMALL ENGINE REPAIR	122321	12/29/2021	MOTOR	600-7003-44607	649.96
FOXWORTH-GALBRAITH	601904	12/29/2021	PUMICE SCOUR STICK HD	600-7003-44607	11.16
FOXWORTH-GALBRAITH	601904	12/29/2021	BROOM ANGLE HD	600-7003-44607	12.99
FOXWORTH-GALBRAITH	601904	12/29/2021	5 GAL BUCKETS PAINT F-G	600-7003-44607	19.56
FOXWORTH-GALBRAITH	601904	12/29/2021	5 GAL LIDS	600-7003-44607	11.16

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Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
BANK OF AMERICA	REF00000337	12/29/2021	RETURN MAILING LABEL FOR G...	600-7003-44606	20.18
Fund 600 - Internal Serv Total:					5,997.26
Grand Total:					985,646.00

## Report Summary

## Fund Summary

Fund	Payment Amount
101 - General	155,203.92
201 - Corrections	4,670.00
209 - Fire	18,568.45
211 - Law Enforce Prot	160.47
214 - Lodgers Tax	8,323.77
216 - Muni Street	120,605.02
294 - State Library	3,128.64
295 - Muni Pool	3,742.75
296 - PD GRT	22,357.72
298 - PD Donations	3,753.16
303 - Vet Wall	305.55
307 - Golf Course Improv	764.00
315 - CI Reserve	57,155.19
320 - USDA WATER SYSTEM IMPROVEMENTS	11,215.85
360 - NMFA PROJECTS	21,222.11
403 - Pledge State	29,104.93
501 - Cemetary	380.79
502 - Util Office - Pool	9,719.26
503 - Electric	353,929.26
504 - Water	25,379.43
505 - Solid Waste	89,103.18
506 - WWTP	21,280.78
508 - Golf Course	8,036.97
509 - Muni Airport	11,537.54
600 - Internal Serv	5,997.26
<b>Grand Total:</b>	<b>985,646.00</b>

## Account Summary

Account Number	Account Name	Payment Amount
101-1000-43597	ATTORNEY FEES-GOVERN...	7,341.50
101-1001-41226	RETIREE INSURANCE	453.60
101-1001-43465	RENT OF EQUIPMENT	969.96
101-1001-43740	PRINTING/PUBLISHING	201.12
101-1001-43775	TELEPHONE	554.58
101-1001-44606	OFFICE SUPPLIES	840.00
101-1002-41226	RETIREE INSURANCE	243.21
101-1002-43770	SUBSCRIPTION & DUES	355.89
101-1002-43775	TELEPHONE	369.66
101-1002-44606	OFFICE SUPPLIES	582.38
101-1003-41226	RETIREE INSURANCE	664.98
101-1003-43465	RENT OF EQUIPMENT	594.96
101-1003-43775	TELEPHONE	702.53
101-1003-43815	SOFTWARE	232.00
101-1003-44606	OFFICE SUPPLIES	2,034.16
101-1004-41226	RETIREE INSURANCE	716.22
101-1004-42720	EMPLOYEE TRAINING-AD...	560.00
101-1004-43465	RENT OF EQUIPMENT	1,149.88
101-1004-43740	PRINTING/PUBLISHING	484.66
101-1004-43775	TELEPHONE	498.48
101-1004-44606	OFFICE SUPPLIES	1,813.47
101-1004-48599	OTHER CONTRACTUAL SE...	1,096.25
101-1006-41226	RETIREE INSURANCE	320.40
101-1006-43775	TELEPHONE	219.50
101-1006-44606	OFFICE SUPPLIES	34.07
101-1006-44607	FIELD SUPPLIES	1,529.75
101-1006-44613	NON-CAPITAL ITEMS	375.00
101-1006-48598	PROFESSIONAL SERVICES	1,474.04



## Account Summary

Account Number	Account Name	Payment Amount
101-1006-48599	OTHER CONTRACTUAL SE...	517.40
101-1007-41226	RETIREE INSURANCE	2,513.23
101-1007-43316	GAS & OIL	5,105.10
101-1007-43465	RENT OF EQUIPMENT	585.09
101-1007-43775	TELEPHONE	2,396.78
101-1007-43815	SOFTWARE	120.00
101-1007-44606	OFFICE SUPPLIES	117.95
101-1007-44607	FIELD SUPPLIES	10.74
101-1007-47420	MAINTENANCE VEHICLE/...	769.02
101-1007-48598	PROFESSIONAL SERVICES	391.28
101-1008-41226	RETIREE INSURANCE	306.00
101-1008-42620	UNIFORMS LINEN-CODE ...	192.90
101-1008-42720	EMPLOYEE TRAINING-CO...	97.00
101-1008-43316	GAS & OIL	706.46
101-1008-43775	TELEPHONE	477.56
101-1008-44606	OFFICE SUPPLIES	195.00
101-1008-47420	MAINTENANCE VEH/EQUI...	20.00
101-1009-41226	RETIREE INSURANCE	321.18
101-1009-43316	GAS & OIL	1,089.84
101-1009-43465	RENT OF EQUIPMENT	2,072.90
101-1009-43775	TELEPHONE	404.30
101-1009-44607	FIELD SUPPLIES-MUNI RE...	9,181.70
101-1009-47415	MAINTENANCE--REPAIRS ...	1,062.75
101-1009-47420	MAINTENANCE VEHICLE/...	583.07
101-1010-41226	RETIREE INSURANCE	194.40
101-1010-43775	TELEPHONE	186.64
101-1010-48598	PROFESSIONAL SERVICES	10,545.12
101-1011-41226	RETIREE INSURANCE	780.69
101-1011-43775	TELEPHONE	139.48
101-1012-41226	RETIREE INSURANCE	338.40
101-1012-43775	TELEPHONE	171.36
101-1012-44607	FIELD SUPPLIES-FLEET MA...	130.62
101-1012-44613	NON-CAPITAL ITEMS	754.98
101-1012-80845	CAPITAL IMPROVEMENTS	11,496.00
101-1013-41226	RETIREE INSURANCE	231.91
101-1013-43316	GAS & OIL	243.42
101-1014-41226	RETIREE INSURANCE	572.40
101-1014-43316	GAS & OIL	464.37
101-1014-43403	REGULAR BUILDING MAI...	1,742.19
101-1014-43775	TELEPHONE	237.14
101-1014-44607	FIELD SUPPLIES-FACILITY ...	1,006.94
101-1014-47410	MAINTENANCE CONTRAC...	53.94
101-1016-41226	RETIREE INSURANCE	542.21
101-1016-44830	CITY BOOK PURCHASING-L...	853.33
101-1017-48599	OTHER CONTRACTUAL SE...	48,758.61
101-1018-43770	SUBSCRIPTIONS AND DUES	211.21
101-1018-43780	UTILITIES	17,693.59
101-1018-43815	SOFTWARE LIC/SOFTWAR...	723.71
101-1018-48598	PROFESSIONAL SERVICES	984.84
101-1040-43465	RENT OF EQUIPMENT	496.92
201-1903-44805	AUTO/LAB/DWI/JUD ED	270.00
201-1903-48710	CARE OF PRISONERS-COR...	4,400.00
209-1603-43316	GAS & OIL	281.55
209-1603-43465	RENT OF EQUIPMENT	526.87
209-1603-43770	SUBSCRIPTION & DUES	232.87
209-1603-43775	TELEPHONE	669.77
209-1603-43780	UTILITIES	742.18
209-1603-44613	NON-CAPITAL ITEMS	1,766.25

## Account Summary

Account Number	Account Name	Payment Amount
209-1603-47405	MAINTENANCE-BUILDING...	6,938.55
209-1603-47415	MAINTENANCE--REPAIRS ...	792.06
209-1603-47420	MAINTENANCE VEHICLE/...	6,618.35
211-2003-42535	EMPLOYEE TRAINING	160.47
214-2503-47406	PROMOTIONAL/ADVERTIS...	4,789.62
214-2503-47597	9% ADVERTISING/MARKET..	1,649.84
214-2503-48599	OTHER CONTRACTUAL SE...	416.66
214-2503-60596	STATE ADVERTISING GRA...	1,467.65
216-4503-42620	UNIFORM LINEN-MUNI S...	737.00
216-4503-42720	EMPLOYEE TRAINING-M...	200.00
216-4503-43316	GAS & OIL	2,165.25
216-4503-43550	ROADWAY MAINTENANCE	113,834.55
216-4503-44615	SAFETY EQUIPMENT	1,069.92
216-4503-47420	MAINT.VEHICLE/FURN/E...	1,799.17
216-4503-48599	OTHER CONTRACTUAL SE...	799.13
294-5003-43465	RENT OF EQUIPMENT	68.95
294-5003-43775	TELEPHONE	334.08
294-5003-60834	STATE LIBRARY GRANT-ST...	2,725.61
295-4803-41226	RETIREE INSURANCE	126.50
295-4803-43465	RENT OF EQUIPMENT	65.84
295-4803-43775	TELEPHONE	57.12
295-4803-43780	UTILITIES-MUNI POOL	3,493.29
296-2403-42720	EMPLOYEE TRAINING	1,200.00
296-2403-44613	NON-CAPITAL ITEMS	2,754.00
296-2403-44615	SAFETY EQUIPMENT	900.44
296-2403-80810	OTHER CAPITAL EQUIPM...	17,503.28
298-2103-45607	MISC. EXPENSES	3,753.16
303-4703-43775	TELEPHONE	305.55
307-6203-44613	NON CAPITAL ITEMS	764.00
315-8005-43403	REGULAR BUILDING MAI...	57,155.19
320-6603-80860	INFRASTRUCTURE	11,215.85
360-7000-48598	PROFESSIONAL SERVICES	21,222.11
403-1203-12918	CWPA TORC 18 OPERATI...	690.58
403-1203-12919	CWPA TORC 19 OPERATI...	7,598.76
403-1203-12967	PPRF-4967 OPERATING	10,545.59
403-1203-90910	DEBT SERVICE INTEREST	10,270.00
501-1803-43780	UTILITIES	380.79
502-3601-41226	RETIREE INSURANCE	828.01
502-3601-43316	GAS & OIL	410.05
502-3601-43465	RENT OF EQUIPMENT	6,661.21
502-3601-43775	TELEPHONE	381.18
502-3601-43780	UTILITIES	282.86
502-3601-43815	SOFTWARE LIC/SOFTWAR...	375.00
502-3601-44606	OFFICE SUPPLIES	520.44
502-3601-44607	FIELD SUPPLIES	222.20
502-3601-47420	MAINTENANCE-VEHICLE/...	38.31
503-3702-41226	RETIREE INSURANCE	1,463.40
503-3702-43316	GAS & OIL	3,160.14
503-3702-43465	RENT OF EQUIPMENT	265.01
503-3702-43770	SUBSCRIPTION & DUES	950.00
503-3702-43775	TELEPHONE	434.60
503-3702-43780	UTILITIES	6,506.83
503-3702-43815	SOFTWARE LIC/SOFTWAR...	723.71
503-3702-44606	OFFICE SUPPLIES	466.52
503-3702-44607	FIELD SUPPLIES	64,120.23
503-3702-44615	SAFETY EQUIPMENT	217.00
503-3702-45796	FRANCHISE TAX-ELECTRIC...	4,571.47
503-3702-47420	MAINTENANCE-VEHICLE/...	1,112.06

## Account Summary

Account Number	Account Name	Payment Amount
503-3702-48598	PROFESSIONAL SERVICES	6,805.93
503-3702-50795	WHOLESALE POWER COS...	261,504.86
503-3702-80846	LAND ACQUISITION AND ...	1,627.50
504-3803-41226	RETIREE INSURANCE	504.96
504-3803-42620	UNIFORM/LINEN-WATER ...	450.00
504-3803-43316	GAS & OIL	2,205.50
504-3803-43465	RENT OF EQUIPMENT	429.02
504-3803-43775	TELEPHONE	139.48
504-3803-43780	UTILITIES	12,629.09
504-3803-43797	WATER CONSERVATION-...	978.69
504-3803-43815	SOFTWARE LIC/SOFTWAR...	723.70
504-3803-44607	FIELD SUPPLIES-WATER D...	2,776.88
504-3803-44615	SAFETY EQUIPMENT	737.08
504-3803-45796	FRANCHISE TAX-WATER D...	1,078.06
504-3803-47420	MAINTENANCE-VEHICLE/...	575.12
504-3803-47421	MAINTENANCE EQUIPME...	516.00
504-3803-48598	PROFESSIONAL SERVICES	1,635.85
505-3904-41226	RETIREE INSURANCE	1,378.80
505-3904-43316	GAS & OIL	4,785.56
505-3904-43465	RENT OF EQUIPMENT	313.79
505-3904-43775	TELEPHONE	331.12
505-3904-43780	UTILITIES	1,266.16
505-3904-43815	SOFTWARE LIC/SOFTWAR...	1,023.70
505-3904-44607	FIELD SUPPLIES-SOLID WA...	3,839.96
505-3904-44615	SAFETY EQUIPMENT	390.00
505-3904-45601	WASTE DISPOSAL	59,383.95
505-3904-45796	FRANCHISE TAX	1,492.73
505-3904-47420	MAINTENANCE-VEHICLE/...	12,386.09
505-3904-48598	PROFESSIONAL SERVICES	984.85
505-3904-48599	OTHER CONTRACTUAL SE...	1,526.47
506-4005-41226	RETIREE INSURANCE	732.41
506-4005-43316	GAS & OIL	1,866.44
506-4005-43770	SUBSCRIPTION & DUES	1,366.00
506-4005-43775	TELEPHONE	720.49
506-4005-43780	UTILITIES	2,591.96
506-4005-43815	SOFTWARE LIC/SOFTWAR...	723.70
506-4005-44605	CHEMICALS/LABORATORY...	1,038.03
506-4005-44607	FIELD SUPPLIES-WASTEWA...	3,137.72
506-4005-47420	MAINTENANCE-VEHICLE/...	601.59
506-4005-48598	PROFESSIONAL SERVICES	4,383.57
506-4005-48798	VILLAGE OF WILLIAMSBU...	4,118.87
508-4303-41226	RETIREE INSURANCE	255.60
508-4303-43465	RENT OF EQUIPMENT	2,135.90
508-4303-43775	TELEPHONE	760.78
508-4303-43780	UTILITIES	2,072.32
508-4303-44606	OFFICE SUPPLIES	43.18
508-4303-44607	FIELD SUPPLIES	2,743.51
508-4303-47420	MAINTENANCE VEHICLE/...	25.68
509-4403-34318	JET FUEL-AIRPORT	360.00
509-4403-41226	RETIREE INSURANCE	182.52
509-4403-43316	GAS & OIL	208.49
509-4403-43465	RENT OF EQUIPMENT	82.96
509-4403-43775	TELEPHONE	876.48
509-4403-43780	UTILITIES	963.71
509-4403-44607	FIELD SUPPLIES	1,152.48
509-4403-46732	GENERAL LIABILITY INSUR...	3,650.00
509-4403-47420	MAINTENANCE VEH/EQUI...	263.40
509-4403-48598	PROFESSIONAL SERVICES	3,797.50

Account Summary

Account Number	Account Name	Payment Amount
600-7003-43316	GAS & OIL	1,430.85
600-7003-43465	RENT OF EQUIPMENT	236.28
600-7003-44606	OFFICE SUPPLIES	58.80
600-7003-44607	FIELD SUPPLIES	3,185.46
600-7003-47420	MAINTENANCE-VEHICLE/...	1,085.87
Grand Total:		985,646.00

Project Account Summary

Project Account Key	Payment Amount
**None**	985,646.00
Grand Total:	985,646.00



## City of Truth or Consequences

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

Agenda Item #: G.1

**SUBJECT:** Public Hearing and Final Adoption of Ordinance No. 723 authorizing the execution and delivery of loan No. PPRF-5652, between the City of Truth or Consequences and the New Mexico Finance Authority for the purpose of purchasing a new electrical transformer.

**DEPARTMENT:** City Manager

**DATE SUBMITTED:** January 7, 2022

**SUBMITTED BY:** City Manager Swingle

**WHO WILL PRESENT THE ITEM:** City Manager Swingle

**Summary/Background:**

This proposed Ordinance is for the execution and delivery of a loan between the City of Truth or Consequences and the New Mexico Finance Authority for the purpose of purchasing a new electrical transformer. Publication of Ordinance No. 723 was approved at the December 15, 2021 City Commission Meeting. Now the final step is a public hearing and final adoption.

**Recommendation:**

Adoption of Ordinance No. 723

**Attachments:**

- Proposed Ordinance No. 723

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

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

**Approved For Submittal By:** ☒ Department Director

**Reviewed by:** ☒ City Clerk ☒ Finance ☒ Legal ☐ Other: -

**Final Approval:** ☒ City Manager

#### CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. . Ordinance No. 723

Continued To: . Referred To: .

☐ Approved ☐ Denied ☐ Other: .

File Name: CC Agenda 1-12-2022

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

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

On behalf of the City of Truth or Consequences, New Mexico (the “Governmental Unit”), and in connection with the Loan Agreement dated February 18, 2022 (the “Loan Agreement”), relating to the financing the cost of purchasing a new electrical transformer for use by the Governmental Unit (the “Project”) as described in the Loan Agreement, and evidencing the Governmental Unit’s obligation in the aggregate principal amount of \$1,320,907, the Governmental Unit hereby certifies as follows:

Capitalized terms used in this Certificate have the same meanings as defined in Ordinance No. 723 adopted on January 12, 2022, unless otherwise defined in this Certificate or the context requires otherwise.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. Economic Life of Project. The weighted average maturity of 5.7156 years of the Loan Agreement does not exceed 120% of the reasonably expected economic life of the Project, which is fifty (50) years.

19. Qualified Tax-Exempt Obligations. The Loan Agreement is a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code. The Governmental Unit represents that the reasonably anticipated amount of qualified tax-exempt obligations which will be issued by the Governmental Unit during the current calendar year does not exceed \$10,000,000 and the Governmental Unit will not designate more than \$10,000,000 of “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. For purposes of this Section, “aggregated issuer” means any entity which: (i) issues obligations on behalf of the Governmental Unit; (ii) derives its issuing authority from the Governmental Unit; or (iii) is controlled directly or indirectly by the Governmental Unit within the meaning of Treasury Regulation Section 1.150-1(e).

20. Rebate Exception. The Governmental Unit is a governmental unit with general taxing powers, no part of the Loan Agreement is a private activity bond, ninety-five percent (95%) or more of the proceeds are to be used for local governmental activities of the Governmental Unit and, the aggregate face amount of all tax-exempt obligations issued by the Governmental Unit during the current calendar year is not reasonably expected to exceed \$5,000,000. There are no subordinate entities of the Governmental Unit which are authorized to issue tax-exempt obligations. If the Governmental Unit fails to satisfy all of the provisions of this paragraph 20 for any reason, as provided in the Loan Agreement and consistent with the covenants of the Governmental Unit contained therein, any rebate owed to the United States Treasury will be paid in the amounts and at the times provided in Section 148 of the Code.

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

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

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

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

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

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

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

[Signature page follows]

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

Dated: February 18, 2022.

CITY OF TRUTH OR CONSEQUENCES,  
NEW MEXICO

[SEAL]

By \_\_\_\_\_  
Amanda Forrister, Mayor Pro Tem

By \_\_\_\_\_  
Bruce Swingle, City Manager

By \_\_\_\_\_  
Carol Kirkpatrick, Finance Director

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## **EXHIBIT "B"**

### **NEW MEXICO FINANCE AUTHORITY TAX REPRESENTATIONS CERTIFICATE**

The undersigned hereby certifies as follows with respect to the \$1,320,907 Loan Agreement dated February 18, 2022 (the "Loan") from the New Mexico Finance Authority (the "Finance Authority") to the City of Truth or Consequences, New Mexico (the "Governmental Unit");

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

2. The Arbitrage Yield on the Loan, calculated in accordance with the applicable U.S. Treasury Regulations from interest to be paid on the Loan, is 0.7370%.

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

4. The Weighted Average Maturity of the Loan, calculated in accordance with the applicable U.S. Treasury Regulations, is 5.7156 years.

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

Dated this February 18, 2022.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
Marquita D. Russel, Chief Executive Officer

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

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

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

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

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

Governmental Unit's Account in the Program Fund:	\$1,188,816.00
-----------------------------------------------------	----------------

Deposit to Loan Agreement Reserve Account:	\$ 132,090.70
-----------------------------------------------	---------------

Deposit to Finance Authority Debt Service Account:	\$ _____ .30
-------------------------------------------------------	--------------

Total:	\$1,320,907.00
--------	----------------

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

WITNESS our hands this February 18, 2022.

CITY OF TRUTH OR CONSEQUENCES,  
NEW MEXICO

[SEAL]

By \_\_\_\_\_  
Amanda Forrister, Mayor Pro Tem

By \_\_\_\_\_  
Bruce Swingle, City Manager

By \_\_\_\_\_  
Carol Kirkpatrick, Finance Director

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

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
Marquita D. Russel, Chief Executive Officer

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Form **8038-G**

(Rev. October 2021)

Department of the Treasury  
Internal Revenue Service**Information Return for Tax-Exempt Governmental Bonds**

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

► Go to [www.irs.gov/F8038G](http://www.irs.gov/F8038G) for instructions and the latest information.

OMB No. 1545-0047

Part I Reporting Authority		Check box if Amended Return <input type="checkbox"/>				
1 Issuer's name		2 Issuer's employer identification number (EIN)				
Truth or Consequences, New Mexico		85-6000144				
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a				
4 Number and street (or P.O. box if mail is not delivered to street address)		Room/suite	5 Report number (For IRS Use Only)			
401 McAdoo Street			3			
6 City, town, or post office, state, and ZIP code		7 Date of issue				
Truth or Consequences, New Mexico 87901		02/18/2022				
8 Name of issue		9 CUSIP number				
New Mexico Finance Authority 2022 Equipment Loan						
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information		10b Telephone number of officer or other employee shown on 10a				
Bruce Swingle, City Manager		575-894-6673				
Part II Type of Issue (Enter the issue price.) See the instructions and attach schedule.						
11	Education . . . . .	11				
12	Health and hospital . . . . .	12				
13	Transportation . . . . .	13				
14	Public safety . . . . .	14				
15	Environment (including sewage bonds) . . . . .	15				
16	Housing . . . . .	16				
17	Utilities . . . . .	17	1,320,907.00			
18	Other. Describe ►	18				
19a	If bonds are TANs or RANs, check only box 19a . . . . . <input type="checkbox"/>					
b	If bonds are BANs, check only box 19b . . . . . <input type="checkbox"/>					
20	If bonds are in the form of a lease or installment sale, check box . . . . . <input type="checkbox"/>					
Part III Description of Bonds. Complete for the entire issue for which this form is being filed.						
	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield	
21	05/01/2031	\$ 1,320,907	\$ 1,320,907	5.7156 years	0.7370 %	
Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)						
22	Proceeds used for accrued interest . . . . .				22	
23	Issue price of entire issue (enter amount from line 21, column (b)) . . . . .				23	1,320,907.00
24	Proceeds used for bond issuance costs (including underwriters' discount) . . . . .				24	
25	Proceeds used for credit enhancement . . . . .				25	
26	Proceeds allocated to reasonably required reserve or replacement fund . . . . .				26	132,090.70
27	Proceeds used to refund prior tax-exempt bonds. Complete Part V . . . . .				27	
28	Proceeds used to refund prior taxable bonds. Complete Part V . . . . .				28	
29	Total (add lines 24 through 28) . . . . .				29	132,090.70
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) . . . . .				30	1,188,816.30
Part V Description of Refunded Bonds. Complete this part only for refunding bonds.						
31	Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded . . . . .					years
32	Enter the remaining weighted average maturity of the taxable bonds to be refunded . . . . .					years
33	Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY) . . . . .					
34	Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)					

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

Form **8038-G** (Rev. 10-2021)

**Part VI Miscellaneous**

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

**Signature and Consent**

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

Signature of issuer's authorized representative \_\_\_\_\_ Date \_\_\_\_\_ **Amanda Forrister, Mayor Pro Tem**  
Type or print name and title

**Paid Preparer Use Only**

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

Mayor Pro Tem:	Amanda Forrister
Commissioners:	Destiny Mitchell Shelly Harrelson Merry Jo Fahl Rolf Hechler
City Manager:	Bruce Swingle
Finance Director:	Carol Kirkpatrick
City Attorney:	Jay F. Rubin, Esq.
City Clerk:	Angela Torres



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

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

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

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

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

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

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

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

11. None of the following does or will conflict with, or constitute a breach by the Governmental Unit of, or default by the Governmental Unit under any law, court decree or order,

governmental regulation, rule or order, resolution, agreement, indenture, mortgage or other instrument to which the Governmental Unit is subject or by which it is bound:

- A. The Governmental Unit's adoption of the Ordinance; or
- B. Any action contemplated by or pursuant to the Ordinance, the Loan Agreement, or the Intercept Agreement.

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

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

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

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

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

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

18. The Governmental Unit is not in default, and has not been in default within the ten (10) years immediately preceding the date of this Certificate, in the payment of principal of, premium, if any, or interest on any bonds, notes or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, if any, or interest except that no representation is made with respect to industrial revenue bonds or conduit bonds payable solely from installment sale or lease payments, loan repayments or other amounts received by the Governmental Unit from private entities.

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

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

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

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

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

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

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

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

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

[Signature page follows]

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WITNESS our hands and the seal of the Governmental Unit this 18<sup>th</sup> day of February, 2022.

CITY OF TRUTH OR CONSEQUENCES,  
NEW MEXICO

[SEAL]

By \_\_\_\_\_  
Amanda Forrister, Mayor Pro Tem

By \_\_\_\_\_  
Bruce Swingle, City Manager

By \_\_\_\_\_  
Carol Kirkpatrick, Finance Director

APPROVED:

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

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

Mayor Pro Tem:	Amanda Forrister
Commissioners:	Destiny Mitchell Shelly Harrelson Merry Jo Fahl Rolf Hechler
City Manager:	Bruce Swingle
Finance Director:	Carol Kirkpatrick
City Attorney:	Jay F. Rubin, Esq.
City Clerk:	Angela Torres



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

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

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

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

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

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

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

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

11. None of the following does or will conflict with, or constitute a breach by the Governmental Unit of, or default by the Governmental Unit under any law, court decree or order,

governmental regulation, rule or order, resolution, agreement, indenture, mortgage or other instrument to which the Governmental Unit is subject or by which it is bound:

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

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

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

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

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

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

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

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

18. The Governmental Unit is not in default, and has not been in default within the ten (10) years immediately preceding the date of this Certificate, in the payment of principal of, premium, if any, or interest on any bonds, notes or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, if any, or interest except that no representation is made with respect to industrial revenue bonds or conduit bonds payable solely from installment sale or lease payments, loan repayments or other amounts received by the Governmental Unit from private entities.

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

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

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

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

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

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

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

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

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

[Signature page follows]

6124212.docx

WITNESS our hands and the seal of the Governmental Unit this 18<sup>th</sup> day of February, 2022.

CITY OF TRUTH OR CONSEQUENCES,  
NEW MEXICO

[SEAL]

By \_\_\_\_\_  
Amanda Forrister, Mayor Pro Tem

By \_\_\_\_\_  
Bruce Swingle, City Manager

By \_\_\_\_\_  
Carol Kirkpatrick, Finance Director

APPROVED:

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

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

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

The City Commission (the "Governing Body") of the City of Truth or Consequences, New Mexico, met in regular session in full conformity with the law and the rules and regulations of the Governing Body at the City Commission Chambers at 405 W. 3<sup>rd</sup> Street, Truth or Consequences, New Mexico 87901, being the meeting place of the Governing Body for the regular meeting held on January 12, 2022, at the hour of 9:00 a.m. Upon roll call, the following members were found to be present:

Present:

---

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---

Absent:

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---

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Also Present:

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



CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO  
ORDINANCE NO. 723

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), IN THE PRINCIPAL AMOUNT OF UP TO \$1,320,907 FOR THE PURPOSE OF FINANCING THE COSTS OF PURCHASING A NEW ELECTRICAL TRANSFORMER FOR THE GOVERNMENTAL UNIT'S SUBSTATION, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY THE PRINCIPAL AMOUNT OF UP TO \$1,320,907, TOGETHER WITH INTEREST THEREON; AND FUNDING A LOAN AGREEMENT RESERVE ACCOUNT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE NET SYSTEM REVENUES OF THE JOINT WATER, ELECTRIC AND SEWER UTILITY OF THE GOVERNMENTAL UNIT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT.

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

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing municipality under the general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and its residents that the Loan Agreement be executed and delivered and that the financing of the Project take place by executing and delivering the Loan Agreement; and

WHEREAS, the Governing Body has determined pursuant to the Act that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement; and

WHEREAS, other than as described in Exhibit "A" to the Loan Agreement, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose to secure the payment of any obligation, which is currently outstanding; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues, and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the full faith and credit of the Governmental Unit or the State; and

WHEREAS, other than the Pledged Revenues, no tax revenues collected by the Governmental Unit shall be pledged to the Loan Agreement; and

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

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance and the form of the Loan Agreement, which is incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Governing Body intends by this Ordinance to authorize the execution and delivery of the Loan Agreement in the amount and for the purposes set forth herein; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority (or its assigns) for the payment of the amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

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

Section 1. Definitions. As used in this Ordinance, the following capitalized terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

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

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

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

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority and specifically related to the Loan Agreement and the Loan Agreement Payments.

“Closing Date” means the date of execution, delivery and funding of the Loan Agreement.

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

“Completion Date” means the date of final payment of the cost of the Project.

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

“Finance Authority” means the New Mexico Finance Authority.

“Finance Authority Debt Service Account” means the debt service account in the name of the Governmental Unit and held by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

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

“Governing Body” means the City Commission of the Governmental Unit, or any future successor governing body of the Governmental Unit.

“Governmental Unit” means the City of Truth or Consequences, New Mexico.

“Gross Revenues” means all income and revenues directly or indirectly derived by the Governmental Unit from the operation and use of the System, or any part of the System, and includes, without limitation, all revenues received by the Governmental Unit, or any municipal corporation or agency succeeding to the rights of the Governmental Unit, from the System.

Gross Revenues do not include:

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

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

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

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to this entire Ordinance and not solely to the particular section or paragraph of this Ordinance in which such word is used.

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

"Loan" means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

"Loan Agreement" means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee.

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

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

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

"NMSA" means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

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

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

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

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

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

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

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

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

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

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

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

"Ordinance" means this Ordinance No. 723 adopted by the Governing Body on January 12, 2022, approving the Loan Agreement, as amended from time to time.

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

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

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

"Project" means the project described in the Term Sheet.

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

“State” means the State of New Mexico.

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

“Term Sheet” means Exhibit “A” to the Loan Agreement.

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

Section 2. Ratification. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the completion of the Project and the execution and delivery of the Loan Agreement, be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Project and the Loan Agreement. The completion of the Project and the method of financing the Project through execution and delivery of the Loan Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Governmental Unit.

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

A. The Project is needed to meet the needs of the Governmental Unit and its residents and the issuance and delivery of the Loan Agreement is necessary and advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the costs of completing the Project.

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

D. It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

E. The Project and the execution and delivery of the Loan Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the



public health, safety and welfare of the residents of and the public served by the Governmental Unit.

F. The Governmental Unit will complete the Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in Exhibit "A" to the Loan Agreement, the Governmental Unit does not have any outstanding obligations payable from the Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement.

H. The net effective interest rate on the Loan does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Loan Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and completing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount of up to \$1,320,907, plus interest thereon, and the execution and delivery of the Loan Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the completion of the Project; (ii) fund the Loan Agreement Reserve Account; and (iii) make a deposit to the Finance Authority Debt Service Account. The Project will be owned by the Governmental Unit.

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

Section 6. Approval of Loan Agreement. The form of the Loan Agreement, as presented at the meeting of the Governing Body at which this Ordinance was adopted, are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement, with such changes, insertions and omissions as may be approved by such individual Authorized Officers, and the City Clerk is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and attest the same. The execution of the Loan Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance and the Loan Agreement

and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefore to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8.     Disposition of Proceeds: Completion of Acquisition of the Project.

A.     Program Account, Finance Authority Debt Service Account and Loan Agreement Reserve Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held by the Finance Authority and to the Program Account, and the Loan Agreement Reserve Account to be held by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves: (i) the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account; and (ii) the deposit of funds in the amount of the Loan Agreement Reserve Requirement in the Loan Agreement Reserve Account, all as set forth in Exhibit "A" to the Loan Agreement.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Program Account, Loan Agreement Reserve Account and Finance Authority Debt Service Account shall be paid to the Finance Authority, all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the purpose of completing the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will complete the Project with all due diligence.

B.     Completion of Acquisition of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that completion of and payment for the Project have been completed. As soon as practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Debt Service Account, as provided in the Loan Agreement and the Indenture.

C. Finance Authority and Trustee Not Responsible. The Finance Authority and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues, Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. Pledged Revenues shall be paid directly by the Governmental Unit to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest, premium, if any, and other amounts due under the Loan Agreement.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amounts in the Finance Authority Debt Service Account and Loan Agreement Reserve Account total a sum at least equal to the entire aggregate amount to become due as to principal and interest on, and any other amounts due under, the Loan Agreement in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section and any payments required by outstanding Parity Obligations, any moneys remaining in the Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged to, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement, subject to the uses hereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues as set forth herein and therein and the Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance and the Loan Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the Loan Agreement, including but not limited to, the execution and delivery of closing documents

in connection with the execution and delivery of the Loan Agreement and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Ordinance may be supplemented or amended by Ordinance of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Ordinance Irrepealable. After the Loan Agreement has been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as herein provided.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. Repealer Clause. All bylaws, orders, and Ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, or Ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor Pro Tem and City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and said Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

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

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 723, duly adopted and approved by the Governing Body of the City of Truth or Consequences, New Mexico, on January 12, 2022. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the City Clerk, 401 McAdoo Street, Truth or Consequences, New Mexico 87901.

The title of the Ordinance is:

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO  
ORDINANCE NO. 723

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND BETWEEN THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), IN THE PRINCIPAL AMOUNT OF UP TO \$1,320,907 FOR THE PURPOSE OF FINANCING THE COSTS OF PURCHASING A NEW ELECTRICAL TRANSFORMER FOR THE GOVERNMENTAL UNIT'S SUBSTATION, EVIDENCING A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY THE PRINCIPAL AMOUNT OF UP TO \$1,320,907, TOGETHER WITH INTEREST THEREON; AND FUNDING A LOAN AGREEMENT RESERVE ACCOUNT; PROVIDING FOR THE PLEDGE AND PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE NET SYSTEM REVENUES OF THE JOINT WATER, ELECTRIC AND SEWER UTILITY OF THE GOVERNMENTAL UNIT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT.

A general summary of the subject matter of the Ordinance is contained in its title. This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

PASSED, APPROVED AND ADOPTED THIS 12<sup>TH</sup> DAY OF JANUARY, 2022.

CITY OF TRUTH OR CONSEQUENCES,  
NEW MEXICO

By \_\_\_\_\_  
Amanda Forrister, Mayor Pro Tem

ATTEST:

By \_\_\_\_\_  
Angela Torres, City Clerk

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

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

Those Voting Aye: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Those Voting Nay: \_\_\_\_\_

\_\_\_\_\_

Those Absent: \_\_\_\_\_

\_\_\_\_\_

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

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



MEXICO

CITY OF TRUTH OR CONSEQUENCES, NEW

By \_\_\_\_\_  
Amanda Forrister, Mayor Pro Tem

ATTEST:

By \_\_\_\_\_  
Angela Torres, City Clerk

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EXHIBIT "A"

Meeting Agenda  
of the January 12, 2022  
City Commission Meeting

(See attached)

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

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

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Commission of the Governmental Unit (the "Governing Body"), constituting the governing body of the Governmental Unit, had and taken at a duly called regular meeting held at the City Commission Chambers, at 405 W. 3<sup>rd</sup> Street, Truth or Consequences, New Mexico 87901, on January 12, 2022, at the hour of 9:00 a.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement, a copy of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand as of the 18<sup>th</sup> day of February, 2022.

CITY OF TRUTH OR CONSEQUENCES,  
NEW MEXICO

(SEAL)

By \_\_\_\_\_  
Angela Torres, City Clerk

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

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

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

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

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

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

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

WHEREAS the Governmental Unit is indebted to the United States Department of Agriculture in the amount of \$5,487,000, Loan No. 0985-CTC-03 (the “USDA Loan”) and the New Mexico Environmental Department in the amount of \$373,000, Loan No. CWSRF 098 (the “NMED Loan”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2011 Loan Agreement Debt Service Requirements**

Fiscal Year Ending	Total Payment
2022	\$8,287
2023	8,287

2024	8,287
2025	8,287
2026	8,287
2027	8,287
2028	8,287
2029	8,287
2030	8,287
2031	8,287
2032	8,288

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

**2012 Loan Agreement Debt Service Requirements**

Fiscal Year Ending	Total Payment
2022	\$91,185.16
2023	91,185.10
2024	91,184.54
2025	91,184.98
2026	91,184.76
2027	91,185.18
2028	91,185.04
2029	91,185.34
2030	91,18.56
2031	91,185.34
2032	91,18.94
2033	91,184.94

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

**May 2019 Loan Agreement Debt Service Requirements**

Fiscal Year Ending	Total Payment
2022	\$31,865.86
2023	31,866.46
2024	31,866.48
2025	31,866.32
2026	31,865.96
2027	31,866.42
2028	31,867.68
2029	31,867.76



2030	31,867.64
2031	31,866.32
2032	31,867.80
2033	31,866.10
2034	31,866.22
2035	31,866.12
2036	31,867.84
2037	31,867.36
2038	31,867.68
2039	31,867.80
2040	31,866.72
2041	31,866.46

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

**June 2019 Loan Agreement Debt Service Requirements**

Fiscal Year Ending	Total Payment
2022	\$85,806.60
2023	85,807.52
2024	85,807.08

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

**USDA LOAN Debt Service Requirements**

Fiscal Year Ending	Total Payment
2022	\$208,813.00
2023	208,813.00
2024	208,813.00
2025	208,813.00
2026	208,813.00
2027	208,813.00
2028	208,813.00
2029	208,813.00
2030	208,813.00
2031	208,813.00
2032	208,813.00
2033	208,813.00
2034	208,813.00
2035	208,813.00

2036	208,813.00
2037	208,813.00
2038	208,813.00
2039	208,813.00
2040	208,813.00
2041	208,813.00
2042	208,813.00
2043	208,813.00
2044	208,813.00
2045	208,813.00
2045	208,813.00
2047	208,813.00
2048	208,813.00
2049	208,813.00
2050	208,813.00
2051	208,813.00
2052	208,813.00
2053	208,813.00
2054	208,813.00
2055	208,813.00
2056	208,813.00
2057	208,813.00
2058	208,813.00
2059	1,001.00

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

**NMED LOAN Debt Service Requirements**

Fiscal Year Ending	Total Payment
2022	\$16,613.00
2023	21,089.00
2024	21,089.00
2025	21,089.00
2026	21,089.00
2027	21,089.00
2028	21,089.00
2029	21,089.00
2030	21,089.00
2031	21,089.00
2032	21,089.00
2033	21,089.00
2034	21,089.00

2035	21,089.00
2036	21,089.00
2037	21,089.00
2038	21,089.00
2039	21,089.00
2040	21,089.00
2041	21,089.00

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

**2022 Loan Agreement Debt Service Requirements**

Fiscal Year Ending	Principal	Interest	Total Payment
2023	\$75,024	\$11,184.56	\$86,208.56
2024	77,113	9,096.38	86,209.38
2025	163,229	8,787.92	172,016.92
2026	164,094	7,922.80	172,016.80
2027	165,177	6,839.78	172,016.78
2028	166,531	5,485.34	172,016.34
2029	168,113	3,903.30	172,016.30
2030	169,862	2,154.92	172,016.92
2031	171,764	252.46	172,016.46

NOW THEREFORE, the undersigned do hereby certify as follows:

1. We are familiar with the provisions of the 2011 Resolution authorizing the execution and delivery of the 2011 Loan Agreement, the 2012 Resolution authorizing the execution and delivery of the 2012 Loan Agreement, the May 2019 Resolution authorizing the execution and delivery of the May 2019 Loan Agreement, the June 2019 Resolution authorizing the execution and delivery of the June 2019 Loan Agreement and the 2022 Resolution authorizing the execution and delivery of the 2022 Loan Agreement and with the provisions of the 2011 Loan Agreement, the 2012 Loan Agreement, the May 2019 Loan Agreement, the June 2019 Loan Agreement, the 2022 Loan Agreement, the USDA Loan and the NMED Loan.

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

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

4. The Governmental Unit is not, and has not been in default as to making any payments on the 2011 Loan Agreement, the 2012 Loan Agreement, the May 2019 Loan Agreement the June 2019 Loan Agreement, the USDA Loan or the NMED Loan, nor under any of the

covenants or requirements of the 2011 Loan Agreement, the 2012 Loan Agreement, the May 2019 Loan Agreement, the June 2019 Loan Agreement, the USDA Loan and the NMED Loan.

5. The 2022 Loan Agreement is payable from the Pledged Revenues and will constitute a lien upon the Pledged Revenues on a parity with the lien of the outstanding 2011 Loan Agreement, the 2012 Loan Agreement, the 2019 Loan Agreement, the USDA Loan and the NMED Loan.

6. The fiscal year immediately preceding the date of the 2022 Loan Agreement is the period commencing on July 1, 2020 and ending in June 30, 2021.

7. The Pledged Revenues for the fiscal year ended 2021 are fairly stated at \$1,012,524.

8. The combined maximum Aggregate Annual Debt Service Requirements on the 2011 Loan Agreement, the 2012 Loan Agreement, the May 2019 Loan Agreement, the June 2019 Loan Agreement, the USDA Loan, the NMED Loan and the 2022 Loan Agreement for the parity bond test set out in the preambles of this Certificate occurs in Fiscal Year 2029 and is \$532,458.40. One hundred thirty percent (130%) of such amount is \$692,195.92.

9. The Pledged Revenues of \$1,012,524 (i.e., paragraph 7 above) for the fiscal year immediately preceding the date of the execution and delivery of the 2022 Loan Agreement were sufficient to pay an amount representing 130% of the combined maximum Aggregate Annual Debt Service Requirements of \$692,195.92 on the 2011 Loan Agreement, the 2012 Loan Agreement, the May 2019 Loan Agreement, the June 2019 Loan Agreement, the USDA Loan, the NMED Loan and the 2022 Loan Agreement.

10. This certificate is for the benefit of each holder from time to time of the 2022 Loan Agreement and for the benefit of bond counsel in rendering opinions to the effect that the 2022 Loan Agreement is secured by a lien pledge on the Pledged Revenues on a parity with the 2011 Loan Agreement, the 2012 Loan Agreement, the May 2019 Loan Agreement, the June 2019 Loan Agreement, the USDA Loan and the NMED Loan.

(Signature Page Follows)

WITNESS our hands this 18th day of February, 2022.

CITY OF TRUTH OR CONSEQUENCES,  
NEW MEXICO

[SEAL]

By \_\_\_\_\_  
Amanda Forrister, Mayor Pro Tem

By \_\_\_\_\_  
Bruce Swingle, City Manager

By \_\_\_\_\_  
Carol Kirkpatrick, Finance Director

# SUTIN THAYER & BROWNE

A PROFESSIONAL CORPORATION

LAWYERS

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

ROBERT G. HEYMAN (Of Counsel)

NOE ASTORGA-CORRAL  
ANNE P. BROWNE

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AMANDA E. CVINAR  
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February 18, 2022

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

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

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

Ladies and Gentlemen:

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

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

February 18, 2022

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

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

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

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

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

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

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

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



February 18, 2022

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

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

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

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

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

Very truly yours,

SUTIN, THAYER & BROWNE  
A Professional Corporation

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

Closing Date: February 18, 2022

TRANSCRIPT OF PROCEEDINGS  
INDEX

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

TRANSCRIPT DISTRIBUTION LIST

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



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

**MEETING DATE:** January 12, 2022

*Agenda Item #:* G.2

**SUBJECT:** Discussion/Action: Final Adoption of Ordinance No. 724 authorizing the execution and delivery of a promissory note and commercial security agreement by and between the City of Truth or Consequences, New Mexico and the Bank of the Southwest.

**DEPARTMENT:** Assistant City Manager

**DATE SUBMITTED:** January 7, 2022

**SUBMITTED BY:** Traci Alvarez

**WHO WILL PRESENT THE ITEM:** Traci Alvarez/Chris Muirhead -Modrall Sperling

***Summary/Background:***

MSD Water Improvement project is ready to move to construction. Commission approved and authorized staff to accept and proceed with Interim Loan Financing thru Bank of the Southwest on 11-17-221. Ordinance was approved for publication on 12/15/2021

***Recommendation:***

Approve Ordinance 724 for final adoption

***Attachments:***

- Ordinance 724

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

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

**Approved For Submittal By:** ☐ Department Director

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

**Final Approval:** ☐ City Manager

#### CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agenda 1-12-2022

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO  
ORDINANCE NO. \_\_\_\_\_

AUTHORIZING THE EXECUTION AND DELIVERY OF A PROMISSORY NOTE AND COMMERCIAL SECURITY AGREEMENT BY AND BETWEEN THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO AND THE BANK OF THE SOUTHWEST, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF \$5,542,045, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF ACQUIRING, EXTENDING, ENLARGING, BETTERING, REPAIRING OR OTHERWISE IMPROVING THE CITY'S WATER SYSTEM; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE PROMISSORY NOTE AND COMMERCIAL SECURITY AGREEMENT SOLELY FROM NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S WATER SYSTEM; APPROVING THE FORMS OF THE PROMISSORY NOTE AND COMMERCIAL SECURITY AGREEMENT AND OTHER DETAILS AND RELATED DOCUMENTS CONCERNING THE PROMISSORY NOTE AND COMMERCIAL SECURITY AGREEMENT; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE PROMISSORY NOTE AND COMMERCIAL SECURITY AGREEMENT.

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

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

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

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

WHEREAS, the City Commission has determined and hereby determines that the Project may be financed with amounts borrowed under the Promissory Note and Commercial Security Agreement and that it is in the best interest of the City and its residents that the Promissory Note and Commercial Security Agreement be executed and delivered and that the financing of the Project take place by executing and delivering the Promissory Note and Commercial Security Agreement; and

WHEREAS, it is in the best interest of the City that the Promissory Note and Commercial Security Agreement be issued with a lien on the Net Revenues of the Water System; and

WHEREAS, the City Commission has determined that it may lawfully pledge the Net Revenues for the payment of amounts due under the Promissory Note and Commercial Security Agreement; and

WHEREAS, the Promissory Note and Commercial Security Agreement shall be special, limited obligations of the City, payable solely from the Net Revenues and shall not constitute a general obligation of the City, or a debt or pledge of the faith and credit of the City or the State; and

WHEREAS, the City Commission intends by this Ordinance to authorize the execution and delivery of the Promissory Note and Commercial Security Agreement in the amount and for the purposes set forth herein; and

WHEREAS, there have been presented to the City Commission and there presently are on file with the City Clerk this Ordinance and the forms of the Promissory Note, Commercial Security Agreement and Related Documents, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Net Revenues to Bank of the Southwest (or its assigns) for the payment of amounts due under the Promissory Note and Commercial Security Agreement, (ii) the use of the proceeds of the Promissory Note and Commercial Security Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Promissory Note and Commercial Security Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

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

Section 1. Definitions. As used in the Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

“Act” means the powers of the City under the authority given by the provisions of Sections 3-31-1 through 3-31-12 NMSA 1978, as amended and supplemented, and all enactments of the Commission relating to the Promissory Note and Commercial Security Agreement.

“Authorized Officers” means the Mayor, Manager, Finance Director and Clerk of the City.

“Bank of the Southwest” means the Bank of the Southwest, a New Mexico corporation, and its successors and assigns, which is the lender under the Promissory Note and Commercial Security Agreement.

“City” means the City of Truth or Consequences, New Mexico.

“City Commission” means the City Commission of the City, and any future successor City Commission of the City.

“Closing Date” means the date of execution, delivery and funding of the Promissory Note and Commercial Security Agreement.

“Commercial Security Agreement” means the Commercial Security Agreement, dated the Closing Date, between the City and Bank of the Southwest in the principal amount of \$5,542,045, and any amendments or supplements thereto.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to the entire Ordinance and not solely to the particular section or paragraph of the Ordinance in which such word is used.

“Loan” means the funds to be loaned to the City by Bank of the Southwest pursuant to the Promissory Note, Commercial Security Agreement and Related Documents.

“Net Revenues” means the Gross Revenues of the Water System less Operation and Maintenance Expenses, which net revenues are pledged to the payment of the Promissory Note and Commercial Security Agreement as provided herein.

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

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

“Ordinance” means this Ordinance as adopted by the City Commission on January \_\_, 2022, approving the Promissory Note and Commercial Security Agreement and pledging the Net Revenues to the payment of the Promissory Note and Commercial Security Agreement, as amended from time to time.

“Parity Obligations” means the Promissory Note and Commercial Security Agreement and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Net Revenues and issued with a lien on the Net Revenues on parity with the Promissory Note and Commercial Security Agreement, if any.

“Project” means acquiring, extending, enlarging, bettering, repairing or otherwise improving the City's Water System.

“Promissory Note” means the Promissory Note, dated the Closing Date, by and between the City and Bank of the Southwest in the principal amount of \$5,542,045.

“Related Documents” means, collectively, the (i) Corporate Resolution to Borrow/Grant Collateral, (ii) Errors and Omissions Agreement, (iii) Disbursement Request and Authorization, (iv) Assignment of Claims under Government Contract, and (v) Notice of Final Agreement.

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

“State” means the State of New Mexico.

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

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Commission and officers of the City directed toward the Project and the execution and delivery of the Promissory Note and Commercial Security Agreement be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Project and the Promissory Note and Commercial Security Agreement. The Project and the method of financing the Project through execution and delivery of the Promissory Note and Commercial Security Agreement are hereby authorized and ordered. The Project is for the benefit of the City.

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

A. The Project is needed to meet the needs of the City and its residents and the issuance, execution and delivery of the Promissory Note and Commercial Security Agreement are necessary and advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the cost of the Project.



C. The Net Revenues may lawfully be pledged to secure the payment of amounts due under the Promissory Note and Commercial Security Agreement.

D. It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Promissory Note and Commercial Security Agreement.

E. The net effective interest rates on the Loans do not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Promissory Note and Commercial Security Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of a three-fourths majority of all of the members of the City Commission. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the City and completing the Project, it is hereby declared necessary that the City, pursuant to the Act, execute and deliver the Promissory Note and Commercial Security Agreement evidencing a special, limited obligation of the City to pay a principal amount of \$5,542,045, plus interest, and the execution and delivery of the Promissory Note and Commercial Security Agreement are hereby authorized. The City shall use the proceeds of the Loan to finance the Project.

B. Detail. The Promissory Note and Commercial Security Agreement shall be in substantially the forms presented at the meeting of the City Commission at which this Ordinance was adopted. The Loans shall be in an aggregate principal amount of \$5,542,045, shall be payable as provided in the Promissory Note and Commercial Security Agreement and shall bear interest at the rate of 5.00% per annum.

Section 6. Approval of Promissory Note and Commercial Security Agreement. The forms of the Promissory Note and Commercial Security Agreement as presented at the meeting of the City Commission at which this Ordinance was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Promissory Note and Commercial Security Agreement with such changes, insertions and omissions as are consistent with this Ordinance and as may be approved by such individual Authorized Officers. The execution of the Promissory Note and Commercial Security Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Promissory Note and Commercial Security Agreement shall be secured by the pledge of the Net Revenues and shall be payable solely from the Net Revenues. The Promissory Note and Commercial Security Agreement, together with interest thereon and other obligations of the City thereunder, shall be a special, limited obligation of the City, payable solely from the Net Revenues as provided in this Ordinance and the Promissory Note and Commercial Security Agreement shall not constitute a general obligation of the City or the State, and the holders of the Promissory Note and Commercial Security Agreement may not look to any general or other fund of the City for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Promissory Note and Commercial Security Agreement, or any other instruments, shall be construed as obligating the City (except with respect to the application of the Net Revenues), as incurring a pecuniary liability or a charge upon the general credit of the City or

against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Promissory Note and Commercial Security Agreement, or any other instrument impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing power. The Promissory Note and Commercial Security Agreement shall never constitute an indebtedness of the City within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing power. Nothing herein shall prevent the City from applying other funds of the City legally available therefor to payments required by the Promissory Note and Commercial Security Agreement, in its sole and absolute discretion.

Section 8. Lien on Net Revenues. Pursuant to this Ordinance and the Promissory Note and Commercial Security Agreement, the Net Revenues are hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Promissory Note and Commercial Security Agreement subject to the uses thereof permitted by and the priorities set forth in this Ordinance. The Promissory Note and Commercial Security Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Net Revenues with the lien thereon of any Parity Obligations.

Section 9. Authorized Officers; Delegation. Authorized Officers are hereby individually authorized and directed to execute and deliver the Related Documents and any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Promissory Note and Commercial Security Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance and the Promissory Note and Commercial Security Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the Promissory Note and Commercial Security Agreement, including but not limited to, the execution and delivery of the Related Documents in connection with the execution and delivery of the Promissory Note and Commercial Security Agreement, and the publication of the summary of this Ordinance set out in Section 15 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 10. Amendment of Ordinance. Prior to the date of the initial delivery of the Promissory Note and Commercial Security Agreement to Bank of the Southwest, the provisions of this Ordinance may be supplemented or amended by ordinance or resolution of the City Commission with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance.

Section 11. Ordinance Irrepealable. After the Promissory Note and Commercial Security Agreement have been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Promissory Note and Commercial Security Agreement shall be fully paid, canceled and discharged, as provided therein.

Section 12. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 13. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 14. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the City kept for that purpose, authenticated by the signatures of the Mayor and the Clerk of the City, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 15 below) shall be published in a newspaper which maintains an office and is of general circulation in the City, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 15. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

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

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. \_\_\_\_\_ duly adopted and approved by the City Commission of the City of Truth of Consequences, New Mexico, on January \_\_, 2022. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the City Clerk, 505 Sims, Truth or Consequences, New Mexico.

The title of the Ordinance is:

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO  
ORDINANCE NO. \_\_\_\_\_

AUTHORIZING THE EXECUTION AND DELIVERY OF A PROMISSORY NOTE AND COMMERCIAL SECURITY AGREEMENT BY AND BETWEEN THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO AND THE BANK OF THE SOUTHWEST, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF \$5,542,045, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF ACQUIRING, EXTENDING, ENLARGING, BETTERING, REPAIRING OR OTHERWISE IMPROVING THE CITY'S WATER SYSTEM; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE PROMISSORY NOTE AND COMMERCIAL SECURITY AGREEMENT SOLELY FROM NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S WATER SYSTEM; APPROVING THE FORMS OF THE PROMISSORY NOTE AND COMMERCIAL SECURITY AGREEMENT AND OTHER DETAILS AND RELATED DOCUMENTS CONCERNING THE PROMISSORY NOTE AND COMMERCIAL SECURITY AGREEMENT; REPEALING ALL ACTION INCONSISTENT WITH

THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS  
IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE  
PROMISSORY NOTE AND COMMERCIAL SECURITY AGREEMENT.

A summary of the subject matter of the Ordinance is contained in its title. This notice  
constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

(Signature Page Follows)

PASSED, APPROVED AND ADOPTED THIS \_\_\_\_ DAY OF JANUARY, 2022.

CITY OF TRUTH OR CONSEQUENCES  
NEW MEXICO

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



\*000000002001210282023511292021\*

## COMMERCIAL SECURITY AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$5,542,045.00	11-29-2021	11-29-2024	2001210282	CB	***	JDG	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "*****" has been omitted due to text length limitations.							

**Grantor:** City Of Truth Or Consequences  
505 Sims St  
T Or C, NM 87901

**Lender:** BANK OF THE SOUTHWEST  
TRUTH OR CONSEQUENCES BRANCH  
509 BROADWAY  
TRUTH OR CONSEQUENCES, NM 87901  
(575) 894-7171

THIS COMMERCIAL SECURITY AGREEMENT dated November 29, 2021, is made and executed between City Of Truth Or Consequences ("Grantor") and BANK OF THE SOUTHWEST ("Lender").

**GRANT OF SECURITY INTEREST.** For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

**COLLATERAL DESCRIPTION.** The word "Collateral" as used in this Agreement means the following described property in which Grantor is giving to Lender a security interest for the payment of the Indebtedness and performance of all other obligations under the Note and this Agreement:

**Government Contract for NET REVENUES WATER SYSTEM**

In addition, the word "Collateral" also includes all the following:

- (A) All accessions, attachments, accessories, replacements of and additions to any of the collateral described herein, whether added now or later.
- (B) All products and produce of any of the property described in this Collateral section.
- (C) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section.
- (D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party's insurer, whether due to judgment, settlement or other process.
- (E) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

**CROSS-COLLATERALIZATION.** In addition to the Note, this Agreement secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL.** With respect to the Collateral, Grantor represents and promises to Lender that:

**Perfection of Security Interest.** Grantor agrees to take whatever actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Grantor will note Lender's interest upon any and all chattel paper and instruments if not delivered to Lender for possession by Lender. This is a continuing Security Agreement and will continue in effect even though all or any part of the Indebtedness is paid in full and even though for a period of time Grantor may not be indebted to Lender.

**Notices to Lender.** Grantor will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (1) change in Grantor's name; (2) change in Grantor's assumed business name(s); (3) change in the management of the Corporation Grantor; (4) change in the authorized signer(s); (5) change in Grantor's principal office address; (6) change in Grantor's state of organization; (7) conversion of Grantor to a new or different type of business entity; or (8) change in any other aspect of Grantor that directly or indirectly relates to any agreements between Grantor and Lender. No change in Grantor's name or state of organization will take effect until after Lender has received notice.

**No Violation.** The execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party, and its certificate or articles of incorporation and bylaws do not prohibit any term or condition of this Agreement.

## COMMERCIAL SECURITY AGREEMENT (Continued)

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**Enforceability of Collateral.** To the extent the Collateral consists of accounts, chattel paper, or general intangibles, as defined by the Uniform Commercial Code, the Collateral is enforceable in accordance with its terms, is genuine, and fully complies with all applicable laws and regulations concerning form, content and manner of preparation and execution, and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. There shall be no setoffs or counterclaims against any of the Collateral, and no agreement shall have been made under which any deductions or discounts may be claimed concerning the Collateral except those disclosed to Lender in writing.

**Location of the Collateral.** Except in the ordinary course of Grantor's business, Grantor agrees to keep the Collateral at Grantor's address shown above or at such other locations as are acceptable to Lender. Upon Lender's request, Grantor will deliver to Lender in form satisfactory to Lender a schedule of real properties and Collateral locations relating to Grantor's operations, including without limitation the following: (1) all real property Grantor owns or is purchasing; (2) all real property Grantor is renting or leasing; (3) all storage facilities Grantor owns, rents, leases, or uses; and (4) all other properties where Collateral is or may be located.

**Removal of the Collateral.** Except in the ordinary course of Grantor's business, Grantor shall not remove the Collateral from its existing location without Lender's prior written consent. Grantor shall, whenever requested, advise Lender of the exact location of the Collateral.

**Transactions Involving Collateral.** Except for inventory sold or accounts collected in the ordinary course of Grantor's business, or as otherwise provided for in this Agreement, Grantor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. Grantor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right to the security interests granted under this Agreement. Unless waived by Lender, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Lender and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Lender to any sale or other disposition. Upon receipt, Grantor shall immediately deliver any such proceeds to Lender.

**Title.** Grantor represents and warrants to Lender that Grantor holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement covering any of the Collateral is on file in any public office other than those which reflect the security interest created by this Agreement or to which Lender has specifically consented. Grantor shall defend Lender's rights in the Collateral against the claims and demands of all other persons.

**Repairs and Maintenance.** Grantor agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order, repair and condition at all times while this Agreement remains in effect. Grantor further agrees to pay when due all claims for work done on, or services rendered or material furnished in connection with the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.

**Inspection of Collateral.** Lender and Lender's designated representatives and agents shall have the right at all reasonable times to examine and inspect the Collateral wherever located.

**Taxes, Assessments and Liens.** Grantor will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, upon this Agreement, upon any promissory note or notes evidencing the Indebtedness, or upon any of the other Related Documents. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized in Lender's sole opinion. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, Grantor shall deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any contest Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings. Grantor further agrees to furnish Lender with evidence that such taxes, assessments, and governmental and other charges have been paid in full and in a timely manner. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized.

**Compliance with Governmental Requirements.** Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral, including all laws or regulations relating to the undue erosion of highly-erodible land or relating to the conversion of wetlands for the production of an agricultural product or commodity. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion, is not jeopardized.

**Hazardous Substances.** Grantor represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used in violation of any Environmental Laws or for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any Hazardous Substance. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Collateral for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any Environmental Laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims and losses resulting from a breach of this provision of this Agreement. This obligation to indemnify and defend shall survive the payment of the Indebtedness and the satisfaction of this Agreement.

**Maintenance of Casualty Insurance.** Grantor shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days' prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

**Application of Insurance Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Collateral, whether or not such casualty or loss is covered by insurance. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Lender as part of the Collateral. If Lender consents to repair or replacement of the damaged or destroyed Collateral, Lender shall, upon satisfactory proof of expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration. If Lender does not consent to repair or replacement of the Collateral, Lender shall retain a sufficient amount of the proceeds to pay all of the Indebtedness, and shall pay the balance to



**COMMERCIAL SECURITY AGREEMENT  
(Continued)**

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Grantor. Any proceeds which have not been disbursed within six (6) months after their receipt and which Grantor has not committed to the repair or restoration of the Collateral shall be used to prepay the Indebtedness.

**Insurance Reserves.** Lender may require Grantor to maintain with Lender reserves for payment of insurance premiums, which reserves shall be created by monthly payments from Grantor of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit and shall constitute a non-interest-bearing account which Lender may satisfy by payment of the insurance premiums required to be paid by Grantor as they become due. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the insurance premiums required to be paid by Grantor. The responsibility for the payment of premiums shall remain Grantor's sole responsibility.

**Insurance Reports.** Grantor, upon request of Lender, shall furnish to Lender reports on each existing policy of insurance showing such information as Lender may reasonably request including the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; (5) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (6) the expiration date of the policy. In addition, Grantor shall upon request by Lender (however not more often than annually) have an independent appraiser satisfactory to Lender determine, as applicable, the cash value or replacement cost of the Collateral.

**Financing Statements.** Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Property. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement.

**GRANTOR'S RIGHT TO POSSESSION.** Until default, Grantor may have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful manner not inconsistent with this Agreement or the Related Documents, provided that Grantor's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Lender is required by law to perfect Lender's security interest in such Collateral. If Lender at any time has possession of any Collateral, whether before or after an Event of Default, Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Lender takes such action for that purpose as Grantor shall request or as Lender, in Lender's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by Grantor shall not of itself be deemed to be a failure to exercise reasonable care. Lender shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the Indebtedness.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon the occurrence of any Event of Default.

**DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Payment Default.** Grantor fails to make any payment when due under the Indebtedness.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**Default in Favor of Third Parties.** Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or ability to perform Grantor's obligations under this Agreement or any of the Related Documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Insolvency.** The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or guarantor, endorser, surety, or accommodation party dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**COMMERCIAL SECURITY AGREEMENT  
(Continued)**

Loan No: 2001210282

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**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Agreement, at any time thereafter, Lender shall have all the rights of a secured party under the New Mexico Uniform Commercial Code. In addition and without limitation, Lender may exercise any one or more of the following rights and remedies:

**Accelerate Indebtedness.** Lender may declare the entire Indebtedness, including any prepayment penalty which Grantor would be required to pay, immediately due and payable, without notice of any kind to Grantor.

**Assemble Collateral.** Lender may require Grantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require Grantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender also shall have full power to enter upon the property of Grantor to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Grantor agrees Lender may take such other goods, provided that Lender makes reasonable efforts to return them to Grantor after repossession.

**Sell the Collateral.** Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in Lender's own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will give Grantor, and other persons as required by law, reasonable notice of the time and place of any public sale, or the time after which any private sale or any other disposition of the Collateral is to be made. However, no notice need be provided to any person who, after Event of Default occurs, enters into and authenticates an agreement waiving that person's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Collateral, with the power to protect and preserve the Collateral, to operate the Collateral preceding foreclosure or sale, and to collect the rents from the Collateral and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Collateral exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Collect Revenues, Apply Accounts.** Lender, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Lender may at any time in Lender's discretion transfer any Collateral into Lender's own name or that of Lender's nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the Indebtedness or apply it to payment of the Indebtedness in such order of preference as Lender may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Lender may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize on the Collateral as Lender may determine, whether or not Indebtedness or Collateral is then due. For these purposes, Lender may, on behalf of and in the name of Grantor, receive, open and dispose of mail addressed to Grantor; change any address to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Lender may notify account debtors and obligors on any Collateral to make payments directly to Lender.

**Obtain Deficiency.** If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

**Other Rights and Remedies.** Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

**Election of Remedies.** Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement, the Related Documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Governing Law.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of New Mexico without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of New Mexico.

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of SIERRA County, State of New Mexico.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Notices.** Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**Power of Attorney.** Grantor hereby appoints Lender as Grantor's irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect, amend, or to continue the security interest granted in this Agreement or to demand termination of filings of other secured parties. Lender may at any time, and without further authorization from Grantor, file a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a financing statement. Grantor will reimburse Lender for all expenses for the perfection and the continuation of the perfection of Lender's security interest in the Collateral.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Successors and Assigns.** Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

**Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Agreement.** The word "Agreement" means this Commercial Security Agreement, as this Commercial Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

**Borrower.** The word "Borrower" means City Of Truth Or Consequences and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Collateral.** The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

**Grantor.** The word "Grantor" means City Of Truth Or Consequences.

**Guaranty.** The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Indebtedness.** The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Agreement.

**Lender.** The word "Lender" means BANK OF THE SOUTHWEST, its successors and assigns.

**Note.** The word "Note" means the Note dated November 29, 2021 and executed by City Of Truth Or Consequences in the principal amount of \$5,542,045.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

**Property.** The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**GRANTOR HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED NOVEMBER 29, 2021.**

GRANTOR:

CITY OF TRUTH OR CONSEQUENCES

By: \_\_\_\_\_  
Bruce C Swingle

By: \_\_\_\_\_  
Authorized Signer for City Of Truth Or  
Consequences

LENDER:

BANK OF THE SOUTHWEST

X \_\_\_\_\_  
Jason Garcia, Loan Officer



\*00000002001210282023511292021\*

## COMMERCIAL SECURITY AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$5,542,045.00	11-29-2021	11-29-2024	2001210282	CB	***	JDG	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*\*" has been omitted due to text length limitations.

**Grantor:** City Of Truth Or Consequences  
505 Sims St  
T Or C, NM 87901

**Lender:** BANK OF THE SOUTHWEST  
TRUTH OR CONSEQUENCES BRANCH  
509 BROADWAY  
TRUTH OR CONSEQUENCES, NM 87901  
(575) 894-7171

THIS COMMERCIAL SECURITY AGREEMENT dated November 29, 2021, is made and executed between City Of Truth Or Consequences ("Grantor") and BANK OF THE SOUTHWEST ("Lender").

**GRANT OF SECURITY INTEREST.** For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

**COLLATERAL DESCRIPTION.** The word "Collateral" as used in this Agreement means the following described property in which Grantor is giving to Lender a security interest for the payment of the Indebtedness and performance of all other obligations under the Note and this Agreement:

**Government Contract for NET REVENUES WATER SYSTEM**

In addition, the word "Collateral" also includes all the following:

- (A) All accessions, attachments, accessories, replacements of and additions to any of the collateral described herein, whether added now or later.
- (B) All products and produce of any of the property described in this Collateral section.
- (C) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section.
- (D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party's insurer, whether due to judgment, settlement or other process.
- (E) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

**CROSS-COLLATERALIZATION.** In addition to the Note, this Agreement secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL.** With respect to the Collateral, Grantor represents and promises to Lender that:

**Perfection of Security Interest.** Grantor agrees to take whatever actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Grantor will note Lender's interest upon any and all chattel paper and instruments if not delivered to Lender for possession by Lender. This is a continuing Security Agreement and will continue in effect even though all or any part of the Indebtedness is paid in full and even though for a period of time Grantor may not be indebted to Lender.

**Notices to Lender.** Grantor will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (1) change in Grantor's name; (2) change in Grantor's assumed business name(s); (3) change in the management of the Corporation Grantor; (4) change in the authorized signer(s); (5) change in Grantor's principal office address; (6) change in Grantor's state of organization; (7) conversion of Grantor to a new or different type of business entity; or (8) change in any other aspect of Grantor that directly or indirectly relates to any agreements between Grantor and Lender. No change in Grantor's name or state of organization will take effect until after Lender has received notice.

**No Violation.** The execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party, and its certificate or articles of incorporation and bylaws do not prohibit any term or condition of this Agreement.

## COMMERCIAL SECURITY AGREEMENT (Continued)

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**Enforceability of Collateral.** To the extent the Collateral consists of accounts, chattel paper, or general intangibles, as defined by the Uniform Commercial Code, the Collateral is enforceable in accordance with its terms, is genuine, and fully complies with all applicable laws and regulations concerning form, content and manner of preparation and execution, and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. There shall be no setoffs or counterclaims against any of the Collateral, and no agreement shall have been made under which any deductions or discounts may be claimed concerning the Collateral except those disclosed to Lender in writing.

**Location of the Collateral.** Except in the ordinary course of Grantor's business, Grantor agrees to keep the Collateral at Grantor's address shown above or at such other locations as are acceptable to Lender. Upon Lender's request, Grantor will deliver to Lender in form satisfactory to Lender a schedule of real properties and Collateral locations relating to Grantor's operations, including without limitation the following: (1) all real property Grantor owns or is purchasing; (2) all real property Grantor is renting or leasing; (3) all storage facilities Grantor owns, rents, leases, or uses; and (4) all other properties where Collateral is or may be located.

**Removal of the Collateral.** Except in the ordinary course of Grantor's business, Grantor shall not remove the Collateral from its existing location without Lender's prior written consent. Grantor shall, whenever requested, advise Lender of the exact location of the Collateral.

**Transactions Involving Collateral.** Except for inventory sold or accounts collected in the ordinary course of Grantor's business, or as otherwise provided for in this Agreement, Grantor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. Grantor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right to the security interests granted under this Agreement. Unless waived by Lender, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Lender and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Lender to any sale or other disposition. Upon receipt, Grantor shall immediately deliver any such proceeds to Lender.

**Title.** Grantor represents and warrants to Lender that Grantor holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement covering any of the Collateral is on file in any public office other than those which reflect the security interest created by this Agreement or to which Lender has specifically consented. Grantor shall defend Lender's rights in the Collateral against the claims and demands of all other persons.

**Repairs and Maintenance.** Grantor agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order, repair and condition at all times while this Agreement remains in effect. Grantor further agrees to pay when due all claims for work done on, or services rendered or material furnished in connection with the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.

**Inspection of Collateral.** Lender and Lender's designated representatives and agents shall have the right at all reasonable times to examine and inspect the Collateral wherever located.

**Taxes, Assessments and Liens.** Grantor will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, upon this Agreement, upon any promissory note or notes evidencing the Indebtedness, or upon any of the other Related Documents. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized in Lender's sole opinion. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, Grantor shall deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any contest Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings. Grantor further agrees to furnish Lender with evidence that such taxes, assessments, and governmental and other charges have been paid in full and in a timely manner. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized.

**Compliance with Governmental Requirements.** Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral, including all laws or regulations relating to the undue erosion of highly-erodible land or relating to the conversion of wetlands for the production of an agricultural product or commodity. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion, is not jeopardized.

**Hazardous Substances.** Grantor represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used in violation of any Environmental Laws or for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any Hazardous Substance. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Collateral for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any Environmental Laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims and losses resulting from a breach of this provision of this Agreement. This obligation to indemnify and defend shall survive the payment of the Indebtedness and the satisfaction of this Agreement.

**Maintenance of Casualty Insurance.** Grantor shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days' prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

**Application of Insurance Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Collateral, whether or not such casualty or loss is covered by insurance. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Lender as part of the Collateral. If Lender consents to repair or replacement of the damaged or destroyed Collateral, Lender shall, upon satisfactory proof of expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration. If Lender does not consent to repair or replacement of the Collateral, Lender shall retain a sufficient amount of the proceeds to pay all of the Indebtedness, and shall pay the balance to



**COMMERCIAL SECURITY AGREEMENT  
(Continued)**

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Grantor. Any proceeds which have not been disbursed within six (6) months after their receipt and which Grantor has not committed to the repair or restoration of the Collateral shall be used to prepay the Indebtedness.

**Insurance Reserves.** Lender may require Grantor to maintain with Lender reserves for payment of insurance premiums, which reserves shall be created by monthly payments from Grantor of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit and shall constitute a non-interest-bearing account which Lender may satisfy by payment of the insurance premiums required to be paid by Grantor as they become due. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the insurance premiums required to be paid by Grantor. The responsibility for the payment of premiums shall remain Grantor's sole responsibility.

**Insurance Reports.** Grantor, upon request of Lender, shall furnish to Lender reports on each existing policy of insurance showing such information as Lender may reasonably request including the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; (5) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (6) the expiration date of the policy. In addition, Grantor shall upon request by Lender (however not more often than annually) have an independent appraiser satisfactory to Lender determine, as applicable, the cash value or replacement cost of the Collateral.

**Financing Statements.** Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Property. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement.

**GRANTOR'S RIGHT TO POSSESSION.** Until default, Grantor may have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful manner not inconsistent with this Agreement or the Related Documents, provided that Grantor's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Lender is required by law to perfect Lender's security interest in such Collateral. If Lender at any time has possession of any Collateral, whether before or after an Event of Default, Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Lender takes such action for that purpose as Grantor shall request or as Lender, in Lender's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by Grantor shall not of itself be deemed to be a failure to exercise reasonable care. Lender shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the Indebtedness.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon the occurrence of any Event of Default.

**DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Payment Default.** Grantor fails to make any payment when due under the Indebtedness.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**Default in Favor of Third Parties.** Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or ability to perform Grantor's obligations under this Agreement or any of the Related Documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Insolvency.** The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or guarantor, endorser, surety, or accommodation party dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.



**COMMERCIAL SECURITY AGREEMENT  
(Continued)**

Loan No: 2001210282

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**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Agreement, at any time thereafter, Lender shall have all the rights of a secured party under the New Mexico Uniform Commercial Code. In addition and without limitation, Lender may exercise any one or more of the following rights and remedies:

**Accelerate Indebtedness.** Lender may declare the entire Indebtedness, including any prepayment penalty which Grantor would be required to pay, immediately due and payable, without notice of any kind to Grantor.

**Assemble Collateral.** Lender may require Grantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require Grantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender also shall have full power to enter upon the property of Grantor to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Grantor agrees Lender may take such other goods, provided that Lender makes reasonable efforts to return them to Grantor after repossession.

**Sell the Collateral.** Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in Lender's own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will give Grantor, and other persons as required by law, reasonable notice of the time and place of any public sale, or the time after which any private sale or any other disposition of the Collateral is to be made. However, no notice need be provided to any person who, after Event of Default occurs, enters into and authenticates an agreement waiving that person's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Collateral, with the power to protect and preserve the Collateral, to operate the Collateral preceding foreclosure or sale, and to collect the rents from the Collateral and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Collateral exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Collect Revenues, Apply Accounts.** Lender, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Lender may at any time in Lender's discretion transfer any Collateral into Lender's own name or that of Lender's nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the Indebtedness or apply it to payment of the Indebtedness in such order of preference as Lender may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Lender may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize on the Collateral as Lender may determine, whether or not Indebtedness or Collateral is then due. For these purposes, Lender may, on behalf of and in the name of Grantor, receive, open and dispose of mail addressed to Grantor; change any address to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Lender may notify account debtors and obligors on any Collateral to make payments directly to Lender.

**Obtain Deficiency.** If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

**Other Rights and Remedies.** Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

**Election of Remedies.** Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement, the Related Documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Governing Law.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of New Mexico without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of New Mexico.

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of SIERRA County, State of New Mexico.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

# COMMERCIAL SECURITY AGREEMENT (Continued)

Loan No: 2001210282

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**Notices.** Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**Power of Attorney.** Grantor hereby appoints Lender as Grantor's irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect, amend, or to continue the security interest granted in this Agreement or to demand termination of filings of other secured parties. Lender may at any time, and without further authorization from Grantor, file a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a financing statement. Grantor will reimburse Lender for all expenses for the perfection and the continuation of the perfection of Lender's security interest in the Collateral.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Successors and Assigns.** Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

**Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Agreement.** The word "Agreement" means this Commercial Security Agreement, as this Commercial Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

**Borrower.** The word "Borrower" means City Of Truth Or Consequences and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Collateral.** The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

**Grantor.** The word "Grantor" means City Of Truth Or Consequences.

**Guaranty.** The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Indebtedness.** The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Agreement.

**Lender.** The word "Lender" means BANK OF THE SOUTHWEST, its successors and assigns.

**Note.** The word "Note" means the Note dated November 29, 2021 and executed by City Of Truth Or Consequences in the principal amount of \$5,542,045.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

**Property.** The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**GRANTOR HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED NOVEMBER 29, 2021.**

**COMMERCIAL SECURITY AGREEMENT  
(Continued)**

Loan No: 2001210282

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GRANTOR:

CITY OF TRUTH OR CONSEQUENCES

By: COPY  
Bruce C Swingle

By: COPY  
Authorized Signer for City Of Truth Or  
Consequences

LENDER:

BANK OF THE SOUTHWEST

X COPY  
Jason Garcia, Loan Officer



\*000000002001210282095511292021\*

## PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$5,542,045.00	11-29-2021	11-29-2024	2001210282	CB	***	JDG	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "*****" has been omitted due to text length limitations.							

**Borrower:** City Of Truth Or Consequences  
505 Sims St  
T Or C, NM 87901

**Lender:** BANK OF THE SOUTHWEST  
TRUTH OR CONSEQUENCES BRANCH  
609 BROADWAY  
TRUTH OR CONSEQUENCES, NM 87901  
(575) 894-7171

**Principal Amount: \$5,542,045.00**

**Date of Note: November 29, 2021**

**PROMISE TO PAY.** City Of Truth Or Consequences ("Borrower") promises to pay to BANK OF THE SOUTHWEST ("Lender"), or order, in lawful money of the United States of America, the principal amount of Five Million Five Hundred Forty-two Thousand Forty-five & 00/100 Dollars (\$5,542,045.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance, calculated as described in the "INTEREST CALCULATION METHOD" paragraph using an interest rate of 5.000% per annum based on a year of 360 days. Interest shall be calculated from the date of each advance until repayment of each advance. The interest rate may change under the terms and conditions of the "INTEREST AFTER DEFAULT" section.

**PAYMENT.** Borrower will pay this loan in full immediately upon Lender's demand. If no demand is made, Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on November 29, 2024. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning December 12, 2021, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to any late charges; then to principal; and then to any unpaid collection costs. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

**INTEREST CALCULATION METHOD.** Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

**PREPAYMENT; MINIMUM INTEREST CHARGE.** Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. In any event, even upon full prepayment of this Note, Borrower understands that Lender is entitled to a minimum interest charge of \$60.00. Other than Borrower's obligation to pay any minimum interest charge, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: BANK OF THE SOUTHWEST, TRUTH OR CONSEQUENCES BRANCH, 609 BROADWAY, TRUTH OR CONSEQUENCES, NM 87901.

**LATE CHARGE.** If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$10.00, whichever is greater.

**INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased by 3.000 percentage points. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Default in Favor of Third Parties.** Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Insolvency.** The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

**Change in Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

**GOVERNING LAW.** This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of New Mexico without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of New Mexico.

**CHOICE OF VENUE.** If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of SIERRA County, State of New Mexico.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may

open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

**COLLATERAL.** Borrower acknowledges this Note is secured by the following collateral described in the security instrument listed herein:

(A) a Commercial Security Agreement dated November 29, 2021 made and executed between City Of Truth Or Consequences and Lender on collateral described as:

Government Contract for NET REVENUES WATER SYSTEM executed by Assignor and the United States of America, \_\_\_\_\_, under date of \_\_\_\_\_

**LINE OF CREDIT.** This Note evidences a straight line of credit. Once the total amount of principal has been advanced, Borrower is not entitled to further loan advances. Advances under this Note may be requested either orally or in writing by Borrower or as provided in this paragraph. Lender may, but need not, require that all oral requests be confirmed in writing. All communications, instructions, or directions by telephone or otherwise to Lender are to be directed to Lender's office shown above. The following person or persons are authorized, except as provided in this paragraph, to request advances and authorize payments under the line of credit until Lender receives from Borrower, at Lender's address shown above, written notice of revocation of such authority: **Bruce C Swingle,, Manager of City Of Truth Or Consequences. AS PER CUSTOMERS REQUEST AND LOAN OFFICER'S REQUEST.** Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs. Lender will have no obligation to advance funds under this Note if: (A) Borrower or any guarantor is in default under the terms of this Note or any agreement that Borrower or any guarantor has with Lender, including any agreement made in connection with the signing of this Note; (B) Borrower or any guarantor ceases doing business or is insolvent; (C) any guarantor seeks, claims or otherwise attempts to limit, modify or revoke such guarantor's guarantee of this Note or any other loan with Lender; or (D) Borrower has applied funds provided pursuant to this Note for purposes other than those authorized by Lender.

**ADDITIONAL TERMS.** There will be an additional fee for any extensions or renewals of this loan. Financial Statements - I agree to provide to Lender, upon request, any financial statements or information Lender may deem necessary. I warrant that all financial statements and information provided are or will be accurate, correct and complete in all material respects. I understand and agree that Lender's cost incurred reviewing said financial statements and information shall be added, from time to time, to the principal amount due and owing hereunder. Should the foregoing financial information not be provided to Lender within 30 days of this same being requested or should Lender, in Lender's sole reasonable business discretion, deem the contents thereof to be inaccurate, incorrect, or incomplete in any material respect, then the rate of interest payable hereunder shall increase by 3% per annum until such time as the information has been provided or corrected, as the case may be, whereupon the interest rate shall revert to the rate shown above.

**LINE OF CREDIT - REVOLVING.** This Note evidences a line of credit. Advances under this Note, as well as directions for payment from Borrower's accounts, may be requested orally or in writing by Borrower or by an authorized person. Lender may, but need not, require that all oral requests be confirmed in writing. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs.

**SUCCESSOR INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

**GENERAL PROVISIONS.** This Note is payable on demand. The inclusion of specific default provisions or rights of Lender shall not preclude Lender's right to declare payment of this Note on its demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

**PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.**

**BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.**

**BORROWER:**

**CITY OF TRUTH OR CONSEQUENCES**

By: \_\_\_\_\_  
Bruce C Swingle

By: \_\_\_\_\_  
Authorized Signer for City Of Truth Or  
Consequences

**LENDER:**

**BANK OF THE SOUTHWEST**

X \_\_\_\_\_  
Jason Garcia, Loan Officer



\*000000002001210282095511292021\*

## PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$5,542,045.00	11-29-2021	11-29-2024	2001210282	CB	***	JDG	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "*****" has been omitted due to text length limitations.							

**Borrower:** City Of Truth Or Consequences  
505 Sims St  
T Or C, NM 87901

**Lender:** BANK OF THE SOUTHWEST  
TRUTH OR CONSEQUENCES BRANCH  
509 BROADWAY  
TRUTH OR CONSEQUENCES, NM 87901  
(575) 894-7171

**Principal Amount: \$5,542,045.00**

**Date of Note: November 29, 2021**

**PROMISE TO PAY.** City Of Truth Or Consequences ("Borrower") promises to pay to BANK OF THE SOUTHWEST ("Lender"), or order, in lawful money of the United States of America, the principal amount of Five Million Five Hundred Forty-two Thousand Forty-five & 00/100 Dollars (\$5,542,045.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance, calculated as described in the "INTEREST CALCULATION METHOD" paragraph using an interest rate of 5.000% per annum based on a year of 360 days. Interest shall be calculated from the date of each advance until repayment of each advance. The interest rate may change under the terms and conditions of the "INTEREST AFTER DEFAULT" section.

**PAYMENT.** Borrower will pay this loan in full immediately upon Lender's demand. If no demand is made, Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on November 29, 2024. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning December 12, 2021, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to any late charges; then to principal; and then to any unpaid collection costs. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

**INTEREST CALCULATION METHOD.** Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

**PREPAYMENT; MINIMUM INTEREST CHARGE.** Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. In any event, even upon full prepayment of this Note, Borrower understands that Lender is entitled to a minimum interest charge of \$50.00. Other than Borrower's obligation to pay any minimum interest charge, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: BANK OF THE SOUTHWEST, TRUTH OR CONSEQUENCES BRANCH, 509 BROADWAY, TRUTH OR CONSEQUENCES, NM 87901.

**LATE CHARGE.** If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$10.00, whichever is greater.

**INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased by 3.000 percentage points. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Default in Favor of Third Parties.** Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Insolvency.** The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

**Change in Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

**GOVERNING LAW.** This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of New Mexico without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of New Mexico.

**CHOICE OF VENUE.** If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of SIERRA County, State of New Mexico.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may

open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

**COLLATERAL.** Borrower acknowledges this Note is secured by the following collateral described in the security instrument listed herein:

(A) a Commercial Security Agreement dated November 29, 2021 made and executed between City Of Truth Or Consequences and Lender on collateral described as:

Government Contract for NET REVENUES WATER SYSTEM executed by Assignor and the United States of America, \_\_\_\_\_, under date of \_\_\_\_\_.

**LINE OF CREDIT.** This Note evidences a straight line of credit. Once the total amount of principal has been advanced, Borrower is not entitled to further loan advances. Advances under this Note may be requested either orally or in writing by Borrower or as provided in this paragraph. Lender may, but need not, require that all oral requests be confirmed in writing. All communications, instructions, or directions by telephone or otherwise to Lender are to be directed to Lender's office shown above. The following person or persons are authorized, except as provided in this paragraph, to request advances and authorize payments under the line of credit until Lender receives from Borrower, at Lender's address shown above, written notice of revocation of such authority: **Bruce C Swingle,, Manager of City Of Truth Or Consequences. AS PER CUSTOMERS REQUEST AND LOAN OFFICER'S REQUEST.** Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs. Lender will have no obligation to advance funds under this Note if: (A) Borrower or any guarantor is in default under the terms of this Note or any agreement that Borrower or any guarantor has with Lender, including any agreement made in connection with the signing of this Note; (B) Borrower or any guarantor ceases doing business or is insolvent; (C) any guarantor seeks, claims or otherwise attempts to limit, modify or revoke such guarantor's guarantee of this Note or any other loan with Lender; or (D) Borrower has applied funds provided pursuant to this Note for purposes other than those authorized by Lender.

**ADDITIONAL TERMS.** There will be an additional fee for any extensions or renewals of this loan.

Financial Statements - I agree to provide to Lender, upon request, any financial statements or information Lender may deem necessary. I warrant that all financial statements and information provided are or will be accurate, correct and complete in all material respects. I understand and agree that Lender's cost incurred reviewing said financial statements and information shall be added, from time to time, to the principal amount due and owing hereunder. Should the foregoing financial information not be provided to Lender within 30 days of this same being requested or should Lender, in Lender's sole reasonable business discretion, deem the contents thereof to be inaccurate, incorrect, or incomplete in any material respect, then the rate of interest payable hereunder shall increase by 3% per annum until such time as the information has been provided or corrected, as the case may be, whereupon the interest rate shall revert to the rate shown above.

**LINE OF CREDIT - REVOLVING.** This Note evidences a line of credit. Advances under this Note, as well as directions for payment from Borrower's accounts, may be requested orally or in writing by Borrower or by an authorized person. Lender may, but need not, require that all oral requests be confirmed in writing. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs.

**SUCCESSOR INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

**GENERAL PROVISIONS.** This Note is payable on demand. The inclusion of specific default provisions or rights of Lender shall not preclude Lender's right to declare payment of this Note on its demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

**PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.**

**BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.**

**BORROWER:**

**CITY OF TRUTH OR CONSEQUENCES**

By: COPY  
Bruce C Swingle

By: COPY  
Authorized Signer for City Of Truth Or  
Consequences

**LENDER:**

**BANK OF THE SOUTHWEST**

X COPY  
Jason Garcia, Loan Officer





## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

*Agenda Item #: H.1*

**SUBJECT:** Resolution No. 40 21/22 Budget Adjustment Request

**DEPARTMENT:** Finance Department

**DATE SUBMITTED:** January 4, 2022

**SUBMITTED BY:** Carol Kirkpatrick, Finance Director

**WHO WILL PRESENT THE ITEM:** Carol Kirkpatrick, Finance Director

**Summary/Background:** Reconciling Budget Adjustments Requests (based on Chapter 6, Article 6 NM Statute) needed for budget adjustments, increases, and decreases per attached.

**Recommendation:**

Approval Resolution No. 40 21/22 Budget Adjustment Requests for Fiscal Year 2021-2022

**Attachments:**

Resolution No 40 21/22

- 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 1-12-2022

# DOCUMENT #1



Truth or Consequences

# Cash Report Account Summary

Date Range: 07/01/2021 - 01/04/2022

## Account

### Category: 10 - Cash

505-3904-10113

### Category: 12 - Change Fund

505-3904-12120

## Name

SOLID WASTE

NM STO/ INVESTMENT SOLID WASTE

Current Cash Bal.

	Beginning Balance	Total Activity	Ending Balance
	1,132,973.20	-10,413.47	1,122,559.73
Total Category: 10 - Cash:	1,132,973.20	-10,413.47	1,122,559.73
	424,206.95	109.07	424,316.02
Total Category: 12 - Change Fund:	424,206.95	109.07	424,316.02
Grand Totals:	1,557,180.15	-10,304.40	1,546,875.75

# CITY OF TRUTH OR CONSEQUENCES

## 2021-2022 FINAL BUDGET

COMMISSION APPROVED JULY 28, 2021

Fund No.	Fund	Estimated Beginning Cash Balance	+ Investments	Cash & = Investments	Estimated + Revenues	Cash + Transfers In	Cash - Transfers Out	Estimated - Expenditures	Estimated Ending Cash = Balance	DFA Local Reserve - Requirement	Estimated Ending Cash = Balance
ENTERPRISE FUNDS											
505	Solid Waste Division	1,132,867.20	424,206.95	1,557,074.15	2,312,956.00	-	(900,249)	(2,364,421)	605,360		605,360

# DOCUMENT #2

BAR  
PD CRT



NEW MEXICO SELF-INSURERS' FUND  
AUTO PHYSICAL DAMAGE LOSS NOTICE

Please print clearly and email to: [liabilityclaims@nmml.org](mailto:liabilityclaims@nmml.org)

MUNICIPALITY: City of T or C POLICY#: \_\_\_\_\_  
DATE OF LOSS: 09/12/21 TIME OF LOSS: 2:00 am  
NMSIF AUTO ID #: \_\_\_\_\_ VIN#: 3B3AA4CT7AH303136  
VEHICLE YEAR: 2010 VEHICLE MAKE: DODGE  
VEHICLE MODEL: CHARGER  
IS VEHICLE DRIVABLE: ☐ YES ☒ NO PHONE # OF LOCATION: (575) 894-6673  
IF NOT, ADDRESS VEHICLE IS LOCATED: 2700 S BROADWAY  
ESTIMATED COST OF DAMAGES: \$ UNKNOWN  
DRIVER OF INSURED VEHICLE: NO DRIVER  
DRIVER'S PHONE # \_\_\_\_\_ DRIVER'S LICENSE#: \_\_\_\_\_  
DEPARTMENT: \_\_\_\_\_  
PERSONS INVOLVED IN INCIDENT:  
NAME: N/A PHONE: \_\_\_\_\_  
NAME: \_\_\_\_\_ PHONE: \_\_\_\_\_  
DESCRIPTION OF ACCIDENT: UNATTENDED MARKED POLICE UNIT  
VANDALIZED AND SET ON FIRE  
DESCRIBE ANY OTHER INFORMATION WHICH YOU FEEL IS PERTINENT TO THIS CLAIM:  
MULTIPLE AFTER MARKET EQUIPMENT INSIDE VEHICLE  
POLICE REPORT MADE: ☒ YES ☐ NO IF YES, AGENCY: SIERRA COUNTY SHERIFF  
PERSON SUBMITTING: ALONA NIEBERGALL TITLE: HR SPECIALIST  
TELEPHONE NUMBER: (575) 740-7554 DATE: 09/14/20 /

**New Mexico Self Insurers Fund**  
**CLAIMS ACCOUNT**  
 PO BOX 846  
 SANTA FE, NM 87504-0846

New Mexico Bank & Trust  
 Santa Fe, NM 87500

CHECK NUMBER **802962**

99-6541  
 1070

DATE  
 12/23/2021

AMOUNT  
 \$ \*\*\*\*\* 17,871.70

Pay: Seventeen Thousand Eight Hundred Seventy One Dollars And 70/100

TO THE ORDER OF: Truth or Consequences  
 505 Sims Street  
 T or C NM 87901

VOID AFTER SIX MONTHS FROM DATE OF TWO SIGNATURES REQUIRED

*[Signature]*

⑈802962⑈ ⑆107006541⑆ 9996941595⑈

Company: NEW MEXICO SELF INSURER'S FUND  
 Payee: Truth or Consequences  
 IRS/SSN: 856000144  
 Examiner: RQUINTANA

Check Number: 802962  
 Check Total: 17,871.70  
 Check Date: 12/23/2021

Incident Date	Account Number From Through	Claim Number Invoice #	Claimant Name	Description	Amount
09/12/2021	9996941595 12/22/2021 12/22/2021	2022028745	T or C 303136	Comprehensive -	17,871.70



# DOCUMENT #3



Truth or Consequences

# Cash Report Account Summary

Date Range: 07/01/2021 - 01/04/2022

Account	Name	Beginning Balance	Total Activity	Ending Balance
<b>Category: 10 - Cash</b>				
<u>505-3904-10113</u>	SOLID WASTE	1,132,973.20	-10,413.47	1,122,559.73
<b>Total Category: 10 - Cash:</b>		<b>1,132,973.20</b>	<b>-10,413.47</b>	<b>1,122,559.73</b>
<b>Category: 12 - Change Fund</b>				
<u>505-3904-12120</u>	NM STO/ INVESTMENT SOLID WASTE	424,206.95	109.07	424,316.02
<b>Total Category: 12 - Change Fund:</b>		<b>424,206.95</b>	<b>109.07</b>	<b>424,316.02</b>
<b>Grand Totals:</b>		<b>1,557,180.15</b>	<b>-10,304.40</b>	<b>1,546,875.75</b>

# CITY OF TRUTH OR CONSEQUENCES

## 2021-2022 FINAL BUDGET

COMMISSION APPROVED JULY 28, 2021

Fund No.	Fund	Estimated Beginning Cash Balance	+ Investments	Cash & Investments	Estimated + Revenues	Cash + Transfers In	Cash - Transfers Out	Estimated - Expenditures	Estimated Ending Cash = Balance	DFA Local Reserve - Requirement	Estimated Ending Cash = Balance
ENTERPRISE FUNDS											
505	Solid Waste Division	1,132,867.20	424,206.95	1,557,074.15	2,312,956.00	-	(900,249)	(2,364,421)	605,360		605,360

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

ENTITY NAME: City of Truth or Consequences  
FISCAL YEAR: 2021-2022  
DFA Resolution Number: 40 21/22  
BAR NUMBER: 9

For Local Government Division use only:

DOCUMENT NUMBER	FUND	ACCOUNT STRING	ACCOUNT NAME	REVENUE, EXPENDITURE, or TRANSFER (TO or FROM)	APPROVED BUDGET	ADJUSTMENT / INCREASE	ADJUSTMENT / DECREASE	ADJUSTED BUDGET	PURPOSE
1	General	101-1099-39935	Cash Transfer In	Transfer	\$ 2,756,795	\$ 21,700.00		\$ 2,778,495	Transfer cash from Sanitation Enterprise to General Fund to pay for salary study
1	Sanitation	505-3904-49930	Cash Transfer Out	Transfer	\$ 900,249	\$ 21,700.00		\$ 921,949	Transfer cash from Sanitation Enterprise to General Fund to pay for salary study
1	General	101-1018-48598	Professional Services	Expense	\$ 12,000	\$ 21,700.00		\$ 33,700	Budget Cash for Salary Study
2	PD GRT	296-2403-38372	Insurance Recovery	Revenue	\$ -	\$ 17,872.00		\$ 17,872	Received insurance reimbursement of Police Vehicle that burned on 9/12/21
2	PD GRT	296-2403-80810	Capital Outlay-Vehicles	Expense	\$ 147,609	\$ 17,872.00		\$ 165,481	Budget insurance proceeds for replacement vehicle
3	Sanitation	505-3904-47420	Maintenance & Repair Equipment	Expense	\$ 75,000	\$ 22,000		\$ 97,000	Budget partial cash carry over for Maintenance & Repair on 420 F Backhoe

ATTEST:

Angela Torres, Clerk-Treasur (Date)

Amanda Forrister, Mayor Pro-Tem

(Date)



## **RESOLUTION NO. 40 21/22**

### **A RESOLUTION REQUESTING FINAL BUDGET ADJUSTMENTS IN THE REVENUE AND EXPENDITURE BUDGET FOR FISCAL YEAR 2021-2022.**

**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 2021-2022; 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 12th of January, 2022.

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Amanda Forrister, Mayor Pro-Tem

ATTEST:

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Angela A. Torres, City Clerk-Treasurer



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

*Agenda Item#:* H.2

**MEETING DATE:** January 12, 2022

**SUBJECT:** Resolution No. 41 21/22 for the Sale of Surplus Property to be sold at the February 5, 2022 Auction through Willard Hall Auctions.

**DEPARTMENT:** Clerk's Office

**DATE SUBMITTED:** January 6, 2022

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

**WHO WILL PRESENT THE ITEM:** Angela A. Torres, City Clerk-Treasurer

***Summary/Background:***

Pursuant to Section 3-54-2 of the New Mexico State Statutes, 1978, Annotated, the City of Truth or Consequences has property that is no longer needed. The City will use Willard Hall Auctions to sell the surplus property belonging to the City on February 5, 2022 at the Sierra County Fair Barn.

***Recommendation:***

Approve Resolution No. 41 21/22 declaring the sale of surplus property with the amended list of items to be sold on February 5, 2022 through Willard Hall Auctions.

***Attachments:***

- Resolution No. 41 21/22
- Items List

***Fiscal Impact (Finance):*** Choose an item.

***Legal Review (City Attorney):*** Choose an item.

***Approved For Submittal By:*** ☒ Department Director

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

***Final Approval:*** ☒ City Manager

#### CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. Resolution No. 41 21/22 Ordinance No. N/A

Continued To: . Referred To: .

☐ Approved ☐ Denied ☐ Other: .

File Name: CC Agendas 1-12-2022



**RESOLUTION NO. 41 21/22**

**A RESOLUTION DECLARING SURPLUS PROPERTY TO BE NONESSENTIAL FOR PUBLIC OR GOVERNMENT FUNCTIONS TO BE SOLD PURSUANT TO §3-54-2 NMSA**

**WHEREAS**, the City Commission of the City of Truth or Consequences finds surplus property to be nonessential for public or government functions; and

**Whereas**, PURSUANT TO Section 3-54-2 of the New Mexico State Statutes, 1978, Annotated, the City of Truth or Consequences serves notice that the City will use the auction **Willard Hall Auctions** to sell various surplus property belonging to the City.

**NOW THEREFORE BE IT RESOLVED THAT:**

- The City of Truth or Consequences may sell personal property having a value of more than two thousand five hundred (\$2,500.00) at public or private sale. If a private sale is held under this subsection, such sale shall be held only after notice is published at least twice, pursuant to the provisions of Subsection J or Section 3-1-2 NMSA 1978, not less than seven days apart, with the last publication not less than fourteen days prior to the sale.
- If a public sale is held, the bid of the highest responsible bidder shall be accepted unless the terms of the bid do not meet the published terms and conditions of the municipality, in which event the highest bid which does meet the published terms and conditions shall be accepted; provided, however, a municipality may reject all bids. Terms and conditions for a proposed sale of lease shall be published at least twice, not less than seven days apart, with the last publication no less than fourteen days prior to the bid opening, and shall be published according to the provisions of Subsection J of Section 3-1-2 NMSA 1978.
- The City of Truth or Consequences may sell, at a private or public sale, exchange or donate real or personal property to the state, to any of its political subdivisions or to the federal government if such sale, exchange or gift is in the best interests of the public and is approved by the local government division of the department of finance and administration. The provisions of Section 6-6-11 NMSA 1978 shall not apply to such sale, exchange or a donation.

**PASSED, APPROVED AND ADOPTED** this 12<sup>th</sup> day of January, 2022.

ATTEST:

\_\_\_\_\_  
Amanda Forrister, Mayor Pro-Tem

\_\_\_\_\_  
Angela A. Torres, CMC, City Clerk



## PROPERTY DISPOSAL LIST

	ELECTRIC	VIN	PLATE	ORIGINAL COST	Approved	Sold
60	WOOD POLES	N/A		\$30.00		
	SWIMMING POOL	VIN	PLATE	ORIGINAL COST	Approved	Sold
4	AFRAS 3/4 HP BOOSTER PUMPS	N/A				
1	BALDOR .5 HP INDUSTRIAL MOTOR	N/A				
1	WORKCENTRE XEROX PRINTER	N/A				
1	DELL E525W PRINTER	N/A				
1	HP COMPUTER MONITOR/TOWER	N/A				
1	QUASAR TV W/VHS	N/A				



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

Agenda Item #: H.3

**SUBJECT:** Discussion/Action: Publication of Ordinance No. 725 amending Chapter 3 of the Municipal Code of Ordinances pertaining to animals.

**DEPARTMENT:** Assistant City Manager

**DATE SUBMITTED:** January 7, 2022

**SUBMITTED BY:** Traci Alvarez

**WHO WILL PRESENT THE ITEM:** Traci Alvarez/Chief Victor Rodriguez

**Summary/Background:**

Ordinance was presented to the Commission on 12/15 for approval to publish. Some revisions have been done since the 12/15 meeting. Staff is requesting publication of the revised Ordinance that will update Animal Control and Animal Shelter Ordinances to meet the needs of current day operations at the Animal Shelter and for Animal Control Enforcement.

**Recommendation:**

Approve Ordinance No. 725 for Publication

**Attachments:**

- Ordinance No. 725

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

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

**Approved For Submittal By:** ☐ Department Director

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

**Final Approval:** ☐ City Manager

#### CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agenda 1-12-2022

ORDINANCE NO. 725

AN ORDINANCE OF THE CITY OF TRUTH OR CONSEQUENCES, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF TRUTH OR CONSEQUENCES, BE AMENDED BY AMENDING CHAPTER 3 PERTAINING TO ANIMALS:

Chapter 3. ANIMALS shall be amended in its entirety to read as follows:

**Chapter 3 - ANIMALS**

**ARTICLE I. - IN GENERAL**

**Sec. 3-1. - Short title of chapter.**

This chapter shall be known and may be cited as the Truth or Consequences Animal Control Ordinance. It is the intent of the City Commission that enactment of this chapter will protect animals from neglect and abuse, protect residents from annoyance and injury, assist in providing housing for animals in a control center, and finance the functions of the licensing and recovery of such animals.

(Code 1962, § 6-2-1; Ord. No. 384, § 6-2-1, 7-22-91)

**Sec. 3-2. - Administration of chapter.**

The City Manager is responsible for the administration of this chapter. Reasonable rules and regulations shall be prescribed by the Commission to carry out the intent and purpose of this chapter, pursuant to standards created by this chapter. Powers to enforce the chapter are delegated to the Truth or Consequences Police Department and the Animal Control Officer.

(Code 1962, § 6-2-3; Ord. No. 436, § 1, 5-13-96; Ord. No. 532, § 1, 10-14-03)

**Sec. 3-3. - Definitions.**

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

***Abandonment of animals*** means ~~to leave the animal behind hours without proper care and protection to give up said animal to fend for itself, regardless of age or condition.~~ **to leave any animal unattended and with no provision of food, water or shelter for more than twenty-four (24) hours on one's premises or to dump or leave off any animal on property other than one's own without permission, regardless of age or condition.**

***Adoption*** means to take by choice and assume responsibility for proper care in accordance with this Ordinance.

***Adequate food means*** access to and the provision of food that is appropriate to the species and of sufficient quantity and nutritive value to maintain each animal in good health, to include:

1. Easily accessible to each animal
2. Prepared so as to permit ease of consumption for the age, species, condition, size and type of each animal
3. Provided in a clean and sanitary manner
4. Placed so as to minimize contamination by excrement and pests

***Adequate living area*** means adequate space, shade, and shelter ~~for exercise~~ suitable to the age, size, species and breed of animal.

***Adequate Shade*** means provision of and access to either man made or natural shade suitable for species, age, condition, size and type of each animal.

***Adequate Shelter means*** provision of and access to shelter that is suitable for species, age, condition, size and type of each animal; provides adequate space for each animal; is safe and protects each animal from injury, rain, sleet, snow, hail, direct sunlight, the adverse effects of heat or cold, physical suffering, and impairment of health; is properly cleaned; enables each animal to be clean and dry.

***Adequate space to prevent overcrowding*** means having sufficient space to allow animals restrained together to be able to move freely, turn around and lie down.

***Adequate water*** means constant access to a supply of unfrozen, potable water, provided in a sanitary manner suitable for species, in sufficient amounts to maintain good health.

***Animal*** means any vertebrate ~~members of the animal kingdom, excluding man.~~ member of the animal kingdom, excluding the human species, including but not limited to wild animals, domesticated animals, and livestock.

***Animal Control Center or Center Shelter or Shelter*** means any pound, lot, premises, and/or building maintained by the City for the care and custody of animals. This shall include any private shelter contracted or recognized by the City for the purpose of maintaining care and custody of animals.

***Animal Control Officer*** means any person designated by the City Manager as a peace officer, who ~~is qualified to perform such duties under the laws of this state.~~ Police Chief to enforce animal control laws, orders, ordinances and regulations.

***Animal fighting paraphernalia*** means equipment that any reasonable person would ascertain is used for animal fighting purposes which includes, but is not limited to:

1. instruments designed to be attached to the leg of a bird, such as a boxing gloves, knife, gaff, or other sharp instrument,

- 2.items to train and condition animals to fight including, but not limited to, hides or other material used as hanging devices to strengthen and/or condition dogs, wooden sticks or handles used to pry open dog's jaws, performance enhancing drugs or substances, or food or water additives.

**Auction** means any place or facility where animals are regularly bought, sold or traded, except for those facilities otherwise defined in this chapter. This definition does not apply to individual sales of animals by owners.

**Bait animal** means any animal used to train and/or condition other animals to fight and are exposed to attack by other animals used or trained to be used in fighting or to make the attacking animal more confident and aggressive.

**Bite** means ~~an actual puncture or tear~~ any puncture, tear, scratch or wound of the skin inflicted by the teeth of an animal.

**Breeder** means any person involved in the controlled breeding of animals. Breeders are subject to City of Truth or Consequences Kennel Permit requirements.

**Canine Hybrid** means any offspring which results from the breeding of a domestic species or breed of canine with any wild species or breed of canine, such as wolf or coyote. Any animal which at any time has been or is advertised, or otherwise described or represented as a canine hybrid, wolf-dog, or wolf hybrid by its owner to an Animal Control Officer, Veterinarian, Police Officer, or Official of the Department of Health shall be considered a canine hybrid for the purpose of this chapter. An animal shall not be classified to be a canine hybrid based strictly on its appearance.

**Care** means responsibility for or attention to health, well-being, and safety.

**Collar** means ~~a band, chain, harness or other suitable device worn around the neck of an animal,~~ strap made of leather or other strong material or a harness that is worn around the neck/torso of an animal to which a current rabies vaccination and city animal registration tag can be affixed.

**Confined or Confinement** means restriction of an animal at all times by an owner or keeper in an escape proof building or other enclosure away from other animals and the public.

**Continually** means a duration that continues over a long period of time but with intervals and interruptions.

**Emergency measures** means any action taken by animal control or its designated agents to preserve the health and life of an animal or human being, including but not limited to entering vehicles or premises, with probable cause and/or exigent circumstance, and impounding an animal to prevent present or imminent suffering to the animal, a human being, or another animal.

**Enclosed lot** means parcel of land or portion thereof in private ownership around the perimeter of which a wall or fence has been erected.



**Enclosure** means an area completely surrounded by a wall, fence, or animal pen of sufficient height and strength to contain the animal(s) within.

**Establishment** means a place of business together with its grounds and equipment.

**Estray or Stray** means any animal found running at large or unattended beyond the boundaries of the premises of the owner.

**Feline Hybrid** means any offspring which results from the breeding of a domestic species or breed of feline with any wild species or breed of feline, such as an African Serval cat. Any animal which at any time has been or is advertised, or otherwise described or represented as a feline hybrid by its owner to an Animal Control Officer, Veterinarian, Police Officer, or Official of the Department of Health shall be considered a feline hybrid for the purpose of this chapter. An animal shall not be classified to be a feline hybrid based strictly on its appearance.

**Feral Animal** means an individual animal of a domesticated species that is not behaviorally compatible with humans, and is therefore not suitable to serve as a pet, companion animal, or work animal. Any feral animal that by physical aspect and behavior are deemed to be un-owned and have been trapped for the purpose of improving public health and limiting reproduction.

**Grooming parlor** means any establishment, or part thereof, or premises maintained for the purpose of offering animals cosmetological services for profit.

**Heat, Estrus or Season** means a regularly recurring state of estrus during which the female animal is capable of attracting or accepting the male for breeding or is capable of conceiving.

**Immediate control** means direct physical control over an animal by the owner/responsible party by use of:

1. A secure collar or harness and leash for a dog; or
2. A secure leash in conjunction with a properly fitting harness for a cat or ferret; or
3. A secure and appropriate portable animal crate or cage for any animal.

**Household** means one or more persons occupying the premises and living as a single housekeeping unit as distinguished from a group occupying a boarding house, lodging house or hotel.

**Kennel area** means a secure space within which an animal is housed that is of sufficient height and strength to contain the animal within and provide sufficient room for the animal to comfortably move around within the structure.

**Kennel, commercial** means any premises on which a total of five or more dogs or cats, in any combination thereof, four months of age or older, are kept; and/or where the business of buying, selling, breeding, training or boarding of dogs and/or cats is conducted.

***Licensed veterinarian*** means a person with a Doctor of Veterinary Medicine degree, licensed to practice in the State of New Mexico.

***Livestock*** means horses, cattle, pigs, sheep, goats, fowl, or any other domestic animals typically used in the production of food, fiber, or other products or activities defined by the city manager as agricultural.

***Owner/responsible party*** means ~~any person, partnership, or corporation, owning, keeping or harboring one or more animals, but not more than four in any combination of dogs and/or cats.~~ a person 18 years of age or older or the parent or guardian of a person under 18 years of age who owns, harbors, keeps an animal, has one in his/her care, or permits an animal to remain on or about the premises owned or controlled by him/her.

***Pet*** means ~~any dog, cat, turtle, small caged birds, aquarium fish, iguanas, caged rodents and caged snakes, pygmy goats and potbellied pigs.~~ domesticated animal kept as a companion animal, and not intended to be used for farming or human consumption. Livestock shall not be considered a pet even if kept as a companion animal and not used for farming or human consumption.

***Pet shop or dealer*** means any commercial establishment or person, including wholesalers engaged in the business of buying and selling or holding pet animals for sale. This term shall not include livestock auctions.

***Potable*** water means water that can be consumed without concern for adverse health effects.

***Premises*** means a parcel of land and/or the structure(s) thereon.

***Public nuisance*** means where an animal owner fails to prevent its animal from urinating, defecating, disturbing the peace, emitting noxious odors or otherwise endangering or offending the well-being of the inhabitants of the City while:

- (1) Trespassing on school grounds, public or private property;
- (2) Being found running at large;
- (3) Damaging private or public property; or
- (4) Barking, whining, or howling in an excessive or continual fashion.

***Public Way*** means an alley, avenue, boulevard, bridge, channel, ditch easement, express freeway, highway, land, parkway, right-of-way, road, sidewalk, street subway, tunnel, viaduct, walk or other ways in which the general public or a public entity have a right, or which are dedicated, whether improved or not.

***Qualified service animal*** means:

- A. any qualified service dog or qualified service miniature horse that has been or is being trained to provide assistance to an individual with a disability;



B. An animal recognized as a service animal under either federal regulations implementing the Americans with Disabilities Act, or NMSA 1978, Chapter 28, Article 11, which is the New Mexico Service Animal Act, and as amended;

C. A qualified service animal does not include a pet, an emotional support animal, a comfort animal, or a therapy animal as defined in NMSA 1978, Section 28-11-2(B) (2013).

**Quarantine** means ~~to detain or isolate an animal~~ detention and isolation of an animal in order to observe the animal suspected of contagion.

**Responsible person** *party for the animal* means the owner of the animal, or an adult person placed in charge of the animal in the absence of incapacitation of the owner.

**Restraint** means any of the following:

1. To be under the immediate control of a capable and competent person on a leash or lead; or
2. To be secured by a trolley system confining the animal within the owner's premises; or
3. To be secured within an escape-proof enclosure within the owner's premises.

**Running at large or to run at large** means ~~to be free of an animal that is free of~~ physical restraint beyond the boundaries of the premises of the owner/responsible party.

**Tether** means to restrain an animal by means of a runner cable or similar device attached to a running line, pulley or trolley system.

**Tormenting of animals** means the act of bothering, annoying, distracting or agitating an animal.

**Un-weaned** means of an infant or other young mammal not accustomed to food other than its mother's milk

**Vaccination** means the inoculation of an animal with a vaccine administered by a veterinarian for the purpose of immunizing the animal against rabies as required by the State of New Mexico Rabies Control Act of 1959. The amount given should be sufficient to provide immunity from rabies for a minimum of one year.

**Veterinary hospital or clinic** means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries to animals.

**Vicious animal** means any animal which bites or in any other manner attacks or attempts to attack any person or animal within the City, except that any animal that bites, attacks, or attempts to attack any person unlawfully upon its owner's or keeper's premises, or which is provoked to attack, shall not be deemed a vicious animal.

(Code 1962, § 6-2-2; Ord. No. 384, § 6-2-2, 7-22-91; Ord. No. 400, § 1, 10-26-92; Ord. No. 436, § 2, 5-13-96; Ord. No. 532, § 2, 10-14-03; Ord. No. 608, § 1, 8-30-11; Ord. No. 659(1), § 1, 1-13-15)

**Cross reference**— Definitions and rules of construction generally, § 1-2.

#### **Sec. 3-4. - Service animals.**

~~No qualified service animal as defined by the ADA (American Disability Act) shall be denied admittance to any building, facility, or accommodation open to the general public, including, but not limited to, restaurants, hotels, motels, hospitals, clinics, swimming pools, stores, common carriers, and theaters, provided that the qualified service animal is under the immediate control of a person that is disabled under the definitions of the ADA.~~

(1) a person with a disability who is using a qualified service animal, as defined by the American Disability Act (ADA), shall be admitted to any building open to the public and to all other public accommodations and shall be allowed access to all common carriers; provided that the qualified service animal is under the control of an owner, a trainer or a handler of the qualified service animal. A person shall not deny an individual with a qualified service animal entry to a building open to the public or to any public accommodation or deny access to a common carrier, regardless of any policy of denying pets entry to that building, public accommodation or common carrier. A person shall not be required to pay any additional charges for the qualified service animal, but may be liable for any damage done by the qualified service animal; provided that persons without disabilities would be liable for similar damage; and

(2) This section does not require a public accommodation or common carrier to permit an owner, trainer or handler using a qualified service animal to have access to a public accommodation or common carrier in circumstances in which the individual's use of the qualified service animal poses a direct threat of significant harm to the health or safety of others.

Credits L. 1989, Ch. 242, § 2; L. 1999, Ch. 262, § 2; L. 1999, Ch. 288, § 2; L. 2005, Ch. 224, § 3, eff. June 17, 2005; L. 2013, Ch. 57, § 3, eff. June 14, 2013.

§ 28-11-3. Admittance of qualified assistance animals, State of New Mexico

(Code 1962, § 6-2-23; Ord. No. 659(1), § 1, 1-13-15)

**Editor's note**— Section 1 of Ord. No. 659, adopted Jan. 13, 2015, changed the title of § 3-4 from "Dogs trained to assist the blind and hearing impaired allowed in public places" to read as herein set out.

#### **Sec. 3-5. - Cruelty.**

- (a) **Physical abuse.** It is unlawful for any person to willfully or maliciously kill, maim, disfigure, torture, beat with a stick, chain, club, or other object, mutilate, burn, or scald any animal; except that reasonable force may be employed to drive off vicious or trespassing animals. When a Law Enforcement Officer or an Animal Control Officer has probable cause to believe that an animal has been cruelly treated, the officer may impound the animal for its protection pending appropriate court proceedings.
- (b) **Work cruelty.** It is unlawful for any person to drive or work any animal cruelly.
- (c) **Animal in a Vehicle.** It shall be unlawful for any owner/responsible party to place or confine an animal in a motor vehicle without allowing cross-ventilation and under no circumstance shall a person confine any animal in any parked, closed vehicle on any public way or private street for any amount of time that would endanger, or create an adverse condition placing at risk the health or well-being of such animal due to temperature, lack of food or potable water or such other conditions as may be reasonably expected that may cause suffering, disability or death. Any animal control or law enforcement officer observing an animal kept in violation of this Section may take emergency measures, as defined by the definitions of this article and impound the animal. In addition to all other defenses and immunities provided by law, any such officer taking emergency measures for the purpose of this Section shall be immune from suit or liability, criminal or civil, caused by or arising from the emergency measures taken.
- (d) **Care and maintenance.** It is unlawful for any person to fail, refuse, or neglect to provide any animal in his charge or custody, as owner or otherwise, with:
- (1) **Adequate Food.** ~~Animals shall be provided with uncontaminated, edible, nutritious food which is of adequate quantity as to maintain the normal weight and condition of a healthy animal. All food containers shall be kept clean.~~
  - (2) **Adequate Water.** ~~Animals shall be provided with constant access to a supply of potable water with sufficient amount as to maintain good health as required by the species.~~
  - (3) **Adequate Shelter.** ~~Any animal habitually kept outside shall be provided with a structurally sound, weatherproof enclosure, large enough to accommodate the animal.~~
  - (4) ~~Veterinary care. No person shall keep an animal which is seriously sick or injured without providing proper veterinary care to the animal.~~
  - (4) **Adequate Shade.** ~~Any owner of an animal shall provide the animal with access to shade not to be inclusive of shelter or to carry any animal in or upon any vehicle in a cruel or inhumane manner.~~
  - (5) **Adequate space to prevent overcrowding means having sufficient space to allow animals restrained together to be able to move freely, turn around and lie down without having to come into contact with another animal and/or the sides of the enclosure.**
- (e) No animal shall be left unattended for more than 24 hours.
- (f) No owner or responsible party shall fail to provide necessary grooming of the coat in order to prevent matting, skin irritation, distress or pain, trapping of fecal matter, and loss of the ability to protect the animal from adverse weather conditions. An animal shall not be so dirty that it becomes matted as to provide a home for parasites and insects. No animal shall be allowed to

have a foreign object embedded in its hide, fur or skin other than a microchip or a medical device implanted by a licensed veterinarian.

- (g) ***Veterinary care.*** It is unlawful for a person to have, keep or harbor an animal which is seriously sick or injured, including suffering from starvation, or severe thirst without providing proper veterinary care. An animal shall be afforded immediate veterinary care if it is known or suspected to be ill or injured. No person shall perform procedures such as ear-cropping, de-barking, tail docking on an animal, or otherwise endanger an animals well-being. Procedures completed by a licensed veterinarian in accordance to their standard practices shall not be considered cruelty.
- (h) ***Abandonment.*** It shall be unlawful for any person being the owner/responsible party of a dog, cat, or other domesticated animal or pet to abandon such animal. Abandonment includes dumping of an animal from a moving or stationary motor vehicle. This section shall not apply to voluntary relinquishments to an animal rescue organization, animal control center, animal control officer, licensed veterinarian, or another person.
- (i) ***Poisoning.*** It is unlawful for any person by any means to make accessible to any animal, with the intent to cause harm or death, any harmful or poisonous substance. Intentionally or knowingly poison or attempts to poison any domestic animal. For purposes of this section, "poison" or "attempt to poison" includes the act of placing food, water, or lure of another sort which contains poison or contains health threatening foreign objects, such as glass or metal, in a location where any animal may be attracted.
- (e) ***Uncared-for animals.*** Whenever the animal control officer, Code Enforcement Officer, or designated representative finds that any animal is or will be without proper care because of injury, illness, incarceration, or other voluntary absence of the owner or person responsible for the care of such animal, the Animal Control Officer shall make arrangements for the care of the animal.
- (j) ***Uncared-for animals.*** Whenever the animal control officer, Code Enforcement Officer, or designated representative finds that any animal is or will be without proper care because of injury, illness, incarceration, or other involuntary absence of the owner or person responsible party for the care of such animal, the Animal Control Officer shall make arrangements for the care of the animal.
- (f) ***Injury by motorists.*** Every operator of a motor or other self-propelled vehicle upon the streets and ways of the City shall immediately, upon injuring, striking, maiming, or running down any animal, give such aid as is reasonably able to be rendered. In the absence of the owner, he shall immediately notify the Police, furnishing sufficient facts relative to such injury. It is the duty of such operator to remain at or near the scene until such time as the appropriate authorities arrive and, upon the arrival of such person, such operator shall immediately identify himself to the appropriate authorities. Alternatively, in the absence of the owner, a person may give aid by taking the animal to a veterinary hospital or the Animal Control Center and notifying the Police. Such animal shall be deemed an uncared for animal within the meaning of subsection (e) of this section. Emergency vehicles are excluded from this provision.



- (k) ***Injury by motorists.*** Every operator of a motor or other self-propelled vehicle upon the streets and ways of the City shall immediately, upon injuring, striking, maiming, or running down any animal, give such aid as is reasonably able to be rendered. In the absence of the owner, he/she shall immediately notify the Police, furnishing sufficient facts relative to such injury. It is the duty of such operator to remain at or near the scene until such time as the appropriate authorities arrive and, upon the arrival of such person, such operator shall immediately identify himself **themselves** to the appropriate authorities. Alternatively, in the absence of the owner, a person may give aid by taking the animal to a veterinary hospital or the Animal Control Center **Shelter** and notifying the Police. Such animal shall be deemed an uncared-for animal within the meaning of subsection (e) **(j)** of this section. Emergency vehicles are excluded from this provision.
- ~~(g) ***Hobbling livestock.*** It is unlawful for any person to hobble livestock or other animals by any means which may cause injury or damage to any animal.~~
- (l) ***Hobbling livestock.*** It is unlawful for any person to hobble livestock or other animals by any means which may cause injury or damage to any animal.
- ~~(h) ***Keeping of diseased animals.*** It is unlawful for any person to have, keep, or harbor any animal which is infected with any dangerous disease. The Animal Control Officer may impound such diseased animal in accordance with the provisions of this article. All such animals impounded may be destroyed humanely as soon as is conveniently possible. In the case of destruction of such animal, the Code Enforcement Officer or Animal Control Officer shall not be required to give any of the notices provided in this article. This section shall not be construed to include veterinary hospitals or animals under active veterinary care.~~
- (m) ***Keeping of diseased animals.*** It is unlawful for any person to have, keep, or harbor any animal which is infected with any dangerous disease. The Animal Control Officer may impound such diseased animal in accordance with the provisions of this article. All such animals impounded may be destroyed humanely as soon as is conveniently possible. In the case of destruction of such animal, the ~~Code Enforcement Officer or~~ Animal Control Officer **for designee** shall not be required to give any of the notices provided in this article. This section shall not be construed to include veterinary hospitals or animals under active veterinary care.
- ~~(i) ***Fights.*** It is unlawful for any person to promote, stage, hold, manage, conduct, carry on, or attend any game, exhibition, contest, or fight in which one or more animals are engaged for the purpose of injuring, killing, maiming, or destroying themselves or any other animal.~~
- (n) ***Fights.*** It is unlawful for any person to promote, stage, hold, manage, conduct, carry on, or attend any game, exhibition, contest, ~~or fight~~, **or combat between one (1) or more animals or between animals and humans** in which one or more animals are engaged for the purpose of injuring, killing, maiming, or destroying themselves or any other animal. **This includes any animal used as a "Bait Animal" as defined in the definitions of this ordinance.**
- ~~(j) ***Abandonment.*** It shall be unlawful for any person to abandon any animal or to cause such abandonment.~~

- ~~(k) *Fowl; impounding; crating.* It is unlawful for any person to confine any wild or domestic fowl or birds unless provisions are made by each person for the proper feeding and the furnishing of water to such fowl or birds at intervals not longer than 12 hours. No person shall impound any wild or domestic fowl or birds in a crate, box or other enclosure, which does not permit each fowl or bird impounded therein to stand in a naturally erect position.~~
- (o) ***Fowl; impounding; crating.*** It is unlawful for any person to confine any wild or domestic fowl or birds unless provisions are made by each person for the proper feeding and the furnishing of water to such fowl or birds at intervals not longer than 12 hours. No person shall impound any wild or domestic fowl or birds in a crate, box or other enclosure, which does not permit each fowl or bird impounded therein to stand in a naturally erect position.
- ~~(l) *Tormenting.* It shall be unlawful for any person to willfully torment any and all animals by any means, such as throwing rocks, yelling or giving chase in any manner. No person shall purposely cause a dog to bark unnecessarily or annoy such animal to the point the animal will attempt to attack a person or other animal.~~
- (p) ***Tormenting.*** It shall be unlawful for any person to willfully torment any and all animals by any means, such as throwing rocks, yelling or giving chase in any manner. No person shall purposely cause a dog to bark unnecessarily or annoy such animal to the point the animal will attempt to attack a person or other animal.
- ~~(m) *Songbirds, killing and robbing of nest prohibited.* It is unlawful for any person to willfully kill any songbird, or to molest or rob the nest of such bird.~~
- (q) ***Songbirds, killing and robbing of nest prohibited.*** It is unlawful for any person to willfully kill any songbird, or to molest or rob the nest of such bird.

(Code 1962, § 6-2-24; Ord. No. 384, § 6-2-24, 7-22-91; Ord. No. 436, § 3, 5-13-96; Ord. No. 659(1), § 1, 1-13-15)

**State Law reference—** Cruelty to animals, NMSA 1978, § 30-18-1.

### **Sec. 3-6. - Sale.**

- (a) ***Use of public property.*** No person shall display, sell, or offer for sale, barter, give away, or otherwise dispose of any animal upon any street, sidewalk, public park or private business, unless said private business is properly licensed **or such person is acting on behalf of the Truth or Consequences Animal Shelter during an adoption event.**
- (b) ***Rabbits or fowl.*** No person shall sell, offer for sale, barter, or give away any baby rabbits under four weeks of age. Nothing in this section shall be construed to prohibit the raising of rabbits and fowl by a private individual for his personal use and consumption, provided that he shall maintain proper brooders and other facilities for the care and containment of such animals while they are in his possession.
- (c) ***Premiums and novelties.*** No person shall offer as a premium prize, award, novelty, or incentive to purchase merchandise any live animal.

- (d) **Turtles.** No person shall offer for sale, sell, barter, or give away turtles, except in conformance with appropriate federal regulations.
- (e) **Sale of un-weaned animals.** A person shall not sell, offer for sale, transfer, or adopt a dog, cat, or ferret under eight weeks of age, or a guinea pig, hamster, or rabbit under four weeks of age. However, in no event shall an animal be sold, transferred or adopted until it is fully weaned and capable of eating on its own to sufficiently maintain proper body condition as determined by the breed and species of the animal. Nothing herein shall prohibit the transfer of animals between animal shelters and animal rescue organizations or prohibit the sale, transfer, or adoption of an un-weaned animal if accompanied by a nursing female.

(Code 1962, § 6-2-25; Ord. No. 436, § 4, 5-13-96; Ord. No. 532, § 3, 10-14-03)

### **Sec. 3-7. - Wild animals prohibited.**

- (a) No person shall keep an animal of a species prohibited or protected by Title 50 of the Code of Federal Regulations or by the appropriate state regulations or statutes.
- (b) No person shall keep any animal which is wild, fierce, dangerous, noxious, or naturally inclined to do harm except where 1) adequate protective devices are provided to prevent such animals from escaping or injuring the public, and 2) a proper license is obtained in accordance with section 3-8. If such requirements are met, they may be kept in a zoological park, pet shop, veterinary hospital, animal shelter, public laboratory, circus, amusement show, educational facility, scientific facility, or in the control of a humane society.
- (c) **Wild animals prohibited.** "Wild animal" means any animal of a species that in its natural life is wild, dangerous, or ferocious and though it may be trained and domesticated will remain dangerous to others and may injure or kill a citizen in the City. Those animals, however domesticated, shall include but are not limited to:
  - (1) Dog family (canidae). All except domesticated dogs, including wolf, fox, coyote, dingo, etc.
  - (2) Cat family (felidae). All except the commonly accepted domesticated cats, including lions, pumas, panthers, mountain lions, wild cats, etc.
  - (3) Bears (ursidae). All bears, including grizzly bears, brown bears, black bears, etc.
  - (4) Weasels (mustelidae). All, including weasels, martins, mink, wolverine, ferrets, badgers, otters, ermine, mongoose, etc.
  - (5) Porcupine (erethizontidae).
  - (6) Venomous snakes.
  - (7) Venomous lizards, alligators, and crocodiles.

(Code 1962, § 6-2-26; Ord. No. 384, § 6-2-26, 7-22-91; Ord. No. 436, § 5, 5-13-96)



**State Law reference**— Sale, purchase, trade and possession of certain animals regulated, NMSA 1978, § 77-18-1.

**Sec. 3-8. - Licensing wild animals.**

- (a) Any person owning a wild animal covered by this section at the time of enactment of this Chapter may license such animal in accordance with law. A fee of \$20.00 **set by resolution** shall be charged for such licensing through the City.
- (b) For the purpose of humanely trapping wild animals such as skunks and domesticated dogs or cats which may be a menace to the public, the Animal Control Officer may maintain such traps as are constructed for the purpose of trapping a live animal without serious risk of injury to the trapped animal and which may be placed on private property at the request of the owner thereof. Traps shall be baited only inside the trap and shall be checked not less than twice a day by the Animal Control Officer or the property owner requesting the placement of such traps. All such trapping shall be in conformity with state law.

(Ord. No. 384, § 6-2-27, 7-22-91; Ord. No. 436, § 6, 5-13-96)

**Sec. 3-8.1. — Harboring of pets.**

- ~~(a) It shall be unlawful for any owner or responsible party to possess or harbor more than four dogs or cats, in any combination thereof, four months of age or older on their premises, where the business of buying, selling, breeding, training or boarding of pets is not carried on. Animals that are the property of visitors who stay in a household longer than 90 days in a calendar year shall be included in the calculation of total animals for that household.~~
- ~~(b) It shall not be a violation of this section if the said person obtains a kennel permit from the City Clerk which permits the person to engage in the aforesaid activity. All applications for kennel permits must meet the following conditions:
  - ~~(1) Kennel permits may only be issued after the applicant is granted a special use permit pursuant to the procedure detailed in section 11-5-6 of the City's Planning and Zoning Code. The fees for kennel permits are described below.~~
  - ~~(2) An initial non-refundable fee of \$100.00 set by resolution for kennel permits must accompany an application to defray the cost of processing the request.~~
  - ~~(3) All kennel permits must be renewed annually and an annual fee of \$25.00 set by resolution shall be assessed.~~
  - ~~(4) Any application may be denied or revoked if the owner or responsible person shows a history of non-compliance with the city codes concerning animal control as evidenced by a conviction of any such ordinance during the past year.~~
  - ~~(5) If a kennel permit is obtained the maximum number of animals that can be maintained on the property shall not exceed seven (7) animals. Licensees who currently have a kennel~~~~

~~permit and the number of animals exceed seven (7) animals will be allowed to keep those animals, but no additional animals may be added.~~

~~(c) A kennel permit may be revoked if, in the judgment of the Animal Control Officer, it is determined that the holder of the permit allows any one or more of the following conditions to exist:~~

~~(1) The realty or the pens are not maintained in a clean and sanitary condition to such an extent that either of them constitute a health hazard or produce noxious odors.~~

~~(2) The housing structures are considered to be unsafe.~~

~~(3) The permit holder is in violation of any of the city animal control ordinances.~~

- **Sec. 3-8.1. – Multi-Animal Site Permit and Kennel Permit.**

(a) It shall be unlawful for a property owner, tenant, lessee, or authorized resident of said property, to possess or harbor more than four animals in any combination thereof, three months of age or older on their residential or business premises without a multi-animal site permit.

(b) If a business premises is being used for the buying, selling, breeding, training, fostering, rescuing, or boarding of animals, said business shall apply for a kennel permit.

(c) Animals belonging to visitors who are located within city limits and who stay in a household or lodging establishment longer than 30 days in a calendar year shall be included in the calculation of total animals for said location and the owner of the animal shall be required to comply with all applicable sections contained in this chapter.

(d) No person shall keep or operate a residential or commercial multi-animal site without a permit issued by the city. All business applicants must have a valid business license issued through the city at the time of application.

(e) Veterinary hospitals or clinics shall be exempt from the kennel permit licensure requirement of this chapter unless the veterinary hospital or clinic engages in the non-veterinary medical boarding of animals.

(f) Any person who operates or proposes to operate a residential or commercial multi-animal site shall file an application for a permit with the police department, describing



the location of the site, and the purpose for which it is to be maintained. An initial non-refundable fee, established by resolution, for residential or commercial multi-animal sites must accompany any application to defray the cost of processing the request.

- (g) Upon receipt of payment, the police department shall forward the application to the Planning and Zoning Department. All applications for multi-animal site and kennel permits shall undergo a special use permit process pursuant to the procedure detailed in section 11-5-6 of the City's Planning and Zoning Code.
- (h) An onsite visit of the premises shall occur by the animal control and designated zoning official or administrator prior to a hearing before the City's Planning and Zoning Board to verify compliance with this section and/or other applicable zoning regulations. If any provision of this section is in conflict with the provision of any applicable zoning regulation, the provision of the zoning regulation shall control.
- (i) All animals listed on the application three months of age or over must be vaccinated for rabies and possess a city animal license tag.
- (j) All multi-animal residential or commercial site permits and kennel permits must be renewed annually at a fee established by resolution.
- (k) There shall not be more than seven animals in any combination thereof for multi-animal residential or commercial site permits. The maximum animal occupancy for kennel permits shall be determined based upon the recommendation of the animal control officer or designated zoning official or administrator to ensure there is adequate space and adequate shelter to ensure sanitary and safe conditions.
- (l) An application may be denied if the applicant or animal owner shows a history of noncompliance with sections contained in this chapter as evidenced by two or more convictions of violations during the preceding 12 months. Any past city permit or license revocations may be considered in decision making process of whether to approve or deny a permit under this section.
- (m) Multi-animal site and kennel permit holders shall allow the animal control officer, police officer, designed zoning official or administrator or other city official to enter and inspect the premises for compliance with this section and/or any other city municipal code or ordinances during normal business hours.

(n) A multi-animal site permit or kennel permit may be revoked when, in the opinion of the designated zoning official or administrator or animal control officer, any one or more the following conditions exist:

(1) The premises or enclosures are not maintained in a clean, safe, and sanitary condition and are a health, fire, or public safety hazard or produce noxious odors.

(2) The number of animals exceeds the number allowed under the permit.

(3) Any other violation listed under this chapter or sections.

(o) In cases where a multi-animal site permit or kennel permit is revoked, the permittee shall be notified in writing via the mailing address listed on their permit application. The revocation letter shall state the reasons said permit has been revoked and the option to file a written appeal with the City Manager or their designee within ten business days of the date listed on the revocation letter. Written appeals shall be hand delivered to City Clerk's Office within the allotted timeframe. The City Manager or their designee may review the appeal and reverse the decision, modify the decision, or deny the appeal and upheld the initial revocation.

(p) If a multi-animal site permit or kennel permit has been revoked, said applicant and/or location of where the permit was issued shall not be allowed to apply or obtain another permit within city limits for a period of at least two years from the date of revocation.

(Ord. No. 395, § 1, 10-26-92; Ord. No. 436, § 7, 5-13-96; Ord. No. 532, § 4, 10-14-03; Ord. No. 609, § 1, 8-30-11; Ord. No. 659(1), § 1, 1-13-15)

**Sec. 3-8.2. - ~~Spaying and neutering of dogs and cats.~~ Sterilization Agreement/deposit for Spaying and neutering of dogs and cats.**

~~(a) It shall be the responsibility of the person obtaining an adult dog or cat from the Animal Control Center to have the dog or cat spayed or neutered prior to receiving the animal.~~

~~(b) If the animal obtained is a puppy or kitten, the owner can wait until the animal reaches the age of six months before getting it spayed or neutered.~~

(a) It is the intent of the City for all dogs and cats over the age of 6 months to be spayed/neutered. Therefore no animal cat or dog shall be released from the animal shelter to an adopting person unless it has been spayed/neutered or a sterilization agreement has been signed and a sterilization deposit set by resolution has been paid.

(b) The sterilization deposit shall be reimbursed only upon presentation of a receipt from a veterinarian that the adopted animal has been sterilized within 30 days of the date of adoption for cats/dogs over the age of six months or by 6 months of age for kittens and puppies.

- (c) An unsterilized animal reclaimed by its owner shall be released without being sterilized upon payment of the sterilization deposit and impoundment/boarding fees imposed by the shelter and set by resolution, and the owner shall sign an agreement stating he/she will sterilize the animal within 30 days after release or will obtain a breeder permit or its equivalent. The sterilization deposit may be reimbursed upon presentation by the owner of a receipt from a veterinarian that the animal has been sterilized within 30 days of release.

(NM Stat § 77-1-20 (2019) ) History: Laws 1993, ch. 43, § 3

(Ord. No. 393, § 1, 8-24-92; Ord. No. 532, § 5, 10-14-03; Ord. No. 610, § 1, 8-30-11)

**Sec. 3-8.3. - ~~Female dogs or cats in heat to be confined.~~ Female dogs or cats in Estrus (heat) to be confined.**

~~Owners shall confine their female dogs and cats in heat so that other dogs or cats are not attracted to the animal in heat and can only come in contact with dogs or cats intended to be bred with the animal in heat.~~

It shall be unlawful for any owner/responsible party to fail to securely confine any un-spayed animal in the state of estrus (heat), in a house, building or proper enclosure, in such a manner that such animal cannot come in contact with another animal except for planned breeding, and such that the animal does not create a nuisance by attracting other animals. When outside on the property of the owner, for metabolic waste elimination, the animal must be physically restrained with a hand-held leash. Owners/responsible party who do not comply may be ordered to remove the animals in estrus (heat) to a boarding kennel, veterinary hospital or animal shelter. All expenses incurred as a result of the confinement shall be paid by the owner/responsible party of the animal. Failure to comply with the removal order shall be a violation of this Section and the animal shall then be impounded as prescribed in this Title.

(Ord. No. 436, § 8, 5-13-96)

**Sec. 3-9. – Enforcement and Interference with Enforcement.**

- (a) The civil and criminal provisions of this chapter shall be enforced by those persons or agencies designated by the City Manager.
- (b) It shall be a violation of this chapter for any person to interfere, hinder or molest any Animal Control Officer or Police Officer in the performance of their duties.

(Ord. No. 384, § 6-2-28, 7-22-91; Ord. No. 436, § 9, 5-13-96; Ord. No. 532, § 6, 10-14-03; Ord. No. 611, § 1, 8-30-11)

**Sec. 3-10. - Reserved.**



**Editor's note**— Section 1 of Ord. No. 612, adopted Aug. 30, 2011, repealed § 3-10, which pertained to fines and fees and derived from Ord. No. 384, § 6, adopted July 22, 1991; Ord. No. 436, § 10, adopted May 13, 1996; and Ord. No. 532, § 7, adopted Oct. 14, 2003.

### **Sec. 3-11. - Penalty for violation of chapter.**

Any person who violates any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with section 1-10, with each conviction carrying a mandatory minimum fine of \$100.00.

(Code 1962, § 6-2-30; Ord. No. 384, § 6-2-30, 7-22-91; Ord. No. 394, § 1, 8-24-92; Ord. No. 436, § 11, 5-13-96; Ord. No. 532, § 8, 10-14-03; Ord. No. 613, § 1, 8-30-11)

### **Sec. 3-12 Deceased Animal Disposal Requirements.**

A. Owner responsibility – The owner / responsible party having care, custody or control of an animal carcass shall be responsible for its removal within twenty-four (24) hours of death if the animal is not to be used for human consumption.

1) An animal carcass may be disposed of in one of the following ways:

a. Burial of the animal carcass on the owners land under the following conditions:

- The bottom of the burial pit must be at least 3 ft. above the water table.
- If possible, choose a site where the soil is heavier and less permeable.
- Flat areas are best. Avoid areas sloping toward water or arroyos.
- Ensure the pit is sized to allow soil to cover mortalities to a depth of at least 3 ft.

b. Cremation by a licensed facility where the remains can be sealed in an acceptable urn for return to the animal owner or disposed of by the facility.

- The cremation of the carcass will be at the expense of the animal owner.

B. Removal - The Animal Control Officer may remove any animal carcass from the roadway or other public property. The Animal Control Officer and/or T or C Animal Shelter staff shall make reasonable efforts to notify the animal's owner if known in the event of the animal's death.

1) Animal Control Officer may dispose of the animal carcass at the T or C Animal Shelter as authorized after microchip scanning and making reasonable efforts to notify the animal's owner. If an owner is located and request that the Animal Shelter dispose of the carcass, then the owner/responsible party will be responsible for the disposal fee.

2) Animal Control Officer shall turn over any tags or other identification found on an animal carcass to the T or C Animal Shelter.

C. Removal fee - The Animal Control Officer may, but is not obligated to, provide for the removal of an animal carcass from private property at the request of the animal owner or property owner for a fee.

- 1) The fee amount shall be established by resolution or
- 2) The fee amount shall be established by most current rate schedule as provided by the current licensed facility, contracted with the City of Truth or Consequences, for cremation services.
  - a. This fee schedule is based on the weight of the carcass.

**Secs. 3-12 3-13 - 3-25. - Reserved.**

## **ARTICLE II. - CONTROL**

### **DIVISION 1. - GENERALLY**

#### **Sec. 3-26. - Authority of Animal Control Officers.**

~~The Truth or Consequences Police Department, and animal control officers shall have the authority to issue citations for violations of this chapter and to perform such other duties as are prescribed in this chapter. An Animal Control Officer shall wear a uniform and shall wear a badge identifying such officer as an animal control officer. The Animal Control Officer is hereby designated a Peace Officer, deputized in accordance with state statutes as they now exist or may hereafter be amended, and he shall not be required to be certified as a regular law enforcement officer.~~

(a) The office of animal control officer is hereby created. The chief of police will assign that duty as needed. The animal control officer shall be charged with all duties pertaining to the enforcement of ordinances regulating or controlling animals and fowl within the corporate limits of the city or in areas of other areas of jurisdiction as specified in agreements with other entities.

(b) An Animal Control Officer shall wear a uniform and shall wear a badge identifying such officer as an animal control officer.

(c) It shall be the duty of the animal control officer to take up and impound any animal or fowl authorized to be impounded by this Code or by other ordinances within the specified agreements with other entities.

(d) It shall be the duty of the animal control officer to investigate all reported violations of animal control ordinances and to attempt, when appropriate, to solve such problems through conferences and issuance of citations or complaints filed with the appropriate court.

(Code 1962, § 6-2-4; Ord. No. 436, § 12, 5-13-96; Ord. No. 532, § 9, 10-14-03)



**State Law reference**— Municipal authority to designate animal control officer, NMSA 1978, § 77-1-15.1B.

**Sec. 3-27. - Establishment of Animal Control Center Shelter.**

There is hereby established an Animal Control Center Shelter which shall be located at a location designed by the Commission.

(Code 1962, § 6-2-5)

**Sec. 3-28. - Animal Control Center Shelter, hours of business.**

The Animal Control Center Shelter of the City of Truth or Consequences shall be kept open to the general public for the transaction of business during the hours set by the City Manager.

(Code 1962, § 6-2-6; Ord. No. 436, § 13, 5-1-3-96)

**Sec. 3-29. - Impoundment.**

It is the duty of the Animal Control Officer to take up and impound in the Animal Control Center Shelter any stray or any animal kept or maintained contrary to this chapter, including any animal that is allegedly creating a public nuisance.

(Code 1962, § 6-2-7; Ord. No. 384, § 6-2-7, 7-22-91)

**State Law reference**— Municipal authority to impound and dispose of animals running at large, NMSA 1978, § 3-18-3A(3).

**Sec. 3-30. - Impounding estrays; records; redemption fees; notice.**

- (a) No person shall, without the knowledge or consent of the owner, hold or retain possession of any animal of which he is not the owner for more than 24 hours without first reporting the possession of such animal to the animal control officer, giving his/her name and address, a true and complete statement of the circumstances under which he took up the animal the animal was taken, and the precise location where such animal is confined.
- (b) It is unlawful for any person taking up an animal to fail to give the notice required in subsection (a) of this section and for any person having such animal in his/her possession to fail or refuse to immediately surrender such animal to the Animal Control Officer upon demand thereof.
- (c) If an stray animal is wearing a license or other identification, it shall be returned to the owner and a citation may be issued. If an stray animal is not wearing a license or other identification, the animal shall be confined for a 72-hour period at the Animal Control Center Shelter. The Animal Control Officer Shelter may dispose of stray animals impounded under this section according to their policies and procedures the day after the required impoundment period.

- (d) No dog or cat that has been impounded by the Animal Control Center Shelter will be sold for the purpose of breeding or resale.
- (e) ~~Reserved.~~ An animal which continues to be an alleged nuisance may be impounded by the Animal Control Officer until such time as a judgment is made by the Municipal Court.
- (f) ~~Reserved.~~ Animals confined/impounded to the Animal Shelter may be released to the rightful owner or designee after all applicable fees have been paid. Owner shall bear the cost of any expenditures while animal is confined including veterinary services.
- (g) ~~An animal which continues to be an alleged nuisance may be impounded by the Animal Control Officer until such time as a judgment is made by the Municipal Court.~~ Reserved.
- (h) Fines for violations of this article shall be in accordance with the provisions of section 1-10. In addition, upon a finding of guilt, Municipal Court shall order In addition, upon a finding of guilt, the City may request that the Municipal Court shall order a defendant to reimburse the Animal Control Shelter or Police Department for any costs associated with apprehending and/or impounding the animal.

(Code 1962, § 6-2-8; Ord. No. 384, § 6-2-8, 7-22-91; Ord. No. 436, § 14, 5-13-96; Ord. No. 614, § 1, 8-30-11)

### **Sec. 3-31. - Restraint of animals.**

- (a) ~~All animals shall be contained upon the premises of the owner unless restrained off the premises under the immediate control of the owner or responsible person. While restrained on the premises of its owner or responsible person, no lead less than 25 feet in length shall be used. While restrained off the premises under the immediate control of the owner or responsible person, no lead greater than eight feet in length shall be used for animals weighing less than 35 pounds. For animals weighing greater than 35 pounds, no lead greater than four feet in length shall be used.~~ Physical restraint - A person owning or having charge, custody, or care over an animal shall keep the animal under humane physical restraint at all times.
- (b) ~~No owner or responsible person shall fail to exercise proper care and control of his animal to prevent it from becoming a public nuisance.~~ Dragging; hobbling - A person shall not hobble an animal, or tether or attach any animal to any object that can be dragged or moved by the animal. Such an animal, if not otherwise restrained by immediate control or enclosure, shall be considered by the animal control officer to be unrestrained. This shall not apply to livestock animals being properly used for work purposes.
- (c) ~~Any animal trespassing upon private or public premises shall be deemed prima facie not to be under the immediate control of the owner or a responsible person and the Animal Control Officer may issue a citation to the owner or responsible person or impound the animal, or both.~~ Owner's premises - A person owning or having care, custody, or control over an animal on his or her premises shall restrain the animal either by a secure enclosure or by immediate control.

- (1) All pens, kennels, stalls, corrals, or other enclosures used to restrain an animal shall be continuously maintained with preservatives, fasteners, and other materials to prevent deterioration and animal escape. Substantial and acceptable locking or latching devices shall be installed on all gates and doors to animal enclosures in such a manner as to be inaccessible to animals and small children in order to prevent animal escape and unauthorized entry.
- (2) A person owning or having care, custody, or control over an animal on his or her premises may use a tether as a means of restraint only if:

- a. The tethered animal has access to adequate food, water, shade and shelter
- b. A tether used to restrain a dog shall be at least 12 feet in length. Such tether shall not enable the animal to reach beyond the owner's property.
- c. A tether used to restrain an animal shall be affixed to a properly fitting collar or harness worn by the animal. A person shall not wrap a chain or tether directly around the neck or other body part of the animal.
- d. A tether used to restrain an animal shall be fastened so that the animal may sit, walk, and lie down using natural motions. Such tether shall be unobstructed by objects that may cause the tether or animal to become entangled, strangled or denied access to adequate necessities.

~~(d) —Voice commands are not an acceptable form of restraint.~~

(3) Voice commands are not an acceptable form of restraint.

(d) Public premises - A person owning or having care, custody, or control over an animal off of his or her premises shall keep the animal under immediate control.

(1) While restrained off premises under the immediate control of the owner or responsible party, the animal must be on a leash that shall enable the handler to maintain control of the animal. The leash shall not exceed six (6) feet in length while the animal is in and around the inhabitants of the city.

(2) A person shall not carry an animal in or upon any vehicle in a cruel, inhumane, or unsafe manner. Animals carried in the open flatbed vehicle shall be crated or restrained upon a non-slick surface and in a manner that prevents the animal from falling out of the vehicle. At no time is an animal allowed to sit or stand in the drivers lap while the vehicle is being operated on any public roadway.

(3) A person in charge of an amphibian or reptile away from the owner's premises shall keep the animal secured within a closed container that will not expose people unexpectedly to the animal.

(4) Voice commands are not an acceptable form of restraint.

(e) Property of others - A person owning or having care, custody, or control over an animal shall not detain or restrain an animal upon another person's private property without having permission from the resident or owner of such property.

(1) If the resident or owner does not permit the animal being detained or restrained upon such property, the animal may be taken up and impounded by the animal control officer at the request of the resident or owner.

(2) If the owner of a rented or leased property does not approve of an animal being restrained or detained by the resident on such property, the dispute shall be regarded by the animal control officer as a civil matter.

(f) Multiple dwelling unit - An owner, manager, agent, or governing board of any multiple dwelling unit, including mobile home parks and gated communities, shall not permit or authorize any animal to be unrestrained upon the common areas of the multiple dwelling unit, except upon such areas and within such enclosures specifically designated for such activity.

(g) Exceptions

(1) A working dog that is under the control and supervision of the owner or handler performing such acts as herding, search and rescue, or police work shall not be considered as unrestrained while performing or being trained for such duties.

(2) A hunting, tracking, or show dog that is under the control and supervision of the owner or handler shall not be considered as unrestrained while performing in or being trained for those capacities.

Each animal cited as a violation under this section is considered a separate offense. Upon a second conviction of an offense under this section, an offender may be sentenced to imprisonment of up to 90 days at the discretion of the court. The offender shall be fined a minimum of \$100.00 per offense. Upon a third or subsequent conviction of an offense under this section, an offender may be sentenced to imprisonment of up to 90 days at the discretion of the court. The offender shall be fined a minimum \$250.00 per offense. The fine penalties imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement by the court.

(Code 1962, § 6-2-12; Ord. No. 384, § 6-2-12, 7-22-91; Ord. No. 436, § 15, 5-13-96; Ord. No. 615, § 1, 8-30-11)

**~~Sec. 3-32. Confinement during estrus.~~**

~~Any female dog or cat in the stage of estrus (heat) shall be confined to a building, kennel, or other secure enclosure so that contact with a male animal of the same species will be prevented except for intentional breeding purposes. Keepers who do not comply with this section shall be required to place such animal in a boarding kennel or veterinary hospital at the keeper's expense.~~

~~(Code 1962, § 6-2-13; Ord. No. 384, § 6-2-13, 7-22-91)~~



**~~Sec. 3-33. — Breaking into Animal Control Center, animal control vehicle.~~**

**Sec. 3-33 3-32. - Breaking into Animal Control Center, animal control vehicle.**

It is unlawful for any person to break open any pound, center, trap, or animal control vehicle wherein animals are impounded by the Animal Control Officer of the City, or in any other way to remove or assist in the removal of any animal from such pound, center, trap, or vehicle without lawful permission.

(Code 1962, § 6-2-22)

**~~Sec. 3-34. — Sterilization agreement and sterilization deposit.~~**

- ~~(a) No animal shall be released from the animal shelter to an adopting person unless a sterilization agreement has been signed and a sterilization deposit has been paid, as provided in subsections (c) and (d) of this section.~~
- ~~(b) In addition to any adoption fee charged, a sterilization deposit of at least \$25.00 shall be imposed on the adoption of each animal from the animal shelter.~~
- ~~(c) Animals less than six months of age shall be released only upon payment of the adoption fee and a sterilization deposit and after the adopting person has signed an agreement stating he will have the adopted animal sterilized when it is no older than six months of age.~~
- ~~(d) Adult animals over the age of six months shall be released only upon payment of the adoption fee and a sterilization deposit and after the adopting person has signed an agreement stating he will have the animal sterilized within 30 days of the date of adoption.~~
- ~~(e) The sterilization deposit shall be reimbursed only upon presentation of a receipt from a veterinarian that the adopted animal has been sterilized.~~
- ~~(f) An unsterilized animal reclaimed by its owner shall be released without being sterilized upon payment of the \$25.00 for the sterilization deposit and impoundment fees imposed by the shelter, and the owner shall sign an agreement stating he will sterilize the animal within 30 days after release or will obtain a breeder permit or its equivalent. The sterilization deposit shall be reimbursed upon presentation by the owner of a receipt from a veterinarian that the animal has been sterilized.~~

(Ord. No. 418, § 1, 9-12-94)

**Sec. 3-33. - Seizure of Animals Notice.**

- (a) An Animal Control Officer, or designee who reasonably believes that the life or health of an animal to include livestock is endangered due to cruel treatment may apply to the municipal court in the city where the animal is located for a warrant to seize the animal.
- (b) If the court finds probable cause that the animal is being cruelly treated, the court shall issue a warrant for the seizure of the animal. The court shall also schedule a hearing on the matter

as expeditiously as possible within 10 business days unless good cause is demonstrated by the city for a later time and such extension is approved by the municipal court judge.

- (c) Written notice regarding the time and location of the hearing shall be provided to the owner of the seized animal. The court may order publication of a notice of the hearing in a newspaper closest to the location of the seizure.
- (d) If the owner of the animal cannot be determined or cannot be located, a written notice regarding the circumstances of the seizure shall be conspicuously posted where the animal is seized at the time the seizure occurs.
- (e) At the option and expense of the owner, the seized animal may be examined by a veterinarian of the owner's choice if approved by the municipal court judge.
- (f) If the animal is a type of livestock, seizure shall be pursuant to Chapter 77, Article 18 NMSA 1978.

NM Stat § 30-18-1.1 (1996 through 1st Sess 50th Legis)

#### **Sec. 3-34 Disposition of Seized Animals**

- (a) If the court finds that a seized animal is not being cruelly treated and that the animal's owner is able to provide for the animal adequately, the court shall return the animal to its owner.
- (b) If the court finds that a seized animal is being cruelly treated or that the animal's owner is unable to provide for the animal adequately, the court shall hold a hearing to determine the disposition of the animal.
- (c) An animal control agency operated by the municipality, or an animal shelter or other animal welfare organization designated by an animal control agency or an animal shelter, in the custody of which an animal that has been cruelly treated has been placed may petition the court to request that the animal's owner may be ordered to post security with the court to indemnify the costs incurred to care and provide for the seized animal pending the disposition of any criminal charges of committing cruelty to animals pending against the animal's owner.
- (d) The court shall determine the amount of security while taking into consideration all of the circumstances of the case including the owner's ability to pay and may conduct periodic reviews of its order. If the posting of security is ordered, the animal control agency, animal shelter or animal welfare organization may, with permission of the court, draw from the security to indemnify the costs incurred to care and provide for the seized animal pending disposition of the criminal charges.
- (e) If the owner of the animal does not post security within fifteen days after the issuance of the order, or if, after reasonable and diligent attempts the owner cannot be located, the

animal may be deemed abandoned and relinquished to the animal control agency, animal shelter or animal welfare organization for adoption or humane destruction

- (f) Nothing in this section shall prohibit an owner from voluntarily relinquishing an animal to an animal control agency or shelter in lieu of posting security. A voluntary relinquishment shall not preclude further prosecution of any criminal charges alleging that the owner has committed cruelty to animals.
- (g) Upon conviction, the court shall place the animal with an animal shelter or animal welfare organization for placement or for humane destruction.
- (h) As used in this section, "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals.

NM Stat § 30-18-1.2 (1996 through 1st Sess 50th Legis)

#### **Sec. 3-35 Costs of Seized Animals**

- (a) Upon conviction, a defendant shall be liable for the reasonable cost of boarding the animal and all necessary veterinary examinations and care provided to the animal. The amount of these costs shall be offset by the security posted pursuant to Section 3-36. Unexpended security funds shall be returned to the owner.
- (b) In the absence of a conviction, the seizing agency shall bear the costs of boarding the animal and all necessary veterinary examinations and care of the animal during the pendency of the proceedings, return the animal, if not previously relinquished, and all of the security posted pursuant to Section 3-36.

NM Stat § 30-18-1.3 (1996 through 1st Sess 50th Legis)

**Secs. 3-35 3-36 - 3-50. - Reserved.**

#### **DIVISION 2. - RABIES<sup>[2]</sup>**

Footnotes:

--- (2) ---

Cross reference— Health and sanitation, ch. 6.

#### **Sec. 3-51. - Vaccinations.**

- (a) It is the duty of all persons owning or keeping a cat or a dog or any member of the canine family over the age of three months to have such animals vaccinated against rabies. The rabies vaccination shall be given in an amount sufficient to provide immunity from rabies for three



years and shall be administered by a licensed veterinarian. A certificate from a licensed veterinarian shall be evidence of vaccination. The Commission may require other animals to receive annual rabies vaccination.

- (b) The veterinarian administering antirabies vaccine to any animal shall issue to the owner or keeper of the animal a numbered vaccination certificate. The certificate shall contain the name and address of the owner or keeper of the animal, a description of the animal vaccinated, the date of vaccination, and the expiration date of the period of immunity.
- (c) It is unlawful for the owner or keeper of any dog, cat, or any other members of the canine or feline family to fail to exhibit its certificate of vaccination upon demand to any police officer or animal control officer.
- (d) It is the duty of all persons who adopt a dog to have such dog vaccinated against rabies, distemper complex, and parvo virus within 48 hours of adoption. It is the duty of all persons who adopt a cat to have such cat vaccinated against rabies and feline distemper complex within 48 hours of adoption.
- (e) Each animal cited as a violation under this section is considered a separate offense. Upon a second conviction of an offense under this section, an offender may be sentenced to imprisonment of up to 90 days at the discretion of the court. The offender shall be fined a minimum of \$100.00 per offense. Upon a third or subsequent conviction of an offense under this section, an offender may be sentenced to imprisonment of up to 90 days at the discretion of the court. The offender shall be fined a minimum \$250.00 per offense. The fine penalties imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement by the court.

(Code 1962, § 6-2-9; Ord. No. 527, §§ 1, 2, 7-14-03)

**State Law reference—** Vaccination of dogs and cats against rabies, NMSA 1978, § 77-1-3.

#### **Sec. 3-52. - Confinement of rabid animal.**

An animal that has rabies or shows signs of having rabies, and every animal bitten by another animal afflicted with rabies or that has been exposed to rabies shall be confined at once in a secure place by the owner. A person who knows or who has reason to know that an animal is infected with rabies or has been exposed to rabies shall immediately upon learning of this notify the Animal Control Officer as to the place where the animal is confined and shall surrender the animal to the Animal Control Officer upon demand. The Animal Control Officer shall then deal with the rabid animal pursuant to state law.

(Code 1962, § 6-2-10)

#### **Sec. 3-53. - Biting dogs or other biting animals.**

- (a) The owner of an animal that bites a person and a person bitten by an animal have a duty to report that occurrence to the Animal Control Officer within 24 hours. The owner of an animal

that bites a person shall surrender the animal to an Animal Control Officer to impound such animal for a period of observation.

- (b) A physician who renders professional treatment to a person bitten by an animal shall report the fact that he/she has rendered professional treatment to ~~the Chief of Police or~~ an Animal Control Officer within 24 hours of his/her first professional attendance. The physician shall report the name, sex, and address of the person bitten as well as the type and location of the bite. The physician shall give the name and address of the owner of the animal that inflicted the bite and other facts that may assist the Animal Control Officer in ascertaining the immunization status of the animal.
- (c) An animal that bites a person shall be confined securely at a place and for a period of time deemed necessary by the Animal Control Officer. The owner of the animal shall bear the cost of confinement.
- (d) A person who has custody of an animal that has bitten a person shall immediately notify the Animal Control Officer.

(Code 1962, § 6-2-11; Ord. No. 384, § 6-2-11, 7-22-91; Ord. No. 436, § 16, 5-13-96; Ord. No. 616, § 1, 8-30-11)

**State Law reference**— Notice to health officer of animal bites, NMSA 1978, § 77-1-6.

**Secs. 3-54—3-70. - Reserved.**

### **DIVISION 3. - LICENSING**

#### **Sec. 3-71. - License required.**

- (a) Any person owning, possessing or harboring any dog or cat three months of age or over shall obtain a license for each animal. Application for such license shall be made as directed by the ~~City Clerk~~ and shall state the name and address of the owner, the name, breed, color, age and sex of such animal and any other information deemed necessary by the ~~City Clerk~~. A current rabies vaccination certificate shall be presented at the time of application for the license. Upon payment of the license fee, as prescribed in subsection (d) of this section, ~~the City Clerk shall issue~~ a license certificate and tag for each animal **shall be issued**. If the tag is lost, replacement tags with a cost set by resolution shall be purchased ~~from the City Clerk~~. The license shall expire on the same date as the rabies certificate or one year whichever is greater.
- (b) A current license tag shall be affixed to the licensed dog or cat at all times in a reasonable manner, unless the licensed dog or cat is being kept in an approved kennel, veterinary hospital, is appearing in an approved show, or is being trained. Provided that the person that is training the dog shall have in his personal possession the valid license tag for each dog or cat and shall immediately display such upon request of the Animal Control Officer or a regular law enforcement officer.

- (c) Animals belonging to nonresidents who do not keep said animals within the corporate limits of the city for ~~90~~ **30** consecutive days shall be exempt from this section, provided, however, that all other provisions of this division be complied with.
- (d) The annual license fee shall be set by resolution for each neutered or spayed dog or cat. The annual license fee shall be set by resolution for each unneutered or un-spayed dog or cat. ~~The license fee shall not apply to animals trained as qualified service animals. The City Clerk shall charge a.~~ **No fee shall be charged for the licensure of qualified service animals who are trained to lead partially or totally blind persons, aid hearing impaired persons or assist mobility impaired persons. A fee shall be charged for a each** dog or cat that has not been spayed or neutered, unless the owner presents a signed statement from a licensed veterinarian stating that spaying or neutering would be a surgical risk for the animal, due to the animal's age or condition.
- (e) **Within 5 business days** ~~Upon~~ change of ownership of any dog or cat, the new owner shall ~~have the current~~ **apply for a new** license ~~transferred to his name, within 30 days with their personal identifying information.~~

(Code 1962, § 6-2-14; Ord. No. 384, § 6-2-14, 7-22-91; Ord. No. 436, § 17, 5-13-96; Ord. No. 564, § 1, 11-14-06; Ord. No. 659(1), § 1, 1-13-15)

**State Law reference**— Municipal authority to require licensing of dogs, NMSA 1978, § 77-1-15.1.

### **Sec. 3-72. - Unlawful use of license tag.**

It is unlawful for any person to remove any license tag from one ~~animal~~ **dog or cat** to another. It shall be unlawful for any person to manufacture, cause to be manufactured, or to have in his possession or under his control a stolen, counterfeit, or forged ~~animal~~ license tag, rabies vaccination certificate, or other form of licensing as required under this division.

(Code 1962, § 6-2-21)

### **Sec. 3-73. - License issued by others.**

~~The City Clerk may allow the issuance of animal licenses by other private or public parties within the City of Truth or Consequences. The City Clerk shall enter into an agreement in a form provided by the City Attorney for that purpose. The agreement shall allow a fee by the interested party in an amount set by resolution of the Commission.~~

(Ord. No. 564, § 1, 11-14-06)

### **Secs. 3-74—3-90. - Reserved.**

### **Secs. 3-74 ~~3-373~~ 3-90. - Reserved.**

## **DIVISION 4. - AT LARGE, VICIOUS, NUISANCE**

### **Sec. 3-91. - Running at large.**

(a) It is unlawful for any person to allow or permit any animal to run at large in **public** or on any **public** street, **public** alley, **public** sidewalk, **private or public** vacant lot, or **public private** property without the permission of the owner thereof. Any animal permitted to run at large in violation of this section is declared to be a nuisance, a menace to the public health and safety, and shall be taken up and impounded as provided in section 3-30.

(b) Each animal cited as a violation under this section is considered a separate offense. Upon a second conviction of an offense under this section, an offender may be sentenced to imprisonment of up to 90 days at the discretion of the court. The offender shall be fined a minimum of \$100.00 per offense. Upon a third or subsequent conviction of an offense under this section, an offender may be sentenced to imprisonment of up to 90 days at the discretion of the court. The offender shall be fined a minimum \$250.00 per offense. The fine penalties imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement by the court

(Code 1962, § 6-2-15)

**State Law reference**— Municipal authority to make provision for the seizure of dogs and cats running at large, NMSA 1978, § 77-1-12.

### **~~Sec. 3-92. - Enclosure for breeding.~~**

~~It is unlawful for any person to let any female animal mate to any male animal, except within an enclosure so arranged as to obstruct such animals completely from the view of all who have no proprietary interest in the breeding of such animals.~~

(Code 1962, § 6-2-16)

### **~~Sec. 3-93. - Reserved.~~**

### **Sec. 3-392 - 3-93. - Reserved.**

**Editor's note**— Ord. No. 436, § 18, adopted May 13, 1996, repealed § 3-93, which pertained to unenclosed premises and derived from Code 1962, § 6-2-17.

### **Sec. 3-94. - Vicious animals.**

It is unlawful for any person to keep or harbor a vicious animal in the City. Any person attacked by a vicious animal may use necessary force to repel said attack. After a judicial determination that an animal is vicious, the owner or keeper of such vicious animal shall turn such animal over to the Animal Control Officer, who shall destroy it humanely.

(Code 1962, § 6-2-18; Ord. No. 505, § 1, 2-11-02; Ord. No. 621, § 1, 11-22-11)

**State Law reference**— Vicious animals, NMSA 1978, § 77-1-10.

**Sec. 3-95. - Disturbing the peace.**

~~It is unlawful for any person to allow any animal to persistently or continually bark, howl, or make noise common to its species or otherwise disturb the peace and quiet of the inhabitants of the City or to keep or maintain any animal in such manner as to disturb by noxious or offensive odors or otherwise endanger the health and welfare of the inhabitants of the City.~~ It is unlawful for a person owning or having the care, custody or control of an animal to permit that animal to howl, bark or create noise which disturbs the comfort and repose of any person of ordinary sensibilities in the vicinity. It shall be a violation of this section if the howling, barking or noise is frequent or long continued; is audible beyond the property line of the premises on which the animal is located. (Code 1962, § 6-2-19; Ord. No. 617, § 1, 8-30-11; Ord. No. 659(2), § 1, 1-13-15)

**Cross reference**— Offenses relating to public order and safety, § 8-31 et seq.

**Sec. 3-96. - Public nuisance.**

- a. Property damage; nuisance. A person owning or having care, custody, or control over an animal shall prevent the animal from causing damage or being a nuisance to the person or property of another.
- b. Pet Waste. A person owning or having care, custody, or control over a pet such as a dog or cat shall dispose of the waste from the animal in a watertight and fly tight receptacle, which shall be emptied frequently and in such a manner so as to prevent a nuisance or health hazard by noxious or offensive odors.
- c. Public defecation. A person owning or having care, custody, or control over an animal shall not permit the animal to defecate on public property or the property of another unless such animal waste is immediately removed and properly disposed of.
- d. Feeding animals running at large. A person shall not feed an animal running at large

It is unlawful for the owner of any animal to be in violation of the public nuisance definition and such violation will be punished in accordance with section 1-10.

(Code 1962, § 6-2-20; Ord. No. 436, § 19, 5-13-96; Ord. No. 618, § 1, 8-30-11)

**Editor's note**— Section 1 of Ord. No. 618, adopted Aug. 30, 2011, changed the title of § 3-96 from "Nuisances on sidewalks, public parks, alleys" to "Public nuisance."

**Sec. 3-97. - Dangerous and potentially dangerous dogs.**

- (a) *Short title.* This section may be known, and will be cited, as the "Dangerous Dog Ordinance".
- (b) *Findings and intent.*



- (1) Every year innocent people, predominantly children, are injured and sometimes killed as a result of the actions of dangerous dogs.
- (2) No person has an absolute right to keep or harbor a dangerous or potentially dangerous dog within the City.
- (3) This section will protect the inhabitants of the City.
- (4) This section will provide for the proper registration and tracking of dangerous or potentially dangerous dogs within the City.
- (5) This section will assist in providing control over dangerous and potentially dangerous dogs.

(c) *Definitions.*

*Animal control authority:* The Animal ~~Control Center~~ Shelter and Animal Control Officer(s) of the Police Department of the City is charged with addressing animal control issues within the City.

*Dangerous dog:* A dog that caused a serious injury to a person or domestic animal.

*Owner:* A person who possesses, harbors, keeps or has control or custody of a dog or, if that person is under the age of 18, that person's parent or guardian.

*Potentially dangerous dog:* A dog that may reasonably be assumed to pose a threat to public safety as demonstrated by the following behaviors:

- (1) Causing an injury to a person or domestic animal that is less severe than a serious injury; or
- (2) Chasing or menacing a person or domestic animal in an aggressive manner and without provocation; or
- (3) Acting in a highly aggressively manner within a fenced yard or enclosure and appearing able to jump out of the yard or enclosure.

*Proper enclosure:* Secure confinement indoors or outdoors, such as in a fenced yard, locked pen or other structure that is designed to prevent the animal from escaping the confined area and young children from entering the confined area but does not include chaining, restraining or other affixing the animal to a stationary object.

*Serious injury:* A physical injury that results in broken bones, multiple bites or disfiguring lacerations requiring sutures or reconstructive surgery.

(d) *Exceptions.* A dog will not be declared a dangerous or potentially dangerous dog if:

- (1) The dog is used by a law enforcement official for legitimate law enforcement purposes; or
- (2) The threat, injury or damage sustained by a person or domestic animal is the result of the person or domestic animal:
  - a. Trespassing upon premises occupied by the owner or the dog; or
  - b. Provoking, tormenting, abusing or assaulting the dog, or in the past has repeatedly provoked, tormented, abused or assaulted the dog; or



- c. Committing, or attempting to commit, a crime; or
- (3) The dog was:
  - a. Responding to pain or injury; or
  - b. Protecting itself or its offspring; or
  - c. Protecting or defending a human being or domestic animal from attack or assault.
- (e) *Seizure of dog—Petition to court of competent jurisdiction.*
  - (1) If an animal control authority has probable cause to believe that a dog is a dangerous dog and poses an imminent threat to public safety, the animal control authority may apply to a court of competent jurisdiction in the county where the animal is located for a warrant to seize the animal.
  - (2) If an animal control authority has probable cause to believe that a dog is a potentially dangerous dog and poses a threat to public safety, the animal authority may apply to a court of competent jurisdiction in the county where the animal is located for a warrant to seize the animal.
  - (3) After seizure, the animal control authority will impound the dog pending disposition of the case or until the owner has fulfilled the requirements for a certificate of registration pursuant to the provisions of subsection (e) of this section.
  - (4) After seizure:
    - a. The owner may admit that the dog is dangerous or potentially dangerous and comply with the requirements for a certificate of registration pursuant to subsection (e) of this section; or
    - b. The animal control authority may, within 14 days after seizure of the dog, bring a petition in a court of competent jurisdiction seeking a determination of whether the dog is dangerous or potentially dangerous. If the court finds, by clear and convincing evidence, that the dog is dangerous and poses an imminent threat to public safety or potentially dangerous and poses a threat to public safety, the court shall order the owner to comply with the registration and handling requirements for the dog and obtain a certificate of registration within 30 days or have the dog humanely destroyed. If the court does not make the required findings pursuant to this paragraph, the court shall immediately order the release of the dog to the owner.
  - (5) If the owner does not admit that the dog is dangerous or potentially dangerous and the animal control authority does not bring a petition in court within 14 days of seizure of the dog, the court shall immediately order the release of the dog to its owner.
  - (6) If the owner admits that the dog is dangerous and transfers ownership of the dog to the animal control authority, the animal control authority may humanely destroy the dog.
  - (7) A determination that a dog is not dangerous or potentially dangerous shall not prevent the animal control authority from making a subsequent application for seizure based on the dog's subsequent behaviors.
- (f) *Dangerous and potentially dangerous dogs—Registration required.*

- (1) Upon application, an animal control authority shall issue a certificate of registration to the owner of a dangerous or potentially dangerous dog if the owner establishes that:
  - a. The owner is able to keep the dog under control at all times; and
  - b. A license, if applicable, has been issued pursuant to the requirements of the City; and
  - c. The dog has a current rabies vaccination; and
  - d. The owner has a proper enclosure to the dog; and
  - e. The owner has paid an annual fee of ~~\$100.00~~ set by resolution to register a dangerous or potentially dangerous dog.; and
  - f. The dog has been spayed or neutered; and
  - g. The dog has been implanted with a microchip containing owner identification information that is also provided to the animal control authority; and
  - h. The owner has entered the dog in a socialization and behavior program approved or offered by the animal control authority.
- (2) If a dog previously determined to be dangerous or potentially dangerous has not exhibited any of the behaviors specified in this section for 36 consecutive months, the owner may request the animal control authority in the City to lift the requirements for registration pursuant to this section. If the animal control authority has no reasonable basis to believe that the dog has exhibited the behaviors specified, it shall relieve the owner of the requirements of this section.
- (3) An animal control authority shall issue a certificate of registration to the owner of a dangerous dog if the owner, in addition to the requirements of subsection (e)(1) of this section, establishes that:
  - a. The owner has paid an annual fee of ~~\$100.00~~ set by resolution, as established by the animal control authority to register a dangerous dog; and
  - b. The owner has written permission of the property owner or homeowner's association where the dangerous dog will be kept, if applicable; and
  - c. The dangerous dog will be maintained exclusively on the owner's property except for medical treatment or examination; and
  - d. When the dangerous dog is removed from the owner's property, the dog shall be caged or muzzled and restrained with a lead no longer than four feet, and the dog shall be under complete control at all times; and
  - e. The dangerous dog will not be transported in a vehicle that might allow the dog to escape or gain access to any person or animal outside the vehicle; and
  - f. A clearly visible warning sign with a conspicuous warning symbol indicate there is a dangerous dog on the premises is posted where the dog is kept and is visible from a public roadway or from 50 feet, whichever is less.
- (4) An animal control authority may order the immediate impoundment or humane destruction of a dog previously determined to be a dangerous dog if the owner fails to

comply with the conditions for registration, confinement or handling set forth in this section.

(g) *Prohibited acts.*

- (1) It is unlawful for an owner of a dangerous or potentially dangerous dog to:
  - a. Keep the dog without a valid certificate of registration; or
  - b. Violate the registration and handling requirements for the dog; or
  - c. Fail to notify the animal control authority immediately upon:
    1. The escape of the dog; or
    2. An attack by the dog upon a human being or a domestic animal;
  - d. Fail to notify the animal control authority of the dog's death within five business days; or
  - e. Fail to notify the animal control authority within 24 hours if the dog has been sold or given away and to provide the name, address and telephone number of the new owner of the dog; or
  - f. Fail to surrender the dog to an animal control authority for safe confinement pending a determination of the case where there is reason to believe that the dog poses an imminent threat to public safety; or
  - g. Fail to comply with special handling or case requirements for the dog that a court has ordered.
- (2) Whoever violates a provision of subsection (g)(1) shall be charged in the Municipal Court in which the animal is located with a violation of the Dangerous Dog Ordinance, and upon conviction shall be sentenced to a fine not to exceed \$500.00, or 90 days imprisonment, or both fines and imprisonment.

(Ord. No. 546, §§ 1—7, 10-11-05; Ord. No. 619, § 1, 9-27-11)

**Editor's note**— Ord. No. 546, §§ 1—7, adopted Oct. 11, 2005, set out provisions intended for use as § 3-101. At the editor's discretion, these provisions have been included as § 3-97.

**Sec. 3-98. – Safekeeping of animals by the Animal Shelter**

Under unforeseen circumstances, a police officer, animal control officer, or animal owner may require an animal to be placed in the care and custody of the Animal Shelter to ensure that the animal is properly cared for. In these situations, the safekeep of the animal shall only occur for a period of not more than 72 hours at the expense of the owner pursuant to fees established by resolution. The owner shall be responsible for contacting a designated person or organization to pick up the animal from the Animal Shelter and the owner shall provide written authorization to the Animal Shelter as to the responsible person or organization taking custody of the animal. After the initial 72 hour period has expired, the animal is no longer classified as a safekeep and the animal shall be considered abandoned and property of the City unless the owner or designated party notifies the City in writing of a date and time the animal will be picked up, not

to exceed an additional 72 hours at the owner's expense. No animal shall be released from the Animal Shelter until all fees are paid in full. Owners who knowingly abandon or fail to arrange for pick up of their animal at the Animal Shelter may be prosecuted under other sections within the Municipal Code.

**Sec. 3-99. – Livestock running at large.**

It is unlawful for the owners of livestock to willfully allow the livestock to run at large within the city limits. The owners of the livestock are subject to prosecution under this section regardless of the livestock's origination.

As used in this section, "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals.

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

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

*Section 2.* This Ordinance shall take effect on the \_\_\_\_\_ day of 2021.

**PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.**

**CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO**

**BY: \_\_\_\_\_**  
**Sandra Whitehead- Mayor**

**ATTEST: \_\_\_\_\_**  
**Angela A. Torres- City Clerk**



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

*Agenda Item #: I.1*

**SUBJECT:** Discussion/Action – Accept recommendation from the P & Z Board to approve the Summary Plat Amendment and Variance at 212 Silver Street

**DEPARTMENT:** Assistant City Manager

**DATE SUBMITTED:** January 7, 2022

**SUBMITTED BY:** Traci Alvarez

**WHO WILL PRESENT THE ITEM:** Traci Alvarez

***Summary/Background:***

Application was presented by Public Hearing at the P & Z Commission Meeting held on 1/6. Commission recommended approval of the summary plat amendment and variance with the request that tract 2 be readdressed to reflect the access at Turtle View. Staff will work with the County to ensure new address is implemented.

***Recommendation:***

Accept the recommendation and approve the summary plat amendment and variance request for 212 Silver Street

***Attachments:***

- P & Z Packet

-

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

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

***Approved For Submittal By:*** ☐ Department Director

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

***Final Approval:*** ☐ City Manager

#### CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agenda 1-12-2022





**CITY OF TRUTH OR CONSEQUENCES**  
**PLANNING AND ZONING COMMISSION ACTION FORM**  
**DATE: 1-6-2021**

**ITEM: Discussion/Action – Summary Plat Amendment 212 Silver and Variance request**

**BACKGROUND:**

**Applicant has submitted application and all required supporting documents and applicable fees have been paid. Applicant is requesting to split the lot at 212 Silver into 2 separate parcels. Both lots will have unobstructed legal access to existing City water and wastewater lines. Applicant has met with Water/Wastewater to establish water and sewer taps for 2<sup>nd</sup> parcel. Both lots will have direct, legal, unobstructed access to an existing City maintained and paved street, variance request is for curb gutter and sidewalk. Utility Verification form will be submitted at meeting.**

**SUPPORT INFORMATION:**

**Summary Plat Survey  
Assessor Parcel Map  
Notice of Public Hearing  
Findings of Facts Checklist  
Municipal Code References**

<b>Name of Drafter:</b> Traci Alvarez	:	<b>Meeting date:</b> 01-06-2021
<b>E-mail:</b> <a href="mailto:talvarez@torcnm.org">talvarez@torcnm.org</a>	<b>Phone:</b> 575-894-6673	



**ALTERNATE SUMMARY PROCEDURE-SUMMARY PLAT**  
of the division of a 1000 acre tract of land  
into two tracts of land, (0.529 acres & 0.471 acres),  
in the N/2 SE/4 SE/4 SW/4 of Section 34, Township 13 South, Range 4 West, NMPM,  
in the City of Truth or Consequences, Sierra County, New Mexico

**Reference**

Book 124, Pages 2026-2027, (Notice of Real Estate Contract)

Account No. 6423

UPC 302-107-026-0403

Plat of Survey Book 1, Page 233, (The Olson-Johnson Subdivision)

Book 05, Page 1584, (Alternate Summary Procedure)

National Flood Insurance Program, Flood Insurance Rate Map (for the City of Truth or Consequences, Sierra County, New Mexico, Community Panel No. 330073) 2005 C. (map revised July 16, 1996)

City of Truth or Consequences Subdivision Codes, Ordinance Number 300, (adopted May 23, 2006)

**ACKNOWLEDGMENT**

We, the undersigned owners of the herein described property do hereby acknowledge, with our free consent and in accordance with our wishes and desires, the division of said land as shown on this plat.

Michael Gill

STATE OF NEW MEXICO  
COUNTY OF SIERRA

The foregoing instrument was acknowledged before me this 29th day of

December, 2021, by Michael Gill

Notary Public



**OFFICIAL SEAL**  
**Destiny Sanders**  
NOTARY PUBLIC - State of New Mexico

My Commission Expires

My Commission Expires 05-03-2022

Mary P. Hopkins

STATE OF NEW MEXICO  
COUNTY OF SIERRA

The foregoing instrument was acknowledged before me this 29th day of

December, 2021, by Mary P. Hopkins

Notary Public



**OFFICIAL SEAL**  
**Destiny Sanders**  
NOTARY PUBLIC - State of New Mexico

My Commission Expires

My Commission Expires 05-03-2022

STATE OF NEW JERSEY  
COUNTY OF BERGEN

The foregoing instrument was acknowledged before me this 7th day of

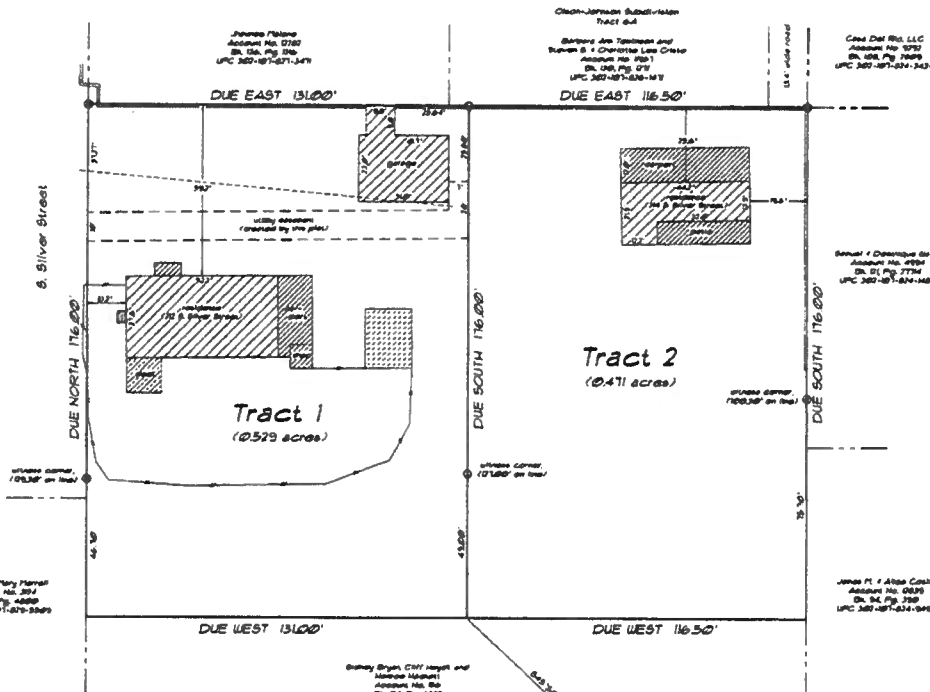
December, 2021, by Lois E. Elting

Notary Public

**OFFICIAL SEAL**  
**Lois E. Elting**  
NOTARY PUBLIC - State of New Jersey

My Commission Expires

MY COMMISSION EXPIRES FEBRUARY 10, 2022



**Notes:**

These tracts are subject to easements, restrictions and reservations of record

The tracts shown herein are located within the boundaries of Flood Zone X, "area determined to be outside 500-year flood plain"

The herein described tracts were created under the City of Truth or Consequences Subdivision Codes, Ordinance Number 300, adopted May 23, 2006, Chapter B, Section B, Alternate Summary Procedure

Use drawing scale to determine measurements when not labeled

The City of Truth or Consequences does hereby acknowledge the division of land as shown on this plat.

Plat:

Date:

**Legend:**

- Round 1/2" rebar encircled stamped "NPLS 025" @
- Box 1/2" rebar encircled stamped "NPLS 025" @
- Round 1/8" rebar without stamp, (1/4" corner) @
- one fence
- board fence
- overhead power line

November 29, 2021

**Chaparral Surveying, LLC**  
Professional Land Surveying  
P.O. Box 629 Elephant Butte, New Mexico 87630

**CERTIFICATE**

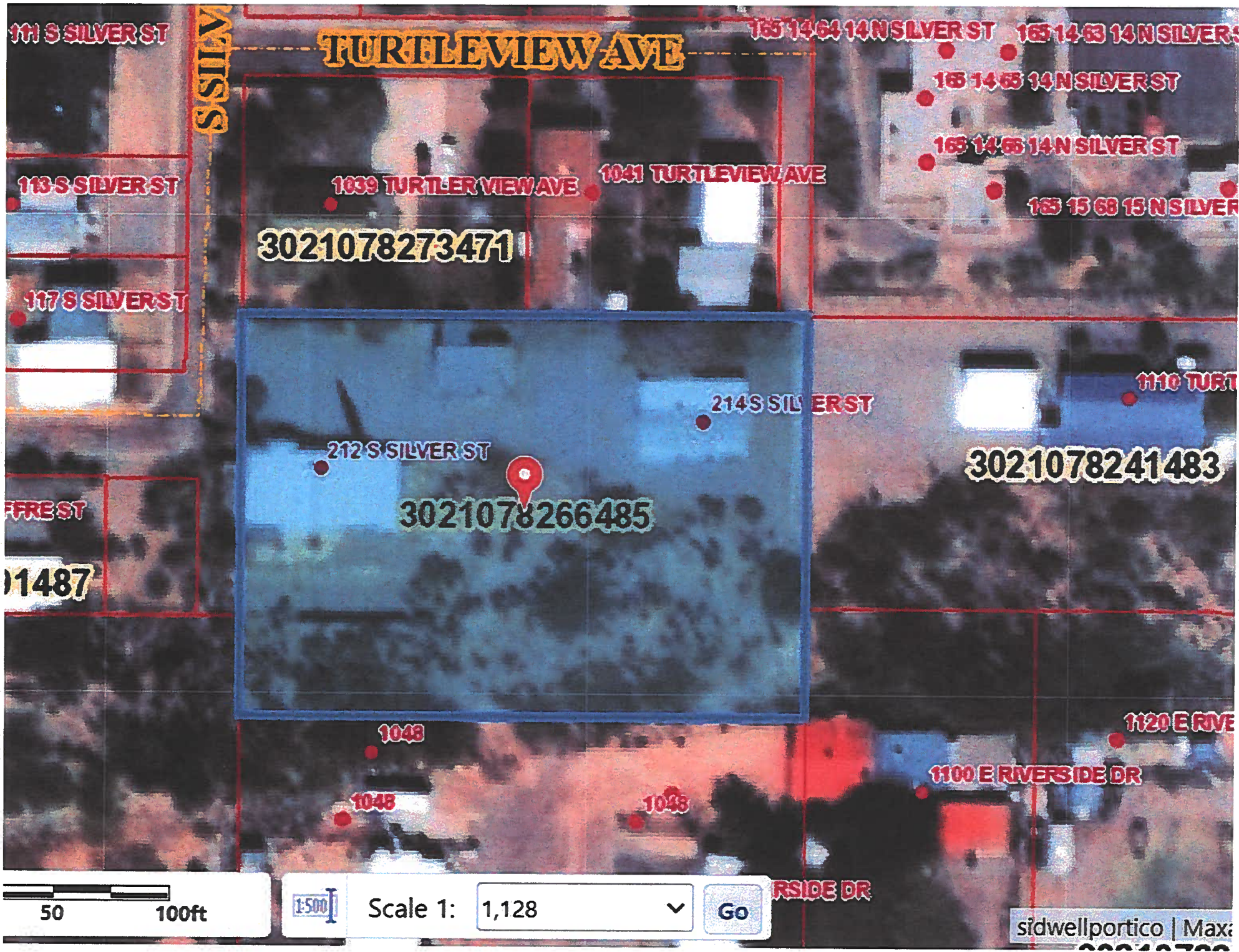
This is to certify that I am a registered Professional Land Surveyor, that this plat is prepared from notes of field survey made by me or under my supervision, that said survey and the plat are true and correct to the best of my knowledge and belief. I further certify that this survey is an Alternate Summary Procedure of an existing tract or tracts.

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

*David M. Elting*  
David M. Elting  
New Mexico Professional Surveyor  
License Number 0276

**INDEXING INFORMATION FOR COUNTY CLERK**  
Michael Gill & Mary P. Hopkins c/o  
Lois E. Elting (6423)  
Section 34  
Township 13 South, Range 4 West, NMPM





111 S SILVER ST

TURTLEVIEW AVE

165 14 64 14 N SILVER ST 165 14 63 14 N SILVER ST

165 14 65 14 N SILVER ST

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*Sandra K. Whitehead*  
Mayor

*Amanda Forrister*  
Mayor Pro-Tem

*Frances Luna*  
Commissioner



*Paul Baca*  
Commissioner

*Vacant*  
Commissioner

*Bruce Swingle*  
City Manager

505 Sims St.  
Truth or Consequences, New Mexico 87901  
P: 575-894-6673 ♦ F: 575-894-7767  
[www.torcnm.org](http://www.torcnm.org)

## **NOTICE OF PUBLIC HEARING**

NOTICE is hereby given that the City of Truth or Consequences Planning & Zoning Commission will hold a Public Hearing during their regular scheduled meeting on Thursday, January 6, 2022 to receive input regarding the following:

Public Hearing/Discussion/Action: Request for a Summary Plat Amendment and Variance Request at 212 Silver Street, Truth or Consequences, NM, pursuant to Chapter 15, Sec. 15-17.

The meeting will be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico starting at 5:30 p.m.

Should you have any questions regarding this Public Hearing, please contact our Assistant City Manager Traci Alvarez at (575) 952-0565, or by email to [talvarez@torcnm.org](mailto:talvarez@torcnm.org).

The agenda may be obtained on Monday, January 3, 2022 on the city website calendar at [www.torcnm.org](http://www.torcnm.org); by contacting the City Clerk's Office at 575-894-6673; or by email to: [torcclerk@torcnm.org](mailto:torcclerk@torcnm.org).

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

Publish on the following date:

- Sentinel– Friday, December 17, 2021

*Sandra K. Whitehead*  
*Mayor*

*Amanda Forrister*  
*Mayor Pro-Tem*

*Frances Luna*  
*Commissioner*



*505 Sims St.*  
*Truth or Consequences, New Mexico 87901*  
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*Paul Baca*  
*Commissioner*

*Vacant*  
*Commissioner*

*Bruce Swingle*  
*City Manager*

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

Publish on the following date:

- Sentinel– Friday, December 17, 2021

# PLANNING AND ZONING COMMISSION FINDINGS OF FACTS CHECKLIST

Request Date\_\_\_\_\_ Address\_\_\_\_\_

Findings of facts for recommendations and decisions.

In considering all requests, the Planning and Zoning Commission shall review applicable plans and determine whether the request will:

1. Impair an adequate supply of light and air to adjacent property;
2. Unreasonably increase the traffic in public streets;
3. Increase the danger of fire or endanger the public safety;
4. Deter the orderly and phased growth and development of the community;
5. Unreasonably impair established property values within the surrounding area;
6. In any other respect impair the public health, safety and general welfare of the City; or
7. Constitute a spot zone and therefore adversely affect adjacent property values.

***All actions or recommendations by the Planning and Zoning Commission shall be based on Findings of Facts as to the impacts of the proposal, using the criteria listed in numbers 1 through 7, above. The Planning and Zoning Commission shall review each of the above listed factors and accord each factor the necessary weight on a case-by-case basis in making its determination.***

**Sec. 11-2-2. - The Planning and Zoning Commission.**

- A. *Purpose.* A Municipal Planning and Zoning Commission is hereby established for the purpose of interpretation of this Code, approving certain actions, receiving requests for modifications to this Code and re-zoning, and making recommendations to the City Commission concerning matters pertaining to zoning within the City.
- B. *Administrative review and interpretations.*
1. The Planning and Zoning Commission shall review an administrative action of the designated Zoning Administrator when it is alleged that there is an error in the order, requirement, determination, or refusal made by the designated Zoning Administrator and reverse, affirm, or modify the administrative action.
  2. The Commission shall interpret this Code when the designated Zoning Administrator is in doubt as to the exact meaning of the text.
  3. The Commission shall interpret the Official Planning and Zoning District Map in accordance with the standards set forth in the Comprehensive Planning and Zoning Code when the designated Zoning Administrator is uncertain as to the exact boundary of a District shown on the Official Planning and Zoning District Map.
- C. *Powers and duties.*
1. Recommend to the City Commission either approval, denial or modification of a request for annexation, special use permit, variance, subdivision, zoning, amendment of this Code, or any other land use consideration within the planning and zoning jurisdiction of the City.
  2. Grant final approval or denial of a home occupation or conditional use permit after public meeting, provided there is not an appeal to the City Commission within fifteen (15) days in accordance with Article 7 of this Code.
- D. *Composition of the Planning and Zoning Commission.* The Planning and Zoning Commission shall consist of five (5) members each to be appointed by a simple majority of the City Commission. Eligibility requirements for membership shall be established by the City Commission. Members shall serve staggered terms of two (2) years each. A recording secretary shall be provided to assist the Planning and Zoning Commission by the City. The recording secretary shall not be a member of the Planning and Zoning Commission and shall be only responsible for those duties requested by the Planning and Zoning Commission and approved by the City Manager.
- E. *Organization of the Planning and Zoning Commission.* The Planning and Zoning Commission shall elect a chairman, vice-chairman, and second vice-chairman in July of each year, or as required due to unforeseen vacancies. They shall serve for one (1) calendar year following their elections.
- F. *Voting.* A simple majority vote of a quorum of the Planning and Zoning Commission is required for approval of all Planning and Zoning Commission actions. A quorum requires at least three members of the Commission present.

In order for a vote to be valid on a particular issue, a quorum must actually vote regarding the measure. A member who abstains from voting on an issue is deemed to have not voted on the issue.

- G. *Findings of facts for recommendations and decisions.* In considering all requests, the Planning and Zoning Commission shall review applicable plans and determine whether the request will:
1. Impair an adequate supply of light and air to adjacent property;
  2. Unreasonably increase the traffic in public streets;
  3. Increase the danger of fire or endanger the public safety;
  4. Deter the orderly and phased growth and development of the community;
  5. Unreasonably impair established property values within the surrounding area;



6. In any other respect impair the public health, safety and general welfare of the City; or

7. Constitute a spot zone and therefore adversely affect adjacent property values.

All actions or recommendations by the Planning and Zoning Commission shall be based on Findings of Facts as to the impacts of the proposal, using the criteria listed in numbers 1 through 7, above. The Planning and Zoning Commission shall review each of the above listed factors and accord each factor the necessary weight on a case-by-case basis in making its determination.

H. *Report to the City Commission.* The Planning and Zoning Commission shall provide written minutes, with recommendations as necessary, to the City Commission on all matters that are brought before the Commission. Such minutes shall include a statement of the findings of facts that were the basis of any decision or recommendation made by the Planning and Zoning Commission.

**Sec. 15-15. - Alternate summary procedure.**

**A. *Approvals by Planning and Zoning Commission:*** The Planning and Zoning Commission may approve or deny the following types of subdivisions:

1. A re-plat of a previously filed subdivision when:
  - a. No more lots are created than exist in the area at the time of the submittal of the replat application; and,
  - b. All lots to be created have direct, legal, unobstructed access to an existing City maintained street;
  - c. All lots to be created have direct, unobstructed legal access to existing City water and wastewater lines;
  - d. The subdivider files with the City a Letter of Credit for funds adequate to pay for connecting the lots to the City's water and wastewater lines, or, pays to the City the City's fees for connecting the lots to the City's water and wastewater lines;
  - e. The new lots comply in all ways with the standards for lots contained within the City's Comprehensive Planning and Zoning Code;
  - f. All new lots are laid out in a manner which allows utility service to be provided to the purchasers of said lots;
  - g. All lots to be eliminated or created exist within the area of a single block of lots in a previously platted and filed subdivision; and,
  - h. No vacation of street dedications or utility easements is proposed; or,
  - i. Lots are to be eliminated.

**2. The subdivision of previously unsubdivided land when:**

- a. No more than two lots are created;
- b. Both lots to be created have direct, legal, unobstructed access to an existing City maintained and paved street with curb gutter and sidewalk;
- c. Both lots to be created have direct, unobstructed legal access to existing City water and wastewater lines;
- d. The subdivider files with the City a Letter of Credit for funds adequate to pay to connect both lots to the City's water and wastewater lines, or, pays to the City funds for connecting both lots to the City's water and wastewater lines;
- e. The new lots comply in all ways with the standards for lots contained within the City's Comprehensive Planning and Zoning Code;
- f. The new lots are laid out in a manner which allows utility service to be provided to the purchasers of said lots; and,
- g. No vacation of street dedications or utility easements is proposed.

**B. *Limit on number of summary procedures:*** The summary procedure shall be used only once on any one property, or within any group of contiguous or adjacent properties owned by a subdivider, unless the property has been master-planned, legally subdivided, and is zoned for industrial uses, and wherein the streets within those subdivisions have been dedicated to and accepted by the City. No subdivider who has received approval of a subdivision shall utilize the summary procedure to subsequently increase the number of lots within said subdivision.

**C. *Elective pre-application procedure:***

1. Prior to filing a summary plat, the subdivider may submit a conceptual plan of the proposed subdivision to the City's Zoning Administrator. The conceptual plan shall provide enough

information for the Zoning Administrator to locate the proposed subdivision and to comprehend its scope and potential impacts. Neither a written application nor an application fee are required for submittal of a conceptual plan.

2. The City's Zoning Administrator shall place the proposed summary subdivision on the next possible agenda of the Planning and Zoning Commission for discussion, when the Planning and Zoning Commission shall consider the proposal with the subdivider or the subdivider's representative and shall indicate changes, if any, that will be required for the submittal process.

D. *Summary plat submittal requirements summary plat submittal requirements are:*

1. Application, signed by all property owners, including all parties having an equitable interest, trustees of an estate and all persons having a specific "power of attorney" in such land;
2. A record of any pending litigation or any final order entered by any court of law regarding the ownership of the subject property;
3. Application fee as established by the City;
4. Documentation from the Sierra County Assessor's Office that the current year's property taxes are paid and that no taxes are owed on the property;
5. A plat conforming to section 15-13.A of this Code; and,
6. Releases by the Public Utilities Advisory Board, and all utility companies which are proposed as providers for the subdivision.

E. *Submittal and review procedures:*

1. Incomplete submittals will not be accepted for review.
2. The subdivider shall submit all required materials to the City's Zoning Administrator.
3. The City's Zoning Administrator shall review all materials, and shall within three working days from the date the application is determined to be complete, request opinions of applicable City departments, other governmental agencies, and utility companies for review, comments and recommendations. City departments shall have ten calendar days in which to review and respond in writing to any such request. Within three working days of receiving any written reports, comments or recommendations from any City department, governmental agency, or utility company, the Zoning Administrator shall make available to the subdivider a copy of such materials.
4. The Zoning Administrator shall have the right to require that the subdivider provide additional information or to make amendments to the plat and supporting information if the Zoning Administrator determines that the information originally submitted by the subdivider was incomplete, incorrect or invalid.
5. The subdivider shall have ten working days in which to make any corrections or additions required by the Zoning Administrator, or to request a postponement of action by the Zoning Administrator for up to 135 days.
6. If a subdivision application does not meet the requirements of this Code within 180 days of its original submittal, the Zoning Administrator shall summarily reject the application and notify the applicant in writing of the reasons for the rejection.
7. At such time as the subdivider meets the requirements of this Code, the subdivider shall provide the Zoning Administrator with a copy of the final plat.
8. At such time as receiving a submittal that meets all requirements of this Code, the Zoning Administrator shall recommend that the Planning and Zoning Commission approve the final plat by consent agenda action during its next regularly scheduled meeting, and the Planning and Zoning Commission shall approve the subdivision by consent agenda action during its next regularly scheduled meeting.

9. The subdivider shall file a signed copy of the final plat in the records of the County Clerk of Sierra County, and shall provide the City with one of the signed copies.
- F. *Divisions for the purpose of mortgage:* Divisions for purposes of mortgage are not allowed. If a property is to be mortgaged it must be done so in its entirety or properly subdivided as required in this chapter.

(Ord. No. 555, 5-23-06)



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

*Agenda Item #: I.2*

**SUBJECT:** Aging & Long-Term Services Department Junior Bill Appropriations Agreement (ALTSD)  
**DEPARTMENT:** City Manager's Office  
**DATE SUBMITTED:** December 21, 2021  
**SUBMITTED BY:** Tammy Gardner  
**WHO WILL PRESENT THE ITEM:** Bruce Swingle, City Manager

**Summary/Background:**

This is the Junior Bill Appropriations Agreement for the ALTSD to be signed and fully executed in order to proceed with the request for payment to use the funds.

**Recommendation:**

Approve Agreement.

**Attachments:**

- ALTSD Junior Bill Appropriations Agreement
- Email Correspondence

**Fiscal Impact (Finance): No**

The city will serve as the fiscal agent for a \$35,000 appropriation to the SJOA.

**Legal Review (City Attorney): No**

[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 1-12-2022

## Swingle, Bruce

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**From:** Padilla, Celina, ALTSD <Celina.Padilla@state.nm.us>  
**Sent:** Monday, December 20, 2021 8:03 AM  
**To:** Swingle, Bruce; Crystal Walton; Sandra Whitehead  
**Cc:** Acosta, Marlene, ALTSD  
**Subject:** RE: [EXTERNAL] RE: Appropriation by legislature  
**Attachments:** Sierra County Agreement.pdf

Good morning,

Please see the attached Junior Bill Appropriations Agreement and the Request for Payment form. If you could sign the agreement with an original signature, and e-mail back to me. The agreement will be signed internally by our Deputy Secretary and a fully signed agreement will be e-mailed back to you. Once you receive the fully signed agreement back, you can proceed with using the funds.

The agreement includes all details and the reimbursement process. If you should have any questions, please contact me.

Thank You,

*Celina Padilla*

Accountant Auditor Advanced  
NM Aging and Long Term Services Department  
ASD Division  
2550 Cerrillos Road  
Santa Fe, NM 87501  
(505) 819-9342  
[celina.padilla@state.nm.us](mailto:celina.padilla@state.nm.us)

**From:** Padilla, Celina, ALTSD  
**Sent:** Tuesday, December 7, 2021 4:08 PM  
**To:** 'Swingle, Bruce' <bswingle@torcnm.org>; Crystal Walton <"Crystal Walton"@gwo2.mbox.net>; Sandra Whitehead <sandra.whitehead@torcnm.org>  
**Cc:** Acosta, Marlene, ALTSD <marlene.acosta@state.nm.us>  
**Subject:** RE: [EXTERNAL] RE: Appropriation by legislature

Good afternoon,

Thank you for responding. I will create a junior bill agreement for the appropriation and e-mail for signature.

Thank you,

*Celina Padilla*

Accountant Auditor Advanced



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

APPROPRIATION RECIPIENT: Sierra County

APPROPRIATION NUMBER:      APPROPRIATION AMOUNT:      REVERSION DATE:

**ZF9280**                              **\$35,000.00**                              **June 30, 2022**

APPROPRIATION LANGUAGE  
For Senior Meal sites.

**Grant funds unexpended by June 30, 2022 will be reverted to the State of New Mexico's general fund.**

APPROPRIATION REIMBURSEMENT

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

CERTIFICATION

I hereby certify that **Sierra County**:

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

\_\_\_\_\_  
Entity

\_\_\_\_\_  
Date

APPROVAL

In accordance with the authority conferred on the Aging & Long-Term Services Department by the statute appropriating these funds, I hereby approve this certification for appropriation number ZF9280 in the amount of \$35,000.00.

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Date

**Aging & Long-Term Services Department (ALTSD)**  
**Junior Bill Appropriations Agreement**  
**Request for Payment**  
**Form**  
**Exhibit A**

**I. Entity Information**

(Make sure information is complete & accurate)

B. Address: \_\_\_\_\_  
(Complete Mailing, including Suite, if applicable)  
\_\_\_\_\_  
City, State, Zip  
C. Phone No: \_\_\_\_\_  
D. Project No: \_\_\_\_\_  
E. Project Title: \_\_\_\_\_  
F. Appropriation Expiration Date: \_\_\_\_\_

**II. Payment Computation**

A. Payment Request No. \_\_\_\_\_  
B. Project Amount: \_\_\_\_\_  
C. Funds Requested to Date: \_\_\_\_\_  
D. Amount Requested this Payment: \_\_\_\_\_  
E. Project Balance: \_\_\_\_\_  
F. Project Balance: \_\_\_\_\_

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

**IV.**

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

\_\_\_\_\_  
or Fiscal Agent (if applicable)

\_\_\_\_\_  
Entity Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date:

\_\_\_\_\_  
(State Agency Use Only)

Vendor Code: \_\_\_\_\_

Fund No.: \_\_\_\_\_

\_\_\_\_\_  
Division Fiscal Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Division Project Manager

\_\_\_\_\_  
Date



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

*Agenda Item #: I.3*

**SUBJECT:** State of New Mexico Aging & Long-Term Services Department Fund 89200 Capital Appropriation Project

**DEPARTMENT:** City Manager's Office

**DATE SUBMITTED:** December 29, 2021

**SUBMITTED BY:** Tammy Gardner

**WHO WILL PRESENT THE ITEM:** Bruce Swingle

***Summary/Background:***

State of New Mexico Aging & Long-Term Services Department Fund 89200 Capital Appropriation Project grant agreement A21F2057 for signature.

***Recommendation:***

Approval of item

***Attachments:***

- Grant Agreement A21F2057
- -

***Fiscal Impact (Finance):*** Choose an item.

[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. [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 1-12-2022

**STATE OF NEW MEXICO  
AGING AND LONG-TERM SERVICES DEPARTMENT  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Aging and Long-Term Services Department, hereinafter called the “Department” or abbreviation such as “ALTSD”, and City of Truth or Consequences, hereinafter called the “Grantee”. This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2021, Chapter 138, Section 5, Paragraph 51, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

**WHEREAS**, State Agency on Aging (28-4-1 to 28-4-9 NMSA 1978): successor agency, Aging and Long-Term Services Department (9-23-1 to 9-23-12 NMSA 1978) may enter into grants and contracts as appropriated by law.

**AGREEMENT**

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

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

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

A21F2057     \$47,000.00 APPROPRIATION REVERSION DATE: 30-JUN-2023

Laws of 2021, Chapter 138, Section 5, Paragraph 51, to purchase and equip a home-delivered meal vehicle for the Ken James senior center in Truth or Consequences in Sierra county;

The Grantee’s total reimbursements shall not exceed forty-seven thousand dollars \$47,000.00 (the “Appropriation Amount”) minus the allocation for Art in Public Places (“AIPP amount”)<sup>1</sup>, if applicable, (\$0), which equals zero dollars \$47,000.00.

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

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

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

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

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

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as “Third Party Obligations”; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

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

- (vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of

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

a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
- c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
- d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

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

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

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

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

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

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

Grantee: City of Truth or Consequences  
Name: Bruce Swingle  
Title: City Manager  
Address: 401 MacAdoo, City of Truth or Consequences, NM 87901  
Email: bswingle@torcnm.org  
Telephone: (575) 894-6673 ext. 321



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

Grantee: City of Truth or Consequences  
Name: Traci Burnette  
Title: Projects Coordinator  
Address: 401 MacAdoo, City of Truth or Consequences, NM 87901  
Email: [tburnette@torcnm.org](mailto:tburnette@torcnm.org)  
Telephone: (575) 894-6673 ext. 353

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

Department: Aging and Long-Term Services Department  
Name: Barbara J. Romero  
Title: Capital Projects Bureau Chief  
Address: 2550 Cerrillos Road Santa Fe, NM 87505  
Email: [barbara.romero@state.nm.us](mailto:barbara.romero@state.nm.us)  
Telephone: 505-365-3660

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

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

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2023, the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

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

#### **ARTICLE V. EARLY TERMINATION**

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

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

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

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

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

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

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

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

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

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

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

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

**D. Corrective Action Plan in the Event of Suspension**

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

**ARTICLE VII. AMENDMENT**

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

**ARTICLE VIII. REPORTS**

**A. Database Reporting**

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

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

**B. Requests for Additional Information/Project Inspection**

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

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

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

## **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

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

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

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

### **C. Deadlines**

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

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

**ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

- A. The following general conditions and restrictions are applicable to the Project:
- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
  - (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.
- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.

- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

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

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

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

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any



or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

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

#### **ARTICLE XIII. LIABILITY**

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

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

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

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

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

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

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

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

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

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

#### **XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

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

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

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

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

#### **ARTICLE XVIII. [OPTIONAL IF THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS OR GENERAL OBLIGATION BONDS] SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

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

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

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

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

\_\_\_\_\_  
Entity Name

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**AGING AND LONG-TERM SERVICES DEPARTMENT**

\_\_\_\_\_  
By:

Its: Cabinet Secretary or Designee

\_\_\_\_\_  
Date



<b>EXHIBIT 1</b> <b>ALTSD CAPITAL OUTLAY GRANT</b> <b>MONTHLY / FINAL REPORT FORM &amp; REQUEST FOR PAYMENT</b>		
<b>MONTHLY REPORT</b> <input type="checkbox"/> <small>(Due on the last day of the month)</small>	<b>PROJECT TITLE:</b> _____	<b>PAY REQUEST NO.</b> _____

Grantee: \_\_\_\_\_ Grant Number: \_\_\_\_\_ Reporting Period: \_\_\_\_\_ DATE: \_\_\_\_\_  
 Grant Expiration Date: \_\_\_\_\_  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Preparer's Name & Phone Number: \_\_\_\_\_

Please provide a detailed status of project referenced above. Please check the box that would best explain the project phase.  
 Bonds Sold ☐ Plan / Design ☐ Bid Documents ☐ Construction/Improvements/Renovation in Process ☐  
 Purchase in Process ☐ Substantial Completion ☐ Project Complete ☐ Other (Please specify in narrative section) ☐

Provide a project update and the anticipated timeline for commencement and completion for each phase. *(Attach extra sheet if needed)*

**REQUEST FOR PAYMENT**

Grant Amount: \_\_\_\_\_  
 AIPP Amount (if applicable): \_\_\_\_\_  
 Funds Requested to Date: \_\_\_\_\_  
 Amount Requested This Payment: \_\_\_\_\_  
 Grant Balance: \_\_\_\_\_

**VENDOR INVOICE DETAIL** *(Attach extra sheet if needed)*

Date of Invoice	Vendor Name	Amount of Invoice	Amount Applicable to This Grant
<b>Amount Requested This Payment:</b>			

**FINAL REPORT** ☐  
 Fiscal Year Expenditure Period Ending  
 (check one)  
 (Jan-Jun) ☐ (Jul-Dec) ☐  
 Fiscal Year \_\_\_\_\_

- ☐ **MONTHLY REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.
- ☐ **FINAL REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/ regulatory requirements. The remaining balance is requested to be reverted to the appropriate funding source.
- ☐ **PROCUREMENT METHOD:** Grantee received approval from ALTSD and Notice of Obligation was issued and signed prior to reimbursement request.

**CERTIFICATION:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, are valid expenditures or actual receipts; and comply with NM State Procurement Code NMSA 13-1-21 through 13-1-199; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti-donation" clause.

\_\_\_\_\_  
 Grantee Fiscal Officer Signature & Printed Name

\_\_\_\_\_  
 Grantee Representative Signature & Printed Name (Preparer)

**STATE AGENCY USE ONLY**

I certify that the ALTSD Financial and vendor file information agree with the above submitted information.

ALTSD Fiscal	Date	1 of 1	ALTSD Capital Projects Bureau	Date
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**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee [# 1]**

DATE: [\_\_\_\_\_]

TO: Department Representative: [\_\_\_\_\_]

FROM: Grantee: [\_\_\_\_\_]

Grantee Official Representative: [\_\_\_\_\_]

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: [\_\_\_\_\_]

Grant Termination Date: [\_\_\_\_\_]

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

Vendor or Contractor: [\_\_\_\_\_]

Third Party Obligation Amount: [\_\_\_\_\_]

Vendor or Contractor: [\_\_\_\_\_]

Third Party Obligation Amount: [\_\_\_\_\_]

Vendor or Contractor: [\_\_\_\_\_]

Third Party Obligation Amount: [\_\_\_\_\_]

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

Grant Amount (Minus AIPP if applicable): [\_\_\_\_\_]

The Amount of this Notice of Obligation: [\_\_\_\_\_]

The Total Amount of all Previously Issued Notices of Obligation: [\_\_\_\_\_]

The Total Amount of all Notices of Obligation to Date: [\_\_\_\_\_]

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

Department Rep. Approver: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

Signature: [\_\_\_\_\_]

Date: [\_\_\_\_\_]

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



## **ATTACHMENT A SPECIAL CONDITIONS**

The capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired with such appropriations.

This Capital Outlay Special Grant Condition(s) **Attachment A** is necessary pursuant to Executive Order 2013-006 (2.A.2.a-c, if applicable), due to the Grantees' material weaknesses, significant deficiencies, or findings that raised concerns as to the ability to expend grant funds in accordance with applicable law in the organization's FY2020 audit. The Special Conditions identified below apply to the authorized agent, City of Truth or Consequences.

The City of Truth or Consequences was not required to provided documentation regarding the City of Truth or Consequences' 2020 Audit file. Therefore, the criteria to enter into this agreement have been met.

## PROJECT DESCRIPTION FORM

### SCOPE OF WORK (SOW)

1. **Name of Grantee/ Fiscal Agent:** Ken James Senior Center/Sierra Joint Office on Aging
2. **Project Title:** Ken James Senior Ctr Meal Vehicle Purchases City of T or C
3. **Grant Agreement Number:** A21F2057
4. **Background Narrative:** Access to well-balanced, affordable meals is imperative to the independence and sustenance of homebound seniors. Research shows that healthy eating provides essential energy and nutrients for welfare, maintenance of health and functional autonomy, and reduces the risk for chronic diseases at older ages. The benefits of home delivered meals are the emotional and psychological, as well as physical: The programs connection to companionship and resources in the community, help with dietary planning and maintaining independence, as well as access welfare checks, make the service that supports the overall well-being of our clients.

The trucks that deliver meals k894-6673 keep the food at proper temperature for safe consumption. If the trucks are unreliable then the food cannot be served safely causing a delay in delivery and unnecessary costs to the program. In the last year, the trucks have had several problems with the heating and cooling systems causing food to be wasted and clients waiting for meals. As the vehicles age the cost of keeping them operable increases causing the center to lose money on the meal program.

5. **Work Plan:** Secure cost/Quotes & select vendor then Purchase build, design and equip meal delivery truck. To take delivery of vehicles while working with the City of Truth or Consequences and the Executive Director to put the vehicle into service as soon as possible.

#### 6. Budget Detail:

Project Cost Activities <i>(These are only examples. Insert activities specific to the proposed project.)</i>	Other Funds	State Funds
Vehicle Purchase		\$47,000
Other Costs (specify)		
<b>Totals</b>		<b>\$47,000</b>

7. **Performance Measures:** Approximately 180 home delivered meals will be delivered daily while holding foods at their proper temperatures to elderly home-bound people while incurring fewer disruptive vehicle repairs.

8. **Results Expected:** The results expected of replacing these home delivery meal trucks will include more consistent and reliable delivery of home delivered meals, savings realized from newer, more energy efficient equipment, significant decrease in repairs.

9.

Time Frame/ Milestones: <i>(These are only examples. Insert milestones specific to the proposed project.)</i>	<i>(Project the month &amp; year for each milestone)</i>
RFP/Quotes Secured	September 2021
Bid Closing	September 2021
Bid Award to Contractor/Vendor	September 2021
Purchase/Install Equipment	September 2021
Project Completion & Review	December 2021
Submit Request for Payment Form and Supporting Documents to ALTSD/Capital Projects Bureau	December 2021

**10. Responsible Staff (include Project Manager and Fiscal Contact):**

Name: Crystal Walton  
Title: Executive Director, Sierra Joint Office on Aging  
Address: 36 W. 4<sup>th</sup> Ave., Truth or Consequences  
Email: cwalton@seniorcenter-sjoa.org  
Phone: 575-894-6641

Name: Traci Burnette  
Title: Projects Coordinator  
Address: 401 MacAdoo, Truth or Consequences  
Email: tburnette@torcnm.org  
Phone: 575-894-6673 ext. 353

Name: Bruce Swingle  
Title: City Manager  
Address: 401 MacAdoo, Truth or Consequences  
Email: bswingle@torcnm.org  
Phone: 575-894-6673 ext. 321

**NOTICE:** The Grant Application, if approved for funding by ALTSD and any attachments to the Grant Application are incorporated by reference into the scope of work. In the event of a conflict between any of the documents that are part of the Agreement, the ALTSD Cabinet Secretary, at the sole discretion of ALTSD, shall resolve that conflict.



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

*Agenda Item #: I.4*

**SUBJECT:** State of New Mexico Aging & Long-Term Services Department Fund 89200 Capital Appropriation Project

**DEPARTMENT:** City Manager's Office

**DATE SUBMITTED:** December 29, 2021

**SUBMITTED BY:** Tammy Gardner

**WHO WILL PRESENT THE ITEM:** Bruce Swingle

**Summary/Background:**

State of New Mexico Aging & Long-Term Services Department Fund 89200 Capital Appropriation Project grant agreement for signature.

**Recommendation:**

Approval of item

**Attachments:**

- Grant Agreement
- .

**Fiscal Impact (Finance):** Choose an item.

[Click here to enter text.](#)

**Legal Review (City Attorney):** Choose an item.

[Click here to enter text.](#)

**Approved For Submittal By:** ☒ Department Director

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

**Final Approval:** ☒ City Manager

#### CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

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

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

File Name: CC Agendas 1-12-2022

**STATE OF NEW MEXICO  
AGING AND LONG-TERM SERVICES DEPARTMENT  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Aging and Long-Term Services Department, hereinafter called the "Department" or abbreviation such as "ALTSD", and City of Truth or Consequences, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2021, Chapter 138, Section 5, Paragraph 52, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

**WHEREAS**, State Agency on Aging (28-4-1 to 28-4-9 NMSA 1978): successor agency, Aging and Long-Term Services Department (9-23-1 to 9-23-12 NMSA 1978) may enter into grants and contracts as appropriated by law.

**AGREEMENT**

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

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

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

A21F2058    \$76,000.00    APPROPRIATION REVERSION DATE: 30-JUN-2025

Laws of 2021, Chapter 138, Section 5, Paragraph 52, for renovations to the Ken James senior center in Truth or Consequences in Sierra county;

The Grantee's total reimbursements shall not exceed seventy-six dollars \$76,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>1</sup>, if applicable, (\$0), which equals zero dollars \$76,000.00.

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

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

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

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

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

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

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

- (vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of

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



a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
- c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
- d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

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

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

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

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

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

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

Grantee: City of Truth or Consequences  
Name: Bruce Swingle  
Title: City Manager  
Address: 401 MacAdoo, City of Truth or Consequences, NM 87901  
Email: bswingle@torcnm.org  
Telephone: (575) 894-6673 ext. 321

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

Grantee: City of Truth or Consequences  
Name: Traci Burnette  
Title: Projects Coordinator  
Address: 401 MacAdoo, City of Truth or Consequences, NM 87901  
Email: [tburnette@torcnm.org](mailto:tburnette@torcnm.org)  
Telephone: (575) 894-6673 ext. 353

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

Department: Aging and Long-Term Services Department  
Name: Barbara J. Romero  
Title: Capital Projects Bureau Chief  
Address: 2550 Cerrillos Road Santa Fe, NM 87505  
Email: [barbara.romero@state.nm.us](mailto:barbara.romero@state.nm.us)  
Telephone: 505-365-3660

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

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

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

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

#### **ARTICLE V. EARLY TERMINATION**

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

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

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

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

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

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

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

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

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

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

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

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

**D. Corrective Action Plan in the Event of Suspension**

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

**ARTICLE VII. AMENDMENT**

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

**ARTICLE VIII. REPORTS**

**A. Database Reporting**

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

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

**B. Requests for Additional Information/Project Inspection**

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

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

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

## **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

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

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

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

### **C. Deadlines**

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

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

**ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

- A. The following general conditions and restrictions are applicable to the Project:
- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
  - (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.
- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.



- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

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

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

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

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any

or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

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

#### **ARTICLE XIII. LIABILITY**

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

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

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

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

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

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

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

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

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

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

#### **XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

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

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

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

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

#### **ARTICLE XVIII. [OPTIONAL IF THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS OR GENERAL OBLIGATION BONDS] SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

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

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

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

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

\_\_\_\_\_  
Entity Name

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**AGING AND LONG-TERM SERVICES DEPARTMENT**

\_\_\_\_\_  
By:

Its: Cabinet Secretary or Designee

\_\_\_\_\_  
Date



<b>EXHIBIT 1</b> <b>ALTSD CAPITAL OUTLAY GRANT</b> <b>MONTHLY / FINAL REPORT FORM &amp; REQUEST FOR PAYMENT</b>	
<b>MONTHLY REPORT</b> <input type="checkbox"/> <small>(Due on the last day of the month)</small>	<b>PROJECT TITLE:</b> _____ <b>PAY REQUEST NO.</b> _____

Grantee: \_\_\_\_\_ Grant Number: \_\_\_\_\_ Reporting Period: \_\_\_\_\_ DATE: \_\_\_\_\_  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Preparer's Name & Phone Number: \_\_\_\_\_  
 Grant Expiration Date: \_\_\_\_\_

Please provide a detailed status of project referenced above. Please check the box that would best explain the project phase.

Bonds Sold ☐ Plan / Design ☐ Bid Documents ☐ Construction/Improvements/Renovation in Process ☐  
 Purchase in Process ☐ Substantial Completion ☐ Project Complete ☐ Other (Please specify in narrative section) ☐

Provide a project update and the anticipated timeline for commencement and completion for each phase. (Attach extra sheet if needed)

**REQUEST FOR PAYMENT**

Grant Amount: \_\_\_\_\_  
 AIPP Amount (if applicable): \_\_\_\_\_  
 Funds Requested to Date: \_\_\_\_\_  
 Amount Requested This Payment: \_\_\_\_\_  
 Grant Balance: \_\_\_\_\_

**VENDOR INVOICE DETAIL** (Attach extra sheet if needed)

**FINAL REPORT** ☐  
 Fiscal Year Expenditure Period Ending  
 (check one)  
 (Jan-Jun) ☐ (Jul-Dec) ☐  
 Fiscal Year: \_\_\_\_\_

Date of Invoice	Vendor Name	Amount of Invoice	Amount Applicable to This Grant
<b>Amount Requested This Payment:</b>			

- ☐ **MONTHLY REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.
- ☐ **FINAL REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/ regulatory requirements. The remaining balance is requested to be reverted to the appropriate funding source.
- ☐ **PROCUREMENT METHOD:** Grantee received approval from ALTSD and Notice of Obligation was issued and signed prior to reimbursement request.

**CERTIFICATION:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, are valid expenditures or actual receipts; and comply with NM State Procurement Code NMSA 13-1-21 through 13-1-199; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti-donation" clause.

\_\_\_\_\_  
 Grantee Fiscal Officer Signature & Printed Name

\_\_\_\_\_  
 Grantee Representative Signature & Printed Name (Required)

**STATE AGENCY USE ONLY**

I certify that the ALTSD Financial and vendor file information agree with the above submitted information.

ALTSD Fiscal \_\_\_\_\_ Date \_\_\_\_\_

ALTSD Financial Services Bureau \_\_\_\_\_ Date \_\_\_\_\_



## Revised 4-20-18

## **ATTACHMENT A SPECIAL CONDITIONS**

The capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired with such appropriations.

This Capital Outlay Special Grant Condition(s) **Attachment A** is necessary pursuant to Executive Order 2013-006 (2.A.2.a-c, if applicable), due to the Grantees' material weaknesses, significant deficiencies, or findings that raised concerns as to the ability to expend grant funds in accordance with applicable law in the organization's FY2020 audit. The Special Conditions identified below apply to the authorized agent, City of Truth or Consequences.

The City of Truth or Consequences was not required to provide documentation regarding the City of Truth or Consequences' 2020 Audit file. Therefore, the criteria to enter into this agreement have been met.

## PROJECT DESCRIPTION FORM SCOPE OF WORK (SOW)

1. **Name of Grantee/ Fiscal Agent:** Ken James Senior Center/Sierra Joint Office on Aging
2. **Project Title:** Ken James Senior Ctr Renovation City of T or C
3. **Grant Agreement Number:** A21F2058
4. **Background Narrative:** The Ken James Senior Center has been providing services to the elderly for over 40 years. The current building is a renovated schoolhouse that was built in the early 1900's. Sierra County population is over 50% seniors. Due to the high volume of senior citizens in our community it is imperative to have the HVAC system replaced as well as the doors, windows, and the plumbing. Studies have shown that the senior population is more susceptible to the health complications related to climate change. The plumbing issues have been ongoing and have created health issues for individuals entering the building. The handicap accessible doorways have had failures in operation and the windows are non-operational which doesn't allow for any fresh air circulation. The senior center is the only one operating in Sierra County so the need to maintain its current location is essential to provide services to an ever-increasing population.
5. **Work Plan:** Complete the installation of the HVAC systems by removing, disposing of old units and replacing installing and construction of ducting and all other components to place new systems. To purchase all materials and equipment, remove, construct, install and replace windows and doors as well as handicap accessible entry on the doors. To remove old failing plumbing under the building. To purchase equip and all materials and equipment for replacement of the plumbing of the building. The Executive Director will work with the City of Truth or Consequences as well as the contractors to ensure the projects are completed.

### 6. Budget Detail:

<b>Project Cost Activities</b> <i>(These are only examples. Insert activities specific to the proposed project.)</i>	<b>Other Funds</b>	<b>State Funds</b>
Architect/Engineer		
Construction		
Renovation		\$64,600
Improvements for Code Compliance		
Equipment		\$11,400
<b>Totals</b>		<b>\$76,000</b>

7. **Performance Measures:** Secure cost/Quotes & select contractor, plumber, build, design and equip while working with the City of Truth or Consequences and the Executive Director to execute the grants and ensure that the projects are completed.

8. **Results Expected:** To create a safe environment for the seniors as well as the staff by providing fresh clean air, climate control and elevating the septic gasses that are in the building.

9.

<b>Time Frame/ Milestones:</b> <i>(These are only examples. Insert milestones specific to the proposed project.)</i>	<i>(Project the month &amp; year for each milestone)</i>
RFP/Quotes Secured	September 2021
Bid Closing	September 2021
Bid Award to Contractor/Vendor	September 2021
Purchase/Install Equipment	September 2021
Project Completion & Review	December 2021
Submit <u>Request for Payment</u> Form and Supporting Documents to ALTSD/Capital Projects Bureau	January 2022

**10. Responsible Staff (include Project Manager and Fiscal Contact):**

Name: Crystal Walton  
Title: Executive Director, Sierra Joint Office on Aging  
Address: 360 W. 4<sup>th</sup> Ave., Truth or Consequences  
Email: cwalton@seniorcenter-sjoa.org  
Phone: 575-894-6641

Name: Traci Burnette  
Title: Projects Coordinator  
Address: 401 MacAdoo, Truth or Consequences  
Email: tburnette@torcnm.org  
Phone: 575-894-6673 ext. 353

Name: Bruce Swingle  
Title: City Manager  
Address: 401 MacAdoo, Truth or Consequences  
Email: bswingle@torcnm.org  
Phone: 575-894-6673 ext. 321

**NOTICE:** The Grant Application, if approved for funding by ALTSD and any attachments to the Grant Application are incorporated by reference into the scope of work. In the event of a conflict between any of the documents that are part of the Agreement, the ALTSD Cabinet Secretary, at the sole discretion of ALTSD, shall resolve that conflict.



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

**MEETING DATE:** January 12, 2022

*Agenda Item #: 1.5*

**SUBJECT:** State of New Mexico Aging & Long-Term Services Department Fund 89200 Capital Appropriation Project

**DEPARTMENT:** City Manager's Office

**DATE SUBMITTED:** December 29, 2021

**SUBMITTED BY:** Tammy Gardner

**WHO WILL PRESENT THE ITEM:** Bruce Swingle

***Summary/Background:***

State of New Mexico Aging & Long-Term Services Department Fund 89200 Capital Appropriation Project grant agreement A21F2059 for signature.

***Recommendation:***

Approval of item.

***Attachments:***

- Grant Agreement A21F2059
- .

***Fiscal Impact (Finance):*** Choose an item.

[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.** [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 1-12-2022

**STATE OF NEW MEXICO  
AGING AND LONG-TERM SERVICES DEPARTMENT  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Aging and Long-Term Services Department, hereinafter called the “Department” or abbreviation such as “ALTSD”, and City of Truth or Consequences, hereinafter called the “Grantee”. This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2021, Chapter 138, Section 5, Paragraph 53, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

**WHEREAS**, State Agency on Aging (28-4-1 to 28-4-9 NMSA 1978): successor agency, Aging and Long-Term Services Department (9-23-1 to 9-23-12 NMSA 1978) may enter into grants and contracts as appropriated by law.

**AGREEMENT**

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

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

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

A21F2059     \$58,413.00     APPROPRIATION REVERSION DATE: 30-JUN-2023

Laws of 2021, Chapter 138, Section 5, Paragraph 53, to purchase and equip vehicles for the Ken James senior center in Truth or Consequences in Sierra county;

The Grantee’s total reimbursements shall not exceed fifty-eight thousand four hundred thirteen dollars \$58,413.00] (the “Appropriation Amount”) minus the allocation for Art in Public Places (“AIPP amount”)<sup>1</sup>, if applicable, (\$0), which equals zero dollars \$58,413.00.

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

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



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

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

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

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as “Third Party Obligations”; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

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

- (vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of

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

a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
- c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
- d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

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

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

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

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

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

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

Grantee: City of Truth or Consequences  
Name: Bruce Swingle  
Title: City Manager  
Address: 401 MacAdoo, Truth or Consequences, NM 87901  
Email: bswingle@torcnm.org  
Telephone: (575) 894-6673 ext. 321

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

Grantee: City of Truth or Consequences  
Name: Traci Burnette  
Title: Projects Coordinator  
Address: 401 MacAdoo, Truth or Consequences, NM 87901  
Email: [tburnette@torcnm.org](mailto:tburnette@torcnm.org)  
Telephone: (575) 894-6673 ext. 353

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

Department: Aging and Long-Term Services Department  
Name: Barbara J. Romero  
Title: Capital Projects Bureau Chief  
Address: 2550 Cerrillos Road Santa Fe, NM 87505  
Email: [barbara.romero@state.nm.us](mailto:barbara.romero@state.nm.us)  
Telephone: 505-365-3660

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

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

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2023, the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

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

#### **ARTICLE V. EARLY TERMINATION**

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

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

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

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

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

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

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

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

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

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

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

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

**D. Corrective Action Plan in the Event of Suspension**

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

**ARTICLE VII. AMENDMENT**

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

**ARTICLE VIII. REPORTS**

**A. Database Reporting**

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

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

**B. Requests for Additional Information/Project Inspection**

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

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

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

## **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

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

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

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

### **C. Deadlines**

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

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.



**ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

- A. The following general conditions and restrictions are applicable to the Project:
- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
  - (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.
- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.

- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

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

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

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

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any



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

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

## **XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

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

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

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

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

## **ARTICLE XVIII. [OPTIONAL IF THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS OR GENERAL OBLIGATION BONDS] SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

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

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

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

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

\_\_\_\_\_  
Entity Name

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**AGING AND LONG-TERM SERVICES DEPARTMENT**

\_\_\_\_\_  
By:

Its: Cabinet Secretary or Designee

\_\_\_\_\_  
Date





**EXHIBIT 1**  
**ALTSD CAPITAL OUTLAY GRANT**  
**MONTHLY / FINAL REPORT FORM & REQUEST FOR PAYMENT**

**MONTHLY REPORT** ☐  
(Due on the last day of the month)

**PROJECT TITLE:** \_\_\_\_\_ **PAY REQUEST NO.** \_\_\_\_\_

**Grantee:** \_\_\_\_\_ **Grant Number:** \_\_\_\_\_ **Reporting Period:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
**Grant Expiration Date:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_ **Preparer's Name & Phone Number:** \_\_\_\_\_

Please provide a detailed status of project referenced above. Please check the box that would best explain the project phase.

**Bonds Sold** ☐ **Plan / Design** ☐ **Bid Documents** ☐ **Construction/Improvements/Renovation in Process** ☐  
**Purchase in Process** ☐ **Substantial Completion** ☐ **Project Complete** ☐ **Other (Please specify in narrative section)** ☐

Provide a project update and the anticipated timeline for commencement and completion for each phase. (Attach extra sheet if needed)

**REQUEST FOR PAYMENT**

**VENDOR INVOICE DETAIL** (Attach extra sheet if needed)

**Grant Amount:** \_\_\_\_\_  
**AIPP Amount (if applicable):** \_\_\_\_\_  
**Funds Requested to Date:** \_\_\_\_\_  
**Amount Requested This Payment:** \_\_\_\_\_  
**Grant Balance:** \_\_\_\_\_

Date of Invoice	Vendor Name	Amount of Invoice	Amount Applicable to This Grant
Amount Requested This Payment:			

**FINAL REPORT** ☐  
**Fiscal Year Expenditure Period Ending**  
(check one)  
**(Jan-Jun)** ☐ **(Jul-Dec)** ☐  
**Fiscal Year** \_\_\_\_\_

- ☐ **MONTHLY REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.
- ☐ **FINAL REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/ regulatory requirements. The remaining balance is requested to be reverted to the appropriate funding source.
- ☐ **PROCUREMENT METHOD:** Grantee received approval from ALTSD and Notice of Obligation was issued and signed prior to reimbursement request.

**CERTIFICATION:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, are valid expenditures or actual receipts; and comply with NM State Procurement Code NMSA 13-1-21 through 13-1-199; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti-donation" clause.

\_\_\_\_\_  
Grantee Fiscal Officer Signature & Printed Name

\_\_\_\_\_  
Grantee Representative Signature & Printed Name (Preparer)

**STATE AGENCY USE ONLY**

I certify that the ALTSD Financial and vendor file information agree with the above submitted information.

ALTSD Fiscal

Date

ALTSD Capital Projects Bureau

Date



1 of 1



**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee [# 1]**

DATE: [\_\_\_\_\_]

TO: Department Representative: [\_\_\_\_\_]

FROM: Grantee: [\_\_\_\_\_]

Grantee Official Representative: [\_\_\_\_\_]

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: [\_\_\_\_\_]

Grant Termination Date: [\_\_\_\_\_]

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

Vendor or Contractor: [\_\_\_\_\_]

Third Party Obligation Amount: [\_\_\_\_\_]

Vendor or Contractor: [\_\_\_\_\_]

Third Party Obligation Amount: [\_\_\_\_\_]

Vendor or Contractor: [\_\_\_\_\_]

Third Party Obligation Amount: [\_\_\_\_\_]

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

Grant Amount (Minus AIPP if applicable): [\_\_\_\_\_]

The Amount of this Notice of Obligation: [\_\_\_\_\_]

The Total Amount of all Previously Issued Notices of Obligation: [\_\_\_\_\_]

The Total Amount of all Notices of Obligation to Date: [\_\_\_\_\_]

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

Department Rep. Approver: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

Signature: [\_\_\_\_\_]

Date: [\_\_\_\_\_]

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

## **ATTACHMENT A SPECIAL CONDITIONS**

The capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired with such appropriations.

This Capital Outlay Special Grant Condition(s) **Attachment A** is necessary pursuant to Executive Order 2013-006 (2.A.2.a-c, if applicable), due to the Grantees' material weaknesses, significant deficiencies, or findings that raised concerns as to the ability to expend grant funds in accordance with applicable law in the organization's FY2020 audit. The Special Conditions identified below apply to the authorized agent City of Truth or Consequences.

The City of Truth or Consequences was not required to provide documentation regarding the City of Truth or Consequences' 2020 Audit file. Therefore, the criteria to enter into this agreement have been met.

**PROJECT DESCRIPTION FORM  
 SCOPE OF WORK (SOW)**

1. **Name of Grantee/ Fiscal Agent:** City of Truth or Consequences
2. **Project Title:** Ken James Senior Ctr Vehicle
3. **Grant Agreement Number:** A21F2059
4. **Background Narrative:** Recent years has seen the increased popularity and availability of mobility vehicles for seniors with mobility issues. Sometimes the mobility issues are compounded with weight issues which increase the need for higher lifting capacity wheelchair ramps and lifts on wheelchair vehicles. Sierra Joint Office on Aging has incurred increased numbers of such senior clients resulting in an increase in the number of repairs to our current vehicles specifically the ramps and lifts.
5. **Work Plan:** When the contracts are signed and finalized, we will submit to Creative Bus Sales to purchase a wheelchair vehicle containing a 1000 lbs. lift with reinforced flooring and other modifications to support the lift. Executive Director Crystal Walton will work with the City of Truth or Consequences for the purchase order to order the vehicle.

**6. Budget Detail:**

<b>Project Cost Activities</b> <i>(These are only examples .Insert activities specific to the proposed project.)</i>	<b>Other Funds</b>	<b>State Funds</b>
Equipment		
Vehicle Purchase	8,392.32	\$58,413
Other Costs (specify)		
<b>Totals</b>	<b>8,392.32</b>	<b>\$58,413</b>

7. **Performance Measures:** After purchase order is obtained from the City or Truth or Consequences Finance Dept., order submitted and received, Executive Director will verify the vehicle is suitable to our purposes.

8. **Results Expected:** Utilization of this vehicle will assist with the transporting of larger seniors using mobility chairs or larger extra weight or electric wheelchairs. Such seniors experience difficulties finding suitable transportation large enough for their larger or motorized equipment.

9.

<b>Time Frame/ Milestones:</b> <i>(These are only examples. Insert milestones specific to the proposed project.)</i>	<i>(Project the month &amp; year for each milestone)</i>
RFP/Quotes Secured	September 2021
Bid Closing	September 2021
Bid Award to Contractor/Vendor	September 2021
Purchase/Install Equipment	September 2021
Project Completion & Review	December 2021
Submit <u>Request for Payment</u> Form and Supporting Documents to ALTSD/Capital Projects Bureau	December 2021

**10. Responsible Staff (include Project Manager and Fiscal Contact):**

Name: Crystal Walton  
Title: Executive Director, Sierra Joint Office on Aging  
Address: 36 W. 4<sup>th</sup> Ave., Truth or Consequences  
Email: cwalton@seniorcenter-sjoa.org  
Phone: 575-894-6641

Name: Traci Burnette  
Title: Projects Coordinator  
Address: 401 MacAdoo, Truth or Consequences  
Email: tburnette@torcnm.org  
Phone: 575-894-6673 ext. 353

Name: Bruce Swingle  
Title: City Manager  
Address: 401 MacAdoo, Truth or Consequences  
Email: bswingle@torcnm.org  
Phone: 575-894-6673 ext. 321

**NOTICE:** The Grant Application, if approved for funding by ALTSD and any attachments to the Grant Application are incorporated by reference into the scope of work. In the event of a conflict between any of the documents that are part of the Agreement, the ALTSD Cabinet Secretary, at the sole discretion of ALTSD, shall resolve that conflict.



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

*Agenda Item #: I.6*

**SUBJECT:** State of New Mexico Aging & Long-Term Services Department Fund 89200 Capital Appropriation Project

**DEPARTMENT:** City Manager's Office

**DATE SUBMITTED:** December 29, 2021

**SUBMITTED BY:** Tammy Gardner

**WHO WILL PRESENT THE ITEM:** Bruce Swingle

**Summary/Background:**

State of New Mexico Aging & Long-Term Services Department Fund 89200 Capital Appropriation Project grant agreement A21F2060 for signature.

**Recommendation:**

Approval of item

**Attachments:**

- Grant Agreement A21F2060
- -

**Fiscal Impact (Finance):** Choose an item.

[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. [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 1-12-2022



**STATE OF NEW MEXICO  
AGING AND LONG-TERM SERVICES DEPARTMENT  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Aging and Long-Term Services Department, hereinafter called the “Department” or abbreviation such as “ALTSD”, and City of Truth or Consequences, hereinafter called the “Grantee”. This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2021, Chapter 138, Section 5, Paragraph 54 the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

**WHEREAS**, State Agency on Aging (28-4-1 to 28-4-9 NMSA 1978): successor agency, Aging and Long-Term Services Department (9-23-1 to 9-23-12 NMSA 1978) may enter into grants and contracts as appropriated by law.

**AGREEMENT**

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

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

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

A21F2060     \$76,000.00     APPROPRIATION REVERSION DATE: 30-JUN-2025

[Laws of 2021, Chapter 138, Section 5, Paragraph 54, to plan, design, construct, purchase, replace, equip and install heating, ventilation and air conditioning units and related equipment for the Ken James senior center in Truth or Consequences in Sierra county;

The Grantee’s total reimbursements shall not exceed seventy-six thousand dollars \$76,000.00 (the “Appropriation Amount”) minus the allocation for Art in Public Places (“AIPP amount”)<sup>1</sup>, if applicable, (\$0), which equals zero dollars \$76,000.00.

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

---

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

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

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

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

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

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

- (vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of

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

a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
- c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
- d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

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

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

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

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

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

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

Grantee: City of Truth or Consequences  
Name: Bruce Swingle  
Title: City Manager  
Address: 401 MacAdoo, Truth or Consequences, NM 87901  
Email: bswingle@torcnm.org  
Telephone: (575) 894-6673 ext. 321

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

Grantee: City of Truth or Consequences  
Name: Traci Burnette  
Title: Projects Coordinator  
Address: 401 MacAdoo, Truth or Consequences, NM 87901  
Email: [tburnette@torcnm.org](mailto:tburnette@torcnm.org)  
Telephone: (575) 894-6673 ext. 353

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

Department: Aging and Long-Term Services Department  
Name: Barbara J. Romero  
Title: Capital Projects Bureau Chief  
Address: 2550 Cerrillos Road Santa Fe, NM 87505  
Email: [barbara.romero@state.nm.us](mailto:barbara.romero@state.nm.us)  
Telephone: 505-365-3660

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

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

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

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

#### **ARTICLE V. EARLY TERMINATION**

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

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

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

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

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

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

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

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

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

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

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

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

**D. Corrective Action Plan in the Event of Suspension**

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

**ARTICLE VII. AMENDMENT**

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

**ARTICLE VIII. REPORTS**

**A. Database Reporting**

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

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

**B. Requests for Additional Information/Project Inspection**

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

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

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



## **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

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

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

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

### **C. Deadlines**

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

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

**ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

- A. The following general conditions and restrictions are applicable to the Project:
- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
  - (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.
- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.

- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

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

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

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

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any

or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

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

#### **ARTICLE XIII. LIABILITY**

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

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

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

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

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

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

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

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

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

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

## **XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

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

- B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
  2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
  3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
  4. terminate this Agreement pursuant to Article V(A) of this Agreement.

## **ARTICLE XVIII. [OPTIONAL IF THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS OR GENERAL OBLIGATION BONDS] SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

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

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

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

[THIS SPACE LEFT BLANK INTENTIONALLY]



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

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

\_\_\_\_\_  
Entity Name

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**AGING AND LONG-TERM SERVICES DEPARTMENT**

\_\_\_\_\_  
By:

Its: Cabinet Secretary or Designee

\_\_\_\_\_  
Date



<b>EXHIBIT 1</b> <b>ALTSD CAPITAL OUTLAY GRANT</b> <b>MONTHLY / FINAL REPORT FORM &amp; REQUEST FOR PAYMENT</b>		
<b>MONTHLY REPORT</b> <input type="checkbox"/> <small>(Due on the last day of the month)</small>	<b>PROJECT TITLE:</b> _____	<b>PAY REQUEST NO.</b> _____

Grantee: \_\_\_\_\_ Grant Number: \_\_\_\_\_ Reporting Period: \_\_\_\_\_ DATE: \_\_\_\_\_  
 Grant Expiration Date: \_\_\_\_\_  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Preparer's Name & Phone Number: \_\_\_\_\_

Please provide a detailed status of project referenced above. Please check the box that would best explain the project phase.

- ☐ Bonds Sold   
 ☐ Plan / Design   
 ☐ Bid Documents   
 ☐ Construction/Improvements/Renovation in Process   
 ☐ Purchase in Process   
 ☐ Substantial Completion   
 ☐ Project Complete   
 ☐ Other (Please specify in narrative section)

Provide a project update and the anticipated timeline for commencement and completion for each phase. (Attach extra sheet if needed)

**REQUEST FOR PAYMENT**

Grant Amount: \_\_\_\_\_  
 AIPP Amount (if applicable): \_\_\_\_\_  
 Funds Requested to Date: \_\_\_\_\_  
 Amount Requested This Payment: \_\_\_\_\_  
 Grant Balance: \_\_\_\_\_

**VENDOR INVOICE DETAIL** (Attach extra sheet if needed)

Date of Invoice	Vendor Name	Amount of Invoice	Amount Applicable to This Grant
<b>Amount Requested This Payment:</b>			

**FINAL REPORT** ☐  
 Fiscal Year Expenditure Period Ending  
 (check one)  
 (Jan-Jun) ☐      (Jul-Dec) ☐  
 Fiscal Year \_\_\_\_\_

- ☐ **MONTHLY REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.
- ☐ **FINAL REPORT:** I hereby certify that the aforementioned Capital Outlay Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/ regulatory requirements. The remaining balance is requested to be reverted to the appropriate funding source.
- ☐ **PROCUREMENT METHOD:** Grantee received approval from ALTSD and Notice of Obligation was issued and signed prior to reimbursement request.

**CERTIFICATION:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, are valid expenditures or actual receipts; and comply with NM State Procurement Code NMSA 13-1-21 through 13-1-199; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti-donation" clause.

\_\_\_\_\_  
 Grantee Fiscal Officer Signature & Printed Name

\_\_\_\_\_  
 Grantee Representative Signature & Printed Name (Preparer)

**STATE AGENCY USE ONLY**

I certify that the ALTSD Financial and vendor file information agree with the above submitted information.

ALTSD Fiscal

Date

ALTSD Capital Projects Bureau

Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee [# 1]**

DATE: [\_\_\_\_\_]

TO: Department Representative: [\_\_\_\_\_]

FROM: Grantee: [\_\_\_\_\_]

Grantee Official Representative: [\_\_\_\_\_]

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: [\_\_\_\_\_]

Grant Termination Date: [\_\_\_\_\_]

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

Vendor or Contractor: [\_\_\_\_\_]

Third Party Obligation Amount: [\_\_\_\_\_]

Vendor or Contractor: [\_\_\_\_\_]

Third Party Obligation Amount: [\_\_\_\_\_]

Vendor or Contractor: [\_\_\_\_\_]

Third Party Obligation Amount: [\_\_\_\_\_]

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

Grant Amount (Minus AIPP if applicable): [\_\_\_\_\_]

The Amount of this Notice of Obligation: [\_\_\_\_\_]

The Total Amount of all Previously Issued Notices of Obligation: [\_\_\_\_\_]

The Total Amount of all Notices of Obligation to Date: [\_\_\_\_\_]

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

Department Rep. Approver: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

Signature: [\_\_\_\_\_]

Date: [\_\_\_\_\_]

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

## ATTACHMENT A SPECIAL CONDITIONS

The capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired with such appropriations.

This Capital Outlay Special Grant Condition(s) **Attachment A** is necessary pursuant to Executive Order 2013-006 (2.A.2.a-c, if applicable), due to the Grantees' material weaknesses, significant deficiencies, or findings that raised concerns as to the ability to expend grant funds in accordance with applicable law in the organization's FY2020 audit. The Special Conditions identified below apply to the authorized agent, City of Truth or Consequences.

The City of Truth or Consequences was not required to provide sufficient documentation regarding the City of Truth or Consequences' 2020 Audit file. Therefore, the criteria to enter into this agreement have been met.

## PROJECT DESCRIPTION FORM

### SCOPE OF WORK (SOW)

1. **Name of Grantee/ Fiscal Agent:** City of Truth or Consequences
2. **Project Title:** Ken James senior center HVAC Unit Replacement
3. **Grant Agreement Number:** A21F2060
4. **Background Narrative:** The Ken James Senior Center has been providing services to the elderly for over 40 years. The current building is a renovated schoolhouse that was built in the early 1900's. Sierra County population is over 50% seniors. Due to the high volume of senior citizens in our community it is imperative to have the HVAC system replaced. Studies have shown that the senior population is more susceptible to the health complications related to climate change. Elderly people are at high risk for developing potentially life-threatening disturbances of temperature regulation due to normal age-related changes and illnesses in the population such as COVID-19. The senior center is the only one operating in Sierra County so the need to maintain its current location is essential to provide services to an ever-increasing population.
5. **Work Plan:** The funds will be used to purchase plan design All HVAC units as well as one additional unit for the kitchen and with all related materials, supplies to replace the existing HVAC units. Removal and disposal of old system. The Executive Director will work with the City of Truth or Consequences as well as the contractor to execute this project.

#### 6. Budget Detail:

Project Cost Activities	Other Funds	State Funds
Architect/Engineer		
Construction		
Renovation		
Improvements for Code Compliance		
Equipment		\$76,000
Vehicle Purchase		
Other Costs (specify)		
<b>Totals</b>		<b>\$76,000</b>

7. **Performance Measures:** The Executive Director will be working with the Head of Facility Maintenance of the city and will acquire the purchase order and the proper completion of the replacement of the HVAC system by the contractor. Performance is to be measured with increased efficiency and energy savings once the system is in place.

8. **Results Expected:** The replacement of the HVAC system is necessary to prevent a possible closure of the facility due to extreme cold or heat. The new HVAC system will alleviate the possibility by the replacement of antiquated equipment which will soon not be able to be fixed.

9.

<b>Time Frame/ Milestones:</b> <i>(These are only examples. Insert milestones specific to the proposed project.)</i>	<b>(Project the month &amp; year for each milestone)</b>
RFP/Quotes Secured	September 2021
Bid Closing	September 2021
Bid Award to Contractor/Vendor	September 2021
Purchase/Install Equipment	September 2021
Project Completion & Review	October 2021
Submit <u>Request for Payment</u> Form and Supporting Documents to ALTSD/Capital Projects Bureau	October 2021





## City of Truth or Consequences

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

Agenda Item #: I.7

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

**DEPARTMENT:** Finance

**DATE SUBMITTED:** January 4, 2022

**SUBMITTED BY:** Donna R Gardner, Chief Procurement Officer

**WHO WILL PRESENT THE ITEM:** Carol Kirkpatrick, Finance Director

**Summary/Background:**

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

**Recommendation:**

Approval Recommended by Chief Procurement Officer /Finance Director

**Attachments:**

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

**Fiscal Impact (Finance):** Choose an item.

As Per Total on Listing of Purchase Requisitions \$557,078.60

**Legal Review (City Attorney):** Choose an item.

Click here to enter text.

**Approved For Submittal By:** ☒ Department Director

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

**Final Approval:** ☒ City Manager

#### CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

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

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

File Name: CC Agendas 1-12-2022



**PURCHASE REQUISITION APPROVAL  
COMMISSION MEETING 1/12/22**

**2021-22 FISCAL YEAR**

Number	Vendor Name	Description	Requested By	Department	Total Amount	Procurement Type
86723	Wagner Equipment	Parts, labor, and repairs for 2013 Caterpillar 420F Backhoe	Andy Alvarez	Sanitation	\$ 22,000.00	State Contract
86758	Bixby Electric, Inc.	Pole Replacement	Bo Easley	Electric	\$ 513,378.60	RFP
86759	Public Sector Personnel Consultants	Salary and Job Description Survey (Funding donated by Sanitation Department to General Fund)	Bruce Swingle	City Manager	\$ 21,700.00	Small Purchase of Professional Services

\$ 557,078.60

ATTEST:

\_\_\_\_\_  
Angela Torres, Clerk-Treasurer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Amanda Forrister, Mayor Pro-Tem

\_\_\_\_\_  
Date



# REQUISITION

**Requisition #:** 86723

**Date:** 12/27/2021

**Vendor #:** 4998

**ISSUED TO:** WAGNER EQUIPMENT CO.  
P.O. BOX 25007  
ALBUQUERQUE, NM 87125

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

ITEM	UNITS DESCRIPTION	PROJECT #	PRICE GL ACCOUNT NUMBER	AMOUNT
1	0 PARTS/LABOR/REPAIRS		0.00 505-3904-47420	22,000.00
<b>PO Description:</b> REPAIR TRANSMISSION IN BACKHOE FUEL#6318 <b>Detailed Description:</b> 2013 CATERPILLAR 420F BACKHOE SEE ATT. STATE CONTRACT HOLD FOR COMMISSION APPROVAL 1-12-2022				

**Authorized By:** \_\_\_\_\_

<b>SUBTOTAL:</b>	22,000.00
<b>TOTAL TAX:</b>	0.00
<b>SHIPPING:</b>	0.00
<b>TOTAL</b>	22,000.00



**State of New Mexico  
General Services Department  
Purchasing Division**

**Statewide Price Agreement Amendment**

**Awarded Vendor:**  
**8 Vendors**

**Email:** \_\_\_\_\_  
**Telephone No.:** \_\_\_\_\_

**Number:** 00-00000-20-00130

**Amendment No.:** One

**Term:** September 28, 2020 - September 27, 2022

**Ship To:**  
**All State of New Mexico agencies, commissions,  
institutions, political subdivisions and local public  
bodies allowed by law.**

**Procurement Specialist** Mark Lujan

**Telephone No.:** 505-795-2516

**Email:** Mark.Lujan@state.nm.us

**Invoice:**  
**As Requested**

**Title: Generator Preventive Maintenance and Repair**

**This amendment is to be attached to the respective Price Agreement and become a part thereof.**

**In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from September 28, 2021 to September 27, 2022 at the same price, terms and conditions.**

**Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.**

**Accepted for the State of New Mexico**

*Valerie Paulk*

**Mark Hayden, New Mexico State Purchasing Agent**

**Date:** 7/23/2021

**X This Amendment was signed on behalf of the State Purchasing Agent**

**Purchasing Division: 1100 St. Francis Drive, Room 2016, Santa Fe, 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-0472**



**State of New Mexico  
General Services Department**

**Statewide Price Agreement**

**Awarded Vendor:**  
**See Page 6 and 7**

**Email:** \_\_\_\_\_  
**Telephone No.:** \_\_\_\_\_

**Ship To:**  
**All State of New Mexico agencies, commissions,  
institutions, political subdivisions and local public  
bodies allowed by law.**

**Invoice:**  
**As Requested**

**Price Agreement Number:** 00-00000-20-00130

**Payment Terms:** Net 30

**F.O.B.:** Destination

**Delivery:** As Requested

**Procurement Specialist:** Mark Lujan

**Telephone No.:** 505-827-0564

**Email:** Mark.Lujan@state.nm.us

**Title:** Generator Preventive Maintenance and Repair

**Term:** September 28, 2020 through September 27, 2021

**This Statewide Price Agreement is made subject to the "terms and conditions" as indicated on subsequent pages.**

**Accepted for the State of New Mexico**

*Valerie Paulk*  
Mark Hayden, New Mexico State Purchasing Agent

**Date:** 9/25/2020

**x This Agreement was signed on behalf of the State Purchasing Agent**



# REQUISITION

**Requisition #:** 86758

**Date:** 01/04/2022

**Vendor #:** 8127

**ISSUED TO:** BIXBY ELECTRIC, INC  
521 WHEELER AVE SE  
ALBUQUERQUE, NM 87102-

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

ITEM	UNITS DESCRIPTION	PROJECT #	PRICE GL ACCOUNT NUMBER	AMOUNT
1	0 12.47 KV DISTRIBUTION LINE RENOVATI		0.00 503-3702-47415	513,378.60
<b>PO Description:</b> POLE REPLACEMENT FOR ELECTRIC DEPT <b>Detailed Description:</b> REFERENCE RFP 21-22-005 12.47 KV DISTRIBUTION LINE RENOVATIONS FOR POLE REPLACEMENT AWARD AND CONTRACT ATTACHED HOLD FOR COMMISSION APPROVAL 1/12/22				

**Authorized By:** \_\_\_\_\_

<b>SUBTOTAL:</b>	473,160.00
<b>TOTAL TAX:</b>	40,218.60
<b>SHIPPING:</b>	0.00
<b>TOTAL</b>	513,378.60



# REQUISITION

**Requisition #:** 86759

**Date:** 01/04/2022

**Vendor #:** 8729

**ISSUED TO:** PUBLIC SECTOR PERSONNEL CONSU  
2824 N POWER ROAD #113-486  
MESA, AZ 85215-

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

ITEM	UNITS DESCRIPTION	PROJECT #	PRICE GL ACCOUNT NUMBER	AMOUNT
1	0 SALARY AND JOB DESCRIPTION SURVEY		0.00 101-1018-48598	21,700.00
<b>PO Description:</b> SALARY AND JOB DESCRIPTION SURVEY <b>Detailed Description:</b> PER ATTACHED QUOTE (SMALL PURCHASE OF PROFESSIONAL SERVICES) AND CONTRACT HOLD FOR COMMISSION APPROVAL 1/12/22				

**Authorized By:** \_\_\_\_\_

<b>SUBTOTAL:</b>	20,000.00
<b>TOTAL TAX:</b>	1,700.00
<b>SHIPPING:</b>	0.00
<b>TOTAL</b>	21,700.00

## **PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by the **City of Truth or Consequence** ("the City") and **Public Sector Personnel Consultants, Inc.** ("PSPC"), 2824 N. Power Road #113-486 Mesa, Arizona 85215 (National Office).

This Agreement is for PSPC to conduct a classification and compensation study as reflected in PSPC's December 2021 quote.

### ***SCOPE OF WORK***

In consideration of the payment by the City of Truth or Consequences, as hereinafter provided, Public Sector Personnel Consultants, Inc. agrees to perform all the services as outlined in "Exhibit A", Scope of Work (page 3).

### ***CONTRACT TIME ESTIMATE***

The City and PSPC will partner to complete the study within 150 days. This agreement shall remain in effect until September 31, 2022.

### ***CONTRACT COST ESTIMATE***

At no time shall the total contract exceed \$20,000, plus gross receipts tax without further approval and modification of this agreement. One on-site meeting is included.

### ***CONTRACT BILLING AND PAYMENT***

We do not require any advance payments and will provide monthly invoices for the professional services provided and out-of-pocket expenses incurred during the month. We request that invoices be paid within thirty (30) days of their receipt.

### ***SEVERABILITY***

That should any word, sentence, paragraph, subdivision, clause, phrase or section of this Agreement, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said agreement, which shall remain in full force and effect.

### ***VENUE***

The laws of the State of New Mexico shall govern the interpretation, validity, performance and enforcement of this Agreement. The parties agree that this Agreement is performable in Sierra County, and that exclusive venue shall lie in Sierra County.

### ***TERMINATION***

This Agreement may be terminated by either party with 30 days written notice.

### ***ASSIGNMENT***

The assignment of this Agreement by any party is prohibited without the prior written consent of the other Party.

### ***AMENDMENT***

Any amendment of this Agreement must be in writing and will be effective if signed by the authorized representatives of the Parties.



## **NOTICES**

Any notices under this Agreement will be effective if transmitted to a Party by confirmed telecopy or via US Postal Service, postage prepaid, certified, to the address of the Party indicated below:

***City of Truth or Consequences***

Mr. Bruce Swingle  
City Manager  
104 McAdoo Street  
Truth or Consequences, NM 87901

***Public Sector Personnel Consultants, Inc.***

Matthew Weatherly  
President  
2824 N. Power Road #113-486  
Mesa, AZ 85215

## **NO THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement, express or implied, is intended to confer any rights, benefits, or remedies under or by reason of this agreement upon person or entity, other than the City and PSPC.

**APPROVED FOR  
CITY OF TRUTH OR CONSEQUENCES**

By: \_\_\_\_\_  
(Signature)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**APPROVED FOR  
PUBLIC SECTOR PERSONNEL CONSULTANTS, INC.**

By: \_\_\_\_\_  
(Signature)  
Name: Matthew Weatherly  
Title: President  
Date: \_\_\_\_\_

## EXHIBIT A

### SUMMARY OF SERVICES FOR THE CITY

**PUBLIC SECTOR PERSONNEL CONSULTANTS (PSPC)** proposes the following program of consulting services and implementation support to conduct a classification and compensation study.

#### **Project Planning and Communication**

1. Telephone planning meeting with the City Manager and project designee(s) \*
2. As-needed policy input and project direction meeting with Commission and designee(s) \*
3. Kick-off introductory meetings for employees to learn about the study, explain job questionnaire

#### **Classification Project Tasks**

4. Occupational familiarization by review of City's current class specifications and compensation plans
5. Organizational familiarization by review of City organization charts, budgets, and annual reports
6. Position Description Questionnaires (PDQ) for collection of job information from employees
7. Determination of job classification and FLSA Exempt / Non-Exempt designation for each position
8. Recommended title modifications and reclassifications for consideration by department heads
9. Review of position classification recommendations with City's project staff and respective departments\*
10. As-needed preparation of updated job descriptions / class specifications for each City job classification

#### **Compensation Survey and Analysis**

11. Occupational familiarization by review of City's current job descriptions and compensation plans
12. Organizational familiarization by review of City organization charts, budgets, and annual reports
13. Identification of survey comparator agencies for use in external data collection and job comparison
14. Identification of survey benchmark job classifications to develop custom survey database (target ~50+)
15. Solicitation and collection of public sector pay plan data, organization charts, budget documents for survey
16. Application of published private sector data and weighting of public and private market data as desired
17. Consolidation of data from all sources and calculation of prevailing rates for benchmark jobs
18. Computation of extent City's compensation offerings vary from external prevailing rates and practices
19. Review of competitiveness analysis with City Officials and City's project designees

#### **Application of Data: Compensation Plan Development**

20. Development of pay range and pay table structures for review and approval by the City
21. Assignment of job classes to salary ranges by internal equity and external competitiveness
22. Linkage of survey data to non-benchmark jobs for "whole plan" creation of pay range placements
23. Assessment of payroll including compression, range penetration, and modeling of alternatives
24. Fiscal impact estimates at various levels of external prevailing rates competitiveness policies
25. Review and critique of draft salary and implementation plans with project leaders

#### **Communication of Results and Implementation Strategies**

26. Preparation and presentation of a final project report for the City Commission, staff, and City Officials
27. Development of a plan for the implementation of City's compensation plan
28. Development and provision of process for ongoing plan maintenance and subsequent plan updates
29. Assistance with communicating the proposed plans for all City officials and employees
30. One year compensation plan maintenance assistance ***at no cost to the City to include ???***

\* many tasks can be completed remotely; on-site meetings can be performed pending Covid-19 restrictions

## PROJECT APPROACH AND METHODOLOGY

Following is our overall work plan and approach to achieving the City's objectives for the conduct of a compensation study.

### A. OBJECTIVES OF THE PROJECT

The recommended plans, programs, systems and administrative procedures will meet these ten most important criteria.

- |                                  |                                             |
|----------------------------------|---------------------------------------------|
| - Internally equitable           | - Financially responsible                   |
| - Externally competitive         | - Efficiently administered                  |
| - Readily understood             | - Inclusive of employee input               |
| - Easily updated & maintained    | - Reflective of City's values               |
| - Legally compliant & defensible | - Reflective of prevailing "best practices" |

### B. SCOPE OF THE PROJECT

The project could include: a management and employee communication plan; partnership with the City Manager, Commission, and project designee(s); occupational, organizational, and operational familiarization; as-needed Position Description Questionnaire (PDQ) and job analysis for all classifications; position classification and job title recommendations for all employees and classifications; FLSA designations; updated job descriptions; **EZ COMP™**; external competitiveness evaluation; salary survey and competitiveness analysis; salary range recommendations; fiscal impact estimates and multiple implementation scenarios; updated classification and compensation plan and one year of classification and compensation plan implementation support for all included employees in all job classifications.

### C. POSITION CLASSIFICATION ANALYSIS

#### 1. Review of Essential Tasks – Position Description Questionnaire

We will review and analyze the current essential tasks, duties and responsibilities, and minimum qualifications of each included position through the Position Description Questionnaire (PDQ) recently completed by each employee (or group of employees with identical jobs). If the information on the PDQ does not clearly delineate the position's scope of responsibilities, we may return the PDQ to the position's incumbent for additional information or seek additional information from departments.

#### 2. FLSA Status Interpretation

We can review the essential tasks and minimum qualifications of each of the City's job classifications and subject them to the Fair Labor Standards Act tests to interpret their exempt or non-exempt status.

### **3. Position Classification**

Each of the City's positions will be analyzed and evaluated to determine their primary characteristics, including:

- Is there a current City occupational job group comprised of job classes with essential functions similar to the subject position; if so:
- To which of the group's job classes, and at what level, are the subject position's essential functions similar to the subject position, and if so:
- Are they sufficiently comparable (+/- 20% guideline) to be allocated to that job class, utilize the same job title, require the same minimum qualifications, and be assigned to the same salary range.
- If the City does not currently have a sufficiently comparable job class, what should be the subject position's occupational job class and title, and:
- What should the recommended occupational classification action be, No Change (N), Title Change (T), Merge With Other Job Class (M), New Job Class (J).
- We may find that a job class is overly broad and encompasses several job activities which are regarded with significant salary difference in the marketplace. In such an instance, we will recommend "splitting" the job class into the current job class and a new job class which encompasses the different job activities.

### **4. Updated Job Descriptions**

We can prepare an updated job description in the City's standard or other selected format for each occupational job class. Focus will be on the Essential Functions and Minimum Qualifications. The descriptions may include (not limited to) the following components:

Job Title – Definition	Education, Training and Experience	Physical Requirements
Distinguishing Characteristics	Licenses and Certifications	Non-Essential Functions
Essential Functions	FLSA Exempt/Non-Exempt Status	Mental Requirements
Desired Knowledge and Skills	Supervision Exercise/Received	Working Conditions

### **5. Draft Classification Plan Review with Department Heads**

We will conduct a review of our initial position classification recommendations and draft job descriptions with the City's Project Team and respective department heads to identify possible errors, obtain feedback, and solicit suggestions for clarification.

## **C. COMPREHENSIVE AND SUSTAINABLE COMPENSATION PLAN**

### **1. City Involvement in Compensation Plan Development**

We will obtain policy direction from the City Commission, Human Resources staff, and/or City Officials on the following key components of the salary plan development process:

- Comparator Employer Selection
- Benchmark Job Class Selection
- Compensation Competitiveness Policy
- Salary Structure Selection
- Job Evaluation Method-Salary Plan Linkage
- Draft Compensation Plan Review / Critique
- Compensation Points for Analysis
- Project Implementation Plan

### **2. Comprehensive Compensation Surveys**

We will collect the complete pay plans from each of the City's comparators and build a custom survey database to ensure accuracy and completeness, unique to the City's job classifications.

- a. **Data Collection Protocol** will be developed in consultation with the City's project leaders to determine which salary data elements to include, such as:

#### **Example Salary Data**

- Salary range structure Minimum, Midpoint, and Maximum
  - Structure design s/a open range, grade step, number of steps
- b. **Benchmark Job Selection** will be made by identifying City job classes common to its employment-competitive public and private employers in the immediate area and throughout the region or State, clearly identifiable, and representative of standard occupational job groups.
- c. **Comparator Employers Identification** will be made in consultation with the City's Project Manager(s) or City Commission. Criteria include their degree of competition to the City in obtaining and retaining high quality staff, their location in the City's traditional recruitment areas, and their organizational size and complexity.
- d. **Compensation Data Collection** will be made by one or more of the following methods.
- Pre-survey contact with the selected comparator employers to solicit participation in the City's compensation survey(s)
  - Extraction from the pay plans of designated public employers.
  - Customized salary survey requests for local governments and other public employers, distributed by mail, fax, and e-mail.
  - Private sector data if desired from Economic Research Institute's Salary Assessor
- e. **Data Quality Control** includes editing data for accuracy and proper matching to the City's survey benchmark jobs, and phone/fax/E-mail follow-ups for data clarification and to obtain comparators' benchmark job descriptions.

### **3. Prevailing Rates Calculation**

We will consolidate the compensation data from all sources, enter the information into the **EZ COMP™** program, and compute the prevailing rates, inclusive of cost-of-living differentials, as the statistical mean of the survey data for each benchmark job class. Data will be projected forward from the date of collection to a common date relating to the City's salary plan year by the annual Prevailing Rate Increase Factor (PRI) applicable at that time.

**4. Compensation Competitiveness Comparison**

We will provide the City with charts comparing its current salary structures to those of the selected public and private comparator employers. We will calculate the extent that the City's offerings vary from the prevailing rates and practices of other relevant employers.

**5. Compensation Competitiveness Policy**

We will assist the City to select a compensation competitiveness policy which best fits its compensation strategy and financial resources, by providing fiscal impact estimates at various percentage relationships to the prevailing rates.

**6. Salary Plan Structure Development**

We will prepare alternative salary range structures and schedules for the City to select the best fit for its competitiveness strategy, with these optional criteria:

- Method of administration, i.e.: measured job performance, longevity, or skill
- Width of the salary ranges, grades, or broad bands, from Minimum to Maximum
- If steps within the salary ranges, number of steps, percentage separation
- Number of salary ranges, grades, or broad bands in the salary schedule

**7. Salary Range Assignment Development**

We will assign each job classification to a salary range in the City's selected salary structure on the basis of a combination of factors, including:

- the prevailing rates for the benchmark job classes
- its current relationship to similar or occupationally related job classes
- the 15% guideline for salary range separation between sequential job classes
- the 25% guideline for salary separation of a department head job class

**8. Implementation Plan Development**

We will consult with the City's Project Team on a plan for transition to the recommended plan, including a timetable for the principal activities, employee communication, multi-year strategies as needed, and estimates of required financial resources.

**D. FINAL REPORTS AND PRESENTATIONS**

**1. Draft and Final Report Preparation**

We will provide the City's project leader(s) with a draft of our report for review and critique, including market data, salary comparison tables, fiscal estimates, salary range listings, and implementation procedures. We will incorporate their critique into the development of a final report summarizing the project's findings, recommendations, and detailed description of the City's proposed compensation plans.

**2. Final Report Presentations**

We can conduct a workshop or formal presentation of our final report and recommendations for City Officials.



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

*Agenda Item #: I.8*

**SUBJECT:** Approval of Contract with Bixby Electric  
**DEPARTMENT:** Finance Department  
**DATE SUBMITTED:** January 4, 2022  
**SUBMITTED BY:** Donna R Gardner, Chief Procurement Officer  
**WHO WILL PRESENT THE ITEM:** Carol Kirkpatrick, Finance Director

**Summary/Background:** Award recommendation presented to the Commission on 12/15/2021 for RFP #21-22-005 12.47 KV Distribution Line Renovations (Pole Replacement)

**Recommendation:**

Approval of Contract

**Attachments:**

- Contract with Bixby Electric
- Award letter Bixby Electric
- RFP 21-22-005 12.47 KV Distribution Line Renovations

**Fiscal Impact (Finance):** Yes

\$473,160.00 plus 40,218.60 gross receipts tax for a total of \$513,378.60 from Electric Department Budget

**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 1-12-2022



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

THIS AGREEMENT is by and between City of Truth or Consequences ("Owner") and  
Bixby Electric, Inc. ("Contractor").

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – SCOPE OF WORK**

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **The Project consists of constructing and replacing electrical distribution, associated distributed transformers, secondary services, and miscellaneous distribution components.**
- 1.02 Contractor agrees to perform any and all consultation, services, activities, construction, tasks set forth or described in the City's Request for Proposals No. 21-22-005 and as called for by this Contract and approved Purchase Orders (the "Work"). All Work called for by individual Purchase Orders shall be performed in strict accordance with this Contract.

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

**ARTICLE 2 – THE PROJECT**

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **12.47 kV Distribution Line Renovations**

**ARTICLE 3 – ENGINEER**

- 3.01 The Project has been designed by Bohannon Huston Inc. and Spectrum Engineers Inc.
- 3.02 The Owner has retained Bohannon Huston Inc. ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

- 4.01 *Time of the Utmost Importance*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 *Contract Times: Days*
- A. The Work will be substantially completed within 180 calendar days for the base bid. If Alternate #1 is awarded, an additional 30 days will be added to the contract time. If Alternate #2 is awarded, an additional 30 days will be added to the contract time. Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and

completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 270 days , contingent upon material availability, after the date when the Contract Times commence to run.

#### 4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner \$1000.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
  2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$1000.00 for each day that expires after such time until the Work is completed and ready for final payment.
  3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

---

#### 4.04 *[Deleted]*

### ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, at the prices stated in Contractor's Bid Proposal, attached hereto as an exhibit.

### ARTICLE 6 – PAYMENT PROCEDURES

#### 6.01 *Submittal and Processing of Payments*

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

#### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 25<sup>th</sup> day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price

Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
  - a. 100 percent of Work completed (with the balance being retainage);
  - b. 100 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion of the entire construction to be provided under the Contract Documents, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

#### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.
- 6.04 *In the event that the City terminates this Contract for Contractor's breach, the City will pay Contractor for work performed before the termination date less any set off to which the city is entitled if and only if Contractor performed such Work in accordance with this Contract and to the City's satisfaction.*
- 6.05 *The City shall have a right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the City to recover excessive and/or illegal payments.*
- 6.06 *The Contractor's acceptance of final payment of the amount due under this Contract shall operate as a full release of the City, its City Commissioners, employees and agents from all liabilities, claims and obligations whatsoever arising from or under this Contract.*

#### ARTICLE 7 – INTEREST

- 7.01 *All amounts not paid when due shall bear interest at the rate of interest rate comparable to short term lending rate or State law percent per annum.*

#### ARTICLE 8 – CONTRACTOR'S COVENANTS, REPRESENTATIONS AND WARRANTIES

- 8.01 Unless otherwise specifically called for by the Contract or by individual Purchase Orders, Contractor shall provide/furnish at no extra cost or charge to the City, all materials necessary to efficiently and effectively perform the Work.
- 8.02 Contractor covenants, represents and warrants that each and every Contractor's employee engaged in the services provided under this Contract is fully qualified, able, licensed, registered, authorized, and has the expertise and training to provide such services to the City.
- 8.03 Contractor covenants, represents and warrants that it has sufficient resources and personnel to perform the obligations set forth in this Contract, including, without limitation, performing the

services, and procuring alternative capability in the event that Contractor's primary resources in performing the services change in such a manner that such primary resources would reasonably be unable to fulfill Contractor's obligations pursuant to this Contract.

- 8.04 Contractor covenants, represents and warrants that its performance of this Contract does not violate any applicable law, rules or regulation. Contractor further covenants, represents and warrants that Contractor shall comply and shall cause each and every of its employees who perform services under this Contract to comply with all laws of all applicable governmental authorities in the conduct of Contractor's activities pursuant to, and arising from, this Contract.
- 8.05 Contractor covenants, represents and warrants that Contractor holds and maintains all permits, licenses, and/or other regulatory requirements necessary to provide the services.
- 8.06 Contractor covenants, represents and warrants that it shall perform this Contract in a timely and professional manner with necessary skill and diligence and that the services provided herein meet or exceed the prevailing practices and standards of the trade from which the services are provided. To the extent that the City is held financially responsible for any deficiencies in the services performed by the Contractor, Contractor agrees to cure such deficiencies at the sole cost to the Contractor
- 8.07 Contractor covenants, represents and warrants that each individual signing this Contract on behalf of Contractor represents and warrants that he or she has the power and authority to bind the Contractor and that no further action, resolution, or approval is necessary to enter into this binding Contract. Contractor further covenants, represents and warrants that this Contract has been duly executed and delivered by the Contractor and constitutes a legal, valid and binding agreement of the Contractor enforceable against the Contractor in accordance with its terms.
- 8.08 Contractor covenants, represents and warrants that Contractor is duly registered as an employer under the New Mexico Workers' Compensation Act and is in good standing with respect to all filings and the payment of assessments or contributions required to be made under that Act.
- 8.09 Contractor covenants, represents and warrants that Contractor is financially solvent and able to pay its debts as they mature.
- 8.10 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 Contents

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 1 to 7, inclusive).
  - 2. Performance bond (pages 1 to 3, inclusive).
  - 3. Payment bond (pages 1 to 3, inclusive).
  - 4. Other bonds.
    - a.      (pages      to     , inclusive).
  - 5. General Conditions (pages 1 to 65, inclusive).
  - 6. Supplementary Conditions (pages 1 to 12, inclusive).
  - 7. Specifications as listed in the table of contents of the Project Manual.
  - 8. Drawings (not attached but incorporated by reference) consisting of 26 sheets with each sheet bearing the following general title: 12.47kV Distribution Line
  - 9. Addenda (numbers      to     , inclusive).
  - 10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages      to     , inclusive).
  - 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:

- a. Notice to Proceed.
  - b. Work Change Directives.
  - c. Change Orders.
  - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### **10.01 Terms**

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

### **10.02 Assignment of Contract**

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### **10.03 Successors and Assigns**

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### **10.04 Severability**

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### **10.05 Contractor's Certifications**

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 10.06 *Other Provisions*

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



IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_  
*(where applicable)*

*(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*

**NOTE TO USER:** Use in those states or other jurisdictions where applicable or required.



425 S. Telshor Blvd.  
Suite C-103  
Las Cruces, NM  
88011-8237

[www.bhinc.com](http://www.bhinc.com)

voice: 575.532.8670  
facsimile: 575.532.8680

December 7, 2021

Donna Gardner  
Chief Procurement Officer  
City of Truth or Consequences  
505 Sims St.  
Truth or Consequences, NM 87901

Re: Truth or Consequences, 12.47 kV Distribution Line Renovations Project  
Proposal Award Recommendation  
BHI Project No. 20210319  
**RFP: 21-22-005**

Dear Ms. Gardner:

Bid proposals were received for the above-referenced project on Tuesday, November 16, 2021. The project consists of replacing electrical distribution, associated distributed transformers, secondary services, and miscellaneous distribution components.

Two bid proposals were received before the scheduled bid opening. The proposal documents were to include Resident Contractor Certification and Resident Veteran Contractor Certification. Those contractors that qualify for a preference, by providing the pertinent certification documentation, are indicated in the criteria for award evaluation sheets. The project award amount would be the total base bid, plus bid alternate 1 and 2 of the project. A tabulation of the cost proposals and the engineer's estimate of probable cost are attached, along with the evaluation sheets for each offeror.

A summary of the cost proposals is shown below:

Bidder	Total Base Bid	Bid Alternate #1	Bid Alternate #2	Total Cumulative Bid
Bixby Electric, Inc	\$384,800.00	\$21,580.00	\$66,780.00	\$473,160.00
B and D Industries	\$681,094.00	\$39,333.00	\$60,070.00	\$780,497.00
Engineer Estimate				\$490,848.18

These figures DO NOT include New Mexico Gross Receipts Tax at a rate of 8.500%

Engineering ▲  
Spatial Data ▲  
Advanced Technologies ▲

The scoring within the RFP process weights several aspects, including past performance, with cost being the highest weighted factor. Given all of this factor weighting described within the evaluation criteria, Bixby Electric achieved the highest score and is the apparent selected offeror. A summary of the evaluation criteria scoring for each offeror is summarized below:

Offeror	Points
Bixby Electric, Inc	83
B and D Industries	78

The apparent offeror to be awarded this contract is:

Bixby Electric, Inc.  
521 Wheeler Ave SE  
Albuquerque, NM 87102  
505.842.5384

NM Contractor License No. 28568  
Expires 07/31/2023

The apparent low offeror's licenses have been verified with Contractors Licensing Services, Inc., are valid for the type of work to be accomplished and are in active status. We have worked with Bixby Electric, Inc. on previous projects, both as a general contractor and a subcontractor on various types of projects. On projects where BHI was the Engineer of Record, Bixby Electric, Inc. has performed the work satisfactorily.

As part of this request for proposal process, experience on recent and previous projects were requested from the offerors. We confirmed from two past project contacts that Bixby Electric finished their respective projects, but not without significant problems, and that Bixby Electric would not be allowed on future projects. Based on these recent projects and the apparent unsatisfactory performance, BHI is concerned this contractor will perform substandard work. Due to the project funding limitations, we understand that it may not be in the city's best interest to reject this lower bid. That decision must be made by the city if they wish to proceed with the award to Bixby Electric based on the past performance concerns. At a minimum, BHI recommends project performance to be monitored by assigning a full-time qualified inspector during project construction.

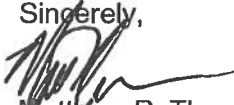
The contract documents require that bidders hold the bid prices for a period of sixty (60) days after the proposal submittal to allow the Owner to evaluate the bid proposals. On the basis of the Criteria for Award evaluation results, I recommend the city award the project to Bixby Electric, Inc. in the amount of \$473,160.00 for the Base Bid and Bid Alternates 1 and 2.

The City of Truth or Consequences is required to take action (in the form of a vote) to accept or revise this recommendation in accordance with the City's objectives for award

Donna Gardner  
City of Truth or Consequences  
December 7, 2021  
Page 3

of the construction contract. Please do not hesitate to contact me if you have any questions or need further assistance with this prior to that time.

Sincerely,



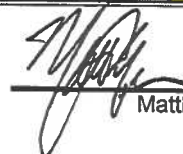
Matthew R. Thompson, PE  
Senior Vice President

MRT/rs  
Enclosure(s)

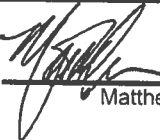
CITY OF TRUTH OR CONSEQUENCES  
12.47 Kv DISTRIBUTION LINE RENOVATIONS PROJECT  
BID REVIEW CERTIFICATION

Bid Item	Description	Unit	Qty	Engineers Estimate		Bixby		B & D	
				Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
Base Bid									
BB-1	Mobilization/Demobilization	LS	1			\$ 60,100.00	\$ 60,100.00	\$ 74,852.00	\$ 74,852.00
BB-2	Class 2, Wood Pole, Douglas Fir	EA	18			\$ 7,000.00	\$ 126,000.00	\$ 19,045.00	\$ 342,810.00
BB-3	Dead End, Steel Pole, Direct Embed	EA	2			\$ 22,500.00	\$ 45,000.00	\$ 11,963.00	\$ 23,926.00
BB-4	Wood Crossarm 8 ft	EA	21			\$ 2,000.00	\$ 42,000.00	\$ 1,338.00	\$ 28,098.00
BB-5	Fiberglass Crossarm 8 ft	EA	4			\$ 2,200.00	\$ 8,800.00	\$ 1,077.00	\$ 4,308.00
BB-6	#2/0 ACSR Quail Conductor	LF	7800			\$ 7.00	\$ 54,600.00	\$ 17.00	\$ 132,600.00
BB-7	#2/0 & #4 Triplex/Duplex Service Wire	LF	500			\$ 21.00	\$ 10,500.00	\$ 14.00	\$ 7,000.00
BB-8	Transformer, Pole Mount 1 Phase, 12.47-120 kV 15-50 Kva	EA	15			\$ 2,520.00	\$ 37,800.00	\$ 4,500.00	\$ 67,500.00
Total Base Bid							\$ 384,800.00		\$ 681,094.00
Bid Alternate 1									
BA1-1	Class 2, Wood Pole, Douglas Fir	EA	1	\$ 7,800.00	\$ 7,800.00	\$ 19,565.00	\$ 19,565.00		
BA1-2	Wood Crossarm 8 ft	EA	2	\$ 2,000.00	\$ 4,000.00	\$ 1,325.00	\$ 2,650.00		
BA1-3	#2/0 ACSR Quail Conductor	LF	1040	\$ 7.00	\$ 7,280.00	\$ 16.00	\$ 16,640.00		
BA1-4	#2/0 & #4 Triplex/Duplex Service Wire	LS	1	\$ 2,500.00	\$ 2,500.00	\$ 478.00	\$ 478.00		
Total for Bid Alternate #1					\$ 21,580.00		\$ 39,333.00		
Bid Alternate 2									
BA2-1	Dead End, Steel Pole, Direct Embed	EA	2	\$ 22,500.00	\$ 45,000.00	\$ 18,248.00	\$ 36,496.00		
BA2-2	Fiberglass Crossarm 8 ft	EA	6	\$ 2,000.00	\$ 12,000.00	\$ 1,076.00	\$ 6,456.00		
BA2-3	#2/0 ACSR Quail Conductor	LF	1040	\$ 7.00	\$ 7,280.00	\$ 16.00	\$ 16,640.00		
BA2-4	#2/0 & #4 Triplex/Duplex Service Wire	LS	1	\$ 2,500.00	\$ 2,500.00	\$ 478.00	\$ 478.00		
Total for Bid Alternate #2					\$ 66,780.00		\$ 60,070.00		
Total Base Bid and Bid Alternates #1, and #2				\$	490,848.18	\$	473,160.00	\$	780,497.00

\*highlighted areas contain corrected values

  
Matthew R. Thompson

BIXBY ELECTRIC, INC		Possible Points	Reviewer 1	Reviewer 2	Reviewer 3
<b>Safety and Compliance –</b> Contractor written safety program and Safety record including Occupational Safety and Health Administration (OSHA) recordables, Osha Recordable Incident Rate (ORIR), etc. Contractor written Environmental and other compliance programs. Confined Space Entry Program. Hot Work Program. Lockout/Tagout (LOTO) program.		20	18	10	12
<b>General Contractor Qualifications –</b> Specialized design and technical competence of the firm, based on similar experience, including joint venture or association, and qualification of personnel selected to perform the project. The personnel named in the statement of qualification submitted by your firm, shall remain responsible throughout the period of this project. No diversion or replacement may be made without submission of the proposed replacement with final approval being granted by the City's Project Administrator.		20	15	5	15
<b>Compliance with Regulatory Agencies-</b> Submit Compliance with Regulatory Form included in this RFP		10	10	10	10
<b>Past Experience with similar projects, Past Experience with construction for Government Agencies –</b> Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules. Provide a summary of projects completed by your firm which address the above factors referenced in these criteria.		15	10	5	10
<b>Bid Cost</b> The Offeror with the lowest cost will receive a total of 35 points. Each succeeding offer will receive a quota of points computed as follows: <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <div style="display: flex; justify-content: space-between;"> <span>Lowest Offer</span> <span>x 35</span> <span>Points</span> </div> <div style="border-top: 1px solid black; padding-top: 2px;"> Higher Offer </div> </div>		35	35	35	35
<b>Total Possible Points</b>		100	88	65	82
<b>In State Preference</b>		5	5	5	5
<b>Veterans Preference</b>		10	0	0	0
<b>Total Possible Points and Preference Points</b>		115	93	70	87
<b>AVERAGE</b>					<b>83</b>

  
Matthew R. Thompson

B & D INDUSTRIES, LLC		Possible Points	Reviewer 1	Reviewer 2	Reviewer 3										
<b>Safety and Compliance –</b> Contractor written safety program and Safety record including Occupational Safety and Health Administration (OSHA) recordables, Osha Recordable Incident Rate (ORIR), etc. Contractor written Environmental and other compliance programs. Confined Space Entry Program. Hot Work Program. Lockout/Tagout (LOTO) program.		20	12	10	20										
<b>General Contractor Qualifications –</b> Specialized design and technical competence of the firm, based on similar experience, including joint venture or association, and qualification of personnel selected to perform the project. The personnel named in the statement of qualification submitted by your firm, shall remain responsible throughout the period of this project. No diversion or replacement may be made without submission of the proposed replacement with final approval being granted by the City's Project Administrator.		20	10	20	20										
<b>Compliance with Regulatory Agencies-</b> Submit Compliance with Regulatory Form included in this RFP		10	10	10	10										
<b>Past Experience with similar projects, Past Experience with construction for Government Agencies –</b> Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules. Provide a summary of projects completed by your firm which address the above factors referenced in these criteria.		15	5	15	13										
<b>Bid Cost</b> The Offeror with the lowest cost will receive a total of 35 points. Each succeeding offer will receive a quota of points computed as follows: <table border="1"><tr><td>Lowest Offer</td><td>\$ 473,160.00</td><td>x 35</td><td><u>21.21802</u></td><td>Points</td></tr><tr><td>Higher Offer</td><td>\$ 780,497.00</td><td></td><td></td><td></td></tr></table>		Lowest Offer	\$ 473,160.00	x 35	<u>21.21802</u>	Points	Higher Offer	\$ 780,497.00				35	21	21	21
Lowest Offer	\$ 473,160.00	x 35	<u>21.21802</u>	Points											
Higher Offer	\$ 780,497.00														
<b>Total Possible Points</b>		100	58	76	84										
<b>In State Preference</b>		5	5	5	5										
<b>Veterans Preference</b>		10	0	0	0										
<b>Total Possible Points and Preference Points</b>		115	63	81	89										
<b>AVERAGE</b>			78												

  
Matthew R. Thompson





*As Advertised*

**SPECIFICATIONS AND CONTRACT DOCUMENTS**

**for the**

**12.47 KV DISTRIBUTION LINE RENOVATIONS  
TRUTH OR CONSEQUENCES, NM  
RFP: 21-22-005**

October 5, 2021

**Prepared for**

**CITY OF TRUTH OR CONSEQUENCES**

**CHIEF PROCUREMENT OFFICER:**

**Donna Gardner**

**City of Truth or Consequences**

**505 Sims Street**

**Truth or Consequences, NM 87901**

**Phone: (575) 952-0490**

**Email: [procurement@torcnm.org](mailto:procurement@torcnm.org)**

**BOHANNAN HUSTON, INC. PROJECT NO. 20210319  
425 S. TELSHOR BLVD., SUITE C-103  
LAS CRUCES, NM 88011  
(575) 532-8670**

**Bohannon  Huston**

ENGINEER OF RECORD:

Bohannon Huston, Inc  
425 S. Telshor Blvd., Ste C103  
Las Cruces, NM 88011  
(575) 532-8670

The technical material and data contained in the specifications were prepared under the supervision and direction of the undersigned, whose seal as a Professional Engineer, licensed to practice in the State of New Mexico, is affixed below.

Engineers Stamp



10/06/2021

Matthew J. Haverkamp, P.E.  
Engineer of Record

License No. 26939

Approved by Owner:

  
\_\_\_\_\_  
City of Truth or Consequences

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

**CONTRACT DOCUMENTS  
FOR 12.47 KV DISTRIBUTION LINE RENOVATIONS**

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**CITY OF TRUTH OR CONSEQUENCES**  
**TRUTH OR CONSEQUENCES, NM**  
**12.47 KV DISTRIBUTION LINE RENOVATIONS**  
**RFP: 21-22-005**

REQUEST FOR PROPOSALS

As required by 13-1-11 NMSA 1978 the City of Truth or Consequences (Owner) is requesting proposals (RFP) for the project described in this RFP.

Sealed proposals for the construction of the **12.47 kV Distribution Line Renovations**, will be received at the **City of Truth or Consequences, Procurement Office 505 Sims St. Truth or Consequences, NM 87901** until **2:00 pm** local time on **November 16, 2021**, at which time the proposals received will be **privately** opened and read. The Project consists of constructing and replacing electrical distribution, associated distributed transformers, secondary services, and miscellaneous distribution components.

The Issuing Office for the Project Documents is: **Bohannon Huston, Inc. located at 425 S. Telshor Blvd., Suite C103, Las Cruces, NM 88011, telephone 575-532-8670**. Prospective offerors may examine the Bidding Documents at the Issuing Office between the hours of **Monday – Thursday 7:30 to 5:30 and Friday 7:30 to 11:30**, and may obtain copies of the Project Documents from the Issuing Office as described below.

For offeror forms, and Contract Documents, including plans, specifications, and other documents to be used in connection with the submission of bids, prospective offerors are invited to register under the "BHITracker®" web portal link located at [www.bhinc.com](http://www.bhinc.com) to obtain access to the "Bids" section for distribution of project documents electronically. Select the pertinent project as listed on the projects list. Register new company account by providing the following contact information: Company name, contact name, company role, telephone number and email address. The offeror shall receive a notification email once the offeror has been registered with the site. Each registered offeror will be able to re-access the site from [www.bhinc.com](http://www.bhinc.com) and selecting the "BHITracker®/Bids" icon which will direct the offeror to the BHITracker® bid document distribution site. The offeror shall have a specific username and password in order to gain access to the "**Truth or Consequences 12.47 kV Distribution Line Renovations**" project. Neither Owner nor Engineer will be responsible for full or partial sets of Project Documents, including Addenda if any, obtained from sources other than the Issuing Office.

If you do not or cannot access the site, please notify us as soon as possible. The following shall be performed through the BHITracker® site.

1. **DOWNLOAD THE BIDDING DOCUMENTS FROM THE BHITRACKER® SITE:**  
The bidding documents are available during the bidding phase from the **CONTRACT DOCUMENTS** tab under the **BIDDING DOCUMENTS** subsection. When issued, addenda will be available from the **ADDENDA SECTION**.
2. **PLEASE SUBMIT ALL QUESTIONS THROUGH THE BHITRACKER® SITE:** To submit a question, go to the **BIDDING** tab and click on **SUBMIT QUESTION**. This will direct you to a form to enter the question, when complete click **SUBMIT** and the question will be sent to BHI for review. Responses to questions will be included in the Addenda section (under the **CONTRACT DOCUMENTS** tab) and offerors will be notified via email when this information is available.
3. The offerors list is provided in the **BIDDERS LIST** tab.

Bidding Documents also may be examined at the following locations:

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

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Construction Reporter 1609 Second St. NM, Albuquerque, NM 87102 (505) 243-9793

---

The PlanIt Room 1155 Westmoreland Suite 109, El Paso, TX 79925 (915) 781-2900

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A pre-proposal conference will be held at **2:00 pm** local time on **October 26, 2021** at the **City of Truth or Consequences, Chambers Meeting Room at 405 W 3<sup>rd</sup> St. Truth or Consequences, NM 87901**. Attendance at the pre-proposal conference is **mandatory**. Bidders shall submit questions to the Owner / Engineer during the bidding phase through the BHITracker® Site. Responses to the questions will be provided via an addendum. The last day for questions is close of business **(5:00 pm local time) November 5, 2021**.

Bid security shall be furnished in accordance with the Instructions to Bidders.

The amount and nature of the service to be furnished is understood and that the nature of this proposal is in strict accordance with the conditions set forth and is part of this Request for Proposal ("RFP"), and that the undersigned Offeror has read and understands the scope and conditions of the RFP.

By submitting this proposal, Offeror declares it is an equal opportunity employer, and will not discriminate with regard to race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, or physical or mental handicap as specified in Sec. 281-7 NMSA 1978 in the performance of this contract between Offeror and the Owner.

The Offeror hereby proposes to perform necessary professional services for the amount and upon the conditions stated in this proposal after notice of award of the contract.

This RFP is subject to the Purchase Order "Term and Conditions," Proposal Requirements, Scope of Work and any subsequent contract or agreement

Proposals must include, but are not limited, the requirements set in the RFP. Proposals deposited with the Owner may be withdrawn or modified prior to the time set for opening of proposals.

The opening of sealed proposals shall be conducted in private in order to maintain the confidentiality of the information/data provided. Proposals will remain confidential during negotiation process.

Pursuant to 13-1-115 NMSA 1978, Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. Negotiations may be conducted with responsible Offerors who submit proposals found to be reasonably likely to be selected for award.

The Owner will open all proposals, assign an evaluation committee and evaluate all proposals; determine the need for, and conduct any negotiation; and make final recommendation to the City Council for award of the agreement or contract.

The agreement or contract award shall be made to the responsible Offeror or Offerors whose proposal is most advantageous to the Owner, taking into consideration the evaluation factors set forth in the RFP.

The proposal total shall exclude all applicable taxes including applicable New Mexico Gross Receipts Tax or applicable local option tax. The Owner will pay the successful offeror for any taxes due on the agreement or contract and will pay any increase in applicable taxes which becomes effective after the date the agreement or contract is entered into in addition to the Proposal total amount. Taxes shall be shown as a separate line item and separate amount on the invoice.

The Owner reserves the right to reject any or all proposals, cancel the RFP in its entirety or to waive irregularities at its option when it is in the best interest of the Owner.

Award of the contract is contingent upon the budgeting and appropriation of funds for continuation of the professional services contemplated by this RFP.

**Owner: City of Truth or Consequences**

**By: Donna Gardner**

**Title: Chief Procurement Officer**

**Date: October 8, 2021**

**+ + END OF REQUEST FOR PROPOSALS + +**

## **INSTRUCTIONS TO OFFERORS**

### **1. Information Provided by the Owner**

- a. Offerors are solely responsible for conducting their own independent research, due diligence or other work necessary for the preparation of proposals, negotiation of agreements, and the subsequent delivery of services pursuant to any agreement. In no event may Offerors rely on any oral statement.
- b. Should an Offeror find discrepancies in, or omissions from, this RFP and related documents, or should Offeror be in doubt as to meaning, Offeror shall immediately notify the City's designated representative. Each Offeror requesting an interpretation will be responsible for the delivery of such requests to the City's designated representative in writing as outlined in this RFP. The City will not be bound by, nor responsible for, any explanation or interpretation of the proposed documents other than those given in writing.

### **2. Intent**

- a. It is the intent of the City to award the contract to the most qualified, responsible Offeror(s) as detailed in the Scope of Work, and with consideration of the potential costs for services. The City will negotiate with the Offeror(s) deemed most qualified by the City to address the specific services to be provided, the time and order of services, staffing, areas of responsibility and proposed fee structure, including the amount and method of payment.
- b. It is the City's intent to adhere to the schedule as set at the publication of this RFP. However, the City reserves the right to modify said schedule.

### **3. Term**

- a. The work will be substantially completed within **180** calendar days for the base bid. If Alternate #1 is awarded, an additional **30** days will be added to the contract time. If Alternate #2 is awarded, an additional **30** days will be added to the contract time. Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **60** days after the date when the Contract Times commence to run.
- b. Until the final award by the Truth or Consequences City Council, the City reserves the right to reject any and/or all submittals, to waive technicalities, to re-advertise, or to otherwise proceed when the best interest of the City will be realized. This procurement is governed by the New Mexico State Statutes 1978, Chapter 13, Public Purchases and Property.

### **4. Termination**

- a. Termination for Cause - If, through any cause, Bidder fails to fulfill in a timely and proper manner Bidder's obligations under this Agreement or if Bidder violates any of the covenants, agreements, or stipulations of this Agreement, the City may order Bidder by written notice to stop the services or any portion of them until the cause for such order has been eliminated. If Bidder fails to correct the deficiency within the time period specified in such notice, which time



period shall be reasonable under the circumstances, the City Manager shall have the right to immediately terminate this Agreement. The Bidder shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder prior to such termination.

Notwithstanding the above, Bidder shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by Bidder, and the City may withhold any payments to the Bidder for the purposes of set-off until such time as the exact amount of damages due the City from the Bidder is determined.

- b. Termination for Convenience - The City Manager may terminate this contract at any time by giving at least thirty (30) days' notice in writing to the Bidder. If this contract is terminated due to the fault of Bidder no further compensation or reimbursement to Bidder shall be due. If terminated for any other reason, City will reimburse Bidder for all documented out-of-pocket expenses incurred in connection with this contract.

## **5. Estimated Quantities**

- a. Quantities are estimates only. The City does not guarantee a minimum quantity to be purchased during the term of the contract. The City reserves the right to:
  - i. order more or less than the quantity listed
  - ii. add or delete items from the contract
  - iii. not order some items on the list
- b. The City anticipates ordering in quantities as shown on the Bid Schedule. If the Bidder's pricing is subject to change if the City elects to order less than or more than the quantity lot size identified, the Bidder must clearly identify on a separate sheet of paper titled "Order Quantity Schedule" the quantity levels where different price structures are applied.

## **6. Required Unit of Measure**

- a. Bidder must correctly extend their bid line items based on the UOM (Unit of Measure) packaging indicated for bid comparison purposes. Bidders submitting their bid with no extended pricing or total may be considered non-responsive.
- b. Bids submitted are to be quoted and invoiced as per UOM listed on each line item. No other UOM will be accepted and the City reserves the right to reject the category or line item not quoted or invoiced as requested.

## **7. Use of Contract by Other Agencies**

- a. Pursuant to Section 13-1-129, NMSA 1978, Bidders/Contractors/Offerors are hereby notified that any central purchasing office allowed by law and as otherwise allowed by their respective governing rules and regulations, may contract for the goods and/or services included in this procurement document with the awarded Bidder/Contractor/Offeror. Contractual engagements accomplished under this provision shall be solely between the Bidder/Contractor/Offeror and the contracting entity with no obligation by the City of Truth or Consequences.

**8. Signing of Proposals and Authorization to Negotiate**

- a. The original proposal shall be executed by a duly authorized officer of the Offeror. The Offeror must also identify those persons authorized to negotiate on its behalf with the City in connection with this RFP.

**9. Period of Acceptance**

- a. All proposals must remain valid for a minimum period of ninety (90) calendar days after the Proposal Due Date. No proposal may be modified or withdrawn by the Offeror during this period of time unless prior written permission is granted by the City.
- b. The City reserves the right to request additional information from the Offeror at any time during the selection process. The City also reserves the right to extend by thirty (30) days the proposal of any Offeror, at no additional cost to the City, to allow for the completion of the final contract documents. If the notification of selection of an Offeror or request for time extension has not been made by the City after ninety (90) days, Offerors may, at their discretion, withdraw their proposals or provide the City with written extensions of time.

**10. Binding Offers**

- a. All proposals submitted by Offeror are required to be binding offers, enabling acceptance by the City to form a binding contract. Proposals are to remain as binding offers for the full period of time of the initial 90-day Period of Acceptance and as such time period may be extended by the City. The City reserves the right to request revisions to proposals, prior to award, for the purpose of obtaining best and final offers.

**11. Subcontracts and Other Contractual Arrangements**

- a. The use of subcontracts or other contractual arrangements to provide the requested services is permitted. The City, however, is looking for a contracting entity that provides for a single, technically and financially capable party to be fully responsible to the City for all contractual obligations.
- b. All existing or anticipated subcontracting and other arrangements relating to the entity that will contract with the City and to the services to be provided by such entity must be fully and clearly disclosed in proposals and are subject to further clarification by the Offeror, and the review and approval by the City.

**12. Independence of the Offeror**

- a. The employees, officers and agents of the Offeror are not, nor shall they be deemed for any purpose, employees or agents of the City, nor shall they be entitled to any rights, benefits, or privileges of City employees. It is understood that the relationship of the Offeror to City, if a contract is successfully negotiated, will be that of independent contractor.

### **13. Laws and Regulations**

- a. This procurement shall be governed by, construed, and enforced in accordance with the laws of the State of New Mexico, and the laws, ordinances, rules and regulations of the City of Truth or Consequences. The City also requires that all responses to this RFP, and any contracts that may arise as a result of this procurement, be in accordance with laws, ordinances, and regulations of the State of New Mexico and the City of Consequences, New Mexico.

### **14. Confidentiality**

- a. It is understood by the Seller or Offeror and the City that the City is a New Mexico municipal corporation and, as such, is subject to the provisions of the New Mexico Inspection of Public Records, Section 14-2-1 through 14-2-12 NMSA 1978 and the New Mexico Public Records Act, Chapter 14, Article 3 NMSA 1978. In the event Seller or Offeror has responded to a City Request For Bid (RFB) or a City Request For Proposal (RFP) and marked all or any part of the information submitted as "CONFIDENTIAL INFORMATION" or as "PROPRIETARY INFORMATION," City agrees to notify Seller of any third party request for any rates, terms, compensation amounts, or other information documented in the Purchase Order, Agreement, or Contract. To the extent Seller or Offeror provides City with written direction to withhold such requested Confidential Information or Proprietary Information and litigation results, Seller or Offeror agrees that the action would be brought in a New Mexico court of competent jurisdiction under New Mexico law. Seller or Offeror, being aware of said facts, agrees to provide legal counsel on behalf of the City in any such litigation and shall bear the complete cost of litigation, including attorney fees and court costs. If Seller or Offeror fails or refuses to provide legal counsel at its expense within ten (10) calendar days after written notification, as aforesaid, such failure may result in the City agreeing to release the Purchase Order, Agreement, or Contract or any portion thereof which is relevant to the denied request.
- b. Confidential data are normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §57-3A-1 to §57-3A-7 NMSA, 1978.

### **15. Prohibited Contacts**

- a. The Offeror, including any person affiliated with or in any way related to the Offeror, is strictly prohibited from any contact with members of the City Council, City staff or the City consultants on any matter having to do in any respect with this RFP other than as outlined herein. Failure by any Offeror to adhere to this prohibition may, at the sole discretion of the City, result in disqualification and rejection of any proposal.

### **16. Bribery and Kickbacks**

- a. By law (Section 13-1-191, NMSA, 1978) the City is required to inform Offerors of the following: (1) it is a third-degree felony under New Mexico law to commit the offense of bribery of a public officer or public employee (Section 30-24-1, NMSA, 1978); (2) it is a third-degree felony to commit the offense of demanding or receiving a bribe by a public officer or public employee (Section 30-24-2, NMSA, 1978); (3) it is a fourth-degree felony to commit the offense of soliciting or receiving

illegal kickbacks (Section 30-41-1, NMSA, 1978); (4) it is a fourth-degree felony to commit the offense of offering or paying illegal kickbacks (Section 30-41-2, NMSA, 1978).

**17. Protest Deadline**

- a. Any protest by an Offeror must be timely and in conformance with Section 13-1-172, NMSA, 1978 and applicable procurement regulations. The fifteen (15) day protest period for responsive Offerors shall begin on the day following the City's written notification to all responding Offerors. Protests must be written and must include the name and address of the protestor and the number assigned to this RFP by the City. It also must contain a statement of grounds for protest including appropriate supporting exhibits. The timely protest must be delivered to:

Chief Procurement Officer  
Donna Gardner  
City of Truth or Consequences  
505 Sims Street  
Truth or Consequences, NM 87901  
Phone: (575) 952-0490  
Email: [procurement@torcnm.org](mailto:procurement@torcnm.org)

**18. Agreement**

- a. A draft agreement is included in this RFP. The draft agreement shall be reviewed thoroughly and any exceptions shall be included in the appropriate section of this RFP. A written contract will be entered into between the City and the successful Offeror.

**19. Conflict of Interest**

- a. Offeror warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of service under this contract.
- b. Offeror must notify the City's Chief Procurement Officer if any employee(s) of the requesting department have a financial interest in the Offeror. If yes, the Offeror must specify the employee(s) name in their proposal.

**20. Debarment, Suspension, and Ineligibility**

- a. By submitting a response to this solicitation (RFQ, Bid, RFP) the business (Bidder/Offeror/Contractor) represents and warrants that it is not debarred, suspended, or placed in ineligibility status under the provisions of Federal Executive Order 12549.

**21. Contents of Proposal**

- a. The Offeror must provide the required information both as to itself and any other person, including without limitation, any corporation, partnership, contractor, joint venture, consortium, or individual which the Offeror intends to assign to a key management role in the proposed agreement with the City or to which the Offeror intends to assign material responsibilities under any such agreement.

## **22. Application of Preferences**

- a. Offeror shall include in-state preference certificates for themselves and for any subcontractors listed in the proposal.
- b. Pursuant to Section 13-1-21(E), NMSA 1978, When a public body makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the public body shall award additional points equivalent to:
  - i. Five percent of the total possible points to a resident business; or
  - ii. Ten percent of the total possible points to a resident veterans' business that has annual gross revenues of up to three million dollars (\$3,000,000) in the preceding tax year.
- c. In accordance with Sections 13-1-21 and 13-1-22 NMSA 1978 and effective July 1, 2012, a resident and resident veteran's business preference has been implemented. The Taxation and Revenue Department (TRD) will be issuing a three (3) year certificate to each qualified business. Businesses are required to reapply to TRD every three (3) years with the proper documentation to renew their certificate.
- d. In accordance with Section 13-4-2 NMSA 1978, a business or contractor shall submit with its bid or proposal a copy of a valid resident business certificate, valid resident veteran business certificate, valid resident contractor certificate or valid resident veteran contractor certificate issued by the taxation and revenue department.

## **23. Criteria for Award**

- a. The Owner will receive proposals from offerors having specific experience, resources and qualifications in the proposed scope of work.
- b. Proposals for consideration for this project must contain evidence of the offerors experience and abilities in the specified area and other disciplines directly related to the proposed project. All information required by the Owner to be submitted in response to this RFP as follows:
  - i. C-410 Bid Proposal
  - ii. C-430 Bid Bond
  - iii. C-440 Subcontractor Listing and WSD Registration
  - iv. C-451 Qualifications Statement
  - v. C-453 Certification Regarding Debarment Suspension and Other Responsibility Matters
  - vi. C-454 Non-Collusion Affidavit
  - vii. C-455 Campaign Contribution Disclosure Form
  - viii. C-456 Compliance with Regulatory Agencies
- c. A selection committee will review and evaluate all replies and detailed proposals and provide a scoring determination to select the Offeror to be awarded this contract.

# **BID PROPOSAL**

City of Truth or Consequences  
12.47 Kv Distribution Renovations  
RFP: 21-22-005

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## ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

***City of Truth or Consequences***

***505 Sims Street***

***Truth or Consequences, NM 87901***

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Project Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

## ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

## ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

**Addendum No.**

**Addendum, Date**

_____	_____
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to

existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

#### **ARTICLE 4 – BIDDER'S CERTIFICATION**

##### **4.01 Bidder certifies that:**

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at

artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 4.02 Penalties

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

### ARTICLE 5 – BASIS OF BID

- 5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

Bid Item	Description	Unit	Qty	Unit Price	Extension
<b>BASE BID</b>					
<b>ALLEY DISTRIBUTION LINE</b>					
<b>BB-1</b>	<b>Mobilization/Demobilization</b> – General overhead, bonds insurance, project management, maintaining site access and staging areas during construction, contractor staging, staking and other all other general requirements, maximum 15% of total contract.	LS	1		
<b>BB-2</b>	<b>Class 2, Wood Pole, Douglas Fir-</b> Removal and disposal of existing pole, new pole installed, distribution line grounding, testing and commissioning, CIP.	EA	18		
<b>BB-3</b>	<b>Dead End, Steel Pole, Direct Embed-</b> Removal and disposal of existing pole, new pole installed, excavation, concrete, distribution line grounding, testing and commissioning, CIP.	EA	2		
<b>BB-4</b>	<b>Wood Crossarm, 8FT-</b> Including all hardware and related Accessories, Insulators, Cutouts, Lightning Arrestors, Splices, dead end assemblies, related	EA	21		

	appurtenances, Installed, CIP.				
BB-5	<b>Fiberglass Crossarm, 8FT-</b> Including all hardware and related Accessories, Insulators, Cutouts, Lightning Arrestors, Splices, dead end assemblies, related appurtenances, Installed, CIP.	EA	4		
BB-6	<b>#2/0 ACSR Quail Conductor-</b> Installed, tested, CIP.	LF	7800		
BB-7	<b>#2/0 &amp; #4 Triplex/Duplex Service Wire-</b> Installed, tested, CIP.	LF	500		
BB-8	<b>Transformer, Pole Mount, 1 Phase, 12.47-120 kV 15-50 kVA (Owner Supplied) -</b> Removal and reinstallation of existing transformers, bracketing, hardware, installed, connected, tested CIP.	EA	15		
<b>Total Base Bid (Items BB-1 through BB-8)</b>					
<b>BID ALTERNATES</b>					
<b>BID ALTERNATE #1 – 9<sup>th</sup> STREET</b>					
BA1-1	<b>Class 2, Wood Pole, Douglas Fir-</b> Removal and disposal of existing pole, new pole installed, distribution line grounding, testing and commissioning, CIP.	EA	1		
BA1-2	<b>Wood Crossarm, 8FT-</b> Including all hardware and related appurtenances, Installed, CIP.	EA	2		
BA1-3	<b>#2/0 ACSR Quail Conductor-</b> Installed, tested, CIP.	LF	1040		
BA1-4	<b>#2/0 &amp; #4 Triplex/Duplex Service Wire-</b> Installed, tested, CIP.	LS	1		
<b>Total for Bid Alternate #1 (ItemsBA1-1 through BA1-4)</b>					
<b>BID ALTERNATE #2 – 4<sup>TH</sup> AVENUE</b>					
BA2-1	<b>Dead End, Steel Pole, Direct Embed -</b> Removal and disposal of existing pole, new pole installed, excavation, concrete, distribution line grounding, testing and commissioning, CIP.	EA	2		

<b>BA2-2</b>	<b>Fiberglass Crossarm, 8FT</b> - Including all hardware and related appurtenances, Installed, CIP.	EA	6		
<b>BA2-4</b>	<b>#2/0 ACSR Quail Conductor-</b> Installed, tested, CIP.	LF	1040		
<b>BA2-5</b>	<b>#2/0 &amp; #4 Triplex/Duplex Service Wire-</b> Installed, tested, CIP.	LS	1		
<b>Total for Bid Alternate #2 (Items BA2-1 through BA2-4)</b>					
<b>Total Base Bid and Bid Alternates #1, and #2</b>					

Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

#### **ARTICLE 6 – TIME OF COMPLETION**

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

#### **ARTICLE 7 – ATTACHMENTS TO THIS BID**

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security;
  - B. List of Proposed Subcontractors;
  - C. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
  - D. Contractor's License No.:  ;
  - E. Required Bidder Qualification Statement with supporting data; and attachments
  - F. *Certification Regarding Debarment, Suspension and Other Responsibility Matters;*
  - G. *Non-Collusion Affidavit;*
  - H. *Campaign Contribution Disclosure Form;*
  - I. *Resident Contractor Preference (if applicable);*
  - J. *Resident Veterans Contractor Preference (if applicable);*

## ARTICLE 8 – DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

## ARTICLE 9 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

By:

*[Signature]*

*[Printed name]*

*(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest:

*[Signature]*

*[Printed name]*

Title:

Submittal Date:

Address for giving notices:

Telephone Number:

Fax Number:

Contact Name and e-mail address:

Bidder's License No.:

*(where applicable)*

Workforce Solutions Dept.  
Registration No.

*(where applicable)*

Resident Contractor  
Certificate No.

*(if applicable attach certificate)*

---

*(where applicable)*

Resident Veteran

Contractor Certificate No.

---

*(if applicable attach certificate)*

*(where applicable)*



## BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (*Name and Address*):

SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

### BID

Bid Due Date:

Description (*Project Name— Include Location*):

### BOND

Bond Number:

Date:

Penal sum \_\_\_\_\_ \$ \_\_\_\_\_  
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

**BIDDER**

**SURETY**

(Seal)

(Seal)

Bidder's Name and Corporate Seal

Surety's Name and Corporate Seal

By:

Signature

By:

Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest:

Signature

Attest:

Signature

Title

Title

*Note: Addresses are to be used for giving any required notice.*

*Provide execution by any additional parties, such as joint venturers, if necessary.*

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

## SUBCONTRACTORS LISTING AND WSD (DOL) REGISTRATION

Project: 12.47 kV Distribution Line Renovations

Project No. 20210319

### 1.0 SUBCONTRACTORS LISTING FOR COMPLIANCE WITH THE SUBCONTRACTORS FAIR PRACTICES ACT AND WSD (DOL) REGISTRATION

1.1 To be fully executed and included with Bid Proposal as a condition of the Bid pursuant to §13-4-31 to 13-4-42 NMSA 1978, known as the Subcontractors Fair Practices Act.

1.2 Pursuant to §13-4-34 NMSA 1978 all Subcontractors providing services valued at \$60,000 or more (listing threshold) for this project shall be listed below.

1.3 See §13-4-36 NMSA 1978 for rules regarding changes in this list after bidding.

1.4 Pursuant to §13-4-13.1 NMSA 1978 any contractor or subcontractor that submits a bid valued at more than \$60,000 for a public works project subject to the Public Works Minimum Wage Act shall be registered with the Labor and Industrial Division of the Workforce Solutions Department (WSD) (formerly the Department of Labor (DOL)). The Owner shall not accept a bid on a public works project from a Contractor that does not provide proof of required registration for itself. Contractors, prime contractors and subcontractors must be registered with the WSD.

<u>Trade (list by trade)</u>	<u>Firm Name and Address</u>	<u>Workforce Solutions Dept. Registration No.</u>	<u>Dollar Value</u>
	WSD Registration No.		
	WSD Registration No.		
	WSD Registration No.		
	WSD Registration No.		

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
WSD Registration No. \_\_\_\_\_  
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WSD Registration No. \_\_\_\_\_  
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\_\_\_\_\_

[Use Additional  
Pages If  
Necessary]



## QUALIFICATIONS STATEMENT

THE INFORMATION SUPPLIED IN THIS DOCUMENT IS CONFIDENTIAL TO THE EXTENT  
PERMITTED BY LAWS AND REGULATIONS

**1. SUBMITTED BY:**

Official Name of Firm:

Address:

**2. SUBMITTED TO:**

**3. SUBMITTED FOR:**

Owner:

City of Truth or Consequences

Project Name:

12.47 kV Distribution Line Renovations

**TYPE OF WORK:**

Electrical

**4. CONTRACTOR'S CONTACT INFORMATION**

Contact Person:

Title:

Phone:

Email:

**5. AFFILIATED COMPANIES:**

Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**6. TYPE OF ORGANIZATION:**

☐ SOLE PROPRIETORSHIP

Name of Owner:

\_\_\_\_\_

Doing Business As:

\_\_\_\_\_

Date of Organization:

\_\_\_\_\_

☐ PARTNERSHIP

Date of Organization:

\_\_\_\_\_

Type of Partnership:

\_\_\_\_\_

Name of General Partner(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

☐ CORPORATION

State of Organization:

\_\_\_\_\_

Date of Organization:

\_\_\_\_\_

Executive Officers:

- President:

\_\_\_\_\_

- Vice President(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- Treasurer:

\_\_\_\_\_

- Secretary:

\_\_\_\_\_



☐ LIMITED LIABILITY COMPANY

State of Organization:

\_\_\_\_\_

Date of Organization:

\_\_\_\_\_

Members:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

☐ JOINT VENTURE

Sate of Organization:

\_\_\_\_\_

Date of Organization:

\_\_\_\_\_

Form of Organization:

\_\_\_\_\_

Joint Venture Managing Partner

- Name:

\_\_\_\_\_

- Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Joint Venture Managing Partner

- Name:

\_\_\_\_\_

- Address:

\_\_\_\_\_

\_\_\_\_\_

Joint Venture Managing Partner

- Name:

\_\_\_\_\_

- Address:

\_\_\_\_\_

\_\_\_\_\_

**7. LICENSING**

Jurisdiction: \_\_\_\_\_

Type of License: \_\_\_\_\_

License Number: \_\_\_\_\_

Jurisdiction: \_\_\_\_\_

Type of License: \_\_\_\_\_

License Number: \_\_\_\_\_

**8. CERTIFICATIONS**

**CERTIFIED BY:**

Disadvantage Business Enterprise: \_\_\_\_\_

Minority Business Enterprise: \_\_\_\_\_

Woman Owned Enterprise: \_\_\_\_\_

Small Business Enterprise: \_\_\_\_\_

Other ( \_\_\_\_\_ ): \_\_\_\_\_

**9. BONDING INFORMATION**

Bonding Company: \_\_\_\_\_

Address: \_\_\_\_\_

Bonding Agent: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Aggregate Bonding Capacity: \_\_\_\_\_

Available Bonding Capacity as of date of this submittal: \_\_\_\_\_

**10. FINANCIAL INFORMATION**

Financial Institution: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Account Manager: \_\_\_\_\_

Phone: \_\_\_\_\_

INCLUDE AS AN ATTACHMENT A BALANCE SHEET FOR EACH OF THE LAST 3 YEARS

**11. CONSTRUCTION EXPERIENCE:**

Current Experience:

List on **Schedule A** all uncompleted projects currently under contract (If Joint Venture list each participant's projects separately).

Previous Experience with similar projects:

List on **Schedule B** all projects completed within the last 5 Years (If Joint Venture list each participant's projects separately).

Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules. Provide a summary of projects completed by your firm which address the above factors.

General Contractor Qualifications:

Specialized design and technical competence of the firm, based on similar experience, including joint venture or association, and qualification of personnel selected to perform the project. The personnel named in the statement of qualification submitted by your firm, shall remain responsible throughout the period of this project. No diversion or replacement may be made without submission of the proposed replacement with final approval being granted by the City's Project Administrator.

Has firm listed in Section 1 ever failed to complete a construction contract awarded to it?

☐ YES ☐ NO

If YES, attach as an Attachment details including Project Owner's contact information.

Has any Corporate Officer, Partner, Joint Venture participant or Proprietor ever failed to complete a construction contract awarded to them in their name or when acting as a principal of another entity?

☐ YES ☐ NO

If YES, attach as an Attachment details including Project Owner's contact information.

Are there any judgments, claims, disputes or litigation pending or outstanding involving the firm listed in Section 1 or any of its officers (or any of its partners if a partnership or any of the individual entities if a joint venture)?

☐ YES ☐ NO

If YES, attach as an Attachment details including Project Owner's contact information.

**12. SAFETY PROGRAM:**

Name of Contractor's Safety Officer: \_\_\_\_\_

Include the following as attachments:

Contractor written safety program and Safety record including Occupational Safety and Health Administration (OSHA) recordables, Osha Recordable Incident Rate (ORIR), etc. Contractor written Environmental and other compliance programs. Confined Space Entry Program. Hot Work Program. Lockout/Tagout (LOTO) program.

Provide as an Attachment Contractor's OSHA No. 300A - Log & Summary of Occupational Injuries & Illnesses for the past 5 years.

Provide as an Attachment Contractor's list of all OSHA Citations & Notifications of Penalty (monetary or other) received within the last 5 years (indicate disposition as applicable) - IF NONE SO STATE.

Provide as an Attachment Contractor's list of all safety citations or violations under any state all received within the last 5 years (indicate disposition as applicable) - IF NONE SO STATE.

I HEREBY CERTIFY THAT THE INFORMATION SUBMITTED HERewith, INCLUDING ANY ATTACHMENTS, IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

NAME OF ORGANIZATION: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATED: \_\_\_\_\_

NOTARY ATTEST:

SUBSCRIBED AND SWORN TO BEFORE ME

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

NOTARY PUBLIC - STATE OF \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

## REQUIRED ATTACHMENTS

1. Schedule A (Current Experience).
2. Schedule B (Previous Experience).
3. Evidence of authority for individuals listed in Section 6 to bind organization to an agreement.
4. Resumes of officers and key individuals (including Safety Officer) of firm named in Section 1.
5. Required safety program submittals listed in Section 12.
6. Compliance Regulatory Form
7. Additional items as pertinent.

## SCHEDULE A

### CURRENT EXPERIENCE

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				



## SCHEDULE B

PREVIOUS EXPERIENCE (Include ALL Projects Completed within last 5 years)

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				

## SCHEDULE B

PREVIOUS EXPERIENCE (Include ALL Projects Completed within last 5 years)

Project Name	Owner's Contact Person	Design Engineer	Contract Date	Type of Work	Status	Cost of Work
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				
	Name: Address: Telephone:	Name: Company: Telephone:				

**CERTIFICATION REGARDING  
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

---

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of all had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State Antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transaction (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. Under 18USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

---

Typed Name & Title of Authorized Representative

---

Signature of Authorized Representative

---

Date

**NON-COLLUSION AFFIDAVIT**

TO BE EXECUTED BY EACH AWARDEE OF A PRINCIPAL CONTRACT

)  
)ss  
)

\_\_\_\_\_, being first duly sworn, deposes and says that he is

City of Truth or Consequences (sole owner, a partner, president, secretary, etc.)

of \_\_\_\_\_  
the party making the foregoing bid; that such a bid is not made in the interest of or on behalf of any undisclosed person, partnership, company association, organization, or corporation; that such a bid is genuine and not collusive or sham; that said bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirect colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, nor that anyone shall refrain from bidding; that said bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of said bidder or of any other bidder, nor to fix any overhead, profit, or cost element of such bid price, nor of that of any other bidder, nor to secure any advantage against the public body awarding the contract or anyone interested in the proposed contract; that all statements contained in such bid are true; and, further, that said bidder has not directly or indirectly, submitted his bid price or any breakdown thereof, nor the contents thereof, nor divulged information or data relative thereto, nor paid and will not pay fee in connection therewith to any corporation, partnership, company, association, organization, bid depository, nor any member or agent thereof, nor any to any other individual except to such person or persons as have a partnership or other financial interest with said bidder in his general business.

Signed:

By \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20

Seal of Notary

\_\_\_\_\_  
NOTARY PUBLIC

## Contract Section II - Attachment C

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective Proposer seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective Proposer must disclose whether they, a family member or a representative of the prospective Proposer has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the Proposer submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the Proposer signs the contract, if the aggregate total of contributions given by the prospective Proposer, a family member or a representative of the prospective Proposer to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective Proposer, a family member of the prospective Proposer, or a representative of the prospective Proposer gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective Proposer fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective Proposer.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE PROPOSER WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

**"Applicable public official"** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective Proposer is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**"Campaign Contribution"** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**"Family member"** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective Proposer, if the prospective Proposer is a natural person; or (b) an owner of a prospective Proposer.

**"Pendency of the procurement process"** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**“Prospective Proposer”** means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

**“Representative of a prospective Proposer”** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective Proposer.

Name(s) of Applicable Public Official(s) if any: City of Truth or Consequences Commission Members: Sandra Whitehead, Mayor; Amanda Forrister, Mayor-ProTem; Paul Baca, Commissioner; Frances Luna, Commissioner

(Completed by State Agency or Local Public Body)

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE PROPOSER:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Proposer: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_  
\_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)

**--OR--**

**NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE** to an applicable public official by me, a family member or representative.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (Position)

## CRITERIA FOR AWARD

The Owner will receive offers from firms having specific experience, resources and qualifications in the proposed scope of work.

Offers for consideration for this project must contain evidence of the firm's experience and abilities in the specified area and other disciplines directly related to the proposed services. Other information required by the Owner to be submitted in response to this RFQ is included elsewhere in this solicitation.

A selection committee will review and evaluate all replies and detailed offers, may conduct oral presentations or a combination of both, unless otherwise indicated in this solicitation. The selection committee will have only the response to this solicitation to review for selection of finalists and, therefore, it is important that Offerors emphasize specific information considered pertinent to the services to be provided. Evaluation of the responses will be based on the following criteria:

### Federal Funds?

If yes, this project utilizes federal funds and New Mexico In-State Resident and Resident Veteran business preferences points do not apply. Additionally, attached FAR forms are required.

	Possible Points	Points This RFP
<b>Safety and Compliance –</b> Contractor written safety program and Safety record including Occupational Safety and Health Administration (OSHA) recordables, Osha Recordable Incident Rate (ORIR), etc. Contractor written Environmental and other compliance programs. Confined Space Entry Program. Hot Work Program. Lockout/Tagout (LOTO) program.	20	
<b>General Contractor Qualifications –</b> Specialized design and technical competence of the firm, based on similar experience, including joint venture or association, and qualification of personnel selected to perform the project. The personnel named in the statement of qualification submitted by your firm, shall remain responsible throughout the period of this project. No diversion or replacement may be made without submission of the proposed replacement with final approval being granted by the City's Project Administrator.	20	
<b>Compliance with Regulatory Agencies-</b> Submit Compliance with Regulatory Form included in this RFP	10	
<b>Past Experience with similar projects, Past Experience with construction for Government Agencies –</b> Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules. Provide a summary of projects completed by your firm which address the above factors referenced in these criteria.	15	



<b>Bid Cost</b> The Offeror with the lowest cost will receive a total of 15 points. Each succeeding offer will receive a quota of points computed as follows:  <u>Lowest Offer (\$      )</u> X 35 = _____ Points Higher Offer (\$      )                      Price Evaluation	<b>35</b>	
<b>Total Possible Points</b>	<b>100</b>	
<b>In State Preference</b>	<b>5</b>	
<b>Veterans Preference</b>	<b>10</b>	
<b>Total Possible Points and Preference Points</b>		

Bid proposal offer shall be based upon the cumulative of the Base Bid plus all additive Bid Alternates.

Proposals will be evaluated based on the above points of the evaluation criteria for final negotiations with the top-rated Offeror.

## COMPLIANCE WITH REGULATORY AGENCIES

1. Has your firm during the past five (5) years been free of any determination by a court or administrative agency of laws and/or regulations pertaining to the payment of prevailing wages or employment of apprentices on public works projects?

☐Yes ☐No

If "no" please explain:

2. Has your firm during the past five (5) years been free of any determination by a court of administrative agency of violation or notice of violation pertaining to the Occupational Safety & Health Administration (OSHA), Department of Transportation (DOT), or Environmental Protection Agency (EPA) requirement on a job site?

☐Yes ☐No

If "no" please explain:

3. Has your firm during the past five (%) years been free of any determinations by a court or administrative agency of violations pertaining to Construction Industry Division requirements pertaining to projects?

☐Yes ☐No

If "no" please explain:

4. Is your firm free of any Subcontractor Fair Practices Act violations for the past five (%) years?

☐Yes ☐No

If "no" Please explain:

5. Has your firm been free of violation of any Federal, State or Local Agency requirement on a jobsite that has resulted in a fine because of violations?

☐Yes ☐No

If "no" please explain:

---

Name

---

Title

---

Signature

## NOTICE OF AWARD

Date of Issuance:

Owner: City of Truth or Consequences

Owner's Contract No.: RFP: 21-22-005

Engineer: Bohannon Huston Inc.

Engineer's Project No.: 20210319

Project: 12.47kV-Distribution Line

Contract Name:

Bidder:

Bidder's Address:

### TO BIDDER:

You are notified that Owner has accepted your Bid dated [ ] for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

[describe Work, alternates, or sections of Work awarded]

The Contract Price of the awarded Contract is: \$ [ ] [note if subject to unit prices, or cost-plus]

[ ] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically. [revise if multiple copies accompany the Notice of Award]

☐ a set of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner [ ] counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security [e.g., performance and payment bonds] and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Issued: \_\_\_\_\_

Copy: Engineer

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

THIS AGREEMENT is by and between City of Truth or Consequences ("Owner") and  
\_\_\_\_ ("Contractor").

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – SCOPE OF WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **The Project consists of constructing and replacing electrical distribution, associated distributed transformers, secondary services, and miscellaneous distribution components.**

1.02 Contractor agrees to perform any and all consultation, services, activities, construction, tasks set forth or described in the City's Request for Proposals No. 21-22-005 and as called for by this Contract and approved Purchase Orders (the "Work"). All Work called for by individual Purchase Orders shall be performed in strict accordance with this Contract.

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

**ARTICLE 2 – THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **12.47 kV Distribution Line Renovations**

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by Bohannon Huston Inc. and Spectrum Engineers Inc.

3.02 The Owner has retained Bohannon Huston Inc. ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Days*

A. The Work will be substantially completed within 180 calendar days for the base bid. If Alternate #1 is awarded, an additional 30 days will be added to the contract time. If Alternate #2 is awarded, an additional 30 days will be added to the contract time. Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and

completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 60 days after the date when the Contract Times commence to run.

#### 4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner \$1000.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
  2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$1000.00 for each day that expires after such time until the Work is completed and ready for final payment.
  3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

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#### 4.04 *[Deleted]*

### ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, at the prices stated in Contractor's Bid Proposal, attached hereto as an exhibit.

### ARTICLE 6 – PAYMENT PROCEDURES

#### 6.01 *Submittal and Processing of Payments*

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

#### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 25<sup>th</sup> day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price

Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
    - a. 100 percent of Work completed (with the balance being retainage);
    - b. 100 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
  - B. Upon Substantial Completion of the entire construction to be provided under the Contract Documents, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.
- 6.03 *Final Payment*
- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.
- 6.04 *In the event that the City terminates this Contract for Contractor's breach, the City will pay Contractor for work performed before the termination date less any set off to which the city is entitled if and only if Contractor performed such Work in accordance with this Contract and to the City's satisfaction.*
- 6.05 *The City shall have a right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the City to recover excessive and/or illegal payments.*
- 6.06 *The Contractor's acceptance of final payment of the amount due under this Contract shall operate as a full release of the City, its City Commissioners, employees and agents from all liabilities, claims and obligations whatsoever arising from or under this Contract.*

#### ARTICLE 7 – INTEREST

- 7.01 *All amounts not paid when due shall bear interest at the rate of interest rate comparable to short term lending rate or State law percent per annum.*

#### ARTICLE 8 – CONTRACTOR'S COVENANTS, REPRESENTATIONS AND WARRANTIES

- 8.01 Unless otherwise specifically called for by the Contract or by individual Purchase Orders, Contractor shall provide/furnish at no extra cost or charge to the City, all materials necessary to efficiently and effectively perform the Work.
- 8.02 Contractor covenants, represents and warrants that each and every Contractor's employee engaged in the services provided under this Contract is fully qualified, able, licensed, registered, authorized, and has the expertise and training to provide such services to the City.
- 8.03 Contractor covenants, represents and warrants that it has sufficient resources and personnel to perform the obligations set forth in this Contract, including, without limitation, performing the

services, and procuring alternative capability in the event that Contractor's primary resources in performing the services change in such a manner that such primary resources would reasonably be unable to fulfill Contractor's obligations pursuant to this Contract.

- 8.04 Contractor covenants, represents and warrants that its performance of this Contract does not violate any applicable law, rules or regulation. Contractor further covenants, represents and warrants that Contractor shall comply and shall cause each and every of its employees who perform services under this Contract to comply with all laws of all applicable governmental authorities in the conduct of Contractor's activities pursuant to, and arising from, this Contract.
- 8.05 Contractor covenants, represents and warrants that Contractor holds and maintains all permits, licenses, and/or other regulatory requirements necessary to provide the services.
- 8.06 Contractor covenants, represents and warrants that it shall perform this Contract in a timely and professional manner with necessary skill and diligence and that the services provided herein meet or exceed the prevailing practices and standards of the trade from which the services are provided. To the extent that the City is held financially responsible for any deficiencies in the services performed by the Contractor, Contractor agrees to cure such deficiencies at the sole cost to the Contractor
- 8.07 Contractor covenants, represents and warrants that each individual signing this Contract on behalf of Contractor represents and warrants that he or she has the power and authority to bind the Contractor and that no further action, resolution, or approval is necessary to enter into this binding Contract. Contractor further covenants, represents and warrants that this Contract has been duly executed and delivered by the Contractor and constitutes a legal, valid and binding agreement of the Contractor enforceable against the Contractor in accordance with its terms.
- 8.08 Contractor covenants, represents and warrants that Contractor is duly registered as an employer under the New Mexico Workers' Compensation Act and is in good standing with respect to all filings and the payment of assessments or contributions required to be made under that Act.
- 8.09 Contractor covenants, represents and warrants that Contractor is financially solvent and able to pay its debts as they mature.
- 8.10 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.



- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 *Contents*

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 1 to 7, inclusive).
  - 2. Performance bond (pages 1 to 3, inclusive).
  - 3. Payment bond (pages 1 to 3, inclusive).
  - 4. Other bonds.
    - a.      (pages      to     , inclusive).
  - 5. General Conditions (pages 1 to 65, inclusive).
  - 6. Supplementary Conditions (pages 1 to 12, inclusive).
  - 7. Specifications as listed in the table of contents of the Project Manual.
  - 8. Drawings (not attached but incorporated by reference) consisting of 26 sheets with each sheet bearing the following general title: 12.47kV Distribution Line
  - 9. Addenda (numbers      to     , inclusive).
  - 10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages      to     , inclusive).
  - 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:

- a. Notice to Proceed.
  - b. Work Change Directives.
  - c. Change Orders.
  - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### **10.01 Terms**

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

### **10.02 Assignment of Contract**

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### **10.03 Successors and Assigns**

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### **10.04 Severability**

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### **10.05 Contractor's Certifications**

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 10.06 *Other Provisions*

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

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_  
*(where applicable)*

*(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*

**NOTE TO USER:** Use in those states or other jurisdictions where applicable or required.

**NOTICE TO PROCEED**

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Owner:	City of Truth or Consequences	Owner's Contract No.:	RFP: 21-22-005
Contractor:		Contractor's Project No.:	
Engineer:	Bohannon Huston Inc.	Engineer's Project No.:	20210319
Project:	12.47kV-Distribution Line	Contract Name:	
		Effective Date of Contract:	

---

**TO CONTRACTOR:**

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on \_\_\_\_\_.

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, [the date of Substantial Completion is \_\_\_\_\_, and the date of readiness for final payment is \_\_\_\_\_] *or* [the number of days to achieve Substantial Completion is \_\_\_\_\_, and the number of days to achieve readiness for final payment is \_\_\_\_\_].

Before starting any Work at the Site, Contractor must comply with the following:

---

Owner:

\_\_\_\_\_  
Authorized Signature

By:

Title:

Date Issued:

Copy: Engineer

## PERFORMANCE BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

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

### CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

### BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

### CONTRACTOR AS PRINCIPAL

### SURETY

\_\_\_\_\_  
Contractor's Name and Corporate Seal

\_\_\_\_\_  
Surety's Name and Corporate Seal

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature *(attach power of attorney)*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.**

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence,

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

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.



10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### 14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims

for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

## PAYMENT BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

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

### CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

### BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

### CONTRACTOR AS PRINCIPAL

### SURETY

\_\_\_\_\_  
*(seal)*

Contractor's Name and Corporate Seal

\_\_\_\_\_  
*(seal)*

Surety's Name and Corporate Seal

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature *(attach power of attorney)*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

Title

Title

***Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.***

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
  - 5.1 Claimants who do not have a direct contract with the Contractor,
    - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2 Pay or arrange for payment of any undisputed amounts.
  - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. **Definitions**
- 16.1 **Claim:** A written statement by the Claimant including at a minimum:
1. The name of the Claimant;
  2. The name of the person for whom the labor was done, or materials or equipment furnished;
  3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
  4. A brief description of the labor, materials, or equipment furnished;
  5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
  6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
  7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
18. Modifications to this Bond are as follows:

### Contractor's Application

Application Number:

Application Date: \_\_\_\_\_

ERJTB 12-020 Contractor's Application for Payment  
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Page 1 of 4

### Contractor's Application

Application Number:

Application Date:

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Page 2 of 4



Application Period: \_\_\_\_\_

Application Number:

Application Date: \_\_\_\_\_

### Contractor's Application

[illegible]

### Contractor's Application

For (Contract):	Application Number:
Application Period:	Application Date:

[illegible]

## CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner: City of Truth or Consequences	Owner's Contract No.: RFP: 21-22-005
Contractor:	Contractor's Project No.:
Engineer: Bohannon Huston Inc.	Engineer's Project No.: 20210319
Project: 12.47kV-Distribution Line	Contract Name:

**This [preliminary] [final] Certificate of Substantial Completion applies to:**

☐ All Work ☐ The following specified portions of the Work:

### Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work shall be as provided in the Contract, except as amended as follows: *[Note: Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see Paragraph 15.03.D of the General Conditions.]*

Amendments to Owner's responsibilities: ☐ None  
☐ As follows

Amendments to Contractor's responsibilities: ☐ None  
☐ As follows:

The following documents are attached to and made a part of this Certificate: *[punch list; others]*

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract.

EXECUTED BY ENGINEER:		RECEIVED:		RECEIVED:	
By: _____	By: _____	By: _____	By: _____	By: _____	By: _____
(Authorized signature)	Owner (Authorized Signature)	Owner (Authorized Signature)	Contractor (Authorized Signature)	Contractor (Authorized Signature)	Contractor (Authorized Signature)
Title: _____	Title: _____	Title: _____	Title: _____	Title: _____	Title: _____
Date: _____	Date: _____	Date: _____	Date: _____	Date: _____	Date: _____
Approved by Funding Agency (if applicable)					
By: _____	Title: _____	Date: _____			

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

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

regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day:*

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - a. does not conform to the Contract Documents; or
  - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).

E. *Furnish, Install, Perform, Provide:*

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

words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

1.03 *Penalties*

A.

1.04 *Force Majeure*

**ARTICLE 2 – PRELIMINARY MATTERS**

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor's Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner's Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

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



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

**2.04**    *Preconstruction Conference; Designation of Authorized Representatives*

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

**2.05**    *Initial Acceptance of Schedules*

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

**2.06**    *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

## ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

### 3.02 *Reference Standards*

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

### 3.03 *Reporting and Resolving Discrepancies*

- A. *Reporting Discrepancies:*
  - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

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

## ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

### 4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

### 4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.

- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. abnormal weather conditions;
  - 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
  - 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

## ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

### 5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

### 5.02 *Use of Site and Other Areas*

- A. *Limitation on Use of Site and Other Areas:*
  - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste

materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

- C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

#### 5.03 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

- 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
- 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
- 3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

- 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
- 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
- 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:

- 1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
- 2. is of such a nature as to require a change in the Drawings or Specifications; or
- 3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
  1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
    - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
  2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
    - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study



of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

- c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
  1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
  2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
    - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
    - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and

recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Possible Price and Times Adjustments:*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
  - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
  - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
  - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
  - d. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

#### 5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
2. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against

Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under

such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 6 – BONDS AND INSURANCE**

### **6.01 *Performance, Payment, and Other Bonds***

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S.

Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

#### 6.03 *Contractor's Insurance*

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
  - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
  - 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
  - 1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
  - 2. claims for damages insured by reasonably available personal injury liability coverage.
  - 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  3. Broad form property damage coverage.
  4. Severability of interest.
  5. Underground, explosion, and collapse coverage.
  6. Personal injury coverage.
  7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
  8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- G. *Additional insureds:* The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance:* If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining

applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.

- I. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
  1. include at least the specific coverages provided in this Article.
  2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
  3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
  4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
  5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

#### 6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

#### 6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under



such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."

2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
6. extend to cover damage or loss to insured property while in transit.
7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
8. allow for the waiver of the insurer's subrogation rights, as set forth below.
9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
10. not include a co-insurance clause.
11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
12. include performance/hot testing and start-up.

13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
  - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
  - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

**6.07**    *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

## ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

### 7.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

### 7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner’s written consent, which will not be unreasonably withheld.

### 7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

### 7.04 *“Or Equals”*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that Engineer authorize the use of other items of material or

equipment, or items from other proposed suppliers under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
  - a. in the exercise of reasonable judgment Engineer determines that:
    - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
    - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
    - 3) it has a proven record of performance and availability of responsive service; and
    - 4) it is not objectionable to Owner.
  - b. Contractor certifies that, if approved and incorporated into the Work:
    - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
    - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

#### 7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent

possible such requests shall be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
  2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
  3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
    - a. shall certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design,
      - 2) be similar in substance to that specified, and
      - 3) be suited to the same use as that specified.
    - b. will state:
      - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
      - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
      - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
    - c. will identify:
      - 1) all variations of the proposed substitute item from that specified, and
      - 2) available engineering, sales, maintenance, repair, and replacement services.
    - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the

replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
  - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

#### **7.07 Patent Fees and Royalties**

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.



- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

#### 7.09 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### 7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

#### 7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

**7.13**    *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

**7.14**    *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

**7.15**    *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

**7.16**    *Shop Drawings, Samples, and Other Submittals*

**A.    *Shop Drawing and Sample Submittal Requirements:***

- 1. Before submitting a Shop Drawing or Sample, Contractor shall have:
  - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

- c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
  - 2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
  - 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.
- 1. *Shop Drawings:*
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.
  - 2. *Samples:*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
  - 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
- 1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract

Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors,

members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
  - 1. observations by Engineer;
  - 2. recommendation by Engineer or payment by Owner of any progress or final payment;
  - 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  - 4. use or occupancy of the Work or any part thereof by Owner;
  - 5. any review and approval of a Shop Drawing or Sample submittal;
  - 6. the issuance of a notice of acceptability by Engineer;
  - 7. any inspection, test, or approval by others; or
  - 8. any correction of defective Work by Owner.
- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the

indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
  - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### **7.19 *Delegation of Professional Design Services***

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

### **ARTICLE 8 – OTHER WORK AT THE SITE**

#### **8.01 *Other Work***

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner

may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

#### 8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The



entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9 – OWNER'S RESPONSIBILITIES**

### **9.01    *Communications to Contractor***

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### **9.02    *Replacement of Engineer***

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## ARTICLE 10 – ENGINEER’S STATUS DURING CONSTRUCTION

### 10.01 *Owner’s Representative*

- A. Engineer will be Owner’s representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner’s representative during construction are set forth in the Contract.

### 10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer’s efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer’s visits and observations are subject to all the limitations on Engineer’s authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of Engineer’s visits or observations of Contractor’s Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer’s consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

### 10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

### 10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer’s authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer’s authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer’s authority as to Change Orders is set forth in Article 11.

D. Engineer's authority as to Applications for Payment is set forth in Article 15.

**10.06 *Determinations for Unit Price Work***

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

**10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work***

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

**10.08 *Limitations on Engineer's Authority and Responsibilities***

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

**10.09 *Compliance with Safety Program***

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

## ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

### 11.01 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

1. *Change Orders:*

a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.

b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.

2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

### 11.02 *Owner-Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the

Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

**11.03** *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

**11.04** *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  - 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
  - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
  - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
  - 1. a mutually acceptable fixed fee; or
  - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
    - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the

maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;

- d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

#### 11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

#### 11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.
  - 1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
  - 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

#### 11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
  4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

#### 11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

### ARTICLE 12 – CLAIMS

#### 12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
  1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and



3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
  - C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
  - D. *Mediation:*
    1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
    2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.
    3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
  - E. *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
  - F. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
  - G. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

### 13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
  4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:
- a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - g. The cost of utilities, fuel, and sanitary facilities at the Site.
  - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.
- E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

#### 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:* Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance:* Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
  - 2. there is no corresponding adjustment with respect to any other item of Work; and
  - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

#### **ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

##### **14.01 *Access to Work***

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

##### **14.02 *Tests, Inspections, and Approvals***

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the

measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

**14.04 Acceptance of Defective Work**

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

**14.05 Uncovering Work**

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

**14.06 Owner May Stop the Work**

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of

Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

**14.07 Owner May Correct Defective Work**

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

**ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

**15.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.



2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

- c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
    - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
    - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
  - 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
  - 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
    - a. the Work is defective, requiring correction or replacement;
    - b. the Contract Price has been reduced by Change Orders;
    - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
    - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
    - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.
- D. *Payment Becomes Due:*
- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.
- E. *Reductions in Payment by Owner:*
- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
    - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
    - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
    - c. Contractor has failed to provide and maintain required bonds or insurance;
    - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
    - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

- f. the Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. the Contract Price has been reduced by Change Orders;
  - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
  - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - l. there are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
  3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

#### 15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the

preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
  - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial

Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 15.06 *Final Payment*

##### A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
  - d. a list of all disputes that Contractor believes are unsettled; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

##### B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is

satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

#### 15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such other adjacent areas;
  - 2. correct such defective Work;
  - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.

- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

### **16.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

**16.03 Owner May Terminate For Convenience**

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.



#### 16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

#### 16.05 *Invalid Term or Condition and Severability*

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

### **ARTICLE 17 – FINAL RESOLUTION OF DISPUTES**

#### 17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
  - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
  - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
  - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
  - 2. agree with the other party to submit the dispute to another dispute resolution process; or
  - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

## ARTICLE 18 – MISCELLANEOUS

### 18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
  - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
  - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

### 18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

### 18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

### 18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

### 18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

### 18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

### 18.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

18.09 *Applicable Law*

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

18.10 *Immunities and Defenses*

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

18.11 *No Assignment*

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

18.12 *No Third Party Beneficiaries*

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

18.13 *Notices*

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

To City:

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

To Contractor:

[INSERT]

**ARTICLE 19 – REQUEST FOR PROPOSALS**

- A. As required by 13-1-111 NMSA 1978 the City of Truth or Consequences (Owner) is requesting proposals (RFP's) for the project described in this RFP.
- B. Proposals shall only be submitted using the Owner's online bidding system. Mailed, emailed, or faxed bids will not be accepted and will be returned unopened.
- C. Proposals must include, but are not limited to, the requirements set forth in the RFP. Proposals deposited with the Owner may be withdrawn or modified prior to the time set for opening of proposals.

- D. The opening of sealed proposals shall be conducted in private in order to maintain the confidentiality of the information/data provided. Proposals will remain confidential during the negotiation process.
- E. Pursuant to 13-1-115 NMSA 1978, Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. Negotiations may be conducted with responsible Offerors who submit proposals found to be reasonably likely to be selected for award.
- F. The Owner will open all proposals assign an evaluation committee and evaluate all proposals; determine the need for and conduct and negotiation; and make a final recommendation to the City Council for award of the agreement or contract.
- G. The agreement of contact award shall be made to the responsible Offeror or Offerors whose proposal is most advantageous to the Owner, taking into consideration the evaluation factors set forth in the RFP.
- H. The proposal total shall exclude all applicable taxes including applicable New Mexico Gross Receipts Tax or applicable local option tax. The Owner will pay the successful Offeror for any taxes due on the agreement or contract and will pay any increase in applicable taxes which become effective after the date the agreement or contract is entered into in addition to the Proposal total amount. Taxes shall be shown as a separate line item and separate amount on the invoice.
- I. The offeror shall complete the "Offeror's Estimate of Taxes" and shall identify by name each tax Offeror believes to be applicable to the agreement or contract and shall estimate the amount of each tax which will be billed to the Owner.
- J. The Owner reserves the right to reject and or all proposals, cancel the RFP in its entirety or to waive irregularities at its option when it is in the best interest of the City of Truth or Consequences.
- K. Award of the contract is contingent upon budgeting and appropriation of funds for continuation of the professional services contemplated by this RFP.

## **SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2013 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

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### **ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**

#### **SC-1.01     *Defined Terms***

**SC 1.01.A.8** Add the following language at the end of last sentence of Paragraph 1.01.A.8:

The Change Order form to be used on this Project is EJCDC C-941. Agency approval is required before Change Orders are effective.

**SC 1.01.A.48** Add the following language at the end of the last sentence of Paragraph 1.01.A.48:

A Work Change Directive cannot change Contract Price or Contract Times without a subsequent Change Order.

**SC 1.01.A.49** Add the following new Paragraph after Paragraph 1.01.A.48:

**Abnormal Weather Conditions** – Conditions of extreme or unusual weather for a given region, elevation, or season as determined by Engineer. Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered Abnormal Weather Conditions.

**SC 1.01.A.50** Add the following new Paragraph after Paragraph 1.01.A.49:

**Agency** - The Project is financed in whole or in part by City local funds.

### **ARTICLE 2 – PRELIMINARY MATTERS**

#### **SC-2.02 *Copies of Documents***

**SC-2.02.A.** Amend the first sentence of Paragraph 2.02.A. to read as follows:

Owner shall furnish to Contractor one copy of the Contract Documents (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF).

*SC-2.06 Electronic Transmittals*

**SC- 2.06.B Delete Paragraph 2.06.B and replace it with the term [Deleted].**

**ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**

*SC-4.01 Commencement of Contract Times; Notice to Proceed*

**SC 4.01.A Amend the last sentence of Paragraph 4.01.A by striking out the following words:**

**In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.**

**SC 4.05.C.2 Amend Paragraph 4.05.C.2 by striking out the following text: “abnormal weather conditions;” and inserting the following text:**

**Abnormal Weather Conditions;**

**ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

*SC-5.03 Subsurface and Physical Conditions*

**SC 5.03 Add the following new paragraphs immediately after Paragraph 5.03.B:**

- A. The following reports of explorations and tests of subsurface conditions at or adjacent to the Site are known to Owner:**
  - 1. Report dated [January 13, 2021, prepared by COZ Engineering, LLC, Las Cruces, NM, entitled: “Truth or Consequences Pole Line Replacements”, consisting of 25 pages.] The Technical Data contained in such report upon whose accuracy Contractor may rely are [those indicated in the definition of Technical Data in the General Conditions.**

*SC-5.06 Hazardous Environmental Conditions*

**SC 5.06 Delete Paragraphs 5.06.A and 5.06.B in their entirety and insert the following:**

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.**
- B. Not Used.**

**ARTICLE 6 – BONDS AND INSURANCE**

*SC-6.01 Performance, Payment, and Other Bonds*

**SC-6.01 Add the following paragraph immediately after Paragraph 6.01.F:**

- G. Non-Resident Contractor's Requirements Regarding Gross Receipts Tax Surety Bond**
  - 1. Section 7-1-55A NMSA 1978 provides that any person (as defined in 7-1-3 NMSA 1978) engaged in the construction business who does not have his principal place of business in New Mexico and enters into a prime**

construction contract to be performed in this state shall, at the time such contract is entered into, furnish the Director of the Revenue Division, Taxation and Revenue Department, or his delegate with a surety bond or other acceptable security in a sum equivalent to the gross receipts tax to be paid under the contract multiplied by the applicable rate of the gross receipts tax imposed by §7-9-4 NMSA 1978 to secure payment of the tax imposed on the gross receipts from the contract, and shall obtain a certificate from the Director of the Revenue Division, Taxation and Revenue Department, or his delegate, that the requirements of this paragraph have been met.

2. If the total sum to be paid under the contract is changed by ten percent or more after the date the surety bond or other acceptable security is furnished, to the Director or his delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen days after the change (§7-1-55B NMSA 1978).
3. In addition to the above requirements, the Contractor will be subject to all the requirements of §7-1-55 NMSA 1978.

**SC-6.02 Insurance—General Provisions**

**SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:**

1. Contractor may obtain worker's compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the project is located, (b) is certified or authorized as a worker's compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.

**SC-6.03 Contractor's Liability Insurance**

**SC 6.03 Add the following new paragraph immediately after Paragraph 6.03.J:**

**K. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:**

1. **Workers' Compensation, and related coverages under Paragraphs 6.03.A.1 and A.2 of the General Conditions:**

<b>State:</b>	<u>Statutory</u>
<b>Federal, if applicable (e.g., Longshoreman's):</b>	<u>Statutory</u>
<b>Jones Act coverage, if applicable:</b>	
Bodily injury by accident, each accident	\$ <u>N/A</u>
Bodily injury by disease, aggregate	\$ <u>N/A</u>
<b>Employer's Liability:</b>	
Bodily injury, each accident	\$ <u>\$100,000</u>
Bodily injury by disease, each employee	\$ <u>\$100,000</u>

Bodily injury/disease aggregate	\$ <u>\$500,000</u>
For work performed in monopolistic states, stop-gap liability coverage shall be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	\$ <u>N/A</u>
Foreign voluntary worker compensation	<u>Statutory</u>
<b>2. Contractor's Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:</b>	
General Aggregate	\$ <u>\$2,000,000</u>
Products - Completed Operations Aggregate	\$ <u>\$2,000,000</u>
Personal and Advertising Injury	\$ <u>\$1,000,000</u>
Each Occurrence (Bodily Injury and Property Damage)	\$ <u>\$1,000,000</u>
<b>3. Automobile Liability under Paragraph 6.03.D. of the General Conditions:</b>	
<b>Bodily Injury:</b>	
Each person	\$ <u>\$1,000,000</u>
Each accident	\$ <u>\$1,000,000</u>
<b>Property Damage:</b>	
Each accident	\$ <u>\$500,000</u>
<i>[or]</i>	
Combined Single Limit of	\$ <u>\$500,000</u>
<b>4. Excess or Umbrella Liability:</b>	
Per Occurrence	\$ <u>\$1,000,000</u>
General Aggregate	\$ <u>\$1,000,000</u>
<b>5. Contractor's Pollution Liability:</b>	
Each Occurrence	\$ _____
General Aggregate	\$ _____





If box is checked, Contractor is not required to provide Contractor's Pollution Liability insurance under this Contract

**6. Contractor's Professional Liability:**

Each Claim	\$ <u>1,000,000</u>
Annual Aggregate	\$ <u>1,000,000</u>

**ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES**

*SC-7.02 Labor; Working Hours*

**SC-7.02.C. Add the following new paragraph immediately after Paragraph 7.02.B:**

Contractor shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer's services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

**SC-7.02.C. Add the following new subparagraph immediately after Paragraph 7.02.C:**

1. For purposes of administering the foregoing requirement, additional overtime costs are defined as per Engineer's Standard Fee Schedule that can be disclosed to Contractor upon request.

*SC-7.04 "Or Equals"*

**SC 7.04.A Amend the third sentence of Paragraph 7.04.A by striking out the following words:**

Unless the specification or description contains or is followed by words reading that no like, equivalent, or 'or-equal' item is permitted.

**SC 7.04.A.1 Amend the last sentence of Paragraph a.3 by striking out "and;" and adding a period at the end of Paragraph a.3.**

**SC 7.04.A.1 Delete paragraph 7.04.A.1.a.4 in its entirety and insert the following in its place:**

[Deleted]

*SC-7.06 Concerning Subcontractors, Suppliers, and Others*

**SC 7.06.A Amend Paragraph 7.06.A by adding the following text to the end of the Paragraph:**

The Contractor shall not award work valued at more than fifty percent of the Contract Price to Subcontractor(s), without prior written approval of the Owner.

**SC 7.06.B Delete paragraph 7.06.B in its entirety and insert the following in its place:**

**[Deleted]**

**SC 7.06.E Amend the second sentence of Paragraph 7.06.E by striking out “Owner may also require Contractor to retain specific replacements; provided, however, that”.**

**SC-7.08**     *Permits*

**SC-7.08**     Add the following new paragraph immediately after Paragraph 7.08.A:

- B. This Contract is subject to the provisions of the New Mexico Construction Industries Licensing Act (§§60-13-1 to §60-13-59 NMSA 1978), the rules and regulations of the New Mexico Construction Industries Commission and the rules, regulations and codes of the various trade boards adopted pursuant to the Construction Industries Licensing Act.**

**SC-7.09**     *Taxes*

**SC-7.09**     Add the following new paragraphs immediately after Paragraph 7.09.A:

- B. Contractor's Gross Receipts Tax Registration**
- 1. §7-10-4 NMSA 1978 provides that any person (as defined in §7-10-3 NMSA 1978) performing services for the state or its political subdivisions, as those terms are used in the Gross Receipts and Compensating Tax Act (§§7-10-1 through §7-10-5 NMSA 1978) must be registered and be issued an identification number with the Revenue Division of the Taxation and Revenue Department of the state to pay the gross receipts tax.**
  - 2. For information in obtaining the identification number contact: Revenue Processing Division, Taxation and Revenue Department, Manuel Lujan Sr. Building, 1200 St. Francis Drive, Santa Fe, New Mexico 87503, or call (505) 827-0825.**
  - 3. If any person who performs services for the State or its political subdivisions is not registered to pay the gross receipts tax, the Owner shall withhold payment of the amount due until the person has presented evidence of registration with the Revenue Division to pay the gross receipts tax.**

**SC-7.10**     *Laws and Regulations*

**SC-7.10**     Add the following new paragraph immediately after Paragraph 7.10.C:

- D. Contracts With Nonresident Persons Or Partnerships Or Unadmitted Foreign Corporations, Agent For Service Of Process: Special attention of Contractors is called to the requirements of §§13-4-21 through §13-4-24 NMSA 1978, whereby a public works contract with a nonresident person or partnership or foreign corporation not authorized to do business in the State shall contain a specific provision designating an agent resident within the State, and his address, upon whom process and writs in any action or proceeding against such business may be served in any action arising out of such contract.**

**SC-7.20**     *Minimum Wage Rates*

**SC-7.20**     Add the following new paragraph immediately after Paragraph 7.20:

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- A. The Contractor warrants and agrees that he and all subcontractors shall comply with all applicable provisions of the New Mexico Public Works Minimum Wage Act, §13-4-11 NMSA 1978, if the project is over \$60,000; and other statutes pertaining to public works in New Mexico; and the federal Wage Rate Determination if the project is over \$2,000. The attached Minimum Wage Rate Determinations are declared to be prevailing and apply to the construction. Note: Applicable federal and state regulations require that the higher of the federal or the state wage rate for each classification must be paid.
- B. Submission of weekly payroll records to the Owner and Labor Commission is mandatory. Include the decision number on Contractor's and subcontractor's payrolls. The scale of wages shall also be posted in a prominent location at the site.
- C. In the event it is found by the Labor Commission, that any laborer or mechanic employed by the Contractor or Subcontractor on the site of the project covered by this Contract, has been or is being paid as a result of a willful violation, a rate of wages less than the rate of wages required by the Contract, the Owner may, by written notice to the Contractor and his subcontractor, if the violation involves a Subcontractor, terminate their right to proceed with the Work or such part of the Work as to which there has been a willful failure to pay the required wages and the Owner may prosecute the Work to completion by contract or otherwise, and the Contractor shall be liable to the Owner and the State of New Mexico for any excess cost occasioned thereby.

#### **ARTICLE 10 – ENGINEER’S STATUS DURING CONSTRUCTION**

##### *SC-10.03 Project Representative*

##### **SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.A:**

- B. The Resident Project Representative (RPR) will be Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
  - 1. General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  - 2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
  - 3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.
  - 4. Liaison:
    - a. Serve as Engineer’s liaison with Contractor. Working principally through Contractor’s authorized representative or designee, assist in

- providing information regarding the provisions and intent of the Contract Documents.
- b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. Shop Drawings and Samples:
- a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
  - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. Review of Work and Rejection of Defective Work:
- a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. Inspections, Tests, and System Start-ups:
- a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
  - b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

**10. Records:**

- a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- c. Maintain records for use in preparing Project documentation.

**11. Reports:**

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.

**12. Payment Requests:** Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

**13. Certificates, Operation and Maintenance Manuals:** During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

**14. Completion:**

- a. Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.
- b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a

final punch list of items to be completed and deficiencies to be remedied.

- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.

**C. The RPR shall not:**

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

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**ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

*SC-11.07 Execution of Change Orders*

**SC 11.07.B Amend Paragraph 11.07.B by adding the following text to the end of the Paragraph:**

**Change Order is only fully in effect if the Agency approves it.**

**SC 11.07.C Add the following new Paragraph after Paragraph 11.07.B:**

**All Contract Change Orders must be approved by Agency before they are effective.**

**ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

*SC-13.02 Allowances*

**SC 13.02.C Delete Paragraph 13.02.C in its entirety and insert the following in its place:**

**[Deleted]**

## **ARTICLE 14 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work**

### **SC-14.02 Tests, Inspections, and Approvals**

**SC 14.02.D.6 Add the following new Paragraph after Paragraph 14.02.D.5:**

**Mileage is not to be charge at a rate greater than the Internal Revenue Service (IRS) limits for a given year.**

### **SC-14.02 Acceptance of Defective Work**

**SC 14.04.A Amend Paragraph 14.04.A by adding the following text to the end of the Paragraph:**

**Agency must approve acceptance of all defective work**

## **ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

### **SC-15.01 Progress Payments**

**SC 15.01.B.4 Add the following new Paragraph after Paragraph 15.01.B.3:**

**The Application for Payment form to be used on this Project is EJCDC C-620. The Agency must approve all Applications for Payment before payment is made.**

**SC 15.01.D.1 Delete Paragraph 15.01.D.1 in its entirety and insert the following in its place:**

**The Application for Payment with Engineer's recommendations will be presented to the Owner and Agency for consideration. This contract allows the Owner to make payment within 45 days after submission of an undisputed request for payment (Section 57-28-5 B (2) NMSA 1978).**

### **SC-15.02 Contractor's Warranty of Title**

**SC 15.02.A Amend Paragraph 15.02.A by striking out the following text: "no later than seven days after the time of payment by Owner" and insert "no later than the time of payment by Owner."**

### **SC-15.03 Substantial Completion**

**SC 15.03.B Amend Paragraph 15.03.B by adding the following text to the end of the Paragraph:**

**Agency is to accompany the Contractor, Owner, and Engineer on the Substantial Completion Inspection.**

**SC 15.03.B Add the following new subparagraph to Paragraph 15.03.B:**

- 1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, shall be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.**

## **ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

### **SC-16.01    *Owner May Suspend Work***

**SC 16.01.A Amend Paragraph 16.01.A by adding the following text to the end of the Paragraph:**

**Owner is required to notify the Agency within 7 calendar days if the work has been suspended or terminated.**

### **SC-16.02    *Owner May Terminate for Cause***

**SC 16.02.B.3 Add the following new subparagraph to Paragraph 16.02.B.2:**

**Owner will notify the Agency within 7 calendar days if the work has been suspended or terminated.**

### **SC-16.05    *Invalid Term or Condition and Severability***

**SC 16.05.A.1 Add the following new subparagraph to Paragraph 16.05.A.1:**

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

## **ARTICLE 17 – FINAL RESOLUTION OF DISPUTES**

### **SC-17.02    *Attorneys' Fees***

**SC-17.02    Add the following new paragraph immediately after Paragraph 17.01.**

**SC-17.02 Attorneys' Fees: For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.**

## **ARTICLE 18 – MISCELLANEOUS**

### **SC-18.08    *Headings***

**SC-17.02    Add the following new paragraph immediately after Paragraph 18.08.**

**18.09    Applicable Law**



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

#### **18.10 IMMUNITIES AND DEFENSES**

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

#### **18.11 NO ASSIGNMENT**

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

#### **18.12 No Third Party Beneficiaries**

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

#### **18.13 Notices**

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

**To City:**

**City of Truth or Consequences Attention: Chief Procurement Officer**

**505 Sims Street**

**Truth or Consequences, NM 87901**

**To Contractor:**

**[INSERT]**

Change Order No. \_\_\_\_\_

Date of Issuance:	Effective Date:
Owner: City of Truth or Consequences	Owner's Contract No.: RFP: 21-22-005
Contractor:	Contractor's Project No.:
Engineer: Bohannon Huston Inc.	Engineer's Project No.: 20210319
Project: 12.47kV-Distribution Line	Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Description:

Attachments: *[List documents supporting change]*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] from previously approved Change Orders No. ____ to No. ____: \$ _____	[Increase] [Decrease] from previously approved Change Orders No. ____ to No. ____: Substantial Completion: _____ Ready for Final Payment: _____ days
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: \$ _____	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ days or dates

<b>RECOMMENDED:</b>		<b>ACCEPTED:</b>		<b>ACCEPTED:</b>	
By: _____	By: _____	By: _____	By: _____	By: _____	By: _____
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized			
Title: _____	Title _____	Title _____			
Date: _____	Date _____	Date _____			

Approved by Funding Agency (if applicable)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

Field Order No. \_\_\_\_\_

Date of Issuance:	Effective Date:		
Owner: City of Truth or Consequences	Owner's Contract No.:	RFP: 21-22-005	
Contractor:	Contractor's Project No.:		
Engineer: Bohannon Huston Inc.	Engineer's Project No.:	20210319	
Project: 12.47kV-Distribution Line	Contract Name:		

Contractor is hereby directed to promptly execute this Field Order, issued in accordance with General Conditions Paragraph 11.01, for minor changes in the Work without changes in Contract Price or Contract Times. If Contractor considers that a change in Contract Price or Contract Times is required, submit a Change Proposal before proceeding with this Work.

Reference: \_\_\_\_\_  
Specification(s) Drawing(s) / Detail(s)

Description:

Attachments:

ISSUED:	RECEIVED:
By: _____ Engineer (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Title: _____	Title: _____
Date: _____	Date: _____

Copy to: Owner

## STATE WAGE RATES

PROJECTS OVER \$60,000 ARE REQUIRED TO PROVIDE STATE WAGE RATES.

REQUEST WAGE RATES FOR PUBLIC WORKS CONSTRUCTION PROJECTS ON THE INTERNET log on at [www.dol.state.nm.us](http://www.dol.state.nm.us) and click on Employer Services. Scroll down to Public Works Wage Rate Requests & click there. Scroll down to Wage Determination Form & click on the words. Fill in the form & click on "submit." If the request doesn't go through, click on the icon to go back a page, & click on "submit" again. Problems? CALL 827-6837

**LABOR RELATIONS DIVISION**

401 Broadway NE  
Albuquerque, NM 87102  
Phone: 505-841-4400  
Fax: 505-841-4424

226 South Alameda Blvd  
Las Cruces, NM 88005  
Phone: 575-524-6195  
Fax: 575-524-6194

**WWW.DWS.STATE.NM.US**

1596 Pacheco St, Suite 103  
Santa Fe, NM 87505  
Phone: 505-827-6817  
Fax: 505-827-9676

**Wage Decision Approval Summary**

1) Project Title: 12.47 kV Distribution Line Renovations  
Requested Date: 08/02/2021  
Approved Date: 08/05/2021  
Approved Wage Decision Number: SI-21-1553-H

**Wage Decision Expiration Date for Bids: 12/03/2021**

2) Physical Location of Jobsite for Project:  
Job Site Address: Austin St., 4th Avenue  
Job Site City: Truth or Consequences  
Job Site County: Sierra

3) Contracting Agency Name (Department or Bureau): City of Truth or Consequences  
Contracting Agency Contact's Name: morris madrid  
Contracting Agency Contact's Phone: (575) 894-6673 Ext. 320

4) Estimated Contract Award Date: 08/06/2021

5) Estimated total project cost: \$377,575.52  
a. Are any federal funds involved?: No  
b. Does this project involve a building?: No  
c. Is this part of a larger plan for construction on or appurtenant to the property that is subject to this project?: No  
d. Are there any other Public Works Wage Decisions related to this project?: No  
e. What is the ultimate purpose or functional use of the construction once it is completed?: replacing electrical distribution, associated distributed transformers, secondary services, and miscellaneous distribution components

**6) Classifications of Construction:**

<b>Classification Type and Cost Total</b>	<b>Description</b>
<b>Heavy Engineering (H) Cost: \$377,575.52</b>	replacing electrical distribution, associated distributed transformers, secondary services, and miscellaneous distribution components



**LABOR RELATIONS DIVISION**  
121 Tijeras Ave NE, Suite 3000  
Albuquerque, NM 87102  
Phone: 505-841-4400  
Fax: 505-841-4424

**WWW.DWS.STATE.NM.US**

## **PUBLIC WORKS PROJECT REQUIREMENTS**

As a participant in a Public Works project valued at more than \$60,000 in the state of New Mexico, the following list addresses many of the responsibilities that are defined by statute or regulation to each project stakeholder.

### **Contracting Agency**

- Ensure that all contractors wishing to bid on a Public Works project when the project is \$60,000 or more are actively registered with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> (Contractor Registration) prior to bidding.
- Please submit Notice of Award (NOA) and Subcontractor List(s) to the PWAA website promptly after the project is awarded.
- Please update the Subcontractor List(s) on the PWAA website whenever changes occur.
- All sub-contractors and tiers (excluding professional services) regardless of contract amount must be listed on the Subcontractor List and must adhere to the Public Works Minimum Wage Act.
- Ninety days after project completion please go into the PWAA system and close the project. Only contracting agencies are allowed to close the project. Agents or contractors are not allowed to close projects.

### **General Contractor**

- Provide a complete Subcontractor List and Statements of Intent (SOI) to Pay Prevailing Wages for all contractors, regardless of amount of work, to the contracting agency within 3 (three) days of award.
- Ensure that all subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> prior to bidding when their bid will exceed \$60,000.
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- Confirm the Wage Rate poster, provided in PWAA, is displayed at the job site in an easily accessible place.
- When the project has been completed, make sure the Affidavits of Wages Paid (AWP) are sent to the contracting agency.
- All subcontractors and tiers (excluding professional services) regardless of contract amount must pay prevailing wages, be listed on the Subcontractor List, and adhere to the Public Works Minimum Wage Act.



## LABOR RELATIONS DIVISION

121 Tijeras Ave NE, Suite 3000  
Albuquerque, NM 87102  
Phone: 505-841-4400  
Fax: 505-841-4424

[WWW.DWS.STATE.NM.US](http://WWW.DWS.STATE.NM.US)

### Subcontractor

- Ensure that all subcontractors wishing to bid on a Public Works project have an active Contractor Registration with the Public Works and Apprenticeship Application (PWAA) website: <http://www.dws.state.nm.us/pwaa> prior to bidding when their bid will exceed \$60,000.
- Make certain the Public Works Apprentice and Training Act contributions are paid either to an approved Apprenticeship Program or to the Public Works Apprentice and Training Fund.
- All subcontractors and tiers (excluding professional services) regardless of contract amount must pay prevailing wages, be listed on the Subcontractor List, and adhere to the Public Works Minimum Wage Act.

### Additional Information

Reference material and forms may be found in the New Mexico Department of Workforce Solutions Public Works web pages at: <https://www.dws.state.nm.us/Labor-Relations/Labor-Information/Public-Works>.

### CONTACT INFORMATION

Contact the Labor Relations Division for any questions relating to Public Works projects by email at [public.works@state.nm.us](mailto:public.works@state.nm.us) or call (505) 841-4400.



## Type “H - Heavy Engineering

Please refer to the base and fringe rate columns that pertain to the date your wage decision was approved. For instance, if your wage decision was approved on April 1, 2021, you will use the rates in the first two columns. If your wage decision was approved on May 10, 2021, use the third and fourth columns.

	Effective January 1, 2021 through May 4, 2021		Effective May 5, 2021		Effective January 1, 2020 Through December 31, 2021
Trade Classification	Base Rate	Fringe Rate	Base Rate	Fringe Rate	Apprenticeship
<b>Asbestos workers/Heat &amp; Frost Insulators</b>	33.01	12.06	32.26	12.06	0.60
<b>Asbestos workers/Heat &amp; Frost Insulators- Los Alamos County</b>	35.44	12.06	34.69	12.06	0.60
<b>Boilermaker</b>	34.97	27.35	34.97	27.35	0.60
<b>Bricklayer/Block layer/Stonemason</b>	25.54	8.81	25.54	8.81	0.60
<b>Carpenter/Lather</b>	25.63	11.74	24.63	11.24	0.60
<b>Carpenter- Los Alamos County</b>	28.37	13.44	27.80	13.19	0.60
<b>Millwright/Pile driver</b>	33.16	27.24	33.16	25.24	0.60
<b>Cement Mason</b>	21.00	9.38	21.00	9.38	0.60
<b>Electricians-Outside Classifications: Zone 1</b>					
Ground man	23.74	13.16	23.27	12.67	0.60
Equipment Operator	34.06	15.94	33.39	15.35	0.60
Lineman/Tech	40.07	17.57	39.28	16.91	0.60
Cable Splicer	40.08	18.65	42.21	17.95	0.60





<b>Electricians-Outside Classifications: Zone 2</b>					
Ground man	23.74	13.16	23.27	12.67	0.60
Equipment Operator	34.06	15.94	33.39	15.35	0.60
Lineman/Tech	40.07	17.57	39.28	16.91	0.60
Cable Splicer	44.08	18.65	42.21	17.95	0.60
<b>Electricians-Outside Classifications: Los Alamos</b>					
Ground man	24.42	13.34	23.94	12.85	0.60
Equipment Operator	35.04	16.21	34.35	15.60	0.60
Lineman/Tech	41.22	17.88	40.41	17.21	0.60
Cable Splicer	45.34	18.99	44.45	18.28	0.60
<b>Electricians-Inside Classifications: Zone 1</b>					
Wireman/low voltage technician	33.65	12.01	32.70	11.18	0.60
Cable Splicer	37.02	12.11	35.97	11.28	0.60
<b>Electricians-Inside Classifications: Zone 2</b>					
Wireman/low voltage technician	36.68	12.10	35.64	11.27	0.60
Cable Splicer	40.04	12.20	38.91	11.37	0.60
<b>Electricians-Inside Classifications: Zone 3</b>					
Wireman/low voltage technician	38.70	12.16	37.61	11.33	0.60
Cable Splicer	42.06	12.26	40.88	11.43	0.60



<b>Electricians-Inside Classifications:</b>					
<b>Zone 4</b>					
Wireman/low voltage technician	42.40	12.27	41.20	11.44	0.60
Cable Splicer	45.76	12.37	44.47	11.53	0.60
<b>Electricians-Inside Classifications: Los Alamos</b>					
Wireman/low voltage technician	38.70	14.09	37.61	13.21	0.60
Cable Splicer	42.06	14.36	40.88	13.47	0.60
<b>Glazier</b>					
Glazier/Fabricator	20.50	6.20	20.25	5.35	0.60
Delivery Driver	9.25	6.20	9.00	5.35	0.60
<b>Ironworker</b>	27.35	17.49	27.00	15.75	0.60
<b>Painter- Industrial</b>	21.50	9.77	21.25	9.17	0.60
<b>Paperhanger</b>	19.00	9.77	18.75	9.17	0.60
<b>Drywall-Industrial</b>					0.60
Ames tool Operator	26.48	7.60	25.93	7.10	0.60
Hand finisher/machine texture	25.48	7.60	24.93	7.10	0.60
<b>Plumber/Pipefitter</b>	31.52	12.90	30.76	11.62	0.60
<b>Roofer</b>	25.23	7.97	25.23	7.97	0.60
<b>Sheet metal Worker</b>	33.38	17.64	31.03	17.26	0.60
<b>Operators</b>					
Group I	20.97	6.54	20.55	6.34	0.60
Group II	21.17	6.54	20.75	6.34	0.60
Group III	21.36	6.54	20.94	6.34	0.60
Group IV	21.51	6.54	21.08	6.34	0.60
Group V	21.63	6.54	21.19	6.34	0.60



Group VI	21.81	6.54	21.37	6.34	0.60
Group VII	21.83	6.54	21.39	6.34	0.60
Group VIII	23.79	6.54	23.29	6.34	0.60
Group IX	29.63	6.54	28.96	6.34	0.60
Group X	32.96	6.54	32.19	6.34	0.60
<b>Laborers</b>					
Group I-Unskilled	17.06	6.22	17.06	6.22	0.60
Group II-Semi-Skilled	17.81	6.22	17.81	6.22	0.60
Group III-Skilled	19.32	6.22	19.32	6.22	0.60
Group IV-Specialty	19.72	6.22	19.72	6.22	0.60
<b>Laborers-Underground</b>					
Group I	18.97	6.22	18.97	6.22	0.60
Group II	19.34	6.22	19.34	6.22	0.60
Group III	19.69	6.22	19.69	6.22	0.60
<b>Truck Drivers</b>					
Group I	16.97	6.25	16.45	7.87	0.60
Group II	17.25	6.25	16.45	7.87	0.60
Group III	17.72	6.25	16.45	7.87	0.60
Group IV	17.74	6.25	16.45	7.87	0.60
Group V	17.80	6.25	16.45	7.87	0.60
Group VI	17.97	6.25	16.45	7.87	0.60
Group VII	18.11	6.25	16.45	7.87	0.60
Group VIII	18.31	6.25	16.51	7.87	0.60
Group IX	18.45	6.25	18.45	7.87	0.60
<b>Maintenance Subgroup IX</b>					
Rate I	20.90	9.00			0.60



Rate II	21.77	9.00			0.60
Rate III	22.24	9.00			0.60

**NOTE: All contractors are required to pay SUBSISTENCE, ZONE AND INCENTIVE PAY according to the particular trade. Details are located in a PDF attachment at [WWW.DWS.STATE.NM.US](http://WWW.DWS.STATE.NM.US). Search Labor Relations/Labor Information/Public Works/Prevailing Wage Rates.**

For more information about the Subsistence, Zone, and Incentive Pay rates, or to file a wage claim, contact the Labor Relations Division at (505) 841-4400 or visit us online at [www.dws.state.nm.us](http://www.dws.state.nm.us).

**GEOTECHNICAL ENGINEERING REPORT**

**TRUTH OR CONSEQUENCES POLE LINE  
REPLACEMENTS**

**TRUTH OR CONSEQUENCES, NEW MEXICO**

**Project No. 422072**

**January 13, 2021**

***Prepared for:***

**BOHANNAN HUSTON  
Las Cruces, New Mexico**

***Prepared by:***

**COZ ENGINEERING, LLC  
Las Cruces, New Mexico**

**COZ Engineering, LLC**

PO Box 13331  
Las Cruces, New Mexico 88013  
Cell: 575.642.7671  
Email: [thecoz42@gmail.com](mailto:thecoz42@gmail.com)

January 13, 2021

Bohannan Huston  
425 S Telshor Blvd Ste C103  
Las Cruces, NM 88011

Attn. Matthew R. Thompson, PE  
P: 575.532.8670  
E: [mthompson@bhinc.com](mailto:mthompson@bhinc.com)

**Re: Geotechnical Engineering Report  
Truth or Consequences Pole Line Replacements  
Truth or Consequences, New Mexico  
COZ Report No. 422072**

Dear Mr. Thompson:

The following is a geotechnical engineering report for the proposed pole replacements in Truth or Consequences, New Mexico. Recommendations for earthwork, foundations and other geotechnical considerations are presented in the report.

Thank you for the opportunity to provide this geotechnical engineering report. If you have any questions or concerns, please contact me at (575)-642-7671.

Sincerely,

Dan Cosper, P.E.



<b><i>Site Investigation:</i></b>	<b><i>1</i></b>
<b><i>Site Conditions:</i></b>	<b><i>1</i></b>
<b><i>Planned Construction:</i></b>	<b><i>2</i></b>
<b><i>Initial Site Grading:</i></b>	<b><i>2</i></b>
<b><i>Soil Improvements:</i></b>	<b><i>2</i></b>
<b><i>Fill Material:</i></b>	<b><i>3</i></b>
<b><i>Compaction Requirements:</i></b>	<b><i>3</i></b>
<b><i>Deep Foundations:</i></b>	<b><i>3</i></b>
<b><i>Seismic Site Classification:</i></b>	<b><i>7</i></b>
<b><i>Lateral Earth Pressures:</i></b>	<b><i>8</i></b>
<b><i>Report Limitations:</i></b>	<b><i>8</i></b>

**Appendix:**

Site Plan  
Boring Logs  
Sieves

## **Site Investigation:**

A subsurface investigation was performed for the proposed pole line replacements to be located at various locations within Truth or Consequences, New Mexico. Five (5) test borings were advanced at the pole line replacement locations. The borings were terminated at a depth of 15 below ground surface (bgs). The test boring logs and location plan are provided in the appendix of this report.

## **Site Conditions:**

The current pole line replacement site surfaces consisted of exposed subgrade (boring locations consisted of asphalt since the proximity of the overhead powerlines required the drilling to be a minimum distance away from the existing poles). Soils investigated at Boring B-1 consisted of silty sand with varying amounts of gravel from the surface to the total explored depth of about 15 feet bgs. Borings B-2 and B-3 consisted of silty sand and sandy silt from the surface to a depth of about 10 feet bgs. The upper soils were underlain by sandy lean clay to total explored depth of about 15 feet bgs. Borings B-4 and B-5 consisted of poorly graded sand with varying amounts of silt and clay from the surface to the total explored depth of about 15 feet bgs.

The groundwater table was not encountered during the field investigation at Borings B-1 thru B-3. The groundwater table was encountered during the field investigation at Borings B-4 and B-5 at depths of about 6 and 4 feet bgs, respectively.



## **Planned Construction:**

Based on the information provided, I understand the project will include removal of existing wood transmission poles and subsequent replacement with steel transmission poles at five locations. The new steel poles will be supported by drilled shaft foundations. Structural loading was not available at the time of this report but is assumed to be about 4 kips in axial compression, 10 kips in shear and 34 ft-k for moment loads.

## **Initial Site Grading:**

Areas for planned construction should be clear of debris, vegetation and any oversized or deleterious material prior to grading operations. Fill construction (if applicable) shall not be allowed on surfaces that contain vegetation or rocks larger than four inches in greatest dimension. No fill shall be placed that contains vegetative materials as decomposition of that material can cause voids and possibly result in surface settlement. Voids in the soil matrix created or encountered during grading operations shall be backfilled with approved compacted fill material.

## **Soil Improvements:**

Subgrade preparation (if applicable) should consist of scarifying the exposed subgrade surface a minimum thickness of 10 inches, moisture conditioning (-2% to +2% of optimum moisture content per ASTM D-1557) and compaction to a minimum of 95% of modified Proctor density (per ASTM D-1557).

## Fill Material:

Engineered fill material (where applicable) for this project should meet the following gradation criteria:

<u>Sieve</u>	<u>% Passing</u>
4"	100
3/4"	70-100
#4	50-100
#200	50 max

The plasticity index of the minus #40 sieve portion should not exceed fifteen (15). Generally, the near surface on-site soils encountered in the borings meet the above specifications. Imported soils or a resulting mix of imported soils and native soils should be tested for compliance to the above referenced recommendation prior to use as engineered fill for this project.

## Compaction Requirements:

The maximum thickness of engineered fill lifts should be 10 inches or less in loose thickness. Engineered fill materials should be compacted to a minimum of 95% of modified Proctor density (ASTM D1557) at a moisture content within -2% to +2% of optimum moisture (ASTM D1557).

## Deep Foundations:

Drilled pier foundation systems could be used for support of the proposed steel poles. The drilled, straight-shaft foundation systems should be designed by the project structural engineer to resist horizontal and vertical forces. Horizontal forces are resisted by the

passive pressure of soil acting on the vertical face of the foundations. Vertical downward forces are resisted by the allowable end bearing pressure of the soils at the bottom of the drilled straight-shafts. Vertical uplift forces can be resisted by the skin resistance, dead weight of the structure and its foundation. When foundation concrete is cast in direct contact with native materials, an allowable side friction value can be used to resist vertical loads.

Design parameters for drilled straight-shaft foundation systems are presented in the tables below. The tables include the soil unit weights, allowable end bearing pressures, lateral passive pressures and skin friction values. The capacities within the upper 3 feet of the on-site native soils should be disregarded to account for surface effects and disturbance during foundation installation.

Settlement of the drilled straight-shaft foundations should be about one inch or less.

### Boring B-1

Depth Below Existing Grade	Unit Weight	Allowable End Bearing	Allowable Skin Friction	Allowable Passive Pressure (FS=2)	Coefficient of Subgrade Reaction	Cohesion	Angle of Internal Friction
ft	pcf	psf	psf	psf/ft	pci	psf	degrees
0-3	100	Ignore					
3-10	105	2,000	200	210	25	--	30
10-15	110	4,800	390	210	90	--	32

## Boring B-2

Depth Below Existing Grade	Unit Weight	Allowable End Bearing	Allowable Skin Friction	Allowable Passive Pressure (FS=2)	Coefficient of Subgrade Reaction	Cohesion	Angle of Internal Friction
ft	pcf	psf	psf	psf/ft	pci	psf	degrees
0-3	100	Ignore					
3-5	105	2,800	170	190	25	--	30
5-10	105	1,800	110	195	400	600	--
10-15	110	2,100	125	180	500	700	--
>15	115	9,000	550	180	1,000	3,000	--

## Boring B-3

Depth Below Existing Grade	Unit Weight	Allowable End Bearing	Allowable Skin Friction	Allowable Passive Pressure (FS=2)	Coefficient of Subgrade Reaction	Cohesion	Angle of Internal Friction
ft	pcf	psf	psf	psf/ft	pci	psf	degrees
0-3	100	Ignore					
3-5	105	1,500	90	195	300	500	--
5-10	110	3,200	250	210	25	--	30
10-15	110	4,500	275	170	800	1,500	--
>15	115	7,500	450	170	1,000	2,500	--

## Boring B-4

Depth Below Existing Grade	Effective Unit Weight	Allowable End Bearing	Allowable Skin Friction	Allowable Passive Pressure (FS=2)	Coefficient of Subgrade Reaction	Cohesion	Angle of Internal Friction
ft	pcf	psf	psf	psf/ft	pci	psf	degrees
0-3	100	Ignore					
3-6	105	3,200	170	210	25	--	30
6-10*	65	4,800	170	215	90	--	32
10-15*	65	8,000	250	215	90	--	33
>15*	55	1,200	260	215	25	--	25

\*water table encountered at 6 feet bgs

## Boring B-5

Depth Below Existing Grade	Effective Unit Weight	Allowable End Bearing	Allowable Skin Friction	Allowable Passive Pressure (FS=2)	Coefficient of Subgrade Reaction	Cohesion	Angle of Internal Friction
ft	pcf	psf	psf	psf/ft	pci	psf	degrees
0-3	105	Ignore					
3-4	110	4,800	140	210	90	--	31
4-10*	60	2,400	120	215	25	--	30
10-15*	50	800	190	170	25	--	27
>15*	50	800	230	215	25	--	25

\*water table encountered at 4 feet bgs

The cohesion, friction angle, and lateral subgrade modulus are ultimate values. The end bearing, skin friction, and passive resistance are allowable values with factors of safety of 3 and 2 (passive resistance). Lateral resistance and friction in the upper 3 feet should be disregarded due to the potential effects of frost action, desiccation, and drilling

disturbance. The drilled piers must extend to the greater of 2 feet or one-half the pier diameter into the bearing strata to achieve the listed capacity.

The drilled straight-shaft foundations should be installed in accordance with the procedures presented in "Drilled Shafts: Construction Procedures and Design Methods," by Reese, L. C. and O'Neill, M. W., FHA Publication No. FHWA-IF-99-025, 1999 and "Standard Specification for the Construction of Drilled Piers", ACI Publication No. 336.1-01, 2001.

Drilling to design depths should be possible with conventional heavy-duty single flight power augers. Casing or drilling slurry will likely be required to properly drill and clean piers due to loose sands (in each boring) and shallow water table (Borings B-4 and B-5). Due to potential sloughing of the native soils, foundation concrete quantities may exceed calculated volumes. If casing is used for pier construction, it should be withdrawn in a slow continuous manner maintaining a sufficient head of concrete to prevent the creation of voids in pier concrete.

### **Seismic Site Classification:**

The seismic site classification is based upon the soil profile in the upper 100 feet as defined by the weighted average of standard penetration blow-counts or shear wave velocity in accordance with Section 20.4 of the ASCE 7 and the International Building Code (IBC). Based upon my field investigation, it is my opinion that the Seismic Site Classification is **D ("Stiff Soil")**. The maximum depth of the borings advanced at the site was 15 feet. Therefore, soil properties below the maximum boring depth to 100 feet were estimated based on my experience with the general area. Deeper borings or geophysical testing would be required to confirm the conditions below the current boring depth.

## Lateral Earth Pressures:

Based upon the field exploration and laboratory testing, the following equivalent fluid pressures have been provided:

Material	USCS	Active (psf/ft)	Passive (psf/ft)	At Rest (psf/ft)
Silty Sand	SM	35	420	55
Poorly Graded Sand	SP	30	430	48
Sandy Silt	ML	34	390	53
Sandy Lean Clay	CL	40	360	60

The lateral earth pressures above do not include a factor of safety.

## Report Limitations:

The conclusions, recommendations and opinions presented herein are:

- 1) Based upon evaluation and interpretation of the findings of the field and laboratory program.
- 2) Based upon an interpolation of soil conditions between and beyond the explorations.
- 3) Subject to confirmation of the conditions encountered during construction.

4) Based upon the assumption that sufficient observation and testing will be provided during construction.

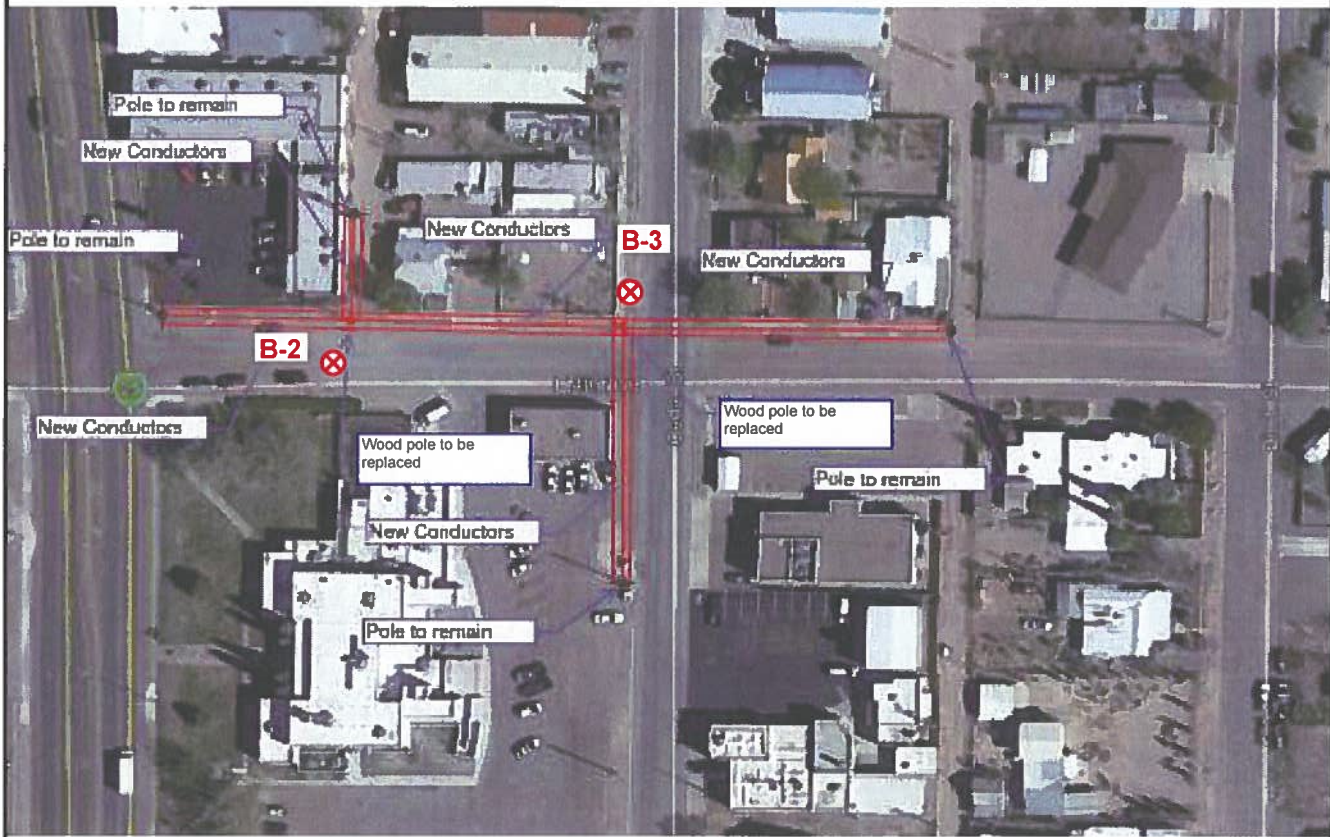
There is no other warranty, either express or implied. Any person using this report for bidding or construction purposes should perform such independent investigation as he deems necessary to satisfy himself as to the surface and subsurface conditions to be encountered and the procedures to be used in the performance of work on this project. If conditions are encountered during construction that appear to differ from those indicated in this report, I should be notified immediately.





⊗ Approximate Boring Location

Project Manager: DC	Project No. 422072	<b>COZ Engineering, LLC</b>  PO Box 13331 Las Cruces, NM 88013	<b>BORING LOCATION PLAN</b>  <b>T or C Pole Line Replacements</b> 9 <sup>th</sup> Street Truth or Consequences, NM	Exhibit  <b>1</b>
Drawn by: DC	Scale: AS SHOWN			
Checked by: DC	File Name: Figures			
Approved by: DC	Date: 12-15-20			



⊗ Approximate Boring Location

Project Manager:	DC
Drawn by:	DC
Checked by:	DC
Approved by:	DC
Project No.	422072
Scale:	AS SHOWN
File Name:	Figures
Date:	12-15-20

**COZ Engineering, LLC**

PO Box 13331  
Las Cruces, NM 88013

### BORING LOCATION PLAN

T or C Pole Line Replacements  
4<sup>th</sup> Avenue  
Truth or Consequences, NM

Exhibit

2





⊗ Approximate Boring Location

Project Manager:	DC	Project No.	422072
Drawn by:	DC	Scale:	AS SHOWN
Checked by:	DC	File Name:	Figures
Approved by:	DC	Date:	12-15-20

**COZ Engineering, LLC**

PO Box 13331  
Las Cruces, NM 88013

## BORING LOCATION PLAN

T or C Pole Line Replacements  
Austin Street  
Truth or Consequences, NM

Exhibit

3

Project: **T or C Pole Line Replacements**  
 Project Location: **Truth or Consequences, NM**  
 Project Number: **422072**

**Log of Boring B-1**  
**Sheet 1 of 1**





Date(s) Drilled <b>11-24-20</b>	Logged By <b>COZ</b>	Checked By <b>COZ</b>
Drilling Method <b>hollow-stem auger</b>	Drill Bit Size/Type	Total Depth of Borehole <b>16.5 feet bgs</b>
Drill Rig Type <b>CME-75</b>	Drilling Contractor <b>Enviro-Drill</b>	Approximate Surface Elevation
Groundwater Level and Date Measured <b>not encountered</b>	Sampling Method(s) <b>SPT</b>	Hammer Data
Borehole Backfill <b>cuttings</b>	Location <b>see boring plan</b>	

Elevation (feet)	Depth (feet)	Sample Type	Sample Number	Sampling Resistance, blows/ft	Material Type	Graphic Log	MATERIAL DESCRIPTION	Water Content, %	Percent Fines	LL, %	PI, %
0					SM		SILTY SAND WITH GRAVEL: brown, dry, loose				
			1	413/2				4.5	16.0		NP
5			2	212/3	SM		SILTY SAND: brown, dry, loose				
10			3	515/5							
15			4	516/8			medium dense				
							Bottom of Boring				
20											
25											
30											

Project: **T or C Pole Line Replacements**  
 Project Location: **Truth or Consequences, NM**  
 Project Number: **422072**

**Log of Boring B-2**  
**Sheet 1 of 1**

Date(s) Drilled <b>11-24-20</b>	Logged By <b>COZ</b>	Checked By <b>COZ</b>
Drilling Method <b>hollow-stem auger</b>	Drill Bit Size/Type	Total Depth of Borehole <b>16.5 feet bgs</b>
Drill Rig Type <b>CME-75</b>	Drilling Contractor <b>Enviro-Drill</b>	Approximate Surface Elevation
Groundwater Level and Date Measured <b>not encountered</b>	Sampling Method(s) <b>SPT</b>	Hammer Data
Borehole Backfill <b>cuttings</b>	Location <b>see boring plan</b>	

Elevation (feet)	Depth (feet)	Sample Type	Sample Number	Sampling Resistance, blows/ft	Material Type	Graphic Log	MATERIAL DESCRIPTION	Water Content, %	Percent Fines	LL, %	PI, %
0					SM-SC		SILTY, CLAYEY SAND: brown, dry, loose				
1	1		31413								
5	5		2	3134	ML		SANDY SILT: brown, dry, medium stiff	6.5	50.7		NP
10	10		3	41315	CL		SANDY LEAN CLAY: brown, dry, stiff				
15	15		4	511217			very stiff				
							Bottom of Boring				
20	20										
25	25										
30	30										

Project: **T or C Pole Line Replacements**  
 Project Location: **Truth or Consequences, NM**  
 Project Number: **422072**

**Log of Boring B-3**  
**Sheet 1 of 1**

Date(s) Drilled <b>11-24-20</b>	Logged By <b>COZ</b>	Checked By <b>COZ</b>
Drilling Method <b>hollow-stem auger</b>	Drill Bit Size/Type	Total Depth of Borehole <b>16.5 feet bgs</b>
Drill Rig Type <b>CME-75</b>	Drilling Contractor <b>Enviro-Drill</b>	Approximate Surface Elevation
Groundwater Level and Date Measured <b>not encountered</b>	Sampling Method(s) <b>SPT</b>	Hammer Data
Borehole Backfill <b>cuttings</b>	Location <b>see boring plan</b>	

Elevation (feet)	Depth (feet)	Sample Type	Sample Number	Sampling Resistance, blows/ft	Material Type	Graphic Log	MATERIAL DESCRIPTION	Water Content, %	Percent Fines	LL, %	PI, %
0					ML		SANDY SILT: brown, dry, medium stiff				
	1		31213								
5					SM		SILTY SAND: brown, dry, loose				
	2		21414								
10					CL		LEAN CLAY WITH SAND: brown, dry, stiff	15.9	79.7	32	17
	3		51618								
15							very stiff				
	4		916116				Bottom of Boring				
20											
25											
30											

Project: **T or C Pole Line Replacements**  
 Project Location: **Truth or Consequences, NM**  
 Project Number: **422072**

**Log of Boring B-4**  
**Sheet 1 of 1**





Date(s) Drilled <b>11-24-20</b>	Logged By <b>COZ</b>	Checked By <b>COZ</b>
Drilling Method <b>hollow-stem auger</b>	Drill Bit Size/Type	Total Depth of Borehole <b>16.5 feet bgs</b>
Drill Rig Type <b>CME-75</b>	Drilling Contractor <b>Enviro-Drill</b>	Approximate Surface Elevation
Groundwater Level and Date Measured <b>6', 11-24-20</b>	Sampling Method(s) <b>SPT</b>	Hammer Data
Borehole Backfill <b>cuttings</b>	Location <b>see boring plan</b>	

Elevation (feet)	Depth (feet)	Sample Type	Sample Number	Sampling Resistance, blows/ft	Material Type	Graphic Log	MATERIAL DESCRIPTION	Water Content, %	Percent Fines	LL, %	PI, %
	0				SM		SILTY SAND: dark brown-grey, moist, loose				
	1		1	213/5							
	5		2	415/7	SP		POORLY GRADED SAND: grey, water bearing at 6', medium dense				
	10		3	711/9	SP		POORLY GRADED SAND WITH GRAVEL: grey, water bearing, medium dense				
	15		4	112/1			very loose				
							Bottom of Boring				
	20										
	25										
	30										

Project: **T or C Pole Line Replacements**  
 Project Location: **Truth or Consequences, NM**  
 Project Number: **422072**

**Log of Boring B-5**  
**Sheet 1 of 1**

Date(s) Drilled <b>11-24-20</b>	Logged By <b>COZ</b>	Checked By <b>COZ</b>
Drilling Method <b>hollow-stem auger</b>	Drill Bit Size/Type	Total Depth of Borehole <b>16.5 feet bgs</b>
Drill Rig Type <b>CME-75</b>	Drilling Contractor <b>Enviro-Drill</b>	Approximate Surface Elevation
Groundwater Level and Date Measured <b>4', 11-24-20</b>	Sampling Method(s) <b>SPT</b>	Hammer Data
Borehole Backfill <b>cuttings</b>	Location <b>see boring plan</b>	

Elevation (feet)	Depth (feet)	Sample Type	Sample Number	Sampling Resistance, blows/ft	Material Type	Graphic Log	MATERIAL DESCRIPTION	Water Content, %	Percent Fines	LL, %	PI, %
0					SM		SILTY SAND WITH GRAVEL: dark brown, dry, medium dense	14.4	22.0		NP
1			1	51616							
5			2	31313	SP		POORLY GRADED SAND: grey, water bearing at 4', loose				
10			3	21111	SC		CLAYEY SAND: grey, water bearing, very loose, trace gravel				
15			4	11111	SP		POORLY GRADED SAND WITH GRAVEL: brown, water bearing, very loose				
							Bottom of Boring				
20											
25											
30											



Project: **T or C Pole Line Replacements**  
 Project Location: **Truth or Consequences, NM**  
 Project Number: **422072**

## Key to Log of Boring Sheet 1 of 1





















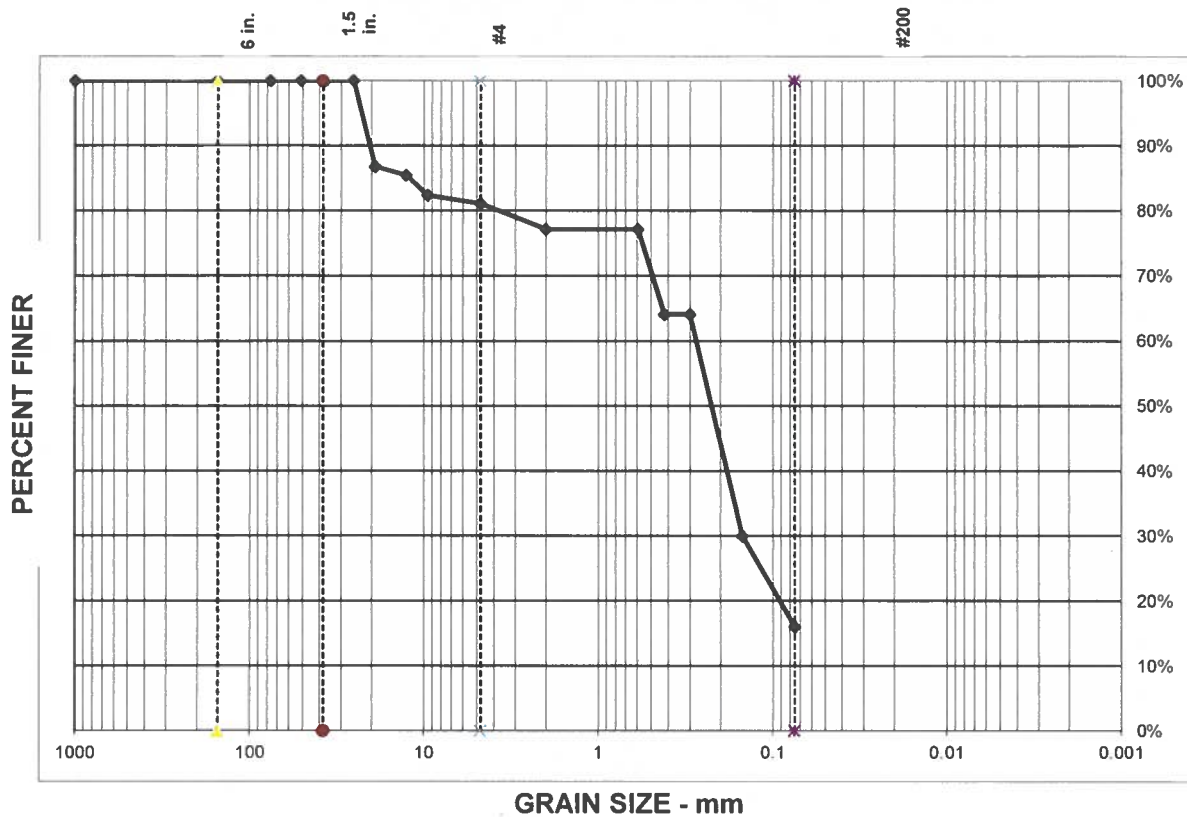
Elevation (feet)	Depth (feet)	Sample Type	Sample Number	Sampling Resistance, blows/ft	Material Type	Graphic Log	MATERIAL DESCRIPTION	Water Content, %	Percent Fines	LL, %	PI, %
1	2	3	4	5	6	7	8	9	10	11	12
<b>COLUMN DESCRIPTIONS</b>											
<p><b>1</b> Elevation (feet): Elevation (MSL, feet).</p> <p><b>2</b> Depth (feet): Depth in feet below the ground surface.</p> <p><b>3</b> Sample Type: Type of soil sample collected at the depth interval shown.</p> <p><b>4</b> Sample Number: Sample identification number.</p> <p><b>5</b> Sampling Resistance, blows/ft: Number of blows to advance driven sampler one foot (or distance shown) beyond seating interval using the hammer identified on the boring log.</p> <p><b>6</b> Material Type: Type of material encountered.</p> <p><b>7</b> Graphic Log: Graphic depiction of the subsurface material encountered.</p> <p><b>8</b> MATERIAL DESCRIPTION: Description of material encountered. May include consistency, moisture, color, and other descriptive text.</p> <p><b>9</b> Water Content, %: Water content of the soil sample, expressed as percentage of dry weight of sample.</p> <p><b>10</b> Percent Fines: The percent fines (soil passing the No. 200 Sieve) in the sample. WA indicates a Wash Sieve, SA indicates a Sieve Analysis.</p> <p><b>11</b> LL, %: Liquid Limit, expressed as a water content.</p> <p><b>12</b> PI, %: Plasticity Index, expressed as a water content.</p>											
<b>FIELD AND LABORATORY TEST ABBREVIATIONS</b>											
<p>CHEM: Chemical tests to assess corrosivity          COMP: Compaction test          CONS: One-dimensional consolidation test          LL: Liquid Limit, percent</p> <p>PI: Plasticity Index, percent          SA: Sieve analysis (percent passing No. 200 Sieve)          UC: Unconfined compressive strength test, Qu, in ksf          WA: Wash sieve (percent passing No. 200 Sieve)</p>											
<b>MATERIAL GRAPHIC SYMBOLS</b>											
<p> Lean CLAY, CLAY w/SAND, SANDY CLAY (CL)</p> <p> SILT, SILT w/SAND, SANDY SILT (ML)</p> <p> Clayey SAND (SC)</p> <p> Silty SAND (SM)</p> <p> Silty to Clayey SAND (SM-SC)</p> <p> Poorly graded SAND (SP)</p>											
<b>TYPICAL SAMPLER GRAPHIC SYMBOLS</b>											
<p> Auger sampler</p> <p> Bulk Sample</p> <p> 3-inch-OD California w/ brass rings</p> <p> CME Sampler</p> <p> Grab Sample</p> <p> 2.5-inch-OD Modified California w/ brass liners</p> <p> Pitcher Sample</p> <p> 2-inch-OD unlined split spoon (SPT)</p> <p> Shelby Tube (Thin-walled, fixed head)</p>											
<b>OTHER GRAPHIC SYMBOLS</b>											
<p> Water level (at time of drilling, ATD)</p> <p> Water level (after waiting)</p> <p> Minor change in material properties within a stratum</p> <p> Inferred/gradational contact between strata</p> <p> Queried contact between strata</p>											
<b>GENERAL NOTES</b>											
<p>1: Soil classifications are based on the Unified Soil Classification System. Descriptions and stratum lines are interpretive, and actual lithologic changes may be gradual. Field descriptions may have been modified to reflect results of lab tests.</p> <p>2: Descriptions on these logs apply only at the specific boring locations and at the time the borings were advanced. They are not warranted to be representative of subsurface conditions at other locations or times.</p>											

Figure B-1

## GRAIN SIZE DISTRIBUTION GRAPH



### TEST SUMMARY (ASTM C136)

Sieve Size	1 1/2"	3/4"	3/8"	#4	#10	#40	#100	#200
% Passing (Cumulative)	100%	87%	82%	81%	77%	64%	30%	16.0%
Specification								

% GRAVEL = 19%  
 % SAND = 65%  
 % SILT & CLAY = 16%

$D_{85} = 12.2$   
 $D_{60} = 0.3$   
 $D_{50} = 0.2$   
 $D_{30} = 0.2$

$D_{15} =$   
 $D_{10} =$   
 $C_U =$   
 $C_C =$

**Sample Date:** 11/24/20

**Project No.:** 422072

**Project Name:** T or C Pole Line Replacements

**Report Date:** 12/15/20

**Sample Location:** B-1 @ 2.5'

**Liquid Limit:**

**Plasticity Index:** NP

**USCS Classification:** SM

**Material Description:** Silty Sand with Gravel

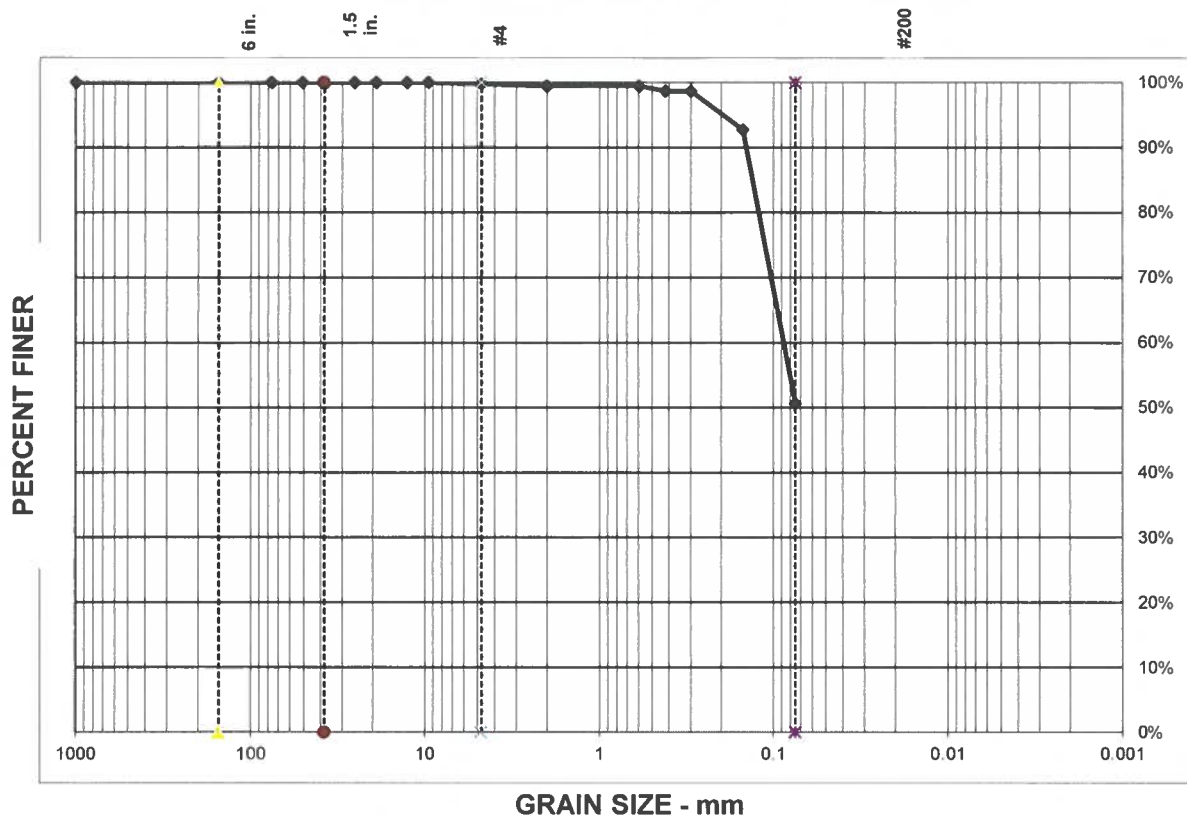
**In-Situ Moisture Content:** 4.5%

**COZ Engineering, LLC**

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 Las Cruces, NM 88013

(575) 642-7671

## GRAIN SIZE DISTRIBUTION GRAPH



### TEST SUMMARY (ASTM C136)

Sieve Size	1 1/2"	3/4"	3/8"	#4	#10	#40	#100	#200
% Passing (Cumulative)	100%	100%	100%	100%	99%	99%	93%	50.7%
Specification								

% GRAVEL = 0%  
 % SAND = 49%  
 % SILT & CLAY = 51%

$D_{85} = 0.1$   
 $D_{60} = 0.1$   
 $D_{50} =$   
 $D_{30} =$

$D_{15} =$   
 $D_{10} =$   
 $C_U =$   
 $C_C =$

**Sample Date:** 11/24/20

**Project No.:** 422072

**Project Name:** T or C Pole Line Replacements

**Report Date:** 12/15/20

**Sample Location:** B-2 @ 5'

**Liquid Limit:**

**Plasticity Index:** NP

**USCS Classification:** ML

**Material Description:** Sandy Silt

**In-Situ Moisture Content:** 6.5%

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Grain size distribution plot showing Percent Finer versus Grain Size (mm). The curve indicates that approximately 100% of the material is finer than 0.25 mm, and about 78% is finer than 0.06 mm.

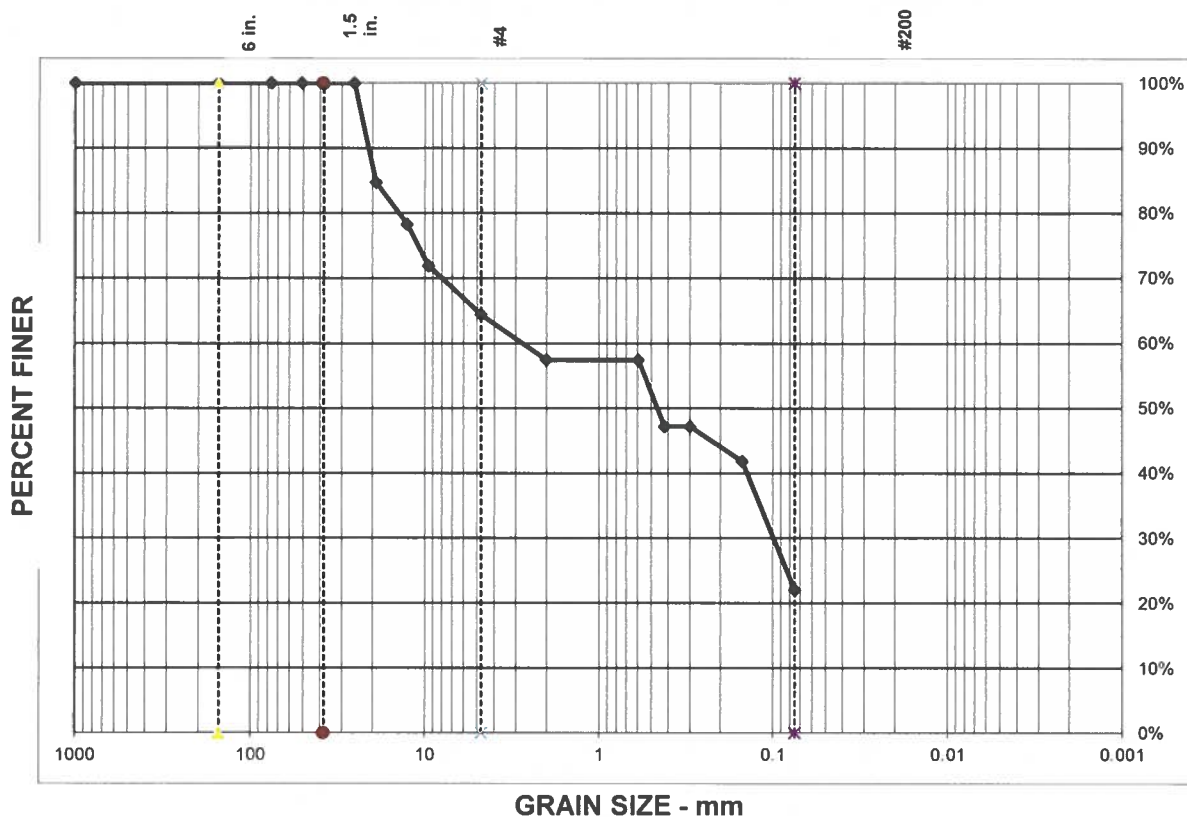
Grain Size (mm)	Percent Finer (%)
1000	100
600	100
425	100
300	100
250	100
200	100
150	100
106	100
75	100
60	100
425	100
300	100
250	100
200	100
150	100
106	100
75	100
60	100
425	100
300	100
250	100
200	100
150	100
106	100
75	100
60	100
425	100
300	100
250	100
200	100
150	100
106	100
75	100
60	100
425	100
300	100
250	100
200	100
150	100
106	100
75	100
60	100
425	100
300	100
250	100
200	100
150	100
106	100
75	100
60	100
425	100
300	100
250	100
200	100
150	100
106	100
75	100
60	100
425	100
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425	100
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106	100
75	100
60	100
425	100
300	100
250	100
200	100
150	100
106	100
75	100
60	100
425	100
300	100
250	100
200	100
150	100
106	100
75	100
60	100
425	100
300	100
250	100
200	100
150	100
106	100
75	100
60	100
425	100
300	

<b>Sieve Size</b>	1 1/2"	3/4"	3/8"	#4	#10	#40	#100	#200
<b>% Passing (Cumulative)</b>	100%	100%	100%	100%	100%	100%	98%	79.7%
<b>Specification</b>								

**D<sub>15</sub> =**  
**D<sub>10</sub> =**  
**C<sub>U</sub> =**  
**C<sub>C</sub> =**

(575) 642-7671

## GRAIN SIZE DISTRIBUTION GRAPH



### TEST SUMMARY (ASTM C136)

Sieve Size	1 1/2"	3/4"	3/8"	#4	#10	#40	#100	#200
% Passing (Cumulative)	100%	85%	72%	64%	57%	47%	42%	22.0%
Specification								

% GRAVEL = 36%  
 % SAND = 42%  
 % SILT & CLAY = 22%

$D_{85} = 19.1$   
 $D_{60} = 2.8$   
 $D_{50} = 0.5$   
 $D_{30} = 0.1$

$D_{15} =$   
 $D_{10} =$   
 $C_U =$   
 $C_C =$

**Sample Date:** 11/24/20

**Project No.:** 422072

**Project Name:** T or C Pole Line Replacements

**Report Date:** 12/15/20

**Sample Location:** B-5 @ 2.5'

**Liquid Limit:**

**Plasticity Index:** NP

**USCS Classification:** SM

**Material Description:** Silty Sand with Gravel

**In-Situ Moisture Content:** 14.4%

**COZ Engineering, LLC**

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**CITY OF TRUTH OR CONSEQUENCES  
12 kV DISTRIBUTION LINE  
TECHNICAL SPECIFICATIONS INDEX**

<b>NUMBER</b>	<b>TITLE</b>
01 04 70	Coordination with Public
01 12 16	Work Sequence
01 14 19	Contractor's Use of Premises
01 20 00	Applications for Payment
01 20 10	Measurement and Payment
01 31 19	Project Meetings
01 32 16	Construction Schedule
01 33 00	Shop Drawings, Product Data, and Samples
01 50 00	Temporary Facilities and Controls
01 55 26	Traffic Regulation
01 57 00	Temporary Controls
01 60 00	Material and Equipment
01 70 00	Contract Closeout
01 74 00	Cleaning
01 78 39	Project Record Documents
01 92 13	Operating and Maintenance Data
33 00 00	General Electrical Requirements

SECTION 01 04 70  
COORDINATION WITH PUBLIC

PART 1 GENERAL

1.01 WORK INCLUDED

- A. Before, after and special construction notices.
- B. Physical delivery of construction notifications to all residences affected by work.

1.02 RELATED WORK

- A. Section 01 12 16: Work Sequence
- B. Section 01 31 19: Project Meetings
- C. Section 01 32 16: Construction Schedules
- D. Section 01 33 00: Shop Drawings, Product Data, and Samples

1.03 PUBLIC MEETING:

- A. The OWNER will schedule a public meeting for the purpose informing the public of:
  - 1. The nature of work to be performed.
  - 2. The anticipated project schedule.
  - 3. Detailed explanations of expected and potential impacts to residents.
- B. CONTRACTOR will be responsible for attending the public meeting and leading the discussions outlined above.

1.04 NOTICES

- A. Before Construction:
  - 1. Delivered to the ENGINEER not more than seven, nor less than four, calendar days prior to actual physical construction on each line or line segment.

2. Corrected notices delivered if construction does not start within 48 hours of date given in notice.
3. Written notice to state:
  - a. CONTRACTOR'S name, address and local telephone number.
  - b. Nature of work to be done.
  - c. Disruption that residents or businesses might expect.
  - d. Expected duration of construction.
  - e. CONTRACTOR'S local telephone number to which complaints may be made during normal working hours.
  - f. CONTRACTOR'S local telephone number to which emergency conditions can be reported during non-working periods.

B. Before Electrical Power Service Outages and Access Restrictions:

1. Hand delivery of cardboard door hangers notifying impacted businesses and residences of a power service outage.
2. Hand delivery of cardboard door hangers notifying impacted businesses residences of a property access restriction.
3. Cardboard door hangers shall be in full color showing:
  - a. The city of Truth or Consequences logo, 2" diameter minimum.
  - b. CONTRACTOR'S name, address and local telephone number.
  - c. Nature of work to be done.
  - d. Disruption that residents or businesses might expect.
  - e. Expected duration of construction.
  - f. CONTRACTOR'S local telephone number to which complaints may be made during normal working hours.
  - g. CONTRACTOR'S local telephone number to which emergency conditions can be reported during non-working periods.
  - h. See Section 01 12 16: Work Sequence for more information on distribution of public notifications.
  - i. Submit door hanger product data and design and five (5) samples to ENGINEER and OWNER for approval per Section 01 33 00: Shop Drawings, Product Data, and Samples.

C. After Construction:

1. Delivered not more than seven calendar days following construction on each line or line segment.
2. Written notice to:
  - a. State CONTRACTOR'S name, address and telephone number.
  - b. Thank residents and businesses for cooperation and report that work is completed in their area.



- D. Notice:
1. Inform residents and businesses personally and by written notice whenever access to property will be impaired, stating scheduling of such impairment in the notice.
  2. Hand-delivery to each resident and business adjacent to and/or which may be reasonably expected to be affected by construction.

1.05 SCHEDULE OF SPECIAL REQUIREMENTS FOR THIS PROJECT

- A. Notification of all residences and commercial businesses in the area affected by water and sewer service outages as well as other impacts of construction.

END OF SECTION

## SECTION 01 12 16

### WORK SEQUENCE

#### PART 1 GENERAL

##### 1.01 WORK SEQUENCE

- A. Work may be accomplished with the following considerations:
  - 1. All entry to existing equipment and power service outages shall be coordinated with the Owner.
  - 2. Power service outages will require a five business day notice.
  - 3. Power service outages shall occur between 9am and 5pm, Tuesday to Thursday. Outages shall not occur on weekends, Mondays, or Fridays.
  - 4. Maximum outage length shall be 2 hours for all services with the exception of the Bullocks Grocery Store and Davis-Fleck Pharmacy on Broadway St.
  - 5. Bullocks Grocery Store and Davis-Fleck Pharmacy on Broadway St. shall not have outages. Provide generator power to maintain continuous power service to these locations.
  - 6. Power service outages extending beyond the maximum outage length shall accrue damage penalties in the amount of \$500/hour. Damage penalties shall be assessed at the top of each hour beyond the maximum outage length until continuous power service is restored.
  - 7. Unscheduled power service outages shall accrue damage penalties in the amount of \$500/hour. Damage penalties shall be assessed at the top of each hour until continuous power service is restored.
  - 8. Power service outages shall occur for services served from a single transformer.
  - 9. Coordinate with Owner when work will impact power end user access to residences. Any work impacting access will require a five business day notice.
- B. Work sequence:
  - 1. The existing electrical distribution system and/or portions of the system shall remain energized during construction.
  - 2. Outages of thirty minutes or less may occur more than two times per power service end user, though a notice of the outage must be a minimum of five business days.

- C. CONTRACTOR may submit for approval an alternate sequence plan in the event that installations may be accomplished in phases to better facilitate outages or minimize the inconvenience to OWNER or power service end users.

END OF SECTION

## SECTION 01 14 19

### CONTRACTOR'S USE OF PREMISES

#### PART 1 GENERAL

##### 1.01 WORK INCLUDED

- A. General requirements for the CONTRACTOR'S use of premises.

##### 1.02 RELATED WORK

- A. General conditions of the Contract.

##### 1.03 AVAILABLE SITES

- A. The CONTRACTOR shall provide adequate storage areas for materials and equipment during the course of the work. The CONTRACTOR shall make arrangements for securing and maintaining storage areas during construction and be fully responsible for those areas while in use, regardless of ownership.

##### 1.04 PROTECTION AND RESTORATION

- A. All existing features and improvements to or within the project area shall be restored by the CONTRACTOR equivalent to those existing prior to construction at no additional cost to the OWNER.
- B. Compliance with special requirements or considerations indicated on the Drawings for the use of facilities shall be the CONTRACTOR'S responsibility at no additional cost to the OWNER.
- C. Trees and other landscaping within the project area shall be preserved and/or replaced to their original condition, unless specifically indicated on the Drawings.
- D. CONTRACTOR is permitted only to access site as shown on the plans. Under no circumstances is the CONTRACTOR to operate vehicles outside the access and work area limits.

- E. All existing traffic control shall be kept in tact and be reinstalled as in place prior to construction commencement. Replacement of damaged traffic control shall be done at the CONTRACTOR'S expense to City standard

#### 1.05 SPECIAL CONSTRUCTION METHODS

- A. Special and/or hand construction methods may be required to maintain existing conditions.
- B. Such methods shall be used by the CONTRACTOR at no additional cost to the OWNER.

#### 1.06 CLEANING DURING CONSTRUCTION

- A. Execute periodic cleaning to keep the Work, the site and adjacent properties free from accumulation of waste materials, rubbish, and windblown debris resulting from construction operations.
- B. Provide on-site containers for the collection of waste materials, debris and rubbish.
- C. Remove waste soil materials, debris, and rubbish from the site periodically, and dispose of at legal disposal areas away from the site.

#### 1.07 DUST CONTROL

- A. Provide dust control as needed during construction to maintain access road and work area. All local ordinances and requirements shall be adhered to.

END OF SECTION

## SECTION 01 20 00

### APPLICATIONS FOR PAYMENT

#### PART 1 GENERAL

##### 1.01 WORK INCLUDED

- A. Submit Applications for Payment to ENGINEER in accordance with the schedule established by conditions of the Contract and Agreement between OWNER and CONTRACTOR.

##### 1.02 RELATED WORK

- A. Agreement between OWNER and CONTRACTOR: lump sum prices.
- B. Conditions of the Contract: progress payments, retainages and final payment.
- C. Section 01 78 39: Project Record Documents

##### 1.03 FORMAT AND DATA REQUIRED

- A. Submit applications in the form required by ENGINEER in accordance with the example to be provided with itemized data typed on 8½" x 14" white paper continuation sheets.
- B. Provide typed itemized data on continuation sheet:
  - 1. Format, schedules, line items and values accepted by ENGINEER.
  - 2. For unit price contracts, pay items shall be the same as those listed in the Bid Proposal plus executed changes.

##### 1.04 PREPARATION OF APPLICATION FOR EACH PROGRESS PAYMENT

- A. Application Form:
  - 1. Fill in required information, including that for change orders executed prior to date of submittal of application.
  - 2. Fill in summary of dollar values to agree with respective totals indicated on continuation sheets.

3. Execute certification with signature of a responsible officer of Contract firm.

B. Continuation Sheets:

1. Fill in total list of all scheduled component items of work, with item number and scheduled dollar value for each item.
2. Fill in dollar value in each column for each scheduled line item when work has been performed or products stored.
3. List each change order executed, prior to date of submission, at the end of the continuation sheets.

1.05 SUBSTANTIATING DATA FOR PROGRESS PAYMENTS

A. Submit with each copy of Application:

1. Properly identified invoices supporting requests for materials payments.
2. Properly identified invoices for inspection testing allowance payments, if any.
3. Wage rate certification in accordance with requirements of the NM Department of Workforce Solutions.
4. If required by ENGINEER, certificate of payment of all suppliers and subcontractors for which payment has previously been received from OWNER in accordance with example form to be provided by ENGINEER.

1.06 PREPARATION OF APPLICATION FOR FINAL PAYMENT

- A. Fill in application form as specified for progress payments.

1.07 SUBMITTAL PROCEDURE

- A. Submit Applications for Payment to ENGINEER at the times stipulated in the Agreement.
- B. Five copies of each Application required.
- C. When ENGINEER finds Application properly completed and correct, he will transmit certificate for payment to OWNER, with copy to CONTRACTOR.

END OF SECTION

SECTION 01 20 10  
MEASUREMENT AND PAYMENT

PART 1 GENERAL

1.01 REQUIREMENTS INCLUDED

- A. General requirements for measurement for payments and description of bid items.

1.02 RELATED REQUIREMENTS

- A. Agreement and corresponding bid.
- B. Section 01 20 00: Application for Payment.

1.03 UNIT PRICE ITEMS

- A. Estimated Quantities:
  - 1. Estimated quantities in Bid Form are approximate and used only for:
    - a. Basis for estimating probable cost of Work.
    - b. For comparison of Bids submitted for Work.
  - 2. Actual work done or materials furnished under Unit Price item may differ from estimated quantities.
  - 3. Basis of payment: actual amount of Work as determined by applying the appropriate unit price as bid.
- B. Other Unit Price Items: Unit complete in place and ready for use including all work.

1.04 LUMP SUM ITEMS

- A. Payment for all lump sum bid items includes all work, labor and materials required to provide a complete, ready-to-use installation. Lump sum items are those as indicated in the Bid Schedule.
- B. Mobilization/Demobilization: Payment for mobilization/demobilization at a maximum of 15% of the total construction cost shall be at the lump sum price listed in the bid schedule. The OWNER will pay the CONTRACTOR using the following procedure:
  - 1. If the CONTRACTOR has performed work representing less than 5% of the total original contract amount less mobilization, the OWNER will pay 25% of the mobilization\demobilization bid amount.



2. If the CONTRACTOR has performed work representing from 5% to less than 20% of the total original contract amount less mobilization, the OWNER will pay 50% of the mobilization\demobilization bid amount.
3. If the CONTRACTOR has performed work representing 20% or more of the total original contract amount less mobilization, the OWNER will pay the mobilization\demobilization bid amount value from 50% to 75% divided by the remaining contract months.
4. The remaining 25% may be requested upon demobilization completion from the job site.
5. The OWNER will not make additional payments for demobilization and remobilization due to shutdowns or suspensions of the work, or for other mobilization activities required for satisfactory completion of the contract.

1.05 ALLOWANCES

- A. Not Used.

1.06 MATERIALS

- A. For small projects for which a schedule of values is not required, payment for materials delivered but not fully incorporated in the Project will only be made if such materials are available for inspection at the Contractor's job site yard, and for which invoices are presented to the Engineer.

1.07 INCIDENTAL WORK

- A. All work, labor, materials, appurtenances, activities and requirements to complete the facilities complete, in place and ready for use, and to comply with all requirements and conditions of the Contract Documents are considered incidental work to the Contract Documents' bid items. No separate, additional or special payment will be due the Contractor for incidental work.
- B. Above, on- or below-ground obstructions, utilities, features or improvements interfering with the work or which must be moved, removed and/or restored to accomplish the Work are considered as incidental work for which separate payment will not be made if separate bid items are not specifically given for such in the Contract Documents.
- C. Construction staking for the project shall be performed by the Contractor and is considered incidental work for no separate payment will be made. The Contractor shall take care to protect existing control points shown on the Drawings.
- D. Traffic control shall be considered as incidental work for which separate payment will not be made, unless otherwise shown on the Bid Schedule.

1.08

FORCE ACCOUNT

- A. If a Force Account Allowance is included on the Bid Form, the Owner will pay the Contractor in accordance with the following provisions.
- B. The force account allowance will only be used when an unordinary storm event is experienced within the lake drainage basin. Only storm events that cause the coffer dam to be overtopped will be classified an unordinary. All other storm events and corresponding runoff shall be accounted for as part of normal daily work operations.
- C. If Subcontractors perform Work by Force Account, the Owner shall only compensate the Contractor an additional ten percent (10%) of the total cost of the subcontracted Work for indirect and administrative costs.
- D. When a force account event is triggered the Contractor will keep a complete and accurate account, in detail, of the cost of doing the Work on a Force Account basis. Failure to maintain records on a force account activities when so directed by the Engineer shall waive any associated right by the Contractor for reimbursement of such costs.
- E. Force account status will remain in effect until such time that normal debris removal operations are resumed as determined by the Engineer.
- F. The Owner will pay the Contractor for labor, the wage rate for Force Account Work actually paid by the Contractor during the pay period ending before the issuance of the Change Order authorizing the Force Account Work. Such payment shall include Work by supervisors in direct charge of the Force Account Work. If there is no wage rate for a labor classification needed to perform the type of Work required, the Owner and Contractor will negotiate and document a new wage rate before beginning the Force Account Work. Labor shall also include, and the Department will reimburse for, the following actual reasonable costs paid to (or on behalf of) workers:
  - 1. Subsistence and travel allowances;
  - 2. Health and welfare benefits;
  - 3. Pension fund benefits.
- G. The Owner will pay an additional 45% of the labor cost for associated labor burden, overhead and profit.
- H. Equipment rental rates shall be paid as shown in the Blue Book in effect at Advertisement date. The rates in the Rental Rate Blue Book reflect current ownership, overhead and operation costs, based on the average hours of operation per year. The rates do not include operating personnel. The ownership cost represents the total cost of depreciation, interest, insurance, taxes, storage, etc., calculated to an hourly rate. Estimated operating cost per hour includes fuel, lubricants, tires, and other operating expendables, e.g. the percentage of mechanics' wages chargeable to preventive and field maintenance. The current Blue Book applies to machinery or special Equipment (other than small tools) and transportation authorized by the Engineer. The Blue Book rates shall be used for the actual time the Equipment is in operation. The Owner will pay for equipment used on force account work at the regular hourly rate in accordance with the rate provided in the Blue Book. No additional costs shall be incurred for small tools.

- I. The Owner will pay the Contractor the actual cost of materials accepted by the Engineer and incorporated into the force account work, including transportation charges paid.
- J. The Contractor shall receive payment for one and one half percent (1%) of the total force account amount for the contract bonds and insurance.

END OF SECTION

## SECTION 01 31 19

### PROJECT MEETINGS

#### PART 1 GENERAL

##### 1.01 WORK INCLUDED

- A. Preconstruction conference to be scheduled by ENGINEER.
- B. Progress or special meetings as deemed necessary and scheduled by OWNER or ENGINEER.
- C. Special and final inspections by OWNER or ENGINEER when requested.
- D. CONTRACTOR to attend project meetings at no additional cost to OWNER.

##### 1.02 RELATED WORK

- A. Section 01 32 16: Construction Schedules

##### 1.03 SCHEDULE OF SPECIAL REQUIREMENTS FOR THIS PROJECT

- A. Weekly progress meetings between the CONTRACTOR and ENGINEER.
- B. Monthly progress meetings to include the OWNER.
- C. Meetings shall be scheduled before start for coordination and scheduling.

END OF SECTION

SECTION 01 32 16  
CONSTRUCTION SCHEDULES

PART 1 GENERAL

1.01 WORK INCLUDED

- A. Promptly after award of the Contract, prepare and submit to ENGINEER estimated construction progress schedules for the Work, with subschedules of related activities essential to its progress.
- B. Submit revised progress schedules.
- C. Schedule subject to approval of ENGINEER.
- D. Schedule construction working hours.

1.02 RELATED WORK

- A. Conditions of the Contract.
- B. Section 01 20 00 Applications for Payment
- C. Section 01 31 19: Project Meetings
- D. Section 01 33 00: Shop Drawings, Product Data, Samples

1.03 FORM OF SCHEDULES (A OR B)

- A. Prepare schedules in the form of a horizontal bar chart.
  - 1. Provide separate horizontal bar for each trade or operation.
  - 2. Horizontal time scale: identify the first work day of each week.
  - 3. Scale and spacing: to allow space for notations and future revisions.
- B. Prepare schedules in the form of "C.P.M."
- C. Format of listings: chronological order of the start of each item of work.

#### 1.04 CONTENT OF SCHEDULES

- A. Construction Progress Schedule:
  - 1. Show the complete sequence of construction by activity.
  - 2. Show projected percentage of completion for each item as of the first day of each month.
- B. Provide subschedules to define critical portions of prime schedules.
- C. Provide subschedules of outage date and times.
- D. Provide subschedules of public notice distribution, see 01 40 70.

#### 1.05 PROGRESS REVISIONS

- A. Indicate progress of each activity to date of submission.
- B. Show changes occurring since previous submission of schedule:
  - 1. Major changes in scope.
  - 2. Activities modified since previous submission.
  - 3. Revised projections of progress and completion.
  - 4. Other identifiable changes.
- C. Provide a narrative report as needed to define:
  - 1. Problem areas, anticipated delays and/or the impact on the schedule.
  - 2. Corrective action to be taken.

#### 1.06 SUBMISSIONS

- A. Submit initial schedules within 15 days after award of Contract.
  - 1. ENGINEER will review schedules and return review copy within 10 days after receipt.
  - 2. If required, resubmit within seven days after return of review copy.
- B. Submit schedule marked up to show actual progress of Work with each application for payment.
- C. Submit revised progress schedules when requested by ENGINEER or whenever project is more than 5% behind approved schedule, as determined by monthly request for payment.

1.07 DISTRIBUTION

- A. Distribute copies of the reviewed schedule to:
- B. CONTRACTOR'S project field office (1 copy).
  - 1. ENGINEER (5 copies).

1.08 CONSTRUCTION WORKING HOURS SCHEDULING

- A. Notify ENGINEER at least 48 hours in advance of any work to be done outside of usual working hours or any change in usual working hours. The usual working hours are between 7 a.m. to 7 p.m., Monday to Friday.

END OF SECTION

## SECTION 01 33 00

### SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

#### PART 1 GENERAL

##### 1.01 WORK INCLUDED

- A. Submit Shop Drawings, Product Data, and Samples required by Contract Documents.

##### 1.02 RELATED WORK

- A. Conditions of the Contract: Definitions and Additional Responsibilities of Parties.

##### 1.03 SHOP DRAWINGS

- A. Drawings shall be presented in a clear and thorough manner with sufficient detail to show kind, size, and arrangement and function of component materials and devices.
- B. Minimum sheet size: 8-1/2" x 11"

##### 1.04 PRODUCT DATA

- A. Preparation:
  - 1. Clearly mark each copy to identify pertinent products or models.
  - 2. Show performance characteristics and capacities.
  - 3. Show dimensions and clearances required.
  - 4. Show wiring or piping diagrams and controls.
  - 5. For equipment for which electrical schematic is given in Drawings, statement from manufacturer that equipment operation per schematic is appropriate for equipment.
- B. Installation data for all materials and equipment for which operation and maintenance manuals will not be provided:
  - 1. Manufacturer's installation instructions and recommendations.
  - 2. Referenced standards for installation.
  - 3. Manufacturer's standard schematic drawings and diagrams:



4. Modify drawings and diagrams to delete information which is not applicable to the Work.
5. Supplement standard information to provide information specifically applicable to the Work.

#### 1.05 SAMPLES

- A. Office samples shall be of sufficient size and quantity to clearly illustrate:
  1. Functional characteristics of the project, with integrally related parts and attachment devices.
  2. Full range of color, texture, and pattern.

#### 1.06 CONTRACTOR RESPONSIBILITIES

- A. Review Shop Drawings, Product Data, and Samples prior to submission.
- B. Determine and verify:
  1. Field measurements.
  2. Field construction criteria.
  3. Catalog numbers and similar data.
  4. Conformance with specifications.
  5. Conflicts with other items of construction past or present.
- C. Coordinate each submittal with requirements of the Work and of the Contract Documents.
- D. Notify the ENGINEER in writing, at time of submission, of any deviations in the submittals from requirements of the Contract Documents.
- E. Begin no fabrication or work which requires submittals until return of submittals with ENGINEER'S final review.

#### 1.07 SUBMISSION REQUIREMENTS

- A. Make submittals promptly and in such sequence as to cause no delay in the Work.
- B. Number of submittals required:
  1. Shop Drawings and Product Data: Submit the number of opaque reproductions which the CONTRACTOR requires, plus four copies which will be retained by the ENGINEER.
  2. Samples: Submit the number stated in each specification section.

- C. Submittals shall contain on the first two pages:
1. The date of submission and the dates of any previous submissions.
  2. The Project title and number.
  3. Contract identification.
  4. The names of:
    - a. CONTRACTOR.
    - b. Supplier.
    - c. Manufacturer.
  5. Identification of the product, with the specification section number and Drawing number.
  6. Field dimensions, clearly identified as such.
  7. Relation to adjacent or critical features of the Work or materials.
  8. Applicable standards, such as ASTM or Federal Specification numbers.
  9. Identification of deviations from Contract Documents.
  10. Identification of revisions on resubmittals.
  11. A 3 in. x 3 in. blank space for ENGINEER'S stamp.
  12. CONTRACTOR'S stamp or statement, initialed or signed, certifying to review of submittal, verification of products, field measurements and field construction criteria, coordination of the information within the submittal with requirements of the Work and of Contract Documents, and the represented products or materials meet all requirements of the Contract Documents except for any specific deviations specifically stated and requested.

#### 1.08 RESUBMISSION REQUIREMENTS

- A. Make any corrections or changes in the submittals required by the ENGINEER and resubmit until final review.
- B. Shop Drawings and Product Data:
1. Revise initial drawings or data, and resubmit as specified for the initial submittal.
  2. Indicate any changes which have been made other than those requested by the ENGINEER.
- C. Samples: Submit new samples as required for initial submittal.

#### 1.09 DISTRIBUTION

- A. Distribute reproductions of Shop Drawings and copies of Product Data which carry the ENGINEER stamp of final review to:
1. Job site file.
  2. Record documents file.
  3. Subcontractors and suppliers as appropriate.

- B. Distribute samples which carry the ENGINEER stamp of approval as directed by ENGINEER.

#### 1.10 ENGINEER DUTIES

- A. Review and return submittals within 7 days of receipt of submittal.
- B. Affix stamp and initials or signature, and indicate requirements for resubmittal or review of submittal.
- C. Return submittals to CONTRACTOR for distribution or for resubmission.
- D. ENGINEER'S review does not constitute acceptance or responsibility for accuracy or dimensions, nor shall it relieve the CONTRACTOR from meeting any requirements of the Contract Documents, nor shall it constitute approval for any deviation from the Contract Documents unless such deviations are specifically stated as such on the submittal and specifically allowed by the ENGINEER.
- E. ENGINEER to return submittals with only cursory review when it becomes apparent the submittal is not acceptable.

#### 1.11 PAYMENT AND TIME FOR REVIEW OF EXCESSIVE SUBMITTALS

- A. Submittals after first resubmittal:
  - 1. Accompanied by CONTRACTOR'S purchase order to ENGINEER for all ENGINEER'S review time and costs at ENGINEER'S standard billing rates.
  - 2. Be reviewed by ENGINEER at convenience of the ENGINEER.

#### 1.12 TIMELINESS

- A. All submittals to be submitted to allow final ENGINEER'S review to be completed within the scheduled number of calendar days of date Contract starts.
  - 1. If submittals not reviewed within the scheduled time:
  - 2. OWNER may withhold payment if such delay results in a delay in receipt of funding agency funds.
  - 3. CONTRACTOR shall not terminate/suspend work.
  - 4. No additional costs or contract time shall be claimed by CONTRACTOR.

- B. No payments made for materials, equipment or supplies for which ENGINEER'S final review of submittal has not been made.
- C. Materials, equipment or supplies for which ENGINEER'S final review of submittal has not been made shall not be allowed on the job site.

#### 1.13 REQUIRED SUBMITTALS

- A. For Schedule Which Follows:
  - 1. AB = As-built Mylar
  - 2. CE = Certificate
  - 3. CD = Connection diagrams, Electrical
  - 4. CS = Color Selection Chart
  - 5. DM = Design Mix
  - 6. EC = Engineering Computations
  - 7. FI = Field O&M instruction required
  - 8. GU = Guarantee
  - 9. IQ = Installers qualifications
  - 10. LT = Testing Laboratory Test Results
  - 11. MI = Manufacturer's Installation Instructions
  - 12. MR = Manufacturer's Representative at site
  - 13. OR = Other; See section requirements
  - 14. OM = O&M Manual
  - 15. PB = Prebid submittal by equipment manufacturer and written prebid Approval of ENGINEER required
  - 16. PD = Product Data
  - 17. SA = Sample
  - 18. SC = Manufacturer's certification of control schematic
  - 19. SD = Shop Drawing
  - 20. SE = Schematic drawings, Electrical
  - 21. SL = Spares inventory list
  - 22. WA = Warranty

#### 1.14 PRELIMINARY SCHEDULE OF REQUIRED SUBMITTALS

<u>Section</u>	<u>Name</u>	<u>Required</u>
01 55 26	Traffic Control	OR
01 78 39	Project Record Documents	OR
01 92 13	Operation and Maintenance Data	OM
33 00 00	General Electrical Requirements	OR

END OF SECTION

## SECTION 01 50 00

### TEMPORARY FACILITIES AND CONTROLS

#### PART 1 GENERAL

##### 1.01 WORK INCLUDED

- A. Furnish, install and maintain suitable barriers as required to prevent public entry, and to protect the public, work and existing facilities.
- B. Remove when no longer needed or at completion of Work.

##### 1.02 RELATED WORK

- A. None.

#### PART 2 PRODUCTS

##### 2.01 GENERAL

- A. Materials may be:
  - 1. New or used.
  - 2. Suitable for the intended purpose.
  - 3. In conformance with the requirements of applicable codes and standards.
  - 4. Materials to be CONTRACTOR'S option, as appropriate, to serve required purpose.

#### PART 3 EXECUTION

##### 3.01 GENERAL

- A. Install facilities in a neat and reasonable uniform appearance, structurally adequate for required purposes.

- B. Maintain barriers during entire construction period.
- C. Relocate barriers as required by progress of construction.
- D. Provide barriers to protect the public from excavations and hazardous conditions and operations.
- E. If a trench or excavation, where accessible to the public, is left open at night or weekends, barricade with flashing lights and orange mesh fence.

### 3.02 FENCES

- A. Fence Location:
  - 1. Enclosure:
    - a. Locate fence to enclose substantially entire Project site.
    - b. That portion that the CONTRACTOR establishes as required to encompass entire Project construction operation.
  - 2. Vehicular entrance gates:
    - a. Locate in suitable relation to construction facilities.
    - b. Avoid interference with traffic on public thoroughfares.
- B. 6' Chain Link Fence.

### 3.03 REMOVAL

- A. Completely remove barricades, including foundations, when construction has progressed to the point where they are no longer needed.
- B. Cleaning:
  - 1. Clean and repair damage caused by installation.
  - 2. Fill and grade areas of the site to required elevations and slopes.
  - 3. Clean the area.

END OF SECTION

## SECTION 01 55 26

### TRAFFIC REGULATION

#### PART 1 GENERAL

##### 1.01 WORK INCLUDED

- A. To submit a traffic control plan to ENGINEER and OWNER for approval.
- B. Provide, operate and maintain equipment, services and personnel with traffic control and protective devices as required to expedite public vehicular traffic flow and access on haul routes, at site entrances, on-site access road, parking areas and any areas affected by construction operations. This item includes signs, sign posts (permanent or portable), barricades, cones, drums, warning lights or flashers, temporary striping, flags, flaggers, and any other incidental items as shown on the plans or as required by the OWNER. All traffic control devices and procedures shall meet the minimum requirements as stated in the Manual on Uniform Traffic Control Devices.
- C. Remove temporary equipment and facilities when no longer required; restore grounds to original or specified conditions.

##### 1.02 RELATED WORK

- A. Section 01 33 00: Shop Drawings, Product Data and Samples

##### 1.03 TRAFFIC CONTROL

- A. Whenever a street or thoroughfare is to be closed or partially closed, the CONTRACTOR shall notify OWNER of such closing and the length of time the street will be closed to traffic. This notice shall be given forty-eight (48) hours prior to the closing and shall be coordinated with the ENGINEER.
- B. Local access shall be maintained for all streets. The CONTRACTOR will be required to keep as much roadway open as possible to provide access for private property OWNERS. The CONTRACTOR shall supply signing, markings, or flagmen as needed to permit local traffic onto the streets where construction is in progress.



- C. During working hours, the CONTRACTOR may close portions of the street for short durations (2-4 hours) to facilitate construction, such as during asphalt patching operations.
- D. At the end of each day, all streets, side streets and driveways shall be left in a fully passable condition. The CONTRACTOR shall close trenches and clean the job site before the end of each day, weekends or holidays. All sidewalks and public walkways shall be open. During non-working hours all streets shall be open to traffic.

#### 1.04 TRAFFIC CONTROL SIGNALS AND SIGNS

- A. Traffic control plan and methods of handling traffic shall be submitted to OWNER for approval prior to issuance of Right of Way permit.
- B. Provide traffic control and directional signs for all closures and detours, mounted on barricades or standard posts with warning flashing lights.
- C. Traffic control shall be in full conformance with Department of Transportation "Manual on Uniform Traffic Control Devices for Streets and Highways," latest edition. Any deviation from "MUTCD" requires prior approval of ENGINEER.

#### 1.05 CONSTRUCTION PARKING CONTROL

- A. Control CONTRACTOR'S and construction personnel's private vehicular parking to preclude interference with public traffic or paving, access by emergency vehicles or OWNER'S operations.

#### 1.06 SPECIAL REQUIREMENTS FOR THIS PROJECT

- A. Provide traffic and detour controls and signs as required per approved traffic control plans.
- B. The CONTRACTOR shall have a responsible person on site during working hours and on call during non-working hours to inspect and maintain project traffic control.

C. Removal:

1. All non-applicable signing shall be removed or covered completely with an opaque, non-light-transmitting material.
2. All remaining, non-applicable traffic control devices are to be removed.

END OF SECTION

SECTION 01 57 00  
TEMPORARY CONTROLS

PART 1 GENERAL

1.01 WORK INCLUDED

- A. Provide and maintain methods, equipment and temporary construction as necessary to provide controls over environmental conditions at the construction site and related areas under CONTRACTOR'S control.
- B. Remove physical evidence of temporary facilities at completion of Work.

1.02 RELATED WORK

- A. None.

1.03 NOISE CONTROL

- A. Limit to:
  - 1. Practical extent.
  - 2. Normal working hours when practical. The normal working hours are between 7 am to 7 pm, Monday through Friday.

1.04 DUST CONTROL

- A. Provide positive methods and apply dust control materials to minimize raising dust from construction operations.
- B. Provide positive means to prevent airborne dust from dispersing into the atmosphere.
- C. Provide truck bed covers on all trucks and other conveyances hauling any loose materials within public right of way.

1.05 WATER CONTROL

- A. Provide methods to control surface water to prevent damage to the Project, the site or adjoining properties.
- B. Drainage:
  - 1. Control fill, grading and ditching to direct surface drainage away from excavations, pits, tunnels and other construction areas.
  - 2. Direct drainage to proper runoff.
- C. Provide, operate and maintain hydraulic equipment of adequate capacity to control surface water and groundwater.
- D. Dispose of drainage water and dewatering water in a manner to prevent flooding, erosion or other damage to any portion of the site or to adjoining areas.
- E. Any public agency or private land OWNER arrangements, permits or other approvals required for the discharge of water are the sole responsibility of the CONTRACTOR.

1.06 RODENT AND PEST CONTROL

- A. As found necessary during construction.

1.07 DEBRIS CONTROL

- A. Maintain all areas under CONTRACTOR'S control free of extraneous debris.
- B. Initiate and maintain a specific program to prevent accumulation of debris at construction site, storage and parking areas or along access roads and haul routes.
  - 1. Provide containers for deposit of debris as specified in Section 01 74 00 - Cleaning.
  - 2. Prohibit overloading of trucks to prevent spillages on access and haul routes.
  - 3. Provide periodic inspection of traffic areas to enforce requirements.
- C. Periodic Debris Collection:
  - 1. Schedule periodic collection and disposal of debris as specified in Section 01 74 00 - Cleaning.
  - 2. Provide additional collections and disposals of debris whenever the periodic schedule is inadequate to prevent accumulation.

1.08 POLLUTION CONTROL

- A. Provide methods, means and facilities required to prevent contamination of soil, water or atmosphere by the discharge of noxious substances from construction operations.
- B. Removal:
  - 1. Provide equipment, personnel and emergency measures required to contain any spillages and remove contaminated soils or liquids.
  - 2. Excavate and dispose of any contaminated earth offsite and replace with suitable compacted fill and topsoil.
- C. Groundwater Protection:
  - 1. Take special measures to prevent harmful substances from entering groundwater.
  - 2. Prevent disposal of wastes, effluents, chemicals or other such substances adjacent to streams or into sanitary or storm sewers.
- D. Provide systems for control of atmospheric pollutants.
  - 1. Prevent toxic concentrations of chemicals.
  - 2. Prevent harmful dispersal of pollutants into the atmosphere.
- E. Provide the necessary number of sanitary toilet units for all of the workers on the work site.

1.09 EROSION CONTROL

- A. Plan and execute construction and earthwork by methods to control surface drainage from cuts and fills, and from borrow and waste disposal areas to prevent erosion and sedimentation.
  - 1. Hold the areas of bare soil exposed at any one time to a minimum.
  - 2. Provide temporary control measures such as berms, dikes and drains.
- B. Construct fills and waste areas by selective placement to eliminate surface silts or clays that will erode.
- C. Erosion Control:
  - 1. Periodically inspect earthwork to detect any evidence of the start of erosion.
  - 2. Apply corrective measures as required to control erosion.

1.10 SECURITY

- A. Provide adequate temporary fencing to secure the project site and all staging areas.
- B. Provide watchmen and other security personnel as necessary to protect the work.

END OF SECTION

## SECTION 01 60 00

### MATERIAL AND EQUIPMENT

#### PART 1 GENERAL

##### 1.01 WORK INCLUDED

- A. Material and equipment incorporated into the Work:
  - 1. New and free of defect unless otherwise shown on the Drawings.
  - 2. Conform to applicable specifications and standards.
  - 3. Comply with size, make, type and quality specified, or as specifically approved in writing by the ENGINEER.
  - 4. Manufactured and fabricated products:
    - a. Design, fabricate and assemble in accordance with the best engineering and shop practices.
    - b. Manufacture like parts of duplicate units to standard sizes and gages, to be interchangeable.
    - c. Two or more items of the same kind shall be identical, by the same manufacturer.
    - d. Products shall be suitable for service conditions.
    - e. Equipment capacities, sizes and dimensions shown or specified shall be adhered to unless variations are specifically approved in writing.
  - 5. Do not use material or equipment for any purpose other than that for which it is designed or is specified

##### 1.02 RELATED WORK

- A. Conditions of the Contract
- B. Section 01 33 00: Shop Drawings, Product Data and Samples
- C. Section 01 92 13: Operating and Maintenance Data

##### 1.03 REUSE OF EXISTING MATERIAL

- A. Except as specifically indicated or specified, materials and equipment removed from existing structures shall not be used in the completed Work.

- B. For material and equipment specifically indicated or specified to be reused in the Work:
  - 1. Use special care in removal, handling, storage, and reinstallation to assure proper function in the completed Work.
  - 2. Arrange for transportation, storage, and handling of products which require off-site storage, restoration or renovation. Pay all costs for such work.

#### 1.04 MANUFACTURER'S INSTRUCTIONS

- A. When Contract Documents require that installation of work shall comply with manufacturer's printed instructions, such instructions must be included with:
  - 1. Shop drawing and/or product data submitted if an operation and maintenance manual is not required
  - 2. Operation and maintenance data if required
- B. Handle, install, connect, clean, condition, and adjust products in strict accordance with such instructions and in conformity with specified requirements.
  - 1. Should job conditions or specified requirements conflict with manufacturer's instructions, consult with ENGINEER for further instructions
  - 2. Do not proceed with work without clear instructions.
- C. Perform work in accordance with manufacturer's instructions. Do not omit any preparatory step or installation procedure unless specifically modified or exempted by Contract Documents.

#### 1.05 TRANSPORTATION AND HANDLING

- A. Arrange deliveries of Products in accordance with construction schedules, coordinate to avoid conflict with work and conditions at the site.
  - 1. Deliver Products in undamaged condition, in manufacturer's original containers or packaging, with identifying labels intact and legible.
  - 2. Immediately on delivery, inspect shipments to assure compliance with requirements of Contract Documents and approved SUBMITTALS, and that Products are properly protected and undamaged.
- B. Provide equipment and personnel to handle Products by methods to prevent soiling or damage to Products or packaging.



## 1.06 STORAGE AND PROTECTION

- A. Store Products in accordance with manufacturer's instructions, with seals and labels intact and legible.
  - 1. Store products subject to damage by the elements in weathertight enclosures.
  - 2. Maintain temperature and humidity within the ranges required by manufacturer's instructions.
- B. Exterior Storage
  - 1. Store fabricated products above the ground, on blocking or skids, prevent soiling or staining. Cover products which are subject to deterioration with impervious sheet coverings, provide adequate ventilation to avoid condensation.
  - 2. Store loose granular materials in a well drained area on solid surfaces to prevent mixing with foreign matter.
- C. Arrange storage in a manner to provide easy access for inspection. Make periodic inspections of stored Products to assure that Products are maintained under specified conditions, and free from damage or deterioration.
- D. Protection After Installation:
  - 1. Provide substantial coverings as necessary to protect installed Products from damage from traffic and subsequent construction operations. Remove when no longer needed.

## 1.07 SUBSTITUTIONS AND PRODUCT OPTIONS

- A. CONTRACTOR'S Options:
  - 1. For Products specified only by reference standard; select any product meeting that standard.
  - 2. For Products specified by naming several products or manufacturers and "or equal" or similar term; select any one of the products or manufacturers named, which complies with the specifications. Materials that are "or equal" should be verified by the CONTRACTOR prior to use for bidding purposes.
  - 3. For Products specified by naming only one Product and manufacturer, if the CONTRACTOR wishes to include an option, the CONTRACTOR must submit a qualifications statement in accordance with this Section for any product or manufacturer not specifically named.
- B. Substitutions
  - 1. For a period of 30 days after Bid Date, ENGINEER will consider written requests from CONTRACTOR for substitution of "Or Equal" Products.

2. Submit a separate request for each Product, supported with complete data, with drawings and samples as appropriate, including:
  - a. Comparison of the qualities of the proposed substitution with that specified.
  - b. Changes required in other elements of the work because of the substitution.
  - c. Effect on the construction schedule.
  - d. Cost data comparing the proposed substitution with the Product specified.
  - e. Any required license fees or royalties.
  - f. Availability of maintenance service, and source of replacement materials.
3. ENGINEER shall be the judge of the acceptability of the proposed substitution.

C. CONTRACTOR'S Representation:

1. A request for substitution constitutes a representation that CONTRACTOR
  - a. Has investigated the proposed Product and determined that it is equal to or superior in all respects to that specified.
  - b. Will provide the same warranties or bonds for the substitution as for the Product specified.
  - c. Will coordinate the installation of an accepted substitution into the Work, and make such other changes as may be required to make the Work complete in all respects.
  - d. Waives all claims for additional costs or contract time, under his responsibility, which may subsequently become apparent.

- D. ENGINEER will review requests for substitutions with reasonable promptness, and notify CONTRACTOR, in writing, of the decision to accept or reject the requested substitution.

1.08 INTENT OF TECHNICAL SPECIFICATIONS

- A. Since the specified materials and details of equipment and component fabrication and assembly are given for specific functional, operational, maintainability, and compatibility reasons, which are not detailed in the Contract Documents, the intent and the functional intent of the Specifications is exactly what the Specifications state in all details without any deviations whatsoever.

END OF SECTION

SECTION 01 70 00  
CONTRACT CLOSEOUT

PART 1 GENERAL

1.01 WORK INCLUDED

- A. Comply with requirements stated in Conditions of the Contract and Specifications for administrative procedures in closing out the Work.

1.02 RELATED WORK

- A. Section 01 92 13: Operating and Maintenance Data
- B. Section 01 78 39: Project Record Documents

1.03 SUBSTANTIAL COMPLETION

- A. When CONTRACTOR considers the Work is substantially complete, he shall submit to ENGINEER:
  - 1. A written notice that the Work, or designated portion thereof, is substantially complete.
  - 2. A list of items to be completed or corrected.
- B. Within a reasonable amount of time after receipt of such notice, ENGINEER will make an inspection to determine the status of completion.
- C. Should ENGINEER determine that the Work is not substantially complete:
  - 1. ENGINEER will promptly notify the CONTRACTOR in writing, giving the reasons therefor.
  - 2. CONTRACTOR shall remedy the deficiencies in the Work, and send a second written notice of substantial completion to the ENGINEER.
  - 3. ENGINEER will reinspect the Work.
- D. Upon satisfactory completion of the review, the ENGINEER shall issue to the CONTRACTOR a written "Notice of Substantial Completion."

1.04 FINAL INSPECTION

- A. When CONTRACTOR considers the Work is complete, he shall submit written certification that:
  - 1. Contract Documents have been reviewed.
  - 2. Work has been inspected for compliance with Contract Documents.
  - 3. Work has been completed in accordance with Contract Documents.
  - 4. Equipment and systems have been tested in the presence of the OWNER'S representative and are operational.
  - 5. Work is completed and ready for final inspection.
- B. ENGINEER will make an inspection to verify the status of completion with reasonable promptness after receipt of such certification.
- C. Should ENGINEER consider that the Work is incomplete or defective:
  - 1. ENGINEER will promptly notify the CONTRACTOR in writing, listing the incomplete or defective work.
  - 2. CONTRACTOR shall take immediate steps to remedy the stated deficiencies, and send a second written certification to ENGINEER that the Work is complete.
  - 3. ENGINEER will reinspect the Work.
- D. When the ENGINEER finds that the Work is acceptable under the Contract Documents, he shall request the CONTRACTOR to make closeout submittals.

1.05 REINSPECTION FEES

- A. Should ENGINEER perform reinspections due to failure of the Work to comply with the claims of status of completion made by the CONTRACTOR:
  - 1. OWNER will compensate ENGINEER for such additional services.
  - 2. CONTRACTOR shall submit purchase order to pay ENGINEER at ENGINEER'S standard billing rate for all costs associated with reinspection.

1.06 CONTRACTOR'S CLOSEOUT SUBMITTALS TO ENGINEER

- A. Evidence of compliance with requirements of governing authorities.
- B. Project Record Documents: Conform to requirements of Section 01 78 39.
- C. Operating and Maintenance Data and Instructions to OWNER'S personnel. Section 01 92 13
- D. Warranties and Bonds: Conform to requirements of General Conditions.

- E. Evidence of Payment and Release of Liens: Conform to requirements of General and Supplemental Conditions.
- F. Consent of Surety.
- G. Certification of Labor Standards.

1.07 FINAL ADJUSTMENT OF ACCOUNTS

- A. Submit a final statement of accounting to ENGINEER.
- B. Statement shall reflect all adjustments to the Contract Sum:
  - 1. The original Contract Sum.
  - 2. Additions and deductions resulting from:
    - a. Previous Change Orders.
    - b. Allowances.
    - c. Unit Prices.
    - d. Deductions from uncorrected Work.
    - e. Deductions for liquidated damages.
    - f. Deductions for reinspection payments.
    - g. Other adjustments.
  - 3. Total Contract Sum, as adjusted.
  - 4. Previous payments.
  - 5. Sum remaining due.
- C. ENGINEER will prepare a final Change Order, reflecting approved adjustments to the Contract Sum not previously made by Change Orders.

1.08 FINAL APPLICATION FOR PAYMENT

- A. CONTRACTOR shall submit the final Application for Payment in accordance with procedures and requirements stated in the Conditions of the Contract.

END OF SECTION

## SECTION 01 74 00

### CLEANING

#### PART 1 GENERAL

##### 1.01 WORK INCLUDED

- A. Execute cleaning during progress of the Work and at completion of the Work, as required by General Conditions.

##### 1.02 RELATED WORK

- A. Conditions of the Contract
- B. Each Specification Section: Cleaning for specific products or work.

##### 1.03 DISPOSAL REQUIREMENTS

- A. All unsuitable material, vegetation, trash, debris, etc. from the excavation shall be disposed of off-site at a location approved by the ENGINEER.
- B. The CONTRACTOR shall make his own arrangements for disposal subject to submission of proof to the ENGINEER that the OWNER(S) of the proposed site(s) have a valid fill permit issued by the appropriate governmental agency.
- C. The CONTRACTOR shall provide watertight conveyance of any liquid, semi-liquid, or saturated solids which tend to bleed or leak during transport. No liquid loss from transported materials will be permitted whether being delivered to the construction site or being hauled away for disposal. Fluid materials hauled for disposal must be specifically acceptable at the selected disposal site.
- D. The CONTRACTOR shall comply with all necessary permits, licenses and authorizations regarding the removal, transport and disposal of waste as are required by all applicable Federal, State and local laws and regulations.
- E. Trash burning will not be permitted on the construction site.

## PART 2 PRODUCTS

### 2.01 MATERIALS

- A. Use only those cleaning materials which will not create hazards to health or property and which will not damage surfaces.
- B. Use only those cleaning materials and methods recommended by manufacturer of the surface material to be cleaned.
- C. Use cleaning materials only on surfaces recommended by cleaning material manufacturer.

## PART 3 EXECUTION

### 3.01 DURING CONSTRUCTION

- A. Execute periodic cleaning to keep the Work, the site and adjacent properties free from accumulations of waste materials, rubbish and windblown debris resulting from construction operations, at no additional cost to the OWNER.
- B. Provide on-site containers for the collection of waste materials, debris and rubbish.
- C. Remove waste materials, debris and rubbish from the site periodically and dispose of at legal disposal areas away from the site.

### 3.02 DUST CONTROL

- A. Dust shall be minimized by wetting down bare soils during windy periods, or if requested by the ENGINEER.
- B. The operation of dumping rock and of carrying rock away in trucks shall be so conducted as to cause a minimum of noise and dust.
- C. Vehicles carrying rock, concrete, or other material shall be routed over such streets as will cause the least annoyance to the public.

- D. All unpaved streets, roads, detours, or haul roads used in the construction area shall be given an approved dust-preventative treatment or periodically watered to prevent dust as directed by the ENGINEER.
- E. Clean interior spaces prior to the start of finish painting and continue cleaning on an as-needed basis until painting is finished.
- F. Schedule operations so that dust and other contaminants resulting from the cleaning process will not fall on wet or newly coated surfaces.

### 3.03 FINAL CLEANING

- A. Employ skilled workmen for final cleaning.
- B. Remove grease, mastic, adhesives, dust, dirt, stains, fingerprints, labels and other foreign materials from sight-exposed interior and exterior surfaces.
- C. Wash and shine glazing and mirrors.
- D. Polish glossy surfaces to a clear shine.
- E. Ventilating Systems:
  - 1. Clean permanent filters and replace disposable filters if units were operated during construction.
  - 2. Clean ducts, blowers and coils if units were operated without filters during construction.
- F. Broom clean exterior paved surfaces; rake clean other surfaces of the grounds.
- G. Prior to final completion or OWNER occupancy, CONTRACTOR shall conduct an inspection of sight-exposed interior and exterior surfaces, and all work areas, to verify that the entire Work is clean.

END OF SECTION



## SECTION 01 78 39

### PROJECT RECORD DOCUMENTS

#### PART 1 GENERAL

##### 1.01 WORK INCLUDED

- A. Maintain for the OWNER at the site one record copy of:
  - 1. Drawings.
  - 2. Specifications.
  - 3. Addenda.
  - 4. Change Orders and other modifications to the Contract.
  - 5. ENGINEER field orders or written instructions.
  - 6. Approved shop drawings, product data and samples.
  - 7. Approved Operation and Maintenance data.
  - 8. Field test records.
  - 9. Receipts for delivery of items to OWNER.

##### 1.02 RELATED WORK

- A. Section 01 33 00: Shop Drawings, Product Data, Samples

##### 1.03 QUALITY ASSURANCE

- A. General: Delegate the responsibility for maintenance of record documents to one person on the CONTRACTOR'S staff who is approved in advance by the ENGINEER.
- B. Accuracy of Records: Thoroughly coordinate all changes within the record documents, making adequate and proper entries on each page of specifications and each sheet of drawings and other documents where such entry is required to properly show the change. Accuracy of records shall be such that future search for items shown in the contract documents may reasonably rely on information obtained from the approved record documents.
- C. Timing of Entries: Make all entries within 24 hours after receipt of information.

1.04            MAINTENANCE OF DOCUMENTS AND SAMPLES

- A.    Store documents and samples in CONTRACTOR'S field office separately from documents used for construction.
  - 1.     Provide files and racks for storage of documents.
  - 2.     Provide locked cabinet or secure storage space for storage of samples.
- B.    File documents and samples in accordance with specification format.
- C.    Maintenance:
  - 1.     Maintain documents in a clean, dry, legible condition and in good order.
  - 2.     Do not use record documents for construction purposes.
- D.    Make documents and samples available at all times for inspection by ENGINEER and OWNER.

1.05            MARKING DEVICES

- A.    Provide felt-tip marking pens for recording information in a color code acceptable to ENGINEER.

1.06            RECORDING

- A.    Label each document "PROJECT RECORD" in neat, large, printed letters.
- B.    Record information concurrently with construction progress.
- C.    Do not conceal any work until required information is recorded.
- D.    Drawings: Legibly mark to record actual construction of:
  - 1.     Depths of various elements of foundation in relation to established data.
  - 2.     Horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
  - 3.     Location of internal utilities and appurtenances concealed in the construction, referenced to visible and accessible features of the structure.
  - 4.     Field changes of dimension and detail.
  - 5.     Changes made by Field Order or Change Order.
  - 6.     Details not on original contract Drawings.
- E.    Specifications and addenda: Legibly mark each section to record:
  - 1.     Manufacturer, trade name, catalog number and supplier of each product and item of equipment actually installed.
  - 2.     Changes made by Field Order or Change Order.

1.07 SUBMITTAL

- A. At Contract close-out, deliver Record Documents to ENGINEER for the OWNER.
- B. Accompany submittal with transmittal letter in duplicate, containing:
  - 1. Date.
  - 2. Project title and number.
  - 3. CONTRACTOR'S name and address.
  - 4. Title and number of each Record Document.
  - 5. Signature of CONTRACTOR or his authorized representative.
- C. Record Documents shall be contained on non-rewritable optical media (Flash Drive). The files shall be in Portable Document Format (PDF).
- D. Record Documents shall contain the following:
  - 1. Project Record Drawings.
  - 2. Project submittals.
  - 3. Operational, maintenance, installation and technical data for all components and equipment installed during work, whether supplied by OWNER or supplied by CONTRACTOR.

1.08 PAYMENT

- A. Project record documents are incidental to the Work for which no separate payment will be made.
- B. No payment will be made to the CONTRACTOR on any portion of the work for which project record documents, including recording, are not complete.

END OF SECTION

## SECTION 01 92 13

### OPERATING AND MAINTENANCE DATA

#### PART I GENERAL

##### 1.01 WORK INCLUDED

- A. Compile product data and related information appropriate to CONTRACTOR'S installation and for OWNER'S maintenance and operation of products furnished under the Contract.
- B. Prepare operating and maintenance data, as specified in this Section and as referenced in other pertinent sections of Specifications.
- C. Instruct OWNER'S personnel in the maintenance of products and in the operation of equipment and systems.

##### 1.02 RELATED WORK

- A. Section 01 33 00: Shop Drawings, Product Data, Samples

##### 1.03 QUALITY ASSURANCE

- A. Preparation of data shall be done by personnel:
  - 1. Trained and experienced in maintenance and operation of the described products.
  - 2. Completely familiar with requirements of this Section.
  - 3. Skilled as technical writers to the extent required to communicate essential data.
  - 4. Skilled as draftsmen competent to prepare required Drawings.
- B. Manuals for equipment and systems shall be prepared by the equipment manufacturer or system supplier.

##### 1.04 SUBMITTALS

- A. Prepare data in the form of an instructional manual for use by OWNER'S personnel.

- B. Format:
1. Size: 8½" x 11".
  2. Paper: 20 lb minimum, white, for typed pages.
  3. Text:
    - a. Manufacturer's printed data.
    - b. Neatly typewritten.
  4. Drawings:
    - a. Provide reinforced, punched binder tab; bind in with text.
    - b. Reduced to 8½" x 11", or 11" x 17" folded to 8½" x 11".
    - c. Where reduction is impractical, folded and placed in 8½" x 11" envelopes bound in text.
    - d. Suitably identified on Drawings and envelopes.
  5. Provide fly leaf for each separate product or each piece of operating equipment.
    - a. Provide typed description of product and major component parts of equipment.
    - b. Provide indexed tabs.
  6. Cover:
    - a. Identify each volume with typed or printed title "OPERATING AND MAINTENANCE INSTRUCTIONS".
    - b. List:
      - i. Title of Project.
      - ii. Identity of separate structure as applicable.
      - iii. Identity of general subject matter covered in manual.
  7. Assembly:
    - a. Assemble and bind material in the same order as specified in Paragraph 1.04.
    - b. Material grouped in the same manner as the applicable portions of the Contract Documents.
- C. Binders:
1. Preliminary manuals: heavy paper covers.
  2. Final manuals: commercial-quality, substantial, permanent, 3-ring or 3-post binders with durable, cleanable plastic covers of adequate size to easily contain required information.
- D. Digital Files
1. Provide 2 electronic copies of the entire Final O and M manuals on CD in Adobe Acrobat .
  2. CD permanently labeled to identify contents specific to this project.

1.05

CONTENT OF MANUALS

- A. Neatly typewritten table of contents for each volume, arranged in a systematic order.
  - 1. CONTRACTOR, name of responsible principal, address and telephone number.
  - 2. A list of each product required to be included, indexed to the content of the volume.
  - 3. List, with each product, the name, address and telephone number of:
    - a. Subcontractor or installer.
    - b. Maintenance CONTRACTOR, as appropriate.
    - c. Identify the area of responsibility of each.
    - d. Local source of supply for parts and replacement.
    - e. Manufacturer.
  - 4. Identify each product by product name and other identifying symbols as set forth in Contract Documents.
- B. Product Data:
  - 1. Include only those sheets which are pertinent to the specific product.
  - 2. Annotate each sheet to:
    - a. Clearly identify the specific product or part installed.
    - b. Clearly identify the data applicable to the installation.
    - c. Delete references to inapplicable information.
  - 3. Preventive maintenance information shall be given for each major component of every piece of equipment in the format included in this Section.
- C. Drawings:
  - 1. Supplement product data with Drawings as necessary to clearly illustrate:
    - a. Relations of component parts of equipment and systems.
    - b. Control and flow diagrams.
  - 2. Coordinate drawings with information in Project Record Documents to assure correct illustration of completed installation.
  - 3. Do not use Project Record Documents as maintenance drawings.
- D. Written text as required to supplement product data for the particular installation:
  - 1. Organize in a consistent format under separate headings for different procedures.
  - 2. Provide a logical sequence of instructions for each procedure.
- E. Copy of each warranty, bond and service contract issued:
  - 1. Provide information sheet for OWNER'S personnel; give:
    - a. Proper procedures in the event of failure.
    - b. Instances which might affect the validity of warranties or bonds.

- F. Provide an installation, operation and maintenance manual for each item of equipment or system listed in the schedule of manuals, in the quantity listed in the submittal schedule.
- G. Content for each unit of equipment and system, as appropriate.
1. Description of unit and component parts:
    - a. Function, normal operating characteristics and limiting conditions.
    - b. Performance curves, engineering data and tests.
    - c. Complete nomenclature and commercial number of all replaceable parts.
  2. Manufacturer's complete installation instructions and recommendations.
  3. Operating procedure:
    - a. Startup, break-in, routine and normal operating instructions.
    - b. Regulation, control, stopping, shutdown and emergency instructions.
    - c. Summer and winter operating instructions, as applicable.
    - d. Special operating instructions.
  4. Maintenance procedures:
    - a. Routine operations.
    - b. Guide to "trouble-shooting".
    - c. Disassembly, repair and reassembly.
    - d. Alignment, adjusting and checking.
    - e. Provide preventive maintenance information for each major component of every piece of equipment as required on the "Preventive Maintenance Information & Equipment Data Sheet" attached at the end of this Section.
  5. Servicing and lubrication schedule:
    - a. List of lubricants required.
    - b. Provide lubrication information for each major component of every piece of equipment as required on the "Preventive Maintenance Information & Equipment Data Sheet" attached at the end of this Section.
  6. Manufacturer's printed operating and maintenance instructions.
  7. Description of sequence of operation.
  8. Original manufacturer's parts list, illustrations, assembly drawings and diagrams required for maintenance.
    - a. Predicted life of parts subject to wear.
    - b. List of original manufacturer's spare parts, manufacturer's current prices and recommended quantities to be maintained in storage.
  9. As-installed control diagrams.
  10. Other data as required under pertinent sections of Specifications.

- H. Content, for each electric and electronic item or system, as appropriate:
1. Description of system and component parts:
    - a. Function, normal operating characteristics and limiting conditions.
    - b. Performance curves, engineering data and tests.
    - c. Complete nomenclature and commercial number of replaceable parts.
  2. Circuit directories of panelboards:
    - a. Electrical service.
    - b. Controls.
    - c. Communications.
  3. As-installed color coded wiring diagrams.
  4. Operating procedures:
    - a. Routine and normal operating instructions.
    - b. Sequences required.
    - c. Special operating instructions.
  5. Maintenance procedures:
    - a. Routine operations.
    - b. Guide to "trouble-shooting".
    - c. Adjustment and checking.
  6. Manufacturer's printed operating and maintenance instructions.
  7. List of original manufacturer's spare parts, manufacturer's current prices and recommended quantities to be maintained in storage.
  8. Other data as required under pertinent sections of Specifications.
- I. Prepare and include additional data when the need for such data becomes apparent during instruction of OWNER'S personnel, or as necessary to provide complete operation and maintenance instructions.
- J. Additional requirements for operating and maintenance data: the respective sections of Specifications.

## 1.06 SUBMITTAL SCHEDULE

- A. Manuals for Equipment and Systems:
1. Submit four preliminary copies prior to the date of shipment of the equipment or system.
    - a. ENGINEER shall review.
    - b. If acceptable:
      - i. One copy shall be returned to CONTRACTOR.
      - ii. One copy sent to ENGINEER'S resident project representative.
      - iii. Two copies retained in ENGINEER'S files.



- c. If unacceptable:
    - i. Two copies shall be returned to CONTRACTOR with ENGINEER'S comments for revision.
    - ii. Two copies retained in ENGINEER'S files.
    - iii. Resubmit four revised preliminary copies for ENGINEER'S review.
    - iv. Once the ENGINEER has determined that a manual is not acceptable, the remainder of the manual shall not be reviewed in detail.
  - d. No partial payments shall be made for equipment and systems, either on hand or installed, until preliminary manuals are submitted and acceptable to the ENGINEER.
  - e. Funding:
    - i. Agency funds may be withheld from OWNER if OWNER'S acceptable operation and maintenance manual is not submitted as required by the agencies.
    - ii. If funds are withheld and such is partially attributable to a delay by the CONTRACTOR in submitting the required operation and maintenance materials:
      - (a). OWNER may withhold payments from CONTRACTOR.
      - (b). CONTRACTOR shall not terminate or suspend work.
      - (c). No additional costs or contract time shall be claimed by CONTRACTOR if OWNER withholds payments.
2. Submit five final copies no less than 30 days prior to putting the equipment or system in service.
- a. ENGINEER shall compare with accepted preliminary manual.
  - b. If identical or otherwise acceptable:
    - i. One copy shall be returned to CONTRACTOR for project record documents.
    - ii. One copy shall be retained by ENGINEER.
    - iii. Three copies shall be held for later transmittal to OWNER.
  - c. If not acceptable:
    - i. All five copies shall be returned to CONTRACTOR for revision or retained by ENGINEER.
    - ii. The necessary revision data shall be requested from CONTRACTOR, at ENGINEER'S option.
  - d. No portion of the Work is substantially complete until final equipment and system manuals relating to that portion of the Work are accepted by ENGINEER.

- e. Submit five copies of any revisions found desirable during instruction of OWNER'S personnel, with instructions for revising copies of manual.
- 3. If CONTRACTOR requires additional copies of the operation and maintenance manuals for the CONTRACTOR'S, subcontractor's or suppliers' use, such may be submitted and shall be returned upon review by the ENGINEER.

#### 1.07 REIMBURSEMENT FOR ENGINEER'S REVIEW COSTS

- A. For all manual reviews beyond one review of the preliminary manual and one review of final manual:
  - 1. CONTRACTOR shall submit purchase order to pay ENGINEER at ENGINEER'S standard billing rates for all costs associated with review.
  - 2. ENGINEER shall perform these unscheduled reviews in the same manner as other unscheduled work.

#### 1.08 INSTRUCTION OF OWNER'S PERSONNEL

- A. Prior to final inspection or acceptance, fully instruct OWNER'S designated operating and maintenance personnel in the operation, adjustment and maintenance of all scheduled products, equipment and systems.
- B. Operating and maintenance manual shall constitute the basis of instruction:
  - 1. Contents of manual reviewed with OWNER'S personnel in full detail to explain all aspects of operations and maintenance.
  - 2. Training of personnel:
    - a. In the field, review operation and maintenance, in full detail with OWNER'S personnel, each scheduled system or equipment.
    - b. Training assistance shall not be considered complete until after equipment is fully operational and checked out and functioning satisfactorily.
    - c. If training is given before equipment is completely operational, representative shall have to repeat training after equipment is fully operational.
- C. Additional requirements for specialized instruction of OWNER'S personnel are given in the detailed equipment specifications.
- D. Scheduled seven days in advance in coordination with both the ENGINEER and OWNER'S operating personnel.

- E. Instruction to be performed by a qualified, experienced, regular employee of the equipment or system manufacturer, or a full time field service representative (not sales personnel) approved by the equipment or system manufacturer.
- F. If the ENGINEER judges the instruction to be incomplete, inadequate or inaccurate, additional instruction shall be scheduled and provided at no additional cost to the OWNER.

1.09 SCHEDULE

- A. Section 01 33 00: Shop Drawings, Product Data, Samples

END OF SECTION

## SECTION 33 00 00

## GENERAL ELECTRICAL AND UTILITY REQUIREMENTS

## PART 1 GENERAL

## 1.1 WORK INCLUDED:

- A. Provide all items, articles, materials, equipment, operations and/or methods listed, mentioned, shown and/or scheduled on the drawings and/or in these specifications, including all labor, services, permits, fees, utility charges, and incidentals necessary and required to perform and complete the electrical work described in this Division and the Drawings. Apply for all permits early in the project to avoid problems due to code revisions.
- B. See the contract conditions (general and supplementary) and Division 1 for requirements concerning this Division including, but not limited to, submittals, shop drawings, substitution requests, change orders, maintenance manuals, record drawings, coordination, permits, record documents and guarantees.

## 1.2 RELATED WORK SPECIFIED ELSEWHERE:

- A. Verify and coordinate all equipment locations and electrical characteristics with other trades involved in the work. Coordination shall be done prior to installation or ordering equipment.
- B. Section 01 33 00: Shop Drawings, Product Data, and Samples
- C. Section 01 78 39: Project Record Documents

## 1.3 COORDINATION:

- A. Contractor agrees that any discrepancies between the contract drawings and the contract specifications are found the higher cost option shall be used for bidding purposes and the discrepancy brought to the attention of the Engineer for clarification.
- B. Coordinate electrical connections to equipment:
  - 1. Refer to existing equipment and equipment manufacturer's shop drawings and written instructions. Provide all power and control wiring with associated raceways for complete operation.

2. Verify electrical requirements of equipment on nameplate and installation manual. Ensure that the electrical connections meet the requirements and notify Engineer of any discrepancies.
3. Meet with Owner or equipment manufacturers' representatives to coordinate equipment installation and electrical connections.

#### 1.4 QUALITY ASSURANCE:

- A. Do all work in accordance with regulations of serving electric utility, telephone utility, cable TV utility, National Electrical Code, National Electrical Safety Code, state and local codes and amendments, National Fire Codes, and all other applicable codes.

#### 1.5 PROJECT CONDITIONS:

- A. The Contractor shall inspect the job site prior to bidding and familiarize himself with existing conditions which will affect the work. Prior to start of work, obtain "As built", "Record", or other Drawings showing existing underground utilities from Owner.
- B. Electrical drawings are diagrammatic indicating approximate location of poles, wire, electrical/mechanical equipment, etc. Consult the Structural drawings to avoid conflicts with equipment, structural members, etc. When required, make all deviations from Drawings to make the work conform to the project as constructed, and to related work of others. Minor relocations ordered prior to installation should be made without added cost to Owner.
- C. Call to the attention of the Engineer any error, omission, conflict or discrepancy in Drawings and/or Specifications. Do not proceed with any questionable items of work until clarification of same has been made.
- D. Under no conditions are utilities, beams, girders, footings or columns to be cut for electrical items unless so shown on Drawings or written approval obtained from the Engineer.
- E. Verify the physical dimensions of each item of electrical/mechanical equipment to fit the available space and promptly notify the Engineer prior to roughing-in if conflicts appear. Coordination of equipment to the available space and to the access routes through the construction shall be the Contractor's responsibility.

**1.6 SUBMITTALS AND SHOP DRAWINGS:**

- A. In addition to Section 01 33 00: Shop Drawings, Product Data, and Samples, comply with the following.
- B. Prior to ordering materials and equipment, the Contractor shall provide submittals in original, searchable PDF format, bookmarked with Section#, Product Name, ID tag, etc. Scanned pages will not be acceptable. Materials and equipment of each specification section shall be complete prior to submittal. Partial submittals will be marked "Incomplete" and returned for resubmittal.
- C. List shall bear Contractor's stamp, signature or other means to show that he has inspected same and certified that submitted material is correct in regard to quantity, size, dimension, quality and is coordinated with the Contract Documents.
- D. See individual sections within this Division for products requiring submittal.
- E. Each shop drawing submittal shall be prepared by the manufacturer, and shall clearly show manufacturer's name, catalog numbers, pictures, details, layout, type, size, rating, style, and all options identified in a permanent fashion. Specific items or options shall be permanently marked on sheets containing more than one option – do not rely on the Engineer to mark options.
- F. Large equipment drawings such as transformers and similar large equipment shall include the size, weight, seismic rating, emissions data, elevation, and wiring diagrams in addition to the product data.
- G. Some sections of this Division may require shop drawings prepared on full size drawings in AutoCAD or other CAD software. Where required, contact the Engineer for the latest version of the drawings and match the size and scale of the construction drawings. Drawings delivered to the contractor from the Engineer may not include addenda changes. Contractor shall only use floor plans for purposes of the construction on this job, and not for any other use or reuse. Add any required addenda items prior to finishing submittals.
- H. Provide complete materials (all materials) list at the beginning of each tabbed section showing "Specification Section", "Material Item", "Manufacturer's Name and Catalog Number", and all pertinent data.
- I. Provide samples where required in individual sections of this Division and Drawings. Confirm with Owner for any sample requirements prior to ordering materials.
- J. Contractor agrees that Shop Drawing Submittals processed by the Engineer are not Change Orders; that the purpose of Shop Drawing Submittals by the

Contractor is to demonstrate to the Engineer that the Contractor understands the design concept, that he demonstrates his understanding by indicating which equipment and material he intends to furnish and install and by detailing the fabrication and installation methods he intends to use.

- K. Contractor further agrees that if deviations, discrepancies or conflicts between Shop Drawings and Specifications are discovered either prior to or after Shop Drawing Submittals are processed by the Engineer, the design Drawings and Specifications shall control and shall be followed.
- L. Delays caused by contractor's neglect to submit on materials and equipment in time for Engineer's review, correction, resubmittal(s), shipment and delivery to the jobsite shall be the responsibility of the contractor.

## PART 2 PRODUCTS

### 2.1 MATERIALS:

- A. All materials shall be new and bear manufacturer's name, model number, electrical characteristics and other identification. All equipment to be U.L. approved or listed by another testing agency approved by authorities having jurisdiction.
- B. Material and equipment shall be standard product of manufacturer regularly engaged in production of similar material for at least five years (unless specifically exempted) and shall be manufacturer's latest design.
- C. If the description of a product is in conflict with the product as specified in the catalog number, the description shall generally take precedence. Contact the Engineer for clarification if this occurs.
- D. All equipment shall be rated and certified for the appropriate seismic design category or seismic use group for the installed location.

## PART 3 EXECUTION

### 3.1 GENERAL INSTALLATION METHODS:

- A. All items, articles, materials, and equipment specified under this Division shall be installed per the manufacturer's installation instructions. Where the manufacturer's instructions are in conflict with the directions provided elsewhere in this Contract, the Engineer shall be notified prior to beginning rough-in.

- B. Cutting or notching shall be kept to an absolute minimum and done when, and in a method approved by the Engineer. Patch and correct finished surfaces damaged by electrical work.
- C. Poles and equipment shall be level and plumb and installed parallel with surfaces. All equipment and enclosures shall fit neatly without gaps, openings, or distortions.
- D. Arrange wiring as shown on the Drawings and do not alter or combine runs without the specific approval of the Engineer.
- E. In general, the mounting heights shall be as noted on the Drawings, however elevations and drawing notes take precedence. Where no heights are indicated, request clarification from the Engineer. Consult the Structural drawings to avoid conflicts prior to roughing-in and for exact locations.
- F. See drawings for minimum separations from voice and data cables. Coordinate with the voice and data installer to assure these separations are met.
- G. All floor mounted equipment shall be installed and anchored to concrete structural or housekeeping pads.

### 3.3 SAFETY:

- A. The Engineer has not been retained or compensated to provide design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences or procedures required for the contractor to perform the work.

### 3.4 EQUIPMENT CONNECTIONS:

- A. The location and method for connecting to each item of equipment shall be verified prior to roughing-in. The voltage and phase of each item of equipment shall be checked before connecting.

### 3.5 PROJECT RECORD DOCUMENTS:

- A. Maintenance of Documents:
  - 1. Maintain at Jobsite, One Record Copy of: Contract Drawings, Specifications, Addenda, Reviewed Shop Drawings, Change Orders, Other Modifications to Contract and Field Test Records.



2. Keep apart from documents used for construction.
  3. Keep documents available at all times for inspection by Engineer.
  4. Refer to Section 01 78 39: Project Record Documents for more information.
- B. Recording:
1. Label each document "PROJECT RECORD."
  2. Keep record documents current. Do not permanently conceal any work until required information has been recorded.
  3. Contract Drawings, legibly mark to record actual construction; including but not limited to the following:
    - a. Depths of various elements; locations of underground items, with dimensions to surrounding structures, building walls and corners; changes of dimensions and details; changes made by Addendum, Field Orders or Change Order.
    - b. Specifications and Addenda; legibly mark each Section to record changes made by Addendum, Field Order or Change Order.
- C. As-Built Submittals:
1. At completion of project, transfer changes, addenda items, variations from drawings, exact routes of all lines, and locations of poles to clean new prints and specifications which will be supplied by the Engineer and deliver to the Engineer as "As-reported Record" drawings.
  2. Format for final as-built drawings shall be original PDF drawings, bookmarked per drawing sheet, marked up in PDF software such as Bluebeam. Scanned redline markups will not be acceptable.
- D. Operation and Maintenance Manuals
1. At completion of project, prepare Operation and Maintenance Manuals with operation and Maintenance Data, contractor's warranties, and copies of approved electrical permits. Include corrected copies of original submittals and shop drawings.
  2. Manuals shall be in original, searchable PDF format, bookmarked with Section#, Product Name, ID tag, etc. Scanned pages will not be acceptable. Materials and equipment of each specification section shall be complete prior to submittal. Partial submittals will be marked "Incomplete" and returned for resubmittal.
  3. See Division 1 for additional requirements.

### 3.6 WARRANTIES:

- A. Provide a minimum 1-year warranty on all electrical equipment, devices, labor, and work by Division 26/33 whether specified or not.
- B. Provide warranties greater than 1 year as specified in other sections where stated. The warranty requirement most stringent shall be used where conflicts arise.

- C. Provide copies of all warranties to the owner upon completion of the project.

### 3.7 COMPLETION:

- A. Complete each system as shown or specified herein and place in operation except where only roughing-in or partial systems are called for. Each system shall be tested and left in proper operation free of faults, shorts or unintentional grounds. Demonstrate system in the presence of the Engineer, the Owner or their representative when requested.

### 3.8 FINAL OBSERVATION:

- A. Contractor shall submit written certification that:
  - 1. Contract Documents have been reviewed.
  - 2. Contractor has inspected Project for compliance with Contract Documents.
  - 3. Work has been completed in accordance with Contract Documents.
  - 4. Equipment and Systems have been tested and are operational.
  - 5. Project is completed and ready for final inspection.
- B. Engineer will make final inspection as soon as possible after receipt of Certification.
- C. If additional inspections are required because of the Contractor's failure to complete the deficiencies and errors prior to the second inspection, costs for the successive inspections will be back-charged to the Contractor by the Owner, who, in turn, will reimburse the Engineer. Charges will be based as follows:
  - 1. Engineer time at current billing rates.
  - 2. Travel time, and all other expenses incurred in making inspections.
- D. Contractor to provide one (1) journeyman, tools, meters, instruments and other test equipment required by Engineer. Contractor to remove and replace trims, covers, fixtures, etc., for Engineer to review and test materials, systems, methods and workmanship. (Example: Removing switchboard and panel covers to take voltage/amp readings, review connections and wire size, etc.)

### 3.9 ADDITIONAL SPECIFICATIONS:

- A. See Drawing EG003 for additional project specifications.
- B. See Drawings EE500 series for additional material specifications.

END OF SECTION 330000



## City of Truth or Consequences

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

Agenda Item #: I.9

**SUBJECT:** Extension on Contract with Tech 45 Enterprises

**DEPARTMENT:** Finance

**DATE SUBMITTED:** January 4, 2022

**SUBMITTED BY:** Carol Kirkpatrick, Finance Director

**WHO WILL PRESENT THE ITEM:** Carol Kirkpatrick, Finance Director

**Summary/Background:**

A contract was entered into with Tech 45 Enterprises for Airport Management Services on 7/1/21 through 9/30/21 (\$10,500). An additional extension was then entered into for 10/1/2021 through 12/31/21 (\$10,500). The City posted a Request for Proposals for those services; however, canceled the RFP until further information can be gathered. Therefore, the City needs to extend services through 1/31/2022 (3,500). 1/4/2022 The City wishes to extend the contract from 2/1/2022 through 6/30/2022 for \$17,500. Total 42,000 – Small purchase for Professional Services under \$60,000.

**Recommendation:**

Staff recommends approval in order to continue services at the Airport.

**Attachments:**

- Contract extension with Tech 45 Enterprises 2/1/2022 through 6/30/2022
- Original contract and extension with Tech 45 Enterprises 7/1/2021 through 1/31/2022

**Fiscal Impact (Finance):** Choose an item.

\$17,500 plus gross receipts tax 1,487.50 for a total of \$18,987.50

**Legal Review (City Attorney):** Choose an item.

Legal Counsel has reviewed contract and extensions.

**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 1-12-2022

**EXTENSION OF  
AIRPORT MANAGEMENT CONTRACT**

This Extension of Airport Management Contract is entered into by and between the **CITY OF TRUTH OR CONSEQUENCES**, a Municipal Corporation (hereinafter called "City") and **TECH 45 ENTERPRISES** (hereinafter called "Contractor").

**RECITALS**

A. The parties entered into an Airport Management Contract which sets forth a Time of Performance for a three (3) month period commencing on July 1, 2021 and ending on September 30, 2021.

B. The parties entered into an extended contract for an additional three (3) month period from October 1, 2021 through December 31, 2021.

C. The parties entered into an extended contract for one additional month from January 1, 2022 through January 31, 2022.

D. The parties desire to extend the Airport Management Contract for five (5) additional months beyond the January 31, 2022 expiration date.

**NOW THEREFORE**, the do mutually agree as follows:

1. The Airport Management Contract shall be extended for five (5) months commencing on February 1, 2022 and ending on June 30, 2022.

2. The same terms and conditions as set forth in the Airport Management Contract shall remain in full force and effect during the extended term.

3. Compensation: Seventeen thousand, five hundred dollars (\$17,500) plus NMGR.T.

**CITY OF TRUTH OR CONSEQUENCES**

505 Sims Street  
Truth or Consequences, NM 87901

**CONTRACTOR**

**TECH 45 ENTERPRISES**

\_\_\_\_\_  
**CITY MANAGER**

\_\_\_\_\_  
**CHAD ROSACKER**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DATE**

**December 15, 2021**

**EXTENSION OF  
AIRPORT MANAGEMENT CONTRACT**

This Extension of Airport Management Contract is entered into by and between the **CITY OF TRUTH OR CONSEQUENCES**, a Municipal Corporation (hereinafter called "City") and **TECH 45 ENTERPRISES** (hereinafter called "Contractor").

**RECITALS**

A. The parties entered into an Airport Management Contract which sets forth a Time of Performance for a three (3) month period commencing on July 1, 2021 and ending on September 30, 2021. The parties also entered into an extended contract for an additional three (3) month period from October 1, 2021 through December 31, 2021.

B. The parties desire to extend the Airport Management Contract for one (1) additional month beyond the December 31, 2021 expiration date.

**NOW THEREFORE**, the do mutually agree as follows:

1. The Airport Management Contract shall be extended for one (1) month commencing on January 1, 2022 and ending on January 31, 2022.

2. The same terms and conditions as set forth in the Airport Management Contract shall remain in full force and effect during the extended term.

3. Compensation: Three thousand five hundred dollars (\$3,500) plus NMGR.

**CITY OF TRUTH OR CONSEQUENCES**

505 Sims Street  
Truth or Consequences, NM 87901

**CONTRACTOR**

**TECH 45 ENTERPRISES**

\_\_\_\_\_  
**CITY MANAGER**

\_\_\_\_\_  
**CHAD ROSACKER**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DATE**

## **AIRPORT MANAGEMENT CONTRACT**

This Agreement for services is by and between the **City of Truth or Consequences** (hereinafter called "City"), and **TECH 45 SERVICES, LLC** (hereinafter called "Contractor").

**WHEREAS** the City wishes to engage the Contractor to provide management services for operation of the Truth or Consequences Municipal Airport.

**NOW THEREFORE** the parties do mutually agree as follows:

**Scope of Services:** The City agrees to engage the Contractor and the Contractor hereby agrees to perform all duties and requirements as detailed in **Exhibit 1**.

**Time of Performance:** The contract shall be for a four (4) month period commencing on March 1, 2021 and ending on June 30, 2021 and terminated by either party with 30 day written notice.

**Compensation and Method of Payment:** For performing the services specified in the Scope of Services, the City agrees to pay the Contractor:

A. \$3,500.00 plus NMGRS per month to be paid on or before the 15<sup>th</sup> day of each month. Contractor will be required to submit monthly certifications that he fulfilled all of the necessary services described in Exhibit 1 with a monthly invoice for services rendered.

B. Sole use of the "Pippen" hangar at no charge to the Contractor during the four (4) month period. Thereafter, Contractor may rent the hangar for \$2,000.00 per year subject to the parties' right to re-negotiate these terms at any time after January 2022.

**Independent Contractor:** Neither the Contractor or its employees are considered to be employees of the City of Truth or Consequences for any purpose whatsoever. The Contractor is considered an independent contractor at all times in the performance of the services described in the Scope of Services. The Contractor further understands that he is not entitled to any benefits from the City under the provisions of the Worker's Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City as described in its Employee Personnel Manual.

**Taxes:** Contractor acknowledges that he is responsible for the payment of all income taxes, gross receipt taxes and other deductions by law for any compensation received by the City.

**Discrimination Prohibited:** In performing the services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, physical handicap or disability.

**ADA Requirement:** In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the regulations, (the "ADA"), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify

and hold harmless the City, its officials, agents, and employees from and against any claims, actions, suits or proceedings of any kind brought against the Contractor as a result of any act or omissions of the Contractor or its agents in violation.

**Reports and Information:** At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered in this Agreement. (additional requirements may be added)

**Establishment and Maintenance of Records:** Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by City, such records shall be maintained for a period of three years after receipt of final payment under this Agreement. Copies and originals of pertinent documents shall be provided to the City as directed by the City Manager.

**Publication, Reproduction and Use of Materials:** No material(s) produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. The City and the Contractor acknowledge that the above is not meant to affect the attorney/client privilege unless waived by the City Commission.

**Construction and Severability:** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforcement of any part of this Agreement, so long as the remainder of the Agreement is reasonably capable of completion.

**Enforcement:** In case of a dispute, the Contractor and the City agree to divide all costs and expenses including reasonable attorney's fees incurred by the prevailing party in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

**Worker's Compensation:** The Contractor agrees to comply with state laws and rules applicable to worker's compensation benefits for its employees. If the Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so, this agreement may be terminated by the City.

**Other Insurance:** Contractor shall maintain the types and amounts of insurance required by the New Mexico State Tort Claims Act for the term of this Agreement.

**Safety:** Contractor shall abide by the policies, rules and guidelines required by the City of Truth or Consequences employees when on City property for the purposes of this Agreement.

**Confidentiality:** Contractor shall be bound by the confidentiality requirements of §7-1-8 NMSA, 1978. Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the City Manager of the Governing Body of the City of Truth or Consequences.

**Conflict of Interest:** The Contractor warrants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required by this Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act. Contractor also agrees that they shall not represent any person, company or otherwise that would create a conflict of interest for the term of this Agreement.

**Assignment:** Contractor's obligation under this Agreement may not be assigned or transferred to any other person, firm or corporation without the written consent of the City.

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

**Entire Agreement:** This Agreement shall be governed and construed and enforced in accordance with the laws of the State of New Mexico and the ordinances of the City of Truth or Consequences.


**CITY OF TRUTH OR CONSEQUENCES**

505 Sims Street  
Truth or Consequences, NM 87901

  
CITY MANAGER

**CONTRACTOR**

TECH 45 SERVICES, LLC

  
CHAD ROSACKER



## **EXHIBIT 1**

### **SCOPE OF SERVICES:**

- Supervises, selects, trains, directs, and evaluates department personnel; monitors all activities and operations of the department; sets goals and objectives and establishes guidelines for performance; makes recommendations for hiring and termination; prepares assignments for Airport Attendants.
- Directs and participates in the recruitment, selection, training, supervision, and development of all Airport staff, either directly or through subordinates.
- Plans, manages, and monitors the proper allocation and utilization of staff according to projected needs and directives.
- Supervises acquisition, planning, design, construction, and maintenance of airport facilities; coordinates, and shares resources with other City Departments on maintenance and special repair projects.
- Evaluates & inspects the cleanliness and effectiveness of the airport areas, facilities, and services.
- Studies local conditions, communicates with user groups, and develops immediate and long range plans to meet airport needs of all age groups.
- Responsible for following City procurement procedures when obtaining price quotes(s) as needed for requisitions, to place orders and maintain supplies and equipment, for efficient airport operations.
- Prepares and manages annual budget for the airport program functions; approves purchase of supplies and operating inventory for recreation programs; develops alternative funding sources for programs and improvements.
- Attends regular Airport Advisory Board meetings and reports recommendations and direction to the City Manager.
- Advises the City Manager of the direction of long-term strategic planning for the City Airport.
- Oversees marketing of the airport programs, including posting on the City of Truth or Consequences website.
- Researches grant opportunities and assists with grant applications for the betterment of the airport and related community facilities.
- Coordinates facilities and programs with department staff and other agencies and organizations.
- Performs public relation duties; responds to complaints; prepares news releases and information and marketing bulletins, or other publicity on airport activities; identifies and works diligently to meet the airport needs.
- Perform Economic Development to recruit business and hangar rental Property Management to ensure City/tenant relationships are maintained for the good of the City.
- Interact directly with pilots, tenants, emergency crews, and the public.
- Represents City as necessary for Airport operations.
- Performs Attendant duties as necessary.
- Fueling and minor servicing of various types of aircraft.

- Airport and aircraft services, such as: radio communications with aircraft, providing local surface weather and area traffic advisories, parking aircraft using hand signals, and logging aircraft landings.

- Sales of incidental items.

- Cash handling operations, to include credit card sales, and daily reconciliation and reporting.

- Maintain fuel logs, measure fuel tanks, test fuel for contaminants, and order fuel as needed.

- Read and communicate monthly well readings.

- Responsible for performing and ensuring all equipment, tools and machinery are in clean and safe operating condition, including having a scheduled maintenance program.

- Maintain assigned vehicle(s) by inspecting, servicing, cleaning, and general housekeeping.

- Performs minor facility and grounds maintenance.

- May be required to perform other duties outside the scope of this agreement.

- On site management will be expected on Fridays, Saturdays, and/or Sundays, a minimum of three (3) weekends per month.

- Weekly hours put into the airport are minimum twenty (20) in addition to being on call on weeknights and available at all times while tending to Tech 45 Enterprises business at the airport

- On call Monday through Thursday 4:30 p.m. through 3:00 a.m.

- Work will be a combination of on-site and remote.

## AIRPORT MANAGEMENT CONTRACT

This Agreement for services is by and between the **City of Truth or Consequences** (hereinafter called "**City**"), and **TECH 45 SERVICES, LLC** (hereinafter called "**Contractor**").

**WHEREAS** the City wishes to engage the Contractor to provide management services for operation of the Truth or Consequences Municipal Airport.

**NOW THEREFORE** the parties do mutually agree as follows:

**Scope of Services:** The City agrees to engage the Contractor and the Contractor hereby agrees to perform all duties and requirements as detailed in **Exhibit 1**.

**Time of Performance:** The contract shall be for a three (3) month period commencing on July 1, 2021 and ending on September 30, 2021. Either party may terminate this contract at any time with a 30 day written notice to the other party.

**Compensation and Method of Payment:** For performing the services specified in the Scope of Services, the City agrees to pay the Contractor:

A. \$3,500.00 plus NMGRS per month to be paid on or before the 15<sup>th</sup> day of each month. Contractor will be required to submit monthly certifications that he fulfilled all of the necessary services described in Exhibit 1 with a monthly invoice for services rendered.

B. Sole use of the "Pippen" hangar at no charge to the Contractor during the three (3) month period. Thereafter, Contractor may rent the hangar for \$2,000.00 per year subject to the parties' right to re-negotiate these terms at any time after September 30, 2021.

**Independent Contractor:** Neither the Contractor or its employees are considered to be employees of the City of Truth or Consequences for any purpose whatsoever. The Contractor is considered an independent contractor at all times in the performance of the services described in the Scope of Services. The Contractor further understands that he is not entitled to any benefits from the City under the provisions of the Worker's Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City as described in its Employee Personnel Manual.

**Taxes:** Contractor acknowledges that he is responsible for the payment of all income taxes, gross receipt taxes and other deductions by law for any compensation received by the City.

**Discrimination Prohibited:** In performing the services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, physical handicap or disability.

**ADA Requirement:** In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the regulations, (the "ADA"), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify

and hold harmless the City, its officials, agents, and employees from and against any claims, actions, suits or proceedings of any kind brought against the Contractor as a result of any act or omissions of the Contractor or its agents in violation.

**Reports and Information:** At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered in this Agreement. (additional requirements may be added)

**Establishment and Maintenance of Records:** Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by City, such records shall be maintained for a period of three years after receipt of final payment under this Agreement. Copies and originals of pertinent documents shall be provided to the City as directed by the City Manager.

**Publication, Reproduction and Use of Materials:** No material(s) produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. The City and the Contractor acknowledge that the above is not meant to affect the attorney/client privilege unless waived by the City Commission.

**Construction and Severability:** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforcement of any part of this Agreement, so long as the remainder of the Agreement is reasonably capable of completion.

**Enforcement:** In case of a dispute, the Contractor and the City agree to divide all costs and expenses including reasonable attorney's fees incurred by the prevailing party in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

**Worker's Compensation:** The Contractor agrees to comply with state laws and rules applicable to worker's compensation benefits for its employees. If the Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so, this agreement may be terminated by the City.

**Other Insurance:** Contractor shall maintain the types and amounts of insurance required by the New Mexico State Tort Claims Act for the term of this Agreement.

**Safety:** Contractor shall abide by the policies, rules and guidelines required by the City of Truth or Consequences employees when on City property for the purposes of this Agreement.

**Confidentiality:** Contractor shall be bound by the confidentiality requirements of §7-1-8 NMSA, 1978. Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the City Manager of the Governing Body of the City of Truth or Consequences.

**Conflict of Interest:** The Contractor warrants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required by this Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act. Contractor also agrees that they shall not represent any person, company or otherwise that would create a conflict of interest for the term of this Agreement.

**Assignment:** Contractor's obligation under this Agreement may not be assigned or transferred to any other person, firm or corporation without the written consent of the City.

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

**Entire Agreement:** This Agreement shall be governed and construed and enforced in accordance with the laws of the State of New Mexico and the ordinances of the City of Truth or Consequences.

**CITY OF TRUTH OR CONSEQUENCES**

505 Sims Street  
Truth or Consequences, NM 87901

  
CITY MANAGER

**CONTRACTOR**

TECH 45 SERVICES, LLC

  
CHAD ROSACKER

## **EXHIBIT 1**

### **SCOPE OF SERVICES:**

- Supervises, selects, trains, directs, and evaluates department personnel; monitors all activities and operations of the department; sets goals and objectives and establishes guidelines for performance; makes recommendations for hiring and termination; prepares assignments for Airport Attendants.
- Directs and participates in the recruitment, selection, training, supervision, and development of all Airport staff, either directly or through subordinates.
- Plans, manages, and monitors the proper allocation and utilization of staff according to projected needs and directives.
- Supervises acquisition, planning, design, construction, and maintenance of airport facilities; coordinates, and shares resources with other City Departments on maintenance and special repair projects.
- Evaluates & inspects the cleanliness and effectiveness of the airport areas, facilities, and services.
- Studies local conditions, communicates with user groups, and develops immediate and long range plans to meet airport needs of all age groups.
- Responsible for following City procurement procedures when obtaining price quotes(s) as needed for requisitions, to place orders and maintain supplies and equipment, for efficient airport operations.
- Prepares and manages annual budget for the airport program functions; approves purchase of supplies and operating inventory for recreation programs; develops alternative funding sources for programs and improvements.
- Attends regular Airport Advisory Board meetings and reports recommendations and direction to the City Manager.
- Advises the City Manager of the direction of long-term strategic planning for the City Airport.
- Oversees marketing of the airport programs, including posting on the City of Truth or Consequences website.
- Researches grant opportunities and assists with grant applications for the betterment of the airport and related community facilities.
- Coordinates facilities and programs with department staff and other agencies and organizations.
- Performs public relation duties; responds to complaints; prepares news releases and information and marketing bulletins, or other publicity on airport activities; identifies and works diligently to meet the airport needs.
- Perform Economic Development to recruit business and hangar rental Property Management to ensure City/tenant relationships are maintained for the good of the City.
- Interact directly with pilots, tenants, emergency crews, and the public.
- Represents City as necessary for Airport operations.
- Performs Attendant duties as necessary.
- Fueling and minor servicing of various types of aircraft.

- Airport and aircraft services, such as: radio communications with aircraft, providing local surface weather and area traffic advisories, parking aircraft using hand signals, and logging aircraft landings.

- Sales of incidental items.

- Cash handling operations, to include credit card card sales, and daily reconciliation and reporting.

- Maintain fuel logs, measure fuel tanks, test fuel for contaminants, and order fuel as needed.

- Read and communicate monthly well readings.

- Responsible for performing and ensuring all equipment, tools and machinery are in clean and safe operating condition, including having a scheduled maintenance program.

- Maintain assigned vehicle(s) by inspecting, servicing, cleaning, and general housekeeping.

- Performs minor facility and grounds maintenance.

- May be required to perform other duties outside the scope of this agreement.

- On site management **with days and times to be agreed upon by the parties. will be expected on Fridays, Saturdays, and/or Sundays, a minimum of three (3) weekends per month.**

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- On call Monday through Thursday 4:30 p.m. through 3:00 a.m.

- Work will be a combination of on-site and remote.

September 22, 2021

**EXTENSION OF  
AIRPORT MANAGEMENT CONTRACT**

This Extension of Airport Management Contract is entered into by and between the **CITY OF TRUTH OR CONSEQUENCES**, a Municipal Corporation (hereinafter called "City") and **TECH 45 SERVICES, LLC** (hereinafter called "Contractor").

**RECITALS**

A. The parties entered into an Airport Management Contract which sets forth a Time of Performance for a three (3) month period commencing on July 1, 2021 and ending on September 30, 2021.

B. The parties desire to extend the Airport Management Contract for an additional three (3) month period beyond the September 30, 2021 expiration date.

**NOW THEREFORE**, the do mutually agree as follows:

1. The Airport Management Contract shall be extended for an additional three (3) month period commencing on October 1, 2021 and ending on December 31, 2021.

2. The same terms and conditions as set forth in the Airport Management Contract shall remain in full force and effect during the extended term.

**CITY OF TRUTH OR CONSEQUENCES**

505 Sims Street  
Truth or Consequences, NM 87901

  
CITY MANAGER

**CONTRACTOR**

**TECH 45 SERVICES, LLC**

  
CHAD ROSACKER



## **AIRPORT MANAGEMENT CONTRACT**

This Agreement for services is by and between the **City of Truth or Consequences** (hereinafter called "City"), and **TECH 45 SERVICES, LLC** (hereinafter called "Contractor").

**WHEREAS** the City wishes to engage the Contractor to provide management services for operation of the Truth or Consequences Municipal Airport.

**NOW THEREFORE** the parties do mutually agree as follows:

**Scope of Services:** The City agrees to engage the Contractor and the Contractor hereby agrees to perform all duties and requirements as detailed in **Exhibit 1**.

**Time of Performance:** The contract shall be for a three (3) month period commencing on July 1, 2021 and ending on September 30, 2021. Either party may terminate this contract at any time with a 30 day written notice to the other party.

**Compensation and Method of Payment:** For performing the services specified in the Scope of Services, the City agrees to pay the Contractor:

A. \$3,500.00 plus NMGRS per month to be paid on or before the 15<sup>th</sup> day of each month. Contractor will be required to submit monthly certifications that he fulfilled all of the necessary services described in Exhibit 1 with a monthly invoice for services rendered.

B. Sole use of the "Pippen" hangar at no charge to the Contractor during the three (3) month period. Thereafter, Contractor may rent the hangar for \$2,000.00 per year subject to the parties' right to re-negotiate these terms at any time after September 30, 2021.

**Independent Contractor:** Neither the Contractor or its employees are considered to be employees of the City of Truth or Consequences for any purpose whatsoever. The Contractor is considered an independent contractor at all times in the performance of the services described in the Scope of Services. The Contractor further understands that he is not entitled to any benefits from the City under the provisions of the Worker's Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City as described in its Employee Personnel Manual.

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and hold harmless the City, its officials, agents, and employees from and against any claims, actions, suits or proceedings of any kind brought against the Contractor as a result of any act or omissions of the Contractor or its agents in violation.

**Reports and Information:** At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered in this Agreement. (additional requirements may be added)

**Establishment and Maintenance of Records:** Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by City, such records shall be maintained for a period of three years after receipt of final payment under this Agreement. Copies and originals of pertinent documents shall be provided to the City as directed by the City Manager.

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

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**CITY OF TRUTH OR CONSEQUENCES**

505 Sims Street  
Truth or Consequences, NM 87901

  
CITY MANAGER

**CONTRACTOR**

TECH 45 SERVICES, LLC

  
CHAD ROSACKER

## **EXHIBIT 1**

### **SCOPE OF SERVICES:**

- Supervises, selects, trains, directs, and evaluates department personnel; monitors all activities and operations of the department; sets goals and objectives and establishes guidelines for performance; makes recommendations for hiring and termination; prepares assignments for Airport Attendants.
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- Advises the City Manager of the direction of long-term strategic planning for the City Airport.
- Oversees marketing of the airport programs, including posting on the City of Truth or Consequences website.
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- On call Monday through Thursday 4:30 p.m. through 3:00 a.m.

- Work will be a combination of on-site and remote.



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

*Agenda Item #: I.10*

**MEETING DATE:** January 12, 2022

**SUBJECT:** Approval of Contract With SCSWA South Central Solid Waste Authority

**DEPARTMENT:** Finance Department

**DATE SUBMITTED:** January 5, 2022

**SUBMITTED BY:** Carol Kirkpatrick, Finance Director

**WHO WILL PRESENT THE ITEM:** Carol Kirkpatrick, Finance Director

**Summary/Background:** Original contract 1-12-2016 with option to renew for 8 years per RFP 15-16-001 for transfer and disposal services.

**Recommendation:**

Approval of Extension of Contract with South Central Solid Waste Authority (SCSWA)

**Attachments:**

- Contract Extension with SCSWA South Central Solid Waste Authority and Original Contract from 1-12-2016

**Fiscal Impact (Finance):** Yes

Total cost of this contract is \$53.68 per ton for an estimate of \$478,401. Original purchase order #74433  
Commission approved 6/23/21

**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 1-12-2022



## **City of Truth or Consequences**

505 Sims Street

Truth or Consequences, New Mexico 87901

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

### **EXTENSION OF CONTRACT BETWEEN THE CITY OF TRUTH OR CONSEQUENCES ("CITY") AND SOUTH CENTRAL SOLID WASTE AUTHORITY ("SCSWA")**

Comes now the Parties, and hereby agree to extend a certain Contract, as described below.

#### **RECITALS**

1. The parties entered into a certain Contract in January 2016, whereby SCSWA agreed to provide solid waste/transfer station handling services to the city as specified in RFP 15-16-001 and the response documents.
2. The Contract contemplated that the parties could extend the Contract upon mutual consent.
3. The parties signed an Extension of the Contract through January 13, 2022.
4. The Parties desire to extend the Contract for an additional year.

Wherefore, the parties agree as follows:

1. The aforesaid Contract shall be extended through January 13, 2023.
2. The cost of transfer and disposal services are invoiced by SCSWA, the month after service. The invoices will reflect the CPI increase percentages current for the prior month of service through January 13, 2023. CPI increases invoices are found on the Bureau of Labor Statistics for all items less food and energy for the Western region. The cost charge for transfer and disposal services will be increased to \$53.68 per ton through January 13, 2023.
3. All other provisions of the Contract shall remain in full force and effect.



## City of Truth or Consequences

505 Sims Street

Truth or Consequences, New Mexico 87901

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

### THE CITY:

\_\_\_\_\_  
City Manager – Bruce Swingle

\_\_\_\_\_  
Chief Procurement Officer -Donna Gardner

\_\_\_\_\_  
City Attorney – Jay Rubin

### CONTRACTOR:

\_\_\_\_\_  
Terri D. Del Ferraro, Purchasing Manager, CPO  
South Central Solid Waste Authority (SCSWA)  
2865 W. Amador Ave. Las Cruces, NM 88005

DATE: 01-04-2022



**CONTRACT BETWEEN THE CITY OF TRUTH OR CONSEQUENCES AND  
SOUTH CENTRAL SOLID WASTE AUTHORITY**

This Contract entered into by and between the City of Truth or Consequences, hereinafter referred as the "City," and **South Central Solid Waste Authority** hereinafter referred to as the "Contractor," to transfer Municipal Solid Waste (as defined in the New Mexico Solid Waste Act) for the City of Truth or Consequences. The City is authorized to enter into this Contract pursuant to Section 13-1-97 et seq. NMSA 1978 and has let this Contract pursuant to state and local purchasing procedures for Contracts of this type and amount. The City Commission approved the Contract during its regularly scheduled meeting on **January 12, 2016**. In consideration of the mutual promises and agreements contained in this Contract, the parties agree as follows:

**ARTICLE 1. MATERIAL TO BE PROVIDED:** When requested, Contractor shall provide solid waste/transfer station hauling services as specified in the RFP and response documents for the City of Truth or Consequences. The Contractor shall have available the service required on an as ordered basis.

The Contractor shall provide the services in accordance with the provisions of this Contract and with the terms and conditions of both Request for Proposals **15-16-001** and Contractor's response to the Request for Proposals incorporated herein by reference and made a part of this contract.

**ARTICLE 2. PERIOD OF PERFORMANCE:** The period of performance of this Contract shall begin from **January 13, 2016** through **January 13, 2017**. The Contract may be renewed and renegotiated for additional annual terms upon mutual consent of the parties, but in no event may this Contract be extended beyond a total of eight (8) years.

**ARTICLE 3. PLACE OF PERFORMANCE:** Contractor shall have available the item(s) and provide the service as per contract.

**ARTICLE 4. ESTIMATED COST:** The amount of the contract during the period specified above is as related in the bid documents. Funds are obligated by this Contract on an as needed basis. The unit cost for the item(s) is based per the Contractor's unit bid response. **Price Per Ton \$ 46.50**, the said price includes tipping fees, contract fee/base fee and a fuel fee.

**ARTICLE 5. NOTICES AND INVOICES:** Invoices shall be mailed to Accounts Payable Office, 505 Sims Street, Truth or Consequences, New Mexico, 87901. All other correspondence shall be submitted jointly to:

CITY OF Truth or Consequences  
505 Sims Street  
T or C, NM 87901  
575-894-6673 Ext. 312  
FAX 575-894-0363  
e-mail: [pat@torcnm.org](mailto:pat@torcnm.org)

**ARTICLE 6. ASSIGNMENT OF CLAIMS:** The Contractor shall not assign or delegate any interest in this Contract or transfer any interest or assign any claims for money due or to become due under this Contract, without the written consent of the City.

**ARTICLE 7. MUTUAL HOLD HARMLESS AND INDEMNIFY CLAUSE:** The contractor shall indemnify, defend and hold harmless the City, their officers, agents and employees from and against any liability, claims, damages, losses, expenses, actions and suits whatsoever, including injury or death of others or any employees of the contractor, or sub-contractor caused by or arising out of the performance, act or omission by the contractor of any term of this contract.

Likewise, the City shall indemnify, defend and hold harmless the contractor, their officers, agents and employees from and against any liability, claims, damages, losses, expenses, actions and suits whatsoever, including injury or death of others or any employees of the City caused by or arising out of the performance, act or omission by the City of any term of this contract.

**ARTICLE 8. INSURANCE:** For the duration of the contract and until all work specified in the contract is completed the Contractor shall maintain in effect all insurance as required below and comply with all limits, terms and conditions stipulated therein.

Work under this contract shall not commence until evidence of all required insurance and bonding is provided to the Finance Department.

Evidence of such insurance shall consist of a completed copy of the certificate of insurance, signed by the insurance agent for the Contractor and returned to the City. If for any reason, any material change occurs in the coverage during the course of the contract such change will not become effective until thirty (30) days after the City has received written notice of such change.

A. The policy shall be written and the certificate shall reflect that:

1. All insurance required below is in effect.
2. The City is an additional insured on the Contractor's general liability policy with respect to activities under the contract.
3. The insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.
4. The insurance afforded therein shall be primary insurance and any insurance or self-insurance of the City shall be excess and not contributory insurance.
  - i. Being that both Parties are governmental agencies and members of the New Mexico Self Insurance Pool, the contractor shall obtain insurance of the types described below from the New Mexico Self Insurance Fund.
1. Commercial General Liability insurance shall cover liability arising from products and completed operations, premises, contractual liability, personal injury, and advertising injury. There shall be no endorsement or modification of the Commercial General Liability insurance limiting coverage for claims arising from explosion, collapse or underground exposures.
2. Worker's Compensation Insurance as required by the State.
3. Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles.

B. Contractor shall maintain insurance coverage to meet the limits set in place by the New Mexico Tort Claims Act.

1. \$100,000 for damage to or destruction of property arising out of a single occurrence;
2. \$300,000 for all past and future medical and medically related expenses arising out of a single occurrence;
3. \$400,000 to any person for any number of claims arising out of a single occurrence;
4. \$750,000 for all claims other than medical or medically related expenses arising out of a single occurrence;
5. Worker's Compensation Insurance as required by statute.

Contractor shall hold harmless, indemnify and defend the City and its "public employees" as defined in the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-29, NMSA 1978, as amended, against and from any and all claims, losses, demands, judgments, damages, liabilities, lawsuits, expenses, fees of attorneys, costs and/or actions of any kind and nature whether from death, bodily injury or damage to property resulting from or related to the Contractor's negligence or intentional acts, errors or omissions in the Contractor's

performance under this Contract. The Contractor's agreement to hold harmless, indemnify and defend shall not be affected or terminated by the cancellation, expiration of the term or any renewal or any other modification of the Contract for any reason and shall survive the cancellation, expiration of the term or any renewal or any other modification of this Contract, for negligence, acts, errors or omissions to act occurring during the term of this Contract.

**ARTICLE 9. TERMINATION:** Either party may terminate this Contract with or without cause by providing written notice to the other party sixty (60) days in advance of the termination. In the event of Contract termination, the Contractor shall be reimbursed for completed work that is approved by the City.

**ARTICLE 10. RELEASE:** The Contractor, upon final payment of the amount due under this Contract for work completed and approved by the City, releases the City, its officers and employees from all liabilities, claims, and obligations whatsoever arising from or under this Contract. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City, unless the Contractor has express written authority from an authorized City employee to do so, and then only within the limits of the expressed written authority.

**ARTICLE 11. CONFLICT OF INTEREST:** The Contractor warrants that he presently has no interest, and shall not acquire any interest during the term of this Contract, which would have the potential to conflict with the performance of the services required under this Contract. In the event such a conflict arises, it shall be brought to the attention of the City and appropriate action acceptable to the City shall be taken. The Contractor's failure to inform the City of the existence of a potential conflict of interest constitutes default and shall be grounds for immediate termination of Contract by the City.

**ARTICLE 12. INDEPENDENT CONTRACTOR:** Nothing in this Contract is intended, or should be construed in any way, to create or establish a partnership relationship between the parties or to establish the Contractor as an agent, representative or employee of the City for any purpose or any manner whatsoever. Contractor and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the City. Contractor is an independent Contractor of the City. The Contractor, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the City and shall not bind the City in any respect.

**ARTICLE 13. PROCUREMENT CODE:** The Procurement Code Sections 13-1-28 through 13-1-199, NMSA 1978 as amended, imposes civil and criminal penalties for its violation. In addition, New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**ARTICLE 14. AMENDMENT:** This Contract shall not be altered, changed or amended except by a written instrument signed by both parties.

**ARTICLE 15. SOVEREIGN IMMUNITY:** By entering into this Contract, the City and its "public employees" as defined in the New Mexico Tort Claims Act, supra, do not waive sovereign immunity, do not waive any defense, and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, supra.

**ARTICLE 16. WAIVER:** Any waiver of any breach of any covenant, term, condition or agreement in this Contract to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the City from declaring a default for any succeeding breach either of the same covenant, term, condition or agreement or another. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

**ARTICLE 17. MERGER OF PRIOR AGREEMENTS:** This Contract incorporates all the conditions, agreements and understandings of the parties concerning the subject matter of the Contract. All such conditions, understandings and agreements have been merged into this written Contract. No prior condition, agreement or understanding, verbal or otherwise, shall be valid or enforceable unless embodied in this Contract.

**ARTICLE 18. PARAGRAPH HEADINGS:** Paragraph headings are for convenience and reference and are not intended to limit the scope of any provision of this Contract.

**ARTICLE 19. THIRD PARTY BENEFICIARY:** It is agreed between the parties executing this Contract that it is not intended by any of the provisions of the Contract to create on behalf of the public or any member thereof the status of third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit based upon this Contract.

**ARTICLE 20. PERSONAL LIABILITY:** No elected or appointed official, employee, servant, agent or law enforcement officer of the City shall be held personally liable under this Contract or any extension or renewal thereof because of its enforcement or attempted enforcement, provided they are acting within the course and scope of their employment or governmental duty and responsibility.

**ARTICLE 21. GOVERNING LAW:** This contract shall be construed in agreement with the Laws of the State of New Mexico. The Contractor shall also comply with all applicable Federal and local laws, ordinances, and the rules and regulations of the City.

**ARTICLE 22. BINDING EFFECT OF AGREEMENT:** Both parties agree that the terms of this Contract and any extension or renewal thereof shall extend to and be binding on the administrators, assigns, and successors of the Contracting Parties.

**ARTICLE 23. SEVERABILITY:** If any clause or provision of the Contract is held to be illegal, invalid or unenforceable, the remainder of the Contract shall remain in full force and effect. However, in the event that neither party can reasonably perform pursuant to the remaining Contract terms, or if the purpose of the Contract can no longer be carried out by either party, the Contract is void and no damages shall accrue to either party.

**ARTICLE 24. ARBITRATION:** In the event that a dispute arises with respect to any of the provisions contained in this Contract or any other matter affecting this contractual relationship between the City and the Contractor, it shall be resolved by arbitration in New Mexico in accordance with the rules and procedures of the American Arbitration Association, and judgment upon the award rendered may be entered into any court having jurisdiction. All attorneys' fees and associated expenses shall be awarded as decided by the Arbitrator.

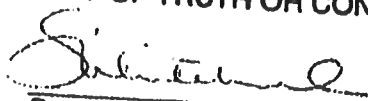
**ARTICLE 25. NOTICE TO PROCEED:** It is expressly understood that this Contract is not binding upon the City until approved and signed by the City and, further, that the Contractor is not to proceed with its obligations under the Contract until the Contractor has received a fully signed copy of the Contract.

**ARTICLE 26. NON-APPROPRIATION:** The City's obligation to make payment under the terms of this Agreement are contingent upon its appropriation of sufficient funds to make those payments. If the City does not appropriate funds for the continuation of this Contract, this Contract will terminate upon written notice of that effect to the Principal. The City's determination that sufficient funds have not been appropriated is firm, binding and not subject to review.

**ARTICLE 27. DUPLICATE ORIGINALS:** This document shall be executed in no less than four (4) counterparts, each of which shall be deemed an original.

**ARTICLE 28. SUB-CONTRACT:** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the City or as negotiated an made part of this Agreement.

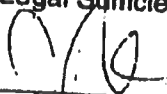
**CITY OF TRUTH OR CONSEQUENCES**



Sandra Whitehead, Mayor

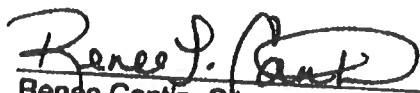
Date: 1/12/2016

As to Legal Sufficiency:



Jay Rubin, Attorney

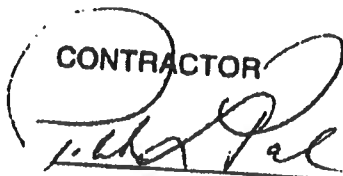
Date: 1/14/16



Renee Cantin, City  
Clerk-Treasurer

Date: 1/12/2016

**CONTRACTOR**



Patrick Pock

Print Name

Address: \_\_\_\_\_

CRS #: 02-301828-00-3

Federal Tax ID #or SS#: 85-0469300

Telephone#: 575 528-3800

Date: 1-21-16

**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:** 74433**Date:** 07/01/2021**Requisition #:** 85521**Vendor #:** 2146

**ISSUED TO:** CITY OF LAS CRUCES  
P.O. BOX 20000  
LAS CRUCES, NM 88004-9002

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

ITEM	UNITS	VENDOR PART #	DESCRIPTION	GL ACCT #	PROJ ACCT #	PRICE	AMOUNT
1	0		SCSWA OPEN PO FY2021-2022 PER CONTRACT 1-31-21 TO 1-13-22 COMMISSION APPROVED 6/23/21	505-3904-45601		0.00	478,401.00

<b>SUBTOTAL:</b>	478,401.00
<b>TOTAL TAX:</b>	0.00
<b>SHIPPING:</b>	0.00
<b>TOTAL</b>	478,401.00

**Chief Purchasing Officer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**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 receipted 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: January 12, 2022

Agenda Item #: I.11

**SUBJECT:** Contract with Public Sector Personnel Consultants, Inc

**DEPARTMENT:** Finance

**DATE SUBMITTED:** January 4, 2022

**SUBMITTED BY:** Carol Kirkpatrick, Finance Director

**WHO WILL PRESENT THE ITEM:** Carol Kirkpatrick, Finance Director

**Summary/Background:**

The City wishes to contract with Public Sector Personnel Consultants, Inc. to perform a compensation study in order to have updated salary schedules and job descriptions.

**Recommendation:**

Staff recommends approval

**Attachments:**

- Contract with Public Sector Personnel Consultants, Inc.
- -

**Fiscal Impact (Finance):** Choose an item.

\$20,000 plus gross receipts tax of \$1,700 for a total of \$21,700 (small purchase of professional services)

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

-

**Approved For Submittal By:** ☒ Department Director

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

**Final Approval:** ☒ City Manager

#### CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

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

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

File Name: CC Agendas 1-12-2022

## **CITY OF TRUTH OR CONSEQUENCES PROFESSIONAL SERVICES CONTRACT**

THIS AGREEMENT is made and entered into by and between the **City of Truth or Consequences New Mexico** (the "City"), a municipal corporation and political subdivision of the State of New Mexico, and **Public Sector Personnel Consultants, Inc ("PSPC")** (the "Contractor") at 2824 N. Power Road #113-486 Mesa, Arizona 85215 (National Office) and is effective as of the date set forth below upon which it is executed.

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.* and Procurement Code Regulations, NMAC 1.4.1 *et. seq.* the Contractor has held itself out as an entity with the ability to provide the required services to implement the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the City of Truth or Consequences;

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUALLY AGREED BETWEEN THE PARTIES:

### **1. Scope of Work.**

- a. In consideration of the payment by the City of Truth or Consequences, as hereinafter provided, Public Sector Personnel Consultants, Inc. agrees to perform all the services as outlined in "Exhibit A", Scope of Work.

### **2. Compensation.**

- a. The City shall pay to the Contractor an amount not to exceed Twenty thousand dollars (\$20,000) plus any applicable gross receipts tax. This cost includes one on-site meeting.
- b. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. .
- c. Contractor will not require any advance payments and will provide monthly invoices for the professional services provided and out-of-pocket expenses incurred during the month. Invoices will be paid within thirty (30) days of their receipt.

### **3. Contract Term Estimate.**

- a. The City and PSPC will partner to complete the study within 150 days. This agreement shall remain in effect until September 31, 2022.

### **4. Termination.**

- a. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination along with contractors expenses to comply with City's termination notice, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City, and fails to implement corrective action within ten (10) business days of the City's notice, or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein and contractors failure to implement corrective actions for fault. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.
- b. Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

## **5. Appropriations.**

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

**6. Status of Contractor**

- a. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City of Truth or Consequences. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the City of Truth or Consequences as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment, and business income tax. The Contractor agrees not to purport to bind the City of Truth or Consequences unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Discrimination Prohibited**

- a. In performing the services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, physical handicap or disability.

**8. ADA Requirement**

- a. In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the regulations, (the "ADA"), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents, and employees from and against any claims, actions, suits or proceedings of any kind brought against the Contractor as a result of any act or omissions of the Contractor or its agents in violation.

**9. Reports and Information**

- a. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered in this Agreement. (additional requirements may be added)

**10. Establishment and Maintenance of Records**

- a. Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by City, such records shall be maintained for a period of three years after receipt of final payment under this Agreement. Copies and originals of pertinent documents shall be provided to the City as directed by the City Manager.

**11. Publication, Reproduction and Use of Materials**

- a. No material(s) produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. The City and the Contractor acknowledge that the above is not meant to affect the attorney/client privilege unless waived by the City Commission.

**12. Construction and Severability**

- a. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforcement of any part of this Agreement, so long as the remainder of the Agreement is reasonably capable of completion.

**13. Claims**

- a. The Contractor shall defend, save and hold harmless the City from claims to the extent caused or allegedly caused by negligence on the part of the Contractor in performance of Contractor's scope of work under this Agreement.

**14. Subcontracting**

- a. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

**15. Release**

- a. Final payment of the amounts due under this Agreement shall operate as a release of the City, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**16. Confidentiality**

- a. Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

**17. Product of Service - Copyright.**

- a. All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the

termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**18. Conflict of Interest; Governmental Conduct Act.**

- a. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
- b. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

**19. Merger.**

- a. This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**20. Penalties for Violation of Law.**

- a. The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
- b. The parties hereto affirmatively state that no illegal bribes, gratuities or kickbacks of any sort have been or will be made or requested in connection with this Agreement.

**21. Equal Opportunity Compliance.**

- a. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life

of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**22. Applicable Law.**

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

**23. Workers Compensation.**

- a. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

**24. Records and Audits**

- a. The Contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Agreement and such other records as may be deemed necessary by the City and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the City or any authorized representative, and will be retained for three (3) years after the payment for the work under this Agreement unless permission to destroy them is granted by the City and the funding City.

**25. Indemnification.**

- a. The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source to the extent caused by the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor or City the receiving party shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the other party by certified mail.

**26. Invalid Term or Condition.**

- a. If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**27. Enforcement of Agreement.**

- a. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**28. Notices.**

- a. Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:
- b. To the City:
  - i. City Manager,  
505 Sims Street  
Truth or Consequences, NM 87901
- c. To the Contractor:
  - ii. Public Sector Personnel Consultants, Inc.  
Matthew Weatherly, President  
2824 N. Power Road #113-486  
Mesa, Arizona 85215

**29. Authority.**

- a. If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**30. Insurance**

- a. Contractor shall maintain the types and amounts of insurance required by the New Mexico State Tort Claims Act for the term of this Agreement.

**31. Assignability**



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

**32. Amendment**

- a. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.
- b. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

**33. Entire Agreement:**

- a. This Agreement shall be governed and construed and enforced in accordance with the laws of the State of New Mexico and the ordinances of the City of Truth or Consequences.

IN WITNESS WHEREOF, the parties have executed this Agreement as of \_\_\_\_\_, 2022.

**CITY OF TRUTH OR CONSEQUENCES**

SIGNED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME AND TITLE: \_\_\_\_\_

SIGNED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

**CITY'S LEGAL COUNCEL-CERTIFYING LEGAL SUFFICIENCY**

**CONTRACTOR:**

COMPANY NAME: **PUBLIC SECTOR PERSONNEL CONSULTANTS, INC.**

SIGNED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME AND TITLE: \_\_\_\_\_

Attest: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**SUMMARY OF SERVICES FOR THE CITY**

***PUBLIC SECTOR PERSONNEL CONSULTANTS (PSPC)*** proposes the following program of consulting services and implementation support to conduct a classification and compensation study.

**Project Planning and Communication**

1. Telephone planning meeting with the City Manager and project designee(s) \*
2. As-needed policy input and project direction meeting with Commission and designee(s) \*
3. Kick-off introductory meetings for employees to learn about the study, explain job questionnaire

**Classification Project Tasks**

4. Occupational familiarization by review of City's current class specifications and compensation plans
5. Organizational familiarization by review of City organization charts, budgets, and annual reports
6. Position Description Questionnaires (PDQ) for collection of job information from employees
7. Determination of job classification and FLSA Exempt / Non-Exempt designation for each position
8. Recommended title modifications and reclassifications for consideration by department heads
9. Review of position classification recommendations with City's project staff and respective departments\*
10. As-needed preparation of updated job descriptions / class specifications for each City job classification

**Compensation Survey and Analysis**

11. Occupational familiarization by review of City's current job descriptions and compensation plans
12. Organizational familiarization by review of City organization charts, budgets, and annual reports
13. Identification of survey comparator agencies for use in external data collection and job comparison
14. Identification of survey benchmark job classifications to develop custom survey database (target ~50+)
15. Solicitation and collection of public sector pay plan data, organization charts, budget documents for survey
16. Application of published private sector data and weighting of public and private market data as desired

17. Consolidation of data from all sources and calculation of prevailing rates for benchmark jobs
18. Computation of extent City's compensation offerings vary from external prevailing rates and practices
19. Review of competitiveness analysis with City Officials and City's project designees

#### **Application of Data: Compensation Plan Development**

20. Development of pay range and pay table structures for review and approval by the City
21. Assignment of job classes to salary ranges by internal equity and external competitiveness
22. Linkage of survey data to non-benchmark jobs for "whole plan" creation of pay range placements
23. Assessment of payroll including compression, range penetration, and modeling of alternatives
24. Fiscal impact estimates at various levels of external prevailing rates competitiveness policies
25. Review and critique of draft salary and implementation plans with project leaders

#### **Communication of Results and Implementation Strategies**

26. Preparation and presentation of a final project report for the City Commission, staff, and City Officials
27. Development of a plan for the implementation of City's compensation plan
28. Development and provision of process for ongoing plan maintenance and subsequent plan updates
29. Assistance with communicating the proposed plans for all City officials and employees
30. One year compensation plan maintenance assistance at no cost the City. Maintenance includes assisting with range placement on any new or changed job, and phone availability for technical or professional advice and support.

**NM PUBLIC SECTOR PERSONNEL CONSULTANTS 12/21**  
**\* many tasks can be completed remotely; on-site meetings can be performed pending Covid-19 restrictions**

### **PROJECT APPROACH AND METHODOLOGY**

Following is our overall work plan and approach to achieving the City's objectives for the conduct of a compensation study.

#### ***A. OBJECTIVES OF THE PROJECT***

The recommended plans, programs, systems and administrative procedures will meet these ten most important criteria.

- Internally equitable

- Financially responsible

- Externally competitive
- Readily understood
- Easily updated & maintained
- Legally compliant & defensible practices”
- Efficiently administered
- Inclusive of employee input
- Reflective of City's values
- Reflective of prevailing “best

## ***B. SCOPE OF THE PROJECT***

The project could include: a management and employee communication plan; partnership with the City Manager, Commission, and project designee(s); occupational, organizational, and operational familiarization; as-needed Position Description Questionnaire (PDQ) and job analysis for all classifications; position classification and job title recommendations for all employees and classifications; FLSA designations; updated job descriptions; *EZ COMP™*; external competitiveness evaluation; salary survey and competitiveness analysis; salary range recommendations; fiscal impact estimates and multiple implementation scenarios; updated classification and compensation plan and one year of classification and compensation plan implementation support for all included employees in all job classifications.

## ***C. POSITION CLASSIFICATION ANALYSIS***

### ***1. Review of Essential Tasks – Position Description Questionnaire***

We will review and analyze the current essential tasks, duties and responsibilities, and minimum qualifications of each included position through the Position Description Questionnaire (PDQ) recently completed by each employee (or group of employees with identical jobs). If the information on the PDQ does not clearly delineate the position’s scope of responsibilities, we may return the PDQ to the position’s incumbent for additional information or seek additional information from departments.

### ***2. FLSA Status Interpretation***

We can review the essential tasks and minimum qualifications of each of the City's job classifications and subject them to the Fair Labor Standards Act tests to interpret their exempt or non-exempt status.

### ***3. Position Classification***

Each of the City’s positions will be analyzed and evaluated to determine their primary characteristics, including:

- Is there a current City occupational job group comprised of job classes with essential functions similar to the subject position; if so:
- To which of the group’s job classes, and at what level, are the subject position’s essential functions similar to the subject position, and if so:

- Are they sufficiently comparable (+/- 20% guideline) to be allocated to that job class, utilize the same job title, require the same minimum qualifications, and be assigned to the same salary range.
- If the City does not currently have a sufficiently comparable job class, what should be the subject position's occupational job class and title, and:
- What should the recommended occupational classification action be, No Change (N), Title Change (T), Merge With Other Job Class (M), New Job Class (J).
- We may find that a job class is overly broad and encompasses several job activities which are regarded with significant salary difference in the marketplace. In such an instance, we will recommend "splitting" the job class into the current job class and a new job class which encompasses the different job activities.

#### **4. Updated Job Descriptions**

We can prepare an updated job description in the City's standard or other selected format for each occupational job class. Focus will be on the Essential Functions and Minimum Qualifications. The descriptions may include (not limited to) the following components:

Job Title – Definition	Education, Training and Experience	Physical Requirements
Distinguishing Characteristics	Licenses and Certifications	Non-Essential Functions
Essential Functions	FLSA Status	Mental Requirements
Desired Knowledge and Skills	Supervision Exercise/Received	Working Conditions

#### **5. Draft Classification Plan Review with Department Heads**

We will conduct a review of our initial position classification recommendations and draft job descriptions with the City's Project Team and respective department heads to identify possible errors, obtain feedback, and solicit suggestions for clarification.

### **C. COMPREHENSIVE AND SUSTAINABLE COMPENSATION PLAN**

#### **1. City Involvement in Compensation Plan Development**

We will obtain policy direction from the City Commission, Human Resources staff, and/or City Officials on the following key components of the salary plan development process:

- Comparator Employer Selection
- Job Evaluation Method-Salary Plan

Linkage

- Benchmark Job Class Selection

- Draft Compensation Plan Review /

Critique

- Compensation Competitiveness Policy

- Compensation Points for

Analysis

- Salary Structure Selection

- Project Implementation Plan

## 2. **Comprehensive Compensation Surveys**

We will collect the complete pay plans from each of the City's comparators and build a custom survey database to ensure accuracy and completeness, unique to the City's job classifications.

- a. Data Collection Protocol** will be developed in consultation with the City's project leaders to determine which salary data elements to include, such as:

### ***Example Salary Data***

- Salary range structure Minimum, Midpoint, and Maximum
- Structure design s/a open range, grade step, number of steps

- b. Benchmark Job Selection** will be made by identifying City job classes common to its employment-competitive public and private employers in the immediate area and throughout the region or State, clearly identifiable, and representative of standard occupational job groups.

- c. Comparator Employers Identification** will be made in consultation with the City's Project Manager(s) or City Commission. Criteria include their degree of competition to the City in obtaining and retaining high quality staff, their location in the City's traditional recruitment areas, and their organizational size and complexity.

- d. Compensation Data Collection** will be made by one or more of the following methods.

- Pre-survey contact with the selected comparator employers to solicit participation in the City's compensation survey(s)
- Extraction from the pay plans of designated public employers.
- Customized salary survey requests for local governments and other public employers, distributed by mail, fax, and e-mail.
- Private sector data if desired from Economic Research Institute's Salary Assessor

- e. Data Quality Control** includes editing data for accuracy and proper matching to the City's survey benchmark jobs, and phone/fax/E-mail follow-ups for data clarification and to obtain comparators' benchmark job descriptions.

**3. Prevailing Rates Calculation**

We will consolidate the compensation data from all sources, enter the information into the **EZ COMP™** program, and compute the prevailing rates, inclusive of cost-of-living differentials, as the statistical mean of the survey data for each benchmark job class. Data will be projected forward from the date of collection to a common date relating to the City's salary plan year by the annual Prevailing Rate Increase Factor (PRI) applicable at that time.

**4. Compensation Competitiveness Comparison**

We will provide the City with charts comparing its current salary structures to those of the selected public and private comparator employers. We will calculate the extent that the City's offerings vary from the prevailing rates and practices of other relevant employers.

**5. Compensation Competitiveness Policy**

We will assist the City to select a compensation competitiveness policy which best fits its compensation strategy and financial resources, by providing fiscal impact estimates at various percentage relationships to the prevailing rates.

**6. Salary Plan Structure Development**

We will prepare alternative salary range structures and schedules for the City to select the best fit for its competitiveness strategy, with these optional criteria:

- Method of administration, i.e.: measured job performance, longevity, or skill
- Width of the salary ranges, grades, or broad bands, from Minimum to Maximum
- If steps within the salary ranges, number of steps, percentage separation
- Number of salary ranges, grades, or broad bands in the salary schedule

**7. Salary Range Assignment Development**

We will assign each job classification to a salary range in the City's selected salary structure on the basis of a combination of factors, including:

- the prevailing rates for the benchmark job classes
- its current relationship to similar or occupationally related job classes
- the 15% guideline for salary range separation between sequential job classes
- the 25% guideline for salary separation of a department head job class

**8. Implementation Plan Development**

We will consult with the City's Project Team on a plan for transition to the recommended plan, including a timetable for the principal activities, employee communication, multi-year strategies as needed, and estimates of required financial resources.



## ***D. FINAL REPORTS AND PRESENTATIONS***

### ***1. Draft and Final Report Preparation***

We will provide the City's project leader(s) with a draft of our report for review and critique, including market data, salary comparison tables, fiscal estimates, salary range listings, and implementation procedures. We will incorporate their critique into the development of a final report summarizing the project's findings, recommendations, and detailed description of the City's proposed compensation plans.

### ***2. Final Report Presentations***

We can conduct a workshop or formal presentation of our final report and recommendations for City Officials.



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

*Agenda Item #: I.12*

**SUBJECT:** Appointment of Joe McClintock as a Member on the Sierra Joint Office on Aging Board  
**DEPARTMENT:** City Manager's Office  
**DATE SUBMITTED:** January 5, 2022  
**SUBMITTED BY:** Tammy Gardner  
**WHO WILL PRESENT THE ITEM:** Bruce Swingle, City Manager

***Summary/Background:***

Discussion/Action the City has a vacancy on the SJOA Board and will need to make an appointment.

***Recommendation:***

Appointment

***Attachments:***

- Email from Joe McClintock
- .

***Fiscal Impact (Finance):* No**

[Click here to enter text.](#)

***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 1-12-2022

**From:** Joe McClintock [<mailto:jmcclintock@sccog-nm.com>]  
**Sent:** Wednesday, January 05, 2022 12:06 PM  
**To:** Swingle, Bruce  
**Subject:** SJOA Board Membership Position / 2022

Dear Mr. Swingle / City Manager,

I would like to express my interest in becoming a Board Member with the Sierra Joint Office on Aging where I can use my experience and skills to help the SJOA reach its objectives.

I have held the position of Board Member with several non-profits in the Southwest region acting as chairperson on three including the Luna County Health Commission, Community Action Agency, and Cancer Support of Luna County.

I have executive experience and excellent leadership skills that I would like to use to assist the SJOA. I previously served as the Executive Director of the SJOA from 2014 to 2018 so I do have experience with the complex budget and program requirements associated with the New Mexico Aging and Long-Term Services Department as well as overseeing the regulation of the Older Americans Act.

I look forward to meeting with you in person. Please call (575)-740-1349 if you would like to discuss my qualifications in detail.

Sincerely,

Joe McClintock  
Projects Manager  
South Central Council of Governments  
[jmcclintock@sccog-nm.com](mailto:jmcclintock@sccog-nm.com)  
575-740-1349



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

*Agenda Item #: I.13*

**SUBJECT:** Appointment of 3 Board Members and 1 Alternate Member to serve on the Sierra Vista Hospital Joint Powers Commission (JPC).

**DEPARTMENT:** City Clerk's Office

**DATE SUBMITTED:** January 6, 2022

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

**WHO WILL PRESENT THE ITEM:** City Clerk Torres

#### **Summary/Background:**

The City has four (4) Commissioners who serve as members on the Sierra Vista Hospital Joint Powers Commission (JPC). Sandra Whitehead, Frances Luna, Randall Aragon, and Paul Baca (alternate member) were the previous Governing Body members who sat on the board. This item is to appoint three (3) new members and one (1) alternate member to the JPC board.

#### **Recommendation:**

Appointment of said positions to the Sierra Vista Hospital Joint Powers Commission (JPC).

#### **Attachments:**

- None.

#### **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: -

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File Name: CC Agendas 1-12-2022



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

Agenda Item #: I.14

**SUBJECT:** Appointment of a Board Member and an Alternate Board Member to serve on the South-Central Council of Governments Board (SCCOG).

**DEPARTMENT:** City Clerk's Office

**DATE SUBMITTED:** January 6, 2022

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

**WHO WILL PRESENT THE ITEM:** City Clerk Torres

#### Summary/Background:

The City has two (2) Commissioners who serve as members on the South-Central Council of Governments Board (SCCOG). Sandra Whitehead, and Frances Luna (alternate member) were the previous Governing Body members who sat on the board. This item is to appoint one (1) new board member and one (1) alternate member to the SCCOG board.

#### Recommendation:

Appointment of said positions to the South-Central Council of Governments Board (SCCOG).

#### Attachments:

- None.

#### 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. -

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File Name: CC Agendas 1-12-2022





## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

Agenda Item #: I.15

**SUBJECT:** Appointment of a Board Member and an Alternate Board Member to serve on the Regional Planning Organization (RPO).

**DEPARTMENT:** City Clerk's Office

**DATE SUBMITTED:** January 6, 2022

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

**WHO WILL PRESENT THE ITEM:** City Clerk Torres

#### **Summary/Background:**

The City has two (2) Commissioners who serve as members on the Regional Planning Organization (RPO). Sandra Whitehead, and Frances Luna (alternate member) were the previous Governing Body members who sat on the board. This item is to appoint one (1) new board member and one (1) alternate member to the Regional Planning Organization (RPO).

#### **Recommendation:**

Appointment of said positions to the Regional Planning Organization (RPO).

#### **Attachments:**

- None.

#### **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 1-12-2022



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

Agenda Item #: I.16

**SUBJECT:** Appointment of a Board Member to serve on the Spaceport America Committee.

**DEPARTMENT:** City Clerk's Office

**DATE SUBMITTED:** January 6, 2022

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

**WHO WILL PRESENT THE ITEM:** City Clerk Torres

#### **Summary/Background:**

The City has one (1) Commissioner who serves as a member on the Spaceport America Committee. Randall Aragon was the previous Governing Body member who sat on the board. This item is to appoint one (1) new board member to the Spaceport America Committee.

#### **Recommendation:**

Appointment of said position to the Spaceport America Committee.

#### **Attachments:**

- None.

#### **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. -

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File Name: CC Agendas 1-12-2022



## CITY OF TRUTH OR CONSEQUENCES

### AGENDA REQUEST FORM

MEETING DATE: January 12, 2022

Agenda Item #: I.17

**SUBJECT:** Appointment of a Board Member to serve on the Sierra County Recreation & Tourism Advisory Board.

**DEPARTMENT:** City Clerk's Office

**DATE SUBMITTED:** January 6, 2022

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

**WHO WILL PRESENT THE ITEM:** City Clerk Torres

#### **Summary/Background:**

The City has one (1) Commissioner who serves as a member on the Sierra County Recreation & Tourism Advisory Board. Mayor Pro-Tem Forrister is the current Governing Body member who sits on the board. Mayor Pro-Tem Forrister is willing to let one of the new Governing Body members serve in the position should they wish to do so.

#### **Recommendation:**

None. New Appointment is to the discretion of the Governing Body.

#### **Attachments:**

- None.

#### **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**

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