

Sandra Whitehead
Mayor

Amanda Forrister
Mayor Pro-Tem

Frances Luna
Commissioner



Paul Baca
Commissioner

Randall Aragon
Commissioner

Bruce Swingle
City Manager

505 Sims St.
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REGULAR MEETING

THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3RD ST., ON WEDNESDAY, SEPTEMBER 8, 2021; TO START AT 9:00 A.M.

A. CALL TO ORDER

B. INTRODUCTION

1. ROLL CALL

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

2. SILENT MEDITATION

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

C. PUBLIC COMMENT (3 Minute Rule Applies)

D. CONSENT CALENDAR

1. City Commission Regular Minutes, August 25, 2021

E. PUBLIC HEARINGS

1. Public Hearing/Discussion/Action: Final Adoption of Ordinance No. 719 relating to Administration adopting a Personnel Policy setting forth Personnel Rules and Regulations, and establishing consistent basic policies, practices, professionalism, and expectations concerning relations between the City of Truth or Consequences and its employees. City Manager Swingle

F. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Resolution No. 20 21/22 Declaring Surplus Property for an online Auction through J.J. Kane Associates, Inc. dba J.J. Kane Auctioneers to be held on October 5, 2021. Angela A. Torres, City Clerk
2. Discussion/Action: Resolution No. 21 21/22 Budget Adjustment Resolution. Carol Kirkpatrick, Finance Director
3. Discussion/Action: Resolution No. 22 21/22 Authorizing and Approving Submission of a Completed Application for Financial Assistance and Project Approval to the New Mexico Finance Authority (NMFA). City Manager Swingle

G. NEW BUSINESS

1. Discussion/Action: Ariel Dougherty Public Appeal in regards to Resolution No. 05 21/22 imposing a \$50 monthly trip fee to customers desiring to retain their digital meters. Ariel Dougherty, Appellant
2. Discussion/Action: Ron Fenn Public Appeal in regards to Resolution No. 05 21/22 imposing a \$50 monthly trip fee to customers desiring to retain their digital meters. Ron Fenn, Appellant
3. Discussion/Action: Approval of NM Workforce Connection Building Lease. City Manager Swingle
4. Discussion/Action: Agreement to Provide GIS Addressing Services between the County of Sierra and the City of Truth or Consequences. City Manager Swingle
5. Discussion/Action: Review and approval of the 2021 Holiday Schedule for the employees of the City of Truth or Consequences. City Manager Swingle

H. REPORTS

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

I. EXECUTIVE SESSION

1. Threatened & Pending Litigation (Clover Leaf Water Rights Case) pursuant to 10-15-1(H.7).

J. ACTION ON ITEMS DISCUSSED DURING EXECUTIVE SESSION, if any.

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, 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, September 6, 2021

NEXT REGULAR CITY COMMISSION MEETING SEPTEMBER 22, 2021



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: September 8, 2021

Agenda Item #: D.1

SUBJECT: City Commission Regular Minutes, August 25, 2021
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: September 2, 2021
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 9-8-2021

**CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
WEDNESDAY, AUGUST 25, 2021**

A. CALL TO ORDER:

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

B. INTRODUCTION:

1. ROLL CALL:

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

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

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.

3. PLEDGE OF ALLEGIANCE:

Mayor Whitehead called for Mayor Pro-Tem Forrister to lead the Pledge of Allegiance.

4. APPROVAL OF AGENDA:

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

C. PUBLIC COMMENT:

Christie LaFont approached the Commission with comments related to her support for improvements to the Louis Armijo Soccer Field that was listed on the ICIP.

CITY COMMISSION AUGUST 25, 2021 REGULAR MEETING MINUTES

Ariel Dougherty approached the Commission with various comments. (Complete copy attached hereto, and made a part hereof).

Ron Fenn approached the Commission with comments related to item E3 "Special election Resolution" and he asked that the text of the Resolution in question be added to the Special election Resolution so it is clear to the voter on what they are voting for.

D. CONSENT CALENDAR:

- 1. City Commission Special Budget/Finance Workshop Minutes, August 9, 2021**
- 2. City Commission Regular Minutes, August 11, 2021**
- 3. Acknowledge Regular Public Utility Advisory Board Minutes, July 19, 2021**

Commissioner Baca 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.

E. ORDINANCES/RESOLUTIONS/ZONING:

- 1. Discussion/Action: Resolution No. 16 21/22 in support of the Infrastructure Capital Improvement Plan (ICIP) for the Sierra Joint Office on Aging (SJOA):**

Crystal Walton, SJOA Executive Director reviewed the Sierra Joint Office on Aging's (SJOA) Infrastructure Capital Improvement Plan (ICIP).

Mayor Pro-Tem Forrister moved to approve Resolution No. 16 21/22 in support of the Infrastructure Capital Improvement Plan (ICIP) for the Sierra Joint Office on Aging (SJOA). Commissioner Aragon seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

- 2. Discussion/Action: Resolution No. 17 21/22 Approve resolution, list, and ranking for the FY 2023-2027 Infrastructure Capital Improvement Plan (ICIP) as required by DFA:**

Traci Alvarez, Assistant City Manager explained that the packet consists of a list of 61 projects, and the list was comprised with input from city staff, department heads, and public input that we received. The Commission is being asked to add or remove, and rank the projects you see before you.

Each department head gave a brief overview of their top priorities.

Public Comment – Truth or Consequences City Commission – August 24, 2021
Ariel Dougherty

Good morning, Commissioners. The public welfare is the most significant obligation and honor of your role as public servants. What efforts do you make to achieve this sacred responsibility? What are your visions and interaction with citizens that you bring to the decisions you make on our behalf? Who outside of your familiar circle, surely not other Commissioners, have you discussed or sought advice on any of the issues on today's agenda?

~~staff~~ As a Commission you called for public input into improving our city's infrastructure. Sadly, city workers are depriving you to learn of contributions from citizens in how the City might progress. You might ask Traci Alvarez what happened. The ICIP submissions in the packet are governmental requests serving city departmental needs. These are not necessarily in service of the public welfare.

Your confusion about serving the public welfare is overshadowed by your response to a large, often familial city staff with a vast host of needs. Those needs range from protection against dangerous dogs to desiring a new backhoe, a growing questionable choice in the age of global warming. The imposition of smart meters on all electric customers underscores how this Commssion fails to address the public welfare. Every presentation on the AMIs accentuated City worker concerns, never the advantages or good that such meters might bring to the public. You might think I stand here alone. I am ~~am~~ ^{not} 240 citizens signed the accompanying petition to rescind Resolution 5 21/22. Many signed this petition because they clearly understood the Resolution's vindictiveness. The actual wording your counsel has designed for the proposed public vote is highly problematic, bordering fraudulence.

Why do you insist on constantly violating state laws, your oaths of office, even your own laws and rules? Today you were to hear an appeal by me on Resolution 5 21/22 based on the new rules you yourselves established July 28th. Mr Rubin, however, countered the process and had the item removed from the agenda. Why allowed him to manipulate *and control the public agenda*? Most egregious, and *ironic*, a city meter reader has disasterously misread my electric meter. This sloppiness makes a mockery of your outrageous \$50 extra charge. Promised last Friday such charges would be waived, this glaring abuse remains on my bill. When, I demand, will your Commission hear my appeal?

Last, beware of White Knight Saviour syndrome. But I have run out of time to explain. Maybe you will widen your circle of citizen input and call me for a fuller explanation.

The results of the top 5 projects are as follows:

- #1: Marie Street Improvements.**
- #2: Substation Primary Underground Feeder Replacement.**
- #3: Solid Waste Roll off Truck and Dumpsters.**
- #4: Street Department 4000 Gal. Water Truck.**
- #5: Animal Shelter Kennel Building.**

Mayor Pro-Tem Forrister moved to approve Resolution No. 17 21/22, as well as the list, and ranking for the FY 2023-2027 Infrastructure Capital Improvement Plan (ICIP) as noted. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. Discussion/Action: Special Election Resolution No. 18 21/22 calling for a Special Election on Tuesday, February 15, 2022 for the purpose of a petition against Resolution No. 05 21/22:

City Clerk Torres explained that she received a petition on August 12, 2021 against Resolution No. 05 21/22 which was the resolution imposing a \$50 monthly fee to retain a digital meter in lieu of an AMI meter. As shown in the packet, the required number of signatures needed for a special election to occur in regards to this petition was 152 signatures. There were 240 signatures on the petition, and after the verification process occurred, there were 197 valid signatures. The date of the special election is February 15, 2022, and it will be conducted through the Office of the County Clerk. This will be a mail ballot election for all registered City of Truth or Consequences qualified electors. She also noted that she does not have a problem with adding the text of Resolution No. 05 21/22 to the special election Resolution, and she noted that she will also include the language that the fee is monthly fee, and not a one-time fee.

City Attorney Rubin explained that the packet includes State Statute 3-14-17, and Paragraph A states that the ordinance or resolution shall become ineffective upon verification of the petition and the commission shall within 10 days of verification adopt a resolution calling for the holding of a special election on the measure within ninety days of the verification of the petition. With that being said, even though the word *shall* is included within that statute, there is an annotation that exhibits the cases which have been decided by the Supreme Court, and interprets this particular statute. He has discussed the matter with his co-counsel John Appel, and even though the word *shall* is present in the state statute, there is an annotation called an Exception to Referendum Power which states: The referendum power of voters, Subsection A of this section, and the city charter was subject to an implied exception for administrative and executive matters, and an ordinance that changed the rate charged by a city-owned utility was an administrative matter within the scope of the exception. *Johnson vs. City of Alamogordo. (Complete copy attached hereto, and made a part hereof).* What the Supreme Court was saying is when you have an ordinance or resolution which classifies more as administrative in nature, you are not required to hold a special election. It is based upon what the Commission feels is most appropriate to do, and he

3-14-17. Commission-manager; referendum; subjects petition; election; effect; repeal of emergency measure.

A. If within thirty days following the adoption of an ordinance or resolution, a petition, signed by the qualified electors in a number more than twenty percent of the average number of voters who voted at the previous four regular municipal elections or more than twenty percent of the number of voters who voted at the previous regular municipal election, whichever is the greater, is presented to the commission asking that the ordinance or resolution in question be submitted to a special election for its adoption or rejection, the ordinance or resolution shall become ineffective upon verification of the petition and the commission shall within ten days of verification adopt a resolution calling for the holding of a special election on the measure within ninety days of the verification of the petition.

B. The ballot shall contain the text of the ordinance or resolution in question. Below the text shall be the phrases:

"For the above measure", and

"Against the above measure",

followed by spaces for marking the ballot with a cross or check or other mark necessary for proper counting of the ballot, in order to cast a vote for the phrase desired. If a majority of the votes cast favor the measure, it shall take effect immediately. If a majority of the votes cast are against the measure, it shall not take effect.

C. If an ordinance or resolution is an emergency measure, it shall go into effect immediately, but it may be repealed by an adverse majority at a referendum election.

History: 1953 Comp., § 14-13-17, enacted by Laws 1955, ch. 300; 1985, ch. 208, § 113.

Gross references. — For examinations of signatures, purging and judicial review of petitions, see 3-1-5 NMSA 1978.

The 1985 amendment inserted "upon verification of the petition" following "resolution shall become ineffective"; substituted "within ten days of verification adopt a resolution calling for the holding of a special election" for "provide for an election"; "ninety days" for "sixty days"; and "verification of the petition" for "filing of the petition" near the end of Subsection A, and inserted "the ballot" following "spaces for marking" and "or check or other mark necessary for proper counting of the ballot, in order to cast a vote for" preceding "the phrase desired" near the middle of Subsection B.

ANNOTATIONS

Liberal construction. — Provisions reserving to the people the power of referendum are to be given a liberal construction to effectuate the policy thereby adopted. *City Comm'n v. State ex rel. Nichols*, 1965-NMSC-104, 75 N.M. 438, 405 P.2d 924.

No time limit is set out for the filing of referendum petitions on emergency measures. *City Comm'n v. State ex rel. Nichols*, 1965-NMSC-104, 75 N.M. 438, 405 P.2d 924.

Exception to referendum power. — The referendum power of voters under Subsection A of this section and the city charter was subject to an implied exception for administrative and executive matters, and an ordinance that changed the rate charged by a city-owned utility was an administrative matter within the scope of the exception. *Johnson v. City of Alamogordo*, 1996-NMSC-004, 121 N.M. 232, 910 P.2d 308.

Summary of ordinance only required. — Where Subsection B of this section states "the ballot shall contain the text," the statutory language can be construed as requiring only a summary of the ordinance to be decided upon. *Turner v. Barnhart*, 1972-NMSC-036, 83 N.M. 759, 497 P.2d 970.

Failure to print entire ordinance does not void election. — Where Subsection B of this section provides "the ballot shall contain the text of the ordinance or resolution in question," failure to print the entire ordinance on the ballot does not amount to an irregularity in the election that is substantial enough to void the election and circumvent the will of the voters involved. *Turner v. Barnhart*, 1972-NMSC-036, 83 N.M. 759, 497 P.2d 970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 42 Am. Jur. 2d Initiative and Referendum §§ 7, 9 et seq.

Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal in time therefor, 27 A.L.R.2d 604.

62 C.J.S. Municipal Corporations §§ 311 to 327.

3-14-18. Commission-manager; initiative; failure of commission to adopt; election.

A. In any commission-manager municipality, upon petition, signed by the qualified electors in a number more than twenty percent of the average number of voters who voted at the previous four regular municipal elections or more than twenty percent of the number of voters who voted at the previous regular municipal election, whichever is the greater, any measure may be proposed to the commission for enactment within thirty days of the date of verification of the petition. If the commission:

CITY COMMISSION AUGUST 25, 2021 REGULAR MEETING MINUTES

understands if you choose not to go forward with the election, we will probably be in litigation. He can never predict what is going to happen in court, but he thinks based upon what we just read, we have a pretty good argument. In the case of Johnson vs. City of Alamogordo there is some language that he feels is in our favor, and that is because of the fact that it is basically a rate making process, which is basically what the Johnson vs. City of Alamogordo case is saying. We are basically talking about is that we were implementing new technology (which were the AMI meters), and that would affect the rates of the people who opted not to get the AMI meter. Therefore, he and City Attorney Appel thinks if it were to go to litigation, they would have a few good arguments to defend such an action. He is not here to push the Commission into not voting for the referendum, but nevertheless he wanted them to hear, if they choose not to go in that direction, he thinks we will have a defensible position.

Mayor Pro-Tem Forrister asked what a special election would cost the city.

City Clerk Torres responded that the city will not pay for it since we opted into the Local Election Act. Everything goes through the County, and they will cover the fees. She believes that the cost of our last special election was somewhere around \$12,000 to \$15,000. It will be a mail in ballot election, and it gets a bit expensive to mail all of the ballots to the qualified electors, and provide postage for all of the returned ballots.

City Manager Swingle stated that he appreciates City Attorney Rubin's research, and exploring all of the options. He knows that the Secretary of State has administratively made some decisions not to pursue referendums based on proclamations that she has received on executive powers. However, he does not know the full gamut of the facts of the Johnson vs. City of Alamogordo case, and he does not know if the facts are similar to ours or different. There were a large number of people who signed the petition for whatever reason, so it may be in the best interest of the city to move forward with having a special election, and let the chips fall where they fall. The fee was a trade up by the Commission for those individuals that decided to opt-out. He thinks some will advocate that the price is unfair, and he keeps hearing the language "unlawful" which he does not abide by in any way shape or form, but he thinks it should go to an election, and then we will respond accordingly when we have a voter decision.

Commissioner Aragon asked if this goes to an election what happens to the fee.

City Attorney Rubin explained that the resolution would not be in effect.

City Clerk Torres also explained, as of right now, since the petition has been verified, anybody who had opted-out from having an AMI Meter will not be charged the \$50 fee until it is decided in the election.

Commissioner Aragon asked if they vote against the fee, do we start again, and come up with another fee?

CITY COMMISSION AUGUST 25, 2021 REGULAR MEETING MINUTES

City Manager Swingle stated that would be the Commission's option. They can look at another option, whether it be a lesser fee or no fee. They could come up with a number of different scenarios, but the \$50 fee would be deemed inappropriate.

Mayor Pro-Tem Forrister asked if the \$50 fee is deemed inappropriate as of right now, or after the election.

City Manager Swingle stated that we are on hold right now.

Mayor Pro-Tem Forrister asked if we have to have an election.

City Attorney Rubin responded, if you decide to have the election, then the fee goes on hold, but if you decide not to have an election, then we would have to hear the appeals that have been filed. He advised City Manager Swingle, and City Clerk Torres that it may not be appropriate to have the appeals on this agenda, when we didn't know if we were going to have an election or not.

Mayor Pro-Tem Forrister asked if we go to election, and it is voted down, will it still come back to the Commission for a vote on fees.

City Attorney Rubin responded yes, and you can even come back, and say that you are not going to allow for anyone to opt-out.

Mayor Pro-Tem Forrister stated that the Commission has already set a fee, so what is the point in spending all of this money on an election that the tax payers are going to have to pay for.

Commissioner Aragon explained that he voted to keep the fee at \$25 per month, and that was based on research on what was reasonable. We went with \$50 per month, but he feels that they need to think about that again because there was research done to come up with a \$25 trip fee.

Mayor Pro-Tem Forrister feels that no matter what fee they choose, there will still be the same people who are opposed of the fee, and we are still going to have the same outcome.

Commissioner Aragon stated if it gets to court they may lower the fee.

Mayor Whitehead explained that the fees are not being imposed at this time because of the petition, and the resolution that is on the agenda today.

Commissioner Aragon stated that this whole thing started with a determination that was administrative, and why there was no vote necessary to go to smart meters.

Mayor Pro-Tem Forrister explained when the new Commissioners came on board, it was the will of the Commission at that point in time to not give an opt-out option. It was

all or nothing, so when Commissioner Luna came on board, she was trying to meet the customers in the middle, and that's when the fee was imposed. It's pointless to waste money on a special election when the issue will still come back to Commission, and they will still make another decision on the fee.

City Manager Swingle explained if it comes back to the Commission in the future, and you make another decision on the fee, there is no guarantee that the new fee will not be petitioned even if it is at a lower rate. As our City Attorney mentioned, you didn't have to give an option in the first place, so if you decide not to allow an opt-out option, there is no guarantee that there will not be a petition on that as well.

- *The Commissioners mentioned that they were informed that some people may have been misled on the context of the petition.*

Mayor Whitehead explained that the city had public hearings, and public meetings in regards to the AMI meters for approximately 6 years or so before the AMI meters were even installed. Everyone had an opportunity to speak on this matter during those meetings, and when we finally went with the AMI meters, the previous Commission was thinking about having an opt-out option, but nothing was ever implemented for an opt-out program. The opt-out option was again discussed when the new Commissioners came on board, and it was said that we were either all in, or we are all out, and we chose to go all in. There were 3 or 4 people who then came in and filed their appeal of having the AMI meters installed, and the decision was made at that time to implement the \$50 monthly fee, and move forward. Now we have this petition before us, and it seems that we are never going to solve this issue, so today she is asking the Commission to do the right thing, and decide to either move forward with the special election, or not move forward with it due to the research provided by City Attorney Rubin.

City Attorney Rubin explained that City Attorney Appel strongly recommended not moving forward with the special election.

Mayor Pro-Tem Forrister explained that we cannot keep spending tax payer's money every single time we charge a fee.

Mayor Pro-Tem Forrister moved to not approve Resolution No. 18 21/22 calling for a Special election on Tuesday, February 15, 2022 for the purpose of a petition against Resolution No. 05 21/22. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

4. Discussion/Action: Resolution No. 19 21/22 rescinding the Commission's action to name Triangle Park the 911 Memorial Monument Park, and to locate a 911 Memorial in the park:

City Manager Swingle explained on June 23, 2021 the Commission approved to re-name the Triangle Park the 911 Memorial Monument Park, and to locate a 911 Memorial in the park. We subsequently found out that we maintain that park, but the property is actually owned by the New Mexico Department of Transportation. The individual who was trying to erect the monument at the park has rescinded their request. Therefore, we are asking the Commission to rescind the action that was approved on June 23, 2021.

Mayor Pro-Tem Forrister moved to approve Resolution No. 19 21/22 rescinding the Commission's action to name Triangle Park the 911 Memorial Monument Park, and to locate a 911 Memorial in the park. Commissioner Aragon seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

F. NEW BUSINESS:

1. Discussion/Update: Update on the re-opening plans for Sierra Joint Office on Aging (SJOA):

Crystal Walton, SJOA Executive Director explained that it has been a very long and trying year with the COVID Pandemic, restrictions, and closures. She acknowledged the staff that has been working with them throughout the entire Pandemic. Without them the SJOA Center would not be open. SJOA has been given a ton of different guidance on how they need to proceed in order to operate the Senior Center. However, the fact that they do not have enough staff to operate is the primary reason why they have not been able to open the congregate setting at this time. They are currently running at a 30% deficit in staffing, and that is pre-COVID. With the added safety guidelines, and security, the majority of her staff are pulling workloads of 2-3 people a day. The other part of it is that they would have to double down on their kitchen staffing because they are still required to provide the "grab and go" outside of the facility. However, they have been able to open up the home making services, and transportation program. They are hoping to expand the transportation program at the beginning of September, and that will allow them to transport seniors who are fully vaccinated to Las Cruces.

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

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

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

3. Discussion/Action: Authorization to open a new checking account at First Savings Bank for “Special Revenue” funds:

Carol Kirkpatrick, Finance Director explained that the City has received the first half of Fiscal Recovery Funds in the amount of \$712,404. These funds need to be kept separated from capital or general funds for record keeping and accountability. The second half of these funds will be received in the 2022-2023 fiscal year.

Commissioner Baca made a motion to approve the authorization to open a new checking account at First Savings Bank for “Special Revenue” funds. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

4. Discussion/Action: Approval of User Agreement, and Inter-Governmental Service Agreement for Traffic & Criminal Software between the New Mexico Department of Public Safety, and the Truth or Consequences Police Department:

Police Chief Rodriguez explained that this has been a system that has been out there for a while, and this will allow the Police Department to access software that will allow them to give an electronic traffic citation, and make electronic crash reports. It will also allow us to share information between the agencies that are agreed to share the database. A lot of agencies in New Mexico use the database, including the State Police. They will also provide us with grant funding for five in-car printers, and five in-car scanners to scan licenses.

Mayor Pro-Tem Forrister moved to approve the User Agreement, and Inter-Governmental Service Agreement for Traffic & Criminal Software between the New Mexico Department of Public Safety, and the Truth or Consequences Police Department. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

5. Discussion/Action: Review and approval of Take-Home Vehicle forms for various departments:

City Manager Swingle explained that the Commission recently approved a Resolution creating a Vehicle Take Home Policy, and with that policy it is required that we bring the forms to the Commission for approval to authorize take home vehicle for various departments. Overtime, he would like to eliminate this process so that we can do this administratively. He then briefly reviewed the forms provided in the packet, and stated that some of the individuals who are listed on the forms are on-call individuals who are rotated every two weeks, and they will not always have a take home vehicle.

Commissioner Baca moved to approve the Take-Home Vehicle forms for various departments. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

6. Discussion/Action: Selection of voting delegate for the 2021 New Mexico Municipal League Annual Conference.

City Manager Swingle explained that we recently received a notification from the New Mexico Municipal League that we need to re-assign the voting delegate for the City of Truth or Consequences to vote on behalf of the City during the Municipal League conferences.

Mayor Pro-Tem Forrister made a motion to select Mayor Whitehead to act as the voting delegate and go with Mayor Whitehead's recommendation to have herself (Mayor Pro-Tem Forrister) act as the Alternate voting delegate for the 2021 New Mexico Municipal League Annual Conference. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

G. REPORTS:

City Manager Swingle reported the following:

- There will be a Sierra Vista Hospital Governing Board meeting on August 26, 2021.
- We started providing professionalism training to our staff. We started with our directors and supervisors of the organization. We have about a 40 hour block of training that will be set up over the next couple of months. We will start with the course, and then we will make sure to educate everyone within the organization. The professionalism expectations that the organization has is clearly identified in the draft Personnel Policy. In his experience, you typically don't fire a lot of people for performance issues. When you have to discipline or terminate employees, it's usually based on behavior or ethical issues. He invited the Commissioners to join the trainings if they wish to do so.
- The safety policy has been circulated to the departments for review and feedback. It is very likely that we will have it on the next City Commission agenda. We don't have a safety committee, and an organization of our size does not necessarily need a safety officer. Therefore, safety will now be the responsibility of the departments.
- We received notification that the State approved our FY 2021/2022 Budget. He congratulated Carol Kirkpatrick, and her finance team for working very hard, and diligently to get the budget to where it needed to be.
- The new census data is out on the County level, and unfortunately we saw another decrease in population for Sierra County. In October we should start seeing the data released for the City level. The drop is due to the economy, or lack of, so we really need to look at growing our economy.

CITY COMMISSION AUGUST 25, 2021 REGULAR MEETING MINUTES

- We had a 12 inch Water Main leak that just occurred a few minutes ago. He will be out there to check it out as soon as this meeting is over. He doesn't have any other information about it at this point. However, he was informed that the schools have been cancelled for the remainder of the day because of the Water Main break.
- We received notification from USDA on our Phase I Water Infrastructure citywide project. The Commission has already approved the letter to USDA, and should we act on that letter, the total amount of funding would be \$7,531,000. \$2,720,000 would be a grant, and the loan portion would be \$4,811,000. The Water Department does not have a lot of bandwidth left with the existing loans that they have, so we will have to sit down, and look at this very closely to see what we need to do, and if we should move forward with this or not. USDA did not recommend a rate increase at this time for this loan. The deadline to have the letter submitted is Friday at noon.
- Staff is doing an amazing job, and they are very receptive to moving forward as an organization.

City Attorney Rubin had no reports.

City Commission Reports:

Mayor Pro-Tem Forrister had no reports.

Commissioner Aragon reported the following:

- He knows that the Keep Truth or Consequences Clean & Beautiful Advisory Board did not work out, but wanted to make it known that he has received an email from a citizen named Jim Davis about how he thought that the board was a great idea.

Commissioner Baca reported the following:

- A group of people went around asking citizens to sign a petition. He is not sure what they were telling the citizens, but he wanted to make it known that the \$50 monthly trip fee is only for those individuals who have opted-out of having an AMI meter. The fee is not for everyone who has an AMI meter.

Mayor Whitehead had no reports.

H. EXECUTIVE SESSION:

- 1. Threatened & Pending Litigation (Clover Leaf Water Rights Case) pursuant to 10-15-1(H.7):**

Commissioner Baca made a motion to go into executive session at 11:21 a.m. to discuss Threatened & Pending Litigation (Clover Leaf Water Rights Case) pursuant to 10-15-1(H.7). Mayor Whitehead seconded the motion. Roll call vote was taken by the Clerk-Treasurer. Motion carried unanimously.

Mayor Whitehead reconvened the meeting in open session at 11:40 a.m.

Mayor Pro-Tem Forrister certified that only matters pertaining to Threatened & Pending Litigation (Clover Leaf Water Rights Case) pursuant to 10-15-1(H.7) was discussed in Executive Session and no action was taken.

I. ADJOURNMENT:

Commissioner Baca moved to adjourn at 11:45 a.m. Mayor Pro-Tem Forrister seconded the motion. Motion carried unanimously.

Passed and Approved this 8th day of September, 2021.

Sandra Whitehead, Mayor

ATTEST:

Angela A. Torres, CMC, City Clerk



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: September 8, 2021

Agenda Item #: E.1

SUBJECT: Public Hearing/Discussion/Action: Final Adoption of Ordinance No. 719 relating to Administration adopting a Personnel Policy setting forth Personnel Rules and Regulations, and establishing consistent basic policies, practices, professionalism, and expectations concerning relations between the City of Truth or Consequences and its employees.

DEPARTMENT: City Manager

DATE SUBMITTED: September 2, 2021

SUBMITTED BY: City Manager Swingle

WHO WILL PRESENT THE ITEM: City Manager Swingle

Summary/Background:

The proposed Ordinance No. 719 is to adopt a Personnel Policy setting forth Personnel Rules and Regulations, and establishing consistent basic Policies, Practices, and Professionalism Expectations concerning relations between the City of Truth or Consequences and its Employees.

Recommendation:

Public Hearing and approval of Ordinance No. 719 Personnel Rules and Regulations.

Attachments:

- Proposed Ordinance No. 719
- Redline proposed Ordinance No. 719

Fiscal Impact (Finance): No

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. 719

Continued To: . Referred To: .

☐ Approved ☐ Denied ☐ Other: .

File Name: CC Agenda 9-8-2021



**CITY OF TRUTH OR CONSEQUENCES
BOARD OF CITY COMMISSIONERS
ORDINANCE № 719**

An Ordinance Relating to Administration, Adopting a Personnel Policy; Setting forth Personnel Rules and Regulations Establishing Consistent, Basic Policies and Practices, and Professionalism Expectations Concerning Relations between the City and its Employees

PREAMBLE

WHEREAS, NMSA 1978, Section 3-18-1 provides that municipalities, have the power to “protect generally the property of its municipality and its inhabitants” and to “preserve peace and order”; and,

WHEREAS, NMSA 1978, Section 3-17-1 provides that cities may adopt ordinances, not inconsistent with statutory or constitutional limitations placed on cities, to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the city and its inhabitants; and,

WHEREAS, NMSA 1978, Section 3-13-4 (1965) allows municipalities to establish a personnel merit system for the hiring, promotion, discharge and general regulation of municipal employees; and,

WHEREAS, the City of Truth or Consequences has a right and responsibility to the taxpayers to set reasonable professional, ethical, performance, and behavioral expectations for employees, supervisors and managers to ensure tax dollars are used in an appropriate and efficient manner; and,

WHEREAS, City of Truth or Consequences employees have an expectation and a right to be treated fairly, consistently and professionally while employed with the City of Truth or Consequences.

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SECTION I: DEFINITIONS

- 1.1 **ADMINISTRATIVE LEAVE WITH PAY:** Leave with pay granted at the City Manager's discretion after considering the department director and Human Resource Manager's recommendation. Bereavement Leave is Administrative Leave with pay. See Section 10.13.
- 1.2 **ADMINISTRATIVE LEAVE WITHOUT PAY:** Leave without pay granted at the City Manager's discretion after considering the department director and Human Resource Manager's recommendation.
- 1.3 **ANNIVERSARY DATE:** Anniversary date means the date of appointment or reemployment and changes as of the date of promotion, demotion, reduction, or change to a different technical occupation group, group role, or manager category in the same pay band or pay opportunity.
- 1.4 **ANNUAL LEAVE:** Leave with pay granted to an employee, after accrual at a specific rate, with approval of the employee's supervisor.
- 1.5 **APPEAL:** Written request that a decision of a formal grievance be reconsidered at a further stage in the grievance procedure.
- 1.6 **APPLICANT:** A person who made formal application on an official City personnel application form for a position with the City.
- 1.7 **"AT WILL" EMPLOYEE:** See definition of "Unclassified Employee".
- 1.8 **BOARD:** Board means the Board of City Commissioners.
- 1.9 **CASUAL EMPLOYEE:** An employee hired to fill a position paid by the hour that may be called on short notice and/or on an occasional basis. Casual employee may also work less than twenty (20) hours a week. A casual employee is paid only for hours worked and does not receive any employment benefits. A casual employee does not have the right to grieve employment decisions.
- 1.10 **CLASSIFIED EMPLOYEE:** An employee that serves the prescribed probationary period and is eligible for the rights and privileges provided for under these Rules.
- 1.11 **CONTINUOUS LENGTH OF CITY SERVICE:** Continuous length of City service means the length of time for which there have been no breaks in employment as an employee spanning from the employee's Date of Hire, other than annual leave, sick leave, military leave authorized pursuant to Section 10.24 below, or authorized leave without pay for less than six (6) months.
- 1.12 **CONTRACT EMPLOYEE:** Contract employees are unclassified FLSA exempt and have a contract approved by the Board modifying the conditions of the City's personnel policy. Contract employees serve at the will and pleasure of the Board. Contract employees are not entitled to grievance procedures, employee benefits or holiday premium pay.

- 1.13 CITY BUSINESS: The performance of official duties of a City employee at an employee's normal work site or at a location authorized by the City.
- 1.14 CITY MANAGER: An individual appointed by the Board to conduct the business of the City and to act as the chief executive officer for the Board, aiding and assisting the Board in the exercise of their duties and responsibilities. In the event there is no City Manager, the duties and responsibilities specified in these Rules shall be carried out by an appointed Acting or Interim City Manager.
- 1.15 DATE OF HIRE: Date of Hire is the date indicated as such on the employee's Personnel Action Form indicating New Hire as a regular employee, from which there is continuous length of City service. Alternatively, the Date of Hire may be from the date of Reinstatement if reinstatement occurs after a lapse of continuous length of City service.
- 1.16 DEMOTION: An employee may be demoted to a position for which the employee is qualified when the employee would otherwise be terminated. The demotion may be a result of funding shortages. An employee who does not possess the necessary ability to render satisfactory performance in the position presently held may be demoted. Employees may voluntarily request such a demotion. Demoted employees may receive a reduction in pay, per City Manager approval and department head recommendation. Only a regular employee demoted due to disciplinary action is entitled to grievance procedures under Section VIII, Grievance Procedures.
- 1.17 DEPARTMENT DIRECTOR: An employee hired to fill a position with the responsibility of supervising and administering a department of City government as determined and designated by the Board.
- 1.18 DISMISSAL: Dismissal means the involuntary separation or dismissal from employment for disciplinary reasons.
- 1.19 DOMESTIC PARTNER: An individual who has an exclusive and committed relationship with a City employee and the relationship is the same as, or similar to, a marriage relationship in this state. For purposes of these Rules: 1) domestic partners must have shared a common, primary residence, 2) must jointly be responsible for each other's common welfare and share financial obligations, 3) neither can be married or a member of another domestic partnership, 4) both must be at least 18 years of age, and 5) are not related by blood to a degree of closeness that would prevent them from being married to each other in this state.
- 1.20 DUE PROCESS: The right granted to a regular employee to pre- and post-disciplinary hearings for actions of suspension, demotion or dismissal.
- 1.21 EMERGENCY CALL-OUT PAY: Compensation paid to an employee who has been called to return to work after hours, including weekends. Employees will receive a minimum of two hours overtime for emergency call-outs.

- 1.22 **EXEMPT EMPLOYEES:** All executive, administrative and professional employees as defined in the federal Department of Labor regulations relating to the Fair Labor Standards Act, whose compensation is based on a fixed salary.
- 1.23 **GRANT FUNDED EMPLOYEE:** A full or part-time employee hired to fill a position that exists only upon receipt of grant funds. This position is terminable-at-will if funding is not received or upon expiration of a grant agreement.
- 1.24 **GRIEVANCE HEARING:** A formal hearing conducted at the request of an employee grieving a promotion, suspension, demotion, involuntary transfer, or dismissal as set forth in these Personnel Rules and Regulations.
- 1.25 **GRIEVANCE:** A formal complaint by an employee concerning actions taken by management, which result in loss of pay and/or privileges to the employee including suspension, demotion, involuntary transfer or dismissal.
- 1.26 **HEARING OFFICER:** The individual charged with the responsibility of hearing and deciding allegations of improper promotion, or post-disciplinary action matters of demotion, suspension, involuntary transfer, and dismissal.
- 1.27 **IMMEDIATE FAMILY:** Spouses, domestic partners, children, parents, siblings, grandparents, grandchildren, like in-laws, like step-relationships, and persons with legal custodial relationships.
- 1.28 **LAYOFF:** The involuntary separation of an employee from City service without fault on the part of the employee, due to the abolition of a position, reorganization, lack of work, lack of funds, or as otherwise determined in the best interest of the City.
- 1.29 **MEDICAL DISABILITY DISMISSAL:** The dismissal of an employee from City employment when the employee is unable to perform the essential functions of the position with reasonable accommodation(s) that do not impose undue hardship upon the City, due to a medical condition, when there is corroborating documentation of this condition from a licensed health-care professional. Although Medical Disability Dismissal is not disciplinary in nature, employees are nonetheless entitled to participate in the City's pre-determination and grievance procedures if they are subject to dismissal.
- 1.30 **NONEXEMPT EMPLOYEES:** Employees that are not exempt employees as defined in the federal Department of Labor regulations relating to the Fair Labor Standards Act.
- 1.31 **PART-TIME EMPLOYEE:** An employee who works twenty (20) hours or more and less than forty (40) hours per week. Employees working twenty (20) hours or more on a consecutive basis are eligible for fringe benefits.
- 1.32 **PRE-DISCIPLINARY HEARING:** A hearing conducted by the City Manager or his/her designee before the imposition of the disciplinary actions of suspension, demotion or dismissal.

- 1.33 **PROBATIONARY EMPLOYEE:** A full-time or part-time employee hired to fill a regular position that has not completed a one (1) year probationary period of employment, during which time the employee is terminable-at-will. During this probationary period, the supervisor is required to evaluate the employee at least every three (3) months.
- 1.34 **PROMOTION:** A promotion is the change of an employee from a position in one classification usually to a position in a classification with a higher salary range.
- 1.35 **REGULAR EMPLOYEE:** Full-time: An employee who has successfully completed probation with a work schedule of at least forty (40) hours per week. Part-time: An employee who has successfully completed probation with a work schedule of twenty (20) or more hours, but less than forty (40) hours per week.
- 1.36 **RESIGNATION:** Resignation means the voluntary separation of an employee from City service.
- 1.37 **SAFETY- or SECURITY-SENSITIVE POSITION (SSP):** A position approved as such by the department director and City Manager, which an individual has a key and direct role in an activity where impaired performance by drug or alcohol use could result in a serious injury, or an improper or inadequate response to a potentially serious incident. SSP include a supervisory or managerial position in which impairment by drug or alcohol use would constitute an immediate and direct threat to public health or safety and includes, but is not limited to, law enforcement officers, employees who are required to regularly carry a firearm, drivers/operators required to have a CDL license, have access to confidential information and/or receive calls for public service and employees who regularly transport other people as their principal job or otherwise designated so by the City Manager.
- 1.38 **SICK LEAVE:** Leave with pay granted to employees when personal illness, injury, pre-arranged medical or dental examination, quarantine, therapy, counseling or other necessary treatment that keeps the employee from performing the duties of the position or when a member of the immediate family is ill, injured or requires treatment for the described reasons.
- 1.39 **STAND-BY PAY:** Compensation paid to employees, though off duty, is required to be available and able to respond to inquiries by telephone or radio, after regular working hours, including weekends.
- 1.40 **SUSPENSION:** An involuntary leave of absence, with or without pay, for disciplinary reasons, or pending investigation of allegations made against an employee, or for pending determination of a grievance procedure.
- 1.41 **TEMPORARY EMPLOYEE:** An employee hired to fill a position that will temporarily fill a position that is vacant due to the absence of an employee or for some other requirement. Temporary employment will not exceed a six (6) months. All temporary employees are terminable-at-will, do not accrue leave, and do not receive employee benefits.

- 1.42 **TRANSFER:** The voluntary or involuntary movement of an employee, from one department or office to another department or office in the City service.
- 1.43 **UNCLASSIFIED EMPLOYEE (or At-Will Employee):** An employee that can be dismissed at any time, with or without cause. The terminable-at-will employees in the City shall be probationary employees, temporary employees, contract employees, and others designated by the Commission. Terminable-at-will employees are not entitled to the grievance procedures provided for in these Rules.

SECTION II: EMPLOYMENT STATUS

2.1 Position Specification: The City shall establish position specifications for all positions. Position specifications shall include title, tasks, duties, responsibilities and minimum qualifications. They will also specify knowledge, skills, education, and abilities required of applicants. See Definitions for description of employee position. An employee may qualify for one or more of the following position descriptions:

- A. **Probationary Employee:** A full-time or part-time employee hired to fill a regular position that has not yet completed the one (1) year probationary period of employment, or (twelve (12) months for police officers) during which time the employee is terminable-at-will. During this probationary period, the supervisor is required to evaluate the employee every three (3) months.
- B. **Temporary Employee:** A temporarily employee, hired to fill a vacancy due to the absence of an employee or for some other requirement. Temporary employment will not exceed a six (6) month period. All temporary employees are terminable-at-will, do not accrue leave, and do not receive employee benefits.
- C. **Regular Employee:** **Full-time:** An employee who has successfully completed probation with a work schedule of at least forty (40) hours per week. **Part-time:** An employee who has successfully completed probation with a work schedule of twenty (20) hours or more, but less than forty (40) hours per week. Employees working twenty (20) hours or more on a consecutive basis are eligible for fringe benefits.
- D. **Grant Funded Employee:** A full or part-time employee hired to fill a position that exists only upon receipt of grant funds. This position is terminable-at-will if funding is not received or upon expiration of the grant agreement.
- E. **Casual Employee:** An employee hired to fill a position paid by the hour that may be called on short notice and/or on an occasional basis. Casual employee may also work less than twenty (20) hours a week. A casual employee is paid only for hours worked and does not receive any employment benefits. A casual employee does not have the right to grieve employment decisions.
- F. **Unclassified Employee:** An employee who can be dismissed at any time, with or without cause. The terminable-at-will employees in the City shall be probationary employees, temporary employees, casual employees, contract employees, and others designated by the Board. Terminable-at-will employees are not entitled to the grievance procedures provided for in these Rules.
- G. **Classified Employee:** An employee that serves the prescribed probationary period and is eligible for the rights and privileges provided for under these Rules.
- H. **Contract Employee:** Contract employees are unclassified, FLSA exempt and have a contract approved by the Board modifying the conditions of the City's personnel policy.

Contract employees serve at the will and pleasure of the Board. Contract employees are not entitled to grievance procedures or holiday premium pay.

- I. **Temporary Agency Employee:** An individual who performs work for the City through a contract with an independent third-party, such as a temporary placement or employment agency. These individuals are not City employees and therefore not entitled to any benefits or rights detailed in this policy.

SECTION III: GENERAL PROVISIONS

3.1 Purpose: The purpose of these Personnel Rules and Regulations (Rules) is to establish consistent, basic policies and practices concerning relations between the City and its employees. These Rules further establish the formal grievance procedure available to regular employees to hear their grievances with respect to promotions, demotions, suspensions, involuntary transfers and dismissal, and provide the method by which a personnel hearing officer is chosen to hear formal grievances. Independent contractors are not subject to the provisions of the Rules.

3.2 Scope: Definite rules and regulations cannot be readily formulated for every possible problem and situation. These Rules serve as an employment contract, general basis and guide for the proper, efficient, and effective management and administration of City personnel matters. The Rules contained herein replace and supersede all previously issued personnel rules regulations and ordinances applicable to City employees.

3.3 Amendment of Rules & Regulations: There shall be no resolution or other action of the Board or other City official, which is inconsistent with these Rules, except by amendment of these Rules. The Board reserves the right to amend these Rules at its discretion. The City Manager may issue interpretative memoranda or Administrative Instructions, consistent with these Rules, which further detail the interpretation of these Rules.

3.4 Employee Knowledge & Information of Rules & Regulations: Department Directors, or Human Resources Manager shall provide a copy of these Rules to present employees and to all new employees with instructions to read and be familiar with all provisions of these Rules. Employees shall sign for a copy upon receipt.

3.5 Equal Employment Opportunity Rules & Regulations: Individuals will not be discriminated against on the grounds of race, age, religion, color, national origin, ancestry, sex, marital status, physical or mental handicap, medical condition, sexual orientation or gender identity, in consideration for employment, promotions, transfers, duration of employment, compensation, terms, conditions, or privileges of employment by the City.

3.6 Administration by City Manager: The City Manager or designee shall administer and interpret the personnel system and the terms of these Rules and its amendments, and all future approved operating procedures. The City Manager shall recommend to the Board any necessary amendments or revisions to the Rules.

3.7 Duties of All Employees: All employees shall adhere to the provisions of these Rules. Department Directors, Human Resources Manager and the City Manager further shall be responsible for seeing to the adherence and enforcement of these Rules.

3.8 Chain of Command & Conflict Resolution: In order to maintain open communication between the City and its employees and to ensure that employees' general working concerns and conflicts are addressed quickly and efficiently, the City will utilize the chain of command protocol. Employees have the right to present or make known their complaints through the chain of command, free from interference, restraint, discrimination, coercion, or reprisal. This provision does not apply to serious complaints such as harassment, dangerous working conditions, workplace violence and discrimination, which are otherwise addressed by the policy. It is required that an employee discusses his/her concerns first with his/her immediate supervisor. Departments should utilize dispute resolution techniques, wherever appropriate to resolve conflicts in the workplace and encourage positive working relationships between employees and management.

If the concern cannot be handled at this level, the employee may request a meeting with the next level supervisor, up to the department director of his/her department. If it becomes necessary to pursue the issue beyond the department director level, or if the concern cannot be handled or remedied within the department due to supervisory conflict, it may be addressed with the City Manager within ten (10) calendar days of the department's final decision. The City Manager's decision on the complaint shall be final and binding.

3.9 Conflict with Collective Bargaining Agreements: If any provision of this Resolution is in conflict with a written Employee Agreement duly adopted by the Board pursuant to the Public Employee Bargaining Act [NMSA 1978, §§10-7E-1 to 10-7E-26], the terms of the Collective Bargaining Agreement shall control.

3.10 Code of Ethics:

- A. City of Truth or Consequences employees and volunteers shall treat their government or quasi-government position as a public trust, requiring adherence to and respect for the Constitution and laws of the United States of America, the Constitution and laws of the State of New Mexico, and the ordinances, resolutions, and policies of the City. Employees and volunteers shall use the powers and resources of public office to advance the public interest rather than as an opportunity to obtain personal benefits or pursue private interests incompatible or competing with the public interest. City Government cannot function efficiently without the confidence of the public. The public's Confidence in the effectiveness, equity, and honesty of City Employees is directly related to the ethical conduct of City Employees and Officials.
- B. The citizens of the City of Truth or Consequences have entrusted the Elected Officials and employees of the City with the responsibility of ensuring that tax dollars, which fund City services, are spent wisely and efficiently. As City employees, the public is our employer. Our work and conduct are always subject to public scrutiny and approval. Our contact with citizens and performance results will often be the basis upon which City government is judged.
- C. Elected Officials and Employees of the City shall maintain their conduct at the highest personal and professional standards in order to promote public confidence and trust in the City's public institutions; and, in a manner, that merits the respect and cooperation of fellow employees.
- D. The City's level of professionalism is demonstrated by each City Official and employee's actions or in some cases inactions; therefore, the City expects employees to conduct themselves professionally during every interaction and every task.

E. The City has established reasonable professionalism expectations; expectations every employer would require of their staff. Elected officials and employees are expected to:

- Build trust, confidence, and professional relationships with the public, coworkers, and others contacted in performance of duties; and
- Promote the City and its employees.

Note: Talking behind an employee's back, toxic talk, misrepresenting the truth, and failing to provide reasonable customer service are examples of a lack of professionalism.

F. General Conduct standards are set forth or restated as follows:

1. The City of Truth or Consequences requires all employees to familiarize themselves with all rules and regulations (general policies and those pertaining to their duties and positions), and that employees abide by these rules and regulations. The City's rules of conduct and performance standards are applicable to all City employees, during normal working hours, at work related or City-sponsored or City-endorsed functions, and while traveling on work related business.
2. Each employee shall make an immediate report to his or her immediate supervisor of any violation of the law or the rules and regulations of the City of which he/she has knowledge. Such report may be required in writing at the discretion of the receiving supervisor and the Human Resources Manager.
3. Each employee shall make a written report within three (3) working days to the Department Director of any criminal charge filed against him/her or arrest for any violation of any law or ordinance except minor traffic violations. (DUI is not a minor traffic offense.)
4. Each employee shall perform his/her duties fairly and impartially, and otherwise conduct him/herself both on-duty and off-duty to command the respect of fellow employees and the public. Each employee's conduct shall be at all times consistent with the goals and mission of the City.
5. No employee shall refuse to truthfully answer questions specifically relating to the performance of his/her official duties or refuse to participate with investigations.
6. No employee shall report for duty while under the influence of any drug prescribed or not prescribed, including but not limited to a narcotic, barbiturate, hallucinogenic drug, central nervous system stimulant, alcohol, or an intoxicant. In the event any of the foregoing drugs is prescribed and administered to an employee, the employee shall report this to the supervisor and Human Resources Manager. The supervisor and the Human Resources Manager shall then make a determination whether the employee can perform their duties without detrimental effect. An employee may be asked to submit to a drug and/or alcohol test when the supervisor has reason to suspect that the employee is under the influence of illegal drugs or alcohol.
7. No employee shall be insubordinate, neglectful, or unwilling to follow orders or perform officially designated duties.
8. No employee shall falsify reports or records or knowingly submit inaccurate or untruthful information for or on any City record, report or document.
9. No employee shall sleep on duty.

10. Violence, fighting, profanity or insulting behavior, non-sexual harassment, horseplay, bullying, mobbing, and threatening or interfering with visitors or other employees at any time on City premises or at any other place, while on duty, will not be tolerated. The City strictly prohibits sexual harassment or other forms of discrimination.
11. Gambling of any kind on City premises or at any other place, while on duty will not be tolerated.
12. Employees shall not reveal confidential information to unauthorized persons.
13. Employees shall not be tardy, absent, or depart from work early without the permission of their supervisors and shall observe time limitations on break and meal periods. Each employee shall notify his/her immediate supervisor or designated representative prior to his/her scheduled work shift in the event he or she expects to be absent from duty due to illness or other reason.
14. No employee shall solicit funds or distribute petitions or literature for any political purpose other than official business on City property or at any other place while on duty.
15. Every employee will comply with safety rules/regulations and shall report promptly to the appropriate supervisor any injury or illness.
16. Employees shall not use City property, materials or facilities for non-City business. No employee shall occupy, use or operate any City property or facility without prior authorization.
17. Every employee has the responsibility to protect and safeguard City property and the person and property of others. No employee shall be in unauthorized possession of any City property or others regardless of value, or attempt to remove such property from City premises.

G. The ethical City employee shall:

1. Properly administer the affairs of the City.
2. Promote decisions, which only benefit the public interest.
3. Actively promote public confidence in City government.
4. Keep safe all funds and other properties of the City.
5. Conduct and perform the duties of the office diligently and promptly dispose of the business of the City.
6. Maintain a positive image to pass constant public scrutiny.
7. Evaluate all decisions so that the best service or product is obtained at a minimal cost without sacrificing quality and fiscal responsibility.
8. Inject the prestige of the office into everyday dealings with the public, employees and associates.
9. Maintain a respectful attitude toward employees, other public officials, colleagues and associates.
10. Effectively and efficiently, work with governmental agencies, political subdivisions and other organizations in order to further the interest of the City.
11. Faithfully comply with all laws and regulations applicable to the City and impartially apply them to everyone.

SECTION IV: RECRUITMENT AND SELECTION

4.1 Purpose: It is the policy of the City to select and recruit the best qualified and the best-suited person for all positions in an open and competitive manner, and to ensure that no discrimination occurs in the process and ensure equal employment opportunities for all applicants and employees. The City will comply with all applicable federal and state laws and regulations.

4.2 Recruitment of Applicants: Department directors shall notify the City Manager and the Human Resources Manager of a vacant position. In an effort to present current employees a viable career path within the organization, internal employees are encouraged to apply for vacant or newly created positions, if they meet minimum qualifications. The Human Resources Manager shall simultaneously issue job announcements internally and externally through such media deemed appropriate to ensure open and competitive recruitment of individuals with sufficient time to ensure reasonable opportunity for persons to apply. The Human Resources Manager shall submit announcements and receive all applications through their Office. All publications for job announcements shall include reference to the City as “*An Equal Opportunity Employer*”.

4.3 Temporarily Filling Vacant Positions: Vacant positions may be filled without public announcement by temporary employees on a temporary basis to replace regular employees on leave and pending the selection of a regular employee for a position or otherwise for a period not to exceed six months. Temporary employees may not be made regular employees in their position without completion of an open application and selection process.

4.4 Best Qualified & Best-Suited Applicant Determination: The best-qualified and best-suited applicant is determined by the department director, in conjunction with the Human Resources Manager, based on minimum qualifications of education, experience, abilities, skills and past work experience, as specified in written position specifications for each position. Personal interviews shall be conducted with at least three (3) applicants, or if less than three applications are received, all applicants shall be interviewed. All internal applicants meeting minimum job requirements for a position shall receive an interview.

4.5 Selection: The department director or designated representative shall review all applications for positions in their department, in conjunction with the Human Resources Manager, and make their recommendation to the City Manager. Final appointment shall be made by the City Manager based on the best qualified and the best-suited applicant for the position and the status of the City’s budget. The Human Resources Manager is responsible for notifying the prospective employee and extending job offers.

4.6 Pre-Selection Prohibited: To ensure the integrity and fairness of the selection process, posted and advertised positions shall not be promised to any person prior to recruitment and selection.

4.7 Ineligibility for Hire and Rehire: Applicants shall be considered ineligible for hire or rehire by the City if the applicant has:

- A. Knowingly made any false statement or omission on the employment application or City record;

- B. Not met the requirements of the position;
- C. Failed to complete pre-employment drug and alcohol screening or physical examinations or other requirements as directed by the City, except that an applicant not meeting drug and alcohol screening testing may reapply after a one-year period. An applicant who failed a physical exam due to a pre-existing correctable medical condition may reapply at any time after the condition is corrected;
- D. Not met the criteria for insurance or bonding as required by City or state law;
- E. Been dismissed from City service as a disciplinary measure in five (5) years prior to the date of application;
- F. Not been certified by a physician that the applicant can perform the physical requirements or the essential requirements of the position;
- G. Been convicted for driving while under the influence of alcohol or drugs within the past three years of the date of the application, if a valid New Mexico driver's license and class is required for the position; or
- H. Been convicted of a felony as described in NMSA 1978, §28-2-1, et seq. or convicted of a felony or infamous crime as defined in NMSA 1978, §10-1-3 and by its nature conflicts with the duties and responsibilities of the position;
- I. Not met the requirements of state or federal funding agreements;
- J. Resigned with pending employment charges pursuant to section 7 and 8 within five (5) years prior to the date of application;
- K. Resigned from City employment without giving two weeks' notice, unless unique circumstances exist;
- L. Previously engaged in destruction of City property, including deleting public (business related) records or emails; and
- M. The above list is not necessarily exhaustive and may not include all of the reasons that would make an applicant ineligible for hire or rehire.

4.8 Testing: To determine employment eligibility, the City may require an applicant to submit to testing for certain bona fide occupational qualifications. This may include, without limitation pre-employment physical, drug, and alcohol screening examinations, and/or proficiency, skills or general aptitude testing. For law enforcement officers, psychological examinations and/or extensive medical examinations may be required as a condition of employment.

4.9 Background Investigation; Driver's License (DL) Check: The City and/or designed contractor(s) shall conduct background investigations on all applicants considered for employment and DL record checks on all perspective and current employees required to drive a vehicle for City business. All applicants shall sign a background investigation waiver and DL check release during the employment application phase or they will be excluded from consideration. DL checks shall be conducted at hiring, and quarterly thereafter, on employees required to drive, as a condition of employment. DL checks will not be conducted on perspective or current employees not having driving responsibilities as a condition of employment. However, if at any time an employee is required to drive a vehicle as a condition of employment, DL checks will be performed at that time and continue on a quarterly basis.

4.10 Commencement of Work: No applicant for employment shall commence work or be considered employed by the City until an approval of the selection is made in writing by the City Manager and Human Resources Manager on a Personnel Action Form (PAF) and all pre-employment testing and relevant background checks have been completed. Payroll shall not enter the applicant into the City's system prior to receipt of a completed and signed PAF.

SECTION V: CHANGES IN EMPLOYMENT STATUS

5.1 Promotion: The City encourages professional growth of its employees and rewards the initiative, creativity, effort, commitment, and diligence of its employees through the promotional process. City employees are encouraged to take advantage of promotional opportunities and apply for higher paying positions for which they qualify.

5.2 Evaluation Period: Regular employees either promoted or voluntarily transferred to a vacant or newly created position will be placed in an evaluation status period for ninety (90) days. This is a period of evaluation and training of the employee in the new position. If performance during the evaluation period is deemed unsatisfactory and documented, the employee may be returned to his/her previous position, if available, placed in another vacant position for which the employee is qualified, if available and in the best interest of the City, or dismissed at the discretion of the City Manager. Employees transferred back to previous positions receive the same pay received before their promotion or transfer.

5.3 Demotion: An employee may be demoted to a position for which the employee is qualified when: 1) the employee would otherwise be dismissed because the employee's position is being abolished due to lack of funds or lack of work and there are no vacancies at the same level for which the employee is qualified; 2) the employee's job is being reclassified; 3) the employee does not present satisfactory performance in the position presently held; 4) the employee voluntarily requests such a demotion, provided a position is available; or 5) employees being demoted for disciplinary reasons.

5.4 Transfers:

- A. General Transfer. Employees may be moved from one position to another of the same grade and pay range either voluntarily or involuntarily. An employee may be transferred if it is in the best interest of the City. Voluntary transfers are not grievable. Fluctuating organizational needs may require temporary or permanent transfer of an employee from one geographic location to another within the City. If a transfer involves a probationary employee, time served in the former position shall be credited toward achievement of regular full-time status and salary increases, accumulated annual leave and sick leave shall be retained. The City Manager must approve all transfers.
- B. Voluntary Transfers between Departments. An employee who voluntarily transfers from one department to a vacant position in another department may be required to accept the new position at its entry-level salary depending on their experience and qualifications required for the new position. The transferred employee will be subject to an evaluation period of ninety (90) days, as specified in Section 5.2.
- C. Medical Transfer. An employee who has been certified by a licensed physician as being physically unable to perform the duties of the employee's current position may be transferred as a reasonable accommodation to an available position in which the physician certifies the employee is able to work, and for which the employee is qualified to perform. If no such position is available, the employee is subject to the leave without pay provisions of these Rules.

5.5 Resignation: An employee voluntarily resigning shall submit in writing to the department director and the Human Resources Manager, a two-week minimum notice of resignation. Unless unique circumstances exist, failure to provide timely written notice may be

grounds for refusal of future employment with the City. Unauthorized absence from work for three (3) consecutive regularly scheduled working days shall be considered a voluntary resignation. Once a Department Director accepts an employee's resignation, the notice of resignation is deemed "accepted", the employee may no longer rescind the resignation unless approved by the City Manager.

5.6 Layoff Procedure: Upon directive of the Board, the City Manager shall make the determination for layoffs after consulting with appropriate department directors and the Human Resource Manager. When layoffs of more than one employee are required, layoffs shall be determined using the following criteria:

- A. Position in order of priority:
 - 1. Temporary employees,
 - 2. Probationary employees,
 - 3. Casual employees,
 - 4. Part-time employees.
- B. Performance of the employee compared to other employees being laid off in the same or similar positions;
- C. Value of the employee's position to the critical operation of the City or department, such as safety-sensitive or enterprise positions;
- D. Length of continuous service with the City; and
- E. Funding source.

5.7 Layoff Return Privileges: Any full-time or part-time regular employee laid off and returns within six (6) months of layoff shall not have to serve a probationary period if the employee returns to their previous position and the probationary period had been served. A laid off-returning employee will be credited for all unused sick leave remaining and not compensated for at the time of layoff, if the employee returns within the six (6) month period. Layoff privileges end:

- A. Six (6) months after the effective layoff date;
- B. After an employee refused employment in a position for which the employee is qualified and/or for which the pay rate is the same or higher than the position previously held; or
- C. When a laid off employee accepts another position with the City. A laid off employee accepting another position with the City shall serve the required evaluation period.

5.8 Medical Disability Dismissal: Employees shall be involuntarily terminated upon completion of the twelve (12) week family/medical leave if the employee is physically unable to perform the essential duties of the employee's position with reasonable accommodation(s) that do not impose undue hardship upon the City, as certified by a qualified, licensed physician. The provisions of this subsection are subject to the provisions regarding Workers' Compensation laws and "On the Job Injury Leave" found in Sections 10.14 and 10.15 of these Rules.

5.9 Reinstatement: Individuals that are reinstated, as regular employees to the same or like position are not entitled to any previous benefits such as sick leave, which had been accrued during previous employment with the City, except as, provided in Section 5.7.

SECTION VI: CONDITIONS OF EMPLOYMENT

6.1 Probationary Period for New Hires: An employee hired to fill a position shall serve a probationary period of one (1) year, beginning on the first day of work, during which time the employee is terminable-at-will.

- A. Law enforcement officers in the police Department shall serve a one (1) year probationary period, beginning on the first day of work, during which time the employees are terminable-at-will. If a law enforcement officer is not certified prior to hiring, the law enforcement officer must obtain law enforcement certification within one year of employment. Uncertified law enforcement officers shall be terminated on the one-year anniversary of hire if they are not accepted or enrolled in a basic police officer training program certified by the Law Enforcement Academy Board.
- B. The probationary period is an integral part of the evaluation process and is for observing the employee's performance and obtaining the most effective adjustment of a new employee to the position. Employees will be evaluated at least every 3 months during the probationary period. The employee must achieve a satisfactory performance or better by the end of the probationary period before the employee can become a regular employee entitled to all of the rights and benefits of that status.
- C. If an employee satisfactorily completes the probationary period, the employee will become a regular employee. If the employee does not satisfactorily complete the probationary period, the employee may be dismissed, or upon the recommendation of the department director and with final approval of the City Manager, the probationary period may be extended for ninety (90) days.
- D. In the event a probationary employee is on extended leave for any reason, the probationary period will be extended in an amount equal to that leave period.
- E. Probationary employee provisions. A probationary employee:
 - 1. can be dismissed, without cause, at any point during the probationary period;
 - 2. is not eligible for personal holiday leave;
 - 3. cannot grieve disciplinary actions;
 - 4. is allowed to accrue and use sick and annual leave as soon as it is accrued with approval of supervisor;
 - 5. employees terminated during their probationary period are only entitled to payment of unused annual leave; and
 - 6. is eligible for health insurance and other optional benefits, as provided in Section 9.7.

6.2 Temporary Employee Hired to a Regular Position: An employee who fills a temporary position and is subsequently hired to fill a regular position shall serve the required probationary period. The beginning date of the probationary period is the date the employee formally transitions to regular status.

6.3 Former City Employees Hired to a Position: A former City employee re-hired in the same or like position, or re-hired at any time to fill a new position, shall serve the required probationary period.

6.4 Permitted Political Activities: All employees:

- A. may engage in political activity on their own time;

- B. are encouraged to register to vote and to exercise their right to vote;
- C. have a right to express their opinion on all political subjects and candidates on their own time;
- D. may serve as convention delegates;
- E. may sign nominating petitions and make voluntary contributions to political organizations and candidates on their own time; and
- F. may serve as an election or poll official.

6.5 Prohibited Political Activities: All employees are prohibited from:

- A. using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office, or for any other political purpose;
- B. directly or indirectly coercing, attempting to coerce, commanding or advising an official or employee to pay, lend, or contribute anything of value to a party, committee or organization, agency, or person for a political purpose;
- C. threatening to deny promotions to or retaliating against an employee who does not vote for or support certain candidate(s), requiring employees to contribute to a political fund or candidate, influencing employees to buy tickets to political fund-raisers and similar events, advising employees to take part in political activity and matters of a similar nature;
- D. engaging in political activity while on duty; and
- E. using any City-owned equipment, supplies, vehicles, space, property, or work time for political purposes.

6.6 Public/Political Office:

- A. Employees covered by the provisions of the Hatch Act [5 U.S.C. Sections 1501 to 1508] may not be candidates for partisan political office elections. (A local school board member or a member of any post-secondary educational institution's governing body shall not be construed as holding political office)
- B. Employees may not hold a City political office and be a regular full-time or at-will employee of the City.

6.7 Nepotism: To eliminate the appearance of nepotism, relatives within the third degree shall not work in the same department when there is a supervisory relationship between them.

- A. Relative, as used in this ordinance, includes father/mother and spouse, son/daughter and spouse, grandparents, grandchildren and spouse, uncle/aunt and spouse, nephew/niece and spouse, brother/sister and spouse, great grandparents, and great grandchild ; including unrelated persons sharing a spousal/domestic partner relationship, adopted step-relatives.
- B. When there is a change in assignment or relationship among City employees, which leads to supervision of or by a relative, the relative supervisor must immediately inform the department director of the relationship in writing. The department director, subject to the approval of the City Manager, shall take appropriate action to eliminate the conflict. Options include eliminating supervisory responsibility for a specific employee, voluntarily/involuntary transfer of the employee or supervisor to

another position, demotion of the supervisor, or termination of the employee or supervisor, whichever is most feasible for the employee, supervisor and City.

6.8 Conflict Ban: No employee shall engage in any business, transaction, accept private employment or other public employment which is incompatible with the proper discharge of the employee's responsibilities or which gives the appearance of impropriety, or is prohibited by federal, state or City law or City policy.

6.9 Outside Employment: Employees may not, directly or indirectly, engage in any outside employment or financial interest which may conflict, in the City's opinion, with the best interests of the City or interfere with the employee's ability to perform his/her assigned City job. Examples include, but are not limited to outside employment which:

- A. Prevents the employee from being available for work beyond normal working hours, such as emergencies or peak work periods, when such availability is a regular part of the employee's job;
- B. Is conducted during the employee's work hours;
- C. Utilizes City facilities, equipment, resources or time;
- D. Constitutes employment, contractual commitment or self-employment which conflicts with Section 15.14, below; or
- E. May be reasonably perceived as a conflict of interest, gives the appearance of impropriety or otherwise discredits public service.

An employee who chooses to have an additional job, contractual commitment or self-employment, may do so provided he/she provides prior notification on the prescribed form and obtains prior approval from his/her department director and the City Manager. Any outside employment that could potentially interfere with emergency call-out situations must be reported to the employee's department director. If, after accepting outside employment, situations arise which could interfere with the employee's job, the employee must immediately report these situations to his/her department director.

6.10 Workplace & Sexual Harassment: The City will not tolerate harassment or sexual harassment.

- A. The City is committed to taking reasonable steps to provide a professional working environment free from all forms of harassment, whether based on sex, sexual orientation, gender identity, race, color, religion, national origin, age, disability or any other protected classification. Although this policy focuses on sexual harassment, it applies equally to all forms of harassment based on a protected classification. The procedures described in this policy shall be followed for all such harassment. This policy also applies when an employee is subject to harassment in the workplace by a non-City employee.
- B. Employees have a right to be free from workplace harassment. Employees are forbidden from engaging in harassing conduct on- or off- duty that creates a hostile work environment. Any act of harassment based upon a protected classification is a severe violation of City policy and will be addressed in a firm manner.
- C. Harassment Definition: verbal, non-verbal or physical conduct by any employee that, bullies, torments, persecutes, disrupts, or interferes with another employee's work performance or member of the public or that creates an intimidating, offensive or hostile environment.

- D. Sexual Harassment Definition: is any unwelcome sexually oriented behavior, demand, comment or physical contact initiated by any individual at the work place when:
1. Submission to such conduct is made either explicitly or implicitly, a term or condition of an individual's employment;
 2. Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions/opportunities affecting such individual; or
 3. Such conduct has the purpose or effect of substantially interfering with an individual's work performance, or creates an intimidating, hostile or offensive working environment.
- E. Harassment can occur in a variety of forms. Examples include, but are not limited to: Teasing an employee(s) about their race, religion, sexual orientation etc. Telling a joke at the expense of or with the intent of embarrassing a protected class.

Sexual harassment also occurs in a variety of forms. Harassing conduct based on gender often is sexual in nature. This policy forbids harassment based on gender regardless of whether the offensive conduct is sexual in nature. Sexual harassment is unacceptable in the workplace or in other work-related settings such as business trips and business-related events. The following are some common examples of behaviors or situations that constitute sexual harassment:

1. Oral or written sexual statements, comments, jokes, questions or innuendoes;
 2. Display of sexually oriented visual items such as calendars, cartoons, photos or posters;
 3. Assault, molestation or unwelcome physical contact such as kissing, touching, patting, pinching, brushing against or hugging;
 4. Requests, demands or subtle pressure for sexual activity;
 5. Threats or retaliation against an employee who refuses unwelcome sexual attention or sexual behavior;
 6. Overt promises or practices that imply preferential treatment for any employee in exchange for dates, sexual attention or sexual behavior;
 7. Sexual insults and suggestions including, but not limited to, lewd remarks, obscene gestures and sexually suggestive materials;
 8. Any conduct that ridicules, or is malicious or abusive to, an individual because of the individual's gender;
 9. Pressuring an employee to go out on a date;
 10. Consensual "romantic" or sexual relationships between a supervisor/director and an employee in the same department; or
 11. Asking questions of a sexual nature.
- F. Responsibility to Report Harassment. Any employee, who believes they are a victim of harassment because of their protected classification, should first confront the person or persons responsible for the offensive behavior and indicate that it is unwelcome and should be stopped. The employee also has an obligation to promptly report the matter to the Human Resources Manager, City Attorney or City Manager. These individuals are authorized by this policy to receive and act upon complaints of harassment or discrimination on behalf of the City. All employees who observe, or become aware of harassment, also have an obligation to bring the matter to the attention of the Human

Resources Manager, City Attorney or City Manager, even if they are not the victim of harassment.

- G. Investigation of Complaints. It is the City's intent to provide a fair process for investigating and resolving complaints of harassment. The City will investigate all reports of alleged harassment. Information associated with the investigation will be kept confidential, to the extent possible, and consistent with the City's obligation to investigate promptly and thoroughly. All employees are required to cooperate with any investigation by the City in response to an allegation of harassment. Refusal to cooperate in an investigation may result in disciplinary action, up to and including termination.
- H. Appeal. Any affected employee dissatisfied with the conclusion or results of an investigation, or with any corrective measures taken, may appeal the decision to the City Manager. Any such appeal should be in writing and must include the nature of the employee's dissatisfaction with the conclusions or results of the investigation. Any qualifying disciplinary appeal must follow the grievance process.
- I. Protection against Retaliation. The City will not retaliate against any employee who reports sexual harassment in good faith and such retaliation in and of itself is grounds for disciplinary action, up to and including termination without prior progressive discipline. Retaliation is a serious violation of this policy and should be immediately reported.
- J. Discipline. Anyone violating section 6.10 will be subject to corrective or disciplinary action up to, and including dismissal.
- K. Unlawful harassment, including sexual harassment, of employees, or members of the public, may be cause for dismissal. If the City determines that harassment has occurred or that counseling, training, disciplinary measures or termination are appropriate, it will respond appropriately to correct the problem following City disciplinary procedures. Serious cases of harassment constitute cause for termination without prior progressive discipline. Employees who knowingly make false allegations of sexual harassment may be subject to disciplinary action.
- L. Mandatory Training. Periodic mandatory training for all employees will be provided by the City to increase knowledge of the workplace harassment policy, state and federal laws and the process for enforcing the policy.
- M. Vendors and Customers: Employees should report harassment, including sexual harassment from vendors, customers, other City employees and the general public utilizing this Policy.

6.11 Performance Evaluations and Performance Goals:

A. Performance Evaluations (Probationary Employees only)

1. Probationary employees shall be evaluated at least every three (3) months or when a department director or immediate supervisor wishes to make the performance of an employee a matter of record.
2. **Contents of Evaluation:** A performance evaluation shall contain an overall appraisal of the employee's performance while on probation. Approved forms are available in Human Resources. All evaluations shall be signed by the employee and supervisor, and forwarded to the City Manager.
3. **Unsatisfactory Evaluation:** The probationary period is a time to grow and develop new employees and ensure a proper fit for the organization; however, if an employee receives an overall evaluation rating of unsatisfactory performance, the employee shall be warned that the failure to meet reasonable performance standards

within a set period shall result in dismissal. In some circumstances of unsatisfactory performance or unacceptable behavior, a probationary employee may not be given a warning and will be terminated as terminable-at-will.

C. Performance Goals (Non-Probationary Employees)

1. Supervisors will develop SMART goals (Specific, Measurable, Achievable, Relevant, and Time-based) annually for each employee, other than probationary employees who shall follow the traditional performance evaluation process. SMART goal setting is important for employee motivation, keeps employees looking forward to new accomplishments, intended to grow employee knowledge and skill sets, designed to meet organizational strategic outcomes, and enhances organizational effectiveness.

Supervisors are expected to supervise and manage staff on a daily basis, and thus, provide either positive reinforcement or constructive corrective feedback as appropriate; performance evaluations and goal setting should not be mistaken for daily supervisory responsibilities.

2. Goal types include:
 - a. Essence of job (EOJ): EOJ goals clearly describe tasks required for the job. Goals can include productivity, efficiency, detail, accuracy, safety, ability to problem-solve or work as a team player, professionalism, customer service, etc. EOJ goals can relate to the speed of work or number of units completed, and product accuracy and quality, etc.
 - b. Specific project(s): Projects are activities that an employee will pursue with a beginning and ending, and are generally beyond the employee's routine duties. Project goals can relate to improving systems, developing new policy or procedures, developing programs, completing purposed research, etc.
 - c. Professional development: These goals specify what an employee will learn in the coming year. These goals grow an employee by developing new skills or knowledge. Goals shall be linked to a realistic organizational need.
 - d. Performance improvement: These goals are used when an employee's behavior is unsatisfactory or their performance is below reasonable expectations. Performance improvement goals should have a limited but reasonable end timeline. They shall document reasonable behavior or performance expectations in a clear and measurable way.
3. Goal Setting: Supervisors, in collaboration with the employee, shall develop SMART goals for each employee annually. Align goals with the department's overall strategies, priorities and most important needs.
4. Goal Tracking: Supervisors shall review goal progress with each employee at least quarterly. A supervisor may amend a goal, either increasing or decreasing responsibilities, if circumstances change during the period.
5. Employee Rebuttal: The employee may submit a written rebuttal statement to the performance goal evaluation and it will become a part of the performance goal report. The rebuttal must be submitted within ten (10) days of the evaluation or it will be denied.

6. Unsatisfactory Goal Evaluation: In the event an employee fails to meet established goal(s), when in the judgment of the supervisor, should have, the employee shall be warned that failure to meet reasonable expectations could result in disciplinary action and/or may be placed on a performance improvement plan.

6.12 Fitness for Duty:

The City endeavors to provide a safe and productive work environment for the benefit of its employees and the public they serve. Employees are expected to manage their health in such a way that they can safely and effectively perform their essential job functions and to discuss with their supervisor any circumstance that may impact their ability to do so. The City may require professional evaluation of an employee's physical or mental capabilities to determine his or her ability to perform essential job functions. Such evaluations are conducted by an independent third party, licensed health/mental health care professional and are undertaken only after careful review by Human Resources. To the extent possible, the City will protect the confidentiality of the evaluation and results.

This evaluation process is for only those situations where reliable observation indicates that the employee may not be physically or mentally able to perform the essential functions of his or her position due to a physical or mental condition. It is not intended to be a substitute for sick or medical leave requests, workers' compensation claims, allegations of violence in the workplace, situations where there is an immediate threat of harm, or a performance management disciplinary process.

- A. Procedures: If, by observation of an employee's behavior or by receipt of reliable information, the City has reason to believe that an employee may lack the ability to perform the essential functions of his or her position due to a physical or mental condition, the following steps will be taken:
 1. The department head will provide Human Resources with detailed information regarding the reason for and circumstances leading up to the fitness-for-duty referral, including information on essential job functions, evidence of the employee's inability to perform those functions effectively, and any attempts at resolving the matter.
 2. The Human Resources Manager will review the information provided in the referral, along with a current job description of the essential functions of the employee's position. If it is determined that a fitness-for-duty evaluation is necessary, upon confirmation from the City Manager, the Human Resources Manager, will notify the employee in writing.
 3. Human Resources will determine the independent, third party, licensed health/mental health professional who will perform the evaluation, send a written request for an evaluation to him or her, and will schedule the evaluation at the earliest opportunity.
 4. Failure on the employee's part to comply with a scheduled fitness-for-duty evaluation constitutes insubordination and will be cause for disciplinary action, including termination.
 5. The City will pay all costs of the services performed by the health/mental health professional as part of the evaluation.
 6. If the City Manager deems it necessary, the employee may be placed on temporary, paid administrative leave until the evaluation is completed.

7. The employee will be requested to sign a voluntary written authorization allowing the health/mental health professional to provide certain information obtained through the evaluation to the City. If no authorization is executed, the City may nevertheless obtain a description of the functional limitations of the employee that may limit the employee's ability to perform the essential function of his or her job, but no statement of medical cause may be disclosed.
 8. Insofar as feasible, the results of the evaluation will be treated as confidential, kept in a separate file within Human Resources, and the minimum necessary information will be shared only with those who need to know the results for legitimate City business purposes.
 9. If it is determined that the employee is not able to perform the essential functions of his or her position, Human Resources will attempt to determine if there is a reasonable accommodation that will allow the employee to continue working. If an appropriate accommodation cannot be made, other options will be identified and communicated to the employee as available.
 10. If it appears that any functional limitations on the employee's ability to perform the essential functions of his or her position are the result of a work-related injury, the matter will be referred to Workers Compensation for the processing of a workers' compensation claim.
 11. All actions taken to carry out this policy will comply with state and federal laws, as well as City policies and procedures and applicable contractual provisions.
- B. Evaluation and Results: The fitness-for-duty evaluation will not be conducted for the purpose of diagnosis or treatment, but rather for the purposes of determining an employee's ability to perform the essential functions of the job. Human Resources will provide the evaluator with a description of the essential function of the employee's position prior to the evaluation. The evaluator will be asked by Human Resources to release only that information as permitted under this policy or otherwise permitted by law. The evaluator will be asked to complete a written report containing only the following information.
1. A conclusion regarding the determination of fitness for duty;
 2. A description of the nature and extent of any functional limitation on the employee's ability to perform his or her job;
 3. A description of the expected duration of each such functional limitation; and
 4. An opinion as to whether or not the functional limitation may be the result of a work-related injury as related by the employee; further medical examination or investigation may be necessary to determine if the functional limitation arises out of, or has been caused by, the employee's occupation.
- C. Insofar as feasible, the results of the evaluation will be treated as confidential, and will be shared only with those who need to know the results for legitimate City business purposes. However, where the employee has placed at issue his or her medical history, mental or physical condition, or treatment, the relevant information may be used and disclosed by the City in connection with such proceedings.
- D. The City Manager will make a decision regarding the employee's status, including but not limited to the employee's return to duty or removal of the employee from any duties pending treatment and re-evaluation, depending on the results of the evaluation and the

recommendation of the evaluator. In certain circumstances, the employee may be subject to medical disability termination pursuant to Section 5.8 of this Ordinance.

6.13 Anti-Fraternization:

- A. The City encourages employees to develop friendships and share a spirit of teamwork and camaraderie both in the workplace and outside of work. In instituting this dating or fraternization policy, it is not the City's goal to interfere with the development of co-worker friendships and relationships.
- B. City employees may date; develop friendships and relationships both inside and outside of the workplace as long as the relationships do not negatively affect work. Any relationship that interferes with the City's culture of teamwork, the harmonious work environment or the productivity of employees will be addressed by applying the progressive discipline policy as outlined in this Ordinance. Adverse workplace behavior or behavior that affects the workplace that arises because of personal relationships will not be tolerated.
- C. The exception to this policy relates to Managers, directors and supervisors. Anyone employed in a managerial or supervisory role shall not have an intimate relationship with employees who report to them. From an employee perspective, these relationships may be perceived as favoritism, misuse of authority, or potentially, sexual harassment. Even if no improper conduct occurs, the relationship would likely cause gossip, hard feelings, dissatisfaction, and distraction among other employees in the workplace. The relationship may appear to other employees as an inappropriate use of position power. The fraternization prohibited by this policy includes dating, romantic involvement, and sexual relations.
- D. Notify your supervisor and the Human Resources Manager if a coworker relationship is a concern and might be from the City's standpoint of job performance and workplace disruption. Appropriate actions will be determined and taken as per the City's personnel policy. In the discretion of the City Manager, the parties to a relationship that become a concern can be required NOT to work together; and, must keep the City informed on the relationship. Any disruption in the workplace is subject to discipline or adjustment in shift status if available.
- E. Sexual misconduct refers to a wide range of inappropriate behaviors associated with the exercise of "power" or "authority" over certain people in the work environment. Therefore, some work relationships are prohibited by State statute. Law enforcement, probation personnel, and counselors are legally prohibited from engaging in relationships with offenders, inmates or clients, as these employees have a position of authority over these individuals. In these relationships, either the Legislature or courts have determined that these individuals are not capable of "consenting" to sex with staff, just as individuals with diminished mental capacity and juveniles are deemed unable to consent.

SECTION VII: BASIS FOR EMPLOYEE DISCIPLINE

7.1 Discipline: Disciplinary actions are based on just cause, in order to promote the efficiency of the services rendered by the City and the operation of its respective departments and offices. Disciplinary actions will be consistent with governing laws and regulations and will be taken without regard to race, age, religion, color, national origin, ancestry, sex, sexual

orientation, gender identity, physical or mental handicap, or medical condition. No employee will be disciplined for refusing to perform an unlawful act.

7.2 Definition of Just Cause: Just cause is defined as any conduct, action or inaction arising from or directly connected with the employee's work or behavior, which is inconsistent with the employee's obligation to the City and reflects the employee's disregard of the City's interest. Just cause includes, but is not limited to, inefficiency, incompetence, misconduct, negligence, insubordination, or performance which continues to be inadequate after reasonable efforts have been made to correct the performance problems, or conviction of a felony or misdemeanor involving moral turpitude and the misdemeanor conviction directly relates to the employee's particular job, trade, or profession.

7.3 Disciplinary Action: The City Manager, department directors and supervisors have the authority to discipline an employee under their supervision. However, only the City Manager has the final authority to demote, suspend or terminate an employee for disciplinary reasons. Copies of any written disciplinary action must be furnished to Human Resources for placement in the employee's file, with evidence of the employee's receipt of the action.

7.4 Consultation with City Attorney: Dismissal, demotion, and suspension require consultation with the City Attorney before taking disciplinary action. Whenever such consultation is not practical because of urgency, necessary action may be taken and the situations/circumstances reviewed with the City Attorney as soon as practical.

7.5 Progressive Discipline: An employee shall be progressively disciplined whenever warranted. All actions involving substandard work performance, leading up to and including dismissal, require documented progressive discipline. The step of corrective action used depends on the severity of the infraction, the employee's previous work record, years of employment, and the employees' status within the organization, e.g., supervisors are expected to conduct themselves at a higher standard. Because of the serious nature of some infractions, the first disciplinary action may be suspension or dismissal.

7.6 Verbal Reprimand: A verbal reprimand is used for minor infractions to inform the employee that his/her actions, behavior or conduct needs to change. Supervisors will keep written notations of verbal reprimands, and will place the written notation of the verbal reprimand in the employee's personnel file. The placement of a verbal reprimand in an employee's file is not grievable. Causes for verbal reprimands include, but are not limited to:

- A. Substandard or unsatisfactory work performance;
- B. Unprofessional behavior;
- C. Malicious gossip and toxic talk;
- D. Repeated absence or tardiness;
- E. Misconduct on the job;
- F. Failure to follow safety rules or procedures, including preventable accidents;
- G. Failure to meet and/or maintain job requirements as set forth in the job description;
- H. Violation of any personnel Rules, other City rules, policies, regulations or supplemental rules;
- I. Violation of a professional code of ethics accepted by those in the same profession as an employee and as stated in this policy;

- J. Non-cooperation by an employee with fellow employees or other personal conduct which interferes with the performance of his/her or another employee's work;
- K. Failure to adhere to an established work schedule;
- L. Excessive personal phone usage; and
- M. Failure to obtain authorization for overtime or compensation time.

7.7 Written Reprimand: An employee shall receive a written reprimand because the deficiency or infraction is of a greater degree than that for which a verbal reprimand may be used, or if a verbal reprimand was not effective. Causes for written reprimands include, but are not limited to:

- A. All causes listed for verbal reprimands;
- B. Excessive absence or tardiness;
- C. Sleeping on the job;
- D. Unprofessional behavior;
- E. Negligence in the performance of duty including negligence in the operation of City vehicles or equipment, including preventable accidents;
- F. Negligence or failure to adhere to established safety rules or regulations as well as willful unsafe conduct;
- G. Insubordination and failure to comply with the lawful orders of a supervisor including the refusal to accept after hours assignments;
- H. Refusal to perform tasks or duties assigned or detailed in an employee's job description;
- I. Unauthorized absence from work;
- J. Failure to report duty injuries, accidents or vehicle collisions;
- K. Failure to follow the chain of command within a department;
- L. Unauthorized use or abuse of City property (e.g. phones, cell phones, computers, vehicles, equipment, etc.).
- M. Being untruthful when asked about any work related activities by a supervisor;
- N. Abuse of sick leave, including use of sick leave on a day for which vacation or other leave has been denied;
- O. Failure to follow a departmental SOP; and
- P. Violation of the Code of Ethics (Section 3.10).

Written reprimands for an employee's work performance or conduct shall be placed in the employee's personnel file after providing the employee with a copy of the statement. The employee will be asked to acknowledge having read the comments by signing the statement. If the employee refuses to sign, said refusal, that information shall be noted on the document by the employee's department director. The department director's signature or employee's signature indicates that the employee received the statement, but does not necessarily indicate concurrence with its content. In addition, the department director may read the letter of reprimand to the employee. The employee may respond with a written rebuttal within ten (10) days after the document was entered into the personnel file, which shall also be placed in the employee's personnel file. The placement of a written reprimand in an employee's file is not grievable.

7.8 Suspension: An employee may be suspended without pay for a single serious offense, for misconduct, or for continued inadequate job performance after previous attempt(s) to correct the performance have failed. Such suspension will not exceed two-hundred forty (240) hours. Suspension of an employee is subject to the formal grievance procedures. Causes for suspension include but are not limited to:

- A. All causes listed for verbal and written reprimands;
- B. Continuous documented instances of poor performance;
- C. Negligent damage to property and/or person(s), including preventable accidents;
- D. Physical or mental unfitness for duty;
- E. Consumption or possession of alcohol or controlled substances on-duty or on City property or in City vehicles;
- F. Fighting while on-duty or on City property;
- G. Harassment;
- H. Sexual harassment;
- I. Violation of the Code of Ethics (Section 3.10).
- J. Failure to report confiscation or loss of driver's license when required as condition of employment;
- K. Operation of a City vehicle or a private vehicle while on City business without a valid driver's license; and
- L. Unlawful carrying or possession of a firearm unless authorized by state law or City policy.
- M. Being under the influence of alcohol or controlled substance including illegal drugs as well as abuse of prescription drugs. See Section 11.
- N. Knowingly making any false statement or omission to a supervisor regarding work-related activities.

7.9 Demotion: An employee may be demoted for continued inadequate job performance after previous attempt(s) to correct the performance deficiency have failed, if a lower job position exists, the employee is capable of performing such a job, and it is in the best interest of the City to demote the employee. The demotion of an eligible employee is subject to formal grievance procedures. A demotion may require a decrease in salary, with approval of the City Manager. Employees engaged in misconduct or ethical infractions will not be considered for demotion.

7.10 Dismissal: Dismissal is the final consequence when progressive discipline has failed to change unacceptable behavior or performance, or when the employee has engaged in other behavior that is of a serious nature that is unacceptable for City employees. The dismissal of an employee is subject to the formal grievance procedures. Causes for dismissal include, but are not limited to:

- A. All causes listed for the previous disciplinary actions or if an employee's performance failed to improve after attempts or correction have failed;
- B. Acceptance of a bribe, gratuity, gift, or kick-back;
- C. Abuse of official position or authority for personal profit or advantage;
- D. Theft, abuse or intentional destruction of City property, including electronic media or data;
- E. Unauthorized disclosure of confidential information from City records or documents, or discussions as set forth by applicable state law; falsification, destruction or unauthorized use of City records, reports, or other City data, including electronic media or data;
- F. Being convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular job, trade, or profession;
- G. Being convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular job, trade, or profession, if the City

determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust.

- H. Falsification of City records, including employment application, health history forms or any other document used in the employment process;
- I. Serious acts of negligence causing damage to City property, public or private property or injury to an employee or member of the public;
- J. Intentional acts causing damage to City property, public or private property or injuring an employee or member of the public;
- K. Conduct unbecoming an employee of the City;
- L. Engaging in conduct prohibited under the City's Drug-Free Workplace Policy as provided in Section 11.4, below;
- M. Insubordination or refusal to carry out reasonable directives;
- N. Failure to meet standards of substance abuse rehabilitation programs;
- O. Loss of license or certification necessary to legally perform the duties of the employee's position.
- P. Determination of Hatch Act violation by Office of Special Counsel;
- Q. Behavior that demonstrates deliberate violations of policy, wrongful intent, evil design, or so as to reveal intentional and substantial disregard of the City 's interests, or of employee's duties and obligations to the City;
- R. Willful falsification of, or misrepresentation on, any work records; falsifying data or information requested by the City; forgery or inappropriate alteration of City records or other City documents (including written or audio or audio-visual media); and
- S. Action or inaction that subjects the City to civil liability.

7.11 Examples Not Inclusive: The above examples are typical of the types of infractions sometimes encountered but are not inclusive of all situations that may arise. The City reserves the right to exercise judgment and render disciplinary action or dismissal as deemed appropriate based on the circumstances of each case.

7.12 Pre-Determination (Loudermill) Hearing: Regular employees shall receive a pre-determination hearing prior to possible disciplinary action for cause or other action that may result in suspension without pay, demotion, and loss of pay, involuntary transfer, or dismissal. Prior to delivery of the written notice to the employee, the City Human Resources Manager shall review the cause for such action and may require the proposed level of discipline be increased or decreased based on policy and past action. The City Manager or his/her designee shall hold the hearing for employees of each respective department.

7.13 Written Notice: The employee's supervisor or department director shall present the employee with written notification of their intent to conduct a pre-determination hearing at least five (5) working days in advance of the hearing date. The written notification shall explain the reasons for the hearing, the proposed discipline, the employee's right to attend the pre-determination hearing, a list of all evidence and/or witnesses to be introduced by the Department supporting the Department's position, the time, place and date of the pre-determination hearing and the employee's right to respond to the proposed action. The time, place and date of the pre-determination hearing can be revised upon the written agreement of the parties.

7.14 Immediate Suspension with Pay: In cases where City property, other employees or citizens, or their property are at risk because of the employee's actions, or when in the best interest of the City, the City Manager or in his/her absence, an appointed designee shall put the

employee on administrative leave with pay until the pre-determination hearing is held and a decision is rendered. Any employee, who is placed on administrative leave pending disciplinary action, will be required to be away from their place of employment and will not be allowed to perform any job related duties or retain any City property during that time, but is subject to recall by the City during normal business hours. Administrative leave pending disciplinary action shall not exceed thirty (30) calendar days, unless the City Manager approves an extension of time. The department director, subject to the approval of the City Manager whenever circumstances warrant such leave, may also grant administrative leave with pay.

7.15 Pre-Determination Hearing Procedure: The City Manager or his/her designee shall meet with the appropriate department director and the employee if he or she chooses to participate, at the appointed time. The City Attorney may be present to assist the Hearing Officer/City Manager but shall not advocate on behalf a City Department. Legal counsel for the employee and the department, if any, may also be present. At this hearing, the employee will have an opportunity to respond to the reasons for the proposed action. Witnesses are permitted as determined relevant to the case by the City Manager or his/her designee. If an employee does not attend the pre-determination hearing and no good cause is shown for his/her absence, the hearing shall proceed as scheduled and a determination may be made.

7.16 Pre-Determination Hearing Decision: The City Manager or his/her designee will issue a decision in writing within ten (10) working days of the hearing. The decision will include the time, date and location of the meeting, persons present, and the determination. The written decision shall either be delivered to the employee by a supervisor or department director with the employee's, signature of receipt of the decision) or be sent to the employee by certified mail, return receipt requested.

7.17 Notice of Grievance: Within five (5) working days of receipt of the written decision, the employee must notify the Human Resources Manager or his/her designee in writing of his/her intent to pursue a grievance hearing before a Personnel Appeals Hearing Officer.

SECTION VIII: GRIEVANCE PROCEDURES

The formal grievance procedure is applicable for promotion, suspension, demotion, involuntary transfer or dismissal. A grievance shall not stay the implementation of the pre-determination hearing decision.

8.1 Conditions or Actions Not Grievable: The following matters are not grievable:

- A. Disputes as to whether or not an established City practice or Rules are valid;
- B. Matters in which a method of review is mandated by law;
- C. Matters where the City is without authority to act or does not have the ability to provide a remedy;
- D. Dismissal of temporary, casual or contract employees dismissed at any point during their employment with the City;
- E. Preferences for employment, promotions, voluntary transfers, temporary assignments, and removal from temporary assignments, and layoffs;
- F. Dismissal of a probationary employee prior to the expiration of the probationary period;
- G. Letters of complaint when the employee's department director determines the letters are justified and appropriate to be placed in the employee's personnel file, so long as the

procedure for written reprimands are followed including the employee's right to submit a rebuttal;

- H. Verbal and written reprimands in the employee's file, although within ten (10) days the employee is allowed a rebuttal of the information contained in the reprimand which will be attached to the reprimand;
- I. Denial of permission for outside employment;
- J. Performance evaluations/goals;
- K. Suspension from employment for three days or less.
- L. Denial of educational rewards or tuition reimbursement funding.

8.2 Employees Not Eligible for Grievance Procedure: Unclassified, temporary, casual, probationary, or contract employees are not eligible to request a grievance hearing. Additionally the City Manager is not entitled to the grievance procedure.

8.3 Grievance Procedure: A regular employee may request, in writing, a hearing before a Personnel Hearing Officer within five (5) working days of receiving the City Manager's decision resulting from the pre-disciplinary process or from other action as may be grievable under this Policy. The request will state with specificity the reason for the grievance and the remedy requested.

8.4 Appointment of Personnel Hearing Officer: After receiving the grievant's notification of intent to pursue a disciplinary hearing, the City Manager will provide the grievant with the name of the Hearing Officer.

8.5 Hearing Officer Qualifications: Hearing Officers shall be personnel professionals, be familiar with public or private personnel systems, or have pertinent experience in the field of management, education or law. The Hearing Officer shall be disinterested in the subject matter of the hearing. The City Manager shall verify the qualifications of the hearing officer. The hearing officer is not required to reside in the City.

8.6 Grievance Hearing Schedule: The City Manager or Hearing Officer will schedule a hearing to be held as soon as practicable after receiving the notification that the employee wants to pursue a grievance hearing. At a hearing, the grievant and City shall have an opportunity to present witnesses and physical evidence and cross-examine the witnesses before a neutral hearing officer. The City shall be represented by its attorney and the grievant may have an attorney or representative of their choice.

8.7 Grievance Hearing Procedures - Rules of Procedure:

- A. The hearing will not be open to the public, unless the grievant requests a public hearing.
- B. The formal Rules of Evidence shall not apply to the hearing.
- C. The hearing officer shall:
 - 1. make rulings on procedural and substantial issues of the hearing;
 - 2. determine the admissibility of evidence and testimony, all of which must have a direct bearing on the issue before the hearing officer; and
 - 3. issue a written ruling, including findings of fact, which form the basis of the hearing officer's conclusions of law.

- D. The grievant, the grievant's legal representative, if any, and the City Attorney are required to be present at the hearing unless otherwise excused by the hearing officer or by agreement of the parties.
- E. The hearing officer shall determine reasonable timelines that the parties or their representatives shall prepare and provide copies of all exhibits and evidence, confidential statements identifying the issues to be heard, a witness list, and a complete list of documents to be admitted as evidence for the hearing officer as well as the opposing party. The hearing officer shall exclude from consideration exhibits and evidence, statements, witness lists, and other documents if not supplied in the manner detailed above.
- F. Each party will be responsible for ensuring that their witnesses are present for the hearing.
- G. Witnesses in grievance hearings are not permitted in the hearing room until called upon to testify, unless the witness is a party (i.e., the grievant, the grievant's department director and/or supervisor, the City Manager, Human Resources Manager, or City Attorney).
- H. An audio, audio-video record or transcript of all grievance hearings will be made.

8.8 Conduct of Hearing: The Grievant shall present an opening statement of issues involved in the case, followed by the City. Opening statements are limited to the pertinent issues of fact and law and shall not exceed ten minutes without the permission of the hearing officer.

8.9 Order of Presentation:

- A. The City will present first. Witnesses for the City may be called and questioned concerning their involvement in or knowledge of the case. Following each witness's testimony, the Grievant will have the opportunity to cross-examine the witness. The hearing officer will then have an opportunity to question the witness. The hearing officer shall restrict all questions to those necessary to clarify the testimony previously given. Follow up or redirect questioning will be allowed at the discretion of the hearing officer.
- B. Witnesses for the Grievant may be called and questioned concerning their involvement in or knowledge of the case. Following each witness's testimony, the City will have the opportunity to cross-examine the witness. The hearing officer will then have an opportunity to question the witness. The hearing officer shall restrict all questions to those necessary to clarify the testimony previously given. Follow up or redirect questioning will be allowed at the discretion of the hearing officer.
- C. Following the presentation of the City's and the Grievant's positions, rebuttals may be offered. Such testimony shall be brief and shall address only the issues brought forth in the City or Grievant's presentation.
- D. The City's closing statement shall be presented followed by the Grievant's closing statement. These statements shall not exceed ten (10) minutes without the permission of the hearing officer and shall contain a request for the desired outcome.

8.10 Communication of Hearing Officer's Decision: The hearing officer's decision will be issued as timely as possible following the hearing and will be signed by the hearing officer, and transmitted to the grievant, the City Manager and department director. The hearing officer may uphold, modify or reverse the decision of the City Manager or designee, and may reinstate the employee and award back pay and benefits. No attorney's fees, costs or other damages may be awarded. The standard of proof in a grievance hearing is a preponderance of the evidence.

The record of the proceedings will be retained by the City Human Resource's office for a period of not less than five (5) years from the hearing date, along with all of the physical evidence admitted by the hearing officer. The verbal record may be transcribed only in the case of appeal to the District Court by one of the parties. The party requesting the transcription shall pay for the transcription.

8.11 Appeal of Hearing Officer's Decision: Either party may appeal the hearing officer's decision to the District Court by filing with the District Court and the Human Resources Manager a Notice of Appeal within thirty (30) calendar days of the hearing officer's decision. A party may cross-appeal within thirty (30) days of the date another party files a Notice of Appeal. Both parties shall be forever estopped from appealing the hearing officer's decision after thirty (30) calendar days from the hearing officer's decision if no Notice of Appeal is timely filed.

- A. These Rules, if certified to be complete by the City Clerk, and in effect at the material times, may be included in the record on appeal at the request of any one of the respective parties at any time before forwarding the record to the District Court.
- B. The appeal shall be one of review of the record (transcript) along with all the exhibits as admitted. No trial de novo will be accorded.

SECTION IX: COMPENSATION & BENEFITS

9.1 Purpose: The purpose of the compensation plan is to establish equitable compensation for all positions in the City. Such a plan may establish a salary schedule containing a minimum and maximum wage or salary for each position. Pay ranges are intended to furnish administrative flexibility. However, all wages and salaries are approved by the Board during the budget process or otherwise. The Board has sole authority to budget and authorize wage and salary increases. The Board acknowledges all changes in compensation and may set pay schedules and Rules regarding any raises and promotional increases for the entire fiscal year for all City employees.

9.2 Hours of Work: Employees will work their scheduled hours pursuant to work schedules established by their department director and approved by the City Manager. Full-time employees will work a minimum of forty (40) hours per week. Actual work periods may fluctuate at the discretion of the department director, with approval of the City Manager. Part-time employees are scheduled to work pursuant to scheduling set forth by their department director. Law Enforcement Personnel may work an alternative schedule in accordance with FLSA regulations in excess of eighty-six (86) hours per pay period permitted by 29 U.S.C. Section 207(k).

9.3 Overtime Pay: Only FLSA non-exempt employees shall be compensated for all time actually worked, whether or not the time is authorized. Failure to obtain authorization for overtime shall result in disciplinary action, up to and including dismissal. The rate shall be one and one-half (1½) times regular pay for each hour of overtime. Only actual time worked will be used to calculate overtime; holiday, annual, sick and other leave hours shall not be considered actual working hours.

- A. Regular employees: such payment shall be made only in cases when an FLSA non-exempt employee works over forty (40) "actual hours" in a normal workweek.

- B. **Law Enforcement Personnel:** An FLSA non-exempt, law enforcement employee shall be paid overtime according to FLSA regulations in excess of eighty-six (86) hours per pay period permitted by 29 U.S.C. Section 207(k).

9.4 Consistency with Fair Labor Standards Act: The provisions of Section 9.3 are subject to change or revision by the Fair Labor Standards Act and any federal regulation or revision thereof.

9.5 Emergency Call-out Pay: An employee called out will be paid for the greater of two (2) hours at one and one-half (1.5) times his/her regular rate or for actual hours worked at one and one-half (1.5) times his/her regular rate. Police officers are exempt from call-out pay eligibility, except as defined in Section 9.3 B.

9.6 Stand-by Pay: An employee on stand-by will be compensated at his/her regular rate for eight (8) hours during any regular seven-day workweek.

- A. No employee may be placed on stand-by for more than one week (seven consecutive days) at a time, except by special arrangement with the department director.

9.7 P.E.R.A. Benefits: All City employees, with the exception of those employees, who are subject to exclusion under P.E.R.A. rules, are required to join the Public Employees Retirement Association of New Mexico (P.E.R.A.).

9.8 Insurance Benefits: The City offers group insurance benefits to all employees as long as the employee is regularly scheduled to work at least 20 hours per week and whose term of employment when hired is for six or more months. Independent contractors and causal employees are not eligible under the City benefit plan. Insurance plans may be changed at the discretion of the Board or the insurance carrier.

9.9 Fringe Benefits: The City will follow the Internal Revenue Service's rules with regard to fringe benefits. Taxable fringe benefits will be included on the employee's W-2 form. (Examples of fringe benefits may include uniforms, uniform allowances, vehicle usage, City cell phones, etc.) If an employee has a question regarding fringe benefits and how that may affect them, the employee should contact the Human Resources Manager. Vehicles assigned as take-home vehicles must be properly identified with a logo as City of Truth or Consequences vehicles, with the exception of law enforcement undercover vehicles.

9.10 Compensatory Time: Compensatory time in lieu of cash compensation may be given if there is no remaining overtime in the Department's budget and shall be authorized only under rare circumstances, which call for immediate action or in special situations required by the nature of the operation or the status of the activity.

- A. Compensatory time in lieu of cash compensation may be given only if there is an agreement entered into voluntarily between the employee and department director.
- B. The employee must have entered into this agreement before compensatory overtime work is performed.
- C. Compensatory time off for FLSA non-exempt employees shall be at a rate equal to one and one-half (1.5) hours for each hour of employment for which overtime compensation is required. However, if the additional hours worked would not qualify

as overtime (i.e. leave was taken during the workweek), but the employee takes time off in lieu of payment such compensatory time would be accrued at the straight time rate.

- D. A maximum of 40 hours of compensatory time may be accrued before the employee will be required to exhaust the leave.
- E. The FLSA-covered employee who has accrued compensatory time off, and who has requested the use of compensatory time, shall be permitted to use the time within a reasonable period after making the request, if the use of compensatory time does not unduly disrupt the operations of the City, as determined by the employee's supervisor.
- F. After accrual of 40 hours of compensatory time, any overtime worked must be paid. If compensation is paid to an employee for accrued compensatory time, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such a payment.
- G. A department head shall make every reasonable effort to schedule time off, for an employee to use accrued compensatory time immediately after accrual.
- H. No employee whose position is designated as exempt shall be paid in any way for hours worked in excess of 40 in a workweek. It is the practice of the City to allow professional flexibility in work schedules for exempt employees to balance their professional and personal commitments. It is, however, generally expected that exempt employees are present and available during daily "core times".

9.11 Flex Time: Excess time accrued by a non-exempt employee above the employee's regularly scheduled daily work hours in, which the employee requests for department director approval to use the accrued hours as alternate leave on a day and time within the same pay period.

- A. Directors may, at their discretion, permit non-exempt employees who are requesting to use accrued flex time on a case-by-case basis, where the employee was engaged in approved work-related assignments that required the employee to work extended hours outside of their normal work day. Flex hours must be used within the same city pay period in which they were accrued and the employee must properly reflect the correct number of hours worked per day on their timesheet entry.

SECTION X: LEAVE AND HOLIDAYS

10.1 Holidays:

- A. The Board shall approve holidays at their discretion, for the calendar year. All employees, except temporary and casual employees, are eligible for holiday pay.
- B. An employee that works on a holiday will receive holiday pay plus their choice of:
 - 1. One hour of time off for each hour worked on the holiday, or
 - 2. Pay for actual time worked at their regular rate.
- C. If a holiday falls on an employee's regularly scheduled day off, the employee will receive eight (8) hours straight time.

10.2 Personal Holiday Leave: All regular employees who have completed the probationary period will have an eight (8) hour and part-time employees eligible for benefits will receive four (4) hours personal holiday each calendar year in addition to the regular holiday schedule. The personal holiday may be taken at any time, upon approval by the employee's supervisor. The entire eight (8) hours, four (4) hours for part-time employees must be taken when requesting personal holiday leave. Personal holiday time may not be taken in hourly increments. Personal holiday leave shall not carry over beyond the current calendar year.

10.3 Annual Leave with Pay: Annual leave may not be used before it is accrued and must be approved with at least seven (7) days or more notice by the employee's supervisor prior to being taken. Employees accrue annual leave with pay in accordance with the following schedule, based upon continuous length of City service:

Full Years of Service	Hours/pay period	Working days/Year
0 to 5 Years	4.0 hours	13 days/ 104 hours
5 to 10 Years	5.0 hours	16.25 days/ 130 hours
10 Years +	6.0 hours	19.5 days/ 156 hours

Employees hired before adoption of this ordinance are grandfathered in at the rate established at hiring and shall accrual annual leave in accordance with the following schedule:

Full Years of Service	Hours/pay period	Working days/Year
0 to 3 Years	4.0 hours	13 days/ 104 hours
3 to 15 Years	6.0 hours	20 days/ 160 hours
15 Years +	8 hours	26 days/ 208 hours

- A. Employees employed in regular part-time status accrue annual leave on a prorated basis.
- B. Only completed calendar months of service before and after interruptions or breaks will be counted. In computing the total number of years of service by which an employee is allowed to progress from one graduated rate of accrual to another, the following will apply:
 - 1. Where the employee has been employed with the City without any interruption or break in continuity of service, the date from which their years of tenure are counted will be the first day of the first completed calendar month worked.
 - 2. Periods of leave without pay in excess of thirty (30) days will not be counted as service.

- C. An eligible employee will progress from one graduated rate of accrual for annual leave to the next on the first day of the month immediately following completion of the required total length of service.
- D. The amount of accrued annual leave permitted to be carried over from one calendar year to the next shall not exceed 240 hours, unless exigent circumstances prevented annual leave use and is approved by the City Manager.
- E. Upon separation of employment, an employee will be compensated for all unused and unforfeited annual leave, not to exceed 240 hours.
- F. Upon death of an eligible employee, compensation for unused total annual leave, not to exceed 240 hours, shall be payable to the employee's estate.

10.4 Accrual Limitation: Total number of accrued annual leave hours shall not exceed a maximum of 240 hours. Therefore, any hours exceeding 240 hours, at any time, will be forfeited, unless approved by the City Manager. Exceptions to this policy must result from a legitimate business necessity.

10.5 Separation from Service or Change in Service Pay: Employees shall be paid for all accrued annual leave upon separation from City service, not to exceed two hundred-forty (240) hours.

10.6 Leave Donation: Employees are permitted to donate or receive annual or sick leave for City employees with severe or extraordinary illnesses, or to provide care for relatives or household members with severe or extraordinary illnesses, if the employee has exhausted their annual and sick leave.

- A. An employee may donate as many annual or sick leave hours as desired, as long as the employee retains an annual and/or sick leave balance of at least 40 hours.
- B. Requests to receive donated leave require department director and City Manager approval. The City reserves the right to approve or deny donated leave requests. The City Manager will render a decision based on the employee's length of service, performance/disciplinary history and review of the employee's leave usage.
- C. A certificate of illness or injury will be required from a physician in order to qualify to use donated hours.
- D. Under no circumstances, including termination, can donated hours be converted into cash. Unused hours will be returned to the employee(s) making the donation.
- E. Upon death of an eligible employee, compensation for unused total annual leave, not to exceed 240 hours, shall be payable to the employee's estate.

10.7 Sick Leave with Pay: Employees shall accrue a maximum of four (4) hours of sick leave with pay per pay period. Part-time employees accrue sick leave at the rate of 2.0 hours per pay-period. Casual and temporary employees do not accrue sick leave.

- A. Sick leave shall be authorized by the employee's supervisor, when such leave is requested, when an employee is unable to perform normal job duties due to medical considerations such as, but not limited to, the following: illness, injury, prearranged medical or dental examination, quarantine, therapy, counseling, treatment, or when a member of the employee's immediate family is ill and requires the personal attention of the employee.

- B. The City has no maximum cap on accrued sick leave; all hours are allowed to be carried-over from one calendar year to the next. Upon separation or retirement of an employee serving five (5) or more continuous years of service, will be compensated for one third (1/3) of the first 480 accrued sick leave hours; a maximum of 160 hours. Employees with less than five (5) continuous years of service will forfeit all accrued sick leave at separation of employment. Employees are not permitted to donate sick leave at time of separation.

10.8 Sick Leave Authorization: Sick leave may not be used before it is accrued and must be authorized or denied according to City policy. Unless otherwise prescribed by separate department policy, the following procedures shall apply:

- A. Reporting Sick Leave. For police officers, sick leave shall be reported as soon as possible, but no later than two (2) hours prior to the employee's work shift. All other employees, sick leave shall be reported as soon as possible, but no later than thirty (30) minutes following the start of their normal work day.
- B. Sick leave shall be requested and entered in the City's system. If an employee uses any falsehood to support a request for leave, any leave authorized may be rescinded and the employee may be subject to disciplinary action. Leave may be granted contingent upon the employee presenting sufficient justification.

10.9 Use of Sick Leave During Probationary Period: Probationary employees accrue sick leave as set forth in 6.1 D and may use sick leave if accrued.

10.10 Certification of Illness for Sick Leave: A physician's written certification may be required prior to receipt of sick leave pay at the discretion of the department director.

10.11 Bereavement Leave: In the event of a death in the employee's immediate family, he or she will be entitled to bereavement leave. Up to three (3) days may be granted for an employee to attend the funeral of a member of his/her immediate family in state and up to five (5) days if the funeral is out-of-state. These days will be classified as Administrative Leave with pay and require City Manager approval.

10.12 Family Medical Leave:

- A. The City provides family medical leave of absence without pay to eligible employees who wish to take time off from work duties to fulfill family obligations relating directly to the birth or adoption of a child or the illness of a child, spouse, domestic partner, parent or the employee themselves. Regular full-time and part-time employees are eligible to request family leave as described in these Rules.
- B. Eligible employees are allowed family/medical leave according to provisions of the Family Medical Leave Act (FMLA). As soon as an eligible employee becomes aware of the need for a family medical leave of absence, the employee shall request leave from their supervisor. Employees requesting family medical leave related to the illness of a child, spouse, domestic partner, parent or the employee themselves shall be required to provide a healthcare provider's certification of employee/family member's serious health condition. Eligible employees who do not request family medical leave in advance of a qualifying event will automatically be placed on family medical leave as soon as the

Human Resources Manager determines that their leave qualifies for protections under FMLA.

- C. The City may require an employee to submit to a fitness for duty return to work exam when the need for FMLA leave is based on the employee's own serious health condition that may affect the essential functions of the employee's job. The City must notify the employee of this requirement at the beginning of the leave.
- D. Eligible employees are allowed up to twelve (12) weeks of family medical leave or up to twenty-six (26) weeks of leave, in a single 12-month period, to care for a covered service member recovering from a serious injury or illness incurred in the line of duty on active duty. Eligibility for leave will be determined on a twelve (12) month rolling-back calendar. The employee will be required to take any available annual or sick leave as part of the approved period of leave. If the family medical leave is unpaid, the employee is subject to all rules pertaining to leave without pay, section 10.20.
- E. Subject to the terms, conditions and limitations of the applicable plans, the City will continue to provide health insurance benefits for the full period of the approved family/medical leave, subject to all rules pertaining to leave without pay, Section 10.20.
- F. When family medical leave ends, every reasonable effort will be made to return the employee to the same position, if it is available, or to a similar available position for which the employee qualifies.

10.13 Administrative Leave with Pay: Administrative leave with pay may be granted by the department director, subject to the approval of the City Manager, pending an investigation or disciplinary action or fitness for duty evaluation, as subject to all rules pertaining to Immediate Suspension with Pay, Section 7.14.

10.14 Workers' Compensation Program: [§§52-5-1 et. seq., NMSA 1978]

- A. The City provides a comprehensive worker's compensation insurance program at no cost to employees. This program covers any injury or anyone suffering from occupational diseases sustained in the course of employment as approved by the insurance carrier. Subject to applicable legal requirements, Workers' Compensation insurance provides benefits after a short waiting period, or if the employee is hospitalized immediately.
- B. Employees who sustain work-related injuries or occupational diseases must inform their supervisor immediately, who will notify Human Resources. No matter how minor an on-the-job injury may appear, it is important that it be reported immediately. This will enable an eligible employee to qualify for coverage as quickly as possible. A "Notice of Accident" form shall be filed with the Human Resources Manager immediately following the work-related injury. Employees sustaining an injury /illness NOT requiring medical care need not seek medical attention; the "Notice of Accident" form will provide sufficient documentation.
 - 1. The employee and the employee's supervisor shall sign the report. In addition, the supervisor's Accident Investigating Report" will be filed on the following workday. All accidents shall be reported, however minor.
 - 2. Human Resources will complete an E-1 workers' compensation report form and report it to NMML in a timely manner.
 - 3. Supervisors will thoroughly investigate the injury/illness and complete a "Supervisor Report of Injury" form. In every case, the "corrective Action Taken" section of the report shall be completed.

- C. Neither the City nor the insurance carrier will be liable for the payment of workers' compensation benefits for injuries that occur during an employee's voluntary participation in any off-duty recreational, social, athletic activity, or similar events off-duty.
- D. Subject to the terms, conditions and limitations of the applicable plans, the City will continue to provide health insurance benefits while the employee is receiving worker's compensation benefits, subject to the provisions of Section 10.15. Eligible employees will automatically be placed on family/medical leave as soon as the Human Resources Manager determines that their leave qualifies for protection under the Act.

10.15 On-The-Job Injury Leave: An employee injured on the job may use accrued sick leave until exhausted and then the use of annual leave is permissible for each regularly scheduled working day after the injury occurs for all such days that are not paid by Workers' Compensation Insurance. If the employee is on worker's compensation time for more than four (4) weeks, and is entitled to compensation for the first seven (7) days and has used accrued leave for the first seven (7) days of injury, the workers' compensation payments received for all such days shall be paid directly to the City by the workers' compensation carrier. In the event an employee uses accrued leave, in lieu of workers' compensation, the leave used shall be re-credited to the employee upon the City's receipt of the reimbursement by the Workers' Compensation carrier after the expiration of the statutory waiting period.

10.16 Voting Leave: For purposes of national, state or local elections, an employee, registered to vote, will be granted up to two (2) hours paid leave for voting, between the time of opening and the time of closing of polls. The employee's supervisor may specify the hours for the leave. This leave will not be granted to any employee whose workday begins more than two (2) hours subsequent to the time of the opening of the polls or ends more than three (3) hours before the closing of the polls.

10.17 Court Service Leave with Pay: Pay for jury duty shall be authorized only for those days that the employee is scheduled to work. If excused by the court during a working day, the employee shall return to work. Employees serving as jurors shall file for jury pay and turn in any pay received to the City. Any jury duty worked beyond their regular work hours shall be refunded back to the employee.

- A. Procedures for Jury Duty Time:
 - 1. Juror Service Verification form from the Court must be attached to the Leave Request Form.
 - 2. Reconciliation of time by Payroll will include matching Jury Hours Summary Sheet received by the Court to time sheet, leave form and Juror Service Verification form.
- B. Court Appearance Time. When required by City duties and subpoenaed to appear before a Court, personnel Hearing Officer, public body or the Board for testifying about City matters, the employee will be compensated as regular work time.

10.18 Leave Without Pay: The department director with the approval of the City Manager, may grant an employee leave without pay for a period not to exceed ten (10) days, when the department director deems that such leave without pay is in the best interest of the City.

- A. Failure to Report Timely: Failure on the part of the employee to report to work immediately to the assigned shift following the last day of the request, upon the expiration of approved leave without pay, shall be subject to disciplinary action up to and including termination.

10.19 Life Threatening Illnesses in the Workplace: Employees with life-threatening illnesses, such as cancer and heart disease, often wish to continue their normal pursuits, including work, to the extent allowed by their condition. The City supports these endeavors as long as employees are able to meet acceptable performance standards. As in the case of other disabilities, the City will make reasonable accommodations in accordance with all legal requirements, to allow qualified employees with life-threatening illnesses to perform the essential functions of their jobs.

- A. Medical information on individual employees is treated confidentially. The City will take reasonable precautions to protect such information from inappropriate disclosure. Management, as well as other employees, has a responsibility to respect and maintain the confidentiality of employee medical information. Anyone inappropriately disclosing such information is subject to corrective or disciplinary action up to and including dismissal of employment.
- B. The Health Insurance Portability and Accountability Act (HIPAA) and the Americans with Disabilities Act (ADA) require the City to maintain the privacy of protected health information. A copy of the City's HIPAA Notice of Privacy Practices can be obtained from Human Resources.

10.20 Inclement Weather: The City Manager may close offices, authorize late reporting or early release due to inclement weather, and all employees will be compensated for normal work hours as administrative leave with pay and shown on a Leave Report Form. Inclement weather leave with pay will not exceed eight (8) hours in one workday.

10.21 Leave For Unforeseen Circumstances: The City Manager may close individual offices, authorize late reporting or early release due to unforeseen conditions beyond the City's control that prevent the employees from performing their duties as administrative leave with pay and entered into the City's system.

10.22 Military Leave:

- A. The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects the job and benefits, for up to five years (or more in some cases), of a service member who must leave his or her civilian job because of military orders to report for training or active duty, voluntary or involuntary, in peacetime or wartime.
- B. Military Leave for Reserve or National Guard Activities (§ 20-1-1 NMSA 1978). USERRA requires service members, or a responsible representative of the military unit, to provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity. Paid Military leave is granted for authorized reserve or National Guard activities for a maximum of fifteen (15) working days with pay during a one (1) year period based on the federal government's fiscal year from October 1 to September 30. Military leave must be requested twenty (20) working days in advance, unless a national or state emergency exists and an immediate call-up is initiated in which case notice as soon as possible is

required. The employee must furnish proof of duty orders or other documentation prior to leave being granted unless the leave is for emergency purposes.

- C. Extended Unpaid Military Leave. Employees voluntarily or involuntarily serving on active duty for more than fifteen (15) working days may use accrued annual leave. When military leave has been exhausted, employees have the option of being placed on leave without pay (LWOP) or using accrued leave. Employees may use all of their annual leave on consecutive days or use up to twenty-seven (27) hours per pay period in order to maintain their group insurance benefits. Employees who exhaust their annual leave shall then be placed on LWOP for the remainder of time they are on active duty. Employees shall not receive pay or accrue leave while on LWOP. Employees wanting to maintain insurance benefits while on military duty will be required to pay the employee's share of their premium.
- D. Service members are entitled to return to their City job and receive pay raises, promotions, pension credit and other seniority benefits as if you had been continually employed, provided certain eligibility criteria be met. Protection under the USERRA applies if:
 - 1. The job the employee left was for more than a brief, non-recurrent period, with no reasonable expectation that such employment would continue indefinitely or for a significant period.
 - 2. The employee left this job for the purpose of entering active duty.
 - 3. The employee is discharged under honorable conditions.AND
 - 4. The employee applied for reemployment within the applicable time limit.
- E. If these criteria are met, the USERRA provides the following protections:
 - 1. The employee is entitled to return to the prior position with the same seniority, benefits, pay, and, additionally, any promotion or raise which could have been reasonably expected if the employee had remained continuously on the civilian job.
 - 2. The City is required to offer disabled veterans the "nearest approximation" of the job the service member could have reasonably expected with continuous employment.
 - 3. Service members are protected from being discharged for the protected period allotted by USERRA according to the time served on active duty, unless the City proves misconduct or violation of policies.
 - 4. To be re-employed in the same position, the employee's return to work must occur within the following guidelines:
 - a. For a service period of 1-30 days, the employee must report to work immediately by the first regularly scheduled work day;
 - b. For a service period of 31-180 days, the employee must make application for re-employment within 14 calendar days after he/she is relieved from training or duty;
 - c. For a service period of 181 days or more, the employee must make application for re-employment ninety (90) calendar days after he/she is relieved from training or duty;
 - d. An employee, who is released from hospitalization of a service-related injury, continuing after discharge for a period of not more than one (1) year, must make application for re-employment ninety (90) calendar days after he/she is relieved from training or duty.

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- F. Employees may qualify for up to twelve (12) weeks of leave for qualifying exigencies arising out of a covered military member's active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation under the FMLA.

10.23 Light Duty Return-To-Work: Employees who are on leave due to an on-duty injury or illness may be eligible to return to work on light duty status after their physician certifies their fitness to do so. The department director and the Human Resources Manager will determine if there is a position or duties suitable for an employee to perform light duty work. The City retains full discretion as to whether or not an employee is eligible for light duty status.

- A. Coordination with Attending Physician: An employee on leave due to a work-related disability can return to work only when the City receives the attending physician's written medical release authorizing such return. The Human Resources Manager is responsible for providing the physician with a copy of the employee's job description, copies of job descriptions for potential restricted duty assignments, and written information explaining the City's return-to-work program.
- B. Return-to-Work Options: Arrangements to facilitate an employee's early return to work are made in consultation with the employee's attending physician and/or other qualified medical professionals retained by the City or its insurance carrier. The following options will be explored:
1. Return to prior position: An employee is offered the opportunity to return to his or her prior position if the attending physician certifies that the employee can perform the essential functions of the job with or without reasonable accommodations. The Human Resources Manager or his/her designee is responsible for working with the employee's supervisor and attending physician (and third-party consultants, as necessary) to provide any reasonable accommodations.
 2. Restricted duty: Any employee who is not yet able to return to their former duties are offered, subject to the restrictions set out in Section 5.2 of these Rules, a temporary restricted duty assignment that has been approved by the employee's attending physician. The Human Resources Manager is responsible for working with the employee's supervisor, and the employee's attending physician to develop and implement the restricted duty assignment. The assignment can consist of the employee's regular job, with reduced working hours or reduced activities, or an alternative restricted duty position.
- C. Limitations on Restricted-Duty Assignments: The following limitations apply to restricted duty assignments:
1. No guarantee of work: As provided in Section 5.9 of these Rules, the City will endeavor to return employees to gainful employment as soon as possible by exploring possible restricted duty assignments. However, the City does not guarantee the availability of restricted duty work.
 2. Pay rates and Workers' Compensation benefits: Employees on restricted duty are not guaranteed the rate of pay they received for the position they held at the time they sustained their work-related injury or illness. The pay rate for a restricted-duty assignment is based on the knowledge, skills, and abilities required for the job as well

as general market conditions. Employees who return to work before they have reached maximum medical improvement (MMI) may be eligible for temporary partial disability benefits under the state Workers' Compensation program, if they earn less than they earned in the position held at the time they sustained the work-related accident or illness. Employees in restricted duty positions are not permitted to supplement their workers' compensation benefits by using their accrued annual, personal, or medical/sick leave.

3. Four (4) week limit: Restricted duty assignments are temporary arrangements intended to complement and facilitate the healing process. Restricted-duty assignments cannot exceed four (4) weeks without approval from the department director and approved by the City Manager.

- D. Employee Refusal of Work/Training: In the event that an employee refuses to return to regular or restricted duties in response to a written, bona fide offer of employment by the City sent via certified mail, the employee is separated from the City and his/her position will be filled permanently (NOTE: An exception to this rule applies in the case of employees who have not yet exhausted their FMLA leave entitlement, refer to subsection F.).

A written offer of employment shall be on a form promulgated by the City Manager and must clearly state:

1. The position offered and the duties of the position;
2. The City's agreement to any limitations or conditions set out in the attending physician's certification of the employee's fitness to return to work;
3. The job's essential functions; and
4. The job's start date, wage, working hours, supervisor and location;
5. Length of assignment and required training.

- E. Coordination with FMLA: Nothing in these Rules should be construed as denying employees their rights under the FMLA or any other federal or state law.
- F. It is the City's policy to designate an employee's absence from work due to a work-related injury or illness as FMLA leave to the extent allowed by federal law. Employees entitled to FMLA leave can voluntarily accept restricted duty assignments while they are recuperating, but they cannot be required to do so. Employees who lose their workers' compensation benefits because of declining a restricted duty assignment are required to substitute any available paid leave, such as accrued annual, personal, or medical/sick leave, for unpaid FMLA leave.
- G. Until employees have exhausted their twelve (12) week FMLA entitlement, they have the right to be reinstated to their original job or an equivalent job providing they are able to perform the job's essential functions.

10.24 Change in FLSA Status:

- A. Upon change from FLSA non-exempt to FLSA exempt status, employees shall be paid a lump sum for the unused portion of their accrued compensatory leave, overtime, sick leave and vacation leave. For employees that qualify, sick leave will be compensated in accordance with Section 10.7 B.
- B. The lump sum payment shall be calculated based on the non-exempt salary rate.

- C. Upon change from non-exempt to exempt status and transfer to a new department, employees shall be paid the lump sum for the unused portion of their accrued compensatory leave by their previous department.
- D. If an employee's change in status is contingent upon a Ninety (90) day trial period, pursuant to section 5.2 of this Ordinance, the lump sum payment shall not be made until successful completion of the trial period.

SECTION XI: SUBSTANCE ABUSE POLICY

11.0 Purpose

- A. The City has adopted this employee substance abuse policy and a drug and alcohol testing policy for the following City Departments: Electric, Fleet, Police, Solid Waste, Street, Waste Water, Water, and all other safety sensitive and non-safety sensitive employees. A safety sensitive employee is an employee who performs duties for the City, with safety ramifications for themselves, fellow employees and the general public. These positions may include, but are not limited to employees who operate equipment/vehicles, have access to confidential information and/or receive calls for public service.
- B. The purpose of this policy is to assure worker fitness for duty and to protect our employees and the public from the risks posed by the misuse of alcohol, the use of prohibited drugs and the misuse of legal drugs. The City is concerned only with those situations where use of alcohol and other drugs interfere with any employee's health, job performance and adversely affects the job performance of other employees or is considered so serious as to be detrimental to the City's operations and the safety of himself/herself and others. There is no intent to intrude upon the private lives of employees.

11.1 Safety Sensitive Employees: Adherence to this testing policy is a condition of employment for all safety-sensitive positions. Safety-sensitive functions refer to any functions contained within an employee's realm of responsibilities that have an impact upon the safety and general welfare of the public or coworkers.

11.2 Policy: The City is dedicated to providing safe, dependable and economical services to our public. City employees are our most valuable resource and it is our goal to provide a healthy, satisfying working environment, which promotes personal opportunities for growth. In meeting these goals, it is our policy to (1) assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner; (2) create a work environment free from the adverse effects of drug abuse and alcohol misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) to encourage employees to seek professional assistance anytime personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

- A. An employee using prescription drugs or over-the-counter medications that could affect work performance, must inform their director (information received shall be kept confidential). An employee with a temporary ailment or permanent medical condition that may affect job performance also must notify their director. A doctor's statement may be required at the City's discretion. Failure to notify the director can lead to injury or property damage, or suspicions of substance abuse that might unnecessarily lead to

substance testing. Upon such notification the City may require the employee to take medical or other leave.

- B. All safety-sensitive employees will receive training on the effects and consequences of prohibited drug or alcohol use on personal health, safety and the work environment, and the signs and symptoms, which may indicate prohibited drug, or alcohol use. The City will schedule mandatory classes but it is ultimately the responsibility of the employee to attend a class provided for by the City.
- C. All department heads and supervisors designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol/drug testing will receive training on the physical, behavioral, speech and performance indicators of probable prohibited drug or alcohol misuse.

11.3 Prohibited Substances: “Prohibited substances” addressed by this policy include the following:

- A. Illegally used controlled substances or drugs: Includes, but is not limited to: marijuana, except when prescribed in accordance with New Mexico law and the employee is in a non-safety sensitive position, amphetamines, methamphetamines, opiates, phencyclidine (PCP), and cocaine, as well as drugs not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. The collection agency shall adhere to all requirements outlined in 49 CFR, Part 40 DOT Guidelines in determining what constitutes a positive test.
- B. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance, including synthetic drugs, which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected shall be reported by the employee to their supervisor and medical advice shall be sought by both the employee and supervisor, as appropriate, before performing safety-sensitive functions. A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. The misuse or abuse of legal drugs while performing official business is prohibited.
- C. Alcohol: The use of beverages or medications containing alcohol, subject to Paragraph 11.3(B) above.

11.4 Prohibited Conduct:

- A. Manufacture, Trafficking, Possession, and Use. Employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or sale of prohibited substances while on duty, on City premises, or in City vehicles. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.
- B. Intoxication/Under the Influence: Any safety-sensitive employee who fails a drug test or has a breath alcohol concentration of 0.04 or greater shall be removed from their safety-sensitive position and referred to an SAP (substance abuse professional). Such test result will subject the employee to disciplinary action up to and including termination. A safety sensitive employee with a breath alcohol concentration of 0.02 or greater, but less than 0.04 shall be immediately removed from their safety-sensitive position for a

minimum of 8 hours or until they can pass an alcohol test with a BAC of less than 0.02. If a breath analyzer is unavailable, testing will be conducted via blood test.

- C. **Alcohol Use:** No employee should report for duty or remain on duty when his/her ability to perform assigned duties is adversely affected by alcohol or when his/her breath alcohol concentration is 0.04 or greater. No employee shall use alcohol while on duty, or while performing County duties. No employee shall use alcohol within four hours of reporting for duty; or during the hours, they are scheduled on call; or up to eight hours following an accident or until tested. Employees, who are not scheduled on call, shall upon being notified to report to duty, acknowledge alcohol use and their inability to perform his/her duties and shall be excused from doing so without further consequences. No County employee under the age of 21 shall have a breath alcohol concentration of .02 or greater at any time while performing duties for the County. Violation of these provisions is prohibited and punishable by termination.
- D. **Compliance with Testing Requirements:** Safety-sensitive employees shall be subject to urine drug testing and breath alcohol testing. Non-safety sensitive employees may be subject to urine drug testing and breath alcohol testing based on reasonable suspicion. Refusal to comply with a request for testing, failure to provide sufficient quantity of breath or urine, failure to appear timely, failure to cooperate with any part of the testing process, refusal to sign the drug testing chain of custody form, refusal to sign Step #2 on the alcohol breath testing form, inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation, tampering with or attempting to adulterate the specimen or collection procedure or not reporting to the collection site in the time allotted, shall constitute a verified positive test result.

11.5 Testing Which Results In a Dilute Specimen:

A. **Definitions:**

Dilute Drug Screen – A drug screen that is identified by the testing lab as an irregular specimen pertaining to the specimen's specific gravity and creatinine concentration. (The irregularity in specific gravity minimizes the reliability of the testing procedure and therefore reduces the reliability in the results.)

Primary Test – A test that is conducted under Sections 11.10, 11.11 or 11.12.

Monitored Tests – The City will offer all employees who are required to take a second level test the opportunity to have the test monitored by a supervisor.

B. **Dilute Drug Screen Procedure:**

A dilute drug screen for Electric, Fleet, Police, Solid Waste, Street, Waste Water, Water, and all other safety sensitive City employees who are covered by this policy will be handled as follows:

1. **Primary Test:**

Identified as Dilute:

- a. The employee shall enter into a re-entry contract as defined in Section 11.17 and 11.18 or
- b. If the employee's physician certifies in writing that there is a valid medical cause for the dilute result, unrelated to illegal drug use or prescription drug abuse, the employee may submit to a hair sample test, at the City's expense, to contest the results.

- c. The employee without a physician's certification may submit to a hair sample test to contest the results if the employee pays, in advance, for the cost of the test.
 2. Second Level Test (test for re-entry purposes or follow-up tests defined within a re-entry contract):
 - a. Monitored Dilute – The City will accept the test results as provided by the lab; tests will be monitored.
- C. Dilute Specimen Test for Employment Applicants: Any applicant for employment with the City whose pre-employment drug and alcohol screen test is identified as dilute, shall not be eligible for employment and is precluded from re-application for employment for:
 1. a period of one (1) year from the date of the test, or
 2. the applicant may submit to a hair sample test to contest the results if the applicant pays, in advance, for the cost of the test. In the event the hair sample test results are negative, the applicant will be eligible for immediate hire.
 3. if the employee's physician certifies in writing that there is a valid medical cause for the dilute result, unrelated to illegal drug use or prescription drug abuse, the employee may submit to a hair sample test to contest the results.

11.6 Treatment Requirements: All employees are encouraged to make use of the available resources for treatment for alcohol misuse and illegal drug use problems. Under certain circumstances, employees may be required to undergo treatment for substance abuse or alcohol misuse. Any employee who refuses or fails to comply with the City's requirements for treatment, after care, or return to duty will be subject to termination. The cost of any treatment or rehabilitation services will be paid for directly by the employee or their insurance provider. Employees will be allowed to take accumulated sick leave and vacation leave to participate in the prescribed rehabilitation program.

11.7 Proper Application of the Policy: The City is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, department directors/supervisors are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any department director/supervisor who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy concerning subordinates, will be subject to disciplinary action, up to and including termination.

11.8 Testing Procedures:

- A. Safety-sensitive employees of the City shall be subject to drug (urine) and alcohol testing for reasonable suspicion, return to duty, follow-up or random and may be subjected to testing following an accident. Follow-up testing will be conducted for a period of one to five years, with up to six tests performed during the first year and as many as four in subsequent years. The Substance Abuse Professional (SAP) may determine the frequency and duration of follow-up testing.
- B. Testing shall be conducted using techniques, equipment and certified laboratory facilities to ensure a high degree of accuracy and reliability. Alcohol testing may only occur during or immediately before/after performing safety sensitive duties and up to eight

hours following an accident. Drug testing may occur any time while performing duties for the City and up to 32 hours following an accident.

11.9 Pre-Employment Drug & Alcohol Screening: All applicants for employment with the City shall be required to take a drug and alcohol screening test when they report for their pre-employment medical examination or when otherwise directed by the City Manager or his/her designee. Any applicant for employment with the City, whose pre-employment drug and alcohol screen test is identified as positive, shall not be eligible for employment and is precluded from re-application for a period of one (1) year from the date of the test.

11.10 Employee Requested Testing: Any safety-sensitive employee who questions the result of a required drug test under paragraphs 11.10 through 11-15 of this policy may request that an additional test be conducted. This test will be conducted at a different certified laboratory. The test will be conducted on the split sample that was provided by the employee at the same time as the original sample. The method of collecting, storing, and testing the split sample will be consistent with acceptable testing standards. The employee's request for a split sample test must be made to the Medical Review Officer* within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the control of the employee. An employee requested test will be at the expense of the employee.

11.11 Reasonable Suspicion Testing: All employees shall be subject to urine and/or breath testing when there is reasonable suspicion to believe an employee is under the influence of prohibited substances. Reasonable suspicion is a belief based on objective facts sufficient to lead a prudent person to suspect that an employee is under the influence of a substance to the extent that job performance may be impaired or ability to perform the job safely may be reduced. A reasonable suspicion referral for testing will be made based on articulable objective facts and circumstances, which are consistent with the short-term effects of substance abuse. Testing an employee, based on reasonable suspicion requires City Manager approval. The supervisor or designee will take the employee to the designated test site as soon as practical for a test. Examples of reasonable suspicion include, but are not limited to the following:

- A. Physical signs and symptoms consistent with prohibited substance use, including slurred speech, poor coordination, and glazed or bloodshot eyes;
- B. Evidence of the manufacture, distribution, dispensing, possession, or use of controlled substances, drugs, alcohol, or other prohibited substances;
- C. Occurrence of an accident that may have been caused by use of a prohibited substance or alcohol misuse;
- D. Fights (to mean physical contact), assaults, and flagrant disregard or violations of established safety, security, or other operating procedures;
- E. Odor of alcohol or prohibited substance on person, clothing or in workspace;
- F. Abnormal or erratic behavior;
- G. Abnormal decline in work performance associated with frequent absences or tardiness; or
- H. Information from a reliable source.

11.12 Post-Accident Testing: Any City employee involved in an automobile/heavy equipment accident occurring on City property or involving City equipment/vehicle meeting any of the following criteria shall be subject to a drug or alcohol test:

- A. An individual dies;
- B. An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident;
- C. One or more vehicles incur disabling damage because of the accident and are transported away from the scene by tow truck or other vehicle; or
- D. The City driver was cited in the accident.

* Medical Review Officer – See DEFINITIONS Section 11.21.

11.13 Random Testing:

- A. Employees in safety-sensitive positions shall be subjected to random, unannounced drug testing. The selection of safety-sensitive employees for random drug testing will be made using a scientifically valid method that ensures each covered employee will have an equal chance of being selected each time selections are made. The random tests will be unannounced and spread throughout the year on all days and during all hours of operation.
- B. When a safety-sensitive employee is informed of a random drug test, they must be tested as soon as is reasonably possible but in a time not to exceed 3 hours. All employees who have been randomly selected or are testing in conjunction with Rule 11.11 will be notified in writing by the City Manager, department director, supervisor, or Human Resources. All tests will be collected as a split sample, giving the employee an opportunity to exercise his/her right to an additional test (Section 11.10) on the sample collected. Should the City's agent not collect a split sample, the results of the test for which a split sample was not collected, will be disregarded by management and the employee will not be required to re-test for this specific testing period.
- C. All safety sensitive employees shall be placed in a selection pool and random drug testing shall come from this predetermined pool. The individual pools shall be defined as follows:
 - 1. Electric Department
 - 2. Fleet Department
 - 3. Police Department
 - 4. Solid Waste Department
 - 5. Street Department
 - 6. Waste Water Department
 - 7. Water Department
 - 8. All other safety-sensitive employees
- D. Shift employees, or employees who are not at work on the day of the scheduled test (random or otherwise), and who have been selected for testing, will be required to test immediately upon their return to work/duty and will be notified and expected to adhere to the rules as described above.

11.14 Return-To-Duty Testing*: A return-to-duty test is required of an employee who has had a positive drug or alcohol test and must be passed (negative non-dilute) before they can return to a safety-sensitive position. The SAP must first clear the employee to return-to-regular-duty after the evaluation and insure the employee has consented to treatment. The return-to-duty test may be for drugs and/or alcohol as required. Any work missed due to a positive

drug/alcohol test or due to treatment shall be charged to the employee's sick leave and/or annual leave (employee's choice) or leave without pay if the employee has no leave balances.

11.15 Follow-Up Testing*: If allowed to return to duty, safety-sensitive employees shall be subject to unannounced follow-up testing for at least 12, but not to exceed 60 months. The SAP may recommend the frequency and duration of the follow-up testing as long as not more than six tests are performed during the first 12 months after the employee returns to duty. Follow-up testing is separate from and in addition to the random testing program.

11.16 Employment Assessment: The SAP may refer any safety-sensitive employee who tests positive for the presence of illegal drugs or alcohol above the minimum thresholds for evaluation. A SAP is a licensed or certified physician, psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related and drug-related disorders. The SAP may evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited drug use or alcohol misuse. Employees may select the SAP of their choice as long as the criteria above is met.

11.17 Departmental Rule for Positive Drug/Alcohol Test:

- A. Any probationary employee who, because of this policy tests positive for drugs and/or alcohol, will be terminated immediately.
- B. Any employee who has been placed on an improvement contract and who tests positive for drugs/alcohol as defined by this policy will be terminated from employment.
- C. Safety Sensitive Positions:
 - 1. A positive prohibited substance/alcohol test for an officer or dispatcher shall be reported to the New Mexico Law Enforcement Academy Director as outlined in the NMLEA Handbook Subsection B4 of 10.29.1.11 NMAC.
 - 2. Any safety sensitive employee who tests positive for prohibited substances and/or alcohol under this policy shall be terminated from employment with the City, Section 7.10.
 - 3. Any safety sensitive employee whose primary test is determined to be a dilute test will be subject to the terms and conditions as defined below (this does not include tests taken as a result of a re-entry contract which are monitored tests and are determined to be dilute).
- D. Any safety sensitive employee who is covered by this policy and whose primary test is determined to be dilute as herein defined, shall be subject to the terms and conditions of:
 - 1. The re-entry contracts defined below;
 - 2. Rule 11.13 of this policy, and;
 - 3. Rule 11.14 of this policy.
 - 4. If applicable, any CDL provisions that may apply.
- E. City safety sensitive employees shall be terminated upon violation of any of the terms and conditions of the individual's re-entry contract (defined below). An unmonitored dilute, second level test (subject to a re-entry contract) shall result in termination of employment.

11.18 Re-Entry Contracts (general safety sensitive employees):

- A. Employees who re-enter the workforce must agree to a re-entry contract. That contract may include, but is not limited to:
 - 1. A release to work statement from the Substance Abuse Professional.
 - 2. A negative test for drugs and/or alcohol. (Section 11.14)
 - 3. An agreement to unannounced frequent follow-up testing for a period of one to five years with up to six tests performed the first year (Section 11.15).
 - 4. A statement of expected work-related behaviors.
 - 5. An agreement to follow specified after care requirements with the understanding that violation of the re-entry contract is grounds for termination.
 - 6. City safety sensitive employees shall be terminated upon violation of any of the terms and conditions of the individual's re-entry contract (defined below). An unmonitored dilute, second level test employees (subject to a re-entry contract) shall result in termination of employment.
- B. Any safety sensitive employees not covered above shall be terminated upon violation of any of the terms and conditions of the individual's re-entry contract (defined below).

11.19 Detection: The City reserves the right to inspect, at any time, all City property and all City vehicles and equipment for the presence of prohibited substances or alcohol. All inspections will be scheduled as deemed necessary by the City Manager or his/her designee.

11.20 Voluntary Request for Assistance:

- A. The City intends to give the same consideration to persons who voluntarily request assistance (prior to being randomly selected or selected for cause) with chemical dependencies as it does to employees having other diseases. Therefore, employees are encouraged to seek professional assistance anytime they experience personal problems, including alcohol or drug dependency.
- B. Early recognition and treatment of chemical (drug and alcohol) dependency problems is important for successful rehabilitation and reduced personal, family and social disruption. The City supports sound treatment efforts and an employee's job will not be jeopardized for conscientiously seeking assistance prior to random selection or selection for cause. Normal City benefits, such as sick leave and the group medical plan, are available to give help in the rehabilitation process to any employee who voluntarily requests assistance for chemical dependencies.
- C. Employees are encouraged to self-report alcohol and drug dependencies prior to random testing selection or testing based on reasonable suspicion. The City has an obligation to maintain the public trust; therefore, any employee identified with a positive test result for illegal drugs, inappropriate use of prescription medications or alcohol will be terminated.

11.21 Definitions:

Medical Review Officer (MRO): The MRO is a licensed physician who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate positive

drug test results. The List of primary responsibilities below is followed by standard operating procedures necessary to carry out those responsibilities:

- A. Receive test results from the laboratory
- B. Review all drug testing results prior to reporting
- C. Verify that the laboratory report and assessment are correct
- D. Review and interpret each confirmed lab tested positive result
- E. Conduct a medical interview, providing an opportunity for the employee to discuss a positive test result
- F. Notify employer of verified positive test
- G. Process employee request for re-test
- H. If necessary, re-analyze the original specimen to determine the accuracy of the test result

11.22 Records:

- A. All records of the controlled substance abuse prevention programs must be kept in a secure location with controlled access in Human Resources. Regulation requires that certain records according to their importance be maintained for varying lengths of time, from one (1) to five (5) years.
- B. Records must be kept confidential and be made available for inspections by the City Manager within two (2) business days following a request by an authorized representative of the Federal Highway Administration. These records should not be made a part of a driver's personnel file.
- C. The following are entitled access to these records through approval of the City Manager:
 - 1. CDL Issuer or his/her representative;
 - 2. The Secretary of Transportation;
 - 3. Any Department of Transportation Agency;
 - 4. Any State or Local Official with regulatory authority over the employee;
 - 5. Any prospective employer with the employee's written permission.

11.23 Confidentially: No laboratory reports or test results shall appear in the employment personnel file unless they are a part of a disciplinary action, but shall be placed in a special locked file.

SECTION XII: COMPUTER, EMAIL, INTERNET, SOCIAL MEDIA, & CELLULAR PHONE USE

12.0 Access: Access to a City computer, email and Internet service and a cellular phone is a privilege. Users granted this privilege must adhere to strict guidelines concerning the appropriate use of this information resource. Users who violate the provisions outlined in this document are subject to disciplinary action up to and including termination. In addition, any inappropriate use that involves a criminal offense will result in legal action. All users are required to acknowledge receipt and understanding of guidelines contained in this document.

12.1 Purpose & Scope: To define policies and procedures for computer use and access to the Internet through the City network infrastructure, and cellular phone use. This policy applies to all personnel with a computer or access to Internet and related services through the City network infrastructure, or have a cellular phone provided by the City. Internet Related services

include all services provided with the TCP/IP protocol, including but not limited to Electronic Mail (e-mail), File Transfer Protocol (FTP), and World Wide Web (WWW) access. Internet access includes, but not limited to connections via DSL subscriptions, phone modem access, server-to-Internet access or T1 line access.

12.2 Acceptable Use: Access to a City computer or the Internet is specifically limited to activities in direct support of official City business.

- A. In addition to access in support of specific work related duties, the City Internet connection may be used for educational and work-related research purposes.
- B. If any user has a question of what constitutes acceptable use he/she should check with their supervisor for additional guidance. Management or supervisory personnel shall consult with the City Manager for clarification of these guidelines.

12.3 Inappropriate Use: City computers, Internet access or use of a City cellular phone shall not be used for any illegal or unlawful purposes. Examples of this would be personal use, or the transmission of violent, threatening, defrauding, pornographic, obscene or otherwise illegal or unlawful materials.

- A. Use of City electronic mail or messaging services shall be used for City business only. These services shall not be used to harass, intimidate or otherwise annoy another person.
- B. The City Internet access shall not be used for private, recreational or other non-City related activity.
- C. City equipment and the Internet connection shall not be used for commercial or political purposes.
- D. Use of City Internet access shall not be used for personal gain such as selling access of a City user login. Internet access shall not be used for or by performing work for profit with City resources in a manner not authorized by the City.
- E. Users shall not attempt to circumvent or subvert security measures on the City's network resources or any other system connected to or accessible through the Internet.
- F. City users shall not use Internet access for interception of network traffic for any purpose unless engaged in authorized network administration.
- G. City users shall not make or use illegal copies of copyrighted material, store such copies on City equipment, or transmit these copies over the City network.
- H. City users shall not download non-City software without authorization from their department director and approved by the City's IT Manager.

12.4 Internet, E-Mail & Cellular Phone Etiquette: City employees shall ensure all communication through City email, messaging services and texted messages are conducted in a professional manner. The use vulgar or obscene language is prohibited.

- A. City users shall not reveal private or personal information without specific approval from management.
- B. Users should ensure that e-mail and texted messages are sent to only those users with a specific need to know. The transmission of e-mail or texted messages to large groups or messages with large file attachments should be avoided.
- C. Electronic Mail and texted messages are not guaranteed to be private. Messages transmitted through the City e-mail system or network infrastructure or on City cellular

phones are the property of the City and are therefore subject to inspection by management and to IPRA requests.

- D. The destruction or deletion of emails and texts containing City business is prohibited and a violation of law.

12.5 Security:

- A. City users who identify or perceive an actual or suspected security problem shall immediately contact the City Information Technology Manager.
- B. Users shall not reveal account passwords or allow another person to use their account. Similarly, users shall not use the account of another user.
- C. Access to City network resources shall be revoked for any user identified as a security risk or a demonstrated history of security problems.

12.6 Penalties: Any user violating these policies is subject to the loss of network privileges and any other City disciplinary actions as detailed in Section 7 of this ordinance.

12.7 No Expectation of Privacy: Users should not expect any information transmitted via the City's systems or phones to remain private or confidential.

- A. The City may monitor use of any part of City Systems at any time, without notice, at its discretion. Such monitoring may include, but is not limited to limiting size, accessing, listening to, reading, or retrieving voice mail messages, e-mail, Internet communications, text messages, or local files.
- B. Users should be aware that deleted files or other communications may be retrieved and review by City Management.
- C. Users are prohibited from, among other things, accessing, listening to, reading or retrieving other team members' e-mail, voice mail, or Internet communications unless specifically authorized to do so by Management.
- D. All files, documents created or stored through the City's network infrastructure, computer system or cellular phones are the property of the City and are therefore subject to inspection by management and to IPRA requests.

12.8 User Compliance: All terms and conditions as stated in this document are applicable to all users of the network and the Internet connection.

12.9 Protection & Handling of Sensitive Information: It is the responsibility of every City employee to ensure the protection of sensitive information and comply with all information technology policies. This includes but is not limited to ensuring such information does not leave the City network, making a reasonable effort to redact sensitive information when sharing records and protecting security account information.

12.10 Social Media: The use of social media on the job is prohibited, unless as required to disseminate time sensitive information (emergency information) as quickly as possible or required for informational purposes. The City does not prohibit employees from participating in social media while not at work, nor is the content posted any concern of the City. However, if an employee uses social media to harm the City, City constituents, or fellow employees, participation while not at work can have employment consequences. To make the distinction between private activity and work activity as clear as possible, in cases where confusion might be created,

employees should identify a social media posting as a personal opinion rather than the opinion of the City.

SECTION XIII: PAY POLICY

13.1 Purpose: This Section outlines the provisions for the City's system of comparing and classifying positions according to their relative equivalence for establishing fair and equitable promotion and pay compensation for employees. The Board approves all positions and salaries as part of the fiscal year budget process or as otherwise necessary.

13.2 Applicability: The provisions of this section shall apply to all employees except that Contract Employees and unclassified employees are subject to wage increases as negotiated and approved by the Board.

13.3 Pay Compensation Process Overview: The pay compensation system includes provisions for:

- A. entry level wages;
- B. step wage increases
- C. transfers;
- D. demotions; and
- E. promotion wage increases.

The Board may at their discretion amend the general wage and classification plan and the general wage schedule by resolution or motion of the Board when deemed appropriate.

13.4 Entry Level Wages: All new employees are normally hired at the Entry level position for the level of position that has been vacated or otherwise approved for hire by the department director, subject to budgetary constraints and the approval of the City Manager.

13.5 Position Specifications Requirements: Each position has a written Position Specification, which includes specifications for minimum qualifications, education, experience, abilities, skills, license, or certification requirements, and a description of duties and responsibilities required for the position.

13.6 Grandfather Clause: Any employee whose position specification is revised is subject to the experience, education, or certification requirements of the new position specification shall show satisfactory progress to meet the new standards within six (6) months or may be subject to reclassification, transfer or dismissal.

13.7 Contents of Personnel File: Subsequent to hiring, a separate record file shall be prepared and maintained for each employee. These records shall be kept in the Human Resources Manager's office. It is the responsibility of each department director to ensure that the records of the employees are complete and up-to-date. The file shall contain a minimum of the following records:

- A. the original application form;

- B. the originating personnel action showing occupation, position classification, date of beginning employment and salary and a signed receipt, evidence of receiving these Rules;
- C. copies of personnel action forms.
- D. copies of all performance evaluations, if applicable;
- E. copies of all favorable or unfavorable letters or memorandums such as letters or certificates of appreciation or records of other outstanding achievements regardless of origination, so long as the procedure applicable to written reprimands is followed;
- F. records or certificates of educational training or orientation achievement completion;
- G. records of disciplinary actions such as reprimands, suspensions, demotions or dismissal; and
- H. application for retirement program.

13.8 Access to Personnel Files: Personnel files are the property of the City and access to the information they contain is restricted. Generally, only immediate supervisors and management personnel of the City who have a legitimate reason to review information in a file are allowed to do so. Employees who wish to review their own file should contact the Human Resources Manager. With reasonable advance notice, employees may review their own personnel files in City's offices and in the presence of an individual appointed by the City to maintain the files.

SECTION XIV: EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PLAN

14.1 Purpose: The purpose of this section is to recruit, employ and promote the most qualified applicants or employees to work in City employment. Employment and promotional opportunities shall be based solely upon ability and demonstrated competence, not upon extraneous factors. Age, sex, marital status, national origin, religion, race, sexual preference, political affiliation and handicaps not related to ability to perform the job sought, are declared extraneous factors that shall have no bearing on employment or promotional opportunities within City service.

14.2 Statement of Policy: It is the policy of the City to comply with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, amended by the Equal Employment Opportunity Act of 1972 and Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, in all employment and programs administered by the City. The City affirms that individuals will be considered for employment or promotion based on bona-fide occupational qualification only and best suited for a position. Each employee or prospective employee will be advised of this policy. All announcements or notices regarding position openings or opportunities will contain the words "An Equal Opportunity Employer".

14.3 Management Responsibility: The Human Resources Manager will consult with department directors to resolve internal complaints of employment discrimination filed by City employees or employment applicants. The Human Resources Manager shall be the referral officer for the City to receive notice of alleged unlawful employment practices from the Equal Employment Opportunity Commission (EEOC) as provided for in Public Law 88-352, Title VII, Section 706(C); 78 Stat. 241 (42 USC 2000e-5).

14.4 Complaint Procedures: Any employee or person refused employment or who believes he/she has been subjected to a discriminatory employment act or practice prohibited by federal or state law shall file with the Human Resources Manager a written and signed statement of facts setting out the basis of the complaint.

- A. Upon receiving a written and signed complaint or upon receiving notice of an alleged unlawful employment practice from an individual, the Human Resources Manager or designee shall immediately conduct an investigation and attempt to resolve such complaint informally and forward copies of the investigation and results to the department director and City Manager.
- B. If the process set forth in subsection A above does not resolve the complaint informally, it will go before a Hearing Officer appointed by the City Manager. The Hearing Officer shall conduct a hearing not more than forty-five (45) days after the complaint has been received by the Human Resources Manager. The complainant, complainant's attorney (if any), the City Manager, Human Resources Manager, City Attorney, department director, and the employee allegedly responsible for the discriminatory act or practice, shall be given five (5) days written notice of the hearing, together with a copy of the complaint filed with the Human Resources Manager.
- C. At the hearing, the complainant and respondent shall have the right to be represented by counsel; all testimony shall be received under oath, and the Hearing Officer shall have the authority to issue administrative subpoenas for the attendance of any City employee as a witness.
- D. The Hearing Officer shall report findings and recommendations in writing to the City Manager and department director not more than twenty (20) days after hearing the complaint. A full record of the proceedings shall be kept either by audio media or in writing by the Human Resources Manager in a confidential file.

14.5 Remedies: In the event the City Hearing Officer determines that a discriminatory act or practice has occurred, the City Manager may take appropriate action including, but not limited to, reinstatement, hiring or promotion of the aggrieved individual, with or without back pay, or any other equitable administrative relief necessary to correct and rectify the discriminatory act or practice. Nothing in this policy prohibits any aggrieved party from seeking remedy through the state or federal agency responsible for such actions.

SECTION XV: MISCELLANEOUS

15.1 Designated Work Areas: All employees are to be at their designated work areas on time and ready to work. They shall work until the scheduled quitting time, unless permission of the supervisor has been obtained for different work hours. Employees shall not litter work areas and will keep such areas neat and clean.

15.2 Personal Business: Personal business shall not be conducted during work hours. While we live in a cellular-world, employees are expected to exercise good judgment when making or receiving personal phone calls. Personal calls shall not interfere with productivity or distract others. Personal calls shall be kept to a minimum while on duty.

15.3 Safety: The City is committed to having all work conducted in a safe manner. All safety precautions shall be followed in accordance with federal and state regulations, and City policies and Safety Policies.

- A. Safety is every employee's responsibility; thus every employee is responsible for his or her personal safety, as well as, the safety of co-workers, visitors, and the public who come in contact with City services.
- B. Employees are responsible for the safe and efficient use of City facilities, equipment and vehicles, for conducting themselves in accordance with work rules and safety regulations and ensuring all activities are conducted and carried out in a safe and efficient manner.
- C. Safety equipment will be provided and used in accordance with OSHA regulations, City safety policies and other regulatory standards.

15.4 City Property: Employees shall not misuse or destroy City property, records, or other material in their care, control, or custody; nor shall any City property, records, or other material be removed from the premises of the City offices unless written permission by the department director has been given. Employees shall not use City property, records or equipment for personal use.

15.5 City Vehicles: No City vehicle will be taken out of the City without permission of the department director and employees shall notify the department director of their destinations and itineraries. City vehicles shall be used for City business only. City vehicles may not be taken home unless designated permissible as defined in the City Take Home Vehicle Policy and adheres to Section 9.9 Fringe Benefits.

- A. City vehicles shall not be used for personal business, except, as is incidental in commuting. Employee family members or passengers not on official City business are not allowed to ride in a City vehicle and strict adherence to this policy is directed to all employees operating a City vehicle.
- B. Any damage to a City vehicle is to be reported immediately to the appropriate department head.

15.6 Personal Appearance: Dress, grooming, and personal cleanliness standards contribute to the morale of all employees and affect the business image the City presents to customers and visitors.

- A. During business hours, employees are expected to present a clean and neat appearance and to dress according to the requirements of their positions. Employees who meet the public, both internal and external, must dress in appropriate business attire at all times. Employees may observe casual dress on Friday if the above stipulation does not apply. Examples of questionable work attire are sun dresses with bare backs and/or shoulders, men's undershirts, excessively baggy, short, or tight clothing, sweatpants and shorts, for men or women, bare midriffs or excessively sheer fabrics unless adequate cover-up (jacket, sweater, etc.) is worn throughout the work day, and low-cut tops/blouses/shirts/dresses (e.g., if they expose "cleavage" when the employee is standing or sitting in a normal manner). Employees who appear for work inappropriately dressed will be sent home and directed to return to work in proper attire. Under such circumstances, employees will not be compensated for the time away from work.
- B. Employees are required to maintain personal cleanliness.
- C. An employee should consult their department director if they have questions as to what constitutes appropriate attire.

15.7 Privileged/Confidential Information, Unauthorized Recordings, Eavesdropping:

A. It is a violation of this policy to:

1. Release or communicate information regarded as privileged or confidential to anyone not having a legitimate business need for the information.
2. Read, interrupt, take or copy any message, document or communication intended for another without the consent of the intended recipient. Communications include, but are not limited to, statements made in person or phone during meetings, hearings, conferences, counseling, or conversations between employees or between employees and elected representatives.
3. Engage in electronic surveillance, eavesdropping, and unauthorized or secret tape recording of any communications between or among employees or elected representatives of the City without the knowledge of the person making such communications.
4. It is not a violation of this policy for employees to record communications with or among employees or citizen contacts in the course of official City business, or as otherwise expressly permitted by the Personnel Policy. This policy does not preclude tape recording when all parties to the communication are aware of the fact that the communication is being recorded or as required by statute for law enforcement contacts.

15.8 Searches & Surveillance: The City's employees should not expect privacy in their personal effects while on City property or on City time. Employee workplaces may be subject to video surveillance. The City may search lockers, desks, toolboxes, lunch sacks, clothing, City internet, City e-mail or City computer accounts and City electronic media/storage, a City vehicle, and any other item in which an unauthorized weapon or other contraband may be hidden. To the extent that an employee refuses to permit a search, such refusal may constitute grounds for disciplinary action.

15.9 Workplace Violence: The City provides a safe work place for all employees. To ensure a safe workplace and to reduce the risk of violence, all employees should review and understand all provisions of this Workplace Violence policy. All employees, including managers and supervisors, are responsible for using safe work practices, for following all directives, policies and procedures, and for assisting in maintaining a safe and secure work environment.

A. Prohibited Conduct: The City does not tolerate any type of workplace violence committed by or against employees. Employees are prohibited from making threats or engaging in violent activities. This list of behaviors, while not inclusive, provides examples of conduct that is prohibited.

1. Causing physical injury to another person;
2. Physical fighting;
3. Making threatening remarks;
4. Aggressive or hostile behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress;
5. Intentionally damaging City property or property of another employee;
6. Possession of a weapon while on City property or while on City business;

7. Committing acts motivated by, or related to, sexual harassment, harassment or domestic violence.

- B. **Reporting Procedures:** Any potentially dangerous situations must be reported immediately in writing to a supervisor or the City Manager's office. All reported incidents will be investigated. Reports or incidents warranting confidentiality will be handled appropriately and information will be disclosed to others only on a need-to-know basis. All parties involved in a situation will be counseled and the results of investigations will be discussed with them. The City will actively intervene at any indication of a possibly hostile or violent situation.
- C. **Risk Reduction Measures:** Hiring: The City takes reasonable measures to conduct background investigations to review candidate's backgrounds and reduce the risk of hiring individuals with a history of violent behavior.
- D. **Safety:** The risk management carrier conducts annual inspections of the premises to evaluate and determine any vulnerability to workplace violence or hazards. Any necessary corrective action will be taken to reduce all identified risk areas.
- E. **Individual Situations:** While the City does not expect employees to be skilled at identifying potentially dangerous persons, employees are expected to exercise good judgment and to inform their supervisor or department director if any employee exhibits behavior, which could be a sign of a potentially dangerous situation. Such behavior includes:
 - 1. Discussing the use of weapons in a threatening manner related to the workplace, or bringing them to the workplace;
 - 2. Displaying overt signs of extreme stress, resentment, hostility, or anger;
 - 3. Making threatening remarks;
 - 4. Sudden or significant deterioration of performance;
 - 5. Displaying irrational or inappropriate behavior.
- F. **Dangerous/Emergency Situations:** Employees confronted by or encounter an armed or dangerous person should not attempt to challenge or disarm the individual.
- G. **Enforcement:** Threats, threatening conduct, or any other acts of aggression or violence in the workplace will not be tolerated. Any employee determined to have committed such acts will be subject to corrective or disciplinary action, up to and including dismissal. Non-employees engaged in violent acts on the City's premises will be reported to the proper authorities.

15.10 Final Paycheck: An employee who resigns shall receive a final paycheck on the first regularly scheduled payday following the employee's effective date of resignation. An employee dismissed shall receive a full paycheck by 5:00 p.m. on the fifth (5th) working day following dismissal or on the next payday, whichever occurs first, or as required by law. In the case of death, final salary and compensation for unused annual leave shall be paid to the employee's named beneficiary or, if unnamed, to the employee's estate, on the next regularly scheduled payday.

15.11 Uniforms: An employee in a designated job with the City may be required to wear special clothing to perform the job function with patches, badges or other distinctive items as approved by the department director or the City Manager.

15.12 Return of Uniforms, Equipment & City Property: Upon severance from City service, all City issued uniforms, equipment, keys, cellular phones, laptop computers, etc. shall be returned to the City. Failure to do so shall result in possible legal action to recover the cost of missing items.

15.13 Gifts, Gratuities or Kickbacks: All employees are prohibited from accepting gifts or other considerations from anyone given with intent of modifying the employee's performance of duties or encouraging the employees to make purchases from the individual or business involved. Employees will maintain the highest moral standards and any attempt to influence employee's performance by a vendor or other person will be reported to the department director and City Manager.

- A. It is unlawful for any City employee, as defined in §13-1-28 NMSA 1978, to participate directly or indirectly in a procurement when the employee knows that the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract. An employee or any member of an employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a financial interest with regard to matters pertaining to that trust. (§13-1-190 NMSA 1978)
- B. Contingent fees prohibited: It is unlawful for a person or business to be retained or for a business to retain a person or business to solicit or secure a contract upon an agreement or understanding that the compensation is contingent upon the award of the contract, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business and persons or businesses employed by the City which are providing professional services to the City in anticipation of the receipt of federal or state grants or loans (§13-1-192 NMSA 1978).
- C. Contemporaneous employment prohibited: It is unlawful for a City employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person or business contracting with the City by whom the employee is employed (§13-1-193 NMSA 1978).
- D. Use of confidential information prohibited: It is unlawful for any City employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person (§13-1-194 NMSA 1978).

15.14 Normal Work Hours: Normal work hours will be based on a forty (40) hour workweek. All City offices shall be open from 8:00 a.m. to 5:00 p.m. Monday through Friday, unless the department director and the City Manager approve a different work schedule. During a normal workday, the department director may authorize an unpaid full one-hour lunch breaks in accordance with departmental scheduling needs.

15.15 Reduced Work Hours: The Board may reduce the number of work hours by resolution if the Board determines that the City budget will not sustain the normal work hours. Reduced work hours will apply to all full time employees of the City, with the possible exception of those employees in safety-sensitive or security-sensitive positions.

15.16 Separation from Service with the City: Upon an employee's termination or resignation from the City, he or she may be required to complete an exit interview and separation report with the Human Resources Manager, and/or the department director.

SECTION XVI: AUTHORITY

16.1 Rules: These rules are promulgated on the authority granted in state and federal law and the Ordinance providing for these Rules.

16.2 Savings Clause: If any article, section, paragraph, clause, word or phrase of this Ordinance is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

SECTION XVII: REPEAL OF FORMER PERSONNEL POLICY

City Ordinances 10-3.3 Personnel Rules and Regulations is hereby repealed, as well as all other City Ordinances or Resolutions relating to personnel, which are in conflict with the above provisions, by the adoption of this Ordinance.

APPROVED, ADOPTED, AND PASSED on this 8th day of September, 2021.

SANDY WHITEHEAD, MAYOR

ATTEST BY:

ANGELA TORRES, CITY CLERK



EMPLOYEE ACKNOWLEDGEMENT FORM
CITY EMPLOYEE RECEIPT OF PERSONNEL POLICY ORDINANCE No. 719.

I _____ acknowledge that on _____
(print name of employee) *(date)*

I received an electronic/hard copy of the City of Truth or Consequences Personnel Policy Ordinance No. 719. I understand that the Personnel Policy is the law that controls, explains and provides the terms of and conditions of my employment with the City. I further understand that I am responsible for compliance with and understanding all City Policies, which can be found on the City's "Share" drive. I also understand that if I have questions concerning City policies I can talk to my supervisor, department director or Human Resources at any time. I further understand that this receipt will be placed in my personnel file as evidence of my having been given a copy the policy.

(Signature of Employee)

The first part of the paper discusses the importance of the research and the objectives of the study. It highlights the need for a comprehensive understanding of the subject matter and the role of the researcher in this process. The second part of the paper presents the methodology used in the study, including the data collection methods and the analysis techniques. The third part of the paper discusses the results of the study and the conclusions drawn from the findings. The final part of the paper provides a summary of the key points and offers suggestions for future research.

The research was conducted in a systematic and rigorous manner, following the principles of scientific inquiry. The data was collected from a large sample of participants, ensuring the representativeness of the findings. The analysis was conducted using advanced statistical techniques, allowing for a detailed examination of the data. The results of the study are presented in a clear and concise manner, highlighting the key findings and their implications.

The findings of the study suggest that there is a significant relationship between the variables under investigation. This relationship is supported by the statistical analysis and the theoretical framework. The results have important implications for the field of study and provide a basis for further research. The study also identifies areas for future research, highlighting the need for a more in-depth exploration of the subject matter.

In conclusion, the study has provided a comprehensive understanding of the subject matter and has identified key findings that have important implications for the field. The research was conducted in a systematic and rigorous manner, ensuring the reliability and validity of the findings. The results of the study are presented in a clear and concise manner, highlighting the key findings and their implications.

Redline Version



**CITY OF TRUTH OR CONSEQUENCES
BOARD OF CITY COMMISSIONERS
ORDINANCE № 719**

An Ordinance Relating to Administration, Adopting a Personnel Policy; Setting forth Personnel Rules and Regulations Establishing Consistent, Basic Policies and Practices, and Professionalism Expectations Concerning Relations between the City and its Employees

PREAMBLE

WHEREAS, NMSA 1978, Section 3-18-1 provides that municipalities, have the power to “protect generally the property of its municipality and its inhabitants” and to “preserve peace and order”; and,

WHEREAS, NMSA 1978, Section 3-17-1 provides that cities may adopt ordinances, not inconsistent with statutory or constitutional limitations placed on cities, to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the city and its inhabitants; and,

WHEREAS, NMSA 1978, Section 3-13-4 (1965) allows municipalities to establish a personnel merit system for the hiring, promotion, discharge and general regulation of municipal employees; and,

WHEREAS, the City of Truth or Consequences has a right and responsibility to the taxpayers to set reasonable professional, ethical, performance, and behavioral expectations for employees, supervisors and managers to ensure tax dollars are used in an appropriate and efficient manner; and,

WHEREAS, City of Truth or Consequences employees have an expectation and a right to be treated fairly, consistently and professionally while employed with the City of Truth or Consequences.

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SECTION I: DEFINITIONS

- 1.1 **ADMINISTRATIVE LEAVE WITH PAY:** Leave with pay granted at the City Manager's discretion after considering the department director and Human Resource Manager's recommendation. Bereavement Leave is Administrative Leave with pay. See Section 10.13.
- 1.2 **ADMINISTRATIVE LEAVE WITHOUT PAY:** Leave without pay granted at the City Manager's discretion after considering the department director and Human Resource Manager's recommendation.
- 1.3 **ANNIVERSARY DATE:** Anniversary date means the date of appointment or reemployment and changes as of the date of promotion, demotion, reduction, or change to a different technical occupation group, group role, or manager category in the same pay band or pay opportunity.
- 1.4 **ANNUAL LEAVE:** Leave with pay granted to an employee, after accrual at a specific rate, with approval of the employee's supervisor.
- 1.5 **APPEAL:** Written request that a decision of a formal grievance be reconsidered at a further stage in the grievance procedure.
- 1.6 **APPLICANT:** A person who made formal application on an official City personnel application form for a position with the City.
- 1.7 **"AT WILL" EMPLOYEE:** See definition of "Unclassified Employee".
- 1.8 **BOARD:** Board means the Board of City Commissioners.
- 1.9 **CASUAL EMPLOYEE:** An employee hired to fill a position paid by the hour that may be called on short notice and/or on an occasional basis. Casual employee may also work less than twenty (20) hours a week. A casual employee is paid only for hours worked and does not receive any employment benefits. A casual employee does not have the right to grieve employment decisions.
- 1.10 **CLASSIFIED EMPLOYEE:** An employee that serves the prescribed probationary period and is eligible for the rights and privileges provided for under these Rules.
- 1.11 **CONTINUOUS LENGTH OF CITY SERVICE:** Continuous length of City service means the length of time for which there have been no breaks in employment as an employee spanning from the employee's Date of Hire, other than annual leave, sick leave, military leave authorized pursuant to Section 10.24 below, or authorized leave without pay for less than six (6) months.
- 1.12 **CONTRACT EMPLOYEE:** Contract employees are unclassified FLSA exempt and have a contract approved by the Board modifying the conditions of the City's personnel policy. Contract employees serve at the will and pleasure of the Board. Contract employees are not entitled to grievance procedures, employee benefits or holiday premium pay.

- 1.13 CITY BUSINESS: The performance of official duties of a City employee at an employee's normal work site or at a location authorized by the City.
- 1.14 CITY MANAGER: An individual appointed by the Board to conduct the business of the City and to act as the chief executive officer for the Board, aiding and assisting the Board in the exercise of their duties and responsibilities. In the event there is no City Manager, the duties and responsibilities specified in these Rules shall be carried out by an appointed Acting or Interim City Manager.
- 1.15 DATE OF HIRE: Date of Hire is the date indicated as such on the employee's Personnel Action Form indicating New Hire as a regular employee, from which there is continuous length of City service. Alternatively, the Date of Hire may be from the date of Reinstatement if reinstatement occurs after a lapse of continuous length of City service.
- 1.16 DEMOTION: An employee may be demoted to a position for which the employee is qualified when the employee would otherwise be terminated. The demotion may be a result of funding shortages. An employee who does not possess the necessary ability to render satisfactory performance in the position presently held may be demoted. Employees may voluntarily request such a demotion. Demoted employees may receive a reduction in pay, per City Manager approval and department head recommendation. Only a regular employee demoted due to disciplinary action is entitled to grievance procedures under Section VIII, Grievance Procedures.
- 1.17 DEPARTMENT DIRECTOR: An employee hired to fill a position with the responsibility of supervising and administering a department of City government as determined and designated by the Board.
- 1.18 DISMISSAL: Dismissal means the involuntary separation or dismissal from employment for disciplinary reasons.
- 1.19 DOMESTIC PARTNER: An individual who has an exclusive and committed relationship with a City employee and the relationship is the same as, or similar to, a marriage relationship in this state. For purposes of these Rules: 1) domestic partners must have shared a common, primary residence, 2) must jointly be responsible for each other's common welfare and share financial obligations, 3) neither can be married or a member of another domestic partnership, 4) both must be at least 18 years of age, and 5) are not related by blood to a degree of closeness that would prevent them from being married to each other in this state.
- 1.20 DUE PROCESS: The right granted to a regular employee to pre- and post-disciplinary hearings for actions of suspension, demotion or dismissal.
- 1.21 EMERGENCY CALL-OUT PAY: Compensation paid to an employee who has been called to return to work after hours, including weekends. Employees will receive a minimum of two hours overtime for emergency call-outs.

- 1.22 **EXEMPT EMPLOYEES:** All executive, administrative and professional employees as defined in the federal Department of Labor regulations relating to the Fair Labor Standards Act, whose compensation is based on a fixed salary.
- 1.23 **GRANT FUNDED EMPLOYEE:** A full or part-time employee hired to fill a position that exists only upon receipt of grant funds. This position is terminable-at-will if funding is not received or upon expiration of a grant agreement.
- 1.24 **GRIEVANCE HEARING:** A formal hearing conducted at the request of an employee grieving a promotion, suspension, demotion, involuntary transfer, or dismissal as set forth in these Personnel Rules and Regulations.
- 1.25 **GRIEVANCE:** A formal complaint by an employee concerning actions taken by management, which result in loss of pay and/or privileges to the employee including suspension, demotion, involuntary transfer or dismissal.
- 1.26 **HEARING OFFICER:** The individual charged with the responsibility of hearing and deciding allegations of improper promotion, or post-disciplinary action matters of demotion, suspension, involuntary transfer, and dismissal.
- 1.27 **IMMEDIATE FAMILY:** Spouses, domestic partners, children, parents, siblings, grandparents, grandchildren, like in-laws, like step-relationships, and persons with legal custodial relationships.
- 1.28 **LAYOFF:** The involuntary separation of an employee from City service without fault on the part of the employee, due to the abolition of a position, reorganization, lack of work, lack of funds, or as otherwise determined in the best interest of the City.
- 1.29 **MEDICAL DISABILITY DISMISSAL:** The dismissal of an employee from City employment when the employee is unable to perform the essential functions of the position with reasonable accommodation(s) that do not impose undue hardship upon the City, due to a medical condition, when there is corroborating documentation of this condition from a licensed health-care professional. Although Medical Disability Dismissal is not disciplinary in nature, employees are nonetheless entitled to participate in the City's pre-determination and grievance procedures if they are subject to dismissal.
- 1.30 **NONEXEMPT EMPLOYEES:** Employees that are not exempt employees as defined in the federal Department of Labor regulations relating to the Fair Labor Standards Act.
- 1.31 **PART-TIME EMPLOYEE:** An employee who works twenty (20) hours or more and less than forty (40) hours per week. Employees working twenty (20) hours or more on a consecutive basis are eligible for fringe benefits.
- 1.32 **PRE-DISCIPLINARY HEARING:** A hearing conducted by the City Manager or his/her designee before the imposition of the disciplinary actions of suspension, demotion or dismissal.

- 1.33 **PROBATIONARY EMPLOYEE:** A full-time or part-time employee hired to fill a regular position that has not completed a one (1) year probationary period of employment, during which time the employee is terminable-at-will. During this probationary period, the supervisor is required to evaluate the employee at least every three (3) months.
- 1.34 **PROMOTION:** A promotion is the change of an employee from a position in one classification usually to a position in a classification with a higher salary range.
- 1.35 **REGULAR EMPLOYEE:** Full-time: An employee who has successfully completed probation with a work schedule of at least forty (40) hours per week. Part-time: An employee who has successfully completed probation with a work schedule of twenty (20) or more hours, but less than forty (40) hours per week.
- 1.36 **RESIGNATION:** Resignation means the voluntary separation of an employee from City service.
- 1.37 **SAFETY- or SECURITY-SENSITIVE POSITION (SSP):** A position approved as such by the department director and City Manager, which an individual has a key and direct role in an activity where impaired performance by drug or alcohol use could result in a serious injury, or an improper or inadequate response to a potentially serious incident. SSP include a supervisory or managerial position in which impairment by drug or alcohol use would constitute an immediate and direct threat to public health or safety and includes, but is not limited to, law enforcement officers, employees who are required to regularly carry a firearm, drivers/operators required to have a CDL license, have access to confidential information and/or receive calls for public service and employees who regularly transport other people as their principal job or otherwise designated so by the City Manager.
- 1.38 **SICK LEAVE:** Leave with pay granted to employees when personal illness, injury, pre-arranged medical or dental examination, quarantine, therapy, counseling or other necessary treatment that keeps the employee from performing the duties of the position or when a member of the immediate family is ill, injured or requires treatment for the described reasons.
- 1.39 **STAND-BY PAY:** Compensation paid to employees, though off duty, is required to be available and able to respond to inquiries by telephone or radio, after regular working hours, including weekends.
- 1.40 **SUSPENSION:** An involuntary leave of absence, with or without pay, for disciplinary reasons, or pending investigation of allegations made against an employee, or for pending determination of a grievance procedure.
- 1.41 **TEMPORARY EMPLOYEE:** An employee hired to fill a position that will temporarily fill a position that is vacant due to the absence of an employee or for some other requirement. Temporary employment will not exceed a six (6) months. All temporary employees are terminable-at-will, do not accrue leave, and do not receive employee benefits.

- 1.42 **TRANSFER:** The voluntary or involuntary movement of an employee, from one department or office to another department or office in the City service.
- 1.43 **UNCLASSIFIED EMPLOYEE (or At-Will Employee):** An employee that can be dismissed at any time, with or without cause. The terminable-at-will employees in the City shall be probationary employees, temporary employees, contract employees, and others designated by the Commission. Terminable-at-will employees are not entitled to the grievance procedures provided for in these Rules.

SECTION II: EMPLOYMENT STATUS

2.1 Position Specification: The City shall establish position specifications for all positions. Position specifications shall include title, tasks, duties, responsibilities and minimum qualifications. They will also specify knowledge, skills, education, and abilities required of applicants. See Definitions for description of employee position. An employee may qualify for one or more of the following position descriptions:

- A. **Probationary Employee:** A full-time or part-time employee hired to fill a regular position that has not yet completed the one (1) year probationary period of employment, or (twelve (12) months for police officers) during which time the employee is terminable-at-will. During this probationary period, the supervisor is required to evaluate the employee every three (3) months.
- B. **Temporary Employee:** A temporarily employee, hired to fill a vacancy due to the absence of an employee or for some other requirement. Temporary employment will not exceed a six (6) month period. All temporary employees are terminable-at-will, do not accrue leave, and do not receive employee benefits.
- C. **Regular Employee:** **Full-time:** An employee who has successfully completed probation with a work schedule of at least forty (40) hours per week. **Part-time:** An employee who has successfully completed probation with a work schedule of twenty (20) hours or more, but less than forty (40) hours per week. Employees working twenty (20) hours or more on a consecutive basis are eligible for fringe benefits.
- D. **Grant Funded Employee:** A full or part-time employee hired to fill a position that exists only upon receipt of grant funds. This position is terminable-at-will if funding is not received or upon expiration of the grant agreement.
- E. **Casual Employee:** An employee hired to fill a position paid by the hour that may be called on short notice and/or on an occasional basis. Casual employee may also work less than twenty (20) hours a week. A casual employee is paid only for hours worked and does not receive any employment benefits. A casual employee does not have the right to grieve employment decisions.
- F. **Unclassified Employee:** An employee who can be dismissed at any time, with or without cause. The terminable-at-will employees in the City shall be probationary employees, temporary employees, casual employees, contract employees, and others designated by the Board. Terminable-at-will employees are not entitled to the grievance procedures provided for in these Rules.
- G. **Classified Employee:** An employee that serves the prescribed probationary period and is eligible for the rights and privileges provided for under these Rules.
- H. **Contract Employee:** Contract employees are unclassified, FLSA exempt and have a contract approved by the Board modifying the conditions of the City's personnel policy.

Contract employees serve at the will and pleasure of the Board. Contract employees are not entitled to grievance procedures or holiday premium pay.

- I. **Temporary Agency Employee:** An individual who performs work for the City through a contract with an independent third-party, such as a temporary placement or employment agency. These individuals are not City employees and therefore not entitled to any benefits or rights detailed in this policy.

SECTION III: GENERAL PROVISIONS

3.1 Purpose: The purpose of these Personnel Rules and Regulations (Rules) is to establish consistent, basic policies and practices concerning relations between the City and its employees. These Rules further establish the formal grievance procedure available to regular employees to hear their grievances with respect to promotions, demotions, suspensions, involuntary transfers and dismissal, and provide the method by which a personnel hearing officer is chosen to hear formal grievances. Independent contractors are not subject to the provisions of the Rules.

3.2 Scope: Definite rules and regulations cannot be readily formulated for every possible problem and situation. These Rules serve as an employment contract, general basis and guide for the proper, efficient, and effective management and administration of City personnel matters. The Rules contained herein replace and supersede all previously issued personnel rules regulations and ordinances applicable to City employees.

3.3 Amendment of Rules & Regulations: There shall be no resolution or other action of the Board or other City official, which is inconsistent with these Rules, except by amendment of these Rules. The Board reserves the right to amend these Rules at its discretion. The City Manager may issue interpretative memoranda or Administrative Instructions, consistent with these Rules, which further detail the interpretation of these Rules.

3.4 Employee Knowledge & Information of Rules & Regulations: Department Directors, or Human Resources Manager shall provide a copy of these Rules to present employees and to all new employees with instructions to read and be familiar with all provisions of these Rules. Employees shall sign for a copy upon receipt.

3.5 Equal Employment Opportunity Rules & Regulations: Individuals will not be discriminated against on the grounds of race, age, religion, color, national origin, ancestry, sex, marital status, physical or mental handicap, medical condition, sexual orientation or gender identity, in consideration for employment, promotions, transfers, duration of employment, compensation, terms, conditions, or privileges of employment by the City.

3.6 Administration by City Manager: The City Manager or designee shall administer and interpret the personnel system and the terms of these Rules and its amendments, and all future approved operating procedures. The City Manager shall recommend to the Board any necessary amendments or revisions to the Rules.

3.7 Duties of All Employees: All employees shall adhere to the provisions of these Rules. Department Directors, Human Resources Manager and the City Manager further shall be responsible for seeing to the adherence and enforcement of these Rules.

3.8 Chain of Command & Conflict Resolution: In order to maintain open communication between the City and its employees and to ensure that employees' general working concerns and conflicts are addressed quickly and efficiently, the City will utilize the chain of command protocol. Employees have the right to present or make known their complaints through the chain of command, free from interference, restraint, discrimination, coercion, or reprisal. This provision does not apply to serious complaints such as harassment, dangerous working conditions, workplace violence and discrimination, which are otherwise addressed by the policy. It is required that an employee discusses his/her concerns first with his/her immediate supervisor. Departments should utilize dispute resolution techniques, wherever appropriate to resolve conflicts in the workplace and encourage positive working relationships between employees and management.

If the concern cannot be handled at this level, the employee may request a meeting with the next level supervisor, up to the department director of his/her department. If it becomes necessary to pursue the issue beyond the department director level, or if the concern cannot be handled or remedied within the department due to supervisory conflict, it may be addressed with the City Manager within ten (10) calendar days of the department's final decision. The City Manager's decision on the complaint shall be final and binding.

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3.9 Conflict with Collective Bargaining Agreements: If any provision of this Resolution is in conflict with a written Employee Agreement duly adopted by the Board pursuant to the Public Employee Bargaining Act [NMSA 1978, §§10-7E-1 to 10-7E-26], the terms of the Collective Bargaining Agreement shall control.

3.10 Code of Ethics:

- A. City of Truth or Consequences employees and volunteers shall treat their government or quasi-government position as a public trust, requiring adherence to and respect for the Constitution and laws of the United States of America, the Constitution and laws of the State of New Mexico, and the ordinances, resolutions, and policies of the City. Employees and volunteers shall use the powers and resources of public office to advance the public interest rather than as an opportunity to obtain personal benefits or pursue private interests incompatible or competing with the public interest. City Government cannot function efficiently without the confidence of the public. The public's Confidence in the effectiveness, equity, and honesty of City Employees is directly related to the ethical conduct of City Employees and Officials.
- B. The citizens of the City of Truth or Consequences have entrusted the Elected Officials and employees of the City with the responsibility of ensuring that tax dollars, which fund City services, are spent wisely and efficiently. As City employees, the public is our employer. Our work and conduct are always subject to public scrutiny and approval. Our contact with citizens and performance results will often be the basis upon which City government is judged.
- C. Elected Officials and Employees of the City shall maintain their conduct at the highest personal and professional standards in order to promote public confidence and trust in the City's public institutions; and, in a manner, that merits the respect and cooperation of fellow employees.
- D. The City's level of professionalism is demonstrated by each City Official and employee's actions or in some cases inactions; therefore, the City expects employees to conduct themselves professionally during every interaction and every task.

- E. The City has established reasonable professionalism expectations; expectations every employer would require of their staff. Elected officials and employees are expected to:
- Build trust, confidence, and professional relationships with the public, coworkers, and others contacted in performance of duties; and
 - Promote the City and its employees.

Note: Talking behind an employee's back, toxic talk, misrepresenting the truth, and failing to provide reasonable customer service are examples of a lack of professionalism.

F. General Conduct standards are set forth or restated as follows:

1. The City of Truth or Consequences requires all employees to familiarize themselves with all rules and regulations (general policies and those pertaining to their duties and positions), and that employees abide by these rules and regulations. The City's rules of conduct and performance standards are applicable to all City employees, during normal working hours, at work related or City-sponsored or City-endorsed functions, and while traveling on work related business.
2. Each employee shall make an immediate report to his or her immediate supervisor of any violation of the law or the rules and regulations of the City of which he/she has knowledge. Such report may be required in writing at the discretion of the receiving supervisor and the Human Resources Manager.
3. Each employee shall make a written report within three (3) working days to the Department Director of any criminal charge filed against him/her or arrest for any violation of any law or ordinance except minor traffic violations. (DUI is not a minor traffic offense.)
4. Each employee shall perform his/her duties fairly and impartially, and otherwise conduct him/herself both on-duty and off-duty to command the respect of fellow employees and the public. Each employee's conduct shall be at all times consistent with the goals and mission of the City.
5. No employee shall refuse to truthfully answer questions specifically relating to the performance of his/her official duties or refuse to participate with investigations.
6. No employee shall report for duty while under the influence of any drug prescribed or not prescribed, including but not limited to a narcotic, barbiturate, hallucinogenic drug, central nervous system stimulant, alcohol, or an intoxicant. In the event any of the foregoing drugs is prescribed and administered to an employee, the employee shall report this to the supervisor and Human Resources Manager. The supervisor and the Human Resources Manager shall then make a determination whether the employee can perform ~~his~~their duties without detrimental effect. An employee may be asked to submit to a drug and/or alcohol test when the supervisor has reason to suspect that the employee is under the influence of illegal drugs or alcohol.
7. No employee shall be insubordinate, neglectful, or unwilling to follow orders or perform officially designated duties.
8. No employee shall falsify reports or records or knowingly submit inaccurate or untruthful information for or on any City record, report or document.
9. No employee shall sleep on duty.

10. Violence, fighting, profanity or insulting behavior, non-sexual harassment, horseplay, bullying, mobbing, and threatening or interfering with visitors or other employees at any time on City premises or at any other place, while on duty, will not be tolerated. The City strictly prohibits sexual harassment or other forms of discrimination.
11. Gambling of any kind on City premises or at any other place, while on duty will not be tolerated.
12. Employees shall not reveal confidential information to unauthorized persons.
13. Employees shall not be tardy, absent, or depart from work early without the permission of their supervisors and shall observe time limitations on break and meal periods. Each employee shall notify his/her immediate supervisor or designated representative prior to his/her scheduled work shift in the event he or she expects to be absent from duty due to illness or other reason.
14. No employee shall solicit funds or distribute petitions or literature for any political purpose other than official business on City property or at any other place while on duty.
15. Every employee will comply with safety rules/regulations and shall report promptly to the appropriate supervisor any injury or illness.
16. Employees shall not use City property, materials or facilities for non-City business. No employee shall occupy, use or operate any City property or facility without prior authorization.
17. Every employee has the responsibility to protect and safeguard City property and the person and property of others. No employee shall be in unauthorized possession of any City property or others regardless of value, or attempt to remove such property from City premises.

G. The ethical City employee shall:

1. Properly administer the affairs of the City.
2. Promote decisions, which only benefit the public interest.
3. Actively promote public confidence in City government.
4. Keep safe all funds and other properties of the City.
5. Conduct and perform the duties of the office diligently and promptly dispose of the business of the City.
6. Maintain a positive image to pass constant public scrutiny.
7. Evaluate all decisions so that the best service or product is obtained at a minimal cost without sacrificing quality and fiscal responsibility.
8. Inject the prestige of the office into everyday dealings with the public, employees and associates.
9. Maintain a respectful attitude toward employees, other public officials, colleagues and associates.
10. Effectively and efficiently, work with governmental agencies, political subdivisions and other organizations in order to further the interest of the City.
11. Faithfully comply with all laws and regulations applicable to the City and impartially apply them to everyone.

SECTION IV: RECRUITMENT AND SELECTION

4.1 Purpose: It is the policy of the City to select and recruit the best qualified and the best-suited person for all positions in an open and competitive manner, and to ensure that no discrimination occurs in the process and ensure equal employment opportunities for all applicants and employees. The City will comply with all applicable federal and state laws and regulations.

4.2 Recruitment of Applicants: Department directors shall notify the City Manager and the Human Resources Manager of a vacant position. In an effort to present current employees a viable career path within the organization, internal employees are encouraged to apply for vacant or newly created positions, if they meet minimum qualifications. The Human Resources Manager shall simultaneously issue job announcements internally and externally through such media deemed appropriate to ensure open and competitive recruitment of individuals with sufficient time to ensure reasonable opportunity for persons to apply. The Human Resources Manager shall submit announcements and receive all applications through their Office. All publications for job announcements shall include reference to the City as *"An Equal Opportunity Employer"*.

4.3 Temporarily Filling Vacant Positions: Vacant positions may be filled without public announcement by temporary employees on a temporary basis to replace regular employees on leave and pending the selection of a regular employee for a position or otherwise for a period not to exceed six months. Temporary employees may not be made regular employees in their position without completion of an open application and selection process.

4.4 Best Qualified & Best-Suited Applicant Determination: The best-qualified and best-suited applicant is determined by the department director, in conjunction with the Human Resources Manager, based on minimum qualifications of education, experience, abilities, skills and past work experience, as specified in written position specifications for each position. Personal interviews shall be conducted with at least three (3) applicants, or if less than three applications are received, all applicants shall be interviewed. All internal applicants meeting minimum job requirements for a position shall receive an interview.

4.5 Selection: The department director or designated representative shall review all applications for positions in their department, in conjunction with the Human Resources Manager, and make their recommendation to the City Manager. Final appointment shall be made by the City Manager based on the best qualified and the best-suited applicant for the position and the status of the City's budget. The Human Resources Manager is responsible for notifying the prospective employee and extending a job offers.

4.6 Pre-Selection Prohibited: To ensure the integrity and fairness of the selection process, posted and advertised positions shall not be promised to any person prior to recruitment and selection.

4.7 Ineligibility for Hire and Rehire: Applicants shall be considered ineligible for hire or rehire by the City if the applicant has:

- A. Knowingly made any false statement or omission on the employment application or City record;
- B. Not met the requirements of the position;

- C. Failed to complete pre-employment drug and alcohol screening or physical examinations or other requirements as directed by the City, except that an applicant not meeting drug and alcohol screening testing may reapply after a one-year period. An applicant who failed a physical exam due to a pre-existing correctable medical condition may reapply at any time after the condition is corrected;
- D. Not met the criteria for insurance or bonding as required by City or state law;
- E. Been dismissed from City service as a disciplinary measure in five (5) years prior to the date of application;
- F. Not been certified by a physician that the applicant can perform the physical requirements or the essential requirements of the position;
- G. Been convicted for driving while under the influence of alcohol or drugs within the past three years of the date of the application, if a valid New Mexico driver's license and class is required for the position; or
- H. Been convicted of a felony as described in NMSA 1978, §28-2-1, et seq. or convicted of a felony or infamous crime as defined in NMSA 1978, §10-1-3 and by its nature conflicts with the duties and responsibilities of the position;
- I. Not met the requirements of state or federal funding agreements;
- J. Resigned with pending employment charges pursuant to section 7 and 8 within five (5) years prior to the date of application;
- K. Resigned from City employment without giving two weeks' notice, unless unique circumstances exist;
- L. Previously engaged in destruction of City property, including deleting public (business related) records or emails; and
- M. The above list is not necessarily exhaustive and may not include all of the reasons that would make an applicant ineligible for hire or rehire.

4.8 Testing: To determine employment eligibility, the City may require an applicant to submit to testing for certain bona fide occupational qualifications. This may include, without limitation pre-employment physical, drug, and alcohol screening examinations, and/or proficiency, ~~and skills~~ or general aptitude testing. For law enforcement officers, psychological examinations and/or extensive medical examinations may be required as a condition of employment.

4.9 Background Investigation; Driver's License (DL) Check: The City and/or designed contractor(s) shall conduct background investigations on all applicants considered for employment and DL record checks on all perspective and current employees required to drive a vehicle for City business. All applicants shall sign a background investigation waiver and DL check release during the employment application phase or they will be excluded from consideration. DL checks shall be conducted at hiring, and quarterly thereafter, on employees required to drive, as a condition of employment. DL checks will not be conducted on perspective or current employees not having driving responsibilities as a condition of employment. However, if at any time an employee is required to drive a vehicle as a condition of employment, DL checks will be performed at that time and continue on a ~~monthly~~quarterly basis.

4.10 Commencement of Work: No applicant for employment shall commence work or be considered employed by the City until an approval of the selection is made in writing by the City Manager and Human Resources Manager on a Personnel Action Form (PAF) and all pre-employment testing and relevant background checks have been completed. Payroll shall not enter the applicant into the City's system prior to receipt of a completed and signed PAF.

SECTION V: CHANGES IN EMPLOYMENT STATUS

5.1 Promotion: The City encourages professional growth of its employees and rewards the initiative, creativity, effort, commitment, and diligence of its employees through the promotional process. City employees are encouraged to take advantage of promotional opportunities and apply for higher paying positions for which they qualify.

5.2 Evaluation Period: Regular employees either promoted or voluntarily transferred to a vacant or newly created position will be placed in an evaluation status period for ninety (90) days. This is a period of evaluation and training of the employee in the new position. If performance during the evaluation period is deemed unsatisfactory and documented, the employee may be returned to his/her previous position, if available, placed in another vacant position for which the employee is qualified, if available and in the best interest of the City, or dismissed at the discretion of the City Manager. Employees transferred back to previous positions receive the same pay received before their promotion or transfer.

5.3 Demotion: An employee may be demoted to a position for which the employee is qualified when: 1) the employee would otherwise be dismissed because the employee's position is being abolished due to lack of funds or lack of work and there are no vacancies at the same level for which the employee is qualified; 2) the employee's job is being reclassified; 3) the employee does not present satisfactory performance in the position presently held; 4) the employee voluntarily requests such a demotion, provided a position is available; or 5) employees being demoted for disciplinary reasons.

5.4 Transfers:

- A. General Transfer. Employees may be moved from one position to another of the same grade and pay range either voluntarily or involuntarily. An employee may be transferred if it is in the best interest of the City. Voluntary transfers are not grievable. Fluctuating organizational needs may require temporary or permanent transfer of an employee from one geographic location to another within the City. If a transfer involves a probationary employee, time served in the former position shall be credited toward achievement of regular full-time status and salary increases, accumulated annual leave and sick leave shall be retained. The City Manager must approve all transfers.
- B. Voluntary Transfers between Departments. An employee who voluntarily transfers from one department to a vacant position in another department may be required to accept the new position at its entry-level salary depending on their experience and qualifications required for the new position. The transferred employee will be subject to an evaluation period of ninety (90) days, as specified in Section 5.2.
- C. Medical Transfer. An employee who has been certified by a licensed physician as being physically unable to perform the duties of the employee's current position may be transferred as a reasonable accommodation to an available position in which the physician certifies the employee is able to work, and for which the employee is qualified to perform. If no such position is available, the employee is subject to the leave without pay provisions of these Rules.

5.5 Resignation: An employee voluntarily resigning shall submit in writing to the department director and the Human Resources Manager, a two-week minimum notice of

resignation. Unless unique circumstances exist, failure to provide timely written notice may be grounds for refusal of future employment with the City. Unauthorized absence from work for three (3) consecutive regularly scheduled working days shall be considered a voluntary resignation. Once a Department Director accepts an employee's resignation, the notice of resignation is deemed "accepted", the employee may no longer rescind the resignation unless approved by the City Manager.

5.6 Layoff Procedure: Upon directive of the Board, the City Manager shall make the determination for layoffs after consulting with appropriate department directors and the Human Resource Manager. When layoffs of more than one employee are required, layoffs shall be determined using the following criteria:

- A. Position in order of priority:
 - 1. Temporary employees,
 - 2. Probationary employees,
 - 3. Casual employees,
 - 4. Part-time employees.
- B. Performance of the employee compared to other employees being laid off in the same or similar positions;
- C. Value of the employee's position to the critical operation of the City or department, such as safety-sensitive or enterprise positions;
- D. Length of continuous service with the City; and
- E. Funding source.

5.7 Layoff Return Privileges: Any full-time or part-time regular employee laid off and returns within six (6) months of layoff shall not have to serve a probationary period if the employee returns to their previous position and the probationary period had been served. A laid off-returning employee will be credited for all unused sick leave remaining and not compensated for at the time of layoff, if the employee returns within the six (6) month period. Layoff privileges end:

- A. Six (6) months after the effective layoff date;
- B. After an employee refused employment in a position for which the employee is qualified and/or for which the pay rate is the same or higher than the position previously held; or
- C. When a laid off employee accepts another position with the City. A laid off employee accepting another position with the City shall serve the required evaluation period.

5.8 Medical Disability Dismissal: Employees shall be involuntarily terminated upon completion of the twelve (12) week family/medical leave if the employee is physically unable to perform the essential duties of the employee's position with reasonable accommodation(s) that do not impose undue hardship upon the City, as certified by a qualified, licensed physician. The provisions of this subsection are subject to the provisions regarding Workers' Compensation laws and "On the Job Injury Leave" found in Sections 10.154 and 10.165 of these Rules.

5.9 Reinstatement: Individuals that are reinstated, as regular employees to the same or like position are not entitled to any previous benefits such as sick leave, which had been accrued during previous employment with the City, except as, provided in Section 5.7.

SECTION VI: CONDITIONS OF EMPLOYMENT

6.1 Probationary Period for New Hires: An employee hired to fill a position shall serve a probationary period of one (1) year, beginning on the first day of work, during which time the employee is terminable-at-will.

- A. Law enforcement officers in the police Department shall serve a one (1) year probationary period, beginning on the first day of work, during which time the employees are terminable-at-will. If a law enforcement officer is not certified prior to hiring, the law enforcement officer must obtain law enforcement certification within one year of employment. Uncertified law enforcement officers shall be terminated on the one-year anniversary of hire if they are not accepted or enrolled in a basic police officer training program certified by the Law Enforcement Academy Board.
- B. The probationary period is an integral part of the evaluation process and is for observing the employee's performance and obtaining the most effective adjustment of a new employee to the position. Employees will be evaluated at least every 3 months during the probationary period. The employee must achieve a satisfactory performance or better by the end of the probationary period before the employee can become a regular employee entitled to all of the rights and benefits of that status.
- C. If an employee satisfactorily completes the probationary period, the employee will become a regular employee. If the employee does not satisfactorily complete the probationary period, the employee may be dismissed, or upon the recommendation of the department director and with final approval of the City Manager, the probationary period may be extended for ninety (90) days.
- D. In the event a probationary employee is on extended leave for any reason, the probationary period will be extended in an amount equal to that leave period.
- E. Probationary employee provisions. A probationary employee:
 - 1. can be dismissed, without cause, at any point during the probationary period;
 - 2. is not eligible for personal holiday leave;
 - 3. cannot grieve disciplinary actions;
 - 4. is allowed to accrue and use sick and annual leave as soon as it is accrued with approval of supervisor;
 - 5. employees terminated during their probationary period are only entitled to payment of unused annual leave; and
 - 6. is eligible for health insurance and other optional benefits, as provided in Section 9.76.

6.2 Temporary Employee Hired to a Regular Position: An employee who fills a temporary position and is subsequently hired to fill a regular position shall serve the required probationary period. The beginning date of the probationary period is the date the employee formally transitions to regular status.

6.3 Former City Employees Hired to a Position: A former City employee re-hired in the same or like position, or re-hired at any time to fill a new position, shall serve the required probationary period.

6.4 Permitted Political Activities: All employees:

- A. may engage in political activity on their own time;
- B. are encouraged to register to vote and to exercise their right to vote;
- C. have a right to express their opinion on all political subjects and candidates on their own time;
- D. may serve as convention delegates;
- E. may sign nominating petitions and make voluntary contributions to political organizations and candidates on their own time; and
- F. may serve as an election or poll official.

6.5 Prohibited Political Activities: All employees are prohibited from:

- A. using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office, or for any other political purpose;
- B. directly or indirectly coercing, attempting to coerce, commanding or advising an official or employee to pay, lend, or contribute anything of value to a party, committee or organization, agency, or person for a political purpose;
- C. threatening to deny promotions to or retaliating against an employee who does not vote for or support certain candidate(s), requiring employees to contribute to a political fund or candidate, influencing employees to buy tickets to political fund-raisers and similar events, advising employees to take part in political activity and matters of a similar nature;
- D. engaging in political activity while on duty; and
- E. using any City-owned equipment, supplies, vehicles, space, property, or work time for political purposes.

6.6 Public/Political Office:

- A. Employees covered by the provisions of the Hatch Act [5 U.S.C. Sections 1501 to 1508] may not be candidates for partisan political office elections. (A local school board member or a member of any post-secondary educational institution's governing body shall not be construed as holding political office)
- B. Employees may not hold a City political office and be a regular full-time or at-will employee of the City.

6.7 Nepotism: To eliminate the appearance of nepotism, ~~near~~-relatives within the third degree shall not work in the same department when there is a supervisory relationship between them.

- A. ~~Near-r~~Relatives, as used in this ordinance, includes father/mother and spouse, son/daughter and spouse, grandparents, grandchildren and spouse, uncle/aunt and spouse, ~~first cousin and spouse~~, nephew/niece and spouse, brother/sister and spouse, great grandparents, and great grandchild; including unrelated persons sharing a spousal/domestic partner relationship, adopted step-relatives.
- B. When there is a change in assignment or relationship among City employees, which leads to supervision of or by a ~~near~~-relative, the ~~near~~-relative supervisor must immediately inform the department director of the relationship in writing. The department director, subject to the approval of the City Manager, shall take appropriate action to eliminate the conflict. Options include eliminating supervisory

responsibility for a specific employee, voluntarily/involuntary transfer of the employee or supervisor to another position, demotion of the supervisor, or termination of the employee or supervisor, whichever is most feasible for the employee, supervisor and City.

6.8 Conflict Ban: No employee shall engage in any business, transaction, accept private employment or other public employment which is incompatible with the proper discharge of the employee's responsibilities or which gives the appearance of impropriety, or is prohibited by federal, state or City law or City policy.

6.9 Outside Employment: Employees may not, directly or indirectly, engage in any outside employment or financial interest which may conflict, in the City's opinion, with the best interests of the City or interfere with the employee's ability to perform his/her assigned City job. Examples include, but are not limited to outside employment which:

- A. Prevents the employee from being available for work beyond normal working hours, such as emergencies or peak work periods, when such availability is a regular part of the employee's job;
- B. Is conducted during the employee's work hours;
- C. Utilizes City facilities, equipment, resources or time;
- D. Constitutes employment, contractual commitment or self-employment which conflicts with Section 15.14, below; or
- E. May be reasonably perceived as a conflict of interest, gives the appearance of impropriety or otherwise discredits public service.

An employee who chooses to have an additional job, contractual commitment or self-employment (~~Avon, Mary Kay, etc.~~), may do so provided he/she provides prior notification on the prescribed form and obtains prior approval from his/her department director and the City Manager. Any outside employment that could potentially interfere with emergency call-out situations must be reported to the employee's department director. If, after accepting outside employment, situations arise which could interfere with the employee's job, the employee must immediately report these situations to his/her department director.

6.10 Workplace & Sexual Harassment: The City will not tolerate harassment or sexual harassment.

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- A. The City is committed to taking reasonable steps to provide a professional working environment free from all forms of harassment, whether based on sex, sexual orientation, gender identity, race, color, religion, national origin, age, disability or any other protected classification. Although this policy focuses on sexual harassment, it applies equally to all forms of harassment based on a protected classification. The procedures described in this policy shall be followed for all such harassment. This policy also applies when an employee is subject to harassment in the workplace by a non-City employee.
- B. Employees have a right to be free from workplace harassment. Employees are forbidden from engaging in harassing conduct on- or off- duty that creates a hostile work environment. Any act of harassment based upon a protected classification is a severe violation of City policy and will be addressed in a firm manner.
- C. Harassment Definition: verbal, non-verbal or physical conduct by any employee that, bullies, torments, persecutes, disrupts, or interferes with another employee's work

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performance or member of the public or that creates an intimidating, offensive or hostile environment.

D. Sexual Harassment Definition: is any unwelcome sexually oriented behavior, demand, comment or physical contact initiated by any individual at the work place when:

1. Submission to such conduct is made either explicitly or implicitly, a term or condition of an individual's employment;
2. Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions/opportunities affecting such individual; or
3. Such conduct has the purpose or effect of substantially interfering with an individual's work performance, or creates an intimidating, hostile or offensive working environment.

E. Harassment can occur in a variety of forms. Examples include, but are not limited to: Teasing an employee(s) about their race, religion, sexual orientation etc. Telling a joke at the expense of or with the intent of embarrassing a protected class.

Sexual harassment also occurs in a variety of forms. Harassing conduct based on gender often is sexual in nature. This policy forbids harassment based on gender regardless of whether the offensive conduct is sexual in nature. Sexual harassment is unacceptable in the workplace or in other work-related settings such as business trips and business-related events. The following are some common examples of behaviors or situations that constitute sexual harassment:

1. Oral or written sexual statements, comments, jokes, questions or innuendoes;
2. Display of sexually oriented visual items such as calendars, cartoons, photos or posters;
3. Assault, molestation or unwelcome physical contact such as kissing, touching, patting, pinching, brushing against or hugging;
4. Requests, demands or subtle pressure for sexual activity;
5. Threats or retaliation against an employee who refuses unwelcome sexual attention or sexual behavior;
6. Overt promises or practices that imply preferential treatment for any employee in exchange for dates, sexual attention or sexual behavior;
7. Sexual insults and suggestions including, but not limited to, lewd remarks, obscene gestures and sexually suggestive materials;
8. Any conduct that ridicules, or is malicious or abusive to, an individual because of the individual's gender;
9. Pressuring an employee to go out on a date;
10. Consensual "romantic" or sexual relationships between a supervisor/director and an employee in the same department; or
11. Asking questions of a sexual nature.

F. Responsibility to Report Harassment. Any employee, who believes they are a victim of harassment because of their protected classification, should first confront the person or persons responsible for the offensive behavior and indicate that it is unwelcome and should be stopped. The employee also has an obligation to promptly report the matter to the Human Resources Manager, City Attorney or City Manager. These individuals are authorized by this policy to receive and act upon complaints of harassment or

discrimination on behalf of the City. All employees who observe, or become aware of harassment, also have an obligation to bring the matter to the attention of the Human Resources Manager, City Attorney or City Manager, even if they are not the victim of harassment.

- G. Investigation of Complaints. It is the City's intent to provide a fair process for investigating and resolving complaints of harassment. The City will investigate all reports of alleged harassment. Information associated with the investigation will be kept confidential, to the extent possible, and consistent with the City's obligation to investigate promptly and thoroughly. All employees are required to cooperate with any investigation by the City in response to an allegation of harassment. Refusal to cooperate in an investigation may result in disciplinary action, up to and including termination.
- H. Appeal. Any affected employee dissatisfied with the conclusion or results of an investigation, or with any corrective measures taken, may appeal the decision to the City Manager. Any such appeal should be in writing and must include the nature of the employee's dissatisfaction with the conclusions or results of the investigation. Any qualifying disciplinary appeal must follow the grievance process.
- I. Protection against Retaliation. The City will not retaliate against any employee who reports sexual harassment in good faith and such retaliation in and of itself is grounds for disciplinary action, up to and including termination without prior progressive discipline. Retaliation is a serious violation of this policy and should be immediately reported.
- J. Discipline. Anyone violating section 6.10 will be subject to corrective or disciplinary action up to, and including dismissal.
- K. Unlawful harassment, including sexual harassment, of employees, or members of the public, may be cause for dismissal. If the City determines that harassment has occurred or that counseling, training, disciplinary measures or termination are appropriate, it will respond appropriately to correct the problem following City disciplinary procedures. Serious cases of harassment constitute cause for termination without prior progressive discipline. Employees who knowingly make false allegations of sexual harassment may be subject to disciplinary action.
- L. Mandatory Training. Periodic mandatory training for all employees; will be provided by the City to increase knowledge of the workplace harassment policy, state and federal laws and the process for enforcing the policy.
- M. Vendors and Customers: Employees should report harassment, including sexual harassment from vendors, customers, other City employees and the general public utilizing this Policy.

6.11 Performance Evaluations and Performance Goals:

- A. Performance Evaluations (Probationary Employees only)
 - 1. Probationary employees shall be evaluated at least every three (3) months or when a department director or immediate supervisor wishes to make the performance of an employee a matter of record.
 - 2. **Contents of Evaluation:** A performance evaluation shall contain an overall appraisal of the employee's performance while on probation. Approved forms are available in Human Resources. All evaluations shall be signed by the employee and supervisor, and forwarded to the City Manager.
 - 3. **Unsatisfactory Evaluation:** The probationary period is a time to grow and develop new employees and ensure a proper fit for the organization; however, if an

employee receives an overall evaluation rating of unsatisfactory performance, the employee shall be warned that the failure to meet reasonable performance standards within a set period shall result in dismissal. In some circumstances of unsatisfactory performance or unacceptable behavior, a probationary employee may not be given a warning and will be terminated as terminable-at-will.

C. Performance Goals (Non-Probationary Employees)

1. Supervisors will develop SMART goals (Specific, Measurable, Achievable, Relevant, and Time-based) annually for each employee, other than probationary employees who shall follow the traditional performance evaluation process. SMART goal setting is important for employee motivation, keeps employees looking forward to new accomplishments, intended to grow employee knowledge and skill sets, designed to meet organizational strategic outcomes, and enhances organizational effectiveness.

Supervisors are expected to supervise and manage staff on a daily basis, and thus, provide either positive reinforcement or constructive corrective feedback as appropriate; performance evaluations and goal setting should not be mistaken for daily supervisory responsibilities.

2. Goal types include:
 - a. Essence of job (EOJ): EOJ goals clearly describe tasks required for the job. Goals can include productivity, efficiency, detail, accuracy, ~~tardiness~~, safety, ability to problem-solve or work as a team player, professionalism, customer service, etc. EOJ goals can relate to the speed of work or number of units completed, and product accuracy and quality, etc.
 - b. Specific project(s): Projects are activities that an employee will pursue with a beginning and ending, and are generally beyond the employee's routine duties. Project goals can relate to improving systems, developing new policy or procedures, developing programs, completing purposed research, etc.
 - c. Professional development: These goals specify what an employee will learn in the coming year. These goals grow an employee by developing new skills or knowledge. Goals shall be linked to a realistic organizational need.
 - d. Performance improvement: These goals are used when an employee's behavior is unsatisfactory or their performance is below reasonable expectations. Performance improvement goals should have a limited but reasonable end timeline. They shall document reasonable behavior or performance expectations in a clear and measurable way.
3. Goal Setting: Supervisors, in collaboration with the employee, shall develop SMART goals for each employee annually. Align goals with the department's overall strategies, priorities and most important needs.
4. Goal Tracking: Supervisors shall review goal progress with each employee at least quarterly. A supervisor may amend a goal, either increasing or decreasing responsibilities, if circumstances change during the period.
5. Employee Rebuttal: The employee may submit a written rebuttal statement to the performance goal evaluation and it will become a part of the performance goal

report. The rebuttal must be submitted within ten (10) days of the evaluation or it will be denied.

6. Unsatisfactory Goal Evaluation: In the event an employee fails to meet established goal(s), when in the judgment of the supervisor, should have, the employee shall be warned that failure to meet reasonable expectations could result in disciplinary action and/or may be placed on a performance improvement plan.

6.12 Fitness for Duty:

The City endeavors to provide a safe and productive work environment for the benefit of its employees and the public they serve. Employees are expected to manage their health in such a way that they can safely and effectively perform their essential job functions and to discuss with their supervisor any circumstance that may impact their ability to do so. The City may require professional evaluation of an employee's physical or mental capabilities to determine his or her ability to perform essential job functions. Such evaluations are conducted by an independent third party, licensed health/mental health care professional and are undertaken only after careful review by Human Resources. To the extent possible, the City will protect the confidentiality of the evaluation and results.

This evaluation process is for only those situations where reliable observation indicates that the employee may not be physically or mentally able to perform the essential functions of his or her position due to a physical or mental condition. It is not intended to be a substitute for sick or medical leave requests, workers' compensation claims, allegations of violence in the workplace, situations where there is an immediate threat of harm, or a performance management disciplinary process.

- A. Procedures: If, by observation of an employee's behavior or by receipt of reliable information, the City has reason to believe that an employee may lack the ability to perform the essential functions of his or her position due to a physical or mental condition, the following steps will be taken:
 1. The department head will provide Human Resources with detailed information regarding the reason for and circumstances leading up to the fitness-for-duty referral, including information on essential job functions, evidence of the employee's inability to perform those functions effectively, and any attempts at resolving the matter.
 2. The Human Resources Manager will review the information provided in the referral, along with a current job description of the essential functions of the employee's position. If it is determined that a fitness-for-duty evaluation is necessary, upon confirmation from the City Manager, the Human Resources Manager, will notify the employee in writing.
 3. Human Resources will determine the independent, third party, licensed health care/mental health professional who will perform the evaluation, send a written request for an evaluation to him or her, and will schedule the evaluation at the earliest opportunity.
 4. Failure on the employee's part to comply with a scheduled fitness-for-duty evaluation constitutes insubordination and will be cause for disciplinary action, including termination.
 5. The City will pay all costs of the services performed by the health care/mental health professional as part of the evaluation.

6. If the City Manager deems it necessary, the employee may be placed on temporary, paid administration leave until the evaluation is completed.
 7. The employee will be requested to sign a voluntary written authorization allowing the health-care/mental health professional to provide certain information obtained through the evaluation to the City. If no authorization is executed, the City may nevertheless obtain a description of the functional limitations of the employee that may limit the employee's ability to perform the essential function of his or her job, but no statement of medical cause may be disclosed.
 8. Insofar as feasible, the results of the evaluation will be treated as confidential, kept in a separate file within Human Resources, and the minimum necessary information will be shared only with those who need to know the results for legitimate City business purposes.
 9. If it is determined that the employee is not able to perform the essential functions of his or her position, Human Resources will attempt to determine if there is a reasonable accommodation that will allow the employee to continue working. If an appropriate accommodation cannot be made, other options will be identified and communicated to the employee as available.
 10. If it appears that any functional limitations on the employee's ability to perform the essential functions of his or her position are the result of a work-related injury, the matter will be referred to Workers Compensation for the processing of a workers' compensation claim.
 11. All actions taken to carry out this policy will comply with state and federal laws, as well as City policies and procedures and applicable contractual provisions.
- B. Evaluation and Results: The fitness-for-duty evaluation will not be conducted for the purpose of diagnosis or treatment, but rather for the purposes of determining an employee's ability to perform the essential functions of the job. Human Resources will provide the evaluator with a description of the essential function of the employee's position prior to the evaluation. The evaluator will be asked by Human Resources to release only that information as permitted under this policy or otherwise permitted by law. The evaluator will be asked to complete a written report containing only the following information.
1. A conclusion regarding the determination of fitness for duty;
 2. A description of the nature and extent of any functional limitation on the employee's ability to perform his or her job;
 3. A description of the expected duration of each such functional limitation; and
 4. An opinion as to whether or not the functional limitation may be the result of a work-related injury as related by the employee; further medical examination or investigation may be necessary to determine if the functional limitation arises out of, or has been caused by, the employee's occupation.
- C. Insofar as feasible, the results of the evaluation will be treated as confidential, and will be shared only with those who need to know the results for legitimate City business purposes. However, where the employee has placed at issue his or her medical history, mental or physical condition, or treatment, the relevant information may be used and disclosed by the City in connection with such proceedings.
- D. The City Manager will make a decision regarding the employee's status, including but not limited to the employee's return to duty or removal of the employee from any duties

pending treatment and re-evaluation, depending on the results of the evaluation and the recommendation of the evaluator. In certain circumstances, the employee may be subject to medical disability termination pursuant to Section 5.8 of this Ordinance.

6.13 Anti-Fraternization:

- A. The City encourages employees to develop friendships and share a spirit of teamwork and camaraderie both in the workplace and outside of work. In instituting this dating or fraternization policy, it is not the City's goal to interfere with the development of co-worker friendships and relationships.
- B. City employees may date; develop friendships and relationships both inside and outside of the work-place as long as the relationships do not negatively affect work. Any relationship that interferes with the City's culture of teamwork, the harmonious work environment or the productivity of employees will be addressed by applying the progressive discipline policy as outlined in this Ordinance. Adverse workplace behavior or behavior that affects the workplace that arises because of personal relationships will not be tolerated.
- C. The exception to this policy relates to Managers, directors and supervisors. Anyone employed in a managerial or supervisory role shall not have an intimate relationship with employees who report to them. From an employee perspective, these relationships may be perceived as favoritism, misuse of authority, or potentially, sexual harassment. Even if no improper conduct occurs, the relationship would likely cause gossip, hard feelings, dissatisfaction, and distraction among other employees in the workplace. The relationship may appear to other employees as an inappropriate use of position power. The fraternization prohibited by this policy includes dating, romantic involvement, and sexual relations.
- D. Notify your supervisor and the Human Resources Manager if a coworker relationship is a concern and might be from the City's standpoint of job performance and workplace disruption. Appropriate actions will be determined and taken as per the City's personnel policy. In the discretion of the City Manager, the parties to a relationship that become a concern can be required NOT to work together; and, must keep the City informed on the relationship. Any disruption in the workplace is subject to discipline or adjustment in shift status if available.
- E. Sexual misconduct refers to a wide range of inappropriate behaviors associated with the exercise of "power" or "authority" over certain people in the work environment. Therefore, some work relationships are prohibited by State statute. Law enforcement, probation personnel, and counselors are legally prohibited from engaging in relationships with offenders, inmates or clients, as these employees have a position of authority over these individuals. In these relationships, either the Legislature or courts have determined that these individuals are not capable of "consenting" to sex with staff, just as individuals with diminished mental capacity and juveniles are deemed unable to consent.

SECTION VII: BASIS FOR EMPLOYEE DISCIPLINE

7.1 Discipline: Disciplinary actions are based on just cause, in order to promote the efficiency of the services rendered by the City and the operation of its respective departments and offices. Disciplinary actions will be consistent with governing laws and regulations and will be taken without regard to race, age, religion, color, national origin, ancestry, sex, sexual

orientation, gender identity, physical or mental handicap, or medical condition. No employee will be disciplined for refusing to perform an unlawful act.

7.2 Definition of Just Cause: Just cause is defined as any conduct, action or inaction arising from or directly connected with the employee's work or behavior, which is inconsistent with the employee's obligation to the City and reflects the employee's disregard of the City's interest. Just cause includes, but is not limited to, inefficiency, incompetence, misconduct, negligence, insubordination, or performance which continues to be inadequate after reasonable efforts have been made to correct the performance problems, or conviction of a felony or misdemeanor involving moral turpitude and the misdemeanor conviction directly relates to the employee's particular job, trade, or profession.

7.3 Disciplinary Action: The City Manager, department directors and supervisors have the authority to discipline an employee under their supervision. However, only the City Manager has the final authority to demote, suspend or terminate an employee for disciplinary reasons. Copies of any written disciplinary action must be furnished to Human Resources for placement in the employee's file, with evidence of the employee's receipt of the action.

7.4 Consultation with City Attorney: Dismissal, demotion, and suspension require consultation with the City Attorney before taking disciplinary action. Whenever such consultation is not practical because of urgency, necessary action may be taken and the situations/circumstances reviewed with the City Attorney as soon as practical.

7.5 Progressive Discipline: An employee shall be progressively disciplined whenever warranted. All actions involving substandard work performance, leading up to and including dismissal, require documented progressive discipline. The step of corrective action used depends on the severity of the infraction, the employee's previous work record, years of employment, and the employees' status within the organization, e.g., supervisors are expected to conduct themselves at a higher standard. Because of the serious nature of some infractions, the first disciplinary action may be suspension or dismissal.

7.6 Verbal Reprimand: A verbal reprimand is used for minor infractions to inform the employee that his/her actions, behavior or conduct needs to change. Supervisors will keep written notations of verbal reprimands, and will place the written notation of the verbal reprimand in the employee's personnel file. The placement of a verbal reprimand in an employee's file is not grievable. Causes for verbal reprimands include, but are not limited to:

- A. Substandard or unsatisfactory work performance;
- B. Unprofessional behavior;
- C. Malicious gossip and toxic talk;
- D. Repeated absence or tardiness;
- E. Misconduct on the job;
- F. Failure to follow safety rules or procedures, including preventable accidents;
- G. Failure to meet and/or maintain job requirements as set forth in the job description;
- H. Violation of any personnel Rules, other City rules, policies, regulations or supplemental rules;
- I. Violation of a professional code of ethics accepted by those in the same profession as an employee and as stated in this policy;

- J. Non-cooperation by an employee with fellow employees or other personal conduct which interferes with the performance of his/her or another employee's work;
- K. Failure to adhere to an established work schedule;
- L. Excessive personal phone usage; and
- M. Failure to obtain authorization for overtime or compensation time.

7.7 Written Reprimand: An employee shall receive a written reprimand because the deficiency or infraction is of a greater degree than that for which a verbal reprimand may be used, or if a verbal reprimand was not effective. Causes for written reprimands include, but are not limited to:

- A. All causes listed for verbal reprimands;
- B. Excessive absence or tardiness;
- C. Sleeping on the job;
- D. Unprofessional behavior;
- E. Negligence in the performance of duty including negligence in the operation of City vehicles or equipment, including preventable accidents;
- F. Negligence or failure to adhere to established safety rules or regulations as well as willful unsafe conduct;
- G. Insubordination and failure to comply with the lawful orders of a supervisor including the refusal to accept after hours assignments;
- H. Refusal to perform tasks or duties assigned or detailed in an employee's job description;
- I. Unauthorized absence from work;
- J. Failure to report duty injuries, accidents or vehicle collisions;
- K. Failure to follow the chain of command within a department;
- L. Unauthorized use or abuse of City property (e.g. phones, cell phones, computers, vehicles, equipment, etc.).
- M. Being untruthful when asked about any work related activities by a supervisor;
- N. Abuse of sick leave, including use of sick leave on a day for which vacation or other leave has been denied;
- O. Failure to follow a departmental SOP; and
- P. Violation of the Code of Ethics (Section 3.10).

Written reprimands for an employee's work performance or conduct shall be placed in the employee's personnel file after providing the employee with a copy of the statement. The employee will be asked to acknowledge having read the comments by signing the statement. If the employee refuses to sign, said refusal, that information shall be noted on the document by the employee's department director. The department director's signature or employee's signature indicates that the employee received the statement, but does not necessarily indicate concurrence with its content. In addition, the department director may read the letter of reprimand to the employee. The employee may respond with a written rebuttal within ten (10) days after the document was entered into the personnel file, which shall also be placed in the employee's personnel file. The placement of a written reprimand in an employee's file is not grievable.

7.8 Suspension: An employee may be suspended without pay for a single serious offense, for misconduct, or for continued inadequate job performance after previous attempt(s) to correct the performance have failed. Such suspension will not exceed two-hundred forty (240) hours. Suspension of an employee is subject to the formal grievance procedures. Causes for suspension include but are not limited to:

- A. All causes listed for verbal and written reprimands;
- B. Continuous documented instances of poor performance;
- C. Negligent damage to property and/or person(s), including preventable accidents;
- D. Physical or mental unfitness for duty;
- E. Consumption or possession of alcohol or controlled substances on-duty or on City property or in City vehicles;
- F. Fighting while on-duty or on City property;
- G. Harassment;
- H. Sexual harassment;
- I. Violation of the Code of Ethics (Section 3.10).
- J. Failure to report confiscation or loss of driver's license when required as condition of employment;
- K. Operation of a City vehicle or a private vehicle while on City business without a valid driver's license; and
- L. Unlawful carrying or possession of a firearm unless authorized by state law or City policy.
- M. Being under the influence of alcohol or controlled substance including illegal drugs as well as abuse of prescription drugs. See Section 11.
- N. Knowingly making any false statement or omission to a supervisor regarding work-related activities.

7.9 Demotion: An employee may be demoted for continued inadequate job performance after previous attempt(s) to correct the performance deficiency have failed, if a lower job position exists, the employee is capable of performing such a job, and it is in the best interest of the City to demote the employee. The demotion of an eligible employee is subject to formal grievance procedures. A demotion may require a decrease in salary, with approval of the City Manager. Employees engaged in misconduct or ethical infractions will not be considered for demotion.

7.10 Dismissal: Dismissal is the final consequence when progressive discipline has failed to change unacceptable behavior or performance, or when the employee has engaged in other behavior that is of a serious nature that is unacceptable for City employees. The dismissal of an employee is subject to the formal grievance procedures. Causes for dismissal include, but are not limited to:

- A. All causes listed for the previous disciplinary actions or if an employee's performance failed to improve after attempts or correction have failed;
- B. Acceptance of a bribe, gratuity, gift, or kick-back;
- C. Abuse of official position or authority for personal profit or advantage;
- D. Theft, abuse or intentional destruction of City property, including electronic media or data;
- E. Unauthorized disclosure of confidential information from City records or documents, or discussions as set forth by applicable state law; falsification, destruction or unauthorized use of City records, reports, or other City data, including electronic media or data;
- F. Being convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular job, trade, or profession;
- G. Being convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular job, trade, or profession, if the City

determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust.

- H. Falsification of City records, including employment application, health history forms or any other document used in the employment process;
- I. Serious acts of negligence causing damage to City property, public or private property or injury to an employee or member of the public;
- J. Intentional acts causing damage to City property, public or private property or injuring an employee or member of the public;
- K. Conduct unbecoming an employee of the City;
- L. Engaging in conduct prohibited under the City's Drug-Free Workplace Policy as provided in Section 11.4, below;
- M. Insubordination or refusal to carry out reasonable directives;
- N. Failure to meet standards of substance abuse rehabilitation programs;
- O. Loss of license or certification necessary to legally perform the duties of the employee's position.
- P. Determination of Hatch Act violation by Office of Special Counsel;
- Q. Behavior that demonstrates deliberate violations of policy, wrongful intent, evil design, or so as to reveal intentional and substantial disregard of the City's interests, or of employee's duties and obligations to the City;
- R. Willful falsification of, or misrepresentation on, any work records; falsifying data or information requested by the City; forgery or inappropriate alteration of City records or other City documents (including written or audio or audio-visual media); and
- S. Action or inaction that subjects the City to civil liability.

7.11 Examples Not Inclusive: The above examples are typical of the types of infractions sometimes encountered but are not inclusive of all situations that may arise. The City reserves the right to exercise judgment and render disciplinary action or dismissal as deemed appropriate based on the circumstances of each case.

7.12 Pre-Determination (Loudermill) Hearing: Regular employees shall receive a pre-determination hearing prior to possible disciplinary action for cause or other action that may result in suspension without pay, demotion, and loss of pay, involuntary transfer, or dismissal. Prior to delivery of the written notice to the employee, the City Human Resources Manager shall review the cause for such action and may require the proposed level of discipline be increased or decreased based on policy and past action. The City Manager or his/her designee shall hold the hearing for employees of each respective department.

7.13 Written Notice: The employee's supervisor or department director shall present the employee with written notification of their intent to conduct a pre-determination hearing at least five (5) working days in advance of the hearing date. The written notification shall explain the reasons for the hearing, the proposed discipline, the employee's right to attend the pre-determination hearing, a list of all evidence and/or witnesses to be introduced by the Department supporting the Department's position, the time, place and date of the pre-determination hearing and the employee's right to respond to the proposed action. The time, place and date of the pre-determination hearing can be revised upon the written agreement of the parties.

7.14 Immediate Suspension with Pay: In cases where City property, other employees or citizens, or their property are at risk because of the employee's actions, or when in the best interest of the City, the City Manager or in his/her absence, an appointed designee shall put the

employee on administrative leave with pay until the pre-determination hearing is held and a decision is rendered. Any employee, who is placed on administrative leave pending disciplinary action, will be required to be away from their place of employment and will not be allowed to perform any job related duties or retain any City property during that time, but is subject to recall by the City during normal business hours. Administrative leave pending disciplinary action shall not exceed thirty (30) calendar days, unless the City Manager approves an extension of time. The department director, subject to the approval of the City Manager whenever circumstances warrant such leave, may also grant administrative leave with pay.

7.15 Pre-Determination Hearing Procedure: The City Manager or his/her designee shall meet with the appropriate department director and the employee if he or she chooses to participate, at the appointed time. The City Attorney may be present to assist the Hearing Officer/City Manager but shall not advocate on behalf a City Department. Legal counsel for the employee and the department, if any, may also be present. At this hearing, the employee will have an opportunity to respond to the reasons for the proposed action. Witnesses are permitted as determined relevant to the case by the City Manager or his/her designee. If an employee does not attend the pre-determination hearing and no good cause is shown for his/her absence, the hearing shall proceed as scheduled and a determination may be made.

7.16 Pre-Determination Hearing Decision: The City Manager or his/her designee will issue a decision in writing within ten (10) working days of the hearing. The decision will include the time, date and location of the meeting, persons present, and the determination. The written decision shall either be delivered to the employee by a supervisor or department director with the employee's, signature of receipt of the decision) or be sent to the employee by certified mail, return receipt requested.

7.17 Notice of Grievance: Within five (5) working days of receipt of the written decision, the employee must notify the Human Resources Manager or his/her designee in writing of his/her intent to pursue a grievance hearing before a Personnel Appeals Hearing Officer.

SECTION VIII: GRIEVANCE PROCEDURES

The formal grievance procedure is applicable for promotion, suspension, demotion, involuntary transfer or dismissal. A grievance shall not stay the implementation of the pre-determination hearing decision.

8.1 Conditions or Actions Not Grievable: The following matters are not grievable:

- A. Disputes as to whether or not an established City practice or Rules are valid;
- B. Matters in which a method of review is mandated by law;
- C. Matters where the City is without authority to act or does not have the ability to provide a remedy;
- D. Dismissal of temporary, casual or contract employees dismissed at any point during their employment with the City;
- E. Preferences for employment, promotions, voluntary transfers, temporary assignments, and removal from temporary assignments, and layoffs;
- F. Dismissal of a probationary employee prior to the expiration of the probationary period;
- G. Letters of complaint when the employee's department director determines the letters are justified and appropriate to be placed in the employee's personnel file, so long as the

procedure for written reprimands are followed including the employee's right to submit a rebuttal;

- H. Verbal and written reprimands in the employee's file, although within ten (10) days the employee is allowed a rebuttal of the information contained in the reprimand which will be attached to the reprimand;
- I. Denial of permission for outside employment;
- J. Performance evaluations/goals;
- K. Suspension from employment for three days or less.
- L. Denial of educational rewards or tuition reimbursement funding.

8.2 Employees Not Eligible for Grievance Procedure: Unclassified, temporary, casual, probationary, or contract employees are not eligible to request a grievance hearing. Additionally the City Manager is not entitled to the grievance procedure.

8.3 Grievance Procedure: A regular employee may request, in writing, a hearing before a ~~P~~ersonnel Hearing Officer within five (5) working days of receiving the City Manager's decision resulting from the pre-disciplinary process or from other action as may be grievable under this Policy. The request will state with specificity the reason for the grievance and the remedy requested.

8.4 Appointment of Personnel Hearing Officer: ~~Within fifteen (15) working days of~~After receiving the grievant's notification of intent to pursue a disciplinary hearing, the City Manager will provide the grievant with the name of the Hearing Officer.

8.5 Hearing Officer Qualifications: Hearing Officers shall be personnel professionals, be familiar with public or private personnel systems, or have pertinent experience in the field of management, education or law. The Hearing Officer shall be disinterested in the subject matter of the hearing. The City Manager shall verify the qualifications of the hearing officer. The hearing officer is not required to reside in the City.

8.6 Grievance Hearing Schedule: The City Manager or Hearing Officer will schedule a hearing to be held as soon as practicable after receiving the notification that the employee wants to pursue a grievance hearing. ~~In the event no qualified Hearing Officer is available within the thirty (30) day limit, the hearing will be held at the first opportunity.~~ At a hearing, the grievant and City shall have an opportunity to present witnesses and physical evidence and cross-examine the witnesses before a neutral hearing officer. The City shall be represented by its attorney and the grievant may have an attorney or representative of their choice.

8.7 Grievance Hearing Procedures - Rules of Procedure:

- A. The hearing will not be open to the public, unless the grievant requests a public hearing.
- B. The formal Rules of Evidence shall not apply to the hearing.
- C. The hearing officer shall:
 - 1. make rulings on procedural and substantial issues of the hearing;
 - 2. determine the admissibility of evidence and testimony, all of which must have a direct bearing on the issue before the hearing officer; and
 - 3. issue a written ruling, including findings of fact, which form the basis of the hearing officer's conclusions of law.

- D. The grievant, the grievant's legal representative, if any, and the City Attorney are required to be present at the hearing unless otherwise excused by the hearing officer or by agreement of the parties.
- E. The hearing officer shall determine reasonable timelines that the parties or their representatives shall prepare and provide copies of all exhibits and evidence, confidential statements identifying the issues to be heard, a witness list, and a complete list of documents to be admitted as evidence for the hearing officer as well as the opposing party. The hearing officer shall exclude from consideration exhibits and evidence, statements, witness lists, and other documents if not supplied in the manner detailed above.
- F. Each party will be responsible for ensuring that their witnesses are present for the hearing.
- G. Witnesses in grievance hearings are not permitted in the hearing room until called upon to testify, unless the witness is a party (i.e., the grievant, the grievant's department director and/or supervisor, the City Manager, Human Resources Manager, or City Attorney).
- H. An audio, ~~or~~ audio-video record or transcript of all grievance hearings will be made.

8.8 Conduct of Hearing: The Grievant shall present an opening statement of issues involved in the case, followed by the City. Opening statements are limited to the pertinent issues of fact and law and shall not exceed ten minutes without the permission of the hearing officer.

8.9 Order of Presentation:

- A. The City will present first. Witnesses for the City may be called and questioned concerning their involvement in or knowledge of the case. Following each witness's testimony, the Grievant will have the opportunity to cross-examine the witness. The hearing officer will then have an opportunity to question the witness. The hearing officer shall restrict all questions to those necessary to clarify the testimony previously given. Follow up or redirect questioning will be allowed at the discretion of the hearing officer.
- B. Witnesses for the Grievant may be called and questioned concerning their involvement in or knowledge of the case. Following each witness's testimony, the City will have the opportunity to cross-examine the witness. The hearing officer will then have an opportunity to question the witness. The hearing officer shall restrict all questions to those necessary to clarify the testimony previously given. Follow up or redirect questioning will be allowed at the discretion of the hearing officer.
- C. Following the presentation of the City's and the Grievant's positions, rebuttals may be offered. Such testimony shall be brief and shall address only the issues brought forth in the City or Grievant's presentation.
- D. The City's closing statement shall be presented followed by the Grievant's closing statement. These statements shall not exceed ten (10) minutes without the permission of the hearing officer and shall contain a request for the desired outcome.

8.10 Communication of Hearing Officer's Decision: The hearing officer's decision will be issued ~~within thirty (30) calendar days~~ timely as possible following ~~of~~ the hearing and will be signed by the hearing officer, and transmitted to the grievant, the City Manager and department director. The hearing officer may uphold, modify or reverse the decision of the City Manager or designee, and may reinstate the employee and award back pay and benefits. No

attorney's fees, costs or other damages may be awarded. The standard of proof in a grievance hearing is a preponderance of the evidence. The record of the proceedings will be retained by the City Human Resource's office for a period of not less than five (5) years from the hearing date, along with all of the physical evidence admitted by the hearing officer. The verbal record may be transcribed only in the case of appeal to the District Court by one of the parties. The party requesting the transcription shall pay for the transcription.

8.11 Appeal of Hearing Officer's Decision: Either party may appeal the hearing officer's decision to the District Court by filing with the District Court and the Human Resources Manager a Notice of Appeal within thirty (30) calendar days of the hearing officer's decision. A party may cross-appeal within thirty (30) days of the date another party files a Notice of Appeal. Both parties shall be forever estopped from appealing the hearing officer's decision after thirty (30) calendar days from the hearing officer's decision if no Notice of Appeal is timely filed.

- A. These Rules, if certified to be complete by the City Clerk, and in effect at the material times, may be included in the record on appeal at the request of any one of the respective parties at any time before forwarding the record to the District Court.
- B. The appeal shall be one of review of the record (transcript) along with all the exhibits as admitted. No trial de novo will be accorded.

SECTION IX: COMPENSATION & BENEFITS

9.1 Purpose: The purpose of the compensation plan is to establish equitable compensation for all positions in the City. Such a plan may establish a salary schedule containing a minimum and maximum wage or salary for each position. Pay ranges are intended to furnish administrative flexibility. However, all wages and salaries are approved by the Board during the budget process or otherwise. The Board has sole authority to budget and authorize wage and salary increases. The Board acknowledges all changes in compensation and may set pay schedules and Rules regarding any raises and promotional increases for the entire fiscal year for all City employees.

9.2 Hours of Work: Employees will work their scheduled hours pursuant to work schedules established by their department director and approved by the City Manager. Full-time employees will work a minimum of forty (40) hours per week. Actual work periods may fluctuate at the discretion of the department director, with approval of the City Manager. Part-time employees are scheduled to work pursuant to scheduling set forth by their department director. Law Enforcement Personnel may work an alternative schedule in accordance with FLSA regulations in excess of eighty-six (86) hours per pay period permitted by 29 U.S.C. Section 207(k).

9.3 Overtime Pay: Only FLSA non-exempt employees shall be compensated for all time actually worked, whether or not the time is authorized. Failure to obtain authorization for overtime shall result in disciplinary action, up to and including dismissal. The rate shall be one and one-half (1½) times regular pay for each hour of overtime. Only actual time worked will be used to calculate overtime; holiday, annual, sick and other leave hours shall not be considered actual working hours.

- A. Regular employees: such payment shall be made only in cases when an FLSA non-exempt employee works over forty (40) "actual hours" in a normal workweek.

- B. Law Enforcement Personnel: An FLSA non-exempt, law enforcement employee shall be paid overtime according to FLSA regulations in excess of eighty-six (86) hours per pay period permitted by 29 U.S.C. Section 207(k).

9.4 Consistency with Fair Labor Standards Act: The provisions of Section 9.3 are subject to change or revision by the Fair Labor Standards Act and any federal regulation or revision thereof.

9.5 Emergency Call-out Pay: An employee called out will be paid for the greater of two (2) hours at one and one-half (1.5) times his/her regular rate or for actual hours worked at one and one-half (1.5) times his/her regular rate. Police officers are exempt from call-out pay eligibility, except as defined in Section 9.3 B.

9.6 Stand-by Pay: An employee on stand-by will be compensated at his/her regular rate for eight (8) hours during any regular seven-day workweek.

- A. No employee may be placed on stand-by for more than one week (seven consecutive days) at a time, except by special arrangement with the department director. ~~Police officers are exempt from stand-by pay eligibility, except as defined in Section 9.3 B~~

9.7 P.E.R.A. Benefits: All City employees, with the exception of those employees, who are subject to exclusion under P.E.R.A. rules, are required to join the Public Employees Retirement Association of New Mexico (P.E.R.A.).

9.8 Insurance Benefits: The City offers group insurance benefits to all employees as long as the employee is regularly scheduled to work at least 20 hours per week and whose term of employment when hired is for six or more months. Independent contractors and causal employees are not eligible under the City benefit plan. Insurance plans may be changed at the discretion of the Board or the insurance carrier.

9.9 Fringe Benefits: The City will follow the Internal Revenue Service's rules with regard to fringe benefits. Taxable fringe benefits will be included on the employee's W-2 form. (Examples of fringe benefits may include uniforms, uniform allowances, vehicle usage, City cell phones, etc.) If an employee has a question regarding fringe benefits and how that may affect them, the employee should contact the Human Resources Manager. Vehicles assigned as take-home vehicles must be properly identified with a logo as City of Truth or Consequences vehicles, with the exception of law enforcement undercover vehicles.

9.10 Compensatory Time: Compensatory time in lieu of cash compensation may ~~only~~ be given if there is no remaining overtime in the Department's budget and shall be authorized only under rare circumstances, which call for immediate action or in special situations required by the nature of the operation or the status of the activity.

- A. Compensatory time in lieu of cash compensation may be given only if there is an agreement entered into voluntarily between the employee and department director.
B. The employee must have entered into this agreement before compensatory overtime work is performed.
C. Compensatory time off for FLSA non-exempt employees shall be at a rate equal to one and one-half (1.5) hours for each hour of employment for which overtime

compensation is required. However, if the additional hours worked would not qualify as overtime (i.e. leave was taken during the workweek), but the employee takes time off in lieu of payment such compensatory time would be accrued at the straight time rate.

- D. A maximum of 40 hours of compensatory time may be accrued before the employee will be required to exhaust the leave.
- E. The FLSA-covered employee who has accrued compensatory time off, and who has requested the use of compensatory time, shall be permitted to use the time within a reasonable period after making the request, if the use of compensatory time does not unduly disrupt the operations of the City, as determined by the employee's supervisor.
- F. After accrual of 40 hours of compensatory time, any overtime worked must be paid. If compensation is paid to an employee for accrued compensatory time, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such a payment.
- G. A department head shall make every reasonable effort to schedule time off, for an employee to use accrued compensatory time immediately after accrual.
- H. No employee whose position is designated as exempt shall be paid in any way for hours worked in excess of 40 in a workweek. It is the practice of the City to allow professional flexibility in work schedules for exempt employees to balance their professional and personal commitments. It is, however, generally expected that exempt employees are present and available during daily "core times".

9.11 Flex Time: Excess time accrued by a non-exempt employee above the employee's regularly scheduled daily work hours in, which the employee requests for department director approval to use the accrued hours as alternate leave on a day and time within the same pay period.

- A. Directors may, at their discretion, permit non-exempt employees who are requesting to use accrued flex time on a case-by-case basis, where the employee was engaged in approved work-related assignments that required the employee to work extended hours outside of their normal work day. Flex hours must be used within the same city pay period in which they were accrued and the employee must properly reflect the correct number of hours worked per day on their timesheet entry.

SECTION X: LEAVE AND HOLIDAYS

10.1 Holidays:

- A. The Board shall approve holidays at their discretion, for the calendar year. All employees, except temporary and casual employees, are eligible for holiday pay.
- B. An employee that works on a holiday will receive holiday pay plus their choice of:
 - 1. One hour of time off for each hour worked on the holiday, or
 - 2. Pay for actual time worked at their -regular rate.
- C. If a holiday falls on an employee's regularly scheduled day off, the employee will receive eight (8) hours straight time.

10.2 Personal Holiday Leave: All regular employees who have completed the probationary period will have an eight (8) hour and part-time employees eligible for benefits will receive four (4) hours personal holiday each calendar year in addition to the regular holiday schedule. The personal holiday may be taken at any time, upon approval by the employee's supervisor. The entire eight (8) hours, four (4) hours for part-time employees must be taken when requesting personal holiday leave. Personal holiday time may not be taken in hourly increments. Personal holiday leave shall not carry over beyond the current calendar year.

10.3 Annual Leave with Pay: Annual leave may not be used before it is accrued and must be approved with at least seven (7) days or more notice by the employee's supervisor prior to being taken. Employees accrue annual leave with pay in accordance with the following schedule, based upon continuous length of City service:

Full Years of Service	Hours/pay period	Working days/Year
0 to 5 Years	4.0 hours	13 days/ 104 hours
5 to 10 Years	5.0 hours	16.25 days/ 130 hours
10 Years +	6.0 hours	19.5 days/ 156 hours

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Employees hired before adoption of this ordinance are grandfathered in at the rate established at hiring and shall accrue annual leave in accordance with the following schedule:

Full Years of Service	Hours/pay period	Working days/Year
0 to 3 Years	4.0 hours	13 days/ 104 hours
3 to 15 Years	6.0 hours	20 days/ 160 hours
15 Years +	8 hours	26 days/ 208 hours

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- A. Employees employed in regular part-time status accrue annual leave on a prorated basis.
- B. Only completed calendar months of service before and after interruptions or breaks will be counted. In computing the total number of years of service by which an employee is allowed to progress from one graduated rate of accrual to another, the following will apply:

1. Where the employee has been employed with the City without any interruption or break in continuity of service, the date from which their years of tenure are counted will be the first day of the first completed calendar month worked.
2. Periods of leave without pay in excess of thirty (30) days will not be counted as service.

- C. An eligible employee will progress from one graduated rate of accrual for annual leave to the next on the first day of the month immediately following completion of the required total length of service.
- D. The amount of accrued annual leave permitted to be carried over from one calendar year to the next shall not exceed 240 hours, unless exigent circumstances prevented annual leave use and is approved by the City Manager.
- E. Upon separation of employment, an employee will be compensated for all unused and unforfeited annual leave, not to exceed 240 hours.
- F. Upon death of an eligible employee, compensation for unused total annual leave, not to exceed 240 hours, shall be payable to the employee's estate.

10.4 Accrual Limitation: Total number of accrued annual leave hours shall not exceed a maximum of 240 hours. Therefore, any hours exceeding 240 hours, at any time, will be forfeited, unless approved by the City Manager. Exceptions to this policy must result from a legitimate business necessity.

10.5 Separation from Service or Change in Service Pay: Employees shall be paid for all accrued annual leave upon separation from City service, not to exceed two hundred-forty (240) hours.

10.6 Leave Donation: Employees are permitted to donate or receive annual or sick leave for City employees with severe or extraordinary illnesses, or to provide care for relatives or household members with severe or extraordinary illnesses, if the employee has exhausted their annual and sick leave.

- A. An employee may donate as many annual or sick leave hours as desired, as long as the employee retains an annual and/or sick leave balance of at least 40 hours.
- B. Requests to receive donated leave require department director and City Manager approval. The City reserves the right to approve or deny donated leave requests. The City Manager will render a decision based on the employee's length of service, performance/disciplinary history and review of the employee's leave usage.
- C. A certificate of illness or injury will be required from a physician in order to qualify to use donated hours.
- D. Under no circumstances, including termination, can donated hours be converted into cash. Unused hours will be returned to the employee(s) making the donation.
- E. Upon death of an eligible employee, compensation for unused total annual leave, not to exceed 240 hours, shall be payable to the employee's estate.

10.7 Sick Leave with Pay: Employees shall accrue a maximum of four (4) hours of sick leave with pay per pay period. Part-time employees accrue sick leave at the rate of 2.0 hours per pay-period. Casual and temporary employees do not accrue sick leave.

- A. Sick leave shall be authorized by the employee's supervisor, when such leave is requested, when an employee is unable to perform normal job duties due to medical considerations such as, but not limited to, the following: illness, injury, prearranged medical or dental examination, quarantine, therapy, counseling, treatment, or when a member of the employee's immediate family is ill and requires the personal attention of the employee.

- B. The City has no maximum cap on accrued sick leave; all hours are allowed to be carried-over from one calendar year to the next. Upon separation or retirement of an employee serving five (5) or more continuous years of service, will be compensated for one third (1/3) of the first 480 accrued sick leave hours; a maximum of 160 hours. Employees with less than five (5) continuous years of service will forfeit all accrued sick leave at separation of employment. Employees are not permitted to donate sick leave at time of separation.

10.8 Sick Leave Authorization: Sick leave may not be used before it is accrued and must be authorized or denied according to City policy. Unless otherwise prescribed by separate department policy, the following procedures shall apply:

- A. Reporting Sick Leave. For police officers, sick leave shall be reported as soon as possible, but no later than two (2) hours prior to the employee's work shift. All other employees, sick leave shall be reported as soon as possible, but no later than thirty (30) minutes following the start of their normal work day.
- B. Sick leave shall be requested and entered in the City's system. If an employee uses any falsehood to support a request for leave, any leave authorized may be rescinded and the employee may be subject to disciplinary action. Leave may be granted contingent upon the employee presenting sufficient justification.

10.9 Use of Sick Leave During Probationary Period: Probationary employees accrue sick leave as set forth in 6.1 D and may use sick leave if accrued.

10.10 Certification of Illness for Sick Leave: A physician's written certification may be required prior to receipt of sick leave pay at the discretion of the department director.

10.11 Bereavement Leave: In the event of a death in the employee's immediate family, he or she will be entitled to bereavement leave. Up to three (3) days may be granted for an employee to attend the funeral of a member of his/her immediate family in state and up to five (5) days if the funeral is out-of-state. These days will be classified as Administrative Leave with pay and require City Manager approval.

10.12 Family Medical Leave:

- A. The City provides family medical leave of absence without pay to eligible employees who wish to take time off from work duties to fulfill family obligations relating directly to the birth or adoption of a child or the illness of a child, spouse, domestic partner, parent or the employee themselves. Regular full-time and part-time employees are eligible to request family leave as described in these Rules.
- B. Eligible employees are allowed family/medical leave according to provisions of the Family Medical Leave Act (FMLA). As soon as an eligible employee becomes aware of the need for a family medical leave of absence, the employee shall request leave from their supervisor. Employees requesting family medical leave related to the illness of a child, spouse, domestic partner, parent or the employee themselves shall be required to provide a healthcare provider's certification of employee/family member's serious health condition. Eligible employees who do not request family medical leave in advance of a qualifying event will automatically be placed on family medical leave as soon as the

Human Resources Manager determines that their leave qualifies for protections under FMLA.

- C. The City may require an employee to submit to a fitness for duty return to work exam when the need for FMLA leave is based on the employee's own serious health condition that may affect the essential functions of the employee's job. The City must notify the employee of this requirement at the beginning of the leave.
- D. Eligible employees are allowed up to twelve (12) weeks of family medical leave or up to twenty-six (26) weeks of leave, in a single 12-month period, to care for a covered service member recovering from a serious injury or illness incurred in the line of duty on active duty. Eligibility for leave will be determined on a twelve (12) month rolling-back calendar. The employee will be required to take any available annual or sick leave as part of the approved period of leave. If the family medical leave is unpaid, the employee is subject to all rules pertaining to leave without pay, section 10.20.
- E. Subject to the terms, conditions and limitations of the applicable plans, the City will continue to provide health insurance benefits for the full period of the approved family/medical leave, subject to all rules pertaining to leave without pay, Section 10.20.
- F. When family medical leave ends, every reasonable effort will be made to return the employee to the same position, if it is available, or to a similar available position for which the employee qualifies.

10.13 Administrative Leave with Pay: Administrative leave with pay may be granted by the department director, subject to the approval of the City Manager, pending an investigation or disciplinary action or fitness for duty evaluation, as subject to all rules pertaining to Immediate Suspension with Pay, Section 7.14.

10.14 Workers' Compensation Program: [§§52-5-1 et. seq., NMSA 1978]

- A. The City provides a comprehensive worker's compensation insurance program at no cost to employees. This program covers any injury or anyone suffering from occupational diseases sustained in the course of employment as approved by the insurance carrier. Subject to applicable legal requirements, Workers' Compensation insurance provides benefits after a short waiting period, or if the employee is hospitalized immediately.
- B. Employees who sustain work-related injuries or occupational diseases must inform their supervisor immediately, who will notify Human Resources. No matter how minor an on-the-job injury may appear, it is important that it be reported immediately. This will enable an eligible employee to qualify for coverage as quickly as possible. A "Notice of Accident" form shall be filed with the Human Resources Manager immediately following the work-related injury. Employees sustaining an injury /illness NOT requiring medical care need not seek medical attention; the "Notice of Accident" form will provide sufficient documentation.
 - 1. The employee and the employee's supervisor shall sign the report. In addition, the supervisor's Accident Investigating Report" will be filed on the following workday. All accidents shall be reported, however minor.
 - 2. Human Resources will complete an E-1 workers' compensation report form and report it to NMML in a timely manner.
 - 3. Supervisors will thoroughly investigate the injury/illness and complete a "Supervisor Report of Injury" form. In every case, the "corrective Action Taken" section of the report shall be completed.

- C. Neither the City nor the insurance carrier will be liable for the payment of workers' compensation benefits for injuries that occur during an employee's voluntary participation in any off-duty recreational, social, athletic activity, or similar events off-duty.
- D. Subject to the terms, conditions and limitations of the applicable plans, the City will continue to provide health insurance benefits while the employee is receiving worker's compensation benefits, subject to the provisions of Section 10.15. Eligible employees will automatically be placed on family/medical leave as soon as the Human Resources Manager determines that their leave qualifies for protection under the Act.

10.15 On-The-Job Injury Leave: An employee injured on the job may use accrued sick leave until exhausted and then the use of annual leave is permissible for each regularly scheduled working day after the injury occurs for all such days that are not paid by Workers' Compensation Insurance. If the employee is on worker's compensation time for more than four (4) weeks, and is entitled to compensation for the first seven (7) days and has used accrued leave for the first seven (7) days of injury, the workers' compensation payments received for all such days shall be paid directly to the City by the workers' compensation carrier. In the event an employee uses accrued leave, in lieu of workers' compensation, the leave used shall be re-credited to the employee upon the City's receipt of the reimbursement by the Workers' Compensation carrier after the expiration of the statutory waiting period.

10.16 Voting Leave: For purposes of national, state or local elections, an employee, registered to vote, will be granted up to two (2) hours paid leave for voting, between the time of opening and the time of closing of polls. The employee's supervisor may specify the hours for the leave. This leave will not be granted to any employee whose workday begins more than two (2) hours subsequent to the time of the opening of the polls or ends more than three (3) hours before the closing of the polls.

10.17 Court Service Leave with Pay: Pay for jury duty shall be authorized only for those days that the employee is scheduled to work. If excused by the court during a working day, the employee shall return to work. Employees serving as jurors shall file for jury pay and turn in any pay received to the City. Any jury duty worked beyond their regular work hours shall be refunded back to the employee.

- A. Procedures for Jury Duty Time:
 - 1. Juror Service Verification form from the Court must be attached to the Leave Request Form.
 - 2. Reconciliation of time by Payroll will include matching Jury Hours Summary Sheet received by the Court to time sheet, leave form and Juror Service Verification form.
- B. Court Appearance Time. When required by City duties and subpoenaed to appear before a Court, personnel Hearing Officer, public body or the Board for testifying about City matters, the employee will be compensated as regular work time.

10.18 Leave Without Pay: The department director with the approval of the City Manager, may grant an employee leave without pay for a period not to exceed ten (10) days, when the department director deems that such leave without pay is in the best interest of the City.

- A. **Failure to Report Timely:** Failure on the part of the employee to report to work immediately to the assigned shift following the last day of the request, upon the expiration of approved leave without pay, shall be subject to disciplinary action up to and including termination.

10.19 Life Threatening Illnesses in the Workplace: Employees with life-threatening illnesses, such as cancer and heart disease, often wish to continue their normal pursuits, including work, to the extent allowed by their condition. The City supports these endeavors as long as employees are able to meet acceptable performance standards. As in the case of other disabilities, the City will make reasonable accommodations in accordance with all legal requirements, to allow qualified employees with life-threatening illnesses to perform the essential functions of their jobs.

- A. Medical information on individual employees is treated confidentially. The City will take reasonable precautions to protect such information from inappropriate disclosure. Management, as well as other employees, has a responsibility to respect and maintain the confidentiality of employee medical information. Anyone inappropriately disclosing such information is subject to corrective or disciplinary action up to and including dismissal of employment.
- B. The Health Insurance Portability and Accountability Act (HIPAA) and the Americans with Disabilities Act (ADA) require the City to maintain the privacy of protected health information. A copy of the City's HIPAA Notice of Privacy Practices can be obtained from Human Resources.

10.20 Inclement Weather: The City Manager may close offices, authorize late reporting or early release due to inclement weather, and all employees will be compensated for normal work hours as administrative leave with pay and shown on a Leave Report Form. Inclement weather leave with pay will not exceed eight (8) hours in one workday.

10.21 Leave For Unforeseen Circumstances: The City Manager may close individual offices, authorize late reporting or early release due to unforeseen conditions beyond the City's control that prevent the employees from performing their duties as administrative leave with pay and entered into the City's system.

10.22 Military Leave:

- A. The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects the job and benefits, for up to five years (or more in some cases), of a service member who must leave his or her civilian job because of military orders to report for training or active duty, voluntary or involuntary, in peacetime or wartime.
- B. Military Leave for Reserve or National Guard Activities (§ 20-1-1 NMSA 1978). USERRA requires service members, or a responsible representative of the military unit, to provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity. Paid Military leave is granted for authorized reserve or National Guard activities for a maximum of fifteen (15) working days with pay during a one (1) year period based on the federal government's fiscal year from October 1 to September 30. Military leave must be requested twenty (20) working days in advance, unless a national or state emergency exists and an immediate call-up is initiated in which case notice as soon as possible is

required. The employee must furnish proof of duty orders or other documentation prior to leave being granted unless the leave is for emergency purposes.

- C. Extended Unpaid Military Leave. Employees voluntarily or involuntarily serving on active duty for more than fifteen (15) working days may use accrued annual leave. When military leave has been exhausted, employees have the option of being placed on leave without pay (LWOP) or using accrued leave. Employees may use all of their annual leave on consecutive days or use up to twenty-seven (27) hours per pay period in order to maintain their group insurance benefits. Employees who exhaust their annual leave shall then be placed on LWOP for the remainder of time they are on active duty. Employees shall not receive pay or accrue leave while on LWOP. Employees wanting to maintain insurance benefits while on military duty will be required to pay the employee's share of their premium.
- D. Service members are entitled to return to their City job and receive pay raises, promotions, pension credit and other seniority benefits as if you had been continually employed, provided certain eligibility criteria be met. Protection under the USERRA applies if:
 - 1. The job the employee left was for more than a brief, non-recurrent period, with no reasonable expectation that such employment would continue indefinitely or for a significant period.
 - 2. The employee left this job for the purpose of entering active duty.
 - 3. The employee is discharged under honorable conditions.
 - AND
 - 4. The employee applied for reemployment within the applicable time limit.
- E. If these criteria are met, the USERRA provides the following protections:
 - 1. The employee is entitled to return to the prior position with the same seniority, benefits, pay, and, additionally, any promotion or raise which could have been reasonably expected if the employee had remained continuously on the civilian job.
 - 2. The City is required to offer disabled veterans the "nearest approximation" of the job the service member could have reasonably expected with continuous employment.
 - 3. Service members are protected from being discharged for the protected period allotted by USERRA according to the time served on active duty, unless the City proves misconduct or violation of policies.
 - 4. To be re-employed in the same position, the employee's return to work must occur within the following guidelines:
 - a. For a service period of 1-30 days, the employee must report to work immediately by the first regularly scheduled work day;
 - b. For a service period of 31-180 days, the employee must make application for re-employment within 14 calendar days after he/she is relieved from training or duty;
 - c. For a service period of 181 days or more, the employee must make application for re-employment ninety (90) calendar days after he/she is relieved from training or duty;
 - d. An employee, who is released from hospitalization of a service-related injury, continuing after discharge for a period of not more than one (1) year, must make application for re-employment ninety (90) calendar days after he/she is relieved from training or duty.

- F. Employees may qualify for up to twelve (12) weeks of leave for qualifying exigencies arising out of a covered military member's active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation under the FMLA.

10.23 Light Duty Return-To-Work: Employees who are on leave due to an on-duty injury or illness may be eligible to return to work on light duty status after their physician certifies their fitness to do so. The department director and the Human Resources Manager will determine if there is a position or duties suitable for an employee to perform light duty work. The City retains full discretion as to whether or not an employee is eligible for light duty status.

- A. **Coordination with Attending Physician:** An employee on leave due to a work-related disability can return to work only when the City receives the attending physician's written medical release authorizing such return. The Human Resources Manager is responsible for providing the physician with a copy of the employee's job description, copies of job descriptions for potential restricted duty assignments, and written information explaining the City's return-to-work program.
- B. **Return-to-Work Options:** Arrangements to facilitate an employee's early return to work are made in consultation with the employee's attending physician and/or other qualified medical professionals retained by the City or its insurance carrier. The following options will be explored:
1. **Return to prior position:** An employee is offered the opportunity to return to his or her prior position if the attending physician certifies that the employee can perform the essential functions of the job with or without reasonable accommodations. The Human Resources Manager or his/her designee is responsible for working with the employee's supervisor and attending physician (and third-party consultants, as necessary) to provide any reasonable accommodations.
 2. **Restricted duty:** Any employee who is not yet able to return to their former duties are offered, subject to the restrictions set out in Section 5.2 of these Rules, a temporary restricted duty assignment that has been approved by the employee's attending physician. The Human Resources Manager is responsible for working with the employee's supervisor, and the employee's attending physician to develop and implement the restricted duty assignment. The assignment can consist of the employee's regular job, with reduced working hours or reduced activities, or an alternative restricted duty position.
- C. **Limitations on Restricted-Duty Assignments:** The following limitations apply to restricted duty assignments:
1. **No guarantee of work:** As provided in Section 5.9 of these Rules, the City will endeavor to return employees to gainful employment as soon as possible by exploring possible restricted duty assignments. However, the City does not guarantee the availability of restricted duty work.
 2. **Pay rates and Workers' Compensation benefits:** Employees on restricted duty are not guaranteed the rate of pay they received for the position they held at the time they sustained their work-related injury or illness. The pay rate for a restricted-duty assignment is based on the knowledge, skills, and abilities required for the job as well

as general market conditions. Employees who return to work before they have reached maximum medical improvement (MMI) may be eligible for temporary partial disability benefits under the state Workers' Compensation program, if they earn less than they earned in the position held at the time they sustained the work-related accident or illness. Employees in restricted duty positions are not permitted to supplement their workers' compensation benefits by using their accrued annual, personal, or medical/sick leave.

3. Four (4) week limit: Restricted duty assignments are temporary arrangements intended to complement and facilitate the healing process. Restricted-duty assignments cannot exceed four (4) weeks without approval from the department director and approved by the City Manager.

- D. Employee Refusal of Work/Training: In the event that an employee refuses to return to regular or restricted duties in response to a written, bona fide offer of employment by the City sent via certified mail, the employee is separated from the City and his/her position will be filled permanently (NOTE: An exception to this rule applies in the case of employees who have not yet exhausted their FMLA leave entitlement, refer to subsection F.).

A written offer of employment shall be on a form promulgated by the City Manager and must clearly state:

1. The position offered and the duties of the position;
2. The City's agreement to any limitations or conditions set out in the attending physician's certification of the employee's fitness to return to work;
3. The job's essential functions; and
4. The job's start date, wage, working hours, supervisor and location;
5. Length of assignment and required training.

- E. Coordination with FMLA: Nothing in these Rules should be construed as denying employees their rights under the FMLA or any other federal or state law.
- F. It is the City's policy to designate an employee's absence from work due to a work-related injury or illness as FMLA leave to the extent allowed by federal law. Employees entitled to FMLA leave can voluntarily accept restricted duty assignments while they are recuperating, but they cannot be required to do so. Employees who lose their workers' compensation benefits because of declining a restricted duty assignment are required to substitute any available paid leave, such as accrued annual, personal, or medical/sick leave, for unpaid FMLA leave.
- G. Until employees have exhausted their twelve (12) week FMLA entitlement, they have the right to be reinstated to their original job or an equivalent job providing they are able to perform the job's essential functions.

10.24 Change in FLSA Status:

- A. Upon change from FLSA non-exempt to FLSA exempt status, employees shall be paid a lump sum for the unused portion of their accrued compensatory leave, overtime, sick leave and vacation leave. For employees that qualify, sick leave will be compensated in accordance with Section 10.7 B.
- B. The lump sum payment shall be calculated based on the non-exempt salary rate.

- C. Upon change from non-exempt to exempt status and transfer to a new department, employees shall be paid the lump sum for the unused portion of their accrued compensatory leave by their previous department.
- D. If an employee's change in status is contingent upon a Ninety (90) day trial period, pursuant to section 5.2 of this Ordinance, the lump sum payment shall not be made until successful completion of the trial period.

SECTION XI: SUBSTANCE ABUSE POLICY

11.0 Purpose

- A. The City has adopted this employee substance abuse policy and a drug and alcohol testing policy for the following City Departments: Electric, Fleet, Police, Solid Waste, Street, Waste Water, Water, and all other safety sensitive and non-safety sensitive employees. A safety sensitive employee is an employee who performs duties for the City, with safety ramifications for themselves, fellow employees and the general public. These positions may include, but are not limited to employees who operate equipment/vehicles, have access to confidential information and/or receive calls for public service.
- B. The purpose of this policy is to assure worker fitness for duty and to protect our employees and the public from the risks posed by the misuse of alcohol, the use of prohibited drugs and the misuse of legal drugs. The City is concerned only with those situations where use of alcohol and other drugs interfere with any employee's health, job performance and adversely affects the job performance of other employees or is considered so serious as to be detrimental to the City's operations and the safety of himself/herself and others. There is no intent to intrude upon the private lives of employees.

11.1 Safety Sensitive Employees: Adherence to this testing policy is a condition of employment for all safety-sensitive positions. Safety-sensitive functions refer to any functions contained within an employee's realm of responsibilities that have an impact upon the safety and general welfare of the public or coworkers.

11.2 Policy: The City is dedicated to providing safe, dependable and economical services to our public. City employees are our most valuable resource and it is our goal to provide a healthy, satisfying working environment, which promotes personal opportunities for growth. In meeting these goals, it is our policy to (1) assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner; (2) create a work environment free from the adverse effects of drug abuse and alcohol misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) to encourage employees to seek professional assistance anytime personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

- A. An employee using prescription drugs or over-the-counter medications that could affect work performance, must inform their director (information received shall be kept confidential). An employee with a temporary ailment or permanent medical condition that may affect job performance also must notify their director. A doctor's statement may be required at the City's discretion. Failure to notify the director can lead to injury or property damage, or suspicions of substance abuse that might unnecessarily lead to

substance testing. Upon such notification the City may require the employee to take medical or other leave.

- B. All safety-sensitive employees will receive training on the effects and consequences of prohibited drug or alcohol use on personal health, safety and the work environment, and the signs and symptoms, which may indicate prohibited drug, or alcohol use. The City will schedule mandatory classes but it is ultimately the responsibility of the employee to attend a class provided for by the City.
- C. All department heads and supervisors designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol/drug testing will receive training on the physical, behavioral, speech and performance indicators of probable prohibited drug or alcohol misuse.

11.3 Prohibited Substances: "Prohibited substances" addressed by this policy include the following:

- A. Illegally used controlled substances or drugs: Includes, but is not limited to: marijuana, except when prescribed in accordance with New Mexico law and the employee is in a non-safety sensitive position, amphetamines, methamphetamines, opiates, phencyclidine (PCP), and cocaine, as well as drugs not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. The collection agency shall adhere to all requirements outlined in 49 CFR, Part 40 DOT Guidelines in determining what constitutes a positive test.
- B. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance, including synthetic drugs, which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected shall be reported by the employee to their supervisor and medical advice shall be sought by both the employee and supervisor, as appropriate, before performing safety-sensitive functions. A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. The misuse or abuse of legal drugs while performing official business is prohibited.
- C. Alcohol: The use of beverages or medications containing alcohol, subject to Paragraph 11.3(B) above.

11.4 Prohibited Conduct:

- A. Manufacture, Trafficking, Possession, and Use. Employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or sale of prohibited substances while on duty, on City premises, or in City vehicles. Law enforcement shall be notified, as appropriate, where criminal activity is suspected.
- B. Intoxication/Under the Influence: Any safety-sensitive employee who fails a drug test or has a breath alcohol concentration of 0.04 or greater shall be removed from their safety-sensitive position and referred to an SAP (substance abuse professional). Such test result will subject the employee to disciplinary action up to and including termination. A safety sensitive employee with a breath alcohol concentration of 0.02 or greater, but less than 0.04 shall be immediately removed from their safety-sensitive position for a

minimum of 8 hours or until they can pass an alcohol test with a BAC of less than 0.02. If a breath analyzer is unavailable, testing will be conducted via blood test.

- C. **Alcohol Use:** No employee should report for duty or remain on duty when his/her ability to perform assigned duties is adversely affected by alcohol or when his/her breath alcohol concentration is 0.04 or greater. No employee shall use alcohol while on duty, or while performing County duties. No employee shall use alcohol within four hours of reporting for duty; or during the hours, they are scheduled on call; or up to eight hours following an accident or until tested. Employees, who are not scheduled on call, shall upon being notified to report to duty, acknowledge alcohol use and their inability to perform his/her duties and shall be excused from doing so without further consequences. No County employee under the age of 21 shall have a breath alcohol concentration of .02 or greater at any time while performing duties for the County. Violation of these provisions is prohibited and punishable by termination.
- D. **Compliance with Testing Requirements:** Safety-sensitive employees shall be subject to urine drug testing and breath alcohol testing. Non-safety sensitive employees may be subject to urine drug testing and breath alcohol testing based on reasonable suspicion. Refusal to comply with a request for testing, failure to provide sufficient quantity of breath or urine, failure to appear timely, failure to cooperate with any part of the testing process, refusal to sign the drug testing chain of custody form, refusal to sign Step #2 on the alcohol breath testing form, inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation, tampering with or attempting to adulterate the specimen or collection procedure or not reporting to the collection site in the time allotted, shall constitute a verified positive test result.

11.5 Testing Which Results In a Dilute Specimen:

A. **Definitions:**

Dilute Drug Screen – A drug screen that is identified by the testing lab as an irregular specimen pertaining to the specimen's specific gravity and creatinine concentration. (The irregularity in specific gravity minimizes the reliability of the testing procedure and therefore reduces the reliability in the results.)

Primary Test – A test that is conducted under Sections 11.10, 11.11 or 11.12.

Monitored Tests – The City will offer all employees who are required to take a second level test the opportunity to have the test monitored by a supervisor.

B. **Dilute Drug Screen Procedure:**

A dilute drug screen for Electric, Fleet, Police, Solid Waste, Street, Waste Water, Water, and all other safety sensitive City employees who are covered by this policy will be handled as follows:

1. **Primary Test:**

Identified as Dilute:

- a. The employee shall enter into a re-entry contract as defined in Section 11.17 and 11.18 or
- b. If the employee's physician certifies in writing that there is a valid medical cause for the dilute result, unrelated to illegal drug use or prescription drug abuse, the employee may submit to a hair sample test, at the City's expense, to contest the results.

- c. The employee without a physician's certification may submit to a hair sample test to contest the results if the employee pays, in advance, for the cost of the test.
- 2. Second Level Test (test for re-entry purposes or follow-up tests defined within a re-entry contract):
 - a. Monitored Dilute – The City will accept the test results as provided by the lab; tests will be monitored.
- C. Dilute Specimen Test for Employment Applicants: Any applicant for employment with the City whose pre-employment drug and alcohol screen test is identified as dilute, shall not be eligible for employment and is precluded from re-application for employment for:
 - 1. a period of one (1) year from the date of the test, or
 - 2. the applicant may submit to a hair sample test to contest the results if the applicant pays, in advance, for the cost of the test. In the event the hair sample test results are negative, the applicant will be eligible for immediate hire.
 - 3. if the employee's physician certifies in writing that there is a valid medical cause for the dilute result, unrelated to illegal drug use or prescription drug abuse, the employee may submit to a hair sample test to contest the results.

11.6 Treatment Requirements: All employees are encouraged to make use of the available resources for treatment for alcohol misuse and illegal drug use problems. Under certain circumstances, employees may be required to undergo treatment for substance abuse or alcohol misuse. Any employee who refuses or fails to comply with the City's requirements for treatment, after care, or return to duty will be subject to termination. The cost of any treatment or rehabilitation services will be paid for directly by the employee or their insurance provider. Employees will be allowed to take accumulated sick leave and vacation leave to participate in the prescribed rehabilitation program.

11.7 Proper Application of the Policy: The City is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, department directors/supervisors are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any department director/supervisor who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy concerning subordinates, will be subject to disciplinary action, up to and including termination.

11.8 Testing Procedures:

- A. Safety-sensitive employees of the City shall be subject to drug (urine) and alcohol testing for reasonable suspicion, return to duty, follow-up or random and may be subjected to testing following an accident. Follow-up testing will be conducted for a period of one to five years, with up to six tests performed during the first year and as many as four in subsequent years. The Substance Abuse Professional (SAP) may determine the frequency and duration of follow-up testing.
- B. Testing shall be conducted using techniques, equipment and certified laboratory facilities to ensure a high degree of accuracy and reliability. Alcohol testing may only occur during or immediately before/after performing safety sensitive duties and up to eight

hours following an accident. Drug testing may occur any time while performing duties for the City and up to 32 hours following an accident.

11.9 Pre-Employment Drug & Alcohol Screening: All applicants for employment with the City shall be required to take a drug and alcohol screening test when they report for their pre-employment medical examination or when otherwise directed by the City Manager or his/her designee. Any applicant for employment with the City, whose pre-employment drug and alcohol screen test is identified as positive, shall not be eligible for employment and is precluded from re-application for a period of one (1) year from the date of the test.

11.10 Employee Requested Testing: Any safety-sensitive employee who questions the result of a required drug test under paragraphs 11.10 through 11.15 of this policy may request that an additional test be conducted. This test will be conducted at a different certified laboratory. The test will be conducted on the split sample that was provided by the employee at the same time as the original sample. The method of collecting, storing, and testing the split sample will be consistent with acceptable testing standards. The employee's request for a split sample test must be made to the Medical Review Officer* within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the control of the employee. An employee requested test will be at the expense of the employee.

11.11 Reasonable Suspicion Testing: All employees shall be subject to urine and/or breath testing when there is reasonable suspicion to believe an employee is under the influence of prohibited substances. Reasonable suspicion is a belief based on objective facts sufficient to lead a prudent person to suspect that an employee is under the influence of a substance to the extent that job performance may be impaired or ability to perform the job safely may be reduced. A reasonable suspicion referral for testing will be made based on articulable objective facts and circumstances, which are consistent with the short-term effects of substance abuse. Testing an employee, based on reasonable suspicion requires City Manager approval. The supervisor or designee will take the employee to the designated test site as soon as practical for a test. Examples of reasonable suspicion include, but are not limited to the following:

- A. Physical signs and symptoms consistent with prohibited substance use, including slurred speech, poor coordination, and glazed or bloodshot eyes;
- B. Evidence of the manufacture, distribution, dispensing, possession, or use of controlled substances, drugs, alcohol, or other prohibited substances;
- C. Occurrence of an accident that may have been caused by use of a prohibited substance or alcohol misuse;
- D. Fights (to mean physical contact), assaults, and flagrant disregard or violations of established safety, security, or other operating procedures;
- E. Odor of alcohol or prohibited substance on person, clothing or in workspace;
- F. Abnormal or erratic behavior;
- G. Abnormal decline in work performance associated with frequent absences or tardiness; or
- H. Information from a reliable source.

11.12 Post-Accident Testing: Any City employee involved in an automobile/heavy equipment accident occurring on City property or involving City equipment/vehicle meeting any of the following criteria shall be subject to a drug or alcohol test:

- A. An individual dies;
- B. An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident;
- C. One or more vehicles incur disabling damage because of the accident and are transported away from the scene by tow truck or other vehicle; or
- D. The City driver was cited in the accident.

* Medical Review Officer – See DEFINITIONS Section 11.21.

11.13 Random Testing:

- A. Employees in safety-sensitive positions shall be subjected to random, unannounced drug testing. The selection of safety-sensitive employees for random drug testing will be made using a scientifically valid method that ensures each covered employee will have an equal chance of being selected each time selections are made. The random tests will be unannounced and spread throughout the year on all days and during all hours of operation.
- B. When a safety-sensitive employee is informed of a random drug test, they must be tested as soon as is reasonably possible but in a time not to exceed 3 hours. All employees who have been randomly selected or are testing in conjunction with Rule 11.11 will be notified in writing by the City Manager, department director, supervisor, or Human Resources. All tests will be collected as a split sample, giving the employee an opportunity to exercise his/her right to an additional test (Section 11.10) on the sample collected. Should the City's agent not collect a split sample, the results of the test for which a split sample was not collected, will be disregarded by management and the employee will not be required to re-test for this specific testing period.
- C. All safety sensitive employees shall be placed in a selection pool and random drug testing shall come from this predetermined pool. The individual pools shall be defined as follows:
 - 1. Electric Department
 - 2. Fleet Department
 - 3. Police Department
 - 4. Solid Waste Department
 - 5. Street Department
 - 6. Waste Water Department
 - 7. Water Department
 - 8. All other safety-sensitive employees
- D. Shift employees, or employees who are not at work on the day of the scheduled test (random or otherwise), and who have been selected for testing, will be required to test immediately upon their return to work/duty and will be notified and expected to adhere to the rules as described above.

11.14 Return-To-Duty Testing*: A return-to-duty test is required of an employee who has had a positive drug or alcohol test and must be passed (negative non-dilute) before they can return to a safety-sensitive position. The SAP must first clear the employee to return-to-regular-duty after the evaluation and insure the employee has consented to treatment. The return-to-duty test may be for drugs and/or alcohol as required. Any work missed due to a positive

drug/alcohol test or due to treatment shall be charged to the employee's sick leave and/or annual leave (employee's choice) or leave without pay if the employee has no leave balances.

11.15 Follow-Up Testing*: If allowed to return to duty, safety-sensitive employees shall be subject to unannounced follow-up testing for at least 12, but not to exceed 60 months. The SAP may recommend the frequency and duration of the follow-up testing as long as not more than six tests are performed during the first 12 months after the employee returns to duty. Follow-up testing is separate from and in addition to the random testing program.

11.16 Employment Assessment: The SAP may refer any safety-sensitive employee who tests positive for the presence of illegal drugs or alcohol above the minimum thresholds for evaluation. A SAP is a licensed or certified physician, psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related and drug-related disorders. The SAP may evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited drug use or alcohol misuse. Employees may select the SAP of their choice as long as the criteria above is met.

11.17 Departmental Rule for Positive Drug/Alcohol Test:

- A. Any probationary employee who, because of this policy tests positive for drugs and/or alcohol, will be terminated immediately.
- B. Any employee who has been placed on an improvement contract and who tests positive for drugs/alcohol as defined by this policy will be terminated from employment.
- C. Safety Sensitive Positions:
 - 1. A positive prohibited substance/alcohol test for an officer or dispatcher shall be reported to the New Mexico Law Enforcement Academy Director as outlined in the NMLEA Handbook Subsection B4 of 10.29.1.11 NMAC.
 - 2. Any safety sensitive employee who tests positive for prohibited substances and/or alcohol under this policy shall be terminated from employment with the City, Section 7.10.
 - 3. Any safety sensitive employee whose primary test is determined to be a dilute test will be subject to the terms and conditions as defined below (this does not include tests taken as a result of a re-entry contract which are monitored tests and are determined to be dilute).
- D. Any safety sensitive employee who is covered by this policy and whose primary test is determined to be dilute as herein defined, shall be subject to the terms and conditions of:
 - 1. The re-entry contracts defined below;
 - 2. Rule 11.13 of this policy, and;
 - 3. Rule 11.14 of this policy.
 - 4. If applicable, any CDL provisions that may apply.
- E. City safety sensitive employees shall be terminated upon violation of any of the terms and conditions of the individual's re-entry contract (defined below). An unmonitored dilute, second level test (subject to a re-entry contract) shall result in termination of employment.

11.18 Re-Entry Contracts (general safety sensitive employees):

- A. Employees who re-enter the workforce must agree to a re-entry contract. That contract may include, but is not limited to:
 - 1. A release to work statement from the Substance Abuse Professional.
 - 2. A negative test for drugs and/or alcohol. (Section 11.14)
 - 3. An agreement to unannounced frequent follow-up testing for a period of one to five years with up to six tests performed the first year (Section 11.15).
 - 4. A statement of expected work-related behaviors.
 - 5. An agreement to follow specified after care requirements with the understanding that violation of the re-entry contract is grounds for termination.
 - 6. City safety sensitive employees shall be terminated upon violation of any of the terms and conditions of the individual's re-entry contract (defined below). An unmonitored dilute, second level test employees (subject to a re-entry contract) shall result in termination of employment.
- B. Any safety sensitive employees not covered above shall be terminated upon violation of any of the terms and conditions of the individual's re-entry contract (defined below).

11.19 Detection: The City reserves the right to inspect, at any time, all City property and all City vehicles and equipment for the presence of prohibited substances or alcohol. All inspections will be scheduled as deemed necessary by the City Manager or his/her designee.

11.20 Voluntary Request for Assistance:

- A. The City intends to give the same consideration to persons who voluntarily request assistance (prior to being randomly selected or selected for cause) with chemical dependencies as it does to employees having other diseases. Therefore, employees are encouraged to seek professional assistance anytime they experience personal problems, including alcohol or drug dependency.
- B. Early recognition and treatment of chemical (drug and alcohol) dependency problems is important for successful rehabilitation and reduced personal, family and social disruption. The City supports sound treatment efforts and an employee's job will not be jeopardized for conscientiously seeking assistance prior to random selection or selection for cause. Normal City benefits, such as sick leave and the group medical plan, are available to give help in the rehabilitation process to any employee who voluntarily requests assistance for chemical dependencies.
- C. Employees are encouraged to self-report alcohol and drug dependencies prior to random testing selection or testing based on reasonable suspicion. The City has an obligation to maintain the public trust; therefore, any employee identified with a positive test result for illegal drugs, inappropriate use of prescription medications or alcohol will be terminated.

11.21 Definitions:

Medical Review Officer (MRO): The MRO is a licensed physician who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate positive

drug test results. The List of primary responsibilities below is followed by standard operating procedures necessary to carry out those responsibilities:

- A. Receive test results from the laboratory
- B. Review all drug testing results prior to reporting
- C. Verify that the laboratory report and assessment are correct
- D. Review and interpret each confirmed lab tested positive result
- E. Conduct a medical interview, providing an opportunity for the employee to discuss a positive test result
- F. Notify employer of verified positive test
- G. Process employee request for re-test
- H. If necessary, re-analyze the original specimen to determine the accuracy of the test result

11.22 Records:

- A. All records of the controlled substance abuse prevention programs must be kept in a secure location with controlled access in Human Resources. Regulation requires that certain records according to their importance be maintained for varying lengths of time, from one (1) to five (5) years.
- B. Records must be kept confidential and be made available for inspections by the City Manager within two (2) business days following a request by an authorized representative of the Federal Highway Administration. These records should not be made a part of a driver's personnel file.
- C. The following are entitled access to these records through approval of the City Manager:
 - 1. CDL Issuer or his/her representative;
 - 2. The Secretary of Transportation;
 - 3. Any Department of Transportation Agency;
 - 4. Any State or Local Official with regulatory authority over the employee;
 - 5. Any prospective employer with the employee's written permission.

11.23 Confidentially: No laboratory reports or test results shall appear in the employment personnel file unless they are a part of a disciplinary action, but shall be placed in a special locked file.

SECTION XII: COMPUTER, EMAIL, INTERNET, SOCIAL MEDIA, & CELLULAR PHONE USE

12.0 Access: Access to a City computer, email and Internet service and a ~~City~~ cellular phone is a privilege. Users granted this privilege must adhere to strict guidelines concerning the appropriate use of this information resource. Users who violate the provisions outlined in this document are subject to disciplinary action up to and including termination. In addition, any inappropriate use that involves a criminal offense will result in legal action. All users are required to acknowledge receipt and understanding of guidelines contained in this document.

12.1 Purpose & Scope: To define policies and procedures for computer use and access to the Internet through the City network infrastructure, and cellular phone use. This policy applies to all personnel with a computer or access to Internet and related services through the City network infrastructure, or have a cellular phone provided by the City. Internet Related services

include all services provided with the TCP/IP protocol, including but not limited to Electronic Mail (e-mail), File Transfer Protocol (FTP), and World Wide Web (WWW) access. Internet access includes, but not limited to connections via DSL subscriptions, phone modem access, server-to-Internet access or T1 line access.

12.2 Acceptable Use: Access to a City computer or the Internet is specifically limited to activities in direct support of official City business.

- A. In addition to access in support of specific work related duties, the City Internet connection may be used for educational and work-related research purposes.
- B. If any user has a question of what constitutes acceptable use he/she should check with their supervisor for additional guidance. Management or supervisory personnel shall consult with the City Manager for clarification of these guidelines.

12.3 Inappropriate Use: City computers, Internet access or use of a City cellular phone shall not be used for any illegal or unlawful purposes. Examples of this would be personal use, or the transmission of violent, threatening, defrauding, pornographic, obscene or otherwise illegal or unlawful materials.

- A. Use of City electronic mail or messaging services shall be used for City business only. These services shall not be used to harass, intimidate or otherwise annoy another person.
- B. The City Internet access shall not be used for private, recreational or other non-City related activity.
- C. City equipment and the Internet connection shall not be used for commercial or political purposes.
- D. Use of City Internet access shall not be used for personal gain such as selling access of a City user login. Internet access shall not be used for or by performing work for profit with City resources in a manner not authorized by the City.
- E. Users shall not attempt to circumvent or subvert security measures on the City's network resources or any other system connected to or accessible through the Internet.
- F. City users shall not use Internet access for interception of network traffic for any purpose unless engaged in authorized network administration.
- G. City users shall not make or use illegal copies of copyrighted material, store such copies on City equipment, or transmit these copies over the City network.
- H. City users shall not download non-City software without authorization from their department director and approved by the City's IT Manager.

12.4 Internet, E-Mail & Cellular Phone Etiquette: City employees shall ensure all communication through City email, messaging services and texted messages are conducted in a professional manner. The use vulgar or obscene language is prohibited.

- A. City users shall not reveal private or personal information without specific approval from management.
- B. Users should ensure that e-mail and texted messages are sent to only those users with a specific need to know. The transmission of e-mail or texted messages to large groups or messages with large file attachments should be avoided.
- C. Electronic Mail and texted messages are not guaranteed to be private. Messages transmitted through the City e-mail system or network infrastructure or on City cellular

phones are the property of the City and are therefore subject to inspection by management and to IPRA requests.

- D. The destruction or deletion of emails and texts containing City business is prohibited and a violation of law.

12.5 Security:

- A. City users who identify or perceive an actual or suspected security problem shall immediately contact the City Information Technology Manager.
- B. Users shall not reveal account passwords or allow another person to use their account. Similarly, users shall not use the account of another user.
- C. Access to City network resources shall be revoked for any user identified as a security risk or a demonstrated history of security problems.

12.6 Penalties: Any user violating these policies is subject to the loss of network privileges and any other City disciplinary actions as detailed in Section 7 of this ordinance.

12.7 No Expectation of Privacy: Users should not expect any information transmitted via City's systems or phones to remain private or confidential.

- A. The City may monitor use of any part of City Systems at any time, without notice, at its discretion. Such monitoring may include, but is not limited to limiting size, accessing, listening to, reading, or retrieving voice mail messages, e-mail, Internet communications, text messages, or local files.
- B. Users should be aware that deleted files or other communications may be retrieved and review by City Management.
- C. Users are prohibited from, among other things, accessing, listening to, reading or retrieving other team members' e-mail, voice mail, or Internet communications unless specifically authorized to do so by Management.
- D. All files, documents created or stored through the City's network infrastructure, computer system or cellular phones are the property of the City and are therefore subject to inspection by management and to IPRA requests.

12.8 User Compliance: All terms and conditions as stated in this document are applicable to all users of the network and the Internet connection.

12.9 Protection & Handling of Sensitive Information: It is the responsibility of every City employee to ensure the protection of sensitive information and comply with all information technology policies. This includes but is not limited to ensuring such information does not leave the City network, making a reasonable effort to redact sensitive information when sharing records and protecting security account information.

12.10 Social Media: The use of social media on the job is prohibited, unless as required to disseminate time sensitive information (emergency information) as quickly as possible or required for informational purposes. The City does not prohibit employees from participating in social media while not at work, nor is the content posted any concern of the City. However, if an employee uses social media to harm the City, City constituents, or fellow employees, participation while not at work can have employment consequences. To make the distinction between private activity and work activity as clear as possible, in cases where confusion might be created,

employees should identify a social media posting as a personal opinion rather than the opinion of the City.

SECTION XIII: PAY POLICY

13.1 Purpose: This Section outlines the provisions for the City's system of comparing and classifying positions according to their relative equivalence for establishing fair and equitable promotion and pay compensation for employees. The Board approves all positions and salaries as part of the fiscal year budget process or as otherwise necessary.

13.2 Applicability: The provisions of this section shall apply to all employees except that Contract Employees and unclassified employees are subject to wage increases as negotiated and approved by the Board.

13.3 Pay Compensation Process Overview: The pay compensation system includes provisions for:

- A. entry level wages;
- B. step wage increases
- C. transfers;
- D. demotions; and
- E. promotion wage increases.

The Board may at their discretion amend the general wage and classification plan and the general wage schedule by resolution or motion of the Board when deemed appropriate.

13.4 Entry Level Wages: All new employees are normally hired at the Entry level position for the level of position that has been vacated or otherwise approved for hire by the department director, subject to budgetary constraints and the approval of the City Manager.

13.5 Position Specifications Requirements: Each position has a written Position Specification, which includes specifications for minimum qualifications, education, experience, abilities, skills, license, or certification requirements, and a description of duties and responsibilities required for the position.

13.6 Grandfather Clause: Any employee whose position specification is revised is subject to the experience, education, or certification requirements of the new position specification shall show satisfactory progress to meet the new standards within six (6) months or may be subject to reclassification, transfer or dismissal.

13.7 Contents of Personnel File: Subsequent to hiring, a separate record file shall be prepared and maintained for each employee. These records shall be kept in the Human Resources Manager's office. It is the responsibility of each department director to ensure that the records of the employees are complete and up-to-date. The file shall contain a minimum of the following records:

- A. the original application form;

- B. the originating personnel action showing occupation, position classification, date of beginning employment and salary and a signed receipt, evidence of receiving these Rules;
- C. copies of personnel action forms.
- D. copies of all performance evaluations, if applicable;
- E. copies of all favorable or unfavorable letters or memorandums such as letters or certificates of appreciation or records of other outstanding achievements regardless of origination, so long as the procedure applicable to written reprimands is followed;
- F. records or certificates of educational training or orientation achievement completion;
- G. records of disciplinary actions such as reprimands, suspensions, demotions or dismissal; and
- H. application for retirement program.

13.8 Access to Personnel Files: Personnel files are the property of the City and access to the information they contain is restricted. Generally, only immediate supervisors and management personnel of the City who have a legitimate reason to review information in a file are allowed to do so. Employees who wish to review their own file should contact the Human Resources Manager. With reasonable advance notice, employees may review their own personnel files in City's offices and in the presence of an individual appointed by the City to maintain the files.

SECTION XIV: EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PLAN

14.1 Purpose: The purpose of this section is to recruit, employ and promote the most qualified applicants or employees to work in City employment. Employment and promotional opportunities shall be based solely upon ability and demonstrated competence, not upon extraneous factors. Age, sex, marital status, national origin, religion, race, sexual preference, political affiliation and handicaps not related to ability to perform the job sought, are declared extraneous factors that shall have no bearing on employment or promotional opportunities within City service.

14.2 Statement of Policy: It is the policy of the City to comply with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, amended by the Equal Employment Opportunity Act of 1972 and Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, in all employment and programs administered by the City. The City affirms that individuals will be considered for employment or promotion based on bona-fide occupational qualification only and best suited for a position. Each employee or prospective employee will be advised of this policy. All announcements or notices regarding position openings or opportunities will contain the words "An Equal Opportunity Employer".

14.3 Management Responsibility: The Human Resources Manager will consult with department directors to resolve internal complaints of employment discrimination filed by City employees or employment applicants. The Human Resources Manager shall be the referral officer for the City to receive notice of alleged unlawful employment practices from the Equal Employment Opportunity Commission (EEOC) as provided for in Public Law 88-352, Title VII, Section 706(C); 78 Stat. 241 (42 USC 2000e-5).

14.4 Complaint Procedures: Any employee or person refused employment or who believes he/she has been subjected to a discriminatory employment act or practice prohibited by federal or state law shall file with the Human Resources Manager a written and signed statement of facts setting out the basis of the complaint.

- A. Upon receiving a written and signed complaint or upon receiving notice of an alleged unlawful employment practice from an individual, the Human Resources Manager or designee shall immediately conduct an investigation and attempt to resolve such complaint informally and forward copies of the investigation and results to the department director and City Manager.
- B. If the process set forth in subsection A above does not resolve the complaint informally, it will go before a Hearing Officer appointed by the City Manager. The Hearing Officer shall conduct a hearing not more than forty-five (45) days after the complaint has been received by the Human Resources Manager. The complainant, complainant's attorney (if any), the City Manager, Human Resources Manager, City Attorney, department director, and the employee allegedly responsible for the discriminatory act or practice, shall be given five (5) days written notice of the hearing, together with a copy of the complaint filed with the Human Resources Manager.
- C. At the hearing, the complainant and respondent shall have the right to be represented by counsel; all testimony shall be received under oath, and the Hearing Officer shall have the authority to issue administrative subpoenas for the attendance of any City employee as a witness.
- D. The Hearing Officer shall report findings and recommendations in writing to the City Manager and department director not more than twenty (20) days after hearing the complaint. A full record of the proceedings shall be kept either by audio media or in writing by the Human Resources Manager in a confidential file.

14.5 Remedies: In the event the City Hearing Officer determines that a discriminatory act or practice has occurred, the City Manager may take appropriate action including, but not limited to, reinstatement, hiring or promotion of the aggrieved individual, with or without back pay, or any other equitable administrative relief necessary to correct and rectify the discriminatory act or practice. Nothing in this policy prohibits any aggrieved party from seeking remedy through the state or federal agency responsible for such actions.

SECTION XV: MISCELLANEOUS

15.1 Designated Work Areas: All employees are to be at their designated work areas on time and ready to work. They shall work until the scheduled quitting time, unless permission of the supervisor has been obtained for different work hours. Employees shall not litter work areas and will keep such areas neat and clean.

15.2 Personal Business: Personal business shall not be conducted during work hours. While we live in a cellular-world, employees are expected to exercise good judgment when making or receiving personal phone calls. Personal calls shall not interfere with productivity or distract others. Personal calls shall be kept to a minimum while on duty.

15.3 Safety: The City is committed to having all work conducted in a safe manner. All safety precautions shall be followed in accordance with federal and state regulations, and City policies and Safety Policies.

- A. Safety is every employee's responsibility; thus every employee is responsible for his or her personal safety, as well as, the safety of co-workers, visitors, and the public who come in contact with City services.
- B. Employees are responsible for the safe and efficient use of City facilities, equipment and vehicles, for conducting themselves in accordance with work rules and safety regulations and ensuring all activities are conducted and carried out in a safe and efficient manner.
- C. Safety equipment will be provided and used in accordance with OSHA regulations, City safety policies and other regulatory standards.

15.4 City Property: Employees shall not misuse or destroy City property, records, or other material in their care, control, or custody; nor shall any City property, records, or other material be removed from the premises of the City offices unless written permission by the department director has been given. Employees shall not use City property, records or equipment for personal use.

15.5 City Vehicles: No City vehicle will be taken out of the City without permission of the department director and employees shall notify the department director of their destinations and itineraries. City vehicles shall be used for City business only. City vehicles may not be taken home unless designated permissible as defined in the City Take Home Vehicle Policy and adheres to Section 9.9 Fringe Benefits.

- A. City vehicles shall not be used for personal business, except, as is incidental in commuting. Employee family members or passengers not on official City business are not allowed to ride in a City vehicle and strict adherence to this policy is directed to all employees operating a City vehicle.
- B. Any damage to a City vehicle is to be reported immediately to the appropriate department head.

15.6 Personal Appearance: Dress, grooming, and personal cleanliness standards contribute to the morale of all employees and affect the business image the City presents to customers and visitors.

- A. During business hours, employees are expected to present a clean and neat appearance and to dress according to the requirements of their positions. Employees who meet the public, both internal and external, must dress in appropriate business attire at all times. Employees may observe casual dress on Friday if the above stipulation does not apply. Examples of questionable work attire are sun dresses with bare backs and/or shoulders, men's undershirts, excessively baggy, short, or tight clothing, sweatpants and shorts, for men or women, bare midriffs or excessively sheer fabrics unless adequate cover-up (jacket, sweater, etc.) is worn throughout the work day, and low-cut tops/blouses/shirts/dresses (e.g., if they expose "cleavage" when the employee is standing or sitting in a normal manner). Employees who appear for work inappropriately dressed will be sent home and directed to return to work in proper attire. Under such circumstances, employees will not be compensated for the time away from work.
- B. Employees are required to maintain personal ~~cleanliness by bathing daily; maintaining daily oral hygiene (brushing of teeth); using deodorant/antiperspirant to minimize body odor; refraining from the use of heavily scented perfumes, colognes and lotions;~~

~~maintaining clean and trimmed fingernails; and washing hands after eating or using the restrooms.~~

- C. An employee should consult their department director if they have questions as to what constitutes appropriate attire.

15.7 Privileged/Confidential Information, Unauthorized Recordings, Eavesdropping:

- A. It is a violation of this policy to:
 - 1. Release or communicate information regarded as privileged or confidential to anyone not having a legitimate business need for the information.
 - 2. Read, interrupt, take or copy any message, document or communication intended for another without the consent of the intended recipient. Communications include, but are not limited to, statements made in person or phone during meetings, hearings, conferences, counseling, or conversations between employees or between employees and elected representatives.
 - 3. Engage in electronic surveillance, eavesdropping, and unauthorized or secret tape recording of any communications between or among employees or elected representatives of the City without the knowledge of the person making such communications.
 - 4. It is not a violation of this policy for employees to record communications with or among employees or citizen contacts in the course of official City business, or as otherwise expressly permitted by the Personnel Policy. This policy does not preclude tape recording when all parties to the communication are aware of the fact that the communication is being recorded or as required by statute for law enforcement contacts.

15.8 Searches & Surveillance: The City's employees should not expect privacy in their personal effects while on City property or on City time. Employee workplaces may be subject to video surveillance. The City may search lockers, desks, toolboxes, lunch sacks, clothing, City internet, City e-mail or City computer accounts and City electronic media/storage, a City vehicle, and any other item in which an unauthorized weapon or other contraband may be hidden. To the extent that an employee refuses to permit a search, such refusal may constitute grounds for disciplinary action.

15.9 Workplace Violence: The City provides a safe work place for all employees. To ensure a safe workplace and to reduce the risk of violence, all employees should review and understand all provisions of this Workplace Violence policy. All employees, including managers and supervisors, are responsible for using safe work practices, for following all directives, policies and procedures, and for assisting in maintaining a safe and secure work environment.

- A. Prohibited Conduct: The City does not tolerate any type of workplace violence committed by or against employees. Employees are prohibited from making threats or engaging in violent activities. This list of behaviors, while not inclusive, provides examples of conduct that is prohibited.
 - 1. Causing physical injury to another person;
 - 2. Physical fighting;
 - 3. Making threatening remarks;

4. Aggressive or hostile behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress;
5. Intentionally damaging City property or property of another employee;
6. Possession of a weapon while on City property or while on City business;
7. Committing acts motivated by, or related to, sexual harassment, harassment or domestic violence.

B. Reporting Procedures: Any potentially dangerous situations must be reported immediately in writing to a supervisor or the City Manager's office. All reported incidents will be investigated. Reports or incidents warranting confidentiality will be handled appropriately and information will be disclosed to others only on a need-to-know basis. All parties involved in a situation will be counseled and the results of investigations will be discussed with them. The City will actively intervene at any indication of a possibly hostile or violent situation.

C. Risk Reduction Measures: Hiring: The City takes reasonable measures to conduct background investigations to review candidate's backgrounds and reduce the risk of hiring individuals with a history of violent behavior.

D. Safety: The risk management carrier conducts annual inspections of the premises to evaluate and determine any vulnerability to workplace violence or hazards. Any necessary corrective action will be taken to reduce all identified risk areas.

E. Individual Situations: While the City does not expect employees to be skilled at identifying potentially dangerous persons, employees are expected to exercise good judgment and to inform their supervisor or department director if any employee exhibits behavior, which could be a sign of a potentially dangerous situation. Such behavior includes:

1. Discussing the use of weapons in a threatening manner related to the workplace, or bringing them to the workplace;
2. Displaying overt signs of extreme stress, resentment, hostility, or anger;
3. Making threatening remarks;
4. Sudden or significant deterioration of performance;
5. Displaying irrational or inappropriate behavior.

F. Dangerous/Emergency Situations: Employees confronted by or encounter an armed or dangerous person should not attempt to challenge or disarm the individual.

G. Enforcement: Threats, threatening conduct, or any other acts of aggression or violence in the workplace will not be tolerated. Any employee determined to have committed such acts will be subject to corrective or disciplinary action, up to and including dismissal. Non-employees engaged in violent acts on the City's premises will be reported to the proper authorities.

15.10 Final Paycheck: An employee who resigns shall receive a final paycheck on the first regularly scheduled payday following the employee's effective date of resignation. An employee dismissed shall receive a full paycheck by 5:00 p.m. on the fifth (5th) working day following dismissal or on the next payday, whichever occurs first, or as required by law. In the case of death, final salary and compensation for unused annual leave shall be paid to the employee's named beneficiary or, if unnamed, to the employee's estate, on the next regularly scheduled payday.

15.11 Uniforms: An employee in a designated job with the City may be required to wear special clothing to perform the job function with patches, badges or other distinctive items as approved by the department director or the City Manager.

15.12 Return of Uniforms, Equipment & City Property: Upon severance from City service, all City issued uniforms, equipment, keys, cellular phones, laptop computers, etc. shall be returned to the City. Failure to do so shall result in possible legal action to recover the cost of missing items.

15.13 Gifts, Gratuities or Kickbacks: All employees are prohibited from accepting gifts or other considerations from anyone given with intent of modifying the employee's performance of duties or encouraging the employees to make purchases from the individual or business involved. Employees will maintain the highest moral standards and any attempt to influence employee's performance by a vendor or other person will be reported to the department director and City Manager.

- A. It is unlawful for any City employee, as defined in §13-1-28 NMSA 1978, to participate directly or indirectly in a procurement when the employee knows that the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract. An employee or any member of an employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a financial interest with regard to matters pertaining to that trust. (§13-1-190 NMSA 1978)
- B. Contingent fees prohibited: It is unlawful for a person or business to be retained or for a business to retain a person or business to solicit or secure a contract upon an agreement or understanding that the compensation is contingent upon the award of the contract, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business and persons or businesses employed by the City which are providing professional services to the City in anticipation of the receipt of federal or state grants or loans (§13-1-192 NMSA 1978).
- C. Contemporaneous employment prohibited: It is unlawful for a City employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person or business contracting with the City by whom the employee is employed (§13-1-193 NMSA 1978).
- D. Use of confidential information prohibited: It is unlawful for any City employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person (§13-1-194 NMSA 1978).

15.14 Normal Work Hours: Normal work hours will be based on a forty (40) hour workweek. All City offices shall be open from 8:00 a.m. to 5:00 p.m. Monday through Friday, unless the department director and the City Manager approve a different work schedule. During a normal workday, the department director may authorize an unpaid full one-hour lunch breaks in accordance with departmental scheduling needs.

15.15 Reduced Work Hours: The Board may reduce the number of work hours by resolution if the Board determines that the City budget will not sustain the normal work hours. Reduced work hours will apply to all full time employees of the City, with the possible exception of those employees in safety-sensitive or security-sensitive positions.

15.16 Separation from Service with the City: Upon an employee's termination or resignation from the City, he or she may be required to complete an exit interview and separation report with the Human Resources Manager, and/or the department director.

SECTION XVI: AUTHORITY

16.1 Rules: These rules are promulgated on the authority granted in state and federal law and the Ordinance providing for these Rules.

16.2 Savings Clause: If any article, section, paragraph, clause, word or phrase of this Ordinance is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

SECTION XVII: REPEAL OF FORMER PERSONNEL POLICY

City Ordinances 10-3.3 Personnel Rules and Regulations is hereby repealed, as well as all other City Ordinances or Resolutions relating to personnel, which are in conflict with the above provisions, by the adoption of this Ordinance.

APPROVED, ADOPTED, AND PASSED on this 8th day of September, 2021.

SANDY WHITEHEAD, MAYOR

ATTEST BY:

ANGELA TORRES, CITY CLERK



EMPLOYEE ACKNOWLEDGEMENT FORM
CITY EMPLOYEE RECEIPT OF PERSONNEL POLICY ORDINANCE No. 719.

I _____ acknowledge that on _____
(print name of employee) *(date)*

I received an electronic/hard copy of the City of Truth or Consequences Personnel Policy Ordinance No. 719. I understand that the Personnel Policy is the law that controls, explains and provides the terms of and conditions of my employment with the City. I further understand that I am responsible for compliance with and understanding all City Policies, which can be found on the City's "Share" drive. I also understand that if I have questions concerning City policies I can talk to my supervisor, department director or Human Resources at any time. I further understand that this receipt will be placed in my personnel file as evidence of my having been given a copy the policy.

(Signature of Employee)



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

Agenda Item #: F.1

MEETING DATE: September 8, 2021

SUBJECT: Resolution No. 20 21/22 Declaring Surplus Property for an online Auction through J.J. Kane Associates, Inc. dba J.J. Kane Auctioneers to be held on October 5, 2021.

DEPARTMENT: Clerk's Office

DATE SUBMITTED: September 2, 2021

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 an online auctioneer J.J. Kane Associates, Inc. dba J.J. Kane Auctioneers to sell the surplus property belonging to the City. The auction is scheduled for October 5, 2021.

Recommendation:

Approve Resolution No. 20 21/22 declaring the listed items as surplus property and allowing the City to Auction items in a Public Auction.

Attachments:

- Resolution No. 20 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. 20 21/22 Ordinance No. N/A

Continued To: . Referred To: .

☐ Approved ☐ Denied ☐ Other: .

File Name: CC Agendas 9-8-2021



RESOLUTION NO. 20 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 online auction **J.J. Kane Associates, Inc. dba J.J. Kane Auctioneers** 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 8th day of September, 2021.

ATTEST:

Sandra Whitehead, Mayor

Angela A. Torres, CMC, City Clerk

Auction List
Surplus Property

Qty	D	VIN	PLATE	VALUE	LOCATION
	Streets Department				
	1995 BIG TEX Roadrunner Flatbed	16VCX1820S1H71065	G-30312	\$ 200.00	Street Department
	1993 Chevy Cheyenne	2GCEK19H7P1181644	G-26557	\$ 1,500.00	Street Department
	2001 Chevy S-10	1GNDT13W61K202689	G-47965	\$ 1,500.00	Street Department
	1981 Marmon Dump Truck	1M9CCB188B1004246	G-31161	\$ 3,000.00	Street Department
	1985 GMC Dump Truck	1GDT7D4Y5FV623007	G-26523	\$ 3,000.00	Street Department
	1976 John Deer Loader	236731T	N/A	\$ 5,000.00	Street Department



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: September 8, 2021

Agenda Item #: *F.2*

SUBJECT: Resolution No. 21 21/22 Budget Adjustment Resolution

DEPARTMENT: Finance Department

DATE SUBMITTED: September 1, 2021

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. 21 21/22 Budget Adjustment Requests for Fiscal Year 2021-2022

Attachments:

Resolution No. 21 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 9-8-2021



RESOLUTION NO. 21 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 **8th day of September, 2021**.

Sandra Whitehead, Mayor

ATTEST:

Angela A. Torres, City Clerk-Treasurer

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

For Local Government Division use only:

ENTITY NAME: City of Truth or Consequences
FISCAL YEAR: 2021-2022
DFA Resolution Number: 21 21/22
BAR NUMBER 3

DOCUMENT NUMBER	FUND	ACCOUNT STRING	ACCOUNT NAME	REVENUE, EXPENDITURE, or TRANSFER (TO or FROM)	APPROVED BUDGET	ADJUSTMENT / INCREASE	ADJUSTMENT / DECREASE	ADJUSTED BUDGET	PURPOSE
1	R&R Airport	312-7014/7015-32375	Other State Grants	Revenue	\$ 11,919	\$ 126,000		\$ 137,919	NMDOT Aviation Grant
1	R&R Airport	312-7015-80810	Other Capital Equipment	Expense	\$ -	\$ 106,000		\$ 106,000	Tractor and Attachments
1	R&R Airport	312-7014-44607	Field Supplies	Expense	\$ -	\$ 20,000		\$ 20,000	Airfield Maintenance and Consumables
2	Airport	509-4403-31375	Federal Grants and Loans	Revenue	\$ -	\$ 22,000		\$ 22,000	Airport Rescue Grant - Reimbursement for Operations and Expenses in the Airport Enterprise Fund
3	General Fund	101-1099-37371	Donations	Revenue	\$ -	\$ 382	\$ -	\$ 382	Received donation from the Rotary Club for signs at the Park
3	General Fund	101-1007-44613		Expense	\$ -	\$ 382		\$ 382	Purchase or sign at the Park using donated funds

ATTEST:

Angela Torres, Clerk-Treasurer (Date)

Sandra Whitehead, Mayor

(Date)

DOCUMENT #1

NEW MEXICO DEPARTMENT OF TRANSPORTATION

Aviation Grant Agreement Form



Date

6/18/2021

Project Location

TCS - TRUTH OR CONSEQUENCES MUNICIPAL AIRPORT

Sponsor

TRUTH OR CONSEQUENCES, CITY OF

Address

505 SIMS ST.

City

TRUTH OR CONSEQUENCES

NM

Zip Code

87901

The Sponsor must sign and send a digital PDF copy to their Airport Development Administrator at the NMDOT Aviation Division.

Participation

STATE ONLY

Funding Breakdown

100-0

Contract No. AVA1390

Project No.

TCS-21-02

Vendor No.

0000054340

Expiration Date 6/25/2023

Purchase Order No: _____

AVIATION GRANT AGREEMENT

This Agreement is between the New Mexico Department of Transportation, acting through its Aviation Division (Department), and the Sponsor. This Agreement is effective as of the date of the last party to sign on the signature page below.

Now Therefore, pursuant to the New Mexico Aviation Act, NMSA 1978, Section 64-1-11 et seq., and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq., the parties agree as follows:

1. Purpose.

The purpose of this Agreement is to provide funding, authorized in Section 64-1-13, NMSA 1978, to the Sponsor to assist in financing an aviation project.

a. Project Description:

TRACTOR & ATTACHMENTS

b. Site of Development. The site of development is identified on the property map, attached as Exhibit A.

c. Funding. Below is the funding for the Project. The State's contribution is the maximum amount that the Department will contribute. Attached as Exhibit B is the engineer's cost estimate.

State	Sponsor	Other	Total
\$ 106,000	\$ 0	\$ 0	\$ 106,000

2. The Sponsor Shall:

- Pay all costs, perform all labor, and supply all material, except as described in the Engineers Estimate attached as EXHIBIT B.
- Provide a representative from its organization who shall serve as the single point of contact for the Department.
- Establish and maintain a resolution by which the Sponsor agrees to establish an airport maintenance program and appoint an individual to be responsible for management of the program.
- Initiate engineering, survey, and all other design activities, inspect Project construction and, coordinate all meetings.
- Be responsible for all design and pre-construction activities.
- Initiate and cause to be prepared all necessary documents including plans, specifications, estimates (PS&E), and reports for this Project.
- Assure that all design and PS&E are performed under the direct supervision of a Registered New Mexico Professional Engineer.
- Design the Project in accordance with State and Federal guidelines and/or advisory circulars, hereby incorporated into this Agreement. Construction projects will be accomplished in accordance with the Federal Aviation Administration's Standards for Specifying Construction of Airports (Advisory Circular 150/5370-10, current edition).

- i. Notify the Department when the plans and specifications are sufficiently complete for review.
- j. Make no changes in design or scope of work without documented approval of the Department.
- k. Advertise for and contract for the construction of the Project in accordance with federal and state laws or local ordinances.
- l. Require the Engineer to prepare a final detailed estimate of the work, indicating the bid items, the quantity in each item, the unit bid price and cost of the items based on low acceptable bid prices. Progress estimates shall be submitted to the Department in acceptable form so that details of quantities allowed on various items of work shall be shown on each progress payment.
- m. The Sponsor shall submit to the Department one complete set of plans and specifications which incorporate all comments and recommendations received during pre-bid activities and which have been fully executed by all involved parties.
- n. The Sponsor shall take all steps, including litigation if necessary, to recover State funds spent in violation of state laws and rules. The Sponsor shall return any recovered state funds to the Department. It shall furnish to the Department, upon request, all documents and records pertaining to the determination of the amount of the state's share of any settlement, litigation, negotiation, or the efforts taken to recover such funds. All settlements or other final dispositions by the Sponsor, in court or otherwise, involving the recovery of such state funds shall be approved in advance by the Department.
- o. The Sponsor shall, upon reasonable notice, allow the Department the right to inspect the Project for the purposes of determining if it is being constructed in a good and workmanlike manner, and if the approved plans and specifications are being complied with satisfactorily. If an inspection discloses a failure to substantially meet such requirements and standards the Department may terminate payment or payments until a mutually satisfactory remedy is reached.

3. The Department Shall:

- a. Assign a contact person for this project.
- b. Provide timely reviews of all submittals of scopes, plans, specifications, investigations or other documents.
- c. The Department shall not provide an extensive check of any plans submitted by the Sponsor. The Department's concurrence of the Project plans does not relieve the Sponsor or its Consultant of their responsibility for errors and omissions.

4. Both Parties Agree:

- a. The allowable costs of this Project shall not include costs determined by the Department to be ineligible for consideration under the Aviation Act.
- b. The expenditure of any State money is subject to approval by the Department.
- c. Funds granted under the Local Governments Road Fund, NMSA 1978 Section 67-3-28.2, shall not be used to administer this Project or used to meet the local match.

5. Method of Payment - Reimbursement.

The Department shall reimburse the Sponsor in accordance with the terms of this agreement. Claims for reimbursement shall be completed on form A-1159, Request for Reimbursement. Each request for reimbursement shall contain proof of payment for valid expenditures for services rendered by a third party or items of tangible property received by the Sponsor for the implementation of the Project. The Department reserves the right to withhold reimbursement on requests that are incorrect and/or incomplete. The Final reimbursement request must be received no later than thirty (30) days after completion of the project or the expiration of this Agreement.

The Sponsor shall not be reimbursed for any costs incurred prior to the full execution of the Agreement, after the expiration of the Agreement or in excess of the maximum dollar amount of the agreement unless the maximum dollar amount is duly amended prior to incurring the service or deliverable. Any unexpended portion of funds subject to this Agreement shall revert to the State Aviation Fund.

6. Accountability of Receipts and Disbursements.

There shall be strict accountability for all receipts and disbursements. The Sponsor shall maintain all records and documents relative to the Project for a minimum of three (3) years after completion of said Project. The Sponsor shall furnish the Department or State Auditor, upon demand, all records which support the terms of this Agreement.

7. Term.

The Agreement becomes effective upon signatures of all parties. The effective date is the date when the last party signed the Agreement on the signature page below. This agreement shall expire two (2) years from the effective date, unless terminated pursuant to Sections 8 and 17, below.

8. Termination for Cause.

The Department has the option to terminate this Agreement if the Sponsor fails to comply with any provision of this Agreement. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the Sponsor's breaches on which the termination is based.

The Department may provide the Sponsor a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Sponsor has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Sponsor has not begun and proceeded in good faith to correct the breach, the Department may declare the Sponsor in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law.

By such termination neither party may nullify obligations already incurred for performance or failure to perform for the work rendered prior to the date of termination. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination.

9. Disposition of Property.

- a. Upon termination of this Agreement, the Sponsor shall account for any remaining property, materials or equipment belonging to the Department and dispose of them as directed by the Department.
- b. Any equipment, materials or supplies procured under this Agreement shall be used solely for aviation purposes maintained according to the manufacturers guidelines and stored at the airport.

10. Representations and Certification.

The Sponsor, by signing this Agreement, represents and certifies the following:

- a. Legal Authority - The Sponsor has the legal power and authority to: (1) do all things necessary in order to undertake and carry out the Project in conformity with the provisions stated in the New Mexico Aviation Act and Rules and Regulations pursuant thereto; (2) accept, receive and disburse grant funds from the State of New Mexico in aid of the Project; and (3) carry out all provisions stated in this Aviation Grant Agreement.
- b. Defaults - The Sponsor is not in default on any obligation to the State of New Mexico relative to the development, operation or maintenance of any airport or aviation project.
- c. Possible Disabilities - The Sponsor states, by execution of this Agreement, there are no facts or circumstance (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project.
- d. Land - The Sponsor holds the property interest in the areas of land which are to be developed or used as part of or in connection with the Project and is identified in a current Airport Property Map. The Sponsor further certifies that the aforementioned is based on a title examination by a qualified attorney or title company who has determined that the Sponsor holds the stated property interests.

11. Assurances.

The Sponsor, by signing this Agreement, covenants and agrees to the following Assurances:

- a. That it will operate the airport for the use and benefit of the public on fair and reasonable terms and without unjust discrimination.
- b. That it will keep the airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds, and classes. The Sponsor shall establish fair, equal and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation.

- c. Neither it nor any person or organization occupying space at the airport will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of the facility and, further that any person, firm or corporation rendering service to the public on the airport will do so on a fair, equal and not unjustly discriminatory basis.
- d. Operate and maintain in a safe and serviceable condition the airport and all facilities which are necessary to serve the aeronautical users and will not permit any activity which would interfere with its use for airport purposes.
- e. By acquisition of land interest, acquisition of easements, airspace zoning, or other accepted means, protect the runway approaches and the airspace in the immediate vicinity of the airport from the construction, alteration, erection or growth of any structure which would interfere with the use or operation of the airport.
- f. Comply with the New Mexico Aviation Act and associated provisions, NMSA 1978 Sections 64-1-1 to 64-5-4 and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq.
- g. That it shall not award the contract nor give bidding documents to any contractor who is subject to suspension or debarment by the U.S. Department of Transportation or the Department at the time of the bidding or award of the contract. Violation of this provision shall void this Agreement.

12. Third Party Beneficiaries.

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

13. New Mexico Tort Claims Act.

As between the Department and the Sponsor, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq.* This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

14. Scope of Agreement.

This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior Agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Terms of this Agreement.

The terms of this Agreement are lawful; performance of all duties and obligations shall conform with and do not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

16. Equal Opportunity Compliance.

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States shall, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

17. Appropriations and Authorizations of State and Federal Funds.

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Sponsor, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Sponsor, Legislature or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given by one party to the other. The Department and the Sponsor are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

18. Severability.

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

19. Applicable Law.

The Laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

20. Principal Contacts and Notices.

The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail) and shall be given to the principal contacts listed below.

Name: Daniel R. Moran
Title: Finance & Administrative Manager

Address: New Mexico Department of Transportation - Aviation Division
3501 Access Rd C.
Albuquerque, NM 87106
Office: (505) 244-1788 ext. 9112
Fax: (505) 244-1790
E-mail: dan.moran@state.nm.us

Name CHAD ROSACKER
Title AIRPORT MANAGER
Sponsor TRUTH OR CONSEQUENCES, CITY OF
Address 505 SIMS ST
City TRUTH OR CONSEQUENCES NM Zip Code 87901
Office Phone +1 (760) 646-5301 Fax
E-Mail AIRPORTMANAGER@TORCNM.ORG

21. Amendment.

This Agreement shall not be altered, modified, or amended except by an instrument in writing and executed by the parties.

In witness whereof, each party is signing this Agreement on the date stated opposite of that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: *Justin Reese*
Justin Reese (Jun 25, 2021 10:46 MDT)
Cabinet Secretary or Designee

Date: Jun 25, 2021

Recommended by:

By: *Daniel R Moran*
Daniel R Moran (Jun 24, 2021 09:30 MDT)
Aviation Division Director
or Designee

Date: Jun 24, 2021

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: *John Howell*
Assistant General Counsel

Date: Jun 25, 2021

SPONSOR

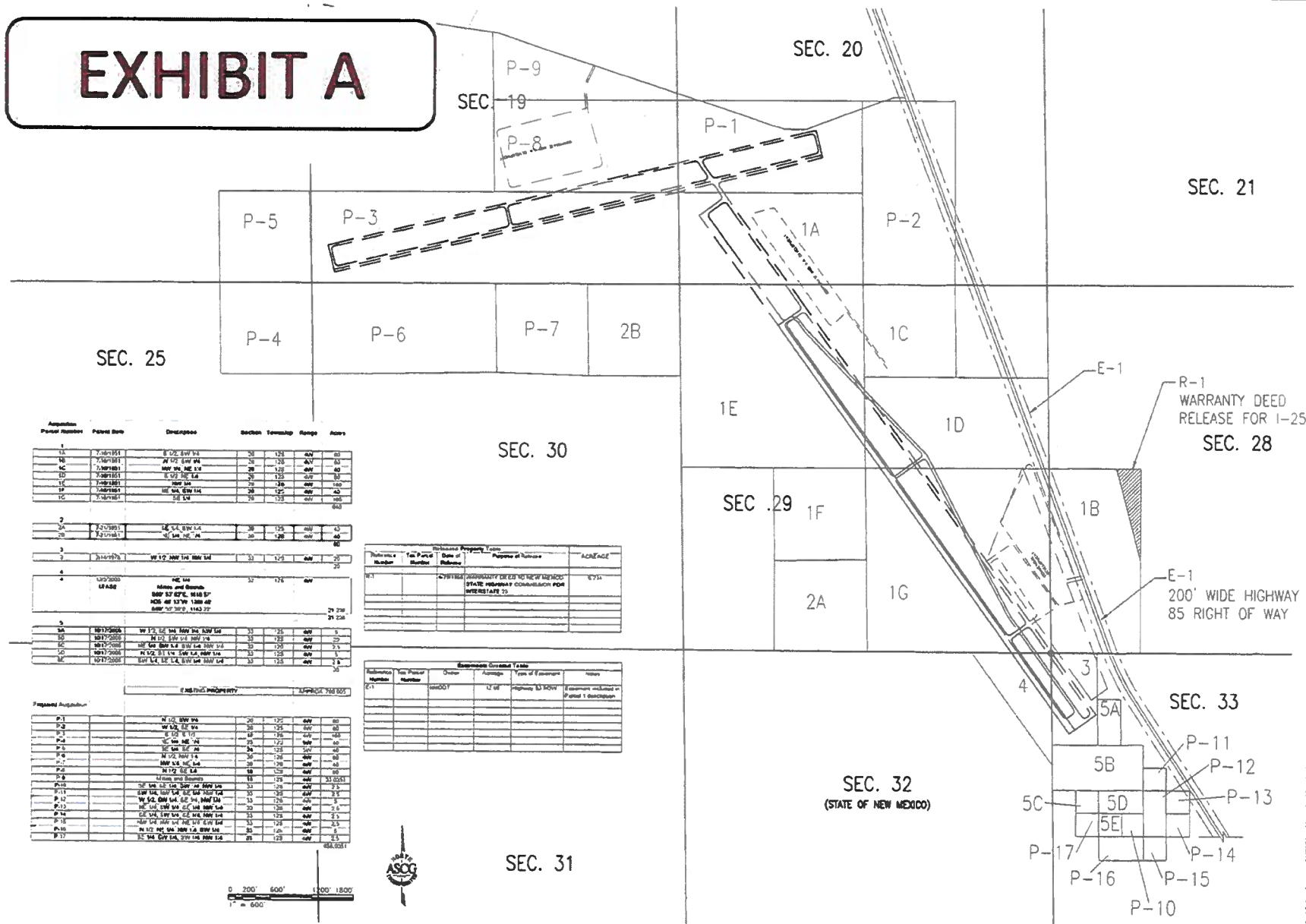
Print Name: BRUCE SWINGUE

By: *Bruce Swingue*

Date: 06/22/21

Title: CITY MANAGER

EXHIBIT A



ASCG
INCORPORATED
SURVEYING - ENGINEERING - ARCHITECTURE - PLANNING
1001 N. 10TH ST., SUITE 100
ALBUQUERQUE, NM 87102
PHONE: (505) 263-1000 FAX: (505) 263-1001

TRUTH OR CONSEQUENCES (TCS)
MUNICIPAL AIRPORT - NEW MEXICO
EXHIBIT 'A'
PROPERTY MAP

REVISIONS
NUMBER DATE

JOB NO: 207952
DATE: NOV 2007
DRAWN BY: MJD/DEC
CHECKED BY: MJD/DS
DRAWING NO: 3
SHEET 3 OF 3



JOHN DEERE

YOUR CONTRACT. YOUR QUOTE. YOUR HELP REQUESTED.

**Ensure your equipment arrives with no delay.
Issue your Purchase Order or Letter of Intent.**

To expedite the ordering process, please include the following information in Purchase Order or Letter of Intent:

For any questions, please contact:

☐ Shipping address

☐ Billing address

Vendor: John Deere Company

☐ 2000 John Deere Run Cary,
NC 27513

☐ Contract name and/or number

☐ Signature

☐ Tax exempt certificate, if applicable

Mike Otero

Desert Greens Equipment, Inc.
4850 Pan American Fwy Ne
Albuquerque, NM 87109

Tel: 505-822-0311

Fax: 505-821-7420

Email: mike@desertgreensequipment.com

The John Deere Government Sales Team

EXHIBIT B



JOHN DEERE

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

Deere & Company
2000 John Deere Run
Cary, NC 27513
FED ID: 36-2382580; DUNS#: 60-7690989

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

Desert Greens Equipment, Inc.
4850 Pan American Fwy Ne
Albuquerque, NM 87109
505-822-0311
mail@nmtractor.com

Quote Summary

Prepared For:

TRUTH OR CONSEQUENCES CITY
505 SIMS ST
CUCHILLO, NM 87901
Business: 575-894-7111

Delivering Dealer:

Desert Greens Equipment, Inc.
Mike Otero
4850 Pan American Fwy Ne
Albuquerque, NM 87109
Phone: 505-822-0311
mike@desertgreensequipment.com

Quote ID: 23734600
Created On: 24 February 2021
Last Modified On: 24 February 2021
Expiration Date: 26 March 2021

Equipment Summary

	Selling Price	Qty	Extended
JOHN DEERE 5090E Utility Tractor	\$ 46,842.25 X	1 =	\$ 46,842.25

Contract: NM Statewide Ag 70-000-17-00057 (PG 6S CG 22)
Price Effective Date: April 12, 2019

JOHN DEERE 540M Loader	\$ 5,931.30 X	1 =	\$ 5,931.30
------------------------	---------------	-----	-------------

Contract: NM Statewide Ag 70-000-17-00057 (PG 6S CG 22)
Price Effective Date: April 1, 2019

JOHN DEERE R10 Flex wing Rotary Cutter	\$ 16,101.03 X	1 =	\$ 16,101.03
--	----------------	-----	--------------

Contract: NM Statewide Ag 70-000-17-00057 (PG 6S CG 22)
Price Effective Date: April 1, 2019

Equipment Total	\$ 68,874.58
------------------------	---------------------

* Includes Fees and Non-contract items

Quote Summary

Equipment Total	\$ 68,874.58
-----------------	--------------

Trade In	
SubTotal	\$ 68,874.58
Est. Service	\$ 0.00
Agreement Tax	
Total	\$ 68,874.58

Salesperson : X _____

Accepted By : X _____

Confidential



JOHN DEERE

**ALL PURCHASE ORDERS MUST BE MADE OUT
TO (VENDOR):**

Deere & Company
2000 John Deere Run
Cary, NC 27513
FED ID: 36-2382580; DUNS#: 60-7690989

**ALL PURCHASE ORDERS MUST BE SENT
TO DELIVERING DEALER:**

Desert Greens Equipment, Inc.
4850 Pan American Fwy Ne
Albuquerque, NM 87109
505-822-0311
mail@nmtractor.com

Down Payment	(0.00)
Rental Applied	(0.00)
Balance Due	\$ 68,874.58

Salesperson : X _____

Accepted By : X _____

Confidential

**JOHN DEERE**

Selling Equipment

Quote Id: 23734600

Customer Name: TRUTH OR CONSEQUENCES CITY

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):Deere & Company
2000 John Deere Run
Cary, NC 27513
FED ID: 36-2382580; DUNS#: 60-7690989**ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:**Desert Greens Equipment, Inc.
4850 Pan American Fwy Ne
Albuquerque, NM 87109
505-822-0311
mail@nmtractor.com

JOHN DEERE 5090E Utility Tractor

Hours:

Stock Number:

Contract: NM Statewide Ag 70-000-17-00057 (PG 6S CG
22)Selling Price *
\$ 46,842.25

Price Effective Date: April 12, 2019

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
08A0LV	5090E Utility Tractor	1	\$ 51,590.00	27.25	\$ 14,058.28	\$ 37,531.72	\$ 37,531.72
Standard Options - Per Unit							
0409	English Operators Manual and Decal Kit	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
1381	12F/12R PowrReverser Transmission - 540/540E	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
2050	Standard Cab	1	\$ 9,391.00	27.25	\$ 2,559.05	\$ 6,831.95	\$ 6,831.95
2120	Air Suspension Seat	1	\$ 731.00	27.25	\$ 199.20	\$ 531.80	\$ 531.80
3025	Deluxe Cornerpost Exhaust	1	\$ 518.00	27.25	\$ 141.16	\$ 376.84	\$ 376.84
3330	Triple Stackable Rear Deluxe SCV's with Lever Control	1	\$ 879.00	27.25	\$ 239.53	\$ 639.47	\$ 639.47
3420	Dual Stackable Mid Valves with Joystick Control	1	\$ 1,279.00	27.25	\$ 348.53	\$ 930.47	\$ 930.47
5911	18.4 - 30 In. 8PR R1 Bias	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
6040	MFWD (4 Wheel Drive)	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
6701	12.4 - 24 In. 8PR R1 Bias	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
Standard Options Total			\$ 12,798.00		\$ 3,487.47	\$ 9,310.53	\$ 9,310.53
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Total Selling Price			\$ 64,388.00		\$ 17,545.75	\$ 46,842.25	\$ 46,842.25

JOHN DEERE 540M Loader

**JOHN DEERE**

Selling Equipment

Quote Id: 23734600

Customer Name: TRUTH OR CONSEQUENCES CITY

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):Deere & Company
2000 John Deere Run
Cary, NC 27513

FED ID: 36-2382580; DUNS#: 60-7690989

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:Desert Greens Equipment, Inc.
4850 Pan American Fwy Ne
Albuquerque, NM 87109
505-822-0311

mail@nmtractor.com

Equipment Notes:

Hours:

Stock Number:

Selling Price *

Contract: NM Statewide Ag 70-000-17-00057 (PG 6S CG
22)

\$ 5,931.30

Price Effective Date: April 1, 2019

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
14C0P	540M Loader	1	\$ 8,471.00	27.25	\$ 2,308.35	\$ 6,162.65	\$ 6,162.65
Standard Options - Per Unit							
0202	United States	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
0409	English	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
0500	Less package	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
1509	Mounting frame	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
2520	540M Standard farm loader, non-self-leveling (NSL) - Two-function	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
3540	Two-function hoses and parts	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
4550	Two-function mid-mount quick-couplers	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
5513	Hood guard	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
6995	Less ballast box	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
7510	John Deere™ 500-style carrier	1	\$ -105.00	27.25	\$ -28.61	\$ -76.39	\$ -76.39
8425	1850-mm (73-in.) general purpose bucket (John Deere™ carrier)	1	\$ -213.00	27.25	\$ -58.04	\$ -154.96	\$ -154.96
Standard Options Total			\$ -318.00		\$ -86.65	\$ -231.35	\$ -231.35
Total Selling Price			\$ 8,153.00		\$ 2,221.70	\$ 5,931.30	\$ 5,931.30

JOHN DEERE R10 Flex wing Rotary Cutter

**JOHN DEERE**

Selling Equipment

Quote Id: 23734600

Customer Name: TRUTH OR CONSEQUENCES CITY

**ALL PURCHASE ORDERS MUST BE MADE OUT
TO (VENDOR):**Deere & Company
2000 John Deere Run
Cary, NC 27513
FED ID: 36-2382580; DUNS#: 60-7690989**ALL PURCHASE ORDERS MUST BE SENT
TO DELIVERING DEALER:**Desert Greens Equipment, Inc.
4850 Pan American Fwy Ne
Albuquerque, NM 87109
505-822-0311
mail@nmtractor.com**Equipment Notes:**

Hours:

Stock Number:

Selling Price *Contract: NM Statewide Ag 70-000-17-00057 (PG 6S CG
22)**\$ 16,101.03**

Price Effective Date: April 1, 2019

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
2330P	R10 Flex wing Rotary Cutter	1	\$ 21,460.00	27.25	\$ 5,847.85	\$ 15,612.15	\$ 15,612.15
Standard Options - Per Unit							
0202	United States	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
3026	5 Pneumatic Tires - (Double center, single on wing) - Severe duty ag tires	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
3511	540 RPM Driveline - Cat 6	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
5120	Ball type hitch	1	\$ 0.00	27.25	\$ 0.00	\$ 0.00	\$ 0.00
5290	Suspended Tongue	1	\$ 672.00	27.25	\$ 183.12	\$ 488.88	\$ 488.88
Standard Options Total			\$ 672.00		\$ 183.12	\$ 488.88	\$ 488.88
Total Selling Price			\$ 22,132.00		\$ 6,030.97	\$ 16,101.03	\$ 16,101.03



JOHN DEERE

Quote Summary

Prepared For:

TRUTH OR CONSEQUENCES CITY
505 SIMS ST
CUCHILLO, NM 87901
Business: 575-894-7111

Prepared By:

Mike Otero
Desert Greens Equipment, Inc.
4850 Pan American Fwy Ne
Albuquerque, NM 87109
Phone: 505-822-0311
mike@desertgreensequipment.com

Quote Id: 23735389

Created On: 24 February 2021

Last Modified On: 24 February 2021

Expiration Date: 24 March 2021

Equipment Summary	Selling Price	Qty	Extended
Frontier RB2309 - 9 Ft. Heavy Duty Rear Blade	\$ 4,100.00 X	1 =	\$ 4,100.00
Frontier AP12F Fixed Pallet Fork for Current 200/300/400/500 Series Carrier	\$ 950.00 X	1 =	\$ 950.00
WORKSAVER WORMB13-327PW	\$ 7,199.00 X	1 =	\$ 7,199.00
Equipment Total			\$ 12,249.00

Quote Summary

Equipment Total	\$ 12,249.00
SubTotal	\$ 12,249.00
Est. Service Agreement Tax	\$ 0.00
Total	\$ 12,249.00
Down Payment	(0.00)
Rental Applied	(0.00)
Balance Due	\$ 12,249.00

Salesperson : X _____

Accepted By : X _____

Confidential

**JOHN DEERE**

Selling Equipment

Quote Id: 23735389

Customer: TRUTH OR CONSEQUENCES CITY

Frontier RB2309 - 9 Ft. Heavy Duty Rear Blade

Hours:

Stock Number:

				Selling Price
				\$ 4,100.00
Code	Description	Qty	Unit	Extended
1323XF	RB2309 - 9 Ft. Heavy Duty Rear Blade	1	\$ 3,463.00	\$ 3,463.00
Standard Options - Per Unit				
1010	Hydraulic Cylinder Kit, Angle - Offset - Tilt	1	\$ 1,618.00	\$ 1,618.00
Standard Options Total				\$ 1,618.00
Other Charges				
	Setup	1	\$ 89.00	\$ 89.00
Other Charges Total				\$ 89.00
Suggested Price				\$ 5,170.00
Customer Discounts				
Customer Discounts Total			\$ -1,070.00	\$ -1,070.00
Total Selling Price				\$ 4,100.00

Frontier AP12F Fixed Pallet Fork for Current 200/300/400/500 Series Carrier

Hours:

Stock Number:

				Selling Price
				\$ 950.00
Code	Description	Qty	Unit	Extended
2153XF	AP12F Fixed Pallet Fork for Current 200/300/400/500 Series Carrier	1	\$ 1,160.00	\$ 1,160.00
Standard Options - Per Unit				
1010	48 In. Pallet Tine	1	\$ 43.00	\$ 43.00
Standard Options Total				\$ 43.00
Suggested Price				\$ 1,203.00
Customer Discounts				
Customer Discounts Total			\$ -253.00	\$ -253.00
Total Selling Price				\$ 950.00

WORKSAVER WORMB13-327PW



JOHN DEERE

Selling Equipment

Quote Id: 23735389

Customer: TRUTH OR CONSEQUENCES CITY

Hours:		0			
Stock Number:					
				Selling Price	
				\$ 7,199.00	
Code	Description	Qty	Unit	Extended	
WORMB13-327 PW	84" BROOM	1	\$ 7,199.00	\$ 7,199.00	
Suggested Price				\$ 7,199.00	
Customer Discounts					
Customer Discounts Total			\$ 0.00	\$ 0.00	
Total Selling Price				\$ 7,199.00	



JOHN DEERE

Quote Id: 24503616

Prepared For:
T Or C Airport

Prepared By: Raul Flores

South Plains Implement, Ltd.
125 Highway 192
Mesquite, NM 88048

Tel: 575-233-0123
Mobile Phone: 575-649-6840
Fax: 575-233-2020
Email: rflores@spitractor.com

Date: 24 May 2021

Offer Expires: 31 May 2021

Confidential



JOHN DEERE

Quote Summary

Prepared For:
T Or C Airport
NM

Prepared By:
Raul Flores
South Plains Implement, Ltd.
125 Highway 192
Mesquite, NM 88048
Phone: 575-233-0123
Mobile: 575-649-6840
rflores@spitractor.com

Quote Id: 24503616
Created On: 24 May 2021
Last Modified On: 24 May 2021
Expiration Date: 31 May 2021

Equipment Summary	Selling Price	Qty	Extended
2021 DEGELMAN DE244600	\$ 24,000.00 X	1 =	\$ 24,000.00
Equipment Total			\$ 24,000.00

Quote Summary	
Equipment Total	\$ 24,000.00
Filing Fee	\$ 0.00
SubTotal	\$ 24,000.00
Est. Service Agreement Tax	\$ 0.00
Total	\$ 24,000.00
Down Payment	(0.00)
Rental Applied	(0.00)
Balance Due	\$ 24,000.00

Salesperson : X _____

Accepted By : X _____

Confidential



JOHN DEERE

Selling Equipment

Quote Id: 24503616

2021 DEGELMAN DE244600

Hours: 0

Stock Number:

Code	Description	Qty
DE244600	ROLERS 20 FOOT	1











TCS-21-02 - TRACTOR & ATTACHMENTS - SIGNED BY SPONSOR

Final Audit Report

2021-06-25

Created:	2021-06-24
By:	Tony Gilbert (anthony.gilbert@state.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAM3dEVyTVy9C_mrZYY_LDIO9-eUthzGT3

"TCS-21-02 - TRACTOR & ATTACHMENTS - SIGNED BY SPONSOR" History

-  Document created by Tony Gilbert (anthony.gilbert@state.nm.us)
2021-06-24 - 3:04:36 PM GMT- IP address: 174.28.180.113
-  Document emailed to Daniel R Moran (dan.moran@state.nm.us) for signature
2021-06-24 - 3:05:35 PM GMT
-  Document e-signed by Daniel R Moran (dan.moran@state.nm.us)
Signature Date: 2021-06-24 - 3:30:16 PM GMT - Time Source: server- IP address: 71.228.121.175
-  Document emailed to John Newell (johnp.newell@state.nm.us) for signature
2021-06-24 - 3:30:18 PM GMT
-  Email viewed by John Newell (johnp.newell@state.nm.us)
2021-06-24 - 5:33:15 PM GMT- IP address: 174.28.55.215
-  Document e-signed by John Newell (johnp.newell@state.nm.us)
Signature Date: 2021-06-25 - 4:38:30 PM GMT - Time Source: server- IP address: 174.28.55.215
-  Document emailed to Justin Reese (Justin.Reese@state.nm.us) for signature
2021-06-25 - 4:38:31 PM GMT
-  Email viewed by Justin Reese (Justin.Reese@state.nm.us)
2021-06-25 - 4:45:42 PM GMT- IP address: 75.161.213.252
-  Document e-signed by Justin Reese (Justin.Reese@state.nm.us)
Signature Date: 2021-06-25 - 4:46:10 PM GMT - Time Source: server- IP address: 75.161.213.252
-  Agreement completed.
2021-06-25 - 4:46:10 PM GMT

NEW MEXICO DEPARTMENT OF TRANSPORTATION

Aviation Grant Agreement Form



Date

6/22/2021

Project Location

TCS - TRUTH OR CONSEQUENCES MUNICIPAL AIRPORT

Sponsor

TRUTH OR CONSEQUENCES, CITY OF

Address

505 SIMS ST.

City

TRUTH OR CONSEQUENCES

NM

Zip Code

87901

The Sponsor must sign and send a digital PDF copy to their Airport Development Administrator at the NMDOT Aviation Division.

Participation

STATE ONLY

Funding Breakdown

90-10

Contract No. AVA1389

Project No.

TCS-21-03

Vendor No.

0000054340

Expiration Date 6/25/2023

Purchase Order No: _____

AVIATION GRANT AGREEMENT

This Agreement is between the New Mexico Department of Transportation, acting through its Aviation Division (Department), and the Sponsor. This Agreement is effective as of the date of the last party to sign on the signature page below.

Now Therefore, pursuant to the New Mexico Aviation Act, NMSA 1978, Section 64-1-11 et seq., and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq., the parties agree as follows:

1. Purpose.

The purpose of this Agreement is to provide funding, authorized in Section 64-1-13, NMSA 1978, to the Sponsor to assist in financing an aviation project.

a. Project Description:

AIRFIELD MAINTENANCE & COSUMABLES

b. Site of Development. The site of development is identified on the property map, attached as Exhibit A.

c. Funding. Below is the funding for the Project. The State's contribution is the maximum amount that the Department will contribute. Attached as Exhibit B is the engineer's cost estimate.

State	Sponsor	Other	Total
\$ 20,000	\$ 2,222	\$	\$ 22,222

2. The Sponsor Shall:

- a. Pay all costs, perform all labor, and supply all material, except as described in the Engineers Estimate attached as EXHIBIT B.
- b. Provide a representative from its organization who shall serve as the single point of contact for the Department.
- c. Establish and maintain a resolution by which the Sponsor agrees to establish an airport maintenance program and appoint an individual to be responsible for management of the program.
- d. Initiate engineering, survey, and all other design activities, inspect Project construction and, coordinate all meetings.
- e. Be responsible for all design and pre-construction activities.
- f. Initiate and cause to be prepared all necessary documents including plans, specifications, estimates (PS&E), and reports for this Project.
- g. Assure that all design and PS&E are performed under the direct supervision of a Registered New Mexico Professional Engineer.
- h. Design the Project in accordance with State and Federal guidelines and/or advisory circulars, hereby incorporated into this Agreement. Construction projects will be accomplished in accordance with the Federal Aviation Administration's Standards for Specifying Construction of Airports (Advisory Circular 150/5370-10, current edition).

- i. Notify the Department when the plans and specifications are sufficiently complete for review.
- j. Make no changes in design or scope of work without documented approval of the Department.
- k. Advertise for and contract for the construction of the Project in accordance with federal and state laws or local ordinances.
- l. Require the Engineer to prepare a final detailed estimate of the work, indicating the bid items, the quantity in each item, the unit bid price and cost of the items based on low acceptable bid prices. Progress estimates shall be submitted to the Department in acceptable form so that details of quantities allowed on various items of work shall be shown on each progress payment.
- m. The Sponsor shall submit to the Department one complete set of plans and specifications which incorporate all comments and recommendations received during pre-bid activities and which have been fully executed by all involved parties.
- n. The Sponsor shall take all steps, including litigation if necessary, to recover State funds spent in violation of state laws and rules. The Sponsor shall return any recovered state funds to the Department. It shall furnish to the Department, upon request, all documents and records pertaining to the determination of the amount of the state's share of any settlement, litigation, negotiation, or the efforts taken to recover such funds. All settlements or other final dispositions by the Sponsor, in court or otherwise, involving the recovery of such state funds shall be approved in advance by the Department.
- o. The Sponsor shall, upon reasonable notice, allow the Department the right to inspect the Project for the purposes of determining if it is being constructed in a good and workmanlike manner, and if the approved plans and specifications are being complied with satisfactorily. If an inspection discloses a failure to substantially meet such requirements and standards the Department may terminate payment or payments until a mutually satisfactory remedy is reached.

3. The Department Shall:

- a. Assign a contact person for this project.
- b. Provide timely reviews of all submittals of scopes, plans, specifications, investigations or other documents.
- c. The Department shall not provide an extensive check of any plans submitted by the Sponsor. The Department's concurrence of the Project plans does not relieve the Sponsor or its Consultant of their responsibility for errors and omissions.

4. Both Parties Agree:

- a. The allowable costs of this Project shall not include costs determined by the Department to be ineligible for consideration under the Aviation Act.
- b. The expenditure of any State money is subject to approval by the Department.
- c. Funds granted under the Local Governments Road Fund, NMSA 1978 Section 67-3-28.2, shall not be used to administer this Project or used to meet the local match.

5. Method of Payment - Reimbursement.

The Department shall reimburse the Sponsor in accordance with the terms of this agreement. Claims for reimbursement shall be completed on form A-1159, Request for Reimbursement. Each request for reimbursement shall contain proof of payment for valid expenditures for services rendered by a third party or items of tangible property received by the Sponsor for the implementation of the Project. The Department reserves the right to withhold reimbursement on requests that are incorrect and/or incomplete. The Final reimbursement request must be received no later than thirty (30) days after completion of the project or the expiration of this Agreement.

The Sponsor shall not be reimbursed for any costs incurred prior to the full execution of the Agreement, after the expiration of the Agreement or in excess of the maximum dollar amount of the agreement unless the maximum dollar amount is duly amended prior to incurring the service or deliverable. Any unexpended portion of funds subject to this Agreement shall revert to the State Aviation Fund.

6. Accountability of Receipts and Disbursements.

There shall be strict accountability for all receipts and disbursements. The Sponsor shall maintain all records and documents relative to the Project for a minimum of three (3) years after completion of said Project. The Sponsor shall furnish the Department or State Auditor, upon demand, all records which support the terms of this Agreement.

7. Term.

The Agreement becomes effective upon signatures of all parties. The effective date is the date when the last party signed the Agreement on the signature page below. This agreement shall expire two (2) years from the effective date, unless terminated pursuant to Sections 8 and 17, below.

8. Termination for Cause.

The Department has the option to terminate this Agreement if the Sponsor fails to comply with any provision of this Agreement. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the Sponsor's breaches on which the termination is based.

The Department may provide the Sponsor a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Sponsor has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Sponsor has not begun and proceeded in good faith to correct the breach, the Department may declare the Sponsor in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law.

By such termination neither party may nullify obligations already incurred for performance or failure to perform for the work rendered prior to the date of termination. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination.

9. Disposition of Property.

- a. Upon termination of this Agreement, the Sponsor shall account for any remaining property, materials or equipment belonging to the Department and dispose of them as directed by the Department.
- b. Any equipment, materials or supplies procured under this Agreement shall be used solely for aviation purposes maintained according to the manufacturers guidelines and stored at the airport.

10. Representations and Certification.

The Sponsor, by signing this Agreement, represents and certifies the following:

- a. Legal Authority - The Sponsor has the legal power and authority to: (1) do all things necessary in order to undertake and carry out the Project in conformity with the provisions stated in the New Mexico Aviation Act and Rules and Regulations pursuant thereto; (2) accept, receive and disburse grant funds from the State of New Mexico in aid of the Project; and (3) carry out all provisions stated in this Aviation Grant Agreement.
- b. Defaults - The Sponsor is not in default on any obligation to the State of New Mexico relative to the development, operation or maintenance of any airport or aviation project.
- c. Possible Disabilities - The Sponsor states, by execution of this Agreement, there are no facts or circumstance (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project.
- d. Land - The Sponsor holds the property interest in the areas of land which are to be developed or used as part of or in connection with the Project and is identified in a current Airport Property Map. The Sponsor further certifies that the aforementioned is based on a title examination by a qualified attorney or title company who has determined that the Sponsor holds the stated property interests.

11. Assurances.

The Sponsor, by signing this Agreement, covenants and agrees to the following Assurances:

- a. That it will operate the airport for the use and benefit of the public on fair and reasonable terms and without unjust discrimination.
- b. That it will keep the airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds, and classes. The Sponsor shall establish fair, equal and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation.

- c. Neither it nor any person or organization occupying space at the airport will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of the facility and, further that any person, firm or corporation rendering service to the public on the airport will do so on a fair, equal and not unjustly discriminatory basis.
- d. Operate and maintain in a safe and serviceable condition the airport and all facilities which are necessary to serve the aeronautical users and will not permit any activity which would interfere with its use for airport purposes.
- e. By acquisition of land interest, acquisition of easements, airspace zoning, or other accepted means, protect the runway approaches and the airspace in the immediate vicinity of the airport from the construction, alteration, erection or growth of any structure which would interfere with the use or operation of the airport.
- f. Comply with the New Mexico Aviation Act and associated provisions, NMSA 1978 Sections 64-1-1 to 64-5-4 and the New Mexico Municipal Airport Law, NMSA 1978 Sections 3-39-1 et seq.
- g. That it shall not award the contract nor give bidding documents to any contractor who is subject to suspension or debarment by the U.S. Department of Transportation or the Department at the time of the bidding or award of the contract. Violation of this provision shall void this Agreement.

12. Third Party Beneficiaries.

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

13. New Mexico Tort Claims Act.

As between the Department and the Sponsor, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq.* This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

14. Scope of Agreement.

This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior Agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Terms of this Agreement.

The terms of this Agreement are lawful; performance of all duties and obligations shall conform with and do not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

16. Equal Opportunity Compliance.

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States shall, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

17. Appropriations and Authorizations of State and Federal Funds.

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Sponsor, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Sponsor, Legislature or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given by one party to the other. The Department and the Sponsor are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

18. Severability.

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

19. Applicable Law.

The Laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

20. Principal Contacts and Notices.

The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail) and shall be given to the principal contacts listed below.

Name: Daniel R. Moran
Title: Finance & Administrative Manager

Address: New Mexico Department of Transportation - Aviation Division
3501 Access Rd C.
Albuquerque, NM 87106
Office: (505) 244-1788 ext. 9112
Fax: (505) 244-1790
E-mail: dan.moran@state.nm.us

Name: CHAD ROSACKER
Title: AIRPORT MANAGER
Sponsor: TRUTH OR CONSEQUENCES, CITY OF
Address: 505 SIMS ST
City: TRUTH OR CONSEQUENCES NM Zip Code: 87901
Office Phone: +1 (760) 646-5301 Fax:
E-Mail: AIRPORTMANAGER@TORCNM.ORG

21. Amendment.

This Agreement shall not be altered, modified, or amended except by an instrument in writing and executed by the parties.

In witness whereof, each party is signing this Agreement on the date stated opposite of that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: *Justin Reese*
Justin Reese (Jun 25, 2021 10:38 MDT)
Cabinet Secretary or Designee

Date: Jun 25, 2021

Recommended by:

By: *Daniel R Moran*
Daniel R Moran (Jun 24, 2021 09:29 MDT)
Aviation Division Director
or Designee

Date: Jun 24, 2021

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: *John Howell*
Assistant General Counsel

Date: Jun 25, 2021

SPONSOR

Print Name: BRUCE SWINGLE

By: *B. Swingle*

Date: 06/22/21

Title: CITY MANAGER

NMDOT Aviation Division

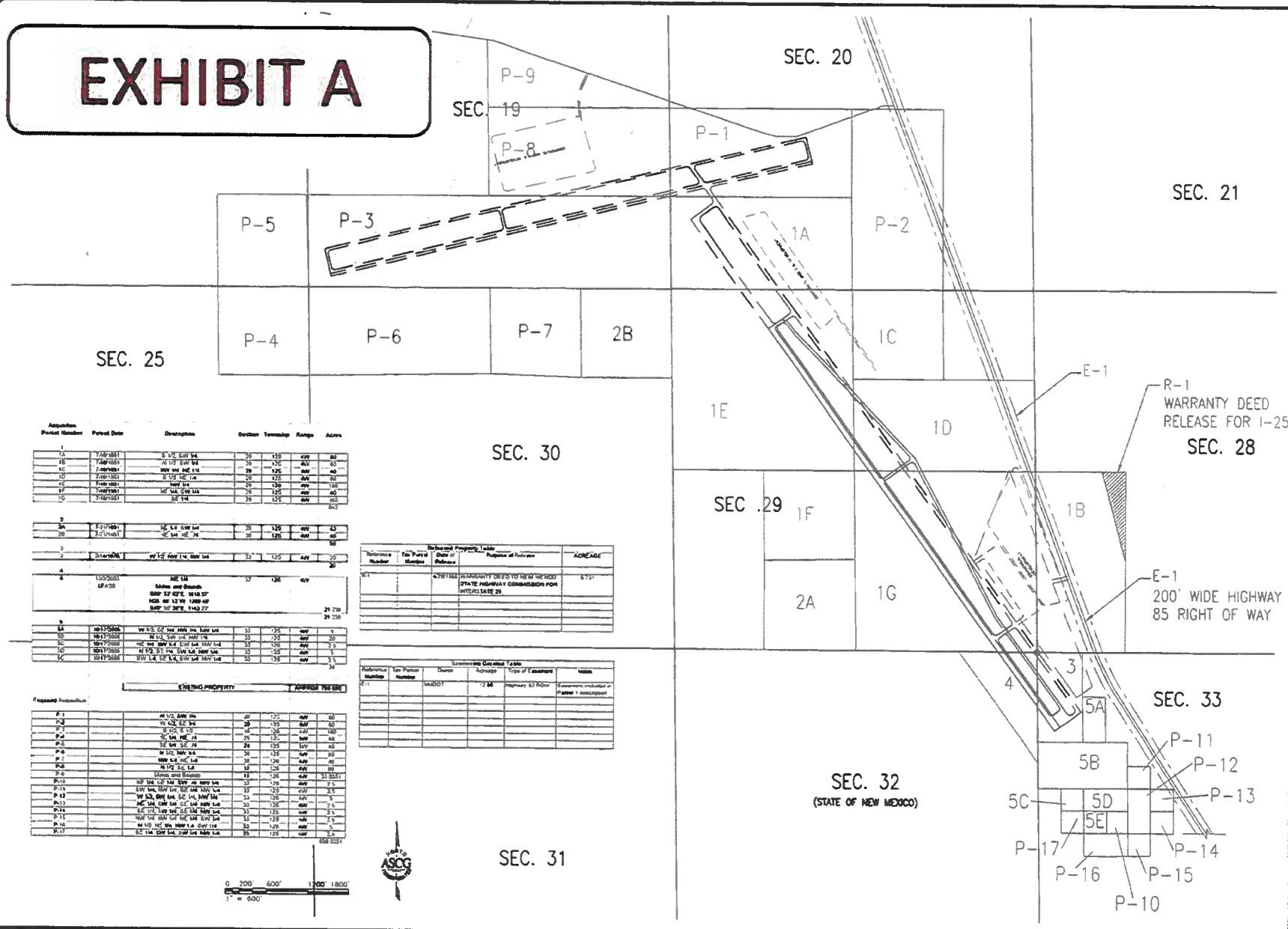
Annual airfield maintenance/expendable materials				
FY Airport		2021 - 2022		
		Truth or Consequences		
Item	units requested	Unit Price	Total	
Wind sock, 18" - Most Common Size for GA's	4	\$ 40.00	\$ 160.00	
Wind sock, 24"		\$ 55.00	\$ -	
Wind sock, 36"	4	\$ 110.00	\$ 440.00	
Incandescent L-861 Runway Edge Light Fixture	5	\$ 150.00	\$ 750.00	
Incandescent L-861E Runway Threshold Light Fixture	1	\$ 175.00	\$ 175.00	
Incandescent L-861T Taxiway or Apron Edge Light Fixture	5	\$ 150.00	\$ 750.00	
LED Light Fixture L-861(L) Edge Light -Without Arctic Kit		\$ 300.00	\$ -	
LED Light Fixture L-861(L) Edge Light – With Arctic Kit		\$ 400.00	\$ -	
Light Fixture L-861 Lens (Blue)	5	\$ 40.00	\$ 200.00	
Light Fixture L-861 Lens (Clear)	5	\$ 40.00	\$ 200.00	
Light Fixture L-861 Lens (Green/Red)	5	\$ 80.00	\$ 400.00	
Light Fixtures L-861 Lamp – 30W	5	\$ 10.00	\$ 50.00	
Light Fixtures L-861 Lamp – 45 W	5	\$ 10.00	\$ 50.00	
LED Light Fixture L-861 Lamp – 45 W	5	\$ 15.00	\$ 75.00	
Light Fixtures L-861 Post / EMT Column		\$ 10.00	\$ -	
Light Fixtures L-861 Frangible Coupling	10	\$ 20.00	\$ 200.00	
Light Fixtures L-861 Head Assembly		\$ 50.00	\$ -	
Light Fixtures L-861 Lens Clamp Assembly		\$ 5.00	\$ -	
L-823 Primary Connector Kits		\$ 25.00	\$ -	
L-823 Secondary Connector Kits		\$ 20.00	\$ -	
Heat Shrink Kits		\$ 10.00	\$ -	
Isolation Transformers	2	\$ 100.00	\$ 200.00	
PAPI Bulbs – Incandescent	2	\$ 35.00	\$ 70.00	
REIL Lights		\$ 130.00	\$ -	
Beacon Bulbs	4	\$ 65.00	\$ 260.00	
Guidance Sign Light Bulbs	5	\$ 35.00	\$ 175.00	
Guidance Sign Panels		\$ 300.00	\$ -	
Herbicide/Pesticide	3	\$ 99.99	\$ 299.97	
Crack filling material	2	\$ 37.50	\$ 75.00	
Pavement marking supplies	20	\$ 95.00	\$ 1,900.00	
ASOS/AWOS maintenance (quarterly)		\$ 900.00	\$ -	
ASOS/AWOS maintenance (Annual)	1	\$ 1,500.00	\$ 1,500.00	
Traffic recording System (computer/moinitor, ADSB)	1	\$ 2,000.00	\$ 2,000.00	
Obstruction lights		\$ 60.00	\$ -	
Pavement Patch (Cold Mix)	2	\$ 35.00	\$ 70.00	
Weed Eater Replace and repair , Supplies	40	\$ 100.00	\$ 4,000.00	
Threshold Lights	5	\$ 15.00	\$ 75.00	
Tractor Maintenance - Tires, Oil, Batteries, Filters	2	\$ 1,000.00	\$ 2,000.00	
Fuel tank filters and Maintenance	2	\$ 1,500.00	\$ 3,000.00	

NMDOT Aviation Division

FOD RAZOR runway sweeper	1	\$ 3,295.00	\$ 3,295.00
Estimated cost			\$ 22,369.97

Sponsor share	10%	\$ 2,237.00
Aviation Division share	90%	\$ 20,132.97

EXHIBIT A



ASCG
INCORPORATED
SURVEYING - ENGINEERING - ARCHITECTURE - INTERIORS
1001 UNIVERSITY AVENUE, SUITE 100
ALBUQUERQUE, NEW MEXICO 87102
PHONE: (505) 263-1100 FAX: (505) 263-1101

TRUTH OR CONSEQUENCES (TCS)
MUNICIPAL AIRPORT - NEW MEXICO
EXHIBIT 'A'
PROPERTY MAP

REVISIONS	NUMBER	DATE

JOB NO: 201952
DATE: NOV 2007
DRAWN BY: MDJ/DBG
CHECKED BY: MDJ/DBG
DRAWING NO: 3
SHEET 3 OF 3

Acquisition Parcel Number Period Date Description Section Township Range Acres

1A	7/18/1981	S 1/2, SW 1/4	25	12S	40N	60
1B	7/18/1981	N 1/2, SW 1/4	25	12S	40N	60
1C	7/18/1981	SW 1/4, NE 1/4	25	12S	40N	60
1D	7/18/1981	S 1/2, NE 1/4	25	12S	40N	60
1E	7/18/1981	SW 1/4	25	12S	40N	60
1F	7/18/1981	NE 1/4, SW 1/4	25	12S	40N	60
1G	7/18/1981	NE 1/4	25	12S	40N	60

2

2A	7/18/1981	SE 1/4, SW 1/4	25	12S	40N	60
2B	7/18/1981	SE 1/4, NE 1/4	25	12S	40N	60
2C	7/18/1981	SW 1/4, NE 1/4	25	12S	40N	60
2D	7/18/1981	SW 1/4	25	12S	40N	60
2E	7/18/1981	NE 1/4, SW 1/4	25	12S	40N	60
2F	7/18/1981	NE 1/4	25	12S	40N	60

3

3A	7/18/1981	SW 1/4, NE 1/4	25	12S	40N	60
3B	7/18/1981	SW 1/4	25	12S	40N	60
3C	7/18/1981	NE 1/4, SW 1/4	25	12S	40N	60
3D	7/18/1981	NE 1/4	25	12S	40N	60
3E	7/18/1981	SW 1/4, NE 1/4	25	12S	40N	60
3F	7/18/1981	SW 1/4	25	12S	40N	60

4

4A	7/18/1981	SW 1/4, NE 1/4	25	12S	40N	60
4B	7/18/1981	SW 1/4	25	12S	40N	60
4C	7/18/1981	NE 1/4, SW 1/4	25	12S	40N	60
4D	7/18/1981	NE 1/4	25	12S	40N	60
4E	7/18/1981	SW 1/4, NE 1/4	25	12S	40N	60
4F	7/18/1981	SW 1/4	25	12S	40N	60

Referenced Property Table

Reference Number	File or Record Number	Purpose of Reference	ACRES
1	4781102	WARRANTY DEED TO THE STATE OF NEW MEXICO FOR THE MUNICIPAL AIRPORT CONVEYANCE FOR INTEREST DATE 25	6.731

Exemptions General Table

Reference Number	Law Number	Section	Amount	Type of Exemption	Notes
1	442051	12	50	Highway 85 Right of Way	Exemptions included in Chapter 1 description

0 200' 600' 1000' 1800'
1" = 600'



EXHIBIT B

Annual airfield maintenance/expendable materials				
FY Airport	2021 - 2022			
	Truth or Consequences			
Item	units requested	Unit Price	Total	
Wind sock, 18" - Most Common Size for GA's	4	\$ 40.00	\$ 160.00	
Wind sock, 24"		\$ 55.00	\$ -	
Wind sock, 36"	4	\$ 110.00	\$ 440.00	
Incandescent L-861 Runway Edge Light Fixture	5	\$ 150.00	\$ 750.00	
Incandescent L-861E Runway Threshold Light Fixture	1	\$ 175.00	\$ 175.00	
Incandescent L-861T Taxiway or Apron Edge Light Fixture	5	\$ 150.00	\$ 750.00	
LED Light Fixture L-861(L) Edge Light -Without Arctic Kit		\$ 300.00	\$ -	
LED Light Fixture L-861(L) Edge Light – With Arctic Kit		\$ 400.00	\$ -	
Light Fixture L-861 Lens (Blue)	5	\$ 40.00	\$ 200.00	
Light Fixture L-861 Lens (Clear)	5	\$ 40.00	\$ 200.00	
Light Fixture L-861 Lens (Green/Red)	5	\$ 80.00	\$ 400.00	
Light Fixtures L-861 Lamp – 30W	5	\$ 10.00	\$ 50.00	
Light Fixtures L-861 Lamp – 45 W	5	\$ 10.00	\$ 50.00	
LED Light Fixture L-861 Lamp – 45 W	5	\$ 15.00	\$ 75.00	
Light Fixtures L-861 Post / EMT Column		\$ 10.00	\$ -	
Light Fixtures L-861 Frangible Coupling	10	\$ 20.00	\$ 200.00	
Light Fixtures L-861 Head Assembly		\$ 50.00	\$ -	
Light Fixtures L-861 Lens Clamp Assembly		\$ 5.00	\$ -	
L-823 Primary Connector Kits		\$ 25.00	\$ -	
L-823 Secondary Connector Kits		\$ 20.00	\$ -	
Heat Shrink Kits		\$ 10.00	\$ -	
Isolation Transformers	2	\$ 100.00	\$ 200.00	
PAPI Bulbs – Incandescent	2	\$ 35.00	\$ 70.00	
REIL Lights		\$ 130.00	\$ -	
Beacon Bulbs	4	\$ 65.00	\$ 260.00	
Guidance Sign Light Bulbs	5	\$ 35.00	\$ 175.00	
Guidance Sign Panels		\$ 300.00	\$ -	
Herbicide/Pesticide	3	\$ 99.99	\$ 299.97	
Crack filling material	2	\$ 37.50	\$ 75.00	
Pavement marking supplies	20	\$ 95.00	\$ 1,900.00	
ASOS/AWOS maintenance (quarterly)		\$ 900.00	\$ -	
ASOS/AWOS maintenance (Annual)	1	\$ 1,500.00	\$ 1,500.00	
Traffic recording System (computer/moinitor, ADSB)	1	\$ 2,000.00	\$ 2,000.00	
Obstruction lights		\$ 60.00	\$ -	
Pavement Patch (Cold Mix)	2	\$ 35.00	\$ 70.00	
Weed Eater Replace and repair , Supplies	40	\$ 100.00	\$ 4,000.00	
Threshold Lights	5	\$ 15.00	\$ 75.00	
Tractor Maintenance - Tires, Oil, Batteries, Filters	2	\$ 1,000.00	\$ 2,000.00	
Fuel tank filters and Maintenance	2	\$ 1,500.00	\$ 3,000.00	

NMDOT Aviation Division

FOD RAZOR runway sweeper	1	\$ 3,295.00	\$ 3,295.00
Estimated cost			\$ 22,369.97

Sponsor share	10%	\$ 2,237.00
Aviation Division share	90%	\$ 20,132.97









TCS-21-03 - AIRFIELD MAINTENANCE & COSUMABLES - SIGNED BY SPONSOR

Final Audit Report

2021-06-25

Created:	2021-06-24
By:	Tony Gilbert (anthony.gilbert@state.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAEGYn2r7pwThJbcVJ24Dhku5wfct_laE0

"TCS-21-03 - AIRFIELD MAINTENANCE & COSUMABLES - SIGNED BY SPONSOR" History

-  Document created by Tony Gilbert (anthony.gilbert@state.nm.us)
2021-06-24 - 3:06:05 PM GMT- IP address: 174.28.180.113
-  Document emailed to Daniel R Moran (dan.moran@state.nm.us) for signature
2021-06-24 - 3:06:53 PM GMT
-  Email viewed by Daniel R Moran (dan.moran@state.nm.us)
2021-06-24 - 3:29:23 PM GMT- IP address: 71.228.121.175
-  Document e-signed by Daniel R Moran (dan.moran@state.nm.us)
Signature Date: 2021-06-24 - 3:29:45 PM GMT - Time Source: server- IP address: 71.228.121.175
-  Document emailed to John Newell (johnp.newell@state.nm.us) for signature
2021-06-24 - 3:29:47 PM GMT
-  Email viewed by John Newell (johnp.newell@state.nm.us)
2021-06-24 - 5:33:14 PM GMT- IP address: 174.28.55.215
-  Document e-signed by John Newell (johnp.newell@state.nm.us)
Signature Date: 2021-06-25 - 4:37:39 PM GMT - Time Source: server- IP address: 174.28.55.215
-  Document emailed to Justin Reese (Justin.Reese@state.nm.us) for signature
2021-06-25 - 4:37:42 PM GMT
-  Email viewed by Justin Reese (Justin.Reese@state.nm.us)
2021-06-25 - 4:38:00 PM GMT- IP address: 75.161.213.252
-  Document e-signed by Justin Reese (Justin.Reese@state.nm.us)
Signature Date: 2021-06-25 - 4:38:28 PM GMT - Time Source: server- IP address: 75.161.213.252

✔ Agreement completed.

2021-06-25 - 4:38:28 PM GMT



Adobe Sign

DOCUMENT #2



U.S. Department
of Transportation
Federal Aviation
Administration

Airports Division
Southwest Region
Louisiana, New Mexico

FAA ASW-640
10101 Hillwood Parkway
Fort Worth, TX 76177

Airport Rescue Grant Transmittal Letter

August 5, 2021

The Honorable Sandra Whitehead
505 Sims
Truth or Consequences, NM 87901

Dear Ms. Whitehead:

Please find the following electronic Airport Rescue Grant Offer, Grant No. 3-35-0042-023-2021 for Truth Or Consequences Municipal Airport. This letter outlines expectations for success. Please read and follow the instructions carefully.

To properly enter into this agreement, you must do the following:

- a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
- b. The sponsor's authorized representative must execute the grant, followed by the attorney's certification, no later than **August 20, 2021** in order for the grant to be valid.
- c. You may not make any modification to the text, terms or conditions of the grant offer.
- d. The grant offer must be digitally signed by the sponsor's legal signatory authority and then routed via email to the sponsor's attorney. Once the attorney has digitally attested to the grant, an email with the executed grant will be sent to all parties.

Subject to the requirements in 2 CFR §200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System. The terms and conditions of this agreement require you draw down and expend these funds within four years.

An airport sponsor may use these funds for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments. Please refer to the [Airport Rescue Grants Frequently Asked Questions](#) for further information.

With each payment request you are required to upload an invoice summary directly to Delphi. The invoice summary should include enough detail to permit FAA to verify compliance with the American Rescue Plan Act (Public Law 117-2). Additional details or invoices may be requested by FAA during the review of your payment requests.

As part of your final payment request, you are required to include in Delphi:

- A signed SF-425, *Federal Financial Report*
- A signed closeout report (a sample report is available [here](#)).

Until the grant is completed and closed, you are responsible for submitting a signed and dated SF-425 annually, due 90 days after the end of each Federal fiscal year in which this grant is open (due December 31 of each year this grant is open).

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

I am readily available to assist you and your designated representative with the requirements stated herein. The FAA sincerely values your cooperation in these efforts.

Sincerely,

**LACEY D
SPRIGGS**

Digitally signed by LACEY
D SPRIGGS
Date: 2021.08.05
13:08:44 -05'00'

Lacey D. Spriggs
Manager



U.S. Department
of Transportation
Federal Aviation
Administration

AIRPORT RESCUE GRANT

GRANT AGREEMENT

Part I - Offer

Federal Award Offer Date August 5, 2021

Airport/Planning Area Truth Or Consequences Municipal Airport

Airport Rescue Grant No. 3-35-0042-023-2021

Unique Entity Identifier 079342838

TO: City of Truth or Consequences
(herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA an Airport Rescue Grant Application dated July 9, 2021, for a grant of Federal funds at or associated with the Truth Or Consequences Municipal Airport, which is included as part of this Airport Rescue Grant Agreement;

WHEREAS, the Sponsor has accepted the terms of FAA's Airport Rescue Grant offer;

WHEREAS, in consideration of the promises, representations and assurances provided by the Sponsor, the FAA has approved the Airport Rescue Grant Application for the Truth Or Consequences Municipal Airport, (herein called the "Grant" or "Airport Rescue Grant") consisting of the following:

WHEREAS, this Airport Rescue Grant is provided in accordance with the American Rescue Plan Act ("ARP Act", or "the Act"), Public Law 117-2, as described below, to provide eligible Sponsors with funding for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments. Airport Rescue Grant amounts to specific airports are derived by legislative formula (See Section 7102 of the Act).

WHEREAS, the purpose of this Airport Rescue Grant is to prevent, prepare for, and respond to the coronavirus pandemic. Funds provided under this Airport Rescue Grant Agreement must be used only for purposes directly related to the airport. Such purposes can include the reimbursement of an airport's operational expenses or debt service payments in accordance with the limitations prescribed in the Act.

Airport Rescue Grants may be used to reimburse airport operational expenses directly related to Truth Or Consequences Municipal incurred no earlier than January 20, 2020.

Airport Rescue Grants also may be used to reimburse a Sponsor's payment of debt service where such payments occur on or after March 11, 2021. Funds provided under this Airport Rescue Grant Agreement will be governed by the same principles that govern "airport revenue." New airport development projects not directly related to combating the spread of pathogens may not be funded with this Grant. Funding under this Grant for airport development projects to combat the spread of pathogens will be reallocated using an addendum to this Agreement for identified and approved projects.

NOW THEREFORE, in accordance with the applicable provisions of the ARP Act, Public Law 117-2, the representations contained in the Grant Application, and in consideration of (a) the Sponsor's acceptance of this Offer; and, (b) the benefits to accrue to the United States and the public from the accomplishment of the Grant and in compliance with the conditions as herein provided,

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 100% percent of the allowable costs incurred as a result of and in accordance with this Grant Agreement.

Assistance Listings Number (Formerly CFDA Number): 20.106

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$22,000, allocated as follows:
 \$22,000 ARPA KW2021
2. **Grant Performance.** This Airport Rescue Grant Agreement is subject to the following Federal award requirements:
 - a. The Period of Performance:
 1. Shall start on the date the Sponsor formally accepts this agreement, and is the date signed by the last Sponsor signatory to the agreement. The end date of the period of performance is 4 years (1,460 calendar days) from the date of acceptance. The period of performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.
 2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. (2 Code of Federal Regulations (CFR) § 200.1)
 - b. The Budget Period:
 1. For this Airport Rescue Grant is 4 years (1,460 calendar days). Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the budget period.
 2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.
 - c. Close out and Termination.

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the period of performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the Grant within one year of the period of performance end date with the information available at the end of 120 days. (2 CFR § 200.344)
2. The FAA may terminate this Airport Rescue Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Unallowable Costs.** The Sponsor shall not seek reimbursement for any costs that the FAA has determined to be unallowable under the ARP Act.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the Grant Application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages only.
5. **Final Federal Share of Costs.** The United States' share of allowable Grant costs is 100%.
6. **Completing the Grant without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the Grant without undue delays and in accordance with this Airport Rescue Grant Agreement, the ARP Act, and the regulations, policies, standards, and procedures of the Secretary of Transportation ("Secretary"). Pursuant to 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from funding eligible expenses under the Grant that exceeds three months or a 25 percent reduction in time devoted to the Grant, and request prior approval from FAA. The report must include a reason for the stoppage. The Sponsor agrees to comply with the attached assurances, which are part of this agreement and any addendum that may be attached hereto at a later date by mutual consent.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs unless this offer has been accepted by the Sponsor on or before August 20, 2021, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner, including uses that violate this Airport Rescue Grant Agreement, the ARP Act, or other provision of applicable law. For the purposes of this Airport Rescue Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement(s). The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or relate to this Airport Rescue

Grant Agreement, including, but not limited to, any action taken by a Sponsor related to or arising from, directly or indirectly, this Airport Rescue Grant Agreement.

11. System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).

- a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
- b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/SAM/pages/public/index.jsf>.

12. Electronic Grant Payment(s). Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.

13. Air and Water Quality. The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Agreement.

14. Financial Reporting and Payment Requirements. The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.

15. Buy American. Unless otherwise approved in advance by the FAA, in accordance with 49 United States Code (U.S.C.) § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured goods produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.

16. Audits for Sponsors.

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA.

17. Suspension or Debarment. When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:

- a. Verify the non-Federal entity is eligible to participate in this Federal program by:
 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
 2. Collecting a certification statement from the non-Federal entity attesting the entity is not excluded or disqualified from participating; or

3. Adding a clause or condition to covered transactions attesting the individual or firm is not excluded or disqualified from participating.
- b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g., subcontracts).
- c. Immediately disclose to the FAA whenever the Sponsor (1) learns the Sponsor has entered into a covered transaction with an ineligible entity, or (2) suspends or debars a contractor, person, or entity.

18. Ban on Texting While Driving.

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to this Airport Rescue Grant or subgrant funded by this Grant.
 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - A. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - B. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded by this Airport Rescue Grant.

19. Trafficking in Persons.

- a. You as the recipient, your employees, subrecipients under this Airport Rescue Grant, and subrecipients' employees may not –
 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 2. Procure a commercial sex act during the period of time that the award is in effect; or
 3. Use forced labor in the performance of the award or subawards under the Airport Rescue Grant.
- b. The FAA as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –
 1. Is determined to have violated a prohibition in paragraph a. of this Airport Rescue Grant Agreement term; or
 2. Has an employee who is determined by the agency official authorized to terminate the Airport Rescue Grant Agreement to have violated a prohibition in paragraph a. of this Airport Rescue Grant term through conduct that is either –
 - A. Associated with performance under this Airport Rescue Grant; or

- B. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by the FAA at 2 CFR Part 1200.
 - c. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a. of this Grant condition during this Airport Rescue Grant Agreement.
 - d. Our right to terminate unilaterally that is described in paragraph a. of this Grant condition:
 - 1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and
 - 2. Is in addition to all other remedies for noncompliance that are available to the FAA under this Airport Rescue Grant.
- 20. Employee Protection from Reprisal.**
- a. Prohibition of Reprisals —
 - 1. In accordance with 41 U.S.C. § 4712, an employee of a grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (a)(2) of this Grant condition, information that the employee reasonably believes is evidence of:
 - a. Gross mismanagement of a Federal grant;
 - b. Gross waste of Federal funds;
 - c. An abuse of authority relating to implementation or use of Federal funds;
 - d. A substantial and specific danger to public health or safety; or
 - e. A violation of law, rule, or regulation related to a Federal grant.
 - 2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:
 - a. A member of Congress or a representative of a committee of Congress;
 - b. An Inspector General;
 - c. The Government Accountability Office;
 - d. A Federal employee responsible for oversight or management of a grant program at the relevant agency;
 - e. A court or grand jury;
 - f. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
 - g. An authorized official of the Department of Justice or other law enforcement agency.
 - 3. Submission of Complaint — A person who believes that they have been subjected to a reprisal prohibited by paragraph a. of this Airport Rescue Grant Agreement may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
 - 4. Time Limitation for Submittal of a Complaint — A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

5. **Required Actions of the Inspector General** — Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
6. **Assumption of Rights to Civil Remedy** — Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).
21. **Limitations.** Nothing provided herein shall be construed to limit, cancel, annul, or modify the terms of any Federal grant agreement(s), including all terms and assurances related thereto, that have been entered into by the Sponsor and the FAA prior to the date of this Airport Rescue Grant Agreement.
22. **Face Coverings Policy.** The sponsor agrees to implement a face-covering (mask) policy to combat the spread of pathogens. This policy must include a requirement that all persons wear a mask, in accordance with Centers for Disease Control (CDC) and Transportation Security Administration (TSA) requirements, as applicable, at all times while in all public areas of the airport property, except to the extent exempted under those requirements. This special condition requires the airport sponsor continue to require masks until Executive Order 13998, Promoting COVID-19 Safety in Domestic and International Travel, is no longer effective.

SPECIAL CONDITIONS FOR USE OF AIRPORT RESCUE GRANT FUNDS

CONDITIONS FOR EQUIPMENT -

1. **Equipment or Vehicle Replacement.** The Sponsor agrees that when using funds provided by this Grant to replace equipment, the proceeds from the trade-in or sale of such replaced equipment shall be classified and used as airport revenue.
2. **Equipment Acquisition.** The Sponsor agrees that for any equipment acquired with funds provided by this Grant, such equipment shall be used solely for purposes directly related to combating the spread of pathogens at the airport.
3. **Low Emission Systems.** The Sponsor agrees that vehicles and equipment acquired with funds provided in this Grant:
 - a. Will be maintained and used at the airport for which they were purchased; and
 - b. Will not be transferred, relocated, or used at another airport without the advance consent of the FAA.

The Sponsor further agrees that it will maintain annual records on individual vehicles and equipment, project expenditures, cost effectiveness, and emission reductions.

CONDITIONS FOR UTILITIES AND LAND -

4. **Utilities Proration.** For purposes of computing the United States' share of the allowable airport operations and maintenance costs, the allowable cost of utilities incurred by the Sponsor to operate and maintain airport(s) included in the Grant must not exceed the percent attributable to the capital or operating costs of the airport.
5. **Utility Relocation in Grant.** The Sponsor understands and agrees that:
 - a. The United States will not participate in the cost of any utility relocation unless and until the Sponsor has submitted evidence satisfactory to the FAA that the Sponsor is legally responsible for payment of such costs;

- b. **FAA participation is limited to those utilities located on-airport or off-airport only where the Sponsor has an easement for the utility; and**
- c. **The utilities must serve a purpose directly related to the Airport.**

The Sponsor's acceptance of this Offer and ratification and adoption of the Airport Rescue Grant Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor. The Offer and Acceptance shall comprise an Airport Rescue Grant Agreement, as provided by the ARP Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to this Grant. The effective date of this Airport Rescue Grant Agreement is the date of the Sponsor's acceptance of this Offer.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

Dated August 5, 2021

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**

**LACEY D
SPRIGGS**

Digitally signed by LACEY D
SPRIGGS
Date: 2021.08.05 13:09:34 -05'00'

(Signature)

Lacey D. Spriggs

(Typed Name)

**Manager, Louisiana/New Mexico
Airports District Office**

(Title of FAA Official)

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Airport Rescue Grant Application and incorporated materials referred to in the foregoing Offer under Part I of this Airport Rescue Grant Agreement, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Airport Rescue Grant Application and all applicable terms and conditions provided for in the ARP Act and other applicable provisions of Federal law.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct. ¹

Dated _____

City of Truth or Consequences

(Name of Sponsor)

(Signature of Sponsor's Designative Official/Representative)

(Type Name of Sponsor's Designative Official/Representative)

(Title of Sponsor's Designative Official/Representative)

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of New Mexico. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the ARP Act. The Sponsor understands funding made available under this Grant Agreement may only be used for costs related to operations, personnel, cleaning, sanitization, janitorial services, and combating the spread of pathogens at the airport incurred on or after January 20, 2020, or for debt service payments that are due on or after March 11, 2021. Further, it is my opinion the foregoing Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

Dated

By:

(Signature of Sponsor's Attorney)

AIRPORT RESCUE GRANT ASSURANCES

AIRPORT SPONSORS

A. General.

1. These Airport Rescue Grant Assurances are required to be submitted as part of the application by sponsors requesting funds under the provisions of the American Rescue Plan Act of 2021 ("ARP Act," or "the Act"), Public Law 117-2. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
2. Upon acceptance of this Airport Rescue Grant offer by the sponsor, these assurances are incorporated into and become part of this Airport Rescue Grant Agreement.

B. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this Airport Rescue Grant that:

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Airport Rescue Grant including but not limited to the following:

FEDERAL LEGISLATION

- a. 49 U.S.C. Chapter 471, as applicable
- b. Davis-Bacon Act — 40 U.S.C. 276(a), et. seq.
- c. Federal Fair Labor Standards Act — 29 U.S.C. 201, et. seq.
- d. Hatch Act — 5 U.S.C. 1501, et. seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et. seq.
- f. National Historic Preservation Act of 1966 — Section 106 — 16 U.S.C. 470(f).
- g. Archeological and Historic Preservation Act of 1974 — 16 U.S.C. 469 through 469c.
- h. Native Americans Grave Repatriation Act — 25 U.S.C. Section 3001, et. seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 — Section 102(a) — 42 U.S.C. 4012a.
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f)).
- m. Rehabilitation Act of 1973 — 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 — 42 U.S.C. 6101, et. seq.

- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 — 42 U.S.C. 4151, et. seq.
- s. Power plant and Industrial Fuel Use Act of 1978 — Section 403- 2 U.S.C. 8373.
- t. Contract Work Hours and Safety Standards Act — 40 U.S.C. 327, et. seq.
- u. Copeland Anti-kickback Act — 18 U.S.C. 874.1.
- v. National Environmental Policy Act of 1969 — 42 U.S.C. 4321, et. seq.
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 — 31 U.S.C. 7501, et. seq.²
- y. Drug-Free Workplace Act of 1988 — 41 U.S.C. 702 through 706.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

- a. Executive Order 11246 – Equal Employment Opportunity
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction
- f. Executive Order 12898 – Environmental Justice
- g. Executive Order 14005 – Ensuring the Future Is Made in All of America by All of America's Workers.

FEDERAL REGULATIONS

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.^{3, 4}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 28 CFR Part 35 – Discrimination on the Basis of Disability in State and Local Government Services.
- e. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- f. 29 CFR Part 1 – Procedures for predetermination of wage rates.¹
- g. 29 CFR Part 3 – Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹

- h. 29 CFR Part 5 – Labor standards provisions applicable to contracts covering Federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- i. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally assisted contracting requirements).¹
- j. 49 CFR Part 20 – New restrictions on lobbying.
- k. 49 CFR Part 21 – Nondiscrimination in Federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- l. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.
- m. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Program.
- n. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- o. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- p. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- q. 49 CFR Part 32 – Government-wide Requirements for Drug-Free Workplace (Financial Assistance).
- r. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- s. 49 CFR Part 41 – Seismic safety of Federal and Federally assisted or regulated new building construction.

FOOTNOTES TO AIRPORT RESCUE GRANT ASSURANCE B

- ¹ These laws do not apply to airport planning sponsors.
- ² These laws do not apply to private sponsors.
- ³ Cost principles established in 2 CFR Part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- ⁴ Audit requirements established in 2 CFR Part 200 subpart F are the guidelines for audits.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations, or circulars are incorporated by reference in this Grant Agreement.

1. Purpose Directly Related to the Airport

It certifies that the reimbursement sought is for a purpose directly related to the airport.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this Grant, and to finance and carry out the proposed grant; that an official decision has been made by the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing

and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this Grant and to finance and carry out the proposed Grant and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Good Title.

It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

4. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with this Grant Agreement.
- c. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations, and the terms and conditions of this Grant Agreement.

5. Consistency with Local Plans.

Any project undertaken by this Grant Agreement is reasonably consistent with plans (existing at the time of submission of the Airport Rescue Grant application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

6. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where any project undertaken by this Grant Agreement may be located.

7. Consultation with Users.

In making a decision to undertake any airport development project undertaken by this Grant Agreement, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

8. Pavement Preventative Maintenance.

With respect to a project undertaken by this Grant Agreement for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed, or repaired with Federal financial assistance at the airport, including Airport Rescue Grant funds provided under this Grant Agreement. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

9. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all Grant accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the Grant in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the Grant supplied by other sources, and such other financial records pertinent to the Grant. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a Grant or relating to the Grant in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

10. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on the airport funded under this Grant Agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

11. Veteran's Preference.

It shall include in all contracts for work on any airport development project funded under this Grant Agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

12. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, State and local agencies for maintenance and

operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:

1. Operating the airport's aeronautical facilities whenever required;
2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
3. Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

13. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

14. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft.

15. Exclusive Rights.

The sponsor shall not grant an exclusive right to use an air navigation facility on which this Grant has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

- a. it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and
- b. allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

16. Airport Revenues.

- a. This Grant shall be available for any purpose for which airport revenues may lawfully be used to prevent, prepare for, and respond to coronavirus. Funds provided under this Airport Rescue Grant Agreement will only be expended for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport(s) subject to this agreement and all applicable addendums for costs

related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments as prescribed in the Act.

- b. For airport development, 49 U.S.C. § 47133 applies.

17. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

18. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

19. Airport Layout Plan.

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
 - 1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 - 2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
 - 3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
 - 4. all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan

as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

20. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this Grant.

- a. Using the definitions of activity, facility, and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR Part 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
 - 1. **Programs and Activities.** If the sponsor has received a grant (or other Federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2. **Facilities.** Where it receives a grant or other Federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
 - 3. **Real Property.** Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

- c. **Duration**

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2. So long as the sponsor retains ownership or possession of the property.

- d. **Required Solicitation Language**

It will include the following notification in all solicitations for bids, Requests for Proposals for work, or material under this Grant and in all proposals for agreements, including airport concessions, regardless of funding source:

“The **City of Truth or Consequences**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

e. **Required Contract Provisions.**

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT Acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - A. For the subsequent transfer of real property acquired or improved under the applicable activity, grant, or program; and
 - B. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, grant, or program.
 - C. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
 - D. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

21. Foreign Market Restrictions.

It will not allow funds provided under this Grant to be used to fund any activity that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

22. Policies, Standards and Specifications.

It will carry out any project funded under an Airport Rescue Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars for AIP projects, as of July 9, 2021.

23. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

24. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

25. Acquisition Thresholds.

The FAA deems equipment to mean tangible personal property having a useful life greater than one year and a per-unit acquisition cost equal to or greater than \$5,000. Procurements by micro-purchase means the acquisition of goods or services for which the aggregate dollar amount does not exceed \$10,000, unless authorized in accordance with 2 CFR § 200.320. Procurement by small purchase procedures means those relatively simple and informal procurement methods for securing goods or services that do not exceed the \$250,000 threshold for simplified acquisitions.

**Current FAA Advisory Circulars Required for Use in AIP Funded and PFC
Approved Projects**

View the most current Series 150 Advisory Circulars (ACs) for Airport Projects at
http://www.faa.gov/airports/resources/advisory_circulars and
http://www.faa.gov/regulations_policies/advisory_circulars

DOCUMENT #3

FOR SECURITY PURPOSES, THE FACE OF THIS DOCUMENT CONTAINS A COLORED BACKGROUND AND MICROPRINTING IN THE BORDER

ROTARY CLUB OF TRUTH OR CONSEQUENCES

P.O. Box 1782

TRUTH OR CONSEQUENCES, NM 87901

5155

Pay to the
Order of

City of T or C

8/10/21

\$ 382.00

Three Hundred & 82/100

DOLLARS

Memo

Rotary Club Sign

Alvin W. Siffert
Alvin W. Siffert

⑈5155⑈ ⑆112206297⑆ ⑈51 400 4⑈



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: September 8, 2021

Agenda Item #: F.3

SUBJECT: Resolution No. 22 21/22 Authorizing and Approving Submission of a Completed Application for Financial Assistance and Project Approval to the New Mexico Finance Authority

DEPARTMENT: City Manager's Office

DATE SUBMITTED: September 2, 2021

SUBMITTED BY: Tammy Gardner

WHO WILL PRESENT THE ITEM: City Manager, Bruce Swingle

Summary/Background:

Authorizing and approving submission of a completed application for financial assistance and project approval to the New Mexico Finance Authority.

Recommendation:

Approve

Attachments:

- Resolution No 22 21/22

Fiscal Impact (Finance): No

None

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. 22 21/22 Ordinance No. [Click here to enter text.](#)

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

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

File Name: CC Agendas 9-8-2021



RESOLUTION NO. 22 21/22

AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY.

WHEREAS, The City of Truth or Consequences ("Governmental Unit") is a qualified entity under the New Mexico Finance Authority Act, Sections 6-21-1 through 6-21-31, NMSA 1978 ("Act"), and the Board of City Commissioners ("Governing Body") is authorized to borrow funds and/or issue bonds for financing of public projects for benefit of the Governmental Unit; and

WHEREAS, the New Mexico Finance Authority ("Authority") has instituted a program for financing of projects from the public project revolving fund created under the Act and has developed an application procedure whereby the Governing Body may submit an Application ("Application") for financial assistance from the Authority for public projects; and

WHEREAS, the Governing body intends to undertake acquisition, construction and improvement of an electrical transformer ("Project") for the benefit of the Governmental Unit and its citizens; and

WHEREAS, the application prescribed by the Authority has been completed and submitted to the Governing Body and this resolution approving submission of the completed Application to the Authority for its consideration and review is required as part of the Application.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF TRUTH OR CONSEQUENCES:

Section 1. That all action (not consistent with the provision hereof) hereto fore taken by the Governing Body and the officers and employees thereof directed toward the Application and the Project, be and the same is hereby ratified, approved and confirmed.

Section 2. That the completed Application submitted to the Governing Body, be and the same is hereby approved and confirmed.

Section 3. That the officers and employees of the Governing Body are hereby directed and requested to submit the completed Application to the Authority for its review, and are further authorized to take such other action as may be requested by the Authority in its consideration and review of the Application and to further proceed with arrangements for financing the Project.

Section 4. All acts and resolutions in conflict with this resolution are hereby rescinded, annulled, and repealed.

Section 5. This resolution shall take effect immediately upon its adoption

PASSES APPROVED AND ADOPTED THIS 8th day of **September, 2021**.

GOVERNING BODY

By _____

Sandra Whitehead, Mayor

(Seal)

ATTEST:

Angela A. Torres, City Clerk-Treasurer



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: September 8, 2021

Agenda Item #: G.1

SUBJECT: Ariel Dougherty Public Appeal in regards to Resolution No. 05 21/22 imposing a \$50 monthly trip fee to customers desiring to retain their digital meters.

DEPARTMENT: -

DATE SUBMITTED: September 2, 2021

SUBMITTED BY: -

WHO WILL PRESENT THE ITEM: Ariel Dougherty

Summary/Background:

Ariel Dougherty submitted an appeal to the City of Truth or Consequences in regards to Resolution No. 05 21/22 imposing a \$50 monthly trip fee to customers desiring to retain their digital meters. Ms. Dougherty will be given the opportunity to present her appeal before the City Commissioners.

Recommendation:

None.

Attachments:

- Ariel Dougherty filed appeal

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 9-8-2021

August 2, 2021

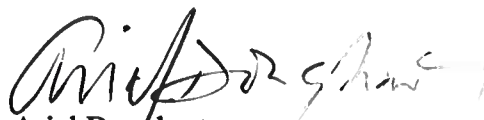
Dear Clerk Torres,

Please find attached a three page Appeal of Resolution 5 21/22. With it are also attached four Exhibits. I have brought it to you in paper form to have it date stamped.

Could you please be so kind in making a PDF of it to send a copy to me.

Thank you.

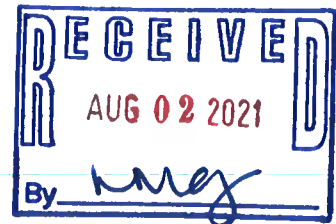
Sincerely,


Ariel Dougherty

1580 Caballo Road
Truth or Consequences,
New Mexico 87901

575 – 740 – 5868
ArielCamera@gmail.com

8 pages



An Electric Appeal Process in accordance with Section 14-30(e)

Based on policy guidelines established at the July 28, 2021 City of Truth or Consequences Commission Meeting (Item H. 12), I hereby appeal a Decision made by the Truth Or Consequences City Commission at its July 14, 2021 meeting, Resolution 5 21/22. As posted on the Agenda for the July 14, 2021 meeting, that Resolution reads: "the imposition of a \$50 monthly fee to retain a digital meter."

A. In what is clearly a Catch-22 I appeal a decision made over two weeks ago, by a policy that was ONLY established a few days ago. Such persistent redefining, in a backwards manner, of City Code--because clarity and thoroughly thoughtout steps are not fully considered *in advance of making appropriate policies* that are to serve the public good--create one, confusion, and two, legal questions.

B. In the newly established policy on appeals, the rules seem to apply to the last stage of an appeal when it is to go before the Commission. For lack of quidelines (as refered to in 14-30 (e)) on how to initiate an appeal with the Department, I follow these, the only available written guidelines

This is my written appeal following as best I can the procedures outlined as approved July 28, 2021:

(1) (a) July 30, 2021

Ariel Dougherty account 2091-03177-00
1580 Caballo Road, Truth or Consequences, NM

(b) Ariel Dougherty

1580 Caballo Road, Truth or Consequences, NM 87901

(c) Resolution 5 21/22 has caused an undue, unjust and harmful cost to me as added to my utility bill reading as "EL TOTAL CHARGE". (See attached July bill, Exhibit A.)

i. "EL TOTAL CHARGE" exists in another line on the bill. How can there be two lines of "EL TOTAL CHARGE"? (ie. can I pick one?)

ii. Commissioners violated their oaths of office to uphold the Constitution and State Statutes in making this decision. There are many such violations. Here I identify one which Commissioners were appraised of prior to taking this decision:

NM Stat § 62-8-1 (2016) : Every rate made, demanded or received by any public utility shall be just and reasonable.

iii. When the Commission heard my appeal, Public Appeals in regard to Electric

Smart Meters, January 27, 2021 it was based on the then current conditions of City Code Section 14-30. No such penalties or other conditions of “trip charges” etc existed at that time in the code. Hence, the circumstance of my appeal and its conditions can not be altered *post facto* by newly created rules or codes.

iv. There is no official record or decision by the Commission at the time of my appeal, January 27, 2021, ***that approved or denied my appeal. But neither was it tabled for a continuance.*** As I still retain my original “non-smart meter” (i.e. non AMI meter) and based on the City's acceptance of Mr. Dumiak's appeal on July 23rd, 2021 I surmise that my appeal was *de facto* approved. I stated this in Public Comment on July 14 and have received no counter to this conclusion. My appeal under Section 14-30 (e) was specifically for a waiver of installation of a so-called smart meter as there existed no “op out” mechanism.

v. The Commission's “magic” originally identifying a “\$50 trip fee” at it's January 27th meeting was based on a false equivalency with the vast multi-county range of Sierra Electric Coop vs a miniscule number of square miles within the confines of the City of Truth or Consequences. The fee process and its discussion by the Commission, a belated attempt to create an “opout”, was arbitrary and capricious. More significantly creation of a fee was not on the City's Agenda for the meeting. It was declared an Open Meetings Violation in a May 28, 2021 determination letter from the NM Attorney General. That seven page letter is on record with the City.

vi. July 14, 2021 the City had on its agenda Resolution 5 21/22 “the imposition of a \$50 monthly fee to retain a digital meter,” thus far the only issue the City has attempted to correct among a list of concerns raised in the May 28, 2021 determination letter. The attempt here denotes bias and an unfair selection from those issues raised by the Attorney General's office.

vii. Resolution 5 21/22 attempts to create a monthly fee on a very small number of citizens who for a variety of reasons have desired to keep their older electric meters. For those individuals like myself who had appeals earlier accepted such a restriction can not be newly super imposed on those prior decisions.

viii. Had the City desired to *post facto* demand payments from the citizens already who had their appeals accepted based on the earlier rules of Section 14-30 they should have included language in Resolution 5 21/22 that specifically claims a retroactive fee process. No such language for retroactive fees from those whose appeals had been accepted exists in Resolution 5 21/22.

ix. As the THEREFORE 3of Resolution 5 21/22. suggests requests be “made within a reasonable time”, I remind the City that I made a waiver or exception request first on December 18, 2020, a full seven months and more before this Resolution came before the Commission. The Resolution can only affect future appeals or requests by customers to keep their older electric meters.

x. In 276 billing cycles over 23 years the City has sent both an electric meter

reader and a water meter reader to my house. These on-going labor expenses have long been included in past billings and continue so in water billings. Why all of a sudden does this normal, past task cost an additional \$50 to me? There appears NO awareness of or acknowledgement of or adjustments of bills based on these past labor costs. Have all smart-metered customers had some adjustment down in their billing because such labor is no longer a factor in their billing? This charge of Resolution 5 21/22 is illogical and unjust and obviously a 2nd charge for the same task.

xi. Costs were not concerns for the City when the Cover Item Sheet of my appeal [Item F.1 on January 27, 2021 (Exhibit B)] was filled out nor, ironically, for this Resolution [Item G.5. at the July 14, 2021 meeting (Exhibit C)] In both cases the Fiscal Impact box was left blank or listed as \$0.00. Only for the Written Appeal procedures [Item H.12. July 28, 2021 meeting (Exhibit D)] was it filled out with a ridiculously vague “yes”. This underscores the City's own confusion and that it perceives no need of or concern of this activity having any fiscal impact on the City. Specifically it makes a mockery of the Fourth WHEREAS in the Resolution.

(1) (d) I seek relief on three levels.

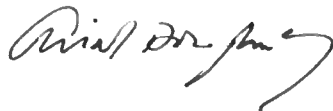
One, I ask City staff and Commissioners in their deliberations to foremost consider the public good which the Constitution requires. To date, that has not been the case with processes concerning the AMI metering. All points have addressed City workers needs not the public's welfare.

Two, I seek that all billing, rules and other communiques from the City be clear, consistent and full – not piecemeal, unclear and hidden.

And three, I seek to have the present additional “EL TOTAL CHARGE” removed from my current July Utility bill now and forthcoming on all future monthly bills for all the reasons I have stated prior on items (1) (c) i thru xi .

A thorough response to this appeal would address, in writing *just as I am required to do*, to each the items that I have explained in (1) (c) i thru xi.

Thank you very much for considering my appeal to Resolution 5 21/22.



Sincerely,

Ariel Dougherty

EXHIBIT A



TRUTH OR CONSEQUENCES
505 Sims St
Truth or Consequence, NM 87901



ARIEL DOUGHERTY
1580 E CABALLO RD
TRUTH OR CONSEQ, NM 87901

1238

Account Number	AMOUNT DUE
2091-03177-00	\$241.43
Due Date	After Due Date Pay
7/30/2021	\$244.93
Billing Date	Penalty Date
7/15/2021	7/31/2021
Service From	Service To
5/6/2021	6/5/2021
Service Address	
1580 E CABALLO RD	

PREVIOUS BALANCE \$363.20
PAYMENTS (\$205.18)
PENALTIES \$0.00
ADJUSTMENTS (\$150.00)
PAST DUE AMOUNT \$8.02

	PREVIOUS READING	CURRENT READING
Wat	1,099	1,101
Elec	34,246	34,973
E		
Sew		Sewer Average
Ref		

USAGE

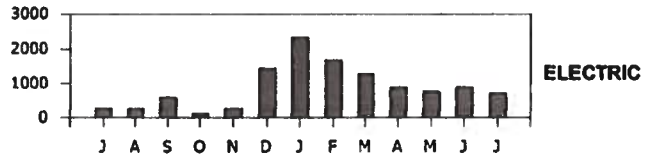
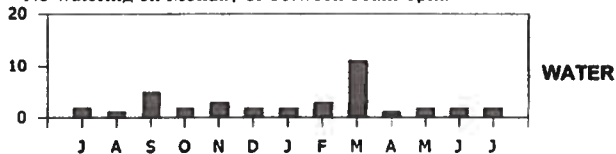
WATER TOTAL CHARGE 15.50
ENERGY COST ADJ 30.10
EL TOTAL CHARGE 73.43
EL TOTAL CHARGE 50.00
SEWER TOTAL CHARGE 20.72
TRASH CHARGE 31.47
Tax \$12.19
CURRENT BILL \$233.41
AMOUNT DUE \$241.43
AMOUNT DUE AFTER 07/30/2021 \$244.93

CITY OF TRUTH OR CONSEQUENCES WATER CONSERVATION IS IN EFFECT FROM APRIL-SEPTEMBER

Even address Tuesday, Thursday and Saturday

Odd address Wednesday, Friday and Sunday

No watering on Monday or between 10am-6pm.



CUSTOMER ACCOUNT INFORMATION - RETAIN FOR YOUR RECORDS



TRUTH OR CONSEQUENCES
505 Sims St
Truth or Consequence, NM 87901



TRUTH OR CONSEQUENCES
505 Sims St
Truth or Consequence, NM 87901

There will be a charge on all returned checks.
Please return this portion with your payment.
When paying in person, please bring both portions of this bill.

Account Number	AMOUNT DUE
2091-03177-00	\$241.43
Due Date	After Due Date Pay
7/30/2021	\$244.93
Account Name	
ARIEL DOUGHERTY	
Service Address	
1580 E CABALLO RD	
Amount Enclosed	





CITY OF TRUTH OR CONSEQUENCES

EXHIBIT B

AGENDA REQUEST FORM

MEETING DATE: January 27, 2021

Agenda Item #: F.1

SUBJECT: Public Appeals in regard to Electric Smart Meters.

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: January 22, 2021

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

WHO WILL PRESENT THE ITEM: City Manager Madrid

Summary/Background:

Ron Fenn, Ariel Dougherty and Lee Foerstner submitted appeals to the City of Truth or Consequences in regards to Electric Smart Meters. Each person will be given the opportunity to present their appeals before the City Commissioners.

Recommendation:

None.

Attachments:

- Ron Fenn Letter from City and filed appeal
- Ariel Dougherty Letter from City and filed appeal
- Lee Foerstner Letter from City and filed appeal

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 1-27-2021



CITY OF TRUTH OR CONSEQUENCES

EXHIBIT C

AGENDA REQUEST FORM

MEETING DATE: July 14, 2021

Agenda Item #: G.5

SUBJECT: Resolution No. 05 21/22 the imposition of a \$50 monthly fee to retain a digital meter.
DEPARTMENT: City Manager's Office
DATE SUBMITTED: July 9, 2021
SUBMITTED BY: City Manager Swingle
WHO WILL PRESENT THE ITEM: Bruce Swingle

Summary/Background:

The city entered into a contract with Landis-Gyr dated September 16, 2019 which contemplated that Landis-Gyr would install AMI Meters to all of the city utility customers. The city wishes to accommodate customers who desire to retain digital meters in lieu of having an AMI installed on their property for a \$50 monthly fee.

Recommendation:

Approve Resolution.

Attachments:

- Resolution No. 05 21/22
- .

Fiscal Impact (Finance): Choose an item.

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 7-14-21



CITY OF TRUTH OR CONSEQUENCES

EXHIBIT D

AGENDA REQUEST FORM

MEETING DATE: July 28, 2021

Agenda Item # : H.12

SUBJECT: Adoption of written procedures pertaining to the Utility Service appeal process in Section 14-30(e) of the Municipal Code.

DEPARTMENT: City Clerk's Office

DATE SUBMITTED: July 23, 2021

SUBMITTED BY: City Clerk Torres

WHO WILL PRESENT THE ITEM: City Clerk Torres

Summary/Background:

Section 14-30(e) of the Municipal Code states that any person disputing a disconnect notice or other action related to utility service, will be provided a reasonable opportunity to appeal within the department, then to the City Manager, and if dissatisfied with the City Manager's decision, to the City Commission in accordance with written procedures established by the Electric Department. This item is to adopt written procedures for the Utility Service appeal process.

Recommendation:

Approval of Utility Service appeal procedures.

Attachments:

- Appeal procedures
- Section 14-30(e)

Fiscal Impact (Finance): Yes

Legal Review (City Attorney): Yes

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

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

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

File Name: CC agendas 7-28-21



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: September 8, 2021

Agenda Item #: G.2

SUBJECT: Ron Fenn Public Appeal in regards to Resolution No. 05 21/22 imposing a \$50 monthly trip fee to customers desiring to retain their digital meters.

DEPARTMENT: -

DATE SUBMITTED: September 2, 2021

SUBMITTED BY: -

WHO WILL PRESENT THE ITEM: Ron Fenn

Summary/Background:

Ron Fenn submitted an appeal to the City of Truth or Consequences in regards to Resolution No. 05 21/22 imposing a \$50 monthly trip fee to customers desiring to retain their digital meters. Mr. Fenn will be given the opportunity to present his appeal before the City Commissioners.

Recommendation:

None.

Attachments:

- Ron Fenn filed appeal

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☒ City Manager

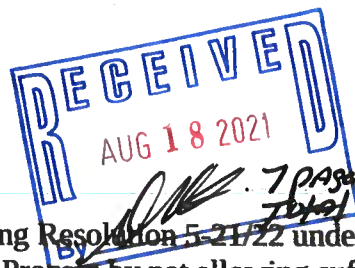
CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 9-8-2021



I appeal the fee imposed upon me by your actions in approving Resolution 5-21/22 under protest. The recently approved "Appeal Procedures" denies any true Due Process by not allowing sufficient time to question the appellees or to receive written reasons for anticipated denials. Impartial hearing is imperative in such appeals but can hardly be expected when they are heard by the architects of the appealed cause. These are requirements of Substantive Due Process and to date have been absent from such proceedings. Administrative Due process is only half of the Constitutional imperative.

Appeal Points

1. Commissioners, you have all signed and sworn an Oath pledging to: "... I will support the Constitution ... and laws of the State of New Mexico...". In that regard the Bill of Rights which provides the authority "vested and derived from the people..." to act as Representatives, not Rulers, but obligates you to act "solely for their good." *Article II Sec. 2 Bill of Rights NM Constitution*
I ask of you to describe, as a requirement of "Substantive Due Process" the "GOOD" that is conferred to me by your actions. (See Attachments)
2. The action taken in Resolution 5-21/22 has not been demonstrated in any way to conform to: *NM Stat § 62-8-1 (2020) "Every rate made, demanded or received by any public utility shall be just and reasonable."* The often used argument that we are not under the PRC (Public Regulatory Commission) is moot because the T or C City Commission has the authority over the City's Public Utility and is thus obliged to follow the State Statute.
No explanation of how this "fee" is Just (justified) or Reasonable rather than punitive has been made. The City failed to consider alternative solutions to a "meter-reading problem" caused by so few, yet benefiting none, except a few city employees and the profit of Landis & Gyr, at the expense of all local ratepayers
3. Your reliance on decision making information from employees and salesmen rather than from the owners of the utility, that is the residents and ratepayers, shows extreme bias and conflict of interest. The people own the Public Utilities in this Community and have been roundly ignored, but forced to pay for this erroneous decision making. The expenditure of amounts that will far exceed the million dollar initial cost should instead have been spent on critical infrastructure not on a frill used for billing that was not failing for the reasons attributed to this action.
Public recommendations as alternative meter-reading solutions such as; Self Reading and Reporting or enforcement of Municipal Code relocation of meters were totally ignored. The failure to engage the wider affected population has resulted in further financial degradation of our community.
4. The City Commission is a Legislative body, not a Judicial or Executive one and should not take on those roles. The fine imposed in Resolution 5-21/22 a particularly flawed piece of legislation is arbitrary, capricious and odious. It affects so few and must be seen as an attempt to coerce compliance without concern for the valid and documented reasons for refusing this contractual offer without full disclosure or warranty. In this case especially so as this commission denied a legally required election on the subject or approval of the affected public.
5. As a solar producer who has supplied the city utility with more than five megawatts of power, without compensation, or having even been billed for purchases of electricity in the past 2 years, I take great umbrage to the abuse of my finances, imposed by this thoughtless resolution, and at the city's abusive actions toward me over the years to chill my protected free-speech rights. If the research and

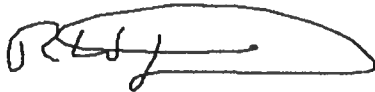
comments I have made embarrass or annoy this commission, it is merely my pointing out of problems that you have created, documented and which will continue as long as you provide such grounds.

6. The adopted Municipal Code for Utilities was not written by this community as evidenced by language speaking to “[C]ompany owned poles or other company owned facilities.” Thus meter-reading which is mentioned as a city function does not specifically address or forbid its accomplishment through customer self-reading and reporting. The lack of trust expressed in the public’s ability to honestly report is in essence a direct reflection on the City officials and employees who have, time after time, exempted others and violated the Municipal Code with seeming impunity.

This ends my appeal narrative.

Thank you for this process which opens a new 30 day opportunity for appeal to a higher authority.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Ron Fenn', enclosed within a hand-drawn oval shape.

Ron Fenn

Attachments, Oath of Office for:

Sandra Whitehead

Amanda Forrister

Francis Luna

Paul Baca

Randall Aragon

**CITY OF TRUTH OR CONSEQUENCES
OATH OF OFFICE**

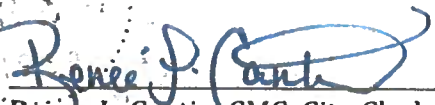
STATE OF NEW MEXICO}
 } SS.
County of Sierra }

I, **Sandra K. Whitehead**, having been duly elected or appointed as **POSITION I CITY COMMISSIONER FOR A TERM TO EXPIRE IN MARCH 2022**, in the County of Sierra, State of New Mexico, do solemnly swear that I will support the Constitution of the United States, the Constitution and laws of the State of New Mexico and faithfully and impartially discharge the duties of said office to the best of my ability, so help me God.


Sandra K. Whitehead

Subscribed and sworn before me this **12th** day of **March**, 2018.

SEAL


Renee L. Cantin, GMC, City Clerk

**CITY OF TRUTH OR CONSEQUENCES
OATH OF OFFICE**

STATE OF NEW MEXICO}
 } SS.
County of Sierra }

I, Amanda L. Forrister, having been duly elected as **POSITION V CITY COMMISSIONER**
FOR A TERM TO EXPIRE IN MARCH 2024, in the County of Sierra, State of New Mexico,
do solemnly swear that I will support the Constitution of the United States, the Constitution
and laws of the State of New Mexico and faithfully and impartially discharge the duties of
said office to the best of my ability, so help me God.


Amanda L. Forrister


Subscribed and sworn before me this **13th** day of **March**, 2020.




Angela A. Torres, CMC, City Clerk

STATE OF NEW MEXICO }
County of Sierra } SS.


Frances Luna


 1950
Angela A. Torres
 Angela A. Torres, CMC, City Clerk

**CITY OF TRUTH OR CONSEQUENCES
OATH OF OFFICE**


STATE OF NEW MEXICO}
 } SS.
County of Sierra }

I, Paul A. Baca, having been duly elected or appointed as **POSITION III CITY COMMISSIONER FOR A TERM TO EXPIRE IN MARCH 2022**, in the County of Sierra, State of New Mexico, do solemnly swear that I will support the Constitution of the United States, the Constitution and laws of the State of New Mexico and faithfully and impartially discharge the duties of said office to the best of my ability, so help me God.


Paul A. Baca

Subscribed and sworn before me this 12th day of March, 2018.

SEAL


Renee L. Cantin, CMC, City Clerk

STATE OF NEW MEXICO }
County of Sierra } SS.

Randall Aragon

Subscribed and sworn before me this 13th day of March, 2020.

Angela A. Torres, CMC, City Clerk



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: September 8, 2021

Agenda Item #: G.3

SUBJECT: NM Workforce Connection Building Lease
DEPARTMENT: City Manager's Office
DATE SUBMITTED: August 25, 2021
SUBMITTED BY: Tammy Gardner
WHO WILL PRESENT THE ITEM: Bruce Swingle, City Manager

Summary/Background:

Review/Approve lease between the City of Truth or Consequences and NM Workforce Connection. Building located at 606 Sunset, Williamsburg, NM 87901. The lease is for a term of 60 months.

Recommendation:

Approve

Attachments:

- Lease
- .

Fiscal Impact (Finance): Choose an item.

Please see above lease.

Legal Review (City Attorney): Choose an item.

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 9-8-2021

LEASE

This lease is made and entered into in between, City of Truth or Consequences, a Municipal Corporation, Lessor and the **Southwestern Area Workforce Development Board**, Lessee, an agency or instrumentality of the *State of New Mexico*.

Lessor and Lessee agree as follows:

1. **Property Leased.** 606 Sunset, Williamsburg, New Mexico 87942.

a. Include description of property including legal description where readily available, inventory of Lessor's furnishings and other property associated with the leased premises which shall remain on premises. The portion of the property that is leased is for workforce services in Sierra County. Lessee will also have access for use of common and parking areas on the property.

b. Square Footage of Leased Space

Leasable: 5,876 Usable: 1,560 (Leased to Workforce Connection)

c. Parking

- General Parking available;
- Designated-Regular Parking Spaces: 10
- Secured Parking Spaces: none at this time, and
- ADA Parking as required by city, county and state

2. **Term.** The term of this lease is for 60 months commencing September 1, 2021 and terminating August 31, 2026.

3. **Option to Renew.** In partial consideration for rent paid under this lease, Lessor DOES grant Lessee, its successors and assignees the first option to renew this lease. The renewal will be negotiable toward the end of the original term and shall be subject to the same terms and conditions set forth in this lease for the original term, except as may be provided otherwise in this lease with regard to rent. Lessee may exercise this option, if any, by giving Lessor written notice at least thirty days prior to the expiration of the current term.

4. **Holding Over.** Lessee's holding over or continued use or occupancy shall be construed as a month-to-month tenancy at the same monthly rent and subject to the same terms and conditions set forth in this lease.

5. Rent.

Year	Begin Date	End Date	Base Lease Cost	Operating Cost	Total Annual Amount	Monthly Amount	Rate Annual Lease Sq. Ft	*Option to Renew
1	09/01/2021	08/31/2022			\$12,000.00	\$1,000.00		
2	09/01/2022	08/31/2023			\$13,200.00	\$1,100.00		
3	09/01/2023	08/31/2024			\$14,400.00	\$1,200.00		
4	09/01/2024	08/31/2025			\$15,600.00	\$1,300.00		
5	09/01/2025	08/31/2026			\$16,800.00	\$1,400.00		*

* Option to renew

** Negotiable

The total rent for the initial term is (not including option year(s)) \$12,000.00

The Lessee has the sole responsibility for paying rent. Lessor should anticipate a delay in the first rent payment of each new fiscal year (July payments). The Department of Finance and Administration closes out all accounts for the fiscal year at that time and all payments may be delayed.

6. **Use of Leased Premises.** Lessee shall use the leased premises for purposes of carrying on state business. More particularly, Lessee shall use the leased premises for, among other things: Office space for employees and contractors to perform and support the work of the Lessee.

Lessor agrees that the premises are suitable for this (these) purpose(s) or has revealed to Lessee any reasons Lessor knows of or reasonably should know of why the premises might not be suitable for such purpose(s).

In accordance with the Workforce Innovation and Opportunity Act, the Lessee may enter into infrastructure resource agreements with its Workforce partners to cost share of the lease amounts.

7. **Condition of Premises.** Lessor warrants that the premises are in good and safe condition, structurally sound and of safe design and that they comply with all applicable building codes, ordinances, rules and regulations, except as noted:

-None-

All noted conditions shall be rectified prior to the inception of this lease or within sixty (60) days thereafter. Failure to correct any dangerous condition constitutes substantial breach.

8. **Accessibility to the Disabled.** The Lessor warrants that the premises shall meet standards consistent with the Americans with Disabilities Act (ADA) within sixty (60) calendar days of the execution of this lease. The Lessor also warrants that the premises will be maintained in compliance with these standards.

9. **Delivery of possession.** Lessor warrants that the premises will be vacant and will put Lessee in possession on the first day of the initial or any subsequent term.

10. **Damage to Premises.** If at the inception of this lease or at any time thereafter (including any renewal) all or any part of the leased premises shall be so damaged or destroyed through any cause, other than Lessee's willful act as to be rendered unfit for Lessee's occupancy, in Lessee's judgment, Lessee may declare this lease terminated and rent shall be payable only to the date of the damage. Alternatively, Lessee, in its sole discretion, may continue to occupy any portion useful to it, and the rent shall abate in proportion to the portions not useful to Lessee.

If at the inception of this lease or at any time thereafter (including any renewal) all or any part of the leased premises shall be so slightly damaged through any cause, other than Lessee's willful act, ordinary wear and tear or repair subject to routine maintenance, as not to be rendered unfit for Lessee's occupancy, in Lessee's judgment, Lessor shall repair the premises with all reasonable promptness, at Lessor's expense, and the rent shall abate fairly until repairs are completed. However, if Lessor fails to promptly commence or to expeditiously complete repairs necessary to restore the premises to their former condition, Lessee may declare this lease terminated and rent, including any fair abatement thereof, shall be payable only to the date of termination. Alternatively, if Lessor fails to promptly commence or to expeditiously complete repairs, Lessee, in its sole discretion, may perform or cause to be performed such repairs, and may deduct the costs from rent, including any fair abatement.

Lessee's decision as to whether all or any part of the premises is fit or unfit for occupancy shall be final, but Lessee's decision shall be reasonable in the circumstances.

Alterations. Lessee shall obtain the Lessor's written permission before making any alterations or improvements of a permanent nature.

11. **Ownership of Improvements.** All alterations and improvements made to or placed in the premises by Lessee are and shall remain the Lessee's property except as the parties mutually agree otherwise in writing, if such alterations and improvements can be removed without undue damage to the premises and are, in fact, removed by Lessee prior to termination of this lease or any renewal thereof or within a reasonable time after termination. Alterations and improvements of a permanent nature which cannot be removed without undue damage to the premises shall become Lessor's property except as the parties mutually agree otherwise in writing.

12. **Condition of Premises upon Surrender.** At the termination of this lease, Lessee shall surrender the premises in the condition in which they were at the inception of this lease, excepting:

- a. deterioration caused through reasonable use and ordinary wear and tear;
- b. alterations, improvements or conditions made with Lessor's written approval; and
- c. any change, damage or destruction not resulting from Lessee's willful act.

13. **Payment of Assessments, etc.** Lessor shall pay as they become due all assessments, charges, mortgages, liens and taxes payable in respect to the leased premises during the term of this lease. If Lessor defaults in paying any such amounts, Lessee, in its sole discretion, may pay any assessment, charge, mortgage, lien or tax. Upon doing so, Lessee shall be subrogated to the creditor's rights and may deduct the cost of such payment from rent.

14. Utilities, Janitorial Services and Supplies. Utilities, janitorial services and supplies shall be paid for by the party indicated by an "X." (Where not applicable, enter "N/A"):

	<u>Lessor</u>	<u>Lessee</u>
a. water	X	
b. sewer	X	
c. refuse disposal	X	
d. gas	X	
e. electricity	X	
f. janitorial services and supplies		X
g. security		X
h. other (specify): Facility repairs	X	
Light bulbs	X	

15. Right of Entry. Lessor or his agent has a right to enter upon the leased premises to inspect, to make repairs and for other reasonable purposes, with Lessee's permission, which shall not be unreasonably withheld. In an emergency, such as fire, Lessor or his agent may enter the premises without securing Lessee's prior permission but shall give Lessee notice of entry as soon thereafter as practicable.

16. Duty to Maintain Premises.

- Lessor has the duty to reveal to Lessee all structural defects of which he knows or reasonably should know, and to repair all structural defects in the premises.
- Lessor has the duty to repair and maintain the exterior of the premises, including but not limited to: roof, windows, grounds, parking lots, sidewalks, doors and lighting in safe condition and in good repair and condition. Lessee has the duty to inspect and notify Lessor of exterior conditions.
- Lessor has the duty to repair and maintain the interior of the premises, including but not limited to: cooling system, heating system, plumbing, lighting, doors, flooring, wall finishes, except as otherwise provided in paragraphs 10 and 13.
- If, after written notification, the Lessor fails to perform required maintenance, the Lessee may abate rent, or perform the maintenance and withhold the cost of the maintenance from the Lessor.

17. Duty to Insure.

- During the term of this lease and any extension thereof, Lessee shall provide coverage for liability of Lessee and its "public employees," as defined in the Tort Claims Act, and for its personal property and tenant's improvements and betterments, as required by New Mexico law.
- During the term of this lease and any extension thereof, Lessor shall maintain in force a policy or policies of insurance providing:
 - comprehensive general liability coverage of not less than \$1,000,000 limit per occurrence, including coverage for property damage, bodily injury and wrongful death. Such insurance policy or policies shall name the "Southwestern Area Workforce Development Board, its branches, agencies, instrumentalities and public employees" as additional insured, and
 - fire, lightning and extended coverage, or "all risk" coverage, for at least 80% of the actual cash value of the premises.

- c. To the extent permitted under their respective insurance policies, Lessor and Lessee waive all rights, against each other, for damages arising out of any damage to or destruction of the leased premises caused by fire or other perils insured against.
- d. Lessor releases and discharges the Lessee and its "public employees" as defined in the Tort Claims Act from any and all claims, damages and causes of action arising out of any damage to or destruction of the leased premises where such damage or destruction was not caused by the willful act of Lessee or any of its "public employees."
- e. Lessor shall provide certificates of coverage or proof of self-insurance evidencing compliance with this section which shall be attached to this lease at the time of execution. Lessor shall notify Lessee within ten days after cancellation or expiration of any required coverage.

18. Right to Terminate upon Breach of Condition or Agreement. Either party may terminate this lease upon the other party's substantial breach of any term or condition contained in this lease, provided that the breaching party shall be given thirty (30) days from the receipt of written notice of a substantial breach to cure the breach or to begin and proceed, with due diligence, to cure a breach that cannot be cured within thirty (30) days. In the event of a substantial breach, the non breaching party shall give the breaching party written notice that describes the nature of the breach and notifies the breaching party that, unless the breach is cured within the time limits contained herein, the lease shall terminate without further notice at the end of the cure period. Upon termination of the lease, the Lessee shall surrender the premises to the Lessor and shall be obligated to pay rent only to the date of surrender.

19. Special Damages. If through Lessor's willful breach of any term or condition, Lessee must vacate or cannot take possession of the leased premises, Lessee may recover, in addition to any other damages, special damages, including the cost of employee time lost, moving costs and all other reasonably ascertainable costs connected with relocating to other premises.

20. Lease Binding on Heirs, etc. This lease is binding upon the heirs, executors, administrators, personal representatives, assignees and successors-in-interest of the parties.

21. Amendments to be in Writing. This lease shall not be altered or amended except by instrument in writing executed by the parties.

22. Address for Notices, Payment of Rent, etc. Notices required under this lease and rental payments shall be made at the following addresses, except as changed by written notice to the opposite party:

a. Lessor: City of Truth or Consequences 505 Sims Street Truth or Consequences, NM 87901 Attn: City Manager	Telephone: 575-894-6673, ext. 320 Email: bswingle@torcnm.org and tgardner@torcnm.org
--	--

b. Payments to be mailed to the following, if different than Lessor: Same as Lessor.

c. Lessee: Fiscal Administrator
Southwestern Area Workforce Development

P.O. Box 1072
Elephant Butte, New Mexico 87935

Telephone No.: 575-744-4857
E-mail: sarnold@sccog-nm.com

23. Merger of Prior Agreement. This lease incorporates all of the conditions, agreements and understandings between the parties concerning the subject matter of this lease, and all such conditions, agreements and understandings have been merged into this written lease. No prior condition, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written lease.

24. Certificates and Documents Incorporated. All certificates and documentation required by the provisions of this lease shall be attached to the lease at the time of execution and are hereby incorporated in this written lease to the extent they are consistent with its terms and conditions. The following documents shall be attached hereto and incorporated herein:

- (a) Lease Summary;
- (b) Request for Proposals and Amendments to the RFP, if any;
- (c) Lessor's Proposal and any Clarifications or Certifications;
- (d) Certificate of Insurance;
- (e) Approved Record Drawings; and
- (f) Performance Bond: \$Waived

26. Early Termination. This lease shall terminate prior to the end of the term set forth in Paragraph 2 of this lease, without penalty to the Lessee, upon the occurrence of one or more of the following events:

- a. The United States Department of Labor or New Mexico Department of Workforce Solutions rescinds or does not grant sufficient authority and appropriations to the Lessee to carry out the terms and conditions of this lease;
- b. The Governor of New Mexico, pursuant to Executive Order, or the New Mexico Legislature, pursuant to statute, pursuant to the New Mexico Department of Workforce Solutions eliminates or transfers employees or functions of the Lessee; or
- c. The State of New Mexico builds a new building or purchases or otherwise acquires an existing building and includes space in such new or existing building for the Lessee.

Upon the occurrence of one or more of the above events, this lease shall terminate when required by law or upon the Lessee giving the Lessor ninety (30) days written notice, whichever occurs first. The Lessee's decision as to whether one or more of the above events has occurred shall be final and binding upon the parties to this lease.

27. Environmental Safety. The Lessor warrants that the premises comply with any and all federal and state environmental regulations. During the term of this lease, the Lessor agrees to maintain the premises consistent with these regulations. Should an environmental hazard which threatens the life, health or safety of Lessee's employees and/or the public be discovered and not caused by Lessee or Lessee's employees, the Lessee may terminate this lease in accordance with Paragraph 20. Lessee shall be remedy any such environmental hazard caused by Lessee or Lessee's employees.

28. **Notice.** 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.

29. **Changes in Square Footage.** Any changes in square footage shall be based upon the rate per Leasable Square Footage (LSF) of the original lease for the effective date in paragraph 5, Rent. If the original rates for LSF have been changed by amendment, then any changes in square footage shall be based upon the amended rate per LSF. The original leases escalation rate will remain in effect, unless also changed by amendment.

30. **Other Provisions.** Lessee may place signage that is consistent with the Lessor's tenant signage policy or guideline for the property.

LESSOR:

By: _____ (signature)

Name: _____

Title: _____

LESSEE: Southwestern Area Workforce Development Board

By: _____ (signature)

Name: _____

Title: _____



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: September 8, 2021

Agenda Item #: G.4

SUBJECT: Agreement to Provide GIS Addressing Services between the County of Sierra and the City of Truth or Consequences.

DEPARTMENT: City Manager's Office

DATE SUBMITTED: August 27, 2021

SUBMITTED BY: Tammy Gardner

WHO WILL PRESENT THE ITEM: Bruce Swingle, City Manager

Summary/Background:

An agreement for the County of Sierra to provide GIS and addressing services to the City.

Recommendation:

Approve

Attachments:

- Agreement
- .

Fiscal Impact (Finance): Yes

See attached agreement

Legal Review (City Attorney): Choose an item.

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

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

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

File Name: CC Agendas 9-8-2021



AGREEMENT TO PROVIDE GIS ADDRESSING SERVICES
FOR THE CITY OF TRUTH OR CONSEQUENCES

BETWEEN

THE COUNTY OF SIERRA
AND
THE CITY OF TRUTH OR CONSEQUENCES

THIS AGREEMENT is entered into by and between the County of Sierra ("County") and the City of Truth or Consequences ("City") referred to collectively as the ("parties").

I. RECITALS

WHEREAS, the County of Sierra and the City of Truth or Consequences are a bodies corporate and politic existing by and under the Constitution and Laws of the State of New Mexico; and,

WHEREAS, the administration of an accurate and current Geographical Information Systems (GIS) addressing system is necessary for the operation of emergency services; and,

WHEREAS, the County of Sierra administers a GIS rural addressing system, which includes, software, hardware and employees; and,

WHEREAS, the City of Truth or Consequences currently does not have a GIS system; and,

WHEREAS, the State of New Mexico 9-1-1 Rules and Regulations require that the 9-1-1 databases, including the Master Street Address Guide (MSAG) and Automatic Location Identifier (ALI) be maintained at each Public Safety Answering Point (PSAP) at a 96% or higher accuracy rate; and,

WHEREAS, the County and City have agreed to share resources in order to protect the citizens of the County by ensuring that the citizens of Truth or Consequences are able to be served by emergency services.

NOW THEREFORE the parties hereby agree as follows:

II. AUTHORITY

Is the power to “protect generally the property of its municipality and its inhabitants” and to “preserve peace and order” and, “provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of ... its inhabitants”. See NMSA 1978, § 3-18-1 (1972) and NMSA 1978, § 4-37-1 (1995)

III. SCOPE OF DUTIES

THE COUNTY SHALL

1. Bring the City of Truth or Consequences E-911 road centerline file up to date for use by the Sierra County Regional Dispatch Authority for dispatch of Emergency Responders.
2. Maintain the City’s Master Street Atlas Guide which includes:
 - a) Plotting or GPS any new roads in the GIS centerline road file and entering this information into the E-911 System.
 - b) Making any corrections to the E-911 address and telephone records as necessary and submitting corrections with the approval of the City of Truth or Consequences.
 - c) Making the necessary corrections to the address road ranges in the GIS System as determined by the City.
 - d) Plotting any new addresses as assigned by the City of Truth or Consequences into the GIS system.
 - e) Correcting any spatial errors that may exist based on monthly error reports received from Earth Data Analysis Center (EDAC) & the DFA E-911 Program Director.
 - f) Providing for accuracy of GIS and GPS data for Wireless E-911 calls.

THE CITY SHALL

1. Pay to the County the sum of fifty dollars (\$50.00) per hour for the services described herein.
2. Make payment to the County upon invoice for services rendered monthly while this agreement is in effect.
3. Provide to the County’s rural addresser updated GIS addressing and MSAG database information on a timely basis.
4. Work towards maintaining the MSAG at a 98% accuracy rate.
5. Provide to the County’s rural addresser the point of contact (name, address, phone, fax, e-mail) for GIS, PSAP and any other personnel handling MSAG updates
6. Sign a non-disclosure agreement as needed.

IV. TERM

This Agreement becomes effective upon signature by all parties hereto and shall remain in effect for three (3) years or until it is terminated pursuant to the terms of this Agreement.

V. PROPERTY

No property shall be acquired as a result of this Agreement and the disposition of records generated by performance of this agreement shall be decided by the parties upon termination.

VI. STRICT ACCOUNTABILITY OF ALL RECEIPTS AND DISBURSEMENTS

Each party shall be strictly accountable for all receipts and disbursements under this Agreement.

VII. AMENDMENT

This Agreement shall not be altered, modified, or amended except by an instrument in writing executed by both parties hereto.

VIII. ASSIGNMENT

This Agreement may not be assigned by either party hereto without the advance written consent of the other party, which consent may be withheld at the other party's sole and absolute discretion.

IX. GOVERNING LAW

This Agreement and the rights of the parties hereto shall be governed by and construed in accordance with the Laws of the State of New Mexico.

X. SEVERABILITY

If any provision of this Agreement, or the application of such provisions to any person or circumstances shall be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of its provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and the remainder of this Agreement can be performed in substantial accordance with the original intent of the parties hereto.

XI. INTEGRATION OF AGREEMENT

This Agreement incorporates all of the agreements and understandings between the parties hereto concerning the subject matter hereof, and all such agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents are valid or enforceable unless embodied in this Agreement.

XII. NEW MEXICO TORT CLAIMS ACT

By entering into this Agreement, each party agrees that it shall be responsible for liability arising from personal injury or damage to property occasioned by its own agents or employees in the performance of this Agreement, subject in all cases to the immunities and limitation of the New Mexico Tort Claims Act (NMSA 1978, Section 41-4-1, et seq.) and any amendments thereto. This section is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. The parties and their "public employees," as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, and do not waive any defense or limitations of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

VII. PRIVILEGES, EXEMPTIONS, AND IMMUNITIES

All privileges and immunities from liability, exemptions from laws, ordinances, and rules, which apply to the activity of officers, agents, or employees of any signatory public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties under the provisions of the Agreement.

XIII. TERMINATION OF AGREEMENT

This Agreement may be terminated by either party upon ninety (90) days written notice delivered to the other.

XIV. CONTACT AND NOTICES

The parties may, from time to time, change their contact person and shall provide prompt notice of such change to the other party. Any notice required under this Agreement shall be deemed given and delivered to, and received by, the receiving party three (3) days after deposit in the U.S. mail, certified mail, return receipt requested, postage prepaid, addressed to the receiving party at the mailing address set forth below:

Sierra County contact person name and mailing address:

Charlene Webb
Sierra County Manager
855 Van Patten
Truth or Consequences, NM 87901
Telephone No: (575) 894-6215

City of Truth or Consequences contact person name and mailing address:

Bruce Swingle
City Manager
505 Sims St
Truth or Consequences, NM 87901
Telephone No: (575) 894-6673

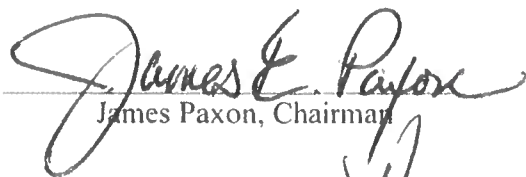
XV. APPROPRIATIONS

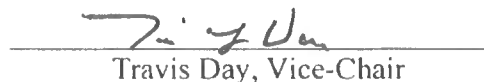
Performance under this agreement is contingent upon sufficient authority and appropriations.

IN WITNESS WHEREOF, the parties have executed this Agreement which becomes effective as of the date of approval by all parties.

APPROVED, ADOPTED, AND PASSED on this ____ day of _____, 2021.

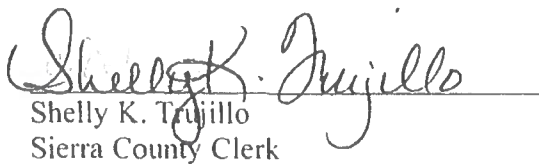
BOARD OF COUNTY COMMISSIONERS OF SIERRA COUNTY


James Paxon, Chairman


Travis Day, Vice-Chair


Hank Hopkins, Commissioner

Attest:


Shelly K. Trujillo
Sierra County Clerk

APPROVED, ADOPTED, AND PASSED on this ____ day of _____, 2021.

CITY OF TRUTH OR CONSEQUENCES

Sandy Whitehead, Mayor

Attest:

Angela Torres
City Clerk



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: September 8, 2021

Agenda Item #: G.5

SUBJECT: 2021 Holiday Schedule
DEPARTMENT: City Manager's Office
DATE SUBMITTED: August 24, 2021
SUBMITTED BY: Tammy Gardner
WHO WILL PRESENT THE ITEM: Bruce Swingle, City Manager

Summary/Background:

Review/Approve 2021 Holiday Schedule for the employees of the City of Truth or Consequences.

Recommendation:

Approve Holiday Schedule

Attachments:

- Holiday Schedule-2021
- .

Fiscal Impact (Finance): Choose an item.

None.

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 9-8-2021

POST THROUGH DECEMBER 31, 2021

City of Truth or Consequences **City Manager's Office**

MEMORANDUM

Updated: August 24, 2021

TO: ALL DEPARTMENT HEADS/SUPERVISORS/MANAGERS

FROM: _____
Sandra Whitehead, Mayor

RE: HOLIDAY SCHEDULE – 2021

The City of Truth or Consequences will observe the following legal public holidays in **2021**. Please notify your employees that City Offices will be closed these days.

New Year's Day	will be observed on Friday	January 1, 2021
Martin Luther King Jr. Day	will be observed on Monday	January 18, 2021
Presidents Day	will be observed on Monday	February 15, 2021
Spring Day – 4 Hours	will be observed on Friday	April 2, 2021
Fiesta Day – 4 Hours	will be observed on Friday	May 7, 2021
Memorial Day	will be observed on Monday	May 31, 2021
Independence Day	will be observed on Monday	July 5, 2021
Labor Day	will be observed on Monday	September 6, 2021
Columbus Day	will be observed on Monday	October 11, 2021
Veterans Day	will be observed on Thursday	November 11, 2021
Thanksgiving Day	will be observed on Thursday	November 25, 2021
Day after Thanksgiving	will be observed on Friday	November 26, 2021
Christmas Day/Eve	will be observed on Friday	December 24, 2021
New Year's Day/Eve	will be observed on Friday	December 31, 2021