

*Steven Green  
Mayor*

*Sandra Whitehead  
Mayor Pro-Tem*

*Kathy Clark  
Commissioner*



*Rolf Hechler  
Commissioner*

*Joshua Frankel  
Commissioner*

*Juan A. Fuentes  
City Manager*

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## REGULAR MEETING

THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, IS TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3<sup>RD</sup> ST., ON WEDNESDAY, AUGUST 23, 2017; TO START AT 9:00 A.M.

### A. CALL TO ORDER

### B. INTRODUCTION

#### 1. ROLL CALL

Hon. Steve Green, Mayor  
Hon. Sandra Whitehead, Mayor Pro-Tem  
Hon. Rolf Hechler, Commissioner  
Hon. Kathy Clark, Commissioner  
Hon. Joshua Frankel, Commissioner

#### 2. SILENT MEDITATION

#### 3. PLEDGE OF ALLEGIANCE

#### 4. APPROVAL OF AGENDA

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

### D. RESPONSE TO PUBLIC COMMENTS

### E. CONSENT CALENDAR

1. City Commission Regular Minutes, July 26, 2017
2. City Commision/PUAB Joint Workshop Minutes, June 28, 2017

### F. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Ordinance No. 686 for publication authorizing issuance and sale of up to \$2,500,000 City of Truth or Consequences Municipal Gross Receipts Tax Revenue Bonds for the purpose of constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to a Law Enforcement Facility or purchasing or improving any ground relating thereto,

ORDINANCES/RESOLUTIONS/ZONING *(Continued)*

including but not necessarily limited to acquiring and improving parking lots, or any combination of foregoing. Juan Fuentes, City Manager

2. Discussion/Action: Ordinance No. 687 for publication adding Section 2-276 providing a procedure for the recusal of Public Utility Advisory Board Members. Jay Rubin, City Attorney
3. Discussion/Action: Resolution No. 06 17/18 adopting the Infrastructure Capital Improvement Plan (ICIP) for for FY 2019-2023. Traci Burnette, Grant/Projects Coordinator

G. UNFINISHED BUSINESS

1. Discussion/Action: Funding mechanism for streets and potholes. Steve Green, Mayor
2. Discussion/Action: SCRDA Contract and future participation. Juan Fuentes, City Manager

H. NEW BUSINESS

1. Discussion/Action: Bid Award for the Airport Fuel Farm Schedule 3. Pat Wood, CPO
2. Discussion/Action: Cell Tower Lease Agreement at Louis Armijo Sports Complex. Robbie Travis, Building Inspector
3. Discussion/Action: Amendment to the City Commission Rules of Procedure related to recusals. Jaime Rubin, City Attorney
4. Discussion/Update: Gun Range guidelines. Police Chief Alirez & Don Armijo, Public Works Director
5. Discussion/Action: To equalize the Airport GRT rate with the rest of the city. Steve Green, Mayor

I. REPORTS

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

K. EXECUTIVE SESSION

1. Threatened Litigation (714 Kopra Easement) *Pursuant to 10-15-1(H.7)*

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

M. ADJOURNMENT

**NEXT CITY COMMISSION MEETING SEPTEMBER 13, 2017**



E.1

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

Approve the minutes of the City Commission Regular Meeting for July 26, 2017.

**BACKGROUND:**

None.

**STAFF RECOMMENDATION:**

Approve the minutes.

Submitted by: Renee Cantin, City Clerk-Treasurer

Meeting date: 08/23/2017

**CITY COMMISSION MEETING MINUTES  
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO  
CITY COMMISSION CHAMBERS, 405 W. 3<sup>RD</sup> St.  
WEDNESDAY, JULY 26<sup>TH</sup>, 2017**

**A. CALL TO ORDER**

The meeting was called to order by Mayor Steve Green at 9:02 a.m., who presided and Renee Cantin, 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. Steve Green, Mayor  
Hon. Sandra Whitehead, Mayor Pro-Tem (Absent-Excused)  
Hon. Kathy Clark, Commissioner  
Hon. Rolf Hechler, Commissioner  
Hon. Joshua Frankel, Commissioner

Mayor Green announced he received a call from Mayor Pro-Tem Whitehead and she will be excused from this meeting.

Also Present: Juan Fuentes, City Manager  
Renee Cantin, City Clerk-Treasurer

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

**2. SILENT MEDITATION**

Mayor Green called for fifteen seconds of Silent Meditation and asked us to keep our veterans in our thoughts and prayers.

**3. PLEDGE OF ALLEGIANCE**

Mayor Green led the Pledge of Allegiance.

**4. APPROVAL OF AGENDA**

Mayor Green requested Consent Calendar Item #F.2 will be removed from the agenda. Commissioner Frankel moved to approve the agenda as amended. Commissioner Hechler seconded the motion. Motion carried unanimously.

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

## CITY COMMISSION JULY 26, 2017 REGULAR MEETING MINUTES

Mayor Green called for Public Comment, noting those wishing to comment would get three minutes, may only approach the podium once, and any material for the Commission was to be left in the black box by the podium.

Cathy Bagdorf addressed the Commission related to:

1) Here to register discontent and frustration with the lack of oversight on our water infrastructure. We have wasted water allowing it to run down the street on Pershing for 36 hours last week. It took the Water Department three hours to fix it, once they got there. She understands there were multiple breaks at the time. However, this is not an unusual circumstance, this is a common occurrence. We have several places in town that break and a cone is put on top of them and they go off to something else. She is frustrated with the fact that she's told, don't water on Monday, but we can allow water going curb to curb to the river. Who is paying for that water? When our water towers aren't at full capacity, our water system has leaks everywhere. Somebody has to take responsibility because we the taxpayers have to deal with the rate hikes. That's not our issue, if you aren't taking care of it, we shouldn't have to suffer. You work for us, and taxpayer's expect that if you're not going to fix something, you'd better have a good reason why. You spend money on a computer system that is only going to benefit those in the office. Keep people on the street, you need eyes, you need people who can do the work. You've got sidewalk going in that could've been done by contractors. Instead, our streets have suffered because the street department has been tied up putting in curbs and sidewalks. Yes, we need them, but we also need our streets tended to. You don't have what you need and you're frivolously putting money into areas that could wait. You now have an idea to put in new meters, why? The old ones work fine, until you get the system straightened out. Don't put any money into your part of it. You're building it for yourself, you're not building it for us. Get on the streets, get on the water. I don't want to be another Artesia, where we end up with e-coli or something else in our water system due to lack of attention.

Martin Nigel, Lyona St. addressed the Commission related to:

1) He started by thanking the Council, he calls volunteers. Lots of complaints, lots of complexity, requirements to study, and research for proposals, so thank you.

2) The water meter company came again two weeks ago and handed out a report that has wrong data in it. A concerned citizen caught this and the professional company did not.

3) He heard a smart meter costs \$100, the company would charge \$1,100 to install it. So it's a \$1,000 gross markup times around 3,000 meters which will give a gross of \$3 million and our local contractors can install them for less. In addition to the new smart meters, he imagined new antennae and computers and possibly new office space will be required to use this new technology. To him it's similar to the pool cover where it's expensive, but the monthly cost of keeping it inflated is another significant monthly expense.

4) Our City has worn out infrastructure. Some of the water has pipes installed 50-60 years ago, needing replacement. Doing this seems more important than water meter replacement. Delivering water to citizens with less water leakage, to him seems a priority. Especially in the desert.

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5) The water meter company has an attractive proposal. Don't worry, this will be funded by the Federal Government. We get our three million gross from the Federal Government, not from you. But to him, the national debt is a problem that's serious and keeps getting ignored as it gets higher and higher. Now if this federal money was used for needed sewer and water pipes, it might be worth it. But the water meters at this markup seems a waste of our taxes. Thank you.

Hans Townsend, Chamber of Commerce and Desert View Inn addressed the Commission related to:

1) He's afraid he's following the path of the last two speakers. He thinks we put money into things that are not necessary. We may believe it's a kudos but it's not. Six or seven months ago he remembers Commissioner Hechler suggesting we take one of the city trucks for three weeks to send them around the alleyways to clean them up and it never happened and they are getting worse. There is junk everywhere and anyone who uses the alleyways can see it and it's a growing problem. And the water pipes are a problem. They are very old. We lose water and you can see them running all over the place. We've repaired leaks on Date St. twice in the last six months. It seems to be getting very impractical and as they mentioned before him the pool roof was the biggest waste we ever did. A half a million dollar roof would've gone towards a brand new pool that would've been practical and could've been money making from visitors. He really feels the City needs to look at potholes as a necessity and not as something on the side we can do if we get all of these other things out of the way. If you look at other cities that don't have a million and a half dollars coming in, they have to manage and they have to fill their potholes. We have to tone down where we want to go and what we are trying to do. He doesn't think radio water meters is a practical idea. He thinks the position we are in and the jobs we need to do, we should be looking at the necessities and not looking at some big advances in technology that we don't need right now until the basics are sorted out. He's very much behind the comments of the last people. He knows the Commission is doing their best but we really need the money in the necessities and not in things that look like a great idea but cost a lot of money and don't really improve anything but get rid of a job. When you have someone who will do the job, that's all you need. He can't see that the water meters is going to be saving money. He really doesn't see it and he's sorry. He hopes that they will go more along the lines of getting necessities done and not big ideas.

Ron Fenn addressed the Commission related to:

1) For those who do not read the packets from the Commission meetings, etc, he wanted to read an excerpt from the end of the Budget Hearing Workshop Minutes. *Mayor Green wanted to put on the table the projects list to his mind. We are advertising for a Tourism/Events Coordinator position and one of the hooks we are using is the Civic Center. Depending on our fee structure, he's concerned that we have taken one building away from the Senior Activities, and now we are going to hire someone to fill the Civic Center. We should look at the Water Building on Fourth St. to see if we can find the money to convert that building into a Senior Center for all things we are getting nailed on every month of the year.* Mr. Fenn continued by saying, Mr. Green you are getting nailed every month because your shingles are coming loose. That's the long and short of it. The

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building that you're proposing is to be given to the city by the Board of Education because they don't want it and don't want to tear it down, so the city can pay to tear it down with taxpayer money. This is a slap in the face to propose or instead of proposing lets put the Seniors back in the Lee Belle Johnson Center which was illegally taken from them.

2) As far as the streets are concerned, lets talk about the Sidewalk Project which he understands is on hold for an \$80,000 shortage. Well that's fictitious the shortage will be astronomical to finish it, because labor hasn't been billed since April 28<sup>th</sup> and he's sure three more months of billing at about \$1,000 plus a day. If you need another \$80,000 in a day, close the Golf Course, we don't need another \$150,000 into a golf course for half a dozen golfers. They can go to Elephant Butte and enjoy the fine course there. Thank you very much.

Ron Pacourek addressed the Commission related to:

1) Standing before you for the third time, asking about the newest member on the Impact Fee Board. He is not understanding how he got put on their board without their board not seeing his application or having the opportunity to interview him or recommend him to the board. So for the third time he's asking why that process got bypassed.

Audon Trujillo, 503 W. Third addressed the Commission related to:

1) He thanked Mayor Green, Mayor Pro-Tem Whitehead, and City Manager Fuentes for replying to his public comment last week. With that said, he stands by all of his observations. While Mr. Fuentes adamantly stated he bought property in T or C, and thereby are a resident, he asked him to formally change his registration to Truth or Consequences to become a voter of this community. That still hasn't happened as of yesterday. This week he was to address Item E. Presentation on the Audit. On page 117 there is an audit find about the extension of a contract for Mr. Rubin. He quoted statute 13-1-150 NMSA 1978, regrettably the City's response said the city was unaware of the state statute. Similarly, in the section with the finding on the Impact Fees said the City wasn't aware that state statute required that separate bank accounts were required. In fact, Deborah Toomey brought up the issue in 2012 and Randy Ashbaugh brought up the issue on various occasions since 2015. He served on three years as a Peace Corps and years with the USA Development Agency whose purpose was to help development efforts in third world countries. He returned home in 2009 to be shocked to see well intentioned individuals attacked by City Officials. And the City Commission's activity actions, he has endorsed who has endeavored to use his skillset to address issues that would improve his hometown. He will continue to do so. He has often tried to communicate with Commissioners outside this forum to address issues and violations before they come up in a meeting. The City Manager shows no appreciation for input, no matter how the information is presented. And the City Commission, especially Mayor Green, is costly protecting the actions of the City Manager or such support by the Commission of our City Manager is important, when the support is earned it is detrimental to this Commission when it's supported by this Commission and not rectified. He urges the Commission to have the city responses to findings on Impact Fees and procurement violations changed to reflect the truth. Because there are lies in there.

Anne Gibson, Attorney at 417 Broadway addressed the Commission related to:

1) She wanted to speak to the Women's Recovery regarding the statutory authority and have them at the location on 9<sup>th</sup> and Date. The 2016 Statutes which have been the same since she cannot tell them how long, but as long as she can remember under Chapter 47, Article 8, Subsection 9.A which she placed in the box for the record. When you have a hotel/motel situation there has always been concerns about how you get rid of somebody. When she was a prosecutor, they were involved in these. She said they should get extra time for lawyers because they don't know how to shut up. Anyway, she was instrumental in having people removed even from this property and the former residents, who claimed they were running a recovery center and in that instance it never was. For this Commission the concern everyone might have is ok the Recovery Program which she said we do need more than anything else, and being run by the most efficient, most qualified person as Phyllis Mecca. But what do we do if people get in there. Basically, the bottom line is that the state decided through its legislative authority that this is not a tenancy or kind of property where you check into a hotel or a month to month to go through the notice for eviction. In this case, there is an exemption in 47-8-9 which says unless it's created to avoid the application of the Uniform Owner Residence Relations Act, which would allow for tenants, the following arrangements are exempted: A. A resident at an institution whether public or private, if incidental to detention or the provision of medical, geriatric, counseling, educational, where room and board or entity or similar service. This is exactly what the Women's Recovery Program is all about. A program she understands is, and she'd dealt with dozens in her career, would be a program where women were either sent by the court or voluntarily placed there. They would undergo counseling, and treatment, learn job skills, and learn how to be a productive part of the community. The biggest part of it is they can get kicked out if they do not provide the necessary requirements of the program. They have no property rights there. The city wouldn't have to go there to remove people. This is a program she would support as an attorney and a program we need. It allows for complete control by the Director of the program. It's not something where you are putting someone who is incapable of making the right decisions into a room you would have to get them out. This is a program this community needs. And the statute allows it. You can challenge the statute but you'd better take it to the legislature to be changed. They want these programs to be exempted and that's what this is. Any other concerns you have, please set it aside. She will talk to them about that. But this is a program that we need and will provide a necessary service to T or C.

Bobbi Sanders, concerned citizen that has worked with juveniles addressed the Commission related to:

1) She is here in support of the Women's Recovery Program. She moved here in 1985 where the biggest concern for adults and juveniles was alcohol and cannabis. Over a course of decades, she has seen this community become just a disaster without recovery assistance. They don't have anywhere to go. We have a similar situation with Domestic Abuse (DAIC). She would encourage them, because she's not aware of what their concerns or questions would be, but she strongly recommended they give this program the opportunity it deserves and what they are requesting if it's at all possible, to make it happen. These communities are devastated by drugs, we are talking hard core drugs, cheap drugs, prescription drugs, and we just need to have something in the community. She understands their goals, you're in law enforcement, Commissioner Hechler. You've

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seen enough there at Elephant Butte so give it all the consideration you can. If she can be of any assistance or to serve on a committee, she will. This is something she truly supports. She added Phyllis Mecca and her have not always seen eye to eye on things, but she knows she is the right person for this program. She agrees with what was said before, where this should not be an issue of not having the knowledge of the law of what may happen in this program. You do the research, ask the questions, and ask her to provide the proof. She wanted to make it clear, she is not here as the Judge, she's here as a concerned citizen who has worked with juveniles for the last 30+ years and she's seen them grow up to become addicted adults in this community. And we are just looking the other way and not looking at what could be done in rehabilitation. She thanked them.

Carolyn Cazares addressed the Commission related to:

1) She moved here four months ago from San Antonio, Texas. She fell in love with the Land of Enchantment 45 years ago and she feels like she has come home. Has questions and concerns as a general nature as a first time sole homeowner and taxpayer. Some of these have been patiently heard and kindly responded to and visits with Mayor Pro-Tem Whitehead, Police Chief Alirez, Traci Burnette, Jagger Gustin, Mayor Green, and Renee Cantin. It was way beyond the call of duty because she can tell they all love T or C and she appreciates all of their time and attention.

2) A few of the issues she would like to be addressed with her very own Commissioner. She knows districting is not required in towns of less than 10,000. It seems impossible for all five Commissioners at large to be familiar and in touch with the whole town, whereas intimate dealings with their own districts people and their concerns would better serve an involved population and also define a more focused area for the Commissioner. She talked with someone who had been here for several years, who said she tried to get involved but nothing ever changes here and she just doesn't care anymore. But things have to change, they are always changing, the question is how to direct those changes toward the wellbeing of the town. Without access to someone who has a particular interest in a particular area, how can we the population know who to contact. Districting would solve that problem. Giving each an area would allow them to not spread themselves too thin and give their constituents the sense that there is someone who knows them and can do something on their behalf. This all made sense to her until she spoke to a couple of very well warm people that said besides the expenses and complications, districting would further divide the town, putting up walls between political, social and economic factions. There are more important issues that need to be addressed. There are always two sides. Is there a middle way? She has some ideas and she would like to present them at the next meeting. She thanked the Commission.

Sophia Person, Truth or Consequences addressed the Commission related to:

1) She agrees with all of the previous speakers. She commented on the drug problems and her friend who filled prescriptions at Walmart said the majority of them is for narcotics. So somebody is putting them out there, and somebody needs to take care of it.

2) She is here to talk about a huge national event that is going to be occurring in Truth or Consequences on September 22<sup>nd</sup> – 24<sup>th</sup> about eight weeks away. It's called the Second Annual Spaceport Drone Summit. There is no registration form on the website page and no schedule of events. Our own Sierra County site that we pay lots of money for, says

you can visit Spaceport Visitor's Center any day at the Lee Belle Johnson Center and you can call 894-1544 which is disconnected for she doesn't know how long. She is just so happy the County Manager, Mr. Swingle, Mr. Hechler, and the Chief Drone Mr. Green are all here because she is not taking the blame for the Spaceport Drone Summit failing. She was blamed for the failure of the Rocket Party and this Drone thing is coming in eight weeks and we haven't heard a thing about it. So please don't blame her or any other Spaceport critics for making the Drone Summit fail. You'd better get out there and do something, you dropped the ball the last time.

Lee Alirez, 507 McAdoo addressed the Commission related to:

1) He is very thankful for our first responders and volunteers through the Fire Department during the incident last week on July 19<sup>th</sup>, they had a strong cell come through and cause significant damage. Captain Apodaca was the Incident Commander, everyone from dispatch to all city workers and volunteers came out in force. Within hours they had power restored, trees removed, and response time was in minutes. We lost a radio tower and the fact that everyone came together and saw the need. There was no lack of communication. Our local Emergency Management could not have gone better. Everyone who was called to assist. He just wanted to say thank you. We has several broken power poles, two lines that were actually down on the ground. They came and did a great job. Everyone from dispatch and countywide who came, he just want to say thank you.

Hugh Hacket, neighbor adjacent to 819 N. Date St. where the Women's Recovery Center is to be constructed addressed the Commission related to:

1) Commissioner Hechler read the letter for comment he submitted. He wished to object to the proposed Women's Center at 819 N. Date St., they own property adjacent to it which has been vacant for a number of years. During the last couple of years a Rehab Center has been operating out of 819 N. Date St. during this time their property has been broken into a number of times and considerable damage was caused. Doors kicked in, windows broken and property stolen. Also considerable trash was dumped in the alley with syringes, rags, old clothes and mattresses. This Rehab Center also caused a spike in crimes which the Police Department can roll out. They feel this proposed rehab center is at odds with the ongoing evolution of new business which continue to locate here. They believe there must be better locations for this than right on the edge of the city.

#### **D. RESPONSE TO PUBLIC COMMENTS**

Commissioner Clark wanted to comment on the water issue. She has the same concerns as many of the citizens do. The Commission has discussed this many times. We have had engineers do a study on what it would cost to do the water lines downtown and along the whole city and it's extremely expensive. And when you talk to our Water people about the leak along Third Street, they know that we've got 70 year old cast iron pipes delivering water. About 1/3 of the delivery line have inside corrosion and we also have lateral breaks on them. When you have the ground shift in a big storm, that's what causes those lateral breaks. She wants them to know, this is not something they have not discussed, and they are very concerned about it. Her understanding is it's about \$30 million that our first

intent would be to replace the downtown water lines which are under six layers of pavement and approximately six feet deep. She does want them to understand this is critical, it's a serious issue and they are losing a tremendous amount of water from the pump and the wells into our delivery system. They understand it's a serious problem and they do get it.

City Manager Fuentes appreciates those who expressed their concerns on the infrastructure side. He can tell them, they are working on finding grants and funding for the infrastructure. But they are talking millions of dollars just for water lines. We also have to look at the wastewater, lift stations, and the electrical distribution system. There is a tremendous need but we also have to look at the dollars we can access. That's why it's so critical to use any opportunity we can get to find revenue streams. He invited people to the ICIP Public Hearing at the first meeting in August to hear from the public and to help prioritize the projects we need to do. All of the working on our needs has been going on for years. And we welcome input and ideas as we look at our five year plan.

Mayor Green responded to Mr. Pacourek, he reviewed our procedures and did not find a requirement for a person to be approved for a board to be taken to the advisory board. He explained in deference to time since their meetings are once a month, we didn't want to waste another month, so it was approved by the City Commission. He thanked Mr. Pacourek for his perseverance in waiting for an answer on that.

## **E. PRESENTATIONS**

### **1. Presentation of the FY 2015-2016 Audit. Chris Garner, Axiom**

Mr. Chris Garner presented the FY 2015-2016 Audit. The presentation which is a summary of the exit conference is part of the agenda packet. He began by presenting their responsibility and the process in auditing. The opinion they gave is an unmodified opinion, which is the highest level of assurance they can give. Their opinion states that the financials are fairly presented and are materially correct. The second report referred to as the Yellow Book Report references on the findings.

He reviewed the current year findings.

- 1) Deficiencies on Internal Controls over financial reporting. One of ten journal entries didn't have the proper review that it should've had. Other issues includes the issue of a purchase order before purchase and fuel receipts.
- 2) Capital Assets. He knows Finance is working on coming up with a detailed list so this will reconcile in the future.
- 3) Financial Close and Reporting. Six or seven years ago, cities and counties were given the responsibility for drafting their own financial statements. And because of that, there were numbers that were hard to come up with and establish. So if we get a little more involved with helping with that, we have to give a finding on it. They worked extensively with personnel trying to come up with a new system to try to figure out how things are going. A lot of this relates to the computer conversion and trying to figure out how we were going to come up with certain numbers to support the financial statement.

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- 4) Travel and Per Diem – As a result of the state audit rule, it requires them look at certain compliance issue and Travel and Per Diem is one of them. Out of 10 samples there were three that weren't paying the right mileage rate amount.
- 5) PERA Reporting – They test all of the reports sent to PERA. The State Auditor has us test all of the money submitted to PERA to make sure the right amounts were being submitted. This has been corrected and shouldn't be a problem in the future.
- 6) Late Audit – Because of the computer conversion, the city had some issues with accounts receivable in utility billing. They met with staff and determined they could do some work now and issue a clean opinion. As a result the audit was late. The end result was they were able to give a clean opinion.
- 7) Procurement – During testing it was noted we did extend beyond what was allowed by state law in the amount for the attorney.
- 8) Impact Fees – violated in the fact that we have to separate out the cash received. They have worked with staff to make sure we have properly accounted for these fees.

Commissioner Clark said we got dings for Impact Fees and all of that happened before they were here and she understood there was an issue with having a lawyer. With that being said if we are dealing with it, are we really being dinged for that or is there an exception. Mr. Garner said there is no exception as far as he knows, its state statute and they have to follow it. They will come back next year and look at the status of what has happened and if we have no violations or issues with additional purchases, this finding will go away and if you have the accounts set up for impact fees, that finding should go away.

City Attorney Rubin takes responsibility for the procurement problem on the attorney agreement. They agreed to have the one month extension, but when they decided to extend the agreement for another three months, he drew up another contract as a small purchase and it's reflected back to the one done on October 30 which is the one he thought made the action more clear. So he thought they rectified that with corrective action. He just wanted everyone to be aware of that. Commissioner Clark said that's what she remembered, it was a different procedure they used. City Attorney Rubin added the first one should've said Small Purchase Agreement.

City Manager Fuentes appreciates the work Chris has done, he also wanted to recognize Melissa and Mr. Gaylord who has been working hard on this and we are making good progress and we are addressing these issues. Mr. Gaylord is a CPA and is working on setting up things for internal controls. The state doesn't look at the fact that we are smaller than the City of Albuquerque. We are required to provide those financial statements and the preparation. Unfortunately, we don't have the resources, but this year, we had to find the resources to find somebody like Mr. Gaylord who is a CPA and is working closely with Melissa to help us take care of those things.

Mr. Garner responded audit findings are a tool to help us get better. If he was a Commissioner, what he would want to see is that we are dealing with the issues. Auditors

have to change their approach every year. There are certain things they have to do, but the standards require them to change. So they are always going to find things that may be new. But the question that needs to be asked is how are we going to fix it. To be honest, there are millions and millions of transactions that float through your financial records and stuff is going to fall through the cracks. Especially since you don't have a lot of resources to build the perfect internal controls. As long as your reactive to the problems to correct them you will be fine. His interaction with the Finance Department, during, since they finished, and subsequent, he knows that they are working on these things and he's expecting to see improvements because of the questions that have been asked and the supporting documents that he's been asked to give. That is his expectations for the next audit.

Mayor Green said in the past when there has been findings, the city has not been able to receive certain funding. We have had to go out and get a fiscal agent, in one case it was the COG which has cost the city money. Has anything changed with our status with DFA where we have cured some of these findings where we don't have to find a fiscal agent? Mr. Garner said it's something they have to depend on the judgement of DFA. The one finding that could cause problems, is the Capital Assets one we still have. As a city, you need to go and say you made a lot of progress. You need to deal with the modification and going from a not clean opinion to a clean opinion. Mayor Green noticed we are the fiscal agent for the Housing Authority and they had four findings which is incorporated in our audits and out of our control. He mentioned some of their repeated and modified opinions. Mr. Garner is not sure they are holding that against you, but you should ask DFA.

Finance Director Torres said in regards to their question about the DFA, they have been in contact with our Analyst at DFA because that is our goal to be able to be our own fiscal agent. She has been talking with Paul Ludi who is our DFA Financial Analyst, and he's still waiting to hear the official word, but he did give us hope that we will not need one. Once we received official word, we will relay that to the Commission. The one thing she just wants to say is though, on the Federal & Capital appropriation grants we are in now with SCCOG, we will have to continue with them through the grants. Then if they allow us we can be our own fiscal agent, then we can.

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

1. City Commission Budget Workshop, May 3, 2017
2. ~~City Commission Regular Minutes, June 14, 2017~~ – Removed from agenda
3. City Commission Regular Minutes, June 28, 2017
4. Public Utility Advisory Board Minutes, June 19, 2017
5. Impact Fee Advisory Board Minutes, June 19, 2017 – pulled for discussion
6. Airport Advisory Board Minutes, April 4, 2017
7. Fourth Quarter Lodgers Tax Quarterly Reports for FY16/17 and Third Quarter Reports for Chamber of Commerce, Veterans Park/Museum – pulled for discussion
8. Acceptance of the FY 2015-2016 Financial Audit. Melissa Torres, Finance Director

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Mayor Green read the Consent Calendar and asked to remove Item #5 and #7 for discussion.

**Commissioner Frankel moved to approve the consent calendar as noted. Commissioner Hechler seconded the motion. Motion carried unanimously.**

### **ITEMS REMOVED FROM THE CONSENT CALENDAR**

#### **F.5 Impact Fee Advisory Board Minutes, June 19, 2017**

Mayor Green was concerned and wanted to discuss that during this meeting with the lawyer present, a member was asked to recuse himself and it created a very hostile and uncomfortable setting to hold a meeting. He looked at our Rules of Procedure and he noticed if a conflict was perceived, even at the Commission level we do not have a process to deal with a conflict of interest. We have left it to the good graces of our Commissioners to make the choice that this is not good business and they walk out the door. He asked City Manager Fuentes to see us visit our Rules of Procedure and put in something where there is a conflict of interest, that person actually steps out of the room until that issue is over and done, until they are invited back in the room. He thinks it will prevent this issue from happening again. He doesn't want to lose this board, we have good people on this board. If we lose this board the City Commission is just taking on another role. But he thinks we need some type of structure. City Manager Fuentes said we can look at the Rules of Procedure and include the advisory boards. Or we can look at revising the ordinances for these boards, and put in a conflict of interest clause in there. He can certainly work with legal on what the best approach will be to bring back to the Commission, and to advise the Advisory Boards of this. City Attorney Rubin agreed he has always recommended if there is a conflict, they should leave the room. And he is open to looking into that.

#### **F.7 Fourth Quarter Lodgers Tax Quarterly Reports for FY16/17 and Third Quarter Reports for Chamber of Commerce, Veterans Park/Museum**

Mayor Green said for these reports, we have discussed the appropriate use of Lodger's Tax and how much money should be used for the 25% that can be spent locally. He explained the process. 75% should be spent out of the area. He mentioned Sierra County Arts Council has run up over \$1,300 plus dollars on local advertising when it should have only been \$750 and should have been used outside the community to bring people in. He knows we are looking at filling the Tourism Director and they will have to work with staff and these people on the funding to help a broad economy to be built and move on. The other group is T or C Fiesta. He read they reported \$2100 for local ads. We've asked where you are spending your money so we can pool together and say we are spending this much money at the Albuquerque Journal to buy ads. He doesn't know what we can do to force these Non-Profits to pool together. It's inappropriate that they are spending money that's not bringing heads-in-beds in this community.

**Mayor Green moved to approve the Impact Fee Advisory Board Minutes, June 19, 2017 and the Fourth Quarter Lodgers Tax Quarterly Reports for FY16/17 and Third Quarter Reports for Chamber of Commerce, Veterans Park/Museum. Commissioner Hechler seconded the motion. Motion carried unanimously.**

**G. PUBLIC HEARINGS**

1. Public Hearing: Final Adoption of Ordinance No. 685 for the sale of 1310 Nickel. Robbie Travis, Building Inspector

Building Inspector Travis said you have before you the ordinance for the sale of 1310 Nickel. At the June 14<sup>th</sup> meeting the Commission approved to proceed with the sale. Staff recommendation is to approve the sale of 1310 Nickel. He did receive the extension agreement and we do have a backup of someone who is interested. But this person has waited for a long time to purchase it. He referred to Jay for comments.

City Attorney Rubin is glad to hear there is an extension agreement to September 15 because the ordinance will not be effective before the September 10 date. He gave a detailed list which has already been approved by the Commission. And according to the City Clerk, nobody has come by to protest the ordinance. Clerk-Treasurer Cantin confirmed that is correct. He's in agreement with the ordinance.

Mayor Green agreed to allow Mr. Trujillo to speak, he did not sign the public hearing list to speak. He is both an opponent and proponent.

Audon Trujillo thanked the Commission for looking into 3-54-1 for the sale of property. He said it doesn't feel right that the ordinance is being published concurrent to the sale. He feels the ordinance should be done before the sale. He doesn't think that process is being allowed, but he is not sure it's required. He just asked if we are in compliance with that.

City Attorney Rubin responded that is why we did a written explanation approved by the Commission. The appraisal was done in October of 2016 and it came in at \$29,000 and the city advertised it for that amount. There were no offers received and then again advertised for \$25,000 and no offers. We feel this is a good offer and we are getting cash for this purchase and the city is coming out ahead on this deal. It's also important to point out the statute requires the 45 days before it becomes effective. Mayor Green asked if we dealt with a realtor or how did we come up with the \$29,000? City Attorney Rubin responded there was an appraisal done.

2. Public Hearing: Special Use Permit for a Woman's Recovery Program at 819 N. Date St. Robbie Travis, Building Inspector

Mayor Green explained the Battershell procedures will be used during this public hearing.

City Clerk Cantin did the swearing in for Building Inspector Travis.

Building Inspector Travis gave the background on this item. It's a Special Use Permit for a Women's Recovery Program at 819 Date St. The complex has been there for many years and a Transitional Living place tried to go in with many problems arising and he had to shut down the business. Staff recommendation if this were approved would be several conditions the applicant would have to meet. We didn't specify those conditions, there could be a time period, but we don't know yet. We do feel this is needed in our town, but we're not sure this is the right location for it. In the supporting information, we have the application, the site plan they prepared, and a comprehensive statement.

He handed out a staff report to the Commission which gives them the code section which is 11-9-4.D.15 on R-3 Special Use Permits. That should be C-1. He read the staff report which is part of the agenda Packet. Number 1 says the Special Use Permit should not be granted in such cases where the use may result in a negative impact which substantially outweigh the positive impacts of the use. The history is it is the old Oasis Hotel. One comment was something Commissioner Hechler read and they called yesterday to make sure we received the letter. And he did receive one other letter from a business owner in the area and again the staff, if it's approved would have several conditions they would need to meet. Then he knows that Police Chief Alirez did have a meeting with Phyllis and he asked him to come and go over that with them,

City Clerk Cantin did the swearing in for Police Chief Alirez.

He reported on some of the concerns about the location. When it first came to his attention, the address itself was concerning because they've been there before. He also mentioned the big difference here is that Phyllis Mecca did approach him to ask what happened over there. She asked about some of the things that occurred, and how she can work with them to prevent them from occurring in the future. They had some very candid discussion and heated at times because of differences of opinion. The program that was there, before they came into town, didn't tell anyone they were coming. It was very problematic because each one of those hotel rooms was numbered so there was no alleviation of 4<sup>th</sup> Amendment Rights which everyone was entitled to. The big issue was we came up with the eviction. He reached out to John Appel and Jay Rubin for an opinion and although there is a section under 47-8-9, there is a provision for that type of facility. It could be problematic trying to force someone out, should that occur. He would be derelict if he didn't tell them in that short time span they had 47 calls for service. We had cars broken into at Whitehead Chevrolet, and other instances he explained. They had to go through the eviction process even though it was a shelter and it was a shame because they would bounce around from room to room and they couldn't find them. He has met with Phyllis about some of these concerns and he doesn't stand on the fence one or another on this issue. He is just bringing this information.

Mayor Green said the Chief eluded to what was there before. Some of the "bad actors", were any of them women or was it all men. Police Chief Alirez wants to say there were two women. But the difference here with Phyllis' program is there is going to be one big handle on this. If not all of them, a great percentage of them will be the version, in lieu of being in physical custody. So it is a last chance option they have that could possibly be some self-executing orders because of the nature of how they will be getting in the

program They will not want to have the Police showing up at their door. One of the discussions was putting a fence which would block all of the front doors. That would be extremely problematic because the last program that was there was selling drugs out of there, and they started switching rooms. So by the time they got out there, it was problematic. Then they started selling drugs out of the back window after the fence was put up. It was all problematic the way they came and set it up without telling anyone. He wants to give Phyllis credit for at least coming and talking to them about what occurred and what can be done to prevent further occurrences.

Mayor Green asked if the Commission has any questions of Mr. Travis.

Commissioner Hechler asked if there was any indications of Ms. Mecca's certification or was there any other information presented. Building Inspector Travis responded just the information that was presented.

Mayor Green said staff recommendation is if they are approved it would have to be with conditions. He asked him to expand on that and what are we talking about. Building Inspector Travis said the fencing is one. We have to work out that situation. As you see in the plans, she brought that around. But the issue is can activities happen behind it. The other one is a probation period where we try it for three months to see what's working. And that's hard because they have to invest in it and we just want to leave an open communication that we've got to work out these details, and go over it more in depth if it goes past this stage.

Mayor Green said next is for those proponents who want to have the opportunity to cross examine Mr. Travis.

**Proponents:**

Audon Trujillo, wanted clarification on the program. Is that only women who have charges against them, not women who are separated from their husbands and are fearful of their husbands attacking the kids? Not someone who has problems with someone who may have attacked them. Building Inspector Travis responded he doesn't think that's what it is. But he will have a chance when Phyllis comes up to ask her questions. But he doesn't believe it's that type of program.

Mayor Green said we have no opponents signed up and asked them to be sworn in.

City Clerk Cantin did the swearing in for Phyllis Mecca, Anne Gibson, Glenn Hamilton, and Audon Trujillo.

Phyllis Mecca read some statistics. Out of 33 Counties in New Mexico, Sierra County ranks number 10 for Alcohol related death; ranks 6<sup>th</sup> in opioid overdose E.R. visits; ranks 5<sup>th</sup> in drug overdose deaths; 4<sup>th</sup> for frequent mental health distress; 3<sup>rd</sup> for suicide deaths; 1<sup>st</sup> for adult mental health depression. Those are just adult's statistics, put out by the 2016 Department of Health. For Juveniles in our County, Sierra County ranks 1<sup>st</sup> for feeling of sadness or hopelessness; 1<sup>st</sup> attempted suicide; 2<sup>nd</sup> for youth who have

seriously considered suicide; and 5<sup>th</sup> for heroin use. Sierra County is also one of the poorest counties in the state with a 30% poverty rate, and the unemployment rate was 8.5%. It's not a secret that the adult problem in our county, and our communities are having is not a juvenile problem, it's a generational problem. The folks in our community are working hard to try and break these barriers and to stop the generational drug and alcohol abuse. We have The Club, JJAC Team, OSAP Team, Judge Sanders has a great diversionary program. But what programs are specifically geared towards the adults who are supposed to be protecting these children? The answer to that is Outpatient counseling. The counseling centers are very overwhelmed in our community and are able to see clients approximately one hour every other week. That's why she is here today. And you may be asking why a women's program instead of a men's program? Women are typically the caregivers for the youth and typically more challenging. 78% of all women that suffer from alcohol and drug addiction have been abused either physically, mentally, emotionally sexually assaulted. Additionally, 90% of all women in correctional facilities have been sexually assaulted. She has done her research and her homework. As a community member, for over 30 years, she is being transparent. And she wants the same for the Women's Recovery Program. It's time we come together to deal with the underlying issues in our community that affects the economics and the growth and development of our community. She's been working on this for a good year. She has communicated with Gary Whitehead on multiple occasions since his business is closest to the property on what the prior issues were with the motel. She wanted to address those issues so she could incorporate them and move forward. She's talked with the Police Chief on several occasions and Judges to get feedback on the previous occupants and what she can do differently. She's well aware of the drug dealings, drug use, prostitution, and the crime under the prior occupants at the proposed location. She worked closely with the Courts, Law Enforcement, and D.A's Office, for over ten years. Therefore, that is why she is hear today to seek approval and to let you know this is something that's really needed in this community.

Mayor Green asked for questions from the Commission.

Commissioner Hechler asked what qualifications she has to run a program like this. Ms. Mecca said she has a Master's degree in Criminal Justice; she is also certified to do Group Counseling; she cannot do individual counseling and that would be contracted out to local providers.

Commissioner Hechler asked what she envisions for on-site staff. Ms. Mecca says two Full-Time staff, one would be her, one living on site, and she would be living on site until further notice. Then a couple of part-time staff. Commissioner Hechler asked if she had other information as far as operating procedures and things of that nature that's more comprehensive than the package they were given. He feels it leaves a lot of information to be desired still. He asked what other information she may have that they can review? Ms. Mecca said she can provide them with any information they need if they just let her know what they need. If she doesn't have it, she will certainly do the research and get it to them. Commissioner Hechler said he was looking for more of a business model or something along those lines to show the operating procedures. Ms. Mecca asked Mr.

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Travis if they were put in there. Building Inspector Travis said she did have more detailed procedures and we can get those to the Commission.

Mayor Green thanked her for stepping up to the plate. It's unfortunate that we need these kind of facilities. But we can't turn our backs on that need. We have to recognize it and understand it. If you have attended these meetings before and heard me talking about tourism before, he is upset that we lost a tourism asset, but at least its not going to be bulldozed and it's a possibility that it can be repurposed. He is not looking into their checkbook, but he wants to know if the organization is a for profit or not for profit organization and where is the money going to come from? Ms. Mecca said the women will work to pay a weekly fee to be in the program. They will work and pay their rent to pay their fee. The money for salaries and for utilities will come from the women in the program.

Mayor Green assumes she's going to have to put some money out first to make the property workable. He thinks what Commissioner Hechler is referring to is the business model. How do you get from if we approve this permit, you've got some expenses to deal with. How will she get the property workable or livable? Ms. Mecca responded the building is livable. She will purchase the property first off. Mayor Green asked if she will set this up as a Non-Profit? Ms. Mecca said she will eventually set this up as one. But it takes time to build a non-profit. To begin with, it will be a for profit.

Mayor Green said Mayor Pro-Tem Whitehead asked if the vote could be postponed because she would like to participate in the discussion. Mayor Green said his question to her is if they were to postpone the vote and put it on the next agenda meeting which would be two weeks from today. Is she against a time crunch or would two weeks still enable her to move forward with this project. Ms. Mecca responded she would like to get it up and running by September 1<sup>st</sup>, it will take about a month to close on the deal to get it up and going. She has many community volunteers who have offered to put in time to paint or put furniture together or whatever needs to be done. Her question to them is would it be a conflict of interest with Ms. Whitehead and the business next door? Is it a conflict of interest? Mayor Green said that is something they would have to determine with legal and that is a valid question and he can't answer that.

Clerk-Treasurer Cantin asked them to keep in mind a Special Use Permit has to be published, so if we were to postpone this, would we need to meet the fifteen day publication requirement. City Manager Fuentes feels since this is already a scheduled public hearing that has been duly advertised, the table and notation can be carried over to the next meeting and he doesn't think we would be required to do that. Clerk-Treasurer Cantin thanked them. City Attorney Rubin said he agreed and we could make such a motion.

Mayor Green added the Whitehead organization has not signed up here as an opponent so obviously in her discussions with Mr. Whitehead she laid any fears or concerns he might have, to her credit. Ms. Mecca agreed, he told her he would not oppose it.

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Commissioner Hechler sees the fees are \$165 per week. How would she deal with those who are indigent? Will she have sponsors? Ms. Mecca said they need to find employment. If they can't then they need to be on disability, which they will help them apply for. But everyone needs to pay their way in life, whether it's alcoholism or whatever.

Mayor Green said to Commissioner Hechler's point, if they don't have a job or access to \$167, then they don't have access to your program. Ms. Mecca said that's not necessarily true. And she believes it says it will not permit them from being enrolled to the program. However, they will need to find a job. This model follows the drug court model. And if they are unable to work, they will at least have to provide community service in our community to give back to our community. There is always community service to be done.

Commissioner Hechler asked if part of their services is assisting in getting a job. Ms. Mecca responded yes. She's actually had a couple of employers who are willing to sit down with her and give the women access to jobs first.

Mayor Green sees each room has two women and some are singles. Will those resident rooms have their own utility meter and would the occupant be responsible or whoever's name is on that service address or that is the entity that will pay the utility bills. Ms. Mecca said it would be one meter and the program would pay the utility bills. To answer Mr. Trujillo's question, it's not for women looking to get out of abusive relationships however, she plans to keep one room designated for emergency DB for women if Law Enforcement is called in the middle of the night and a lady needs a place to stay, can stay there for a day or two until they can get them to another program like La Casa in Las Cruces.

Mayor Green said there are no opponents and then called for the public comments.

### **Opponents:**

None.

City Clerk Cantin did the swearing in for Hans Townsend.

Mr. Townsend said he is in agreement with Mr. Taggerts comments. He can see very clearly that part of Date St. and there has been very strange people coming and going from this place that make him wary. He has questions about the management of this place. He is hopefully going to put this off for a bit and he's in the middle of looking up some other things that make him wary. Being a neighbor it obviously affects him.

Mayor Green believes if the Commission votes to put this on the next agenda for the next meeting, we will not have a public hearing but the citizens could use the three minute public comment to express their concerns. Mr. Townsend presumes if he gives something in written form it can be given to the Commission. Mayor Green confirmed and asked him to give it to the City Clerk's Office and she will make sure it's distributed.

Commissioner Clark let Mr. Townsend know they are familiar with his property on Date St. and her understanding is that he lives on site, she asked if that's correct? Mr.

Townsend confirmed that was correct. Commissioner Clark asked how many rooms he has. Mr. Townsend responded they have 11 rooms. Commissioner Clark then asked if he can tell her every single time someone walks in and out of those units. Mr. Townsend responded, no he can't. Commissioner Clark thanked him. Mr. Townsend said but he does have cameras. Mayor Green said it's not a cross examination conversation.

Proponent:

Ms. Anne Gibson mentioned she is going to be assisting Ms. Mecca both as legal counsel and as somebody who has a Master's of Science and Education, and a background in Psychology. She believes this is a program that is necessary here and she hears people talking about the Oasis and trust her it crossed her desk more than she wants to tell them, when she was a Prosecutor. The people that went in there, went in under a cloud of deceit and were people they were watching very carefully for the fact that they believed there was drug trafficking and things like that. And they even had to prosecute one of them for destroying the property of somebody who was a current resident. That is not what is going on here. If it was, she would not put her name behind it. What is going on here is an organization who are going to assist women in recovery. She can't tell you how many times she has seen children walking into the system because women are doing drugs instead of taking care of their children. Because the kids are seeing the drug use in the home. These are the women that are causing the generational drug problem. We are into third generation children. She knows there are Sheriff's Officers here who have seen kids who saw their Mom's doing drugs and now they are having children who are addicted to drugs. This is where Sierra County needs to stop a generation that will make our crime grow. A recovery center is not a place we put people so they can have an opportunity to commit crime. Crime happens in T or C constantly, thank God not very serious violent stuff. But it is a town racked with Domestic Violence and Drug abuse and Trafficking. With that being said, Ms. Mecca has what it takes which is a heart and a soul for this and for working with the community. She is ready to get on her hands and knees and scrub those floors of that old hotel so she can put one women in there to help her to not go shoot up or smoke a joint or something in front of her three year old daughter. And so that her three year old daughter isn't doing that ten years from now. What they are trying to do is intercede in a problem. She is seeing a huge need. There are 10-20 women waiting for beds right now that can't get into them. It's modeled after Drug Court being a highly responsible program where you are monitored on a daily basis; you have consequences; you have to have a job. One of the things the Judges are doing is you are either working full time or you're doing 30 hours of Community Service. And while you're doing that, you'd better be getting your GED. And you'd better be a person that is not a problem when you come out of the program. That is exactly what Ms. Mecca is proposing to do there. They going to learn how to do the things they never learned because their generation never taught them. We are all lucky to have had a substantial family background and a society that held us accountable. We are not living in that society anymore. We're dealing with 20 year old women who have never not had a phone or the interne. Who think they can just have a handout and never learn the skills to say no and the skills to get a job and be happy working at Wal-Mart. And are blessed by that because they never had the skills ever put in front of them before. She can tell them from knowing her as a CYFD Worker, and knowing her personally, she is going to demand that same

quality of each one of her patients. She's going to demand they walk out with that. And if they don't walk out with that they can walk right back into the RDAP, the prison system, or someplace else. This is where they are going to become parts of Truth or Consequences, parts of Sierra County, and people we will be proud to have, versus what we have now and is going on over at the Oasis. This is a plus, this is a thing she would want to tell the world about. And she would ask that they do the same thing.

Mayor Green certainly applauds Ms. Mecca who surrounds herself with people like Ms. Gibson who has passion, knowledge, and also addressed as Attorney Gibson. He thinks that's certainly an auspicious start.

Audon Trujillo said he has a sister who would work with battered women. She was telling him about the plight that women have in this community. And these aren't necessarily people who are arrested. They are people who have bad relationships, get beat up on, and have kids with nowhere to turn. He doesn't know how many units there are or occupants allowed. He would hope the provisions for this facility would allow people who are getting battered to use these beds. He expressed his concern about the location and the children's safety. He has a five year old grandson and he wouldn't want him to live there because it's on a main street. Mayor Green reminded him he signed up as a proponent. Mr. Trujillo said he is in favor, they need a place like this. Are we going to have walls so kids can play in a secure area there? Is there going to be a requirement for them to be drug tested so they aren't around the other kids? He's still a proponent of this, but those are questions he has. Is it going to be a safe enclave for these people? He hopes so and wishes them all well.

Building Inspector Travis in response said he doesn't believe there will be children living there. Mr. Trujillo said that makes him feel better.

Mayor Green asked if any Commissioners have any questions, and they did not. He asked Ms. Mecca.

Ms. Mecca did clarify it's not for children, just for women. There will be cameras, so she will know what's going on out the back window. Additionally, they will be tested a minimum of three times a week. Part of the policy is, if you're dirty, you're out of the program. She would like to have more women in a battered shelter but that's a problem for those who are staying clean, if they might be using. It could be a trigger for them. That's the reason for one bed separated from all others, but she can't really do much more than that.

Sheriff Glen Hamilton thanked them for the opportunity to address them today. Of the many boards that he sits on, one of them that is most important to him is the New Mexico Association of Counties Criminal Justice Reform Committee of which he's Vice Chair. Of the many topics they take on in that committee, one of them is the need, the opportunity for alternative to detention or to prison. So this is one of the things they have identified as a necessity or a need in the State of New Mexico. Or additional programs or facilities that encompasses these types of treatment or rehabilitation programs. Sierra County or Truth or Consequences is one of the areas they have identified as lacking not only in the

mental health portion but drug rehabilitation. Annually, he takes about 30% of his budget to transport individuals that come out of our court system who are required through conditions of probation or orders of the court to attend such programs. One third of his budget is for transporting these individual throughout the state for these programs. This would give Sierra County and the County Sheriff and the taxpayers in being able to bring these services on a local level. He will point out that the problems that were present with the previous tenant, we should keep in mind that was not technically an official program. Whether his intentions were good, it had a negative impact in that particular area. He could point out several areas that are extensive in use. In Law Enforcement, the Chief can agree with him or disagree with him, but in Law Enforcement, they know those particular areas within their community that are riddled with that type of behavior. Particularly with the mandates and monitoring that is going to take place, it's going to impact the public safety would increase the type of the number of crimes in this particular area. And nothing again, that they don't already have in other areas of our community. He stands in support of this program and would hope that the Commission would grant this program the necessary permitting.

Mayor Green asked if there were any questions from the Commission or staff. With there being none, he announced now we are finished with that portion of the meeting. He suggested to his fellow Commissioners and those in attendance, we are taking a little bit longer because of the very nature of the public hearing process and it's certainly important that they give everyone an opportunity to be heard.

Mayor Green announced in light the issues with the public hearing he asked that we hear Items H.1 and H.2 and we will take a break and come right back to finish the meeting.

#### **H. ORDINANCES, RESOLUTION, & ZONING**

1. Discussion/Action: Special Use Permit for a Woman's Recovery Program at 819 N. Date St. Robbie Travis, Building Inspector

Building Inspector Travis does not have anything else to add. He's here for any other questions we might have.

Commissioner Clark asked him to explain his hesitation on this particular location. Building Inspector Travis responded he thinks its more because it's right in the center of our town. But he's not against it. If she can run it properly, it might not be a problem. This all hinges off management. Jus the comments he's had from other business owners is the only thing he would say, but he really doesn't have one way or the other. He's just not sure this is the best location. He met with one of the other attorneys in town trying to find another location, and he thinks this one will work the best for her because it's already set up. The rooms are there and the low cost of getting into is the best for her.

Commissioner Clark thinks the whole concept is excellent and definitely overdue in our community. She does have a concern about the location. She has an on-site resident at her hotel and she knows it's hard to see everything that's happening, even with cameras.

She wonders if it would be better to have something in the downtown area to be more accessible to some of the things they would need. It's also very visible and she wonders if it would be better to have an oversized home where you can have one entry and it's enclosed. She does have a very good friend who started a recovery program in Arizona and she would like time to talk to him. She doesn't want to put this off but she would like to refer to Mayor Pro-Tem Whitehead's request to defer the action.

Mayor Green asked if there were any further comments from the Commission. Seeing none, he will stand for a motion, keeping in mind Mayor Pro-Tem Whitehead's request and he believes it will give the Commission an opportunity to review and digest the additional information to look at and guide us in making a decision.

**Commissioner Hechler moved to postpone until the next meeting to allow an opportunity for Commissioners to do more research and for Mayor Pro-Tem Whitehead to be part of the discussion. Commissioner Clark seconded the motion. Motion carried unanimously.**

Mayor Green thanked them for all of their patience during this process.

2. Discussion/Action: Final Adoption of Ordinance No. 685 for the sale of 1310 Nickel. Robbie Travis, Building Inspector

Building Inspector Travis said they are ready for final adoption.

**Mayor Green moved to approve Final Adoption of Ordinance No. 685 for the sale of 1310 Nickel. Commissioner Clark seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

**Mayor Green recessed the meeting at 11:17 a.m. and reconvened at 11:23 a.m.**

**Mayor Green moved to approve moving Item I.1 to be the next item. Commissioner Clark seconded the motion. Motion carried unanimously.**

I.1 Discussion/Action: SCRDA Contract and future participation. Juan Fuentes, City Manager

City Manager Fuentes said he and Police Chief Alirez met with MVRDA and the Chief met with other entities. He presented a presentation with some of the findings.

The County adopted a county emergency GRT, not all of it goes to SCRDA, but the majority of it. They have an operating budget of \$833,453.00. SCRDA is also in need to update their equipment. He went on to Option Two which would be Mesilla Valley Regional Dispatch Authority (MVRDA). They are a new state of the art emergency communications center, with the latest technology, and resources to meet the communication needs. Then, Option three is going with New Mexico State Police. The New Mexico State Police is a partner with the City of Truth or Consequences Law Enforcement Complex, and will be jointly housed in this facility. The City is already in

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discussions with State Police to obtain a Records Management System, and the latest technology including Mobile Digital Terminals. So these are the options we have, there is a potential for significant savings. If the entities want to go with MRVDA they do have openings for dispatchers.

Mayor Green said for the record, he did meet with Sheriff Hamilton and the Undersheriff. He left the meeting feeling that the Sheriff was committed to keeping SCRDA whole and number two, because we did have a seemingly impasse of changing the meeting dates, that he was going to do everything in his power to reach out to the board members and try to change the meeting date.

Commissioner Clark asked if City Attorney Rubin had an opportunity to review the regulation in consolidation for PSAP. City Attorney Rubin asked for clarification in what she wanted him to look into. Commissioner Clark read the NMAC and the regulations. What she is reading is that if we were to do an exception to the consolidation in the county, we would've had to do that within one year from May 28<sup>th</sup>, and that we are required by NMAC to be within the county, not outside the county, and consolidated. City Attorney Rubin said that rings a bell. He believes the Chief wanted to address that.

Police Chief Alirez said that is about receiving E-911 funds. That would be something for DFA to hold a hearing on to discuss and amend that. Nothing that MVRDA discussed included them wanting to receive the E-911 funds.

Sheriff Hamilton said it was his understanding that NMAC Title 10 was actually the reason they went into the consolidation was for the E-911 funds which will go to one location for a local dispatch. If each entity had their own dispatch services, each would be eligible for those funds. That's why we moved into consolidation in early 1996 so they go to one entity and one location in the county. And yes, if you are receiving those funds, your PSAP has to be located within that county under Title 10. City Manager Fuentes said in regards to the E-911 fund, it does not prohibit exploring the option for another PSAP. That does not limit us from doing that. City Attorney Rubin agrees that was the interpretation he got.

Commissioner Clark said as far as the calls for service there is quite a difference in the charges for service in the City, and Elephant Butte, and Williamsburg, the County, and the lake. They were ranging anywhere from \$.12 a call up to \$.83 per call. How do we determine the billing rate for each one of the entities? Police Chief Alirez responded in 2013 we were being assessed \$200,000 a year, the Sheriff's Dept. was being assessed \$200,000 a year on a contribution scale. When he first got here he asked what the call volume was and was told they can't give me that information. But he went back and asked if he can help them get that information. They placed a milk crate on a desk and said that's all of their calls for last year and they said he could go through them and count them and sort it out. But he ended up getting it from the State Police. When he looked at that, it stood out like a red flag that some agencies were being charged a disproportionate amount. They looked into, and as a board they changed the dynamics of the contribution figures. Some of our calls can be considered a higher risk because

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we handle Animal Control, utilities, water, and all of that stuff. We saw an immediate \$43,000 decline and as you can see now we are like \$60,000 less in 2016 from what we were paying in 2105.

Commissioner Clark said sort of, she explained the amounts and it's seems like the contribution is skewed unless you're on a flat rate. City Manager Fuentes said both the Fire Department for T or C and the County pay a set amount of \$10,000. The amount looks more like \$12.39, but if you look down the State Parks, Williamsburg, and the Hospital pay a set amount. He explained which ones are the main users and how he figured the average. Police Chief Alirez said some have a fixed rate they agreed to.

Mickey Howard, Executive Director of SCRDA. The JPA that was created so the contributions is on a percentage base. It's all percentages except State Parks, Sierra County Fire, and City Fire are a fixed rate. She believes city and county Fire are paid out of State Fire Funds, not out of the city budget. City Manager Fuentes said just for clarification, it's still under the control of our finances. Ms. Howard said when you did the breakdown of calls, they based it out of a percentage base. Obviously the City of T or C has the higher call volume.

Commissioner Clark said so if we went through Mesilla would the towers still come through here? Mickey said the way it would work is DFA comes through their trunking system for E-911 funds. They pay for the landline trunking system and wireless trunking system. She explained if the city moves down to MVRDA, they will lose about 80% of their calls because they can't be rerouted wireless phone calls through the towers. City Manager Fuentes said that's incorrect. Police Chief Alirez said that was discussed at the meeting. Ms. Howard stated they also discussed it with Mr. Acosta of MVRDA. Approximately 20% of your calls, in today's times, more people use cell phones than landline. So you can lose approximately 60-80% because they cannot be rerouted off of the towers.

City Manager Fuentes said he appreciated her opinion on that but they did discuss that with Mr. Acosta and he did not indicate that would be a problem. Since this item may be postponed because Mayor Pro-Tem Whitehead is not here, he would certainly invite Mr. Acosta to be present to answer these questions in person. Because he can tell them they specifically asked that same question, and they didn't raise that issue that we would be losing any calls. So hearing it from him directly to get more information to the Commission. Police Chief Alirez said they would prefer to handle the calls for all of Sierra County. Wireless numbers have to be added an EIN number to address where they get routed to. He says it's challenging but not something that can't be done. The time frame is seven months to a year. Their interest was to have all of the subscribers in Sierra County.

Commissioner Clark said we would be exporting dollars outside of our county. Police Chief Alirez confirmed.

Sheriff Hamilton also spoke to the Director of MVRDA, as well, about making the switch. And taking all of the services and moving down there came up. Because the technology is not there, it's a matter of moving the landlines down there to MVRDA. If we continue to have a PSAP here, E-911 collection center, 80% of the calls that are routed here are over cell phone towers. So you can be in Albuquerque or Belen and call 911, even though you're from T or C, it will run through their towers. If we continue to maintain and all other entities maintain here in Sierra County we still have to have the regional towers directed towards the Regional Center. The only way it would work is if all entities move down to MVRDA. He made it clear they have no intentions to take over all of the entities, but he agreed it might be a good idea to get Mr. Acosta down here. Because we need clarification of the information we were all given. They were assured by Mr. Acosta that in order for this to work, all of the entities would have to go down.

City Manager Fuentes appreciates that comment, but in their discussions, there was no limitation for him. They never said in order to make it work, all would have to go. It would be preferred but they would make it work with just the city. Having him attend certainly would help. They met with him the Chair of the MVRDA Board and their capabilities are more than adequate to be able to accommodate this. Sheriff Hamilton agreed.

**Commissioner Clark moved to approve to postpone until the next meeting and we invite Mr. Acosta to come up. Commissioner Frankel seconded the motion.**

Discussion: Mayor Green asked how many employees she has. Ms. Howard has 10 full-time Dispatchers who work and live here. She is expecting to hire two more next year. She hasn't had a turnover in about a year, which is a first in a very long time. She knows that it was mentioned that if there was a switchover, they would have openings. Her Dispatchers that work here, most of them were born and raised here. She could not see them having to travel back and forth to another facility.

Mayor Green also had questions about a nice cushion SCRDA has in the bank. How is that going to financially impact the subscribers to the service? If you go out for a grant or funding for equipment, how is that going to financially impact the subscribers to the service? What backs up that \$500,000, he thought he heard the Sheriff mention? And if you decide, new building, is the projection \$140,173 for next year for service. If you go out and buy or build a new building. Ms. Howard explained the E-911 fund is a surcharge that pays for the PSAP's in the State of New Mexico and also 911 and recording equipment. SCRDA is scheduled next fiscal year for upgrades on their list. They have an extremely old system and the last legislative cycle they lost about \$6 million. She explained the cost of a new system. She can give Mr. Fuentes the breakdown of the funding from DFA. They do not fund radio systems. Their system is coming up on eight years. Almost two years over its life. If it was to go down, we are in trouble. That is a priority to obviously have their radios.

Sheriff Hamilton said the board voted to keep those surplus funds in there specifically for a rainy day fund. They are looking to have the new equipment installed so it will be easy to switchover. The question is what do we do with these additional funds, do we credit

them to our users, or do we take care of the issues at hand and get that infrastructure in place and make sure we have something that's going to continue to give the service to those providers. And then we can look at what we can give back to the providers.

Commissioner Clark asked if the Police Department pulled out would we lose that because we are no longer consolidated. Sheriff Hamilton responded it would still be charged and received and designated for Sierra County.

Commissioner Hechler said he just wanted to mention he's in a position where he monitor's SCRDA's radio traffic throughout the week. And he wanted to commend SCRDA in their professionalism in the way they dispatch. And one of the things we need to keep in mind is Officer Safety is one of the premier things we need to keep in mind. One of the things we should be aware of is these Dispatchers are in a position where they know the community, they know the Officer's and they can give that individualized attention to the Officer's. And if we go with someone else, that's something we will lose and we should be aware of.

**Motion carried unanimously.**

3. Discussion/Action: Resolution No. 03 2017/2018 for FY 2016-2017 DFA 4th Quarter Report. Melissa Torres, Finance Director

Finance Director Torres introduced Mr. Gary Gaylord and gave his background as a CPA. He has been helping us clean up some of the areas that are demanding our attentions. Mr. Gary Gaylord addressed the Commission. He said it's been a real pleasure coming down here and working with the staff diligently on some improvements. The policies will be living documents because as situations change, you have to adapt with the changes. We have to learn what the mistakes are, and see what we need to do differently instead of just trying to cover them up. He explained they are going to make sure everyone is on board and then we are going to be monitoring how things are going. He appreciates the opportunity to come here and help out.

City Manager Fuentes said there are many ways we try to address the issues, and every year they are adopting new guidelines and we have to adapt to. He added there are new guidelines and new accounting standards to municipalities who have limited resources. Even though we have some of these standards, we have never had a certified CPA to help us give staff the resources on the technical side because we don't know that language to address those issues and help us get there. The reality is there is an expense attached to it, but he thinks it's well worth the expense where we have been looking for pennies. These are the resources staff needs to help us get there.

Finance Director Torres began with her revised presentation which is part of the agenda packet. One of the things she wanted to highlight is areas like Capital Projects where the revenue is only showing 75%, but you will also see the expenses showing 70%. You will not see as you have in the past where the expenses were higher. She moved on to the graph with the overall for the revenues, then the graph with the prior vs. current GRT. We can't count on projects like the Veterans Center as an ongoing for revenue. You have to

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think outside the box. The next graph gives the prior vs. current on the Lodger's Tax Revenue. This quarter we had \$267,072.

Mayor Green asked if the 1% Convention Fee is a stand-alone and does not reflect in the \$267,702.13 for this year. Finance Director Torres confirmed that is correct.

Finance Director Torres continued with the Fiscal Year End Graph. This is the one that shows the trend and how much revenue and expenditures we have. We want to start seeing that balance out. This is the first time since 2015 that we had a reduction in the expenses and we are hoping to continue that trend. She read the next few slides and the numbers for the fourth quarter report.

Mayor Green asked if there are any questions and stated it looks like we are on a nice trend and going the right way, which is always nice to see. He thanked staff for that and all of the different Department Heads and team members who are looking at spending the dollars as though they were their own and that's a good thing.

**Commissioner Clark moved to approve Resolution No. 03 2017/2018 for FY 2016-2017 DFA 4th Quarter Report. Commissioner Hechler seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

4. Discussion/Action: Resolution No. 04 2017/2018 approving the Final Budget for FY 2017-2018. Melissa Torres, Finance Director

Finance Director Torres gave a highlight of what the final budget is. One of the things they heard was about giving merit increases. And that was important to her and City Manager Fuentes and they were successful by giving from 3% to 7% increases. We had discussed getting the bottom line up for the employees on the lower end got an additional increase for the competitive wages. She thanked the Commission for that. Annual health benefits increase will be 1% and you will see that. She named some the Capital Projects we are working on. Our debt, revenue, and expense, and capital purchases are some of the changes you will see.

City Manager Fuentes said in reference to merit increases. He reminded the Commission they already approved merit increases for part of the staff. The second part as he stated during the preliminary was looking at an increase for the Department Heads, and that is already included in there as well. He wanted to highlight one Department Head who was making way less than other Department Heads and he had to find a way to get him a better pay. In his case, he is getting more percentage wise. It is justifiable in his opinion because it's only fair when you look at the salaries other departments are making and he is running one of the largest departments and has done a great job.

Commissioner Hechler asked if the bottom line goes up when we bring in new employees, or just existing employees. When we do new hires is it going to be easier for us to provide more incentives. City Manager Fuentes said in the preliminary budget we just included a set amount for each employee to make them more competitive. Finance Director Torres

added their goal is to do comparables as an overall as to other entities. Then they make that recommended to Mr. Fuentes in regards to that information. That will help us continue to keep the bottom line going up.

Finance Director Torres went on to the general fund. Our estimated revenue is \$3.7 million and our transfers out will be \$1.1 million. Once we take our transfers out, minus our expenses, minus investments, minus our debt, then our required DFA reserve, the only amount that is left is \$1,412. So we definitely want to just point that out because once we start looking at other projects, our revenue is dedicated already one way or another. So we are going to make those changes as an entity to make our revenue go higher and our expenditures go lower so when we make that cash bucket, sometimes it looks pretty good, but again, we have a lot of our debt that is already dedicated to a lot of that revenue. Mayor Green has a question about how the numbers don't come out to \$1,412.

City Manager Fuentes added in regards to the picture you see right now, is the picture the DFA will be looking at going to the new fiscal year. So if we want to add \$50,000 in one department. DFA will say, well you only have \$1,400 left, where is that other money going to come from? You have to somehow amend the revenue side to provide for that. In the past we had the flexibility for those kinds of adjustments. Right now, we are showing them a picture of what it's going to look like. And he wanted them to keep that in mind, because we have to come back if there's any additional expenses. And if there's an issue to transfer out from the General Fund, they're going to expect the city to cut somewhere else for the expense. We were conservative on the revenues as well, because the Veterans Home was just one time money for those capital projects. Internally we have to keep that in the back of our minds that we don't have a lot of money. We can't just look and say we have to increase our GRT because we need money on the expense side. It's not advisable that we do that, because DFA will look at this snapshot and make adjustments in the future.

Finance Director Torres asked them to keep in mind this is an overall picture and they will look to see that this money has already been or has commitments to it. We can't just say our checking account tells us that we have \$3.3 million, it doesn't work like that. We only show \$1,400 as uncommitted money. This last fiscal year was a big eye opener in regards to how much DFA is requiring of municipalities now. She said her hair use to be straight and working with DFA and the adjustments, it's turned curly. That's one of the things we have DFA involved now when it comes to reporting.

Mayor Green asked in the numbers with the estimated revenues, the net transfers, and expenditures, he doesn't come up with \$5,497,000. He asked her to explain that breakdown. City Manager Fuentes said he went straight into the budget recap, he thinks if she starts with the first column and explains it to the end. Finance Director Torres explained the breakdown from the recap sheet. By state statute the DFA requires us to have a reserve of \$453,439 that we can't even touch. City Manager Fuentes thinks one of the amounts that's missing is the ending cash balance. That's where the difference is.

Finance Director Torres went on with the recap; General Fund Revenues; General Fund Taxes; and Revenues and Transfers In.

City Manager Fuentes said one of the differences is the transfers in from 505 Solid Waste and 507 Solid Waste Collection Center because of the projections on the revenue side which were still coming up short. So we consider it an Administrative Fee. In this case we had to find some money somewhere.

Finance Director Torres went on with the Revenues and Transfers In; Expenditures & Detail; Enterprise Funds;

City Manager Fuentes reported the Capital Projects Funds that were already reported at a previous meeting. These are all of the challenges we have going into the fiscal year.

Mayor Green asked Commissioner Clark if we can use Lodger's Tax for transportation systems. He sits on the SCRTD and they pay for part of the operation of the transportation system. He thanked Commissioner Hechler because he hounded for staff and it was forefront on his mind. He's pleased to see the equity in fairness has exhibited itself with bringing up a certain persons salary because it was warranted.

**Commissioner Clark moved to approve Resolution No. 04 2017/2018 approving the Final Budget for FY 2017-2018. Commissioner Frankel seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

Mayor Green asked if City Manager Fuentes could send an email to all department heads thanking them for controlling their budgets and staying in their budget. We just want to say good job.

#### **I. UNFINISHED BUSINESS**

1. Discussion/Action: SCRDA Contract and future participation. Juan Fuentes, City Manager

Discussed earlier on the agenda.

#### **J. NEW BUSINESS**

1. Discussion/Action: Lease Agreement between the Southwestern Area Workforce Development and the City of Truth or Consequences. Juan Fuentes, City Manager

City Manager Fuentes said this is a contract we want to enter into with Southwestern Area Workforce Development to have them located at the Gardner Learning Center. They are currently located at the Civic Center. The agreement you have incorporates some of the fees which would help offset some of the expenses with a lease amount of \$600 a month. But at least the benefit we will get by having this facility to be used and open throughout the day.

Mayor Green really appreciates Representative Dow jumping on this and bringing all of the players to the table and getting it done.

**Commissioner Hechler moved to approve the Lease Agreement between the Southwestern Area Workforce Development and the City of Truth or Consequences. Commissioner Clark seconded the motion. Motion carried unanimously.**

2. Discussion/Action: Appointment of a Voting Delegate for the NMML Annual Conference in Clovis on August 15th - 18th. Renee Cantin, Clerk-Treasurer

City Clerk Cantin presented the item. As you know annually the Municipal League has their annual conference. This year it will be held in Clovis, August 15<sup>th</sup> – 18<sup>th</sup>. She requested they select a voting delegate and an alternate.

**Commissioner Clark moved to approve City Manager Fuentes as the Voting Delegate and Police Chief Alirez as the alternate. Commissioner Frankel seconded the motion. Motion carried unanimously.**

3. Discussion/Update: Update on the short term rental ordinance. Renee Cantin, Clerk-Treasurer

City Clerk Cantin reported she did not hear from her contact in Taos, but has received some information from Gina Kelly in Ruidoso. She presented the draft flyer she plans to get in the utility bills to get the word out about this ordinance. She is scheduled to present it to the Lodger's Tax Board and the next step is preparing the Resolution for the fees for Lodger's Tax Registration. She also found more than just Airbnb and VRBO. She included the notice in the utility bills so they will contact our office so we will have a list of those who already have a home listed. In the future, they will have to do more detailed research depending on the responses they get.

Mayor Green thanked her for the update and understands it will take time and as long as the process is moving forward, he's a happy camper.

## **K. REPORTS**

### **a. City Manager**

- 1) Today there is a Governing Board Meeting he will be attending at 1. And of course the JPC Meeting will be at 4:00 p.m.
- 2) The rest of the week he will be attending the City Manager's Association meeting.
- 3) He requested the Item L.1 for Executive Session be postponed to the next meeting so we can get some additional information.

### **b. City Attorney**

None.

c. City Commission

Commissioner Hechler thanked City Manager Fuentes and staff for all of the hard work they've done on the budget and reconciling the audits. They are very complete and well put together and he appreciates all of the hard work.

Mayor Green thinks one of our shortcomings is dissemination of information before the public. He would like to see us go out and make presentations to the public. He doesn't think the public realizes we are going to the state and USDA looking for money. It might serve staff and the Commission to get the message out to the citizens of what we are doing to try to find funding options for things we need to get done.

**Mayor Green moved to approve removing Executive Session and let staff decide when they want to bring it back. Commissioner Clark seconded the motion. Motion carried unanimously.**

**L. EXECUTIVE SESSION**

1. Sale, Acquisition, or Disposal of Real Property (T or C Airport) *Pursuant to 10-15-1(H.8)*

**M. ACTION ON ITEMS DISCUSSED DURING EXECUTIVE SESSION, if any.**

**N. ADJOURNMENT**

Meeting was adjourned at 1:03 p.m.

Passed and Approved this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Steven Green, Mayor

ATTEST:

\_\_\_\_\_  
Reneé L. Cantin, CMC, City Clerk



E.2

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

Approve the minutes of the Joint City Commission/PUAB Workshop for June 28, 2017.

**BACKGROUND:**

None.

**STAFF RECOMMENDATION:**

Approve the minutes.

Submitted by: Renee Cantin, City Clerk-Treasurer

Meeting date: 08/23/2017

JOINT CITY COMMISSION/PUAB WORKSHOP MINUTES  
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO  
CITY COMMISSION CHAMBERS, 405 W. 3<sup>RD</sup> St.  
WEDNESDAY, JUNE 28<sup>TH</sup>, 2017

**A. CALL TO ORDER**

The meeting was called to order by Mayor Steve Green at 1:30 p.m., who presided and Renee Cantin, City Clerk-Treasurer, acted as Secretary of the meeting.

**B. INTRODUCTION**

**1. ROLL CALL**

Upon calling the roll, the following Commissioners and PUAB Members were reported present.

**City Commission**

Hon. Steve Green, Mayor  
Hon. Sandra Whitehead, Mayor Pro-Tem  
Hon. Rolf Hechler, Commissioner  
Hon. Joshua Frankel, Commissioner

**Public Utility Advisory Board**

George Szigeti – Chair  
Jeff Dornbusch – Vice Chair  
Ron Pacourek – Member  
Randy Ashbaugh - Member

**Absent:** Hon. Kathy Clark and Gil Avelar are absent.

**Also Present:** Renee Cantin, City Clerk-Treasurer  
Angela Torres, Deputy Clerk

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

**C. INTRODUCTIONS**

Mayor Green asked that The City of Truth or Consequences staff introduced themselves as follows:

Ruby Otero-Vallejos – Water/Wastewater Administrative Assistant  
Jesus Salayandia - Water/Wastewater Director  
Arnie Castaneda - Water/Wastewater Supervisor  
Marty Davis – Water Department Forman

Sonya Williams - Utility Office Manager  
Boaz Easley – Electric Division Director  
Tammy Gardner – Electric Division Administrative Assistant  
Robbie Travis – Building Inspector  
Traci Burnette – Grants Projects Coordinator

PUAB Chairman Szigeti introduced Scott Griffith who introduced the others from YESCO in attendance.

Colby Geer – General Manager  
Alex Montano – Project Director

Mr. Griffith also introduced the Vendors who helped work on the project which included:

Paul Carrol & Jerry Uhlman – MSPS (Mountain States Pipe & Supply) Awarded Vendor  
Toby Leafgreen – RTS, Auditing work for project  
Kamstrup Meters – Phoenix  
El Paso – Electric & Gas Meters, Alamogordo – Electric Meters

**D. PRESENTATION BY SCOTT GRIFFITH, YEAROUT ENERGY SERVICES COMPANY (YESCO)**

Mr. Griffith began with the presentation that is part of the agenda packet.

One of the issues and challenges that we are dealing with in Truth or Consequences, just like any small town, is that we're really having a decline of natural resources, physical constraints of what is happening with the budgets, legislative demands that were under, as well as the environmental stewardship, sometimes in cases dealing with climate changes especially here in the Southwest. Our point to this process was to be able to deliver a project that has uninterrupted reliable service, immediate response time to the highest quality customer service. This will help create the lowest possible utility rates and persistent maintenance and replacement of

**The Challenge**

**Issues:**

- Declining Natural Resources (Water & Fuel)
- Fiscal Constraints / Lack of Resources
- Legislative Demands / Compliance
- Environmental stewardship / climate change

**Unwavering Expectations:**

*Despite these challenges, you are still expected to deliver:*

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- Uninterrupted reliable service
- Immediate response time / Highest quality customer service
- Lowest possible utility rates
- Persistent maintenance and replacement of aging equipment and infrastructure
- Financial stability and health

### **The Opportunity:**

#### *Utility Meter Replacement*

- Avoid increasing rates to compensate for inaccurate meters
- Immediately resolve lost revenue issues due to inaccurate meters (Customer Billed for Actual Consumption)
- Reallocate annual meter replacement budgets to other needed capital improvements
- Assure constituents and staff that resources are generated, delivered and accurately measured. (Not wasted)
- Lead-Free metering devices

#### **AMI System**

- Improve billing accuracy / reduce accidental human errors
- Provide better and faster customer service
- Full Integration with Billing Platform
- Enhance leak detection capabilities
- Reduce operational costs (vehicles, personnel, inventory, safety)
- Redeploy staff to maintain the system (Leak Detection & Remediation) rather than read & replace meters
- Increase awareness, real-time monitoring for staff and customers

Mayor Green introduced Finance Director Melissa Torres who arrived at 1:38 P.M.

Grants Projects Coordinator Burnette addressed the Commission and PUAB. In regards to funding availability, as you all know, Water Trust Board, Colonias, USDA, and our Capital Outlay, there is no guarantee that we are going to apply for funds and get them. For the last couple of years we have been unsuccessful in getting Water Trust Board money. Part of that is due to the lack of funding availability verses the amount of funding requests that they have been receiving. A lot of their requests are for cities that have much more critical needs than we do. Colonias funds are tied up in our Wastewater Plant, and we cannot apply for funds until we expend those funds, and USDA is currently funding our Wastewater, as well as looking at funding our Water. This next year we are possibly looking of a decrease in availability of USDA funding. There is a possibility that they could lose their Colonias funding. So all of these funding sources are pretty much all focused on infrastructure needs that pertain to Wastewater Treatment Plant improvements, Waterline Improvements, or expansions, and they all require some type of a cash match or a loan component which uses up some of our revenue in a tight budget that the Water and Wastewater Department have already. As

## JUNE 28, 2017 CITY COMMISSION/PUAB WORKSHOP MINUTES

far as electrical goes, we have been working really hard with the Electric Department, and unfortunately there's not a lot of grant funding availability for electrical. Mayor Green asked about the period of time we are talking about for the applications for USDA funding. Grants Projects Coordinator Burnette responded the completion date is April 2018.

Mr. Griffith noted that one of the other issues with using performance contracting vs. self-performing is that the bond issues that you have to put out for new equipment, you don't have to do that under a performance contracting.

Finance Director Torres said procurement wise it would be more strenuous to ensure a bond for this kind of project is needed. Mr. Griffith added this is a different form of procurement than people are used to doing.

Mr. Colby Geer reported on Silver City's project and advanced metering solutions in NM.

PUAB Member Pacourek asked about Silver City and if it was water only. Mr. Geer responded it was water only.

PUAB Vice-Chairman Dornbusch asked about the work crews and whether the crew was local or from out of town. Mr. Geer responded in Silver City about 50% to 60% of the crew was local which was a benefit when the residents saw people they knew.

Commissioner Hechler asked about integrating it with our Tyler System. Mr. Geer responded neither one have Tyler, they have HTE/SunGard. So basically we will get a sample data file from them and the data file says "this is how I want my data filled out." So when you up load it to the Tyler he can ping and query the right column, pull that in, and administer a bill based on that. So they will have to know the serial number, account number, and all additional information that they need to see. So as they are going through the system, they will have iPads or tablets of some sort to upload that information, and take pictures of the meter pit to show a meter went in there, and then upload the data accordingly. As we look to integrate into the billing software, we will do pilot runs tests, they'll run some water through them to see what it looks like, and then make sure that it corresponds back to the meter billing software appropriately. They will need access to the city's IT department in order to help give them access through your fire walls so they can send that information out.

Commissioner Frankel asked on the Silver City project what were the biggest hurdles and what challenges are they still dealing with. Mr. Geer responded mostly on the development side up front, the installation went well. There were a couple of things that were addressed very quickly, but no major problems.

Mr. Griffith went on to the next phase of the project.

Alex Montano talked about the IGA Baseline water loss.

## JUNE 28, 2017 CITY COMMISSION/PUAB WORKSHOP MINUTES

Mayor Green asked a question for Commissioner Clark who could not be here. The meters are not going to help us with our 26% loss. All that they are going to do is capture more accurately whatever the customer is using that goes through a new meter. Mr. Montano responded yes and no. One part of that 26% is whatever the use is. There is water not being sent all of the way to the user. The other part of the 26% is water that is being sent to that user, but those inaccurate meters are just not registering that water. So you are not billing customers for their actual consumption today because those meters that are currently installed do not pick up the consumption information.

PUAB Chairman Szigeti said basically this will reduce the loss.

PUAB Vice-Chairman Dornbusch asked what percent we are at the meters. Mr. Montano responded they are all at different flow rates and different sizes. It would be cost prohibitive to test every single meter. PUAB Vice-Chairman Dornbusch said these numbers are shocking, and asked if there is a contingency plan for citizens who are upset. Mr. Griffith responded it happens in increments.

Mr. Montano said it is just billing them for what they are actually using. Their numbers apply a conservation pressure for them to work to save water.

Commissioner Frankel said there is a possibility that some readings may go up and some will go down. Mr. Montano said it's less likely you will see it on the other side.

Mr. Montano went on to the Sewer Revenue Increase and the Investment Grade Audit findings.

PUAB Chairman Szigeti wanted to know exactly what was involved in the O & M. Mr. Montano responded they are not attempting to eliminate any operations, but to allow them to work better, and to focus on other areas by taking the manual stuff out, and automate them. PUAB Chairman Szigeti asked for clarification. Mr. Montano gave an example of doing a shut off and what it entails.

Mayor Green asked about the \$92,000 for O & M savings. Mr. Montano said the \$200,000 is based on the projected revenue. Mayor Green wanted to make sure the guarantee was \$200,000.

PUAB Member Ashbaugh added what you mean is you can flip a switch and not be in the line of fire. Mr. Montano replied there is actually a lot of technology in those meters and the answer is yes you are doing it now but the difference is that you don't have to be in the line of fire anymore.

PUAB Member Pacourek had a question about the contingency plan. In his experience he has never seen an electronic cut clean ever. Mr. Montano said in the project cost there are some contingency dollars. One thing that was in your packets, but not quite discussed today, is that the project price number has not changed and it is a guaranteed number. Once the amount is locked in then it cannot be changed.

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Mayor Green asked if it includes the cost of the water meter, other meters, and installation of meters and if it is a turnkey price. Mr. Montano agreed it is turnkey price.

Electric Department Director Easley said he Melissa, and Sonya all went to Aztec. He gave a report as to their system. It was a very good system and they were doing theirs in house, it had been ten years, and they were still installing it.

Finance Director Torres added to Electric Department Director Easley's comments. They were very impressed with the customer service and their numbers. One of the things they noticed is they sent staff to iTron to learn their product. She added right now our operation is based on being reactive, and being proactive, we can schedule some types of repairs. That is something that's very positive for us.

Mayor Green asked can you give us an idea of what the payback period was. Where was the profit modem to do this if they were just spending the money on the savings to buy the meters and the cost of installing the meters? Finance Director Torres said it was definitely in the water side, and they got pay off because they were losing just as much as we were. She doesn't know if it would be the second or third year where they would start to see an increase on the revenue side.

Commissioner Hechler asked about the struggles with Tyler. Finance Director Torres responded this system is something that is continuously a learning system for us. She would be a lot more nervous if we were doing this in house, but if they do it, she would feel comfortable with it.

Mr. Montano shifted to talk about projects now.

PUAB Member Pacourek asked about bi meters. One of the vendors said they are available. He thinks there have been more applications for people adding solar. PUAB Chairman Szigeti said we have 6 residential, and 1 commercial with solar.

Mr. Montano explained what AMI means and then went over the Project Financial Benefits.

Mayor Green asked if what he is guaranteeing is a 6.6 return on a 5.5 investment. Mr. Geer responded that there is insurance and a bond on the project.

PUAB Chairman Szigeti asked about the city's monthly cost. Mr. Geer responded you will pay on an annual basis, and it depends on how they set the financing.

PUAB Member Ashbaugh asked if the turnkey price is \$5.4 million dollars. Mr. Geer responded this is an investment grade audit, which they will take out to the market for an RFP to find funding. PUAB Member Ashbaugh asked how long the system will work before it needs an upgrade. Mr. Geer responded we anticipated a 20 year term at 3% interest on this project so far.

Mayor Green wanted to follow up on Mr. Ashbaugh's question. Mr. Geer said they can provide that to them. For us to make a sound financial decision, we need to know the cost of the project to the penny. Mr. Geer said we know the cost is the \$4.4 million, what we don't know is the cost of the funding.

Mr. Montano went on to present the Cost/Benefit Analysis.

Mr. Griffith presented the strategies for funding. Next we will go through technology and what type of scope will be preferred by the city. He added they have been supported a great deal by staff.

#### **E. PRESENTATION BY PAUL CARROL & JERRY UHLMAN – MOUNTAIN STATES PIPE & SUPPLY (MSPS)**

Mr. Paul Carroll discussed the AMI (Advanced Metering Infrastructure) which is a two way communication. Technology was discussed on the ITron Openway RIVA Platform.

PUAB Vice-Chairman Dornbusch said with all of the hacking going on he would hate to see them get hacked.

Mayor Green asked who would do the replacement. Mr. Geer said inside of our warranty of one year, they will provide the material, and if it's after that one year, they would provide the labor and material.

#### **F. QUESTIONS FROM PUAB**

PUAB Member Ashbaugh projected what it will cost it the City which he's saying will be about \$340,000 to \$400,000 a year for this system. Mr. Geer responded he has built a pro formula with the rates escalated on an annual basis. Mr. Montano said the PUAB & Commission has put in a 5% increase, but they only used a 3% increase in projections.

#### **G. QUESTIONS FROM COMMISSION**

There were no additional comments from the Commission.

#### **H. QUESTIONS FROM THE PUBLIC**

Mr. Klaus Wittern submitted his questions on a handout.

Mr. Ron Fenn commented he feels that the 9 Gentleman here from YESCO, most of them look like they eat very well, and he doesn't want to buy them dinner for 20 years. He asked if they know who Clay M. Bidinger is, because he is the man who is responsible for the electric in the solar farm. He lives in Florida and is collecting

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between \$2 million to \$4 million dollars from the City of T or C. Mayor Pro-Tem Whitehead called for point of order.

PUAB Member Ashbaugh left the meeting at 3:23 p.m.

Mayor Green suggested that Mr. Fenn bring his concerns up to the Commission and stated that this is not the place we are talking about. That is an entire different project.

**I. NEXT STEPS FOR THE PROJECT**

Mr. Griffith said the state has given them funding to do this, and the city can certainly do this by yourselves. This process helps you to allocate this new equipment to help you pay for this process. There is a guarantee for this funding, and this is a way to do it which will not impact your current budget

Mayor Green wanted to let them know, the gentleman was talking about a Power purchase agreement. He asked the PUAB to take this item back to their board and take the lead on this and send it back to the Commission when they are ready. We are obligated to do due diligence to make sure we looked at everything to make a knowledgeable decision that is best for our community.

**J. ADJOURNMENT**

**Mayor Green adjourn the meeting at 3:30 p.m.**

**Passed and Approved this \_\_\_\_ day of \_\_\_\_\_, 2017.**

\_\_\_\_\_  
Steven Green, Mayor

**ATTEST:**

\_\_\_\_\_  
Reneé L. Cantin, CMC, City Clerk



F.1

**CITY OF TRUTH OR CONSEQUENCES**  
COMMISSION ACTION FORM

**ITEM:**

DISCUSSION/ACTION: FUNDING OPTION FOR THE LAW ENFORCEMENT COMPLEX PROJECT.

**BACKGROUND:**

The City acquired the Old Armory property from the NM State National Guard for the purpose of constructing an Animal Shelter and Regional Public Safety Complex. The goal for acquiring the property is to consolidate Public Safety Operations (Animal Shelter and Law Enforcement) near each other to share resources and reduce operation costs. The first priority project was the new Regional Animal Shelter. The project has been funded by State and Local Appropriations. A notice to proceed has been issued to the contract and construction is in progress.

The next priority project is the renovation of the existing Old Armory for law enforcement. The City Commission has approved an architectural contract with NCA Architects and preliminary plans and estimates are being finalized. During the City Commission meeting on February 14<sup>th</sup>, the City Commission authorized staff to proceed with financing options for this project. On June 14<sup>th</sup>, the City Commission authorized an application with the New Mexico Finance Authority (NMFA) for up to \$2,500,000 for the Law Enforcement Complex Project. The NMFA Board met on July 29<sup>th</sup> and approved the City's application for financing the Law Enforcement Project.

On August 9<sup>th</sup>, Mark Valenzuela, GK Baum, presented his analysis of the financing options to choose from to finance the project. The City Commission approved funding the Law Enforcement Complex Project through the NMFA. NMFA requires the adoption of an ordinance which dedicates a portion of the PD GRT for repayment of the loan.

The proposed ordinance for publication was drafted by Melendrez & Melendrez Law Firm who is assisting NMFA and GK Baum to process our funding application and loan documents.

**STAFF RECOMMENDATION:**

- Authorization to proceed with publication of the proposed ordinance for financing for the Law Enforcement Complex.

Name: Juan A. Fuentes	Department: City Manager	Mtg: 08/23/17
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STATE OF NEW MEXICO  
CITY OF TRUTH OR CONSEQUENCES  
SIERRA COUNTY

The City Commission (the "Governing Body") of the City of Truth or Consequences, New Mexico, met in regular session in full conformity with law and the rules and regulations of the Governing Body at 405 West Third, Truth or Consequences, New Mexico being the meeting place of the Governing Body for the regular meeting held on the 13th day of September, 2017, at the hour of 9:00 a.m. Upon roll call, the following members were found to be present:

Present: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Also Present: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO

ORDINANCE NO. 686

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT NOT TO EXCEED \$2,500,000 TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF CONSTRUCTING A LAW ENFORCEMENT FACILITY FOR THE GOVERNMENTAL UNIT, FUNDING A LOAN AGREEMENT RESERVE ACCOUNT AND PAYING A LOAN PROCESSING FEE; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE ONE-FOURTH OF ONE PERCENT (0.25%) OF THE MUNICIPAL LOCAL OPTION GROSS RECEIPTS TAX IMPOSED PURSUANT TO SECTION 7-19D-9, NMSA 1978, AND DISTRIBUTED TO THE GOVERNMENTAL UNIT BY THE STATE TAXATION AND REVENUE DEPARTMENT; PROVIDING FOR THE DISTRIBUTION OF THE MUNICIPAL LOCAL OPTION GROSS RECEIPTS TAX TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

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

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

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

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

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

WHEREAS, the Governmental Unit desires to provide that distributions of the Pledged Revenues be redirected to the Finance Authority or its assigns pursuant to an Intercept Agreement between the Governmental Unit and the Finance Authority (the "Intercept Agreement") for the payment of amounts due under the Loan Agreement; and

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

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

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

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

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

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

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

"Act" means the general laws of the State, Sections 3-31-1 through 3-21-12, NMSA 1978, as amended, Section 7-19D-9, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement and Intercept Agreement, including this Ordinance.

"Aggregate Annual Debt Service Requirement" means the total principal and interest

payments due and payable pursuant to the Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

“Authorized Officers” means the Mayor, Mayor Pro-Tem, City Manager and City Clerk.

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

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

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

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

“Distributing State Agency” means the department or agency of the State, as described on the Term Sheet attached as Exhibit “A” to the Loan Agreement, authorized to distribute the Pledged Revenues on behalf of the Governmental Unit.

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

“Expense Fund” means the expense fund created pursuant to the Indenture to be held and administered by the Trustee to pay expenses.

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

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

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

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

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

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, or the

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

“Intercept Agreement” means the Intercept Agreement, between the Governmental Unit and Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

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

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

“Loan Agreement Principal Amount” means the original principal amount of the Loan Agreement as shown on the Term Sheet attached as “Exhibit “A” to the Loan Agreement.

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

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

“Finance Authority” means the New Mexico Finance Authority.

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

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

“Ordinance” means this Ordinance No. 686 adopted by the Governing Body on September 13, 2017 approving the Loan Agreement and the Intercept Agreement as amended from time to time.

“Parity Obligations” means the Loan Agreement and any other obligations, now or

hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on parity with the Loan Agreement, including those obligations described on the Term Sheet attached as Exhibit "A" to the Loan Agreement.

"Pledged Revenues" means the revenues received pursuant to the Tax Ordinance which imposes a Municipal Loan Option Gross Receipts Tax known as the one-fourth of one percent (0.25%) the Municipal Gross Receipts Tax on the gross receipts of all persons engaging in business within the Governmental Unit and pledged to payment of the Loan Agreement.

"Processing Fee" means the processing fee to be paid on the Closing Date by the Governmental Unit to the Finance Authority for the costs of originating and servicing the Loan, as shown on Exhibit "A" to the Loan Agreement.

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

"Project" means the project described in Exhibit "A" to the Loan Agreement.

"State" means the State of New Mexico.

"Tax Ordinance" means Ordinance No. 606 passed and approved by the Governmental Unit pursuant to the Act on June 14, 2011, with an effective date of January 1, 2012, which imposes a Municipal Local Option Gross Receipts Tax known as the one-fourth of one percent (.25%) Municipal Gross Receipts Tax on the gross receipts of all persons engaging in business within the Governmental Unit.

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

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

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

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

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

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

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

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

E. The Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety and welfare of the residents of and the public served by the Governmental Unit.

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

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

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

I. Pursuant to Section 7-19D-9, NMSA 1978, as amended, the Governmental Unit heretofore has adopted the Tax Ordinance, which imposes a Municipal Local Option Gross Receipts Tax known as the one-fourth of one percent (.25%) Municipal Gross Receipts Tax on the gross receipts of all persons engaging in business within the Governmental Unit.

J. Pursuant to Section 7-1-6.12, NMSA 1978, as amended, the Governmental Unit receives Pledged Revenues from the Distributing State Agency.

Section 5. Loan Agreement and Intercept Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and acquiring and constructing the Project,

it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and the Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount not to exceed \$2,500,000, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the acquisition and construction of the Project; (ii) fund the Loan Agreement Reserve Account; and (iii) pay the Processing Fee. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in an original aggregate principal amount not to exceed \$2,500,000, shall be payable in installments of principal due on May 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on May 1 and November 1 of each year, beginning on November 1, 2017 at the rates designated in Exhibit "B" to the Loan Agreement.

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

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefore to payments required by the Loan Agreement, in its sole and absolute discretion.

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

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

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

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

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

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

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

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

A. Deposit of Pledged Revenues. Pursuant to the Intercept Agreement, Pledged Revenues shall be paid to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal and interest due under the Loan Agreement, including sufficient Pledged Revenues in the Loan Agreement Reserve Account to maintain the Loan Agreement Reserve Requirement. The Governmental Unit shall pay Pledged Revenues in an amount sufficient to pay Loan Agreement Payments, including an amount sufficient to cure any deficiencies in the Loan

Agreement Reserve Account, to the Finance Authority or its assignee to be deposited in the Finance Authority Debt Service Account.

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

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

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

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance, the Loan Agreement and Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Ordinance may be supplemented or amended by ordinance of the Governing Body with respect to any changes

which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

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

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

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

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

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

(Form of Summary of Ordinance for Publication)

City of Truth or Consequences, New Mexico

Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 686, duly adopted and approved by the Governing Body of the City of Truth or Consequences, New Mexico, on September 13, 2017. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the City Clerk, 505 Sims Street, Truth or Consequences, New Mexico.

The title of the Ordinance is:

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO

ORDINANCE NO. 686

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT NOT TO EXCEED \$2,500,000 TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF CONSTRUCTING A LAW ENFORCEMENT FACILITY FOR THE GOVERNMENTAL UNIT, FUNDING A LOAN AGREEMENT RESERVE ACCOUNT AND PAYING A LOAN PROCESSING FEE; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE ONE-FOURTH OF ONE PERCENT (0.25%) OF THE MUNICIPAL LOCAL OPTION GROSS RECEIPTS TAX IMPOSED PURSUANT TO SECTION 7-19D-9, NMSA 1978, AND DISTRIBUTED TO THE GOVERNMENTAL UNIT BY THE STATE TAXATION AND REVENUE DEPARTMENT; PROVIDING FOR THE DISTRIBUTION OF THE MUNICIPAL LOCAL OPTION GROSS RECEIPTS TAX TO BE REDIRECTED BY THE STATE TAXATION AND REVENUE DEPARTMENT TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

(End of Form of Summary for Publication)

PASSED, APPROVED AND ADOPTED THIS 13th DAY OF SEPTEMBER, 2017.

CITY OF TRUTH OR CONSEQUENCES,  
NEW MEXICO

By: \_\_\_\_\_  
Steve Green, Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
Renee Cantin, Clerk-Treasurer

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

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

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

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

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

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

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

CITY OF TRUTH OR CONSEQUENCES,  
NEW MEXICO

By: \_\_\_\_\_  
Steve Green, Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
Renee Cantin, Clerk-Treasurer

**EXHIBIT "A"**  
**Meeting Agenda**  
**of the September 13, 2017**  
**City Commission Meeting**

**(See attached)**

STATE OF NEW MEXICO  
CITY OF TRUTH OR CONSEQUENCES  
SIERRA COUNTY

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

1. The foregoing pages are a true and complete copy of the record of the proceedings of the City Commission of the City of Truth or Consequences, New Mexico (the "Governing Body"), constituting the governing body of the Governmental Unit had and taken at a duly called regular meeting held at, 405 West Third, Truth or Consequences, New Mexico, on September 13, 2017, at the hour of 9:00 a.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement and Intercept Agreement, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 13<sup>th</sup> day of September, 2017.

CITY OF TRUTH OR CONSEQUENCES,  
NEW MEXICO

By: \_\_\_\_\_  
Renee Cantin, Clerk-Treasurer

[SEAL]



F.2

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

ADDING A NEW ORDINANCE TO PROVIDE A PROCEDURE FOR THE RECUSAL OF PUBLIC UTILITY ADVISORY BOARD MEMBERS

**BACKGROUND:**

Given that the question frequently arises as to when it is appropriate for a board member to recuse himself/herself, this proposed ordinance should provide clarity.

**STAFF RECOMMENDATION:**

Approve the ordinance for publication.

**SUPPORT INFORMATION:**

Draft of the proposed ordinance

Name of Presenter:	Department:	Meeting date:
--------------------	-------------	---------------

**ORDINANCE NO. 687**

AN ORDINANCE OF THE CITY OF TRUTH OR CONSEQUENCES, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF TRUTH OR CONSEQUENCES,

BE AMENDED BY ADDING SECTION 2-276 PROVIDING A PROCEDURE FOR THE RECUSAL OF PUBLIC UTILITY ADVISORY BOARD MEMBERS

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

*Section 1.* That section 2-276 of the Code of Ordinances of the City of Truth or Consequences be added so that such section shall read as follows:

**Sec. 2-276. Recusal.**

A member of the Public Utility Advisory Board shall recuse himself/herself from participating in a particular item on the agenda when such member 1) has a conflict of interest as described in the Government Conduct Act, 10-16-1, et seq., or 2) the totality of circumstances would create a reasonable public perception that such member cannot participate in that particular item in a fair and impartial manner. In such event, the member shall explain his/her reasoning prior to the item being discussed by the Public Utility Advisory Board. The recusing member shall then remove himself/herself from the meeting room prior to the commencement of any discussion of that particular agenda item, and shall not vote on such item.

*Section 2.* All Ordinances or Resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This Repealer shall not be construed to revive any Ordinance or Resolution, or part thereof, heretofore repealed.

*Section 3.* This Ordinance shall take effect on the \_\_\_ day of \_\_\_\_\_, 2017.

**PASSED, APPROVED AND ADOPTED** this \_\_\_ day of \_\_\_\_\_, 2017.

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

**BY:** \_\_\_\_\_  
*STEVE GREEN – Mayor*

**ATTEST:**

\_\_\_\_\_  
*Renee Cantin – City Clerk*



F.3

CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM

**ITEM: DISCUSSION/ACTION: RESOLUTION NO. 06-17/18 ADOPTING THE 2019-2023  
INFRASTRUCTURE CAPITAL IMPROVEMENT PLAN (ICIP)**

**BACKGROUND:**

The ICIP is a plan that establishes planning priorities for future projects for the city. The Department of Finance and Administration (DFA) encourages municipal entities to annually review, reprioritize and adopt by resolution the new plan.

Attached is a draft sheet of the current projects; the City Commission can add, amend or delete projects from the list provided. Next, the Commission must rank each of the projects for each fiscal year starting with 2019 and ending with 2023; finally the list must be adopted by the City Commission by approving Resolution No. 06-17/18.

Staff will update the ICIP database online to reflect the approved projects and ranking. The deadline for submitting the ICIP is September 1st by 5:00 p.m.

**SUPPORT DOCUMENTS:**

- Draft ICIP Sheet
- Resolution No. 06-17/18

Name of Drafter: Traci Burnette	Department: Community Development	Meeting date: 8.23.17
E-mail: <a href="mailto:tburnette@torcnm.org">tburnette@torcnm.org</a>	Phone: 575-894-6673 Ext. 353	

# **CITY OF TRUTH OR CONSEQUENCES**

## **RESOLUTION No. 06-17/18**

### **A RESOLUTION ADOPTING AN INFRASTRUCTURE CAPITAL IMPROVEMENTS PLAN (ICIP), 2019-2023.**

**WHEREAS**, the City of Truth or Consequences recognizes that the financing of public capital projects has become a major concern in New Mexico and nationally; and

**WHEREAS**, in times of scarce resources it is necessary to find new financing mechanisms and maximize the use of existing resources; and

**WHEREAS**, systematic capital improvements planning is an effective tool for communities to define their development needs, establish priorities and pursue concrete actions and strategies to achieve necessary project development; and

**WHEREAS**, this process contributes to local and regional efforts in project identification and selection in short and long range capital planning efforts.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY OF TRUTH OR CONSEQUENCES THAT:**

1. The City of Truth or Consequences has adopted the attached FY 2019-2023 Infrastructure Capital Improvement Plan, and
2. It is intended that the Plan be a working document and is the first of many steps towards improving rational, long range capital planning and budgeting for the New Mexico's infrastructure.
3. This Resolution supersedes Resolution No. 06-17/18

**PASSED, APPROVED, AND ADOPTED** by the governing body of the City Commission this 23<sup>rd</sup> day of August 2017.

\_\_\_\_\_  
**Steve Green , MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Renee Cantin, CITY CLERK**

## Infrastructure Capital Improvement Plan FY 2019-2023

### Truth or Consequences Project Summary

ID	Year	Rank	Project Title	Category	Funded					Total Project Cost	Amount Not Yet Funded	Phases?	
					to date	2019	2020	2021	2022				2023
26604	2019	001	Animal Shelter	Public Safety Equipment/Bldgs	451,000	200,000	0	0	0	0	651,000	200,000	No
26571	2019	002	Wastewater Treatment Plant Renovation	Wastewater	11,357,400	1,252,329	0	0	0	0	12,609,729	1,252,329	Yes
32976	2019	003	Cook Street Water Treatment Facility Improvements	Water Supply	0	2,045,660	0	0	0	0	2,045,660	2,045,660	No
24062	2019	004	Airport Fuel Farm Storage Tank Replacement	Airports	834,738	232,852	0	0	0	0	1,067,590	232,852	No
10579	2019	005	Regional Detention Center	Adm/Service Facilities (local)	0	7,600,000	0	0	0	0	7,600,000	7,600,000	Yes
26605	2019	006	Construction & Demolition Landfill	Landfills	0	500,000	725,000	0	0	0	1,225,000	1,225,000	Yes
17930	2019	007	Electrical Main Feeders Upgrade	Utilities (publicly-owned)	0	50,000	50,000	1,000,000	1,000,000	0	2,100,000	2,100,000	Yes
23328	2019	008	Storm Drain Improvements In Downtown	Storm/Surface Water Control	0	190,000	1,960,000	0	0	0	2,150,000	2,150,000	Yes
33030	2020	001	Regional Safety Complex	Public Safety Equipment/Bldgs	0	2,654,100	0	0	0	0	2,654,100	2,654,100	No
16524	2020	002	Water Line Replacement	Water Supply	0	9,420,000	9,420,000	9,420,000	9,420,000	9,420,000	47,100,000	47,100,000	Yes
33002	2020	003	City Wide Storm Drain Improvements	Storm/Surface Water Control	0	0	650,000	550,000	1,550,000	0	2,750,000	2,750,000	Yes
24061	2020	004	Pole Replacement Program	Utilities (publicly-owned)	0	300,000	300,000	300,000	300,000	300,000	1,500,000	1,500,000	Yes
33003	2021	001	Capacitor Upgrades	Utilities (publicly-owned)	0	0	0	106,250	0	0	106,250	106,250	No
17717	2021	002	Water Tank Repair	Water Supply	0	0	0	100,000	0	0	100,000	100,000	No
17702	2021	003	Water Well North	Water Supply	0	0	0	50,000	1,900,000	0	1,950,000	1,950,000	Yes
17715	2021	004	ADA Restrooms For Armijo Park	Public Parks (local)	0	0	0	110,000	0	0	110,000	110,000	Yes

## Infrastructure Capital Improvement Plan FY 2019-2023

22194	2021	005	Senior Citizens' Complex	Senior Facilities	0	0	0	50,000	400,000	6,000,000	6,450,000	6,450,000	Yes
33004	2022	001	New and Upgraded Circuit Swtiches	Utilities (publicly-owned)	0	0	0	0	280,000	0	280,000	280,000	Yes
33006	2022	002	Batter/Enclosure Replacement at Substation	Utilities (publicly-owned)	0	0	0	0	7,500	0	7,500	7,500	No
24068	2022	003	Effluent Water to Cemetery	Water Supply	0	0	0	0	600,000	0	600,000	600,000	Yes
33008	2023	001	Corona & Camino Del Cielo Underground Upgrades	Utilities (publicly-owned)	0	0	0	0	0	1,328,381	1,328,381	1,328,381	Yes
23327	2023	002	Citywide Sidewalks and Signage	Hiways/Roads/Streets/Bridges	0	0	0	0	0	190,000	190,000	190,000	Yes
17704	2023	003	Library expansion	Libraries	0	0	0	0	0	376,500	376,500	376,500	No
12005	2023	004	Dog Park	Public Parks (local)	0	0	0	0	0	60,000	60,000	60,000	Yes
17693	2023	005	Hospital Expansion	Health-Related Cap Infra	0	0	0	0	0	1,200,000	1,200,000	1,200,000	No
10588	2023	006	New City Hall/Commission Chambers	Adm/Service Facilities (local)	0	0	0	0	0	2,900,000	2,900,000	2,900,000	Yes
30094	2023	007	Citywide Broadband	Economic Development	0	0	0	0	0	35,000	35,000	35,000	No
9593	2023	008	Civic Center Improv/Renovation	Convention Facilities	0	0	0	0	0	180,000	180,000	180,000	Yes
11994	2023	009	Multi-purpose Recreation Complex	Public Parks (local)	0	0	0	0	0	2,000,000	2,000,000	2,000,000	Yes

<b>Number of projects:</b>	29												
<b>Grand Totals</b>	<b>Funded to date:</b>	<b>Year 1:</b>	<b>Year 2:</b>	<b>Year 3:</b>	<b>Year 4:</b>	<b>Year 5:</b>	<b>Total Project Cost:</b>						<b>Total Not Yet Funded:</b>
	12,643,138	24,444,940	13,105,000	11,686,250	15,457,500	23,989,880	101,326,712						88,683,560

G.7



CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM

**ITEM:**

Discussion/Action: Funding mechanism for streets and potholes.

**BACKGROUND:**

Mayor Green will present this item.

**STAFF RECOMMENDATION:**

None.

Submitted by: Renee Cantin, City Clerk-Treasurer

Meeting date: 08/23/2017

G.2



**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

Discussion/Action: SCRDA Contract and future participation.

**BACKGROUND:**

This item was postponed from the July 26<sup>th</sup> meeting.

**STAFF RECOMMENDATION:**

**SUPPORT INFORMATION:**

None.

Submitted by: Renee Cantin	Department: Clerk-Treasurer	Meeting date: 08-23-2017
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H.1

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

Discussion/Action: ITB: 16-17-007 – Bid Award to Construct Aviation Fuel Farm  
Schedule 3

**BACKGROUND:**

The Bid Opening for this was held on Tuesday, June 27, 2017 at 2:00 p.m.  
We received one bid for this project.

**STAFF RECOMMENDATION: Delta Airport Consultants are recommending  
to Award bid to CSW Contractors Inc.**

**Bid amount \$ 226,360.00  
NMGRT \$ 15,703.73  
Total Bid \$ 242,063.73**

**Pending Grant Funding from FAA and NMDOT –Aviation Division.**

**SUPPORT INFORMATION: Bid Tab & Recommendation of Award letter from  
Delta Airport Consultants**

Name of Presenter: Pat Wood, CPO	Department: Finance	Meeting date: 08-23-17
E-mail: pat@torcnm.org	Phone: 575-894-6673 ext. 312	

**BID RESULTS**  
**CONSTRUCT AVIATION FUEL FARM - SCHEDULE B**

Truth or Consequences Municipal Airport  
 Truth or Consequences, NM

AIP Project No. 3-35-0042-017-2017  
 NMDOT Project No. TCS-17-04  
 City of Truth or Consequences ITB No. 16-17-007  
 Delta Project No. 17061

BID OPENING DATE: June 27, 2017  
 REVISED BID SUBMITTAL: July 20, 2017

Difference from  
 Revised Bid to Estimate

ITEM NO.	SPEC NO.	DESCRIPTION	UNIT	BID QUANTITY	ENGINEER'S ESTIMATE		CSW CONTRACTORS INC Scottsdale, AZ Original Bid		CSW CONTRACTORS INC Scottsdale, AZ Revised Bid	
					UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT
1	P-100	MOBILIZATION	LS	1	\$187,250.00	\$187,250.00	\$244,958.00	\$244,958.00	\$226,360.00	\$226,360.00
SUBTOTAL						\$187,250.00		\$244,958.00		\$226,360.00
MGRT @ 6.9375%						\$12,990.47		\$16,993.96		\$15,703.73
TOTAL						\$200,240.47		\$261,951.96		\$242,063.73
DBE %:								0%		0%

Unit Price	Total Price
Diff	Diff.
	(\$39,110.00) (\$39,110.00) -21%
	(\$39,110.00)



**DELTA AIRPORT  
CONSULTANTS, INC.**

July 21, 2017

Mr. Juan Fuentes  
City Manager  
City of Truth or Consequences  
505 Sims Street  
Truth or Consequences, NM 87901

**Subject: Recommendation of Award**  
Construct Aviation Fuel Farm Schedule 3  
Truth or Consequences Municipal Airport  
AIP Project No. 3-35-0042-017-2017  
NMDOT Project No. TCS-17-04  
City of Truth or Consequences ITB No. 16-17-007

Dear Mr. Fuentes:

It is recommended that City of Truth or Consequences award construct Aviation Fuel Farm Schedule 3 in the amount of Two hundred twenty-six thousand, three hundred dollars and no cents (\$226,300.00) to CSW Contractors Inc.

If you should have any questions concerning this matter, please do not hesitate to contact our office.

Sincerely,

  
Cheryl A. Rodriguez  
Project Manager

Enclosures: Bid Tabulation

7804 PAN AMERICAN EAST FREEWAY NE, SUITE 4, ALBUQUERQUE, NM 87109

P. (505) 797-4921 F. (505) 797-1725 [WWW.DELTAIRPORT.COM](http://WWW.DELTAIRPORT.COM)

H.2



**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

Cell Tower Lease Agreement at Louis Armijo Sports Complex

**BACKGROUND:**

Sun State Towers is requesting to lease property at the Louis Armijo Sports Complex for the installation of a Cell Tower. The project will replace an existing light pole with the tower and light on it.

This property is in a T-1 zone which allows for Public Towers as a permitted use by right.

**STAFF RECOMMENDATION:**

Approve the lease that John Appel has already reviewed

**SUPPORT INFORMATION:**

- Plans
- Lease

Name of Presenter: Robbie Travis	Department: Community Development	Meeting date: 8/23/17
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# NM06-067 RIO GRANDE / NM3 WILLIAMSBURG

APN: 3024079073353  
 2800 S. BROADWAY ST.  
 TRUTH OR CONSEQUENCES, NM 87901  
 SIERRA COUNTY



1426 N MARVIN STREET # 101  
 GILBERT, AZ 85233



1426 N MARVIN STREET # 101  
 GILBERT, AZ 85233

PROJECT NO: 1426-NM-067-001  
 DRAWN BY: CDR  
 CHECKED BY: JT

REV	DATE	DESCRIPTION	BY
A	06/27/17	ISSUE FOR PERMITS	CDR

**PRELIM  
FOR ZONING  
ONLY**

**NM06-067 RIO GRANDE /  
NM3 WILLIAMSBURG**

DRAWN & PREPARED BY  
 1426 N MARVIN STREET # 101  
 GILBERT, AZ 85233

PROJECT INFORMATION

SITE NUMBER  
**T-1**

**SITE DIRECTIONS**

FROM LAS CRUCES INTERNATIONAL AIRPORT, HEAD WEST ON I-70 BLVD TOWARD CRAWFORD. TURN LEFT ONTO CRAWFORD BLVD AND HEAD 8 MILES TO I-10. MERGE ONTO I-10 AND DRIVE FOR 11.3 MILES. TAKE EXIT 144 TO MERGE ON TO I-25A TOWARD ALBUQUERQUE. CONTINUE ON I-25 N FOR 7.7 MILES AND THEN TAKE EXIT 73 TOWARD I-17/WILLIAMSBURG. TURN ON CONSOLENOLS. MERGE ONTO BROADWAY AND AFTER 0.8 MILES, TAKE A RIGHT ONTO HYGE AVENUE AND THEN LEFT ONTO WEATHER ST. THE SITE WILL BE ON THE LEFT.

**PROJECT DESCRIPTION**

**SCOPE OF WORK**

- INSTALLATION OF PROPOSED 60'-0" TALL STATE TOWERS MONOPOLE
- INSTALLATION OF PROPOSED 30'x30' 8' TALL CHAIN LINK FENCE
- INSTALLATION OF PROPOSED OUTDOOR POWER CABINET
- INSTALLATION OF PROPOSED ELECTRICAL SERVICE
- INSTALLATION OF PROPOSED TELECOM SERVICE
- INSTALLATION OF (12) PROPOSED ANTENNAS
- INSTALLATION OF (12) PROPOSED REMOTE RADIO HEADS
- INSTALLATION OF (2) PROPOSED J BOXES
- INSTALLATION OF (2) PROPOSED HYBRID CABLES

**CLIENT**

VERIZON WIRELESS  
 118 W. GILBERT DR.  
 TEMPE, AZ 85283  
 CONTACT: ROCK MERRANDA  
 PHONE: (602) 290-9844

**PROPERTY OWNER**

CITY OF T OR C  
 505 S 84th STREET  
 T OR C, NM 87901

**TOWER OWNER**

SUN STATE TOWERS  
 1426 N MARVIN STREET #101  
 CONTACT: CHAD WARD  
 GILBERT, AZ 85233  
 PHONE: (602) 463-9514  
 SITE ID: NM06-067  
 SITE NAME: RIO GRANDE

**PROJECT DATA**

**ZONING:** N/A

**PARCEL #:** 3024079073353

**USE:** URBAN/COMMUNICATIONS

**NEW LEASE AREA:** 900 SQ FT

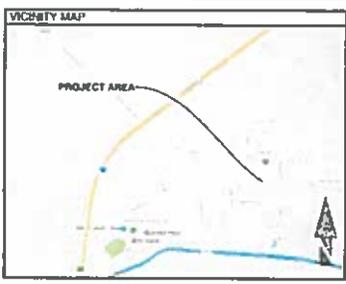
**JURISDICTION:** CITY OF T OR C

**GOVERNING CODES:** 2015 NM COMMERCIAL BUILDING CODE  
 2014 NM ELECTRICAL CODE  
 2012 NM MECHANICAL CODE

ALL BUILDING CODES LISTED ABOVE SHALL INCLUDE AMENDMENTS BY THE GOVERNING JURISDICTION

**GENERAL NOTES**

- THIS WIRELESS TELECOMMUNICATIONS FACILITY WILL MEET THE HEALTH AND SAFETY STANDARDS FOR ELECTROMAGNETIC FIELD EXPOSURE AS ESTABLISHED BY THE FEDERAL COMMUNICATIONS COMMISSION OR ANY SUCCESSOR THEREOF, AND ANY OTHER FEDERAL OR STATE AGENCY.
- THIS WIRELESS TELECOMMUNICATIONS FACILITY WILL MEET THE REGULATIONS OF THE FEDERAL COMMUNICATIONS COMMISSION REGARDING PHYSICAL AND ELECTROMAGNETIC INTERFERENCE.
- LIGHTING OR SIGNS WILL BE PROVIDED ONLY AS REQUIRED BY FEDERAL OR STATE AGENCIES.
- DEVELOPMENT AND CONSTRUCTION OF THIS PROJECT WILL COMPLY WITH ALL APPLICABLE CODES AND ORDINANCES.
- EXISTING PARKING IS NOT AFFECTED BY THIS PROJECT.
- THIS PROJECT DOES NOT INCLUDE WATER OR SEWER.



**SHEET INDEX**

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1S-1	BOUNDARY DETAIL
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2-3	ELEVATIONS
2-4	ELEVATIONS

**SITE ACQUISITION**

PINNACLE CONSULTING, INC  
 1426 N MARVIN STREET #101  
 GILBERT, AZ 85233  
 CONTACT: ERIC MURLEY  
 PHONE: (480) 686-1993 ext. 234

**A/E/FIRM**

PINNACLE CONSULTING, INC  
 1426 N MARVIN STREET #101  
 GILBERT, AZ 85233  
 CONTACT: KYLE FORTIN  
 PHONE: (602) 217-4235

**NEW SITE LOCATION**

**LATITUDE:** 33° 07' 04.736" N (34.085)

**LONGITUDE:** 107° 17' 00.4875" W (107.2835)

**GROUND ELEVATION:** 4792.1' (1461m)

**APPROVALS**

(RF): \_\_\_\_\_ DATE: \_\_\_\_\_

(CONST.): \_\_\_\_\_ DATE: \_\_\_\_\_

(REG): \_\_\_\_\_ DATE: \_\_\_\_\_

LANDLORD: \_\_\_\_\_ DATE: \_\_\_\_\_

**LEGALS/LEGAL DESCRIPTION**

A TRACT OF LAND LOCATED IN THE CITY OF TRUTH OR CONSEQUENCE, BEYOND COUNTY, NEW MEXICO DESCRIBED AS FOLLOWS:

A TRACT OF LAND LOCATED IN THE CITY OF TRUTH OR CONSEQUENCE, TOWNSHIP 14 SOUTH RANGE 4 WEST NORTH AND BEYOND ON THE NORTH BY THE 1/2 SECTION 8 EAST AND BEYOND ON THE SOUTH BY THE 1/2 SECTION 8 EAST BY THE 1/2 SECTION 8 EAST TO SECTION 8 AND 8 BY TOWNSHIP 14 SOUTH RANGE 4 WEST NORTH BEYOND ON THE SOUTH BY VEATER STREET AND BOUND ON THE WEST BY HYDE AVENUE.

NOTE: THIS IS NOT AN OFFICIAL LEGAL DESCRIPTION PREPARED BY A NEW MEXICO LICENSED LAND SURVEYOR AND IS ONLY INTENDED FOR THE PURPOSE OF DESCRIBING THE LAND BEING ACQUIRED FOR THE PROJECT. THIS DESCRIPTION SHALL NOT BE USED IN ANY OTHER MANNER. A LEGAL DESCRIPTION OF THE PROPERTY CONSTITUTES A PUBLIC RECORD AND IS THE ONLY LEGAL DESCRIPTION THAT SHALL BE USED FOR ANY PURPOSE. THIS LEGAL DESCRIPTION IS PREPARED BY A NEW MEXICO LICENSED LAND SURVEYOR AND IS ONLY INTENDED FOR THE PURPOSE OF DESCRIBING THE LAND BEING ACQUIRED FOR THE PROJECT. THIS LEGAL DESCRIPTION SHALL NOT BE USED FOR ANY OTHER PURPOSE. ACCEPTANCE OF THIS REPORT CONSTITUTES A WAIVER OF ANY LIABILITY OF THE SURVEYOR TO THE CLIENT FOR ANY USE OF THE LEGAL DESCRIPTION OTHER THAN THE USE DESCRIBED ABOVE.

**FLOOD ZONE DESIGNATION**

THE PROPOSED LINE PROJECT IS SHOWN IN RED AND IS TO BE WITHIN FLOOD ZONE "A" AS DETERMINED BY THE FEDERAL BUREAU OF INVESTIGATION (FBI) AND FEMA DATED 08/11/11.

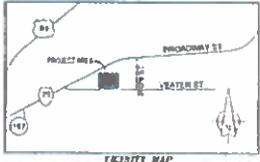
FLOOD ZONE "A" IS DESIGNATED AS AN AREA SUBJECT TO ANNUAL CHANCE FLOODING FOR WHICH NO SPECIAL MEASURES ARE REQUIRED.

**RELIABLE REFERENCES**

ITEM 1 THROUGH 4 OF THE CLIENT PROVIDED TITLE REPORT DO NOT CONTAIN GRAPHICALLY REPRESENTED EASEMENTS, EASEMENTS, RESTRICTIONS OR OTHER ENCUMBRANCES. THE SURVEYOR CANNOT GUARANTEE THAT NONE OF THESE ENCUMBRANCES DO NOT EXIST THAT MAY AFFECT THE SUBJECT EASED PRECISES.

LINE	LENGTH	BEARING
L1	29.80	N47° 00' 00" W
L2	57.41	N47° 00' 00" W
L3	100.00	N47° 00' 00" W
L4	75.00	N47° 00' 00" W
L5	30.00	N47° 00' 00" W
L6	30.00	N47° 00' 00" W
L7	30.00	N47° 00' 00" W
L8	15.00	N47° 00' 00" W

NE COR. LOT 5, SEC. 6, T14S, R. 4 W.



**PROJECT META DATA**

- ELEVATIONS SHOWN HEREIN ARE REPRESENTED IN METERS AND ARE NOT TO BE USED FOR ANY OTHER PURPOSE. ELEVATIONS ARE BASED ON THE NAVD83 DATUM. ELEVATIONS ARE BASED ON THE NAVD83 DATUM. ELEVATIONS ARE BASED ON THE NAVD83 DATUM. ELEVATIONS ARE BASED ON THE NAVD83 DATUM.
- BEARINGS SHOWN HEREIN ARE BASED ON THE U.S. STATE PLANE COORDINATE SYSTEM FOR THE STATE OF NEW MEXICO. COORDINATE SYSTEM FOR THE STATE OF NEW MEXICO. COORDINATE SYSTEM FOR THE STATE OF NEW MEXICO.
- FIELD WORK FOR THIS PROJECT WAS PERFORMED ON 08/11/17.

**SURVEYOR NOTES**

- ALL TITLE INFORMATION IS BASED UPON A CURRENT TITLE REPORT PROVIDED BY THE CLIENT. THE SURVEYOR HAS CONDUCTED A VISUAL SEARCH OF THE TITLE REPORT TO DETERMINE ANY EFFECT ON THIS SURVEY.
- THE BOUNDARY SHOWN HEREIN IS PLOTTED FROM RECORD INFORMATION AND DOES NOT CONSTITUTE A PRELIMINARY SURVEY OF THE PROPERTY.
- THE SURVEYOR DOES NOT GUARANTEE THAT ALL UTILITIES ARE SHOWN OR THEIR LOCATIONS BY THE RESPONSIBILITY OF THE CONTRACTOR AND DEVELOPER TO CONTACT THE STATE AND ANY OTHER STATE AGENCIES TO LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION. RELOCATION AND/OR REPLACEMENT IS THE RESPONSIBILITY OF THE CONTRACTOR.

**LEGEND**

- FOUND AS NOTED
- PERMITS
- CONTRACT
- EXISTING POINT
- BOUNDARY
- WEATHER
- PROPERTY ELEVATION
- APN
- RECHARGE
- CONTRACT
°



**verizon**  
128 W GEMINI DR.  
TEMPE, AZ 85283

**Pinnacle**  
CONSULTING, INC.  
Construction Project Management Site Development

1430 N ANTONIO DRIVE SUITE 1111  
DURHAM, NC 27703

FIELD BY: AAA  
DRAWN BY: CAS  
CHECKED BY: RLF

**REVISIONS**

NO.	DATE	DESCRIPTION
2	05/01/17	FINAL
1	04/05/17	DESCRIPTION

**RLF**  
CONSULTING



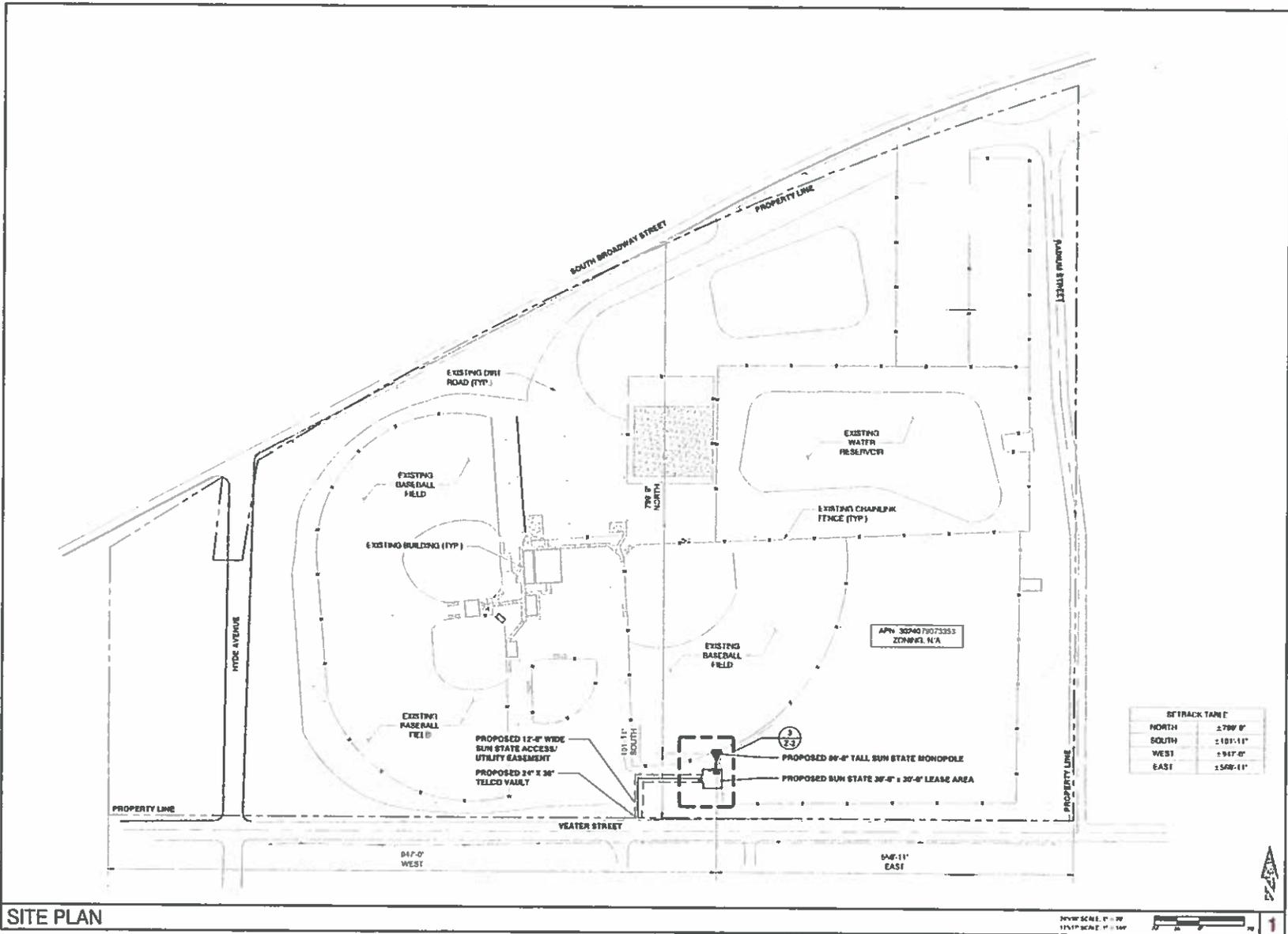
PROJECT NO: 10008375  
SHEET NAME: NM3 WILLIAMSBURG  
NM306-067 RIO GRANDE  
SITE ADDRESS: 20000 S BROADWAY ST  
TRUTH OR CONSEQUENCES, NM

PROJECT NO: 10008375  
SHEET NAME: NM3 WILLIAMSBURG  
NM306-067 RIO GRANDE  
SITE ADDRESS: 20000 S BROADWAY ST  
TRUTH OR CONSEQUENCES, NM

SHEET TITLE: BOUNDARY DETAIL

SHEET NO: LS-1





**SITE PLAN**

VERTICAL SCALE: 1" = 30'  
 HORIZONTAL SCALE: 1" = 100'

PROPOSED BY

171 W. DENVER ST. SUITE 4200  
 PHOENIX, AZ 85003  
 FAX: 602.771.1300

CLIENT

1411 W. BROADWAY STREET, # 101  
 GILBERT, AZ 85131

PROJECT NO.	1406-067-001
DRAWN BY	CPM
DATE	09/15/11

REV	DATE	DESCRIPTION	BY
A	04/27/11	90% 2D REVISE	CPM

**PRELIM  
 FOR ZONING  
 ONLY**

**NM06-067 RIO GRANDE /  
 NM3 WILLIAMSBURG**

200 S. BROADWAY ST  
 GILBERT, AZ 85131

**SHEET TITLE**

**SITE PLAN**

**SHEET NUMBER**

**Z-1**

SETBACK TABLE

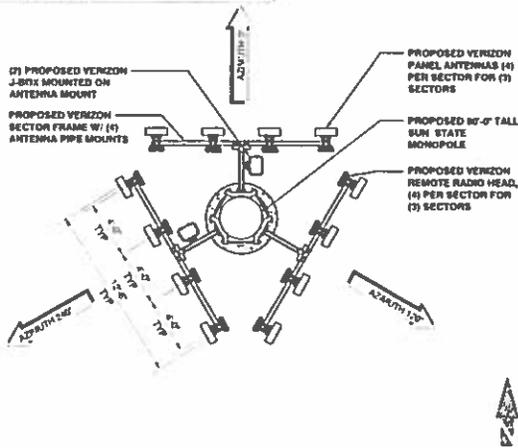
NORTH	± 750' 0"
SOUTH	± 101' 11"
WEST	± 947' 0"
EAST	± 568' 11"

NEW COAXIAL CABLE TABLE					
SECTOR	AZIMUTH	LENGTH	QTY	SIZE	TYPE
ALPHA	0°	140'	2	1 1/4"	INTERFLEX CABLE
BETA	120°				
GAMMA	240°				

NOTE:  
ALL AZIMUTHS SHOWN ARE RELATIVE TO TRUE NORTH, UNLESS NOTED OTHERWISE.  
IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO VERIFY AZIMUTHS DEPICTED HEREIN WITH RF DEPARTMENT PRIOR TO INSTALLING ANTENNAS.

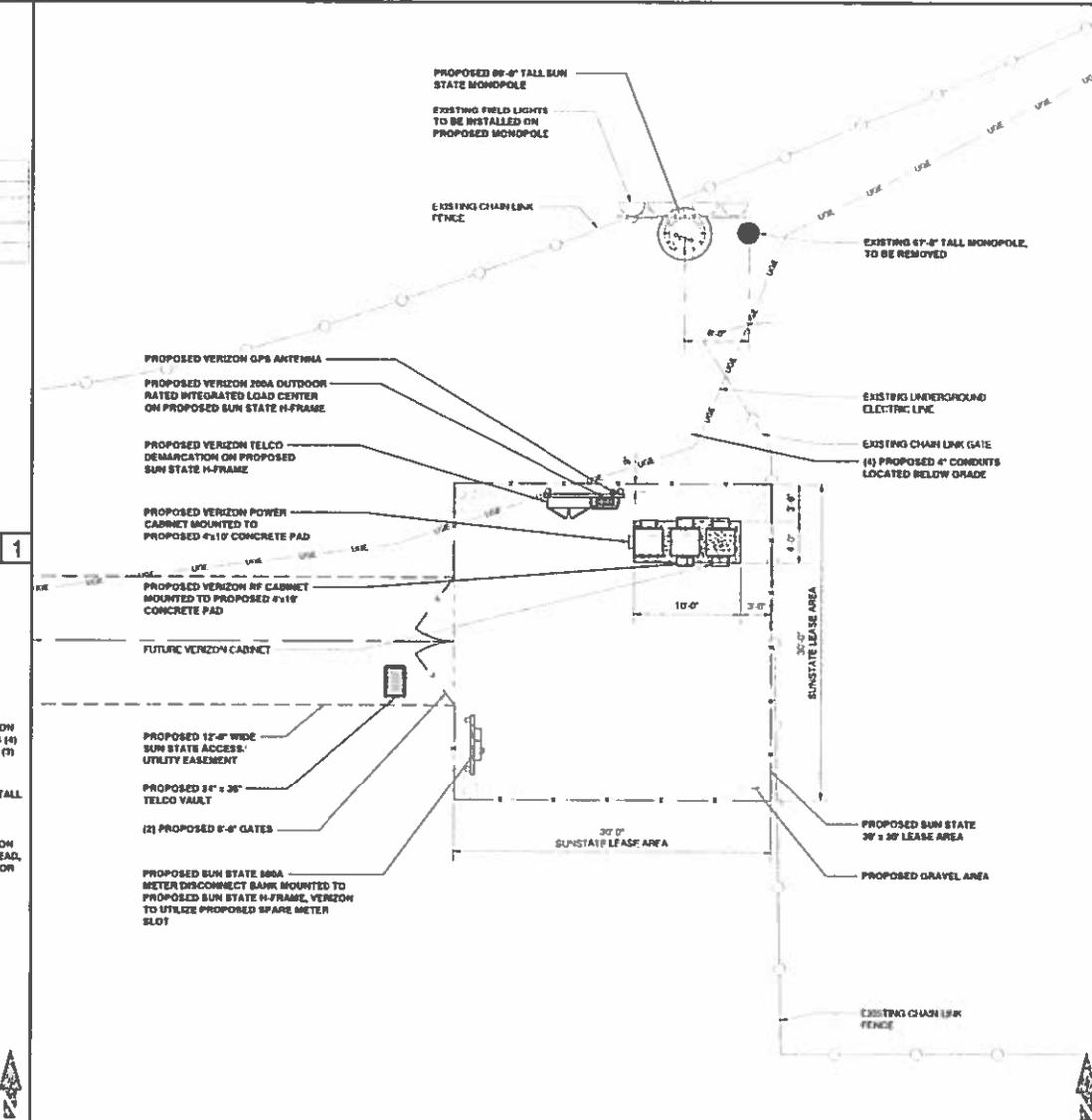
### CABLING DETAIL

NOTE:  
ALL AZIMUTHS SHOWN ARE RELATIVE TO TRUE NORTH, UNLESS NOTED OTHERWISE.  
IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO VERIFY AZIMUTHS DEPICTED HEREIN WITH RF DEPARTMENT PRIOR TO INSTALLING ANTENNAS.  
EXISTING FIELD LIGHTS TO BE INSTALLED ON PROPOSED MONOPOLE.



ANTENNA PLAN

20' = 1" SCALE 10' = 1/2" SCALE



ENLARGED SITE PLAN

20' = 1" SCALE 10' = 1/2" SCALE

verizon

17000 SHAW DR. FARMER, AZ 85011  
PHONE: 480.777.6366  
FAX: 480.777.6369

PINNACLE

Construction Project Management Site Development

1420 W. SHAW DR. FARMER, AZ 85011  
TEL: 480.777.6366

PROJECT NO:	2006-067-001
DRAWN BY:	CSH
CHECKED BY:	CSH

REV	DATE	DESCRIPTION	BY
1	06/07/17	ISSUE FOR PERMITS	CSH

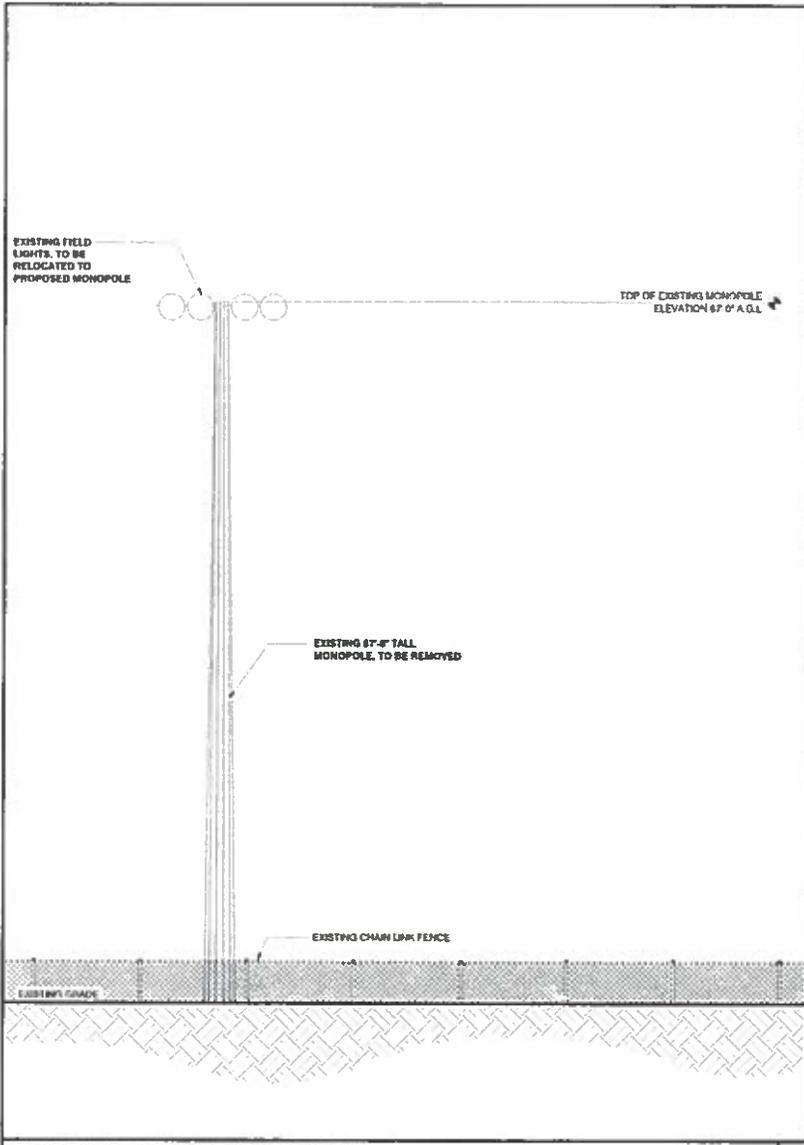
**PRELIM FOR ZONING ONLY**

NM06-067 RIO GRANDE / NM3 WILLIAMSBURG

PHASE 3 PROCEEDING BY TRUTH OR CONSEQUENCES 1801 4th ST. BERLIN COUNTY

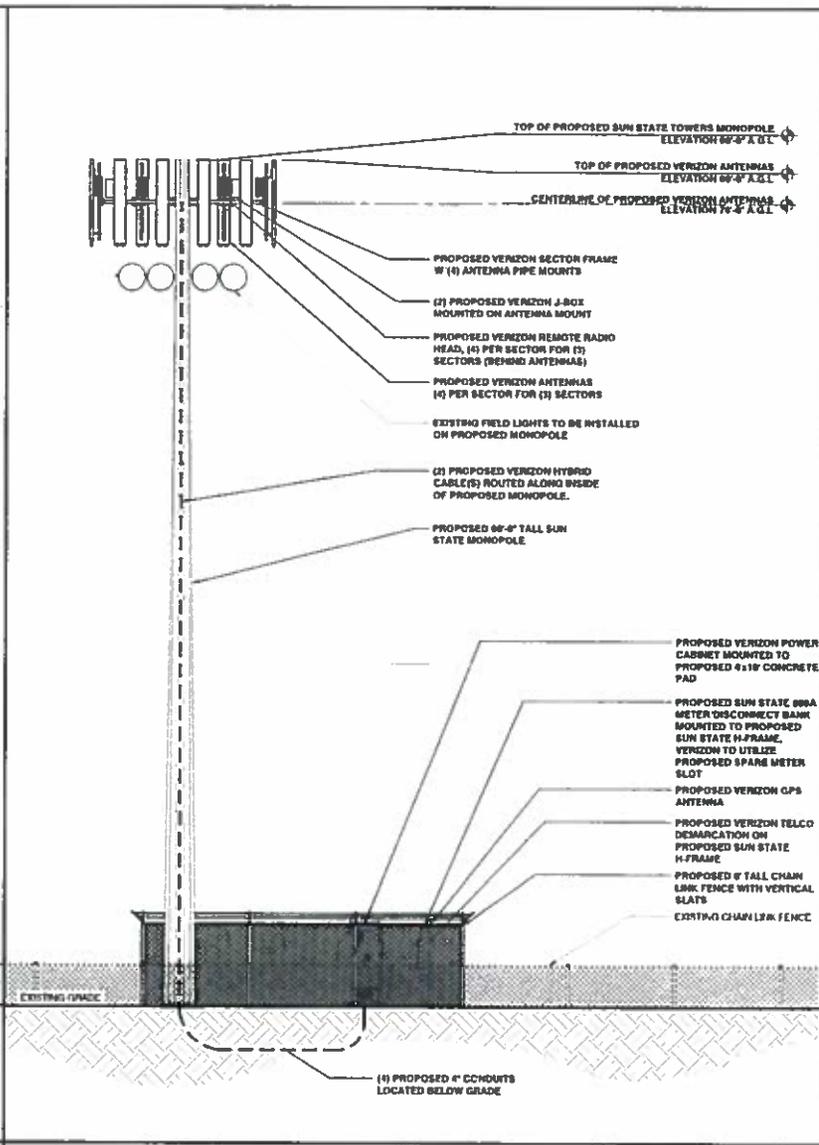
SHEET TITLE  
ENLARGED SITE PLAN AND ANTENNA PLAN

SHEET NUMBER  
**Z-2**



EXISTING NORTH ELEVATION

AS SHOWN SCALE: 3/8" = 1'-0"  
 FINISH SCALE: 3/8" = 1'-0"



1 NEW NORTH ELEVATION

AS SHOWN SCALE: 3/8" = 1'-0"  
 FINISH SCALE: 3/8" = 1'-0"

2

1-800-942-7273  
 1400 N. MARYMOUNT STREET # 104  
 GILBERT, AZ 85024

1400 N. MARYMOUNT STREET # 104  
 GILBERT, AZ 85024

PROJECT NO.	James and Jodi Kennedy
DESIGNED BY	CSM
CHECKED BY	CSM

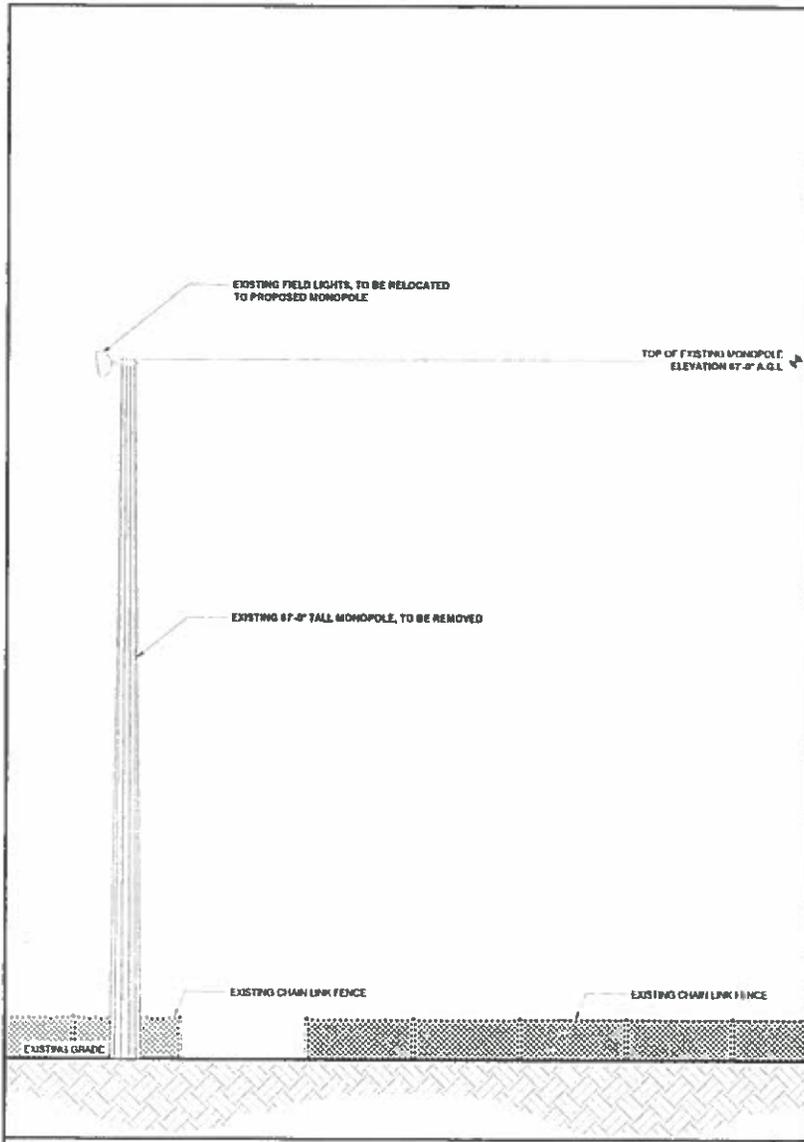
REV	DATE	DESCRIPTION	BY
1	04/11/17	0015 2/1/2015	CSM

**PRELIM FOR ZONING ONLY**

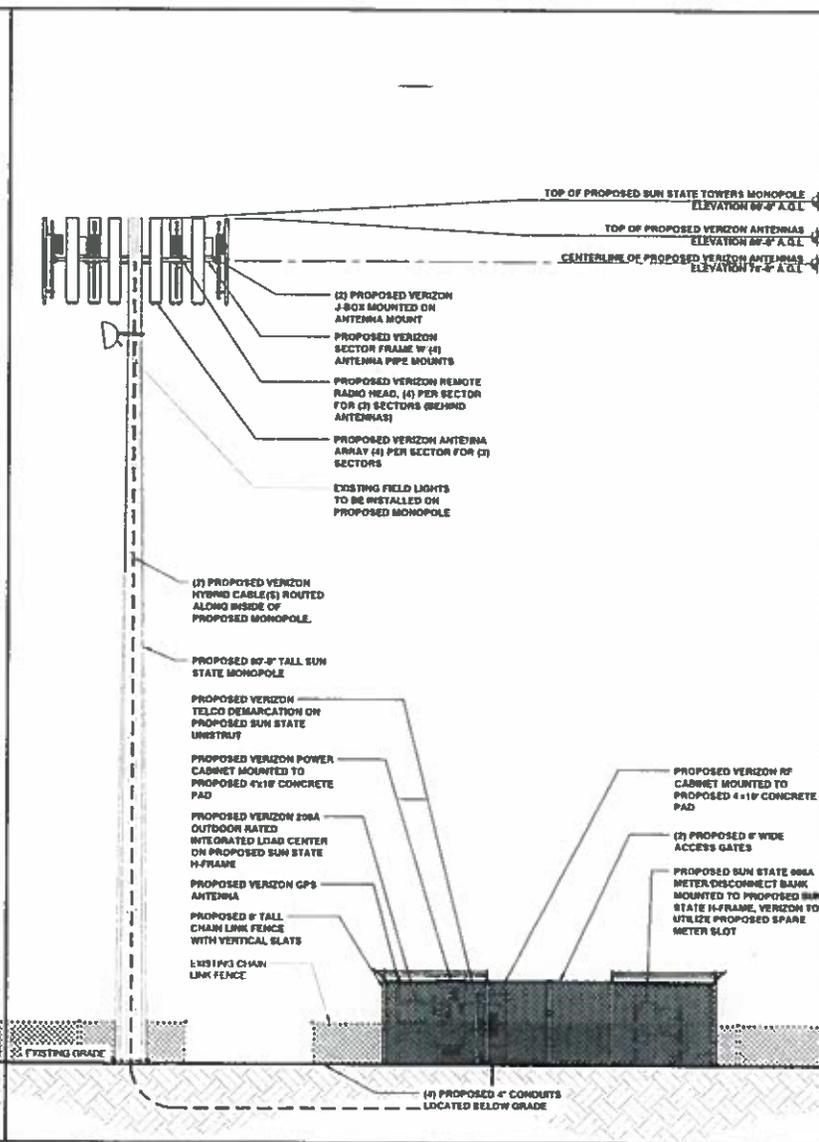
NM06-067 RIO GRANDE / NM03 WILLIAMSBURG  
 1000 S. BROADWAY ST  
 TULSA OK 74106-1505  
 TULSA COUNTY

**ELEVATIONS**

**Z-3**



EXISTING WEST ELEVATION



NEW WEST ELEVATION

PREPARED FOR

1200 N. GARDEN ST. SUITE 1000  
 FORT WORTH, TX 76102  
 PHONE: 817.777.4300  
 FAX: 817.777.4300

CLIENT

1200 N. GARDEN ST. SUITE 1000  
 FORT WORTH, TX 76102

PROJECT NO: 10000-001-0000-0000-0000

DESIGNED BY: CT/ST

DATE: 08/11/11

REV	DATE	DESCRIPTION	BY
A	08/11/11	ISSUE FOR PERMITS	CT/ST

**PRELIM FOR ZONING ONLY**

**NM06-067 RIO GRANDE / NM3 WILLIAMSBURG**

7000 S. GARDEN ST. SUITE 1000  
 FORT WORTH, TX 76102

**ELEVATIONS**

**Z-4**

1

2

Site Name: Rio Grande  
Site Number: NM06-067

### **EXECUTED PRIME LEASE INSTRUCTIONS TO LANDLORD**

In order to ensure the prompt execution and processing of all Prime Leases, Sun State Towers respectfully requests that the instructions below are followed when preparing to return executed agreements.

1. Prior to returning to Sun State Towers, please sign and date the signature page of all copies of the Prime Lease and Memorandum of Lease.
2. Ensure that all necessary witness signatures have been obtained (if witnesses are required).
3. Ensure that all applicable notary fields are completed and stamped with the notary's stamp (only if required by law).
4. Please complete a W-9, Payment Authorization Form, and if applicable, a mortgage information form.
5. Sun State Towers will retain two (2) originals of each document. Please print as many copies as you plan to retain, along with two (2) originals for Sun State Towers.
6. Please print all signed documents on one-sided paper.
7. Send original documents to the following address:  

Sun State Towers III, LLC  
Attn: Tower Development  
1426 North Marvin Street #101  
Gilbert, AZ 85233
8. Sun State Towers will return your fully executed originals to the notice address provided.

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("*Prime Lease*") is made effective as of the date of the latter signature hereof (the "*Execution Date*") and is by and between Landlord and Sun State Towers.

### RECITALS

- A. WHEREAS, Landlord is the owner of that certain parcel of land (the "*Property*") located in the County of Sierra, State of New Mexico, as more particularly described on Exhibit A;
- B. WHEREAS, Landlord desires to grant to Sun State Towers an option to lease from Landlord a portion of the Property (the "*Compound*"), together with easements for ingress and egress and the installation and maintenance of utilities (the "*Easement*" and together with the Compound, the "*Site*") both being approximately located as shown and/or described on Exhibit B; and

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

1. **Business and Defined Terms.** For the purposes of this Prime Lease, the following capitalized terms have the meanings set forth in this paragraph 1.

- (a) ***Sun State Towers:*** Sun State Towers III, LLC,  
a Delaware limited liability company
- (b) ***Notice Address of Sun State Towers:*** Sun State Towers III, LLC  
1426 North Marvin Street #101  
Gilbert, AZ 85233  
Attn: Land Management
- (c) ***Landlord:*** City of Truth or Consequences,  
a New Mexico municipal corporation
- (d) ***Notice Address of Landlord:*** City of Truth or Consequences  
Attn.: City Manager  
505 Sims Street  
Truth or Consequences, NM 87901
- (e) ***Initial Option Period:*** Twelve (12) months
- (f) ***Renewal Option Period(s):*** One (1) period of Twelve (12) months.
- (g) ***Option Period:*** The Initial Option Period and any Renewal Option Period(s)
- (h) ***Option Consideration (Initial Option Period):*** \$1,000.00

Site Name: Rio Grande  
Site Number: NM06-067

- (i) **Option Extension Consideration (Renewal Option Period(s)):** \$1,000.00
- (j) **Commencement Date:** The date specified in the written notice by Sun State Towers to Landlord exercising the Option constitutes the Commencement Date of the Term.
- (k) **Initial Term:** Five (5) years, commencing on the Commencement Date and continuing until midnight of the day immediately prior to the fifth (5th) anniversary of the Commencement Date.
- (l) **Renewal Terms:** Each of the five (5) successive periods of five (5) years each, with the first Renewal Term commencing upon the expiration of the Initial Term and each subsequent Renewal Term commencing upon the expiration of the immediately preceding Renewal Term.
- (m) **Term:** The Initial Term with any and all Renewal Terms.
- (n) **Rent:** The monthly amount of nine hundred fifty dollars (\$950.00). In the event that Sun State Towers licenses or subleases all or a portion of the Site or Tower Facilities to multiple Collocators (as defined below) beyond the initial Collocator, the Rent shall increase by five hundred dollars (\$500.00) per month during the term of such license or subleases.
- (o) **Increase Amount:** In year five (5) of the Initial Term, and every five (5) years thereafter, including throughout any Renewal Terms exercised, the yearly Rent will increase by ten percent (10%) over the Rent paid during the previous Term.

## 2. **Option to Lease.**

- (a) **Grant of Option.** Landlord hereby gives and grants to Sun State Towers and its assigns, an exclusive and irrevocable option to lease the Site during the Initial Option Period (the "**Option**").
- (b) **Extension of Option.** The Initial Option Period will automatically be extended for each Renewal Option Period unless Sun State Towers provides Landlord written notice of its intent not to extend the Option.
- (c) **Consideration for Option.** Option Consideration is due and payable in full within thirty (30) days of the Execution Date and Sun State Towers will pay Landlord any Option Extension Consideration within thirty (30) days of the commencement of any Renewal Option Period.
- (d) **Option Period Inspections and Investigations.**
  - (i) During the Option Period, Landlord will provide Sun State Towers with any keys or access codes necessary for access to the Property.
  - (ii) During the Option Period, Sun State Towers and its officers, agents, employees and independent contractors may enter upon the Property to perform or cause to be performed test borings of the soil, environmental audits, engineering studies and to

Site Name: Rio Grande  
Site Number: NM06-067

conduct a metes and bounds survey of the Site and/or the Property (the "Survey"), provided that Sun State Towers will provide at least forty-eight (48) hours' notice of such activities and will not unreasonably interfere with Landlord's use of the Property in conducting these activities. Sun State Towers acknowledges that the Property is in regular use for public recreational activities and will not interfere with such activities. At Sun State Towers' discretion, the legal description of the Site as shown on the Survey may replace Exhibit B of this Prime Lease and be added as Exhibit B of the Memorandum of Lease.

(iii) Sun State Towers may not begin any construction activities on the Site during the Option Period other than those activities described in, or related to, this paragraph 2(d).

(e) Exercise of Option. Sun State Towers may, in its sole discretion, exercise the Option by delivery of written notice to Landlord at any time during the Option Period. If Sun State Towers exercises the Option, then Landlord will lease the Site to Sun State Towers subject to the terms and conditions of this Prime Lease. If Sun State Towers does not exercise the Option, this Prime Lease will terminate.

### 3. Term.

(a) Initial Term. The Initial Term is as provided in paragraph 1(k).

(b) Renewal Terms. Sun State Towers will have the right to extend this Prime Lease for each of the Renewal Terms. Each Renewal Term will be on the same terms and conditions provided in this Prime Lease except that Rent will escalate as provided in paragraph 4(b). This Prime Lease will automatically be renewed for each successive Renewal Term unless Sun State Towers notifies Landlord in writing of Sun State Towers' intention not to renew the Prime Lease at any time prior to the expiration of the Initial Term or the Renewal Term which is then in effect.

### 4. Consideration.

(a) Sun State Towers will pay its first installment of Rent within sixty (60) days of the Commencement Date. Thereafter, Rent is due and payable in advance on the first day of each calendar month to Landlord at Landlord's Notice Address. Rent will be prorated for any partial months, including, the month in which the Commencement Date occurs.

(b) On the Increase Date, the Rent will increase by the Increase Amount.

(c) In the event Sun State Towers makes an overpayment of Rent or any other fees or charges to Landlord during the Term of this Prime Lease, Sun State Towers may, but will not be required, to treat any such overpayment amount as prepaid Rent and apply such amount as a credit against future Rent due to Landlord.

(d) Sun State Towers will not be required to remit the payment of Rent to more than two (2) recipients at any given time.

5. Use.

(a) Sun State Towers will be permitted to use the Site for the purpose of constructing, maintaining, removing, replacing, securing, and operating a communications facility and uses incidental thereto, including, but not limited to, the construction or installation and maintenance of a telecommunications tower (the "**Tower**"), structural tower base(s), communications equipment, one or more buildings or equipment cabinets, equipment, radio transmitting and receiving antennas, personal property and related improvements and facilities on the Compound (collectively, the "**Tower Facilities**"), to facilitate the use of the Site as a site for the transmission and receipt of communication signals including, but not limited to, voice, data and internet transmissions and for any other uses which are incidental to the transmission and receipt of communication signals of any kind and frequency (the "**Intended Use**"). The Intended Use shall include Lessee's ability to install utilities (including, but not limited to, electricity and electric power sources or creation of any kind, fiber optic lines, cable lines, and any cabling or transmission conduits of any kind or type) in, on, and to the Site. The Intended Use shall also include the Lessee's right to access, ingress, and egress the Site at its sole discretion 24 hours a day, seven (7) days a week, 365 days a year.

(b) Sun State Towers, at its sole discretion, will have the right, without prior notice or the consent of Landlord, to license or sublease all or a portion of the Site or the Tower Facilities to other parties (each, a "**Collocator**" and collectively, the "**Collimators**"). Notwithstanding anything in this Prime Lease to the contrary, Sun State Towers shall only be required to pay the additional Rent set forth in paragraph 1(n) for any macrocell Collocator, and shall not be required to pay any additional Rent for any microcell or small cell Collocator. The Collimators will be entitled to modify the Tower Facilities and to erect additional improvements on the Compound, including, but not limited to antennas, dishes, cabling, additional buildings or shelters ancillary to the Intended Use. The Collimators will be entitled to all rights of ingress and egress to the Site and the right to install utilities on, in, and to the Site that Sun State Towers has under this Prime Lease, and shall have all rights and inclusions of the Site's Intended Use described herein including, but not limited to, the use of any easement described below and on the same terms as Lessee, and to all other rights set forth herein.

6. Tower Facilities.

(a) Sun State Towers will have the right, at Sun State Towers' sole cost and expense, to erect the Tower Facilities which will be the exclusive property of Sun State Towers throughout the Term as well as upon the expiration or termination of this Prime Lease. The Tower Facilities shall consist of a single monopole no more than one hundred (100) feet in height above ground level and associated equipment cabinets and other equipment within the Compound. Sun State Towers with the cooperation of the Landlord shall also mount on the tower lighting for the existing park facilities (the "**Lighting Facilities**"), consistent with the height and intensity of lighting presently located at the site of the Tower Facilities. Subsequent maintenance, repair, replacement, refurbishment or removal of the Lighting Facilities, as appropriate and necessary, will be the responsibility of the Landlord.

(b) Landlord grants Sun State Towers a non-exclusive easement in, over, across and through the Property, as more particularly described and/or depicted on Exhibit B, and other real

Site Name: Rio Grande  
Site Number: NM06-067

property owned by Landlord contiguous to the Site as may be reasonably required for construction, installation, maintenance, and operation of the Tower Facilities including: (i) access to the Site for construction machinery and equipment, (ii) storage of construction materials and equipment during construction of the Tower Facilities, and (iii) use of a staging area for construction, installation and removal of equipment; provided, however, that such use of contiguous land shall not in any event damage or disrupt or impair the use of the Property by the Landlord or the public.

(c) Sun State Towers may, at its sole expense, use any and all appropriate means of restricting access to the Compound or the Tower Facilities, including, without limitation, construction of a fence and may install and maintain identifying signs or other signs required by any governmental authority on or about the Site, including any access road to the Site; provided, however, that the Landlord shall at all times have access for the maintenance, repair, replacement or servicing of the Lighting Facilities.

(d) Sun State Towers will maintain the Compound, including the Tower Facilities, in a reasonable condition throughout the Term. Sun State Towers is not responsible for reasonable wear and tear or damage from casualty and condemnation. Landlord grants Sun State the right to clear all trees, undergrowth, or other obstructions and to trim, cut, and keep trimmed all tree limbs which may interfere with or fall upon the Tower Facilities or the Site.

(e) Sun State Towers (and any Collocators — which are collectively referred to herein as “*Sun State*”) may replace and augment Sun State’s equipment or portions thereof and add or modify the frequencies upon which such equipment operates as needed to meet Sun State’s business objectives, whether such equipment or frequencies are specified or not on any Attachments to the applicable Supplement. Sun State shall be permitted to make “*Equipment Modifications*” (as defined below) without incurring any increase in the then current Rent, and without Landlord’s approval thereof conditioned upon any extension of the remaining Term of the applicable Supplement or other change to the terms and conditions of such Supplement (including the terms and conditions of this Prime Lease). For purposes of this Prime Lease, “*Equipment Modifications*” means removal of Sun State’s equipment installed at the Site, (collectively, the “*Old Equipment*”), and replacing the same with new equipment (collectively, the “*Replacement Equipment*”), but does not include any extension of tower height unless specifically approved by Landlord in writing.

(f) Sun State Towers will remove or cause to be removed all of the above-ground portions of the Tower Facilities within one hundred eighty (180) days following the expiration or termination of this Prime Lease; provided, however, that Sun State Towers will not remove any portion of the Tower Facilities necessary to support the Lighting Facilities if then located on the Tower Facilities, and will execute a deed or bill of sale transferring the ownership of such Tower Facilities to the Landlord.

## 7. Utilities.

(a) Sun State will have the right to install utilities, at Sun State Towers expense, and to improve present utilities on the Property and the Site. Sun State will have the right to

Site Name: Rio Grande  
Site Number: NM06-067

permanently place utilities on (or to bring utilities across or under) the Site to service the Compound and the Tower Facilities.

(b) If utilities necessary to serve the equipment of Sun State cannot be located within the Site, Landlord agrees to allow the installation of utilities on the Property or other real property owned by Landlord without requiring additional compensation from Sun State. Landlord will, upon Sun State Towers' request, execute a separate recordable written easement or lease to the utility company providing such service evidencing this right.

(c) Sun State may install backup generator(s) within the Compound.

**8. Access.**

(a) In the event that the Site loses access to a public right of way during the Term, Landlord and Sun State Towers will amend this Prime Lease, at no imposed cost to either Party, to provide access to a public way by: (i) amending the location of the Easement; or (ii) granting an additional easement to Sun State.

(b) To the extent damage (including wear and tear caused by normal usage) to the Easement or any other route contemplated hereunder intended to provide Sun State with access to the Site and the Tower Facilities is caused by Landlord or Landlord's tenants, licensees, invitees or agents, Landlord will repair the damage at its own expense.

(c) Landlord will maintain access to the Compound from a public way in a free and open condition so that no interference is caused to Sun State by Landlord or lessees, licensees, invitees or agents of Landlord. In the event that Sun State's access to the Compound is impeded or denied by Landlord or Landlord's lessees, licensees, invitees or agents, in addition to any and all rights and remedies set forth in this Prime Lease, Sun State shall have the right to pursue any and all rights and remedies that it may have at law or in equity.

**9. Representations and Warranties of Landlord.** Landlord represents and warrants to Sun State Towers and Sun State Towers' successors and assigns:

(a) Landlord has the full right, power, and authority to execute this Prime Lease;

(b) There are no pending or threatened administrative actions, including bankruptcy or insolvency proceedings under state or federal law, suits, claims or causes of action against Landlord or which may otherwise affect the Property;

(c) The Property is not presently subject to an option, lease or other contract which may adversely affect Landlord's ability to fulfill its obligations under this Prime Lease, and the execution of this Prime Lease by Landlord will not cause a breach or an event of default of any other agreement to which Landlord is a Party. Landlord agrees that it will not grant an option or enter into any contract or agreement which will have any adverse effect on the Intended Use or Sun State's rights under this Prime Lease;

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(d) No licenses, rights of use, covenants, restrictions, easements, servitudes, subdivision rules or regulations, or any other encumbrances relating to the Property prohibit or will interfere with the Intended Use;

(e) Landlord has good and marketable fee simple title to the Site, the Property and any other property across which Landlord may grant an easement to Sun State, free and clear of all liens and encumbrances. Landlord covenants that Sun State will have the quiet enjoyment of the Compound during the term of this Prime Lease. If Landlord fails to keep the Site free and clear of any liens and encumbrances, Sun State Towers will have the right, but not the obligation, to satisfy any such lien or encumbrance and to deduct the full amount paid by Sun State Towers on Landlord's behalf from future installments of Rent;

(f) Sun State will at all times during this Prime Lease enjoy ingress, egress, and access from the Site 24 hours a day, seven (7) days a week, 365 days a year, to an open and improved public road which is adequate to service the Site and the Tower Facilities; and

(g) These representations and warranties of Landlord survive the termination or expiration of this Prime Lease.

**10. Interference.** Landlord will not use, nor will Landlord permit its tenants, licensees, invitees or agents to use any portion of the Property in any way which interferes with the Intended Use, including, but not limited to, any use on the Property or surrounding property that causes electronic or physical obstruction or degradation of the communications signals from the Tower Facilities ("**Interference**"). Interference will be deemed a material breach of this Prime Lease by Landlord and Landlord will have the responsibility to terminate Interference immediately upon written notice from Sun State Towers. Notwithstanding anything in this Prime Lease to the contrary, if the Interference does not cease or is not rectified as soon as possible, but in no event longer than 24 hours after Sun State Towers written notice to Landlord, Landlord acknowledges that continuing Interference will cause irreparable injury to Sun State, and Sun State Towers will have the right, in addition to any other rights that it may have at law or in equity, to bring action to enjoin the Interference.

**11. Termination.** This Prime Lease may be terminated, without any penalty or further liability upon written notice as follows:

(a) By either Party upon a default of any covenant or term of this Prime Lease by the other Party which is not cured within sixty (60) days of receipt of written notice of default (without, however, limiting any other rights available to the parties in law or equity); provided, that if the defaulting Party commences efforts to cure the default within such period and diligently pursues such cure, the non-defaulting Party may not terminate this Prime Lease as a result of that default.

(b) Upon thirty (30) days' written notice by Sun State Towers to Landlord if Sun State Towers is unable to obtain, maintain, renew or reinstate any agreement, easement, permit, certificates, license, variance, zoning approval, or any other approval which may be required from any federal, state or local authority necessary to the construction and operation of the Tower Facilities or to the Intended Use (collectively, the "**Approvals**"); or

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(c) Upon thirty (30) days' written notice from Sun State Towers to Landlord if the Site is or becomes unsuitable, in Sun State Towers' sole, but reasonable judgment for use as a wireless communications facility by Sun State or by Sun State's licensee(s) or sublessee(s).

(d) In the event of termination by Sun State Towers or Landlord pursuant to this provision, Sun State shall be relieved of all further liability hereunder except the obligation to remove above-ground portions of the Tower Facilities under paragraph 6(f).

## 12. Taxes.

(a) Sun State Towers will pay any personal property taxes assessed on or attributable to the Tower Facilities. Sun State Towers will reimburse Landlord for any increase to Landlord's real property taxes that are directly attributable to Sun State Towers' Site and/or Tower Facilities upon receipt of the following: (1) a copy of Landlord's tax bill; (2) proof of payment; and (3) written documentation from the assessor of the amount attributable to Sun State Towers. Sun State Towers shall have no obligation to reimburse Landlord for any taxes paid by Landlord unless Landlord requests reimbursement within twelve (12) months of the date said taxes were originally due. Additionally, as a condition precedent to Landlord having the right to receive reimbursement, Landlord shall, within three (3) days of receipt of any notice from the taxing authority of any assessment or reassessment, provide Sun State Towers with a copy of said notice. Sun State Towers shall have the right to appeal any assessment or reassessment relating to the Site or Tower Facilities and Landlord shall either (i) designate Sun State Towers as its attorney-in-fact as required to effect standing with the taxing authority, or (ii) join Sun State Towers in its appeal.

(b) Landlord will pay when due all real property taxes and all other fees and assessments attributable to the Property, Compound and Easement. If Landlord fails to pay when due any taxes affecting the Property or the Site, Sun State Towers will have the right, but not the obligation, to pay such taxes and either: (i) deduct the full amount of the taxes paid by Sun State Towers on Landlord's behalf from future installments of Rent, or (ii) collect such taxes by any lawful means.

## 13. Environmental Compliance.

(a) Landlord represents and warrants that:

(i) No Hazardous Materials have been used, generated, stored or disposed of, on, under or about the Property in violation of any applicable law, regulation or administrative order (collectively, "*Environmental Laws*") by either Landlord or to Landlord's knowledge, any third party; and

(ii) To Landlord's knowledge, no third party has been permitted to use, generate, store or dispose of any Hazardous Materials on, under, about or within the Property in violation of any Environmental Laws.

(b) Landlord will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Materials on, under, about or within the Property in violation of any Environmental Laws.

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(c) Sun State Towers agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Site in violation of any applicable laws, regulations or administrative orders.

(d) The term "*Hazardous Material(s)*" means any: material, substance, chemical or waste, including, but not limited to, contaminants, oils, asbestos, PCBs, or any other hazardous substances or wastes, as defined by federal, state or local environmental laws, regulations or administrative orders or other materials the removal of which is required or the maintenance of which is prohibited or regulated by any federal, state or local government authority having jurisdiction over the Property.

#### 14. Indemnification.

(a) General.

(i) Landlord, its heirs, grantees, successors, and assigns will exonerate, hold harmless, indemnify, and defend Sun State from any claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorney's fees, which may arise out of: (A) any injury to or death of any person; (B) any damage to property, if such injury, death or damage arises out of or is attributable to or results from the acts or omissions of Landlord, or Landlord's principals, employees, agents or independent contractors; or (C) any breach of any representation or warranty made by Landlord in this Prime Lease, subject to all immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 *et seq.*, NMSA 1978, the protections of which shall remain fully applicable notwithstanding any other provision of this Prime Lease.

(ii) Sun State Towers, its grantees, successors, and assigns will exonerate, hold harmless, indemnify, and defend Landlord from any claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorney's fees, which may arise out of: (A) any injury to or death of any person; (B) any damage to property, if such injury, death or damage arises out of or is attributable to or results from the negligent acts or omissions of Sun State Towers, or Sun State Towers' employees, agents or independent contractors; or (C) any breach of any representation or warranty made by Sun State Towers in this Prime Lease.

(b) Environmental Matters.

(i) Sun State Towers, its grantees, successors, and assigns will indemnify, defend, reimburse and hold harmless Landlord from and against environmental damages caused by the presence of Hazardous Materials on the Compound in violation of any Environmental Laws and arising solely as the result of Sun State Towers' activities after the execution of this Prime Lease.

(ii) Landlord shall be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene

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conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Site or Property, unless such conditions or concerns are caused by the activities of Sun State Towers in the Site.

(iii) In the event that abatement of Hazardous Materials is required in connection with the construction of the Site, Landlord shall take responsibility as generator of the waste resulting from the abatement and shall cooperate with any necessary abatement procedures, including signing all necessary documents and manifest required for abatement.

**15. Casualty.**

In the event of damage by fire or other casualty to the Site or Property that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Sun State's operations at the Site for more than forty-five (45) days, then Sun State may, at any time following such fire or other casualty, provided Landlord has not completed the restoration required to permit Sun State to resume its operation at the Site, terminate this Prime Lease upon fifteen (15) days prior written notice to Landlord. Any such notice of termination shall cause this Prime Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Prime Lease and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Prime Lease. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which Sun State's use of the Site is impaired.

**16. Right of First Refusal; Sale of Property.**

(a) During the Term, prior to selling any portion of or interest in the leasehold interest or easements under this Prime Lease, or otherwise transferring all or any portion of Landlord's interest in Rent, and prior to assigning the Rent or any portion of Rent to a third party, Landlord shall notify Sun State Towers in writing of the sale price and terms offered by a third party (the "*Offer*"), together with a copy of the Offer. Sun State Towers will have the right of first refusal to purchase such interest being sold by Landlord to such third party on the same financial terms of the Offer. Sun State Towers will exercise its right of first refusal within sixty (60) days of receipt of Landlord's notice and if Sun State Towers does not provide notice within sixty (60) days, Sun State Towers will be deemed to have not exercised its right of first refusal. If Sun State Towers does not exercise its right of first refusal, paragraph 16(b) of this Prime Lease will control the terms of the sale.

(b) Landlord may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Prime Lease; and (ii) if the sale does not include the assignment of Landlord's full interest in this Prime Lease the purchaser must agree to perform, without requiring compensation from Sun State, any obligation of the Landlord under this Prime Lease, including Landlord's obligation to cooperate with Sun State as provided hereunder, which

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obligation Landlord would no longer have the legal right or ability to perform following the sale without requiring compensation from Sun State to be paid to such purchaser.

**17. Assignment.**

(a) Any sublease, license or assignment of this Prime Lease that is entered into by Landlord or Sun State Towers is subject to the provisions of this Prime Lease.

(b) Landlord may assign this Prime Lease in its entirety to any third party in conjunction with a sale of the Property in accordance with paragraph 16 of this Prime Lease. Landlord will not otherwise assign less than Landlord's full interest in this Prime Lease without the prior written consent of Sun State Towers.

(c) Sun State Towers may assign this Prime Lease without prior notice or consent of Landlord. Sun State Towers shall notify Landlord of any assignment within ten (10) business days, identifying the assignee by name, business address and telephone number. Upon assignment and notification thereof as provided in this paragraph, Sun State Towers shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Prime Lease and all obligations hereunder.

(d) Sun State Towers may mortgage or grant a security interest in this Prime Lease and the Tower Facilities, and may assign this Prime Lease and the Tower Facilities to any such mortgagees or holders of security interests including their successors and assigns (collectively, "**Secured Parties**"). If requested by Sun State Towers, Landlord will execute such consent to such financing as may reasonably be required by Secured Parties. In addition, if requested by Sun State Towers, Landlord agrees to notify Sun State Towers and Sun State Towers Secured Parties simultaneously of any default by Sun State Towers and to give Secured Parties the same right to cure any default as Sun State Towers. If a termination, disaffirmance or rejection of the Prime Lease by Sun State Towers pursuant to any laws (including any bankruptcy or insolvency laws) occurs, or if Landlord will terminate this Prime Lease for any reason, Landlord will give to Secured Parties prompt notice thereof and Secured Parties will have the right to enter upon the Compound during a 30-day period commencing upon Secured Parties' receipt of such notice for the purpose of removing any Tower Facilities. Landlord acknowledges that Secured Parties are third-party beneficiaries of this Prime Lease.

**18. Condemnation.** In the event of any condemnation of all or any portion of the Property, this Prime Lease shall terminate and the Parties shall have no further obligation (except for indemnifications which expressly survive this Prime Lease) as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Site or Property, Sun State Towers, in Sun State Towers' sole discretion, is unable to use the Site for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt Sun State Towers' operations at the Site for more than forty-five (45) days, Sun State Towers may, at Sun State Towers' option, to be exercised in writing within fifteen (15) days after Landlord shall have given Sun State Towers written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession), terminate this Prime Lease effective as of the date the condemning authority takes such possession. Sun State Towers shall be entitled to and shall receive and retain that part of

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the award or price paid by the condemning authority which is attributable to the improvements, fixtures, conduits, antennas, equipment; and all other things of Sun State Towers situated on the Site or the Property which cannot be removed, as well as Sun State Towers' relocation costs, damages and losses, and the loss of its leasehold interest (collectively, "Losses"). In addition, Sun State Towers may on its own behalf make a claim for its Losses in any condemnation proceeding involving the Site. Any such notice of termination shall cause this Prime Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Prime Lease and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to each other under this Prime Lease. If Sun State Towers does not terminate this Prime Lease in accordance with the foregoing, this Prime Lease shall remain in full force and effect as to the portion of the Site remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Site taken bears to the total rentable area of the Site. In the event that this Prime Lease is not terminated by reason of such condemnation, Landlord shall promptly repair any damage to the Site caused by such condemning authority. In the event this Prime Lease, is not terminated, Sun State Towers shall also be entitled to an award for its Losses.

**19. Insurance.**

(a) Sun State Towers will purchase and maintain in full force and effect throughout the Option Period and the Term such general liability and property damage policies as Sun State Towers may deem necessary. Said policy of general liability insurance will at a minimum provide a combined single limit of \$1,000,000.00. Landlord shall be an additional named insured on such policy.

(b) Landlord will purchase and maintain in full force and effect throughout the Option Period and the Term such general liability and property damage policies as Landlord may deem necessary, or in the alternative may obtain and maintain comparable insurance through a self-insurers fund or other self-insurance arrangement available to New Mexico municipalities. Said policy of general liability insurance will at a minimum provide a combined single limit of \$1,000,000.00 and will include such additional coverage as Landlord deems necessary and appropriate in consideration of the protections and limitations of liability provided to Landlord under the New Mexico Tort Claims Act.

**20. Waiver of Damages.**

(a) In the event that Sun State Towers does not exercise its Option: (i) Landlord's sole compensation and damages will be fixed and liquidated to the sums paid by Sun State Towers to Landlord as consideration for the Option; and (ii) Landlord expressly waives any other remedies it may have for a breach of this Prime Lease including specific performance and damages for breach of contract.

(b) Neither Landlord nor Sun State will be responsible or liable to the other Party for any loss or damage arising from any claim to the extent attributable to any acts of omissions of other licensees or tower users occupying the Tower Facilities or vandalism or for any structural or power failures or destruction or damage to the Tower Facilities except to the extent caused by the negligence or willful misconduct of such Party.

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(c) EXCEPT WITH RESPECT TO INDEMNIFICATION OF THIRD PARTY CLAIMS UNDER THIS PRIME LEASE OR A VIOLATION OF LAW, IN NO EVENT SHALL EITHER LANDLORD OR SUN STATE BE LIABLE TO THE OTHER, THE OTHER'S EMPLOYEES, SUBCONTRACTORS, AND/OR AGENTS, OR ANY THIRD PARTY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, RELIANCE, PUNITIVE/EXEMPLARY OR TREBLE DAMAGES, LOSS OF FINANCING, LOSS OF REVENUE, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR LOST PROFITS, OR INTERRUPTION OR LOSS OF USE OF SERVICE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR ANY CLAIM OR DEMAND OF ANY NATURE OR KIND, AND WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS PRIME LEASE INCLUDING ANY SUPPLEMENT HEREUNDER OR THE PERFORMANCE OR BREACH HEREOF OR THEREOF.

**21. Subordination Agreements.**

(a) If the Site is encumbered by a mortgage or deed of trust, within thirty (30) days of receipt of a written request from Sun State Towers, Landlord agrees to execute and obtain the execution by its lender of a non-disturbance and attornment agreement in the form provided by Sun State Towers, to the effect that Sun State and Sun State's sublessees and licensees will not be disturbed in their occupancy and use of the Site by any foreclosure or to provide information regarding the mortgage to Sun State Towers.

(b) Should a subordination, non-disturbance and attornment agreement be requested by Landlord or a lender working with Landlord on a loan to be secured by the Property and entered into subsequent to the Execution Date, Sun State Towers will use good faith efforts to provide Landlord or Landlord's lender with Sun State Towers form subordination, non-disturbance and attornment agreement executed by Sun State Towers within thirty (30) days of such request.

**22. Recording.** Landlord agrees to execute a Memorandum of this Prime Lease which Sun State Towers may record with the appropriate officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term of rent payments.

**23. Notices.** All notices or demands by or from Sun State Towers to Landlord, or Landlord to Sun State Towers, required under this Prime Lease will be in writing and sent (United States mail postage pre-paid, certified with return receipt requested or by reputable national overnight carrier service, transmit prepaid) to the other Party at the addresses set forth in paragraph 1 of this Prime Lease or to such other addresses as the parties may, from time to time, designate consistent with this paragraph 23, with such new notice address being effective thirty (30) days after receipt by the other Party. Notices will be deemed to have been given upon either receipt or rejection.

**24. Further Acts.**

(a) Within fifteen (15) days after receipt of a written request from Sun State Towers, Landlord will execute any document necessary or useful to protect Sun State's rights under this Prime Lease or to facilitate the Intended Use including documents related to title, zoning and other Approvals, and will otherwise cooperate with Sun State in its exercise of its rights under this Prime Lease, provided that such document may be executed by the City Manager or another administrative official under applicable New Mexico law. If the execution of the requested document requires approval by the governing body of the Landlord, the Landlord will undertake to present the document to the governing body for consideration and approval at the earliest reasonable opportunity, in accordance with the public notice and other requirements of applicable law.

(b) In the event that Landlord fails to execute any such document(s), as required by paragraph 24(a) above, such document(s) will be deemed consented to and approved by Landlord, and, in addition to any and all rights and remedies set forth in this Prime Lease, Sun State shall additionally have the right to pursue any and all rights and remedies that it may have at law or in equity.

**25. Memorandum of Lease.** Simultaneously with the execution of this Prime Lease, the parties will enter into the Memorandum of Lease attached to this Prime Lease as Exhibit C which Sun State Towers may record in the public records of the county of the Property. Landlord acknowledges and agrees that after Landlord signs the Memorandum of Lease but before Sun State Towers records the Memorandum of Lease, Sun State Towers may add both: (a) a reference to the recording granting Landlord its interest in the Property; (b) a legal description of the Property as Exhibit A to the Memorandum of Lease, and (c) a legal description of the Site as Exhibit B to the Memorandum of Lease, both of which shall be fully consistent with Exhibits A and B to this Prime Lease. Landlord agrees to execute and return to Sun State Towers a recordable amendment to the Memorandum of Lease in form supplied by Sun State Towers if: (i) the information included in the Memorandum of Lease changes, or (ii) if it becomes clear that such information is incorrect or incomplete or if this Prime Lease is otherwise amended.

**26. Miscellaneous.**

(a) This Prime Lease runs with the Property and is binding upon and will inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns.

(b) Sun State Towers may, at Sun State Towers' sole cost and expense, procure an abstract of title, a commitment to issue a policy of title insurance, or an owner's policy of title insurance with respect to Sun State Towers' leasehold interest in the Property (collectively "***Title Coverage***").

(c) Landlord hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Tower Facilities or any portion thereof, regardless of whether or not same is deemed real or personal property under applicable laws.

(d) In the event of any dispute leading to litigation under this Prime Lease, such litigation shall be pursued only in the Seventh Judicial District Court for Sierra County, New

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Mexico, or in the United States District Court for the District of New Mexico. The substantially prevailing Party in any litigation arising hereunder is entitled to its reasonable attorney's fees and court costs, including appeals, if any.

(e) Each Party agrees to furnish to the other, within thirty (30) days after request, such estoppel information as the other may reasonably request.

(f) This Prime Lease constitutes the entire agreement and understanding of Landlord and Sun State Towers with respect to the subject matter of this Prime Lease, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not stated in this Prime Lease. Any amendments to this Prime Lease must be in writing and executed and delivered by Landlord and Sun State Towers.

(g) If either Landlord or Sun State Towers is represented by a real estate broker in this transaction, that Party is fully responsible for any fees due such broker and will hold the other Party harmless from any claims for commission by such broker.

(h) The Prime Lease will be construed in accordance with the laws of the state in which the Site is situated.

(i) Landlord recognizes that this Prime Lease is a lease of real property under which Sun State, in addition to all rights and privileges it receives herein, is entitled to all rights and protections under 11 U.S.C. § 365(h), as amended from time to time.

(j) If any term of the Prime Lease is found to be void or invalid, the remainder of this Prime Lease will continue in full force and effect.

(k) With respect to Sun State Towers' acquisition of Title Coverage, Landlord will cooperate by promptly executing any documentation required by the title insurance company.

(l) This Prime Lease may be executed in two (2) or more counterparts, all of which are considered one and the same agreement and become effective when one or more counterparts have been signed by each of the parties, it being understood that all parties need not sign the same counterpart.

(m) Landlord will not, during the Option Period or the Term, enter into any other lease, license, or other agreement for the same or similar purpose as the Intended Use, on or adjacent to the Property.

(n) Failure or delay on the part of either Party to exercise any right, power or privilege hereunder will not operate as a waiver thereof and waiver of breach of any provision hereof under any circumstances will not constitute a waiver of any subsequent breach.

(o) The parties agree and stipulate that if any of the provisions of this Prime Lease should not be performed in accordance with the terms hereof, or should be otherwise breached, either party will be entitled to seek a declaratory judgment as to the rights of the parties hereunder in the Seventh Judicial District Court for Sierra County, New Mexico or in the United States District Court for the District of New Mexico pursuant to the Declaratory Judgment Act,

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Sections 44-6-1 through 44-6-15, NMSA 1978, and may apply to the court for any form of relief available under that Act or under any other law or regulation.

(p) Each Party executing this Prime Lease acknowledges that it has full power and authority to do so and that the person executing on its behalf has the authority to bind the Party.

(q) The parties agree that an accurate and complete, scanned or electronically reproduced copy or image of this Prime Lease will be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Prime Lease and without the requirement that the unavailability of such original, executed counterpart of this Prime Lease first be proven.

[SIGNATURES APPEAR ON NEXT PAGE]

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IN WITNESS WHEREOF, Landlord and Sun State Towers have each executed this Prime Lease as of the respective dates written below.

**LANDLORD:**

THE CITY OF TRUTH OR CONSEQUENCES,  
a New Mexico municipal corporation

By: \_\_\_\_\_

Name: Juan A. Fuentes

Title: City Manager

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Renee Cantin  
City Clerk

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me, \_\_\_\_\_ the undersigned, a Notary Public for the State, personally appeared \_\_\_\_\_, who is the \_\_\_\_\_ of \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

[Affix Notary Seal]

\_\_\_\_\_  
Notary Public  
My commission expires:

\_\_\_\_\_

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**SUN STATE TOWERS:**

SUN STATE TOWERS III, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me, \_\_\_\_\_ the undersigned, a Notary Public for the State, personally appeared \_\_\_\_\_, who is the \_\_\_\_\_ of SUN STATE TOWERS III, LLC, a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2017.

[Affix Notary Seal]

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

\_\_\_\_\_

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## **EXHIBITS**

The following exhibits are attached to this Prime Lease and incorporated into this Prime Lease:

Exhibit A Description or Depiction of Property

Exhibit B Description or Depiction of Site

Exhibit C Memorandum of Lease

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## **EXHIBIT A**

### **DESCRIPTION OF PROPERTY**

#### **LESSOR'S LEGAL DESCRIPTION**

A TRACT OF LAND LOCATED IN THE CITY OF TRUTH OR CONSEQUENCES, SIERRA COUNTY, NEW MEXICO DESCRIBED AS FOLLOWS:

A TRACT OF LAND LOCATED IN LOTS FOUR (4) AND FIVE (5) OF SECTION 6, TOWNSHIP 14 SOUTH, RANGE 4 WEST, NMPM, AND BOUNDED ON THE NORTH BY THE 1-25 BUSINESS LOOP (ALSO KNOWN AS SOUTH BROADWAY), BOUNDED ON THE EAST BY THE SECTION LINE COMMON TO SECTIONS 5 AND 6 OF TOWNSHIP 14 SOUTH, RANGE 4 WEST, NMPM, BOUNDED ON THE SOUTH BY VEATER STREET, AND BOUNDED ON THE WEST BY HYDE AVENUE.

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**EXHIBIT B CON'T**  
**DESCRIPTION OF SITE**

**LESSEE LEASE AREA LEGAL DESCRIPTION**

A PORTION OF LOT FIVE (5) OF SECTION 6, TOWNSHIP 14 SOUTH, RANGE 4 WEST, NMPM, SIERRA COUNTY, NEW MEXICO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 5; THENCE SOUTH 89°43'03" WEST ALONG THE SOUTH LINE OF SAID LOT 5, 642.38 FEET; THENCE DEPARTING SAID SOUTH LINE NORTH 00°16'57" WEST , 28.96 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF VEATER STREET; THENCE DEPARTING SAID RIGHT OF WAY LINE NORTH 00°00'00" EAST, 57.41 FEET; THENCE NORTH 90°00'00" EAST, 100.46 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00°00'00" EAST, 15.00 FEET; THENCE NORTH 90°00'00" EAST, 30.00 FEET; THENCE SOUTH 00°00'00" EAST, 30.00 FEET; THENCE NORTH 90°00'00" WEST, 30.00 FEET; THENCE NORTH 00°00'00" EAST, 15.00 FEET TO THE POINT OF BEGINNING.

**LESSEE ACCESS AND UTILITY EASEMENT LEGAL DESCRIPTION**

A 12.00 FOOT WIDE STRIP OF LAND BEING A PORTION OF LOT FIVE (5) OF SECTION 6, TOWNSHIP 14 SOUTH, RANGE 4 WEST, NMPM, SIERRA COUNTY, NEW MEXICO, LYING 6.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 5; THENCE SOUTH 89°43'03" WEST ALONG THE SOUTH LINE OF SAID LOT 5, 642.38 FEET; THENCE DEPARTING SAID SOUTH LINE NORTH 00°16'57" WEST , 28.96 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF VEATER STREET ALSO BEING THE POINT OF BEGINNING.

THENCE DEPARTING SAID RIGHT OF WAY LINE NORTH 00°00'00" EAST, 57.41 FEET; THENCE NORTH 90°00'00" EAST, 100.46 FEET TO THE POINT OF TERMINUS.

Site Name: Rio Grande  
Site Number: NM06-067

**EXHIBIT C**  
**MEMORANDUM OF LEASE**

*[see following pages]*

Prepared by and Return To:  
Sun State Towers, LLC  
1426 North Marvin Street #101  
Gilbert, AZ 85233  
Site # NM06-067  
Site Name: Rio Grande  
Tax Parcel No.:

### Memorandum of Lease Agreement

**THIS MEMORANDUM OF LEASE AGREEMENT** ("*Memorandum*") is executed this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between \_\_\_\_\_, with a mailing address of \_\_\_\_\_ ("*Landlord*") and SUN STATE TOWERS III, LLC, a Delaware limited liability company, with a mailing address of 1426 North Marvin Street #101, Gilbert, AZ 85233 ("*Sun State Towers*") and evidences that on the \_\_\_\_ day of \_\_\_\_\_, 2017, a Lease Agreement ("*Agreement*") was entered into by and between Landlord and Sun State Towers.

1. **Option.** The initial term of the Option is Twelve (12) months from the date of the Agreement. This Option can be extended by Sun State Towers for One (1) additional period of Twelve (12) months and for such other periods as the Landlord and Sun State Towers mutually agree.

2. **Property.** Landlord owns certain real property described in Exhibit A ("*Property*"). Subject to the terms of the Agreement, Landlord has granted to Sun State Towers an option to lease a portion of the Property ("*Compound*") and to acquire certain easements for ingress, egress and utilities for the benefit of Sun State Towers and Sun State Towers' sublessees and invitees ("*Easements*" and collectively with the Compound, the "*Site*", as shown on Exhibit B), a license to use certain other portions of the Property and a right of first refusal to purchase the leasehold interest, easements and/or Rent under the Agreement.

3. **Lease.** Should Sun State Towers exercise its Option, the Agreement will constitute a lease of the Site. The initial term of the lease will be for five (5) years commencing upon the date Sun State Towers specifies in a written notice to Landlord. The Agreement will

automatically renew for five (5) additional periods of five (5) years each, unless Sun State Towers notifies Landlord of its decision not to renew the Agreement.

4. **Notices.** All notices, requests, demands, and other communications to the Landlord or Sun State Towers will be made at the following addresses:

**Landlord:** City of Truth or Consequences  
Attn.: City Manager  
505 Sims Street  
Truth or Consequences, NM 87901

**Sun State Towers** Sun State Towers III, LLC  
1426 North Marvin Street #101  
Gilbert, AZ 85233  
Attn: Land Management

5. **Construction of Memorandum.** This Memorandum is not a complete summary of the terms and conditions contained in the Agreement. Provisions in the Memorandum will not be used in interpreting the Agreement provisions. In the event of a conflict between this Memorandum and the Agreement, the Agreement will control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first set forth above.

**LANDLORD:**

THE CITY OF TRUTH OR CONSEQUENCES,  
a New Mexico municipal corporation

By: \_\_\_\_\_

Name: Juan A. Fuentes

Title: City Manager

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Renee Cantin  
City Clerk

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me, \_\_\_\_\_ the undersigned, a Notary Public for the State, personally appeared \_\_\_\_\_, who is the \_\_\_\_\_ of \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

[Affix Notary Seal]

\_\_\_\_\_  
Notary Public  
My commission expires:

\_\_\_\_\_

**SUN STATE TOWERS:**

SUN STATE TOWERS III, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me, \_\_\_\_\_ the undersigned, a Notary Public for the State, personally appeared \_\_\_\_\_, who is the \_\_\_\_\_ of SUN STATE TOWERS III, LLC, a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

[Affix Notary Seal]

\_\_\_\_\_  
Notary Public  
My commission expires:

\_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

**LESSOR'S LEGAL DESCRIPTION**

A TRACT OF LAND LOCATED IN THE CITY OF TRUTH OR CONSEQUENCES, SIERRA COUNTY, NEW MEXICO DESCRIBED AS FOLLOWS:

A TRACT OF LAND LOCATED IN LOTS FOUR (4) AND FIVE (5) OF SECTION 6, TOWNSHIP 14 SOUTH, RANGE 4 WEST, NMPM, AND BOUNDED ON THE NORTH BY THE 1-25 BUSINESS LOOP (ALSO KNOWN AS SOUTH BROADWAY), BOUNDED ON THE EAST BY THE SECTION LINE COMMON TO SECTIONS 5 AND 6 OF TOWNSHIP 14 SOUTH, RANGE 4 WEST, NMPM, BOUNDED ON THE SOUTH BY VEATER STREET, AND BOUNDED ON THE WEST BY HYDE AVENUE.

**EXHIBIT B**

**DESCRIPTION OF SITE**

**LESSEE LEASE AREA LEGAL DESCRIPTION**

A PORTION OF LOT FIVE (5) OF SECTION 6, TOWNSHIP 14 SOUTH, RANGE 4 WEST, NMPM, SIERRA COUNTY, NEW MEXICO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 5; THENCE SOUTH 89°43'03" WEST ALONG THE SOUTH LINE OF SAID LOT 5, 642.38 FEET; THENCE DEPARTING SAID SOUTH LINE NORTH 00°16'57" WEST , 28.96 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF VEATER STREET; THENCE DEPARTING SAID RIGHT OF WAY LINE NORTH 00°00'00" EAST, 57.41 FEET; THENCE NORTH 90°00'00" EAST, 100.46 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00°00'00" EAST, 15.00 FEET; THENCE NORTH 90°00'00" EAST, 30.00 FEET; THENCE SOUTH 00°00'00" EAST, 30.00 FEET; THENCE NORTH 90°00'00" WEST, 30.00 FEET; THENCE NORTH 00°00'00" EAST, 15.00 FEET TO THE POINT OF BEGINNING.

**LESSEE ACCESS AND UTILITY EASEMENT LEGAL DESCRIPTION**

A 12.00 FOOT WIDE STRIP OF LAND BEING A PORTION OF LOT FIVE (5) OF SECTION 6, TOWNSHIP 14 SOUTH, RANGE 4 WEST, NMPM, SIERRA COUNTY, NEW MEXICO, LYING 6.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 5; THENCE SOUTH 89°43'03" WEST ALONG THE SOUTH LINE OF SAID LOT 5, 642.38 FEET; THENCE DEPARTING SAID SOUTH LINE NORTH 00°16'57" WEST , 28.96 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF VEATER STREET ALSO BEING THE POINT OF BEGINNING.

THENCE DEPARTING SAID RIGHT OF WAY LINE NORTH 00°00'00" EAST, 57.41 FEET; THENCE NORTH 90°00'00" EAST, 100.46 FEET TO THE POINT OF TERMINUS.



H.3

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

A new subsection 18 (e) to be included in the City of Truth or Consequences Commission Rules of Procedure.

**BACKGROUND:**

Given that the question frequently arises as to when it is appropriate for a City Commissioner to recuse himself/herself, this proposed new rule should provide clarity.

**STAFF RECOMMENDATION:**

Approve the new Rule subsection 18 (e)

**SUPPORT INFORMATION:**

Draft of the proposed Rule 18 (e)

Name of Presenter:	Department:	Meeting date:
--------------------	-------------	---------------

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION RULES OF PROCEDURE**

**SECTION 1 – GENERAL PROVISIONS**

**RULE 1. COMMISSION MEETING – LOCATION**

All regular, special, and emergency meetings of the City Commission shall be held at the City Commission Chambers, 405 West 3<sup>rd</sup> Street as specified in the Open Meetings Resolution. [Resolution No. 2-94/95] [Amended – Resolution No. 24-05/06]

**RULE 2. COMMISSION MEETING – TIME**

The regular meetings of the City Commission shall be held Pursuant to the Open Meetings Act Resolution adopted annually. [Resolution No. 2-94/95] [Amended – Resolution No. 24-05/06] [Amended – Resolution No. 28 15/16]

**RULE 3. COMMISSION MEETINGS – OPEN TO THE PUBLIC**

All meetings of the City Commission and of committees thereof held for the purpose of formulating public policy or for the purpose of taking any action within the authority of or the delegated authority are declared to be public meetings open to the public at all times, except as otherwise provided for in the state constitution or the Open Meetings Act (§10-15-1 et seq. NMSA 1978).

**RULE 4. ELECTION OF OFFICERS**

Procedures for electing officers are as follows:

- (a) At the first organizational meeting of the new City Commission, the members thereof select one of its members to act as Mayor for two years. The Mayor has all the powers and duties of a Commissioner as well as the right to vote on all matters that come before the City Commission. (§3-14-10 NMSA 1978).
- (b) In conjunction with the above election, a Mayor Pro Tempore shall also be elected in a like manner.
- (c) The above elections shall be by affirmative motion.

**RULE 5. PRESIDING OFFICER**

The Mayor shall preside at all meetings of the City Commission, and be recognized as the official head of the City for all ceremonial purposes, civil process and for military purposes (§3-14-10 NMSA 1978). The Mayor has no regular administrative or executive duties. In case of the Mayor's absence or temporary disability, the Mayor Pro Tempore shall act as Mayor during the continuance of the absence. In case of the absence or

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION RULES OF PROCEDURE**

temporary disability of the Mayor and the Mayor Pro Tempore, a Mayor Pro Tempore selected by members of the City Commission shall act as Mayor during the continuance of the absences or disabilities. The Mayor or Mayor Pro Tempore are referred to as "Presiding Officer" from time to time in these Rules of Procedures.

**RULE 6. QUORUM**

A quorum is necessary for the governing body to conduct business at any meeting. A quorum is a simple majority of all the commissioners including the Mayor. A majority vote of all the members of the City Commission is required to adopt an ordinance or resolution and certain other actions as required by law or ordinance. (§3-17-3 NMSA 1978). The City Commission may adjourn from time to time, provided that written notice of said adjournment be posted on the exterior Chamber door and at the City Clerk's office. City Commission meetings adjourned under the previous provision shall be considered a regular meeting for all purposes.

**RULE 7. ATTENDANCE, EXCUSED ABSENCES**

Members of the City Commission may be excused from attendance from a meeting by complying with this section. The member shall contact the City Manager or City Clerk prior to the meeting and state the reason for his/her inability to attend the meeting who shall convey the message to the Presiding Officer. The Presiding Officer shall inform the City Commission of the member's absence and excuse the member's absence. The Clerk will make an appropriate notation in the minutes.

**RULE 8. SPECIAL AND EMERGENCY COMMISSION MEETINGS**

Procedures for setting a special meeting are as follows:

- (a) A special meeting may be called only by a majority of the members of the City Commission.
- (b) Notice of the special meeting shall be given with no less than seventy-two hours' notice before such meeting. The notice shall specify the business to be conducted and shall be broadcast over the radio, or in the alternative, be posted as set forth in the Open Meetings Resolution.

Procedures for setting an emergency meeting are as follows:

- (a) An emergency meeting may be called only under circumstances that, if not addressed immediately by the City Commission, will likely result in injury or damage to persons or property or substantial financial loss to the City.

## CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE

- (b) Emergency meetings may be called by the Mayor or a majority of the City Commission by giving whatever notice is possible and reasonable under the circumstances.

### **RULE 9. COMMISSION MEETING AGENDA**

The City Clerk, under the direction of the City Manager, shall arrange a list of such matters according to the order of business and prepare an agenda for the City Commission. A copy of the agenda and supporting materials shall be prepared for the City Commission members, the City Manager, the City Clerk, and the press at least five (5) days before a regular City Commission meeting. The City Commission shall have the option of deleting any item from the agenda or deferring an item on the agenda to a subsequent meeting. The Presiding Officer or any Commission member may introduce a new item to the agenda by Noon *seven (7) days* before a meeting.

Persons wishing to be placed on the agenda must submit complete written documentation to a member of the City Commission or City Manager who shall make the determination whether to forward to the City Clerk to be placed on the agenda. All requests are due by noon, seven (7) days prior to the meeting. Requests, which do not include detailed information on the proposed subject matter, will not be placed on the agenda.

The City Commission deals with a variety of routine items that do not require individual action or discussion. These items include accounts payable, meeting minutes, etc. These types of items shall be listed on a "Consent Calendar" where one (1) action approves all items. However, if an individual Commissioner wishes to discuss a particular item, then that item shall be removed from the said "Consent Calendar" during the "Approval of the Agenda" portion of the meeting. (See Rule 16. E-3)

### **RULE 10. WORKSHOPS**

Special Workshops, or regular City Commission meetings that may be canceled by the Presiding Officer in accordance with law, may be designed as Workshops where no official action is contemplated. Workshops may be conducted informally so long as such informality is not in conflict with these rules. The City Clerk, under the direction of the City Manager, shall arrange a City Commission Workshop agenda for the Workshop. The Workshop agenda shall, for each item, contain the Workshop Item. After the proposed Workshop agenda has been approved by the City Manager, a copy of it along with any supporting materials shall be prepared for City Commission members, the City Manager, the City Clerk and the press at least *seventy-two (72) hours* before the City Commission Workshop. During the Workshop, the Presiding Officer may; 1) introduce the subject and give background information; 2) identify the eventual goal of the Workshop, and; 3) act as facilitator to keep the meeting discussion focused to the subject.

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION RULES OF PROCEDURE**

**RULE 11. CITY MANAGER**

The City Manager, as the chief administrative, and executive officer and head of the executive branch of City government or his/her designee, shall attend all meetings unless excused by the Presiding Officer or City Commission. The City Manager may take part in the City Commissioner's discussion on all matters on the agenda, and otherwise concerning the welfare of the City. Except when clearly undesirable or unnecessary, the commission shall request the opinion of the manager on any proposed measure (§3-14-14 NMSA 1978). The City Manager has a seat at commission meetings, but does not have a vote. In the event that the City Manager is unable to attend a City Commission meeting, the City Manager shall appoint another qualified staff member to attend the meeting on behalf of city management.

**RULE 12. CITY CLERK**

The City Clerk shall be ex-officio Clerk of the City Commission, and shall keep minutes and shall perform such other and further duties in the meeting as may be required by the City Commission, Presiding Officer, or City Manager. In the absence of the City Clerk, the City Manager or the Clerk shall appoint another qualified staff member to act as Clerk.

**RULE 13. FORMS OF ADDRESS**

The Mayor shall be addressed as "Mayor", "Your Honor", or "Mr. /Madam Mayor". The Mayor Pro-Tempore, when acting for the Mayor, shall be addressed as "Mayor". Members of the City Commission shall be addressed as "Commissioner".

**RULE 14. APPEARANCE OF FAIRNESS DOCTRINE**

Appearance of Fairness Doctrine and its Application.

When public hearings give the public not only the right to attend, but the right to be heard as well, the hearings must not only be fair, but must appear to be so.

It is a situation where appearances are quite as important as substance. The test of whether the appearance of fairness doctrine has been violated is as follows; 1) Would a disinterested person, having been appraised of the totality of a board member's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist?

If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided.

# CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE

## **RULE 15. RULES OF ORDER**

The City Commission members shall be governed by the “City Commission Rules of Procedure”.

## **RULE 16. ORDER OF BUSINESS**

The City Commission may use the following as a guideline for the business of all regular meetings of the City Commission. However the Presiding Officer may, during a City Commission meeting, re-arrange items in the agenda to conduct the business before the city Commission more expeditiously.

(a) **Call to Order** by the Presiding Officer

(b) **Introduction**

(1) **Roll Call** (See Rule 7 for procedure to excuse an absence).

(2) **Silent Meditation**

(3) **Pledge of Allegiance**

(4) **Approval of Agenda**

(c) **Comments from the Public** (for Items not on the agenda – see Rule 17 for procedural details.)

(d) **Response to Public Comments**

(e) **Consent Calendar**

(1) The City Manager, in consultation with the Presiding Officer, shall place matters on the Consent Calendar which have been; a) previously discussed by the City Commission, or; b) based on the information delivered to members of the City Commission by administration that can be reviewed by a Commission member without further explanation or; c) are so routine or technical in nature that passage is likely, or; d) as directed by the City Commission.

(2) The Presiding Officer shall read the Consent Calendar, including the titles of any resolutions contained therein.

(3) Prior to the vote on the motion to adopt the Consent Calendar, the Presiding Officer shall inquire if any City

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION RULES OF PROCEDURE**

Commission member wishes an item to be withdrawn from the Consent Calendar. If any matter is withdrawn, the Presiding Officer shall place the item at an appropriate place on the agenda for the current or a future meeting.

- (f) Public Hearings** (see Rule 17 for procedural details).
- (g) Ordinances, Resolutions, and Zoning**
- (h) Unfinished Business**
- (i) New Business**
- (j) Reports**
  - i. City Manager
  - ii. City Attorney
  - iii. City Commissioners
- (k) Executive Session** ( Taken action as needed)
- (l) Return to regular Session** ( if applicable)
- (m) Adjournment**

**RULE 17. ACTIONS FOR “COMMENTS FROM THE PUBLIC” OR A PUBLIC HEARING**

The procedures for “Comments from the Public” are as follows:

Any member of the public may request time to address the City Commission. The Presiding Officer in his/her discretion may then allow the comments, subject to a time limitation of three (3) minutes. Following such comments, the City Commission may place the matter on a future agenda, or refer the matter to the City Manager for investigation and report. After the close of all public comments, the City Commissioners may immediately respond to the public comments or respond to the public comments during the “Response to Public comment” section at the next regularly scheduled City Commission Meeting.

Prior to the start of “Comments from the Public”, all persons wishing to be heard shall give their names and addresses.

The following rules of conduct shall apply to all public comment:

No comments shall be made from any other location than the podium and anyone making “out of order” comments as determined by the Presiding Officer may be subject to

## CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE

removal from the meeting. In that regard, a police officer may be present to enforce these rules of conduct.

There will be no demonstrations during, or at the conclusion, of anyone's presentation. No extensions of time shall be given to any speaker, and no sharing or passing of time to other speakers shall be permitted.

If it appears that a group of speakers desire to speak on a particular subject, that group shall delegate a spokesperson to speak for the entire group. This will prevent repetitious comments and prevent the wasting of time.

Any person making a public comment may also supplement their comment by submitting documents. Such documents, however, must be deposited into a receptacle that is designated by the chair. The speaker may not approach the Commissioners without the express consent of a majority vote of the Commission. At the close of the open portion of the City Commission meeting, the City Clerk shall collect the deposited documents from the receptacle.

Any person who violates the rules of conduct may be subject to having their speaking privileges removed at future City Commission Meetings or may be subject to removal from that particular meeting as determined by a majority vote of the City Commission.

The Procedures for a "Public Hearing" are as Follows:

- (a) Prior to the start of a public hearing all persons wishing to be heard shall give their name and address and whether they wish to speak as a proponent, opponent, or otherwise. The time limit for each speaker shall be limited to five (5) minutes. In public hearings that are not of a quasi-judicial nature, the time limit for each speaker shall be limited to five (5) minutes. The Presiding Officer, subject to concurrence of the majority of the City Commission, may extend time limits and otherwise control presentation, The Presiding Officer may change the order of speakers so that testimony is heard in the most logical groups (i.e. proponents, opponents, adjacent owners, vested interests, etc.). However, the following shall be determined a reasonable guide.
- (b) The Presiding Officer introduces the agenda item, opens the public hearing, and asks for comments for or against the item at hand.
- (c) At the outset of each public hearing or meeting to consider a zoning amendment or zoning reclassification the Presiding Officer will announce the legal standards for zoning amendments and ask the parties to limit their presentations to information within the scope of the standards.
- (d) The Presiding Officer calls upon the City Manager to describe the matter under consideration.

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION RULES OF PROCEDURE**

- (e) The Presiding Officer calls for proponents.
- (f) The proponents now speak. (Note: If the City itself is the proponent, a member or members of the Administration shall be designated to give proponent and rebuttal testimony).
- (g) Opponents speak.
- (h) The Presiding Officer calls for proponents to speak in rebuttal. A proponent speaking in rebuttal shall not introduce new materials. If the proponent does, or is allowed to do so, the opponents shall also be allowed to rebut the new elements.
- (i) The Presiding Officer inquires as to whether any City Commission members have any questions to ask the proponents, opponents, or administration. If any City Commission member has questions, the appropriate individual will be recalled to the podium.
- (j) The Presiding Officer closes the public hearing.

**RULE 18. VOTING**

The votes during all meetings of the City Commission shall be transacted as follows:

- (a) Unless otherwise provided for by statute, a Roll call vote shall be taken for ordinances and to adjourn to Executive Session by the Clerk.
- (b) In case of a tie in votes on any proposal, any Commissioner may request the item be put on the next agenda.
- (c) Every member who was in the City Commission chambers when the question was put, shall give their vote unless the City Commission, for special reasons, shall excuse the member by motion or unless the City Commission member is excused in accordance with Rule 7. A City Commission member who "abstains" will be recorded as neither an "aye" or "nay" vote.
- (d) A majority vote of all the members of the City Commission is required to adopt an ordinance or resolution and certain other actions as required by law or ordinance. (§3-17-3 NMSA 1978).
- (e) A member of the City Commission shall recuse himself/herself from participating in a particular item on the agenda when such member 1) has a conflict of interest as described in the Government Conduct Act, 10-16-1, et seq., or 2) the totality of circumstances would create a reasonable public perception that such member cannot participate in that particular item in a fair and impartial manner. In such

## CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE

event, the member shall explain his/her reasoning prior to the item being discussed by the City Commission. The recusing member shall then remove himself/herself from the City Commission chambers prior to the commencement of any discussion of that particular agenda item, and shall not vote on such item.

### **RULE 19. COMMITTEES**

The Committee structure of the City Commission and the procedures governing, all committees shall be as follows:

(a) Special ad Hoc Citizen Advisory Committees:

Special as hoc citizen advisory committees may be created by the City Commission for a particular purpose. Committee members shall be appointed by the City Commission. The Presiding Officer shall appoint the chair of the Committee. Citizen study committee shall sunset at the end of their mission, but no later than the end of each calendar year unless specifically continued by the City Commission thereafter for a specified time period. One City Commission member, and one alternate City Commission member, may be appointed as a member and liaison of a Citizen advisory committee.

### **RULE 20. ENACTED ORDINANCES, RESOLUTIONS AND MOTIONS**

An enacted ordinance is a legislative act prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality. City Commission action shall be taken by ordinance when required by law, or to prescribe permanent rules of conduct which continue in force until repealed, or where such conduct is enforced by penalty.

An enacted resolution is an internal legislative act, which is a formal statement of policy concerning matters of special or temporary character. City Commission action shall be taken by resolution when required by law and in those instances where an expression of policy more formal than a motion is desired.

An enacted motion is a form of action taken by the City Commission to direct that a specific action be taken on behalf of the municipality. A motion, once approved and entered into the record, is the equivalent of a resolution in those instances where a resolution is not required by law.

### **RULE 21. RESOLUTIONS**

A resolution may be put to its final passage on the same day on which it is introduced. The title of each resolution shall in all cases be read prior to its passage, provided, should a majority of the City Commission members present request that the entire resolution or certain of its sections be read, such requests shall be granted. Printed copies shall be

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION RULES OF PROCEDURE**

made available to interested persons during normal and regular business hours of the City Clerk upon request and payment of a reasonable charge for reproduction.

**RULE 22. ORDINANCES**

The procedure for ordinances are as follows:

- (a) Notice by publication of the title and subject matter of any ordinance proposed for adoption by the City Commission must take place at least two weeks prior to consideration of final action upon the ordinance in open session. This does not apply to ordinances dealing with an emergency declared by the Mayor to be an immediate danger to the public health, safety and welfare of the City, or to ordinances, the subject matter of which is amending a city-zoning map. The title of each ordinance shall in all cases be read prior to its passage; provided, should a majority of the City Commission members present request that the entire ordinance or certain of its sections be read, such requests shall be granted. Printed copies shall be made available to interested persons during normal and regular business hours of the City Clerk upon request and payment of a reasonable charge beginning with the date of publication and continuing to the date of consideration by the City Commission.
- (b) If a Motion to pass an ordinance fails, any Commissioner may request the ordinance be put on a future agenda after six (6) months.
- (c) Any ordinance amending or repealing any portion of the City Code of Ordinances shall also amend or repeal the respective portions of any underlying ordinance(s).

**RULE 23. PERMISSION REQUIRED TO ADDRESS THE COMMISSION**

Persons other than City Commission members and management may be permitted to address the City Commission upon recognition and introduction by the Presiding Officer or the chair of the appropriate City Commission committee.

**RULE 24. COMMISSION RELATIONS WITH BOARDS, COMMISSIONS AND ADVISORY COMMITTEES**

All boards, commissions and City Commission citizen advisory bodies shall provide the City Commission with copies of any minutes taken of meetings. Communications from such boards, commissions and bodies to the City Commission shall be recorded in the minutes as follows.

Any such communication shall be officially acknowledged by the City Commission and receipt noted in the minutes.

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION RULES OF PROCEDURE**

**RULE 25. PHOTOGRAPHS, MOTION PICTURES, VIDEO TAPE, TELEPHONE  
DEVICES – PERMISSION REQUIRED FOR ARTIFICIAL ILLUMINATION**

No photographs, motion pictures, or video tapes that require the use of flash bulbs, electronic flashes, floodlights, or similar artificial illumination, or telephone devices shall be used at City Commission Meetings without the consent of the Presiding Officer or a majority of the City Commission. All cellular telephones shall be either turned off or placed on a non-audio setting. Reasonable effort shall be made to accommodate the use of audio and video recording devices.



H.4

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

Discussion/Update: Gun Range guidelines.

**BACKGROUND:**

Police Chief Alirez and Public Works Director Armijo will give an update on this item

**STAFF RECOMMENDATION:**

Update only.

Submitted by: Renee Cantin, City Clerk-Treasurer		Meeting date: 08/23/2017
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H.5

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

Discussion/Action: To equalize the Airport GRT rate with the rest of the city. Steve Green, Mayor

**BACKGROUND:**

Mayor Green will present this item.

**STAFF RECOMMENDATION:**

None.

Submitted by: Renee Cantin, City Clerk-Treasurer

Meeting date: 08/23/2017