

*Rolf Hechler
Mayor*

*Amanda Forrister
Mayor Pro-Tem*

*Merry Jo Fahl
Commissioner*



*Destiny Mitchell
Commissioner*

*Ingo Hoepfner
Commissioner*

*Gary Whitehead
City Manager*

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

REGULAR MEETING

THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3RD ST., ON WEDNESDAY, MAY 28, 2025; TO START AT 4:00 P.M.

A. CALL TO ORDER

B. INTRODUCTION

1. ROLL CALL

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

2. SILENT MEDITATION

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

5. COMMISSION COMMENTS

6. STAFF COMMENTS

C. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Resolution No. 45 24/25 Budget Adjustment Request.
2. Discussion/Action: Resolution 46 24/25 Authorizing and providing for the incurrence of indebtedness for the purpose of providing a portion of the cost of acquiring, constructing, enlarging, improving, and/or extending its Water System.
3. Discussion/Action: Resolution 47 24/25 Resolution of Members.
4. Discussion/Action: Resolution 48 24/25 Authorizing and providing for the incurrence of indebtedness for the purpose of providing a portion of the cost of acquiring, constructing, enlarging, improving, and/or extending its Water System.
5. Discussion/Action: Resolution 49 24/25 Resolution of Members.

D. NEW BUSINESS

1. Discussion/Action: Summary Plat Amendment Property Code 3022077326147.
2. Discussion/Action: Accept recommendation of the Impact Fee Advisory Board for use of impact fee funds as allowed for the WSPI-1 Project.
3. Discussion/Action: Accept recommendation of the Impact Fee Advisory Board for use of impact fee funds as allowed for Morgan St. Sewer Expansion.

E. ADJOURNMENT

**The meeting will be streamed through Facebook Live on the City of Truth or Consequences
Public Information Facebook Page**

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting please contact the City Clerk's Office, at 505 Sims Street, Truth or Consequences, New Mexico 87901, phone (575) 894-6673 at least one (1) week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the City Clerk's Office if a summary or other type of accessible format is needed.

NEXT REGULAR CITY COMMISSION MEETING JUNE 11, 2025 AT 9:00 A.M.



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 28, 2025

Agenda Item #: C.1

SUBJECT: Resolution No. 45 24/25 Budget Adjustment Request

DEPARTMENT: Finance Department

DATE SUBMITTED: May 21, 2025

SUBMITTED BY: Kerin Salcedo, Accounting Officer

WHO WILL PRESENT THE ITEM: Jocelyn Holguin, Finance Director

Summary/Background: Reconciling Budget Adjustments Requests (based on Chapter 6, Article 6 NM Statute) needed for budget adjustments, increases, and decreases per attached.

Recommendation:

Approval Resolution No. 45 24/25 Final Budget Adjustment Requests for Fiscal Year 2024-2025

Attachments:

Resolution No 45 24/25

- Schedule of Budget Adjustments, Supporting Documentation

Fiscal Impact (Finance): Yes

Changes in funding as presented on the Department of Finance and Administration Schedule of Budget Adjustments

Legal Review (City Attorney): N/A

Approved For Submittal By: ☒ Department Director

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

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: . Referred To: .

☐ Approved ☐ Denied ☐ Other: .

File Name: CC Agendas 5-28-25



RESOLUTION NO. 45 24/25

A RESOLUTION REQUESTING FINAL BUDGET ADJUSTMENTS IN THE REVENUE AND EXPENDITURE BUDGET FOR FISCAL YEAR 2024-2025.

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

WHEREAS, the City Commission in and for the City of Truth or Consequences, State of New Mexico needs to adjust the current approved budget for Fiscal Year 2024-2025; and

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

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

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

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

PASSED, ADOPTED and APPROVED this **28th day of May, 2025**.

Rolf Hechler, Mayor

ATTEST:

Angela A. Torres, City Clerk-Treasurer

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

For Local Government Division use only:

ENTITY NAME: City of Truth or Consequences
FISCAL YEAR: 2024-25 5/28/2025
DFA Resolution Number: 45 24/25
BAR NUMBER 14

DOCUMENT NUMBER	FUND	ACCOUNT STRING	ACCOUNT NAME	REVENUE, EXPENDITURE, or TRANSFER (TO or FROM)	APPROVED BUDGET	ADJUSTMENT / INCREASE	ADJUSTED BUDGET	PURPOSE
1	101	101-1007-40125	PD-OverTime Wages	Expense	\$ 75,000.00	\$ 50,000	\$ 125,000	Increase budget shortfall
1	101	101-1007-40140	PD-Delayed Comp	Expense	\$ -	\$ 30,340	\$ 30,340	Increase budget shortfall
1	101	101-1099-30312	GF-Gross Receipts Hospital	Revenue	\$ 300,000.00	\$ 207,500	\$ 507,500	Increase budget shortfall
							\$ -	
2	210	210-1007-32389	PD-State DPS LER Appropriation	Revenue	\$ -	\$ 9,450	\$ 9,450	State DPS Law Enforcement Retention Appropriation LERF-FY25-162
2	210	210-1007-41262	PD-Retention Differential Disbursement (PRDD)	Expense	\$ -	\$ 9,314	\$ 9,314	State DPS Law Enforcement Retention Appropriation LERF-FY25-162
2	210	210-1007-41210	PD-FICA Medicare	Expense	\$ -	\$ 136	\$ 136	State DPS Law Enforcement Retention Appropriation LERF-FY25-162
							\$ -	
3	216	216-4503-80810	Street-Other Capital Equipment-Vehicles	Expense	\$ 290,000.00	\$ 169,309	\$ 459,309	4000 Gallon Water Tank Truck PO 79572-R1 Possible rollover FY26
							\$ -	
4	403	403-1203-90930	Debt-Cost of Debt Issuance	Expense	\$ -	\$ 38,835	\$ 38,835	Expenses for GO Bond 2024
4	403	403-1203-32385	Debt-Loan Proceeds	Revenue	\$ -	\$ 790,000	\$ 790,000	GO Bond 2024
5	503	503-3702-80810	Elec-Other Capital Equipment-Vehicles	Expense	\$ 253,320	\$ 221,652	\$ 474,972	2025 F-550 Truck PO 80250 Possible rollover FY26
							\$ -	
6	505	505-3904-36410	SW-NM STO Investment	Revenue	\$ 12,500	\$ 354,483	\$ 366,983	New GenStratigies/Parkhill - Rolling Stock Possible CD pending return rate
							\$ -	

ATTEST:

Angela Torres, Clerk-Treasurer

(Date)

Rolf Hechler, Mayor

(Date)



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 28, 2025

Agenda Item #: C.2

SUBJECT: Discussion/Action – Resolution 46 24/25 Authorizing and Providing for The Incurrence of Indebtedness for The Purpose of Providing a Portion of The Cost of Acquiring, Constructing, Enlarging, Improving, and/or Extending Its Water System

DEPARTMENT: Community Development

DATE SUBMITTED: May 23, 2025

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

Updating of USDA form 1780-27 WSPI-1 Loan Resolution to include the American Iron and Steel requirement – Original Resolution 38 23/24 approved on 2-28-24 was an outdated document. No change to funding grant/loan amounts. Updating documents only.

Recommendation:

Approve Resolution 46 24/25

Attachments:

- Resolution 46 24/25
- Resolution 38 23/24
-

Fiscal Impact (Finance): Yes

Grant \$2,720,000.00/Loan \$4,811,000.00

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 5-28-25

LOAN RESOLUTION
(Public Bodies)A RESOLUTION OF THE City CommissionOF THE City of Truth or Consequences

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS

Public Body

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the City of Truth or Consequences

(Public Body)

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

Four Million Eight Hundred Eleven Thousand & 00 100pursuant to the provisions of NMSA (1978) Sect. 3-1-1; and**WHEREAS**, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:**NOW THEREFORE**, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal ly permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0121. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the Government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities and replacement of short lived assets.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
17. To accept a grant in an amount not to exceed \$ 2,720,000.00

under the terms offered by the Government; that the Mayor

and City Management of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

The vote was: Yeas _____ Nays _____ Absent _____

IN WITNESS WHEREOF, the City Commission of the

City of Truth or Consequences has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this _____, _____ day of _____

(SEAL)

By _____

Attest:

Title _____

Title _____

AMERICAN IRON & STEEL ATTACHMENT

TO BE ATTACHED TO PROVISIONS OF LETTERS OF CONDITIONS, LOAN RESOLUTIONS, GRANT AGREEMENTS, AND CONDITIONAL COMMITMENTS

"Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference applies a new American Iron and Steel (AIS) requirement to obligations made after May 5th, 2017:

1. No Federal funds made available for this fiscal year for the rural water, waste water, waste disposal, and solid waste management programs authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 et seq.) shall be used for a project for the construction, alteration, maintenance, or repair of a public water or wastewater system unless all of the iron and steel products used in the project are produced in the United States.
2. The term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
3. The requirement shall not apply in any case or category of cases in which the Secretary of Agriculture (in this section referred to as the "Secretary") or the designee of the Secretary finds that—
 - a. applying the requirement would be inconsistent with the public interest;
 - b. iron and steel products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
 - c. inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent."

"Owners are ultimately responsible for compliance with AIS requirements and will be responsible for the following:

1. Signing loan resolutions, grant agreements and letters of intent to meet conditions which include AIS language, accepting AIS requirements in those documents and in the letter of conditions.
2. Signing change orders (i.e. C-941 of EJCDC) and partial payment estimates (i.e. C-620 of EJCDC) and thereby acknowledging responsibility for compliance with American and Iron Steel requirements.
3. Obtaining the certification letters from the consulting engineer upon substantial completion of the project and maintaining this documentation for the life of the loan.
4. Where the owner provides their own engineering and/or construction services, providing copies of engineers', contractors', and manufacturers' certification letters (as applicable) to the Agency to insert into the Agency file. All certification letters must be kept in the engineer's project file and on site during construction. For Owner Construction (Force Account), all clauses from Section 17 must be included in the Agreement for Engineering Services.
5. Where the owner directly procures AIS products, including AIS clauses in the procurement contracts and obtaining manufacturers' certification letters and providing copies to consulting engineers and contractors.

Name:

Date

Title:

LOAN RESOLUTION
(Public Bodies)A RESOLUTION OF THE City CouncilOF THE City of Truth or Consequences

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WHEREAS, it is necessary for the City of Truth or Consequences

(Public Body)

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

Four Million Eight Hundred Eleven Thousand & 00 100pursuant to the provisions of NMSA (1978) Sect. 3-1-1; and**WHEREAS**, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:**NOW THEREFORE**, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0121. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the Government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities and replacement of short lived assets.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
17. To accept a grant in an amount not to exceed \$ 2,720,000.00

under the terms offered by the Government; that the City Manager

and Clerk/Treasurer of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

The vote was:

Yeas 5

Nays 0

Absent 0

IN WITNESS WHEREOF, the City Council of the

City of Truth or Consequences

has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this

2024

28th

day of February

(SEAL)

Attest:

By

Title

Mayor

Title Clerk/Treasurer

CERTIFICATION TO BE EXECUTED AT LOAN CLOSING

I, the undersigned, as _____ of the City of Truth or Consequences
hereby certify that the City Council _____ of such Association is composed of
_____ members, of whom, _____ constituting a quorum, were present at a meeting thereof duly called and
held on the _____ day of _____; and that the foregoing resolution was adopted at such meeting
by the vote shown above, I further certify that as of _____,
the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been
rescinded or amended in any way.

Dated, this _____ day of _____

Title _____



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 28, 2025

Agenda Item #: C.3

SUBJECT: Discussion/Action – Resolution 47 24/25 Resolution of Members

DEPARTMENT: Community Development

DATE SUBMITTED: May 23, 2025

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

New document required by USDA. The Resolution is confirming the City Commission is authorized to take action necessary as it relates to USDA Funding awards. This Resolution will be for the WSPI-1 Project.

Recommendation:

Approve Resolution 47 24/25

Attachments:

- Resolution 47/24/25
-

Fiscal Impact (Finance): Yes

As noted on Resolution

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 5-28-25

RESOLUTION OF MEMBERS OR STOCKHOLDERS

City of Truth or Consequences

(Name of Association)

505 Sims Street Truth or Consequences, NM 87901-

(Address, including Zip Code)

RESOLVED, that the Governing Board of this Association be and it hereby is authorized and empowered to take all action necessary or appropriate —

1. To obtain for and on behalf of the Association through the United States Department of Agriculture (USDA) or any other Governmental agency:
 - (a) A loan in a sum not to exceed \$ \$4,811,000.00 ;
 - (b) A grant in a sum not to exceed \$ \$2,720,000.00 ;to be advanced by the lender or grantor in one or more advances at such time or times as may be agreed upon.
2. In case of a loan or grant or both —
 - (a) For the execution of such application or applications (including exhibits, amendments and/or supplements thereto) as may be required;
 - (b) For the execution and delivery to the lender or grantor of all such written instruments as may be required in regard to or as evidence of such loan or grant; and
 - (c) In its judgment to carry out the terms of this resolution.
3. And in case of a loan —
 - (a) To obligate this Association for the repayment of the loan at such rates of interest and on such other terms and conditions as the Governing Board shall deem proper;
 - (b) To pledge, hypothecate, mortgage, convey, or assign property of this Association of any kind and in any amount now owned or hereafter acquired, as security for any or all obligations (past, present and/or future) of this Association to such lender; and
 - (c) From time to time to pay, extend, or renew any such obligations.

CERTIFICATION

I, the undersigned, as _____ of the above named Association, hereby
(Secretary) (Acting Secretary)
certify that said Association on the _____ day of _____, _____, had _____
(Number)
_____ ; that _____ of these
(members) (stockholders) or (shares of voting stock outstanding)
constituted a quorum; that _____ said members or stockholders or shares of voting stock were present at a meeting
of the members or stockholders duly called and held on the _____ day of _____, _____ ;
that the foregoing resolution was adopted at such meeting by the affirmative vote of _____ said members
or stockholders or shares of voting stock; and that said resolution has not been rescinded or amended in any way.

Dated this day _____ of _____, _____.

Secretary of City of Truth or Consequences



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 28, 2025

Agenda Item #: C.4

SUBJECT: Discussion/Action – Resolution 48 24/25 Authorizing and Providing for The Incurrence of Indebtedness for The Purpose of Providing a Portion of The Cost of Acquiring, Constructing, Enlarging, Improving, and/or Extending Its Water System

DEPARTMENT: Community Development

DATE SUBMITTED: May 23, 2025

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

Resolution is needed to request Closing Instructions for the WSPI -2 project (Water System Project Improvements – PER 2) and must be executed prior to going to bid. Project is still in design stage but new USDA Rep would like to prepare files, so project is ready to be approved for going to bid as soon as design has been completed and approved.

Recommendation:

Approve Resolution 48 24/25

Attachments:

- Resolution 48 24/25
-

Fiscal Impact (Finance): Yes

As noted on Resolution

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 5-28-25

LOAN RESOLUTION
(Public Bodies)A RESOLUTION OF THE City CommissionOF THE City of Truth or Consequences

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS

Public Body

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the City of Truth or Consequences(Public Body)

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

Two Million Six Hundred Seventy-Three Thousand & 00/100pursuant to the provisions of NMSA 3-2-1 (1978); and**WHEREAS**, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:**NOW THEREFORE**, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal ly permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0121. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the Government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities and replacement of short lived assets.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
17. To accept a grant in an amount not to exceed \$ Seven Million Two Hundred Twenty-Seven Thousand & 00/100

under the terms offered by the Government; that the _____

and _____ of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

The vote was: Yeas _____ Nays _____ Absent _____

IN WITNESS WHEREOF, the City Commission _____ of the

City of Truth or Consequences _____ has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this _____, _____ day of _____

(SEAL)

By Rolf Hechler

Attest:

Title Mayor

Title _____

AMERICAN IRON & STEEL ATTACHMENT

TO BE ATTACHED TO PROVISIONS OF LETTERS OF CONDITIONS, LOAN RESOLUTIONS, GRANT AGREEMENTS, AND CONDITIONAL COMMITMENTS

"Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference applies a new American Iron and Steel (AIS) requirement to obligations made after May 5th, 2017:

1. No Federal funds made available for this fiscal year for the rural water, waste water, waste disposal, and solid waste management programs authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 et seq.) shall be used for a project for the construction, alteration, maintenance, or repair of a public water or wastewater system unless all of the iron and steel products used in the project are produced in the United States.
2. The term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
3. The requirement shall not apply in any case or category of cases in which the Secretary of Agriculture (in this section referred to as the "Secretary") or the designee of the Secretary finds that—
 - a. applying the requirement would be inconsistent with the public interest;
 - b. iron and steel products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
 - c. inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent."

"Owners are ultimately responsible for compliance with AIS requirements and will be responsible for the following:

1. Signing loan resolutions, grant agreements and letters of intent to meet conditions which include AIS language, accepting AIS requirements in those documents and in the letter of conditions.
2. Signing change orders (i.e. C-941 of EJCDC) and partial payment estimates (i.e. C-620 of EJCDC) and thereby acknowledging responsibility for compliance with American and Iron Steel requirements.
3. Obtaining the certification letters from the consulting engineer upon substantial completion of the project and maintaining this documentation for the life of the loan.
4. Where the owner provides their own engineering and/or construction services, providing copies of engineers', contractors', and manufacturers' certification letters (as applicable) to the Agency to insert into the Agency file. All certification letters must be kept in the engineer's project file and on site during construction. For Owner Construction (Force Account), all clauses from Section 17 must be included in the Agreement for Engineering Services.
5. Where the owner directly procures AIS products, including AIS clauses in the procurement contracts and obtaining manufacturers' certification letters and providing copies to consulting engineers and contractors.

Name:

Date

Title:



United States Department of Agriculture

Rural Development

July 30, 2024

New Mexico
State Office

One Sun Plaza
100 Sun Ave NE
Suite 130
Albuquerque, NM
87109

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

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

SUBJECT: Letter of Conditions
Project Name: Water System Performance Improvements - 2
CFDA NUMBER: 10.770 -
Water and Waste Disposal Loans and Grants
(Section 306C)

Agency Loan: \$2,673,000
Agency Grant: \$1,652,891.01 – Section 306(C), Colonias
Agency Grant: \$5,574,109 – Section 306(C), Colonias

Dear Mayor Forrister:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA Rural Development (RD), both of which are referred to throughout this letter as the Agency. Any changes in project cost, source of funds, scope of project, or any other significant changes in the project or applicant must be reported to and concurred with by the Agency by written amendment to this letter. This includes any significant changes in the Applicant's financial condition, operation, organizational structure or executive leadership. Any changes made without Agency concurrence shall be cause for discontinuing processing of the application.

This letter does not constitute loan and grant approval, nor does it ensure that funds are or will be available for the project. The funding is being processed on the basis of a loan not to exceed \$2,673,000 and a grant not to exceed \$7,227,000.01. The loan and grant will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds" is signed by the Agency approval official.

The applicant will ensure projects are completed in a timely, efficient, and economical manner. You must meet all conditions set forth under Section III – Requirements Prior to Advertising for Bids within 1 year of this letter. If you do not meet the conditions of this letter, the Agency reserves the right to withdraw Agency funding.

USDA is an equal opportunity provider, employer, and Lender.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: mail at U.S. Department of Agriculture, Office of the Secretary for Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

If you agree to meet the conditions set forth in this letter and desire further consideration, be given to your application, please complete and return the following forms within 1 days:

Form RD 1942-46, "Letter of Intent to Meet Conditions"
Form RD 1940-1, "Request for Obligation of Funds"

All parties may access information and regulations referenced in this letter at our website located at: [Water and Environmental Programs | Rural Development \(usda.gov\)](https://www.usda.gov/water-and-environmental-programs/rural-development)

The conditions are as follows:

SECTION I - PROJECT SCOPE

1. Project Description – Funds will be used to rehabilitate the City of Truth or Consequences' water distribution system by replacing roughly 13,983 linear feet of existing water lines with new and larger diameter sized pipe as well as the installation of new meter cans and water service lines.

Facilities will be designed and constructed in accordance with sound engineering practices and must meet the requirements of Federal, State, and local agencies. The proposed facility design must be based on the Preliminary Engineering Report (PER), prepared by Wilson & Company, Engineers & Architects, Inc. amended August 16, 2023, as concurred with by the Agency.

2. Project Funding – The Agency is offering the following funding for your project:

Agency Loan -	\$ 2,673,000
Agency Grant -	\$ 7,227,000.01
TOTAL PROJECT COST -	\$ 9,900,000.01

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Prior to loan closing, any increase in non-Agency funding will be applied first as a reduction to Agency grant funds, up to the total amount of the grant, and then as a reduction to Agency loan funds.

The applicant must certify that they have exhausted all other funding avenues and have no pending funding considerations from any other sources. Further, the applicant must certify that they do not intend to apply anywhere else for funding for this project. If, after obligation of Agency funds, other funding becomes available, the Agency reserves the right to deobligate any and all funding for this project and to re-underwrite. This may result in the offering of a different funding package to for this project.

Prior to advertisement for construction bids, you must provide evidence of applicant contributions and other funding sources. This evidence should include a copy of the commitment

letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

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

<u>Project Costs:</u>		<u>Total Budgeted:</u>
Development		\$6,834,703
Contingency		\$683,470
GRT – Development		\$629,647
Engineering Fees		\$1,536,494
Includes:		
Engineering Admin.	\$186,000	
Preliminary Engineering Report/ Environmental Report	\$60,000	
Design	\$789,108	
Construction Inspection	\$265,000	
Construction Admin.	\$125,254	
GRT - Engineering	\$111,132	
Interest – Pre-Dev./Interim		\$171,252.01
Legal Fees - Local Attorney		\$44,434
TOTAL		\$9,900,000.01

Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. Obligated loan and/or grant funds not needed to complete the proposed project will be deobligated. Any reduction will be applied to Agency grant funds first. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. An “Amended Letter of Conditions” will be issued for any changes to the total project budget.

4. Project Timeline – To ensure that the project proceeds in a timely manner, key processing milestones have been established in accordance with the PER or other Agency approved documentation. **Projects should be completed and Agency funds fully disbursed within three years of obligation.** By agreeing to the terms herein, you agree to comply with the milestones identified below. If, for any reason, one or more of the milestones cannot be met, you must notify the Agency in writing at least 30 days prior to the referenced date. Should your final completion date become more than three years after obligation the written request will follow the procedures outlined in Section VI of this letter, including the submission of not less than 90 days prior to the benchmark. The correspondence must contain a valid explanation as to why the milestone cannot be met and include a proposed revised project completion schedule. If the Agency agrees to the modification, a written confirmation will be issued. The Agency reserves the right to de-obligate loan and/or grant funds, or take other appropriate action, if the established or amended deadlines are not met.

<u>Milestone</u>	<u>Date</u>
Plans & Specifications, and Design Complete	11/2/2024
Initial Advertisement for Bids	1/01/2025
Award Contract(s)/Initiate Construction	3/3/2025
Substantial Completion	11/28/2025
Final Completion	12/31/2025

SECTION II – RATES & TERMS

5. Interest Rates and Loan Terms – The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing, unless you request otherwise. Should the interest rate be reduced, the payment will be recalculated to the lower amount. The payment due date will be established as the day that the loan closes.

Your loan will be scheduled for repayment over a period of 40 years. Payments will be equal monthly amortized installments, beginning one month after closing. For planning purposes, use a 2.125% interest which provides for a monthly payment of \$8,287. The precise payment amount will be based on the interest rate at which the loan is closed and may be different than the one above.

6. Security – The loan will be secured by a Revenue bond with first lien position in the amount of \$2,673,000. The bond will be fully registered as to both principal and interest in the name of the “United States of America, Acting through the United States Department of Agriculture.” Bond Counsel will be utilized in preparation of these documents.

The bond instrument and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or associated laws. There must be no defeasance or refinancing clause in conflict with the graduation requirements of 7 U.S.C. 1983.

Additional security requirements are contained in RUS Bulletin 1780-27, “Loan Resolution (Public Bodies) and RUS Bulletin 1780-12, “Water and Waste System Grant Agreement”. A draft of all security instruments, including draft bond resolution, must be reviewed, and concurred in by the Agency prior to advertising for bids. Bond/loan resolutions must be duly adopted and executed prior to loan closing.

The Grant Agreement will be executed prior to the first disbursement of grant funds. The grantee understands that any property acquired or improved with Federal grant funds may have use and disposition conditions which apply to the property as provided by 2 CFR part 200 in effect at this time and as may be subsequently modified. The grantee understands that any sale or transfer of property is subject to the interest of the United States Government in the market value in proportion to its participation the project.

7. Reserves – Reserves must be properly budgeted and set aside to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency repairs, to assist with debt service should the need arise, and for the replacement of assets which have a useful life less than the repayment period of the loan. The following reserves are required to be established as a condition of this loan:

- a. **Debt Service Reserve** – As a part of this Agency loan proposal, you must establish a debt service reserve fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment per year for ten years or until the balance is equal to one annual loan payment. For planning purposes, 10% of the proposed loan installment would equal \$832 per month; this amount should be deposited monthly until a total of \$99,890 has accumulated. Prior written concurrence from the Agency must be obtained before funds may be withdrawn from this account during the life of the loan. When funds are withdrawn during the life of the loan, deposits will continue as designated above until the fully funded amount is reached.
- b. **Short-Lived Asset Reserve** – In addition to the debt service reserve fund, you must establish a short-lived asset reserve fund. Based on the PER, you must deposit at least \$182,347 into the short-lived asset reserve fund annually for the life of the loan to pay for repairs and/or replacement of major system assets. It is your responsibility to assess your facility's short-lived asset needs on a regular basis and adjust the amount deposited to meet those needs.

SECTION III – REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

8. Organization – The Bond Counsel transcripts of proceedings must show that your organization is a duly incorporated public body and has continued legal existence. Your organization must have the authority to own, construct, operate, and maintain the proposed facility, as well as for borrowing money, pledging security and raising revenues.

9. Suspension and Debarment Screening – You will be asked to provide information on the principals of your organization. Agency staff must conduct screening for suspension and debarment of the entity, as well as its principals through the Do Not Pay Portal.

Principal –

- i. An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or
- ii. A consultant or other person, whether or not employed by the participant or paid with federal funds, who –
 1. Is in a position to handle federal funds;
 2. Is in a position to influence or control the use of those funds; or,
 3. Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction. (2 CFR §180.995)

10. Environmental Requirements – At the conclusion of the proposal’s environmental review process, specific action(s) were determined necessary to avoid or minimize adverse environmental impacts.

The project, as proposed, has been evaluated to be consistent with the National Environmental Policy Act. Other Federal, State, tribal, and local laws, regulations and/or permits may apply or be required. If the project or any project element deviates from or is modified from the originally approved project, additional environmental review may be required.

11. Engineering Services – You have been required to complete an Agreement for Engineering Services, which should consist of the Engineers Joint Contract Documents Committee (EJCDC) documents as indicated in RUS Bulletin 1780-26, “Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance,” or other approved form of agreement. The Agency will provide concurrence prior to advertising for bids and must approve any modifications to this agreement.

12. Contract Documents, Final Plans, and Specifications- All development will be completed by contract in accordance with applicable provisions of RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Constructing and Inspections, (copy available upon request), and in compliance with all statutory requirements. You are responsible to share this with your engineer before pre-design.

- a. The plans and specifications and all proposals required by law must be approved by
- b. In preparing final design and providing service to the planned project area, you and your engineer will comply with all zoning and planning requirements of the appropriate governing bodies where service is to be provided.
- c. The Agency will need to concur in the plans and specifications prior to advertising for bids. The Agency may require an updated cost estimate if a significant amount of time has elapsed between the original project cost estimate and advertising for bids.
- d. The use of any procurement method other than competitive sealed bids must be requested in writing and approved by the Agency.
- e. The contract documents must consist of the EJCDC construction contract documents as indicated in RUS Bulletin 1780-26 or other Agency-approved forms of agreement.

13. Build America, Buy America (BABAA) Requirements - Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- a. all iron and steel permanently installed in the project are produced in the United States-- this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

- b. all manufactured products permanently installed in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. all construction materials permanently installed are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The BABAA requirement applies to the entirety of an infrastructure project even if only a portion of the project is funded by Federal funds.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Waivers

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:

- a. applying the domestic content procurement preference would be inconsistent with the public interest;
- b. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- c. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials

required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

Definitions

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Owners are ultimately responsible for compliance with the evidence standards as outlined in the Build America Buy America (BABAA) appendix to this Letter. Owners are required to maintain records as specified in their loan or grant agreement, but in all cases, they should maintain records for a minimum of three years after the final expenditure report. Minimum records include certifications from manufacturers, the architect/engineer, and the prime contractor. Supporting documentation includes purchasing records and notes and photos taken by the Resident Project Representative (RPR). Further guidance regarding certifications will be provided by the Agency.

14. Legal Services—A legal services agreement is required with your attorney and bond counsel, if applicable, for any legal work needed in connection with this project. The agreement should stipulate an hourly rate for the work, with a “not to exceed” amount for the services, including reimbursable expenses. RUS Bulletin 1780-7, “Legal Services Agreement,” or similar format may be used. The Agency will provide concurrence prior to advertising for bids. Any changes to the fees or services spelled out in the original agreement must be reflected in an amendment to the agreement and have prior Agency concurrence.

15. Property Rights - Prior to advertising for bids, you and your legal counsel must furnish satisfactory evidence that you have adequate continuous and valid control over the lands and rights-of-way needed for the project. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Such control over the lands and rights will be evidenced by the following:

- a. **Right-of-Way Map** – Your engineer will provide a map clearly showing the location of all lands and rights-of-way needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
- b. **Form RD 442-20, “Right-of-Way Easement”** – This form, or similar format, may be used to obtain any necessary easements for the proposed project.
- c. **Form RD 442-21, “Right-of-Way Certificate”** – You will provide a certification on this form that all right-of-way requirements have been obtained for the proposed project.
- d. **Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way”** – Your attorney will provide a certification and legal opinion on this form addressing rights-of-way, easements, and title.

The approving official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. Any such waivers must be provided by the approving official in writing prior to closing or the start of construction, whichever occurs first.

You are responsible for the acquisition of all property rights necessary for the project and for determining that prices paid are reasonable and fair. The Agency may require an appraisal by an independent appraiser or Agency employee in order to validate the price to be paid.

16. System Policies, Procedures, Contracts, and Agreements – The facility must be operated on a sound business plan which involves adopting policies, procedures, and/or ordinances outlining the conditions of service and use of the proposed system. Mandatory connection policies should be used where enforceable. The policies, procedures, and/or ordinances must contain an effective collection policy for accounts not paid in full within a specified number of days after the date of billing. They should include appropriate late fees, specified timeframes for disconnection of service, and reconnection fees. A draft of these policies, procedures, and/or ordinances must be submitted for Agency review and concurrence, along with the documents below, before closing instructions may be issued unless otherwise stated.

- a. **Conflict of Interest Policy** – Prior to obligation of funds, you must certify in writing that your organization has in place up-to-date written standards of conduct covering conflict of interest. The standards of conduct must include disciplinary actions in the event of a violation by officers, employees, or agents of the borrower. The standards identified herein apply to any parent, affiliate or subsidiary organization of the borrower that is not a state or local government, or Indian Tribe. Policies and accompanying documents shall be furnished to Rural Development upon request.

You must also submit a disclosure of planned or potential transactions related to the use of Federal funds that may constitute or present the appearance of personal or organizational conflict of interest. Disclosure must be in the form of a written letter signed and dated by the applicant's official. A negative disclosure in the same format is required if no conflicts are anticipated.

Sample conflict of interest policies may be found at the National Council of Nonprofits website, <https://www.councilofnonprofits.org/tools-resources/conflict-of-interest>, or in Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy," at <http://www.irs.gov/pub/irs-pdf/i1023.pdf>. Though these examples reference non-profit corporations, the requirement applies to all types of Agency borrowers.

Assistance in developing a conflict of interest policy is available through Agency-contracted technical assistance providers if desired.

- #b. Water User Agreement** – Projects not involving mandatory connection require users to execute a Water Users Agreement. The draft agreement must receive Agency concurrence prior to advertising for bids. RUS Bulletin 1780-9, "Water Users Agreement," or similar format may be used.
- #c. Contracts for Other Services/Lease Agreement** – Drafts of any contracts or other forms of agreements for other services, including audit, management, operation, and maintenance, or lease agreements covering real property essential to the successful operation of the facility, must be submitted to the Agency for review and concurrence prior to advertising for bids.
- #d. Parity/Intercreditor Agreement** – Projects with parity liens must have in place a written agreement between the parity lenders. The draft agreement must receive Agency concurrence prior to advertising for bids.
- #e. Other agreements** with governments or other entities regarding joint operation of facilities, granting authority to Agency borrower for providing service within another entity's service area, etc. – Utility service Agreement with the Village of Williamsburg – The draft agreement must receive Agency concurrence prior to advertising for bids.

Fully executed copies of any policies, procedures, ordinances, contracts, or agreements above must be submitted prior to loan closing, with the exception of the conflict of interest policy, which must be in place prior to obligation of funds.

17. Closing Instructions – The Agency will prepare closing instructions as soon as the requirements of the previous paragraphs are complete, as well as a draft of the security instrument(s). Both your bond and legal counsel must comply with these instructions when closing the Agency loan/grant.

18. System Users – This letter of conditions is based upon your indication at application that there will be at least 2828 residential users, 514 non-residential users, on the existing system when construction is completed.

Before the Agency can agree to the project being advertised for construction bids, you must certify that the number of users indicated at application are currently using the system or signed up to use the system once it is operational.

If the actual number of existing and/or proposed users that have signed up for service is less than the number indicated at the time of application, you must provide the Agency with a written plan on how you will obtain the necessary revenue to adequately cash flow the expected operation, maintenance, debt service, and reserve requirements of the proposed project (e.g., increase user rates, sign up an adequate number of other users, reduce project scope, etc.). Similar action is required if there is cause to modify the anticipated flows or volumes presented following approval.

If you are relying on mandatory connection requirements, you must provide evidence of the authorizing ordinance or statute along with your user certification.

19. Construction Account – A separate construction account is not required for project funds. However, the recipient must be able to separately identify, report and account for all Federal funds, including the receipt, obligation and expenditure of funds, in accordance with 2 CFR 200.305. These funds must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage. **If the balances at the financial institution where federal funds will be deposited exceeds the FDIC insurance coverage, the excess amount must be collaterally secured up to 100 percent of the highest amount of funds expected to be deposited in the account at any one time, per the Department of Treasury regulations and requirements.**

20. Interim Financing – The Agency's policy is to utilize interim financing for all loans exceeding \$500,000. Prepayment penalties on interim financing are not allowed. Borrowers are required to seek interim financing initially from private or cooperative lenders if funds can be borrowed at reasonable interest rates on an interim basis from those sources for the construction period. The fact that a commercial lender's rates are higher than current Agency interest rates does not necessarily mean that the commercial rate is not reasonable.

21. Proposed Operating Budget – You must establish and/or maintain a rate schedule that provides adequate income to meet the minimum requirements for operation and maintenance (O and M), debt service, and reserves. Prior to advertising for bids, you must submit a proposed annual operating budget to the Agency, as well as your proposed rate schedule. The operating budget should be based on a typical year cash flow after completion of the construction phase and should be signed by the appropriate official of your organization. Form RD 442-7, "Operating Budget," or similar format may be utilized for this purpose. It is expected that O and M expenses will change over each successive year and user rates will need to be adjusted on a regular basis.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system. This assistance is available free to your organization. If you are interested, please contact our office for information.

22. Permits –The owner or responsible party will be required to obtain all applicable permits for the project, prior to advertising for bids. The consulting engineer must submit written evidence that all applicable permits required prior to construction have been obtained with submission to the Agency of the final plans, specifications, and bid documents.

23. Risk and Resilience Assessment/Emergency Response Plan (RRA/ERP) –The Agency requires all financed water and wastewater systems to have a RRA/ERP in place. New water or wastewater systems must provide a certification that an ERP is complete prior to the start of operation, and a certification that an RRA is complete must be submitted within one year of the start of operation. Borrowers with existing systems must provide a certification that an RRA/ERP has been completed prior to advertising for bids. Technical assistance is available in preparing these documents at no cost to you.

Before funds are drawn, you should have in place a cybersecurity plan, a supply chain plan, and a plan to comply with cybersecurity requirements of the National Institute of Science and Technology and the Cybersecurity and Infrastructure Security Administration. These items should be addressed in the RRA/ERP.

The RRA/ERP documents themselves are not submitted to the Agency. The RRA/ERP must address potential impacts from natural disasters and other emergency events. It should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every five years at a minimum.

24. Bid Authorization - Once all the conditions outlined in Section III of this letter have been met, the Agency will authorize you to advertise the project for construction bids. Such advertisement must be in accordance with applicable State statutes.

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

25. Disbursement of Agency Funds - Agency funds will be disbursed electronically into the construction account as they are needed. SF 3881, “ACH Vendor/Miscellaneous Payment Enrollment Form,” must be completed and submitted to the Agency prior to commencement of construction.

The order of disbursement is as follows: 1) Applicant contribution, 2) other funding sources, 3) interim financing or Agency loan funds, and 4) Agency grant funds. Interim financing or Agency loan funds will be expended after all other funding sources unless a written agreement is reached with all other funding sources on how funds are to be disbursed prior the first disbursement. Interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds. Agency Grant funds must not be disbursed prior to loan funds except as authorized in 7 CFR 1780.45(d).

Grant funds are to be deposited in an interest-bearing account (exception provided below) in accordance with 2 CFR Part 200 and interest in excess of \$500 per year remitted to the Agency.

The funds should be disbursed by the recipient immediately upon receipt, and there should be little interest accrual on the Federal funds. Recipients shall maintain advances of Federal funds in interest-bearing accounts, unless:

- The recipient receives less than \$120,000 in Federal awards per year.
- The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
- The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
- A foreign government or banking system prohibits or precludes interest-bearing accounts.

26. Bid Tabulation – Immediately after bid opening, you must provide the Agency with the bid tabulation and your engineer's evaluation of bids and recommendations for contract awards. If the Agency agrees that the construction bids received are acceptable, adequate funds are available to cover the total project costs, and all the requirements of Section III of this letter have been satisfied, the Agency will authorize you to issue the Notice of Award.

- a. **Cost Overruns** – If bids are higher than expected, or if unexpected construction problems are encountered, you must utilize all options to reduce cost overruns. Negotiations, redesign, use of bidding alternatives, rebidding or other means will be considered prior to commitment of subsequent funding by the Agency. Any requests for subsequent funding to cover cost overruns will be contingent on the availability of funds. Cost overruns exceeding 20 percent of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.
- b. **Excess Funds** - If bids are lower than anticipated at time of obligation, excess funds must be deobligated prior to start of construction except in the cases addressed in this paragraph. In cases where the original PER for the project included items that were not bid, or were bid as an alternate, the State Office official may modify the project to fully utilize obligated funds for those items. Amendments to the PER, ER, and Letter of Conditions may be needed for any work not included in the original project scope. In all cases, prior to start of construction, excess funds will be deobligated, with grant funds being deobligated first. Excess funds do not include contingency funds as described in this letter.

27. Suspension and Debarment Screening – In accordance with 2 CFR Part 180, Subpart C, as a condition of the transaction and the responsibilities to persons at the next lower tier with whom you enter into transactions, you must conduct screening for suspension and debarment of lower tier recipients (e.g., vendors, contractors, etc.).

28. Contract Review – Your attorney will certify that the executed contract documents, including performance and payment bonds, if required, are adequate and that the persons executing these documents have been properly authorized to do so in accordance with 7 CFR 1780.61(b).

Once your attorney has certified that they are acceptable, the contract documents will be submitted to the Agency for concurrence. Construction cannot commence until the Agency has concurred in the construction contracts.

29. Final Rights of Way – Your attorney or title company must furnish a separate final title opinion or Title Insurance Policy on all real property related to the facility, now owned and to be acquired for this project, as of the day of loan closing or start of construction, whichever occurs first. Form RD 1927-10, “Final Title Opinion” may be used.

If any of the right-of-way forms listed previously in this letter contain exceptions that do not adversely affect the suitability, successful operation, security value, or transferability of the facility, the approving official must provide a written waiver prior to the issuance of the Notice to Proceed.

30. Insurance and Bonding Requirements - Prior to the start of construction or loan closing, whichever occurs first, you must acquire and submit to the Agency proof of the types of insurance and bond coverage for the borrower shown below. The use of deductibles may be allowed, providing you have the financial resources to cover potential claims requiring payment of the deductible. The Agency strongly recommends that you have your engineer, attorney, and insurance provider(s) review proposed types and amounts of coverage, including any exclusions and deductible provisions. It is your responsibility and not that of the Agency to assure that adequate insurance and fidelity bond coverage is maintained.

- a. **General Liability Insurance** – Include vehicular coverage.
- b. **Workers’ Compensation** – In accordance with appropriate State laws.
- c. **Guaranty or Fidelity Insurance**—Coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through “blanket” coverage providing protection for all appropriate employees. Each position is to be insured in an amount equal to the maximum amount of funds expected to be under the control of that position at any one time. The minimum coverage allowed will be an amount equal to the total annual debt service payment on the Agency loans. The coverage may be increased during construction based on the anticipated monthly advances.
- d. **National Flood Insurance** - If the project involves acquisition or construction in a designated special flood area, the community in which the acquisition or construction is situated must be currently participating in the national flood insurance program. Additionally, if the project involves acquisition or construction in designated special flood or mudslide prone areas, a flood insurance policy must be in place at the time of loan closing.
- e. **Real Property Insurance** – Fire and extended coverage will normally be maintained on all structures except reservoirs, pipelines and other structures if such structures are not normally insured, and subsurface lift stations except for the value of electrical and pumping equipment. The Agency will be listed as mortgagee on the policy when the Agency has a lien on the property. Prior to the acceptance of the facility from the

contractor(s), you must obtain real property insurance (fire and extended coverage) on all facilities identified above.

The Agency is to be listed as “Other Insured” so as to receive notifications on all insurance, regardless of security. Insurance types described above are required to be continued throughout the life of the loan. See Section VII.

31. Initial Civil Rights Compliance Review – The Agency will conduct an initial civil rights compliance review of the borrower prior to loan closing or start of construction, whichever occurs first, in accordance with 7 CFR 1901, Subpart E. You are expected to comply with the completion of the review, including the furnishing of any documents, records, or other applicable material.

SECTION V – REQUIREMENTS PRIOR TO CLOSING

32. Interim Financing. Interim financing is being used. Generally, loan closing will occur near the end of construction when interim funds are fully disbursed. Documents detailed above from Sections II and III regarding security, electronic payments (Form 3550-28), and system policies, procedures, contracts, and agreements must be adopted and/or executed and submitted to the Agency prior to loan closing.

33. Electronic Payments – Payments will be made through an electronic preauthorized debit system. You will be required to complete Form RD 3550-28, “Authorization Agreement for Preauthorized Payments,” for all new and existing indebtedness to the Agency prior to loan closing.

34. Other Requirements – All requirements contained in the Agency’s closing instructions, as well as any requirements of your bond counsel and/or attorney, must be met prior to loan closing.

- a. **System for Award Management**. You will be required to maintain a Unique Entity ID (UEI) and maintain an active registration in the System for Award Management (SAM) database. Renewal can be completed online at: <http://sam.gov>. This registration must be renewed and revalidated every 12 months for as long as there is an active loan, grant, or guaranteed loan with the Agency.

To ensure the information is current, accurate and complete, and to prevent the SAM account expiration, the review and updates must be performed within 365 days of the activation date, commonly referred to as the expiration date. The registration process may take up to 10 business days. (See 2 CFR Part 25 and the “Help” section at <http://sam.gov>).

- b. **Litigation**. You are required to notify the Agency within 30 days of receiving notification of being involved in any type of litigation prior to loan closing or start of construction, whichever occurs first. Additional documentation regarding the situation and litigation may be requested by the Agency.

- c. **Certified Operator**. Evidence must be provided that your system has or will have a certified operator, as defined by applicable State or Federal requirements, available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

35. Construction Completion Timeframe – Following the benchmarks established in Section I, Item 4, Project Timeline, all projects should be completed and Agency funds fully disbursed within three years of the date of obligation. If funds are not disbursed within three years of obligation and you have not already done so per Section I, Item 4, you must submit a written request for extension of time to the Agency with adequate justification of the circumstances, including any beyond your control. The request must be submitted at least 90 days prior to the end of the three-year timeframe and include a revised estimated date of completion. The Agency will typically only allow one extension. Subsequent requests for waivers beyond the initial extension or requests that exceed five years from the initial date of obligation will be submitted to the RUS, Water and Environmental Programs for consideration. The Agency retains the right to de-obligate any loan and/or grant monies, or take other appropriate action, related to unliquidated funds that exceed the timeframes above and are not under an active extension.

36. Resident Inspector(s) – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must provide written concurrence. Inspection services are to be provided by the consulting engineer unless other arrangements are requested in writing and concurred with by the Agency. A resume of qualifications of any resident inspector(s) will be submitted to the owner and Agency for review and concurrence prior to the pre-construction conference. The resident inspector(s) must attend the preconstruction conference.

37. Preconstruction Conference – A preconstruction conference will be held prior to the issuance of the Notice to Proceed. The consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, other funders, and other interested parties, and will provide minutes of this meeting to the owner and Agency.

38. Inspections - The Agency requires a preconstruction conference, pre-final, final, and warranty inspections. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the 11- month warranty period to address and/or resolve any outstanding warranty issues. The Agency will conduct an inspection with you of your records management system at the same time and will continue to inspect the facility and your records system every three years for the life of the loan. See Section VII of this letter.

39. Change Orders – A Change Order must be submitted for all modifications to the approved scope of work, including existing contracts. This includes non-physical modifications such as

any time extension requests. Prior written Agency concurrence is required for all Change Orders.

40. Payments – Prior Agency concurrence is required for all invoices and requests for payment before Agency funds will be released. Requests for payment related to a contract or service agreement will be signed by the owner, project engineer, and contractor or service provider prior to Agency concurrence. Invoices not related to a construction contract or service agreement will include the owner's written concurrence.

41. Use of Remaining Funds – As stated above, applicant contribution and connection or tap fees will be the first funds expended in the project. Funds remaining after all costs incident to the basic project have been paid or provided will be handled as follows:

- a. Funds remaining after the applicant contribution and connection fees may be considered in direct proportion to the amounts of funding obtained from each source. The use of Agency funding will be limited to eligible loan and grant purposes, provided the use will not result in major changes to the original scope of work and the purpose of the loan and grant remains the same.
- b. Any reductions in the Agency funding will be first applied to the grant funds.
- c. Grant funds not expended for authorized purposes will be cancelled (de-obligated) within 30 days of final completion of project. Prior to actual cancellation, you, your attorney and engineer will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.
- d. Under no circumstances is it appropriate to use remaining funds as contributions to a new project outside the scope of the funded project.
- e. Loan funds that are not needed will be cancelled (de-obligated) prior to loan closing.

42. Technical, Managerial and Financial Capacity - It is required that members of the Board of Directors, City Council members, trustees, commissioners and other governing members possess the necessary technical, managerial, and financial capacity skills to consistently comply with pertinent Federal and State laws and requirements. It is recommended members receive training within one year of appointment or election to the governing board, and a refresher training for all governing members on a routine basis. The content and amount of training should be tailored to the needs of the individual and the utility system. Technical assistance providers are available to provide this training for your organization, often at no cost. Contact the Agency for additional information.

43. Reporting Requirements Related to Expenditure of Funds -- An annual audit under 2 CFR 200 is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the

Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law and must be submitted within 9 months of your fiscal year end. Both the audit and accompanying management report must be submitted for review.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy of that agreement to the Agency prior to the advertisement of construction bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit to be completed, the time frame in which the audit will be completed, and how irregularities will be reported.

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

44. Prepayment and Extra Payments - Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower, with no penalty.

Security instruments, including bonding documents, must contain the following language regarding extra payments, unless prohibited by State statute:

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of borrower to pay the remaining installments as scheduled in your security instruments.

45. Annual Financial Reporting/Audit Requirements – You are required to submit an annual financial report at the end of each fiscal year. The annual report will be certified by the appropriate organization official, and will consist of financial information, a current rate schedule, and listing of board members with their terms. Financial statements must be prepared on an accrual basis of accounting in accordance with generally accepted accounting principles (GAAP). The annual report will include separate reporting for each water and waste disposal facility, and itemized cash accounts by type (debt service, short-lived assets, etc.) under each facility. All records, books and supporting material are to be retained for three years after the issuance of the annual report. Technical assistance is available, at no cost, with preparing financial reports.

The type of financial information that must be submitted is specified below:

- a. **Audits** – An audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

See Section VI for additional information regarding audits.

- b. **Financial Statements** – If you expend less than \$750,000 in Federal financial assistance per fiscal year, you may submit financial statements in lieu of an audit which include, at a minimum, a balance sheet and an income and expense statement. You may use Form RD 442-2, “Statement of Budget, Income and Equity,” and 442-3, “Balance Sheet,” or similar format to provide the financial information. The financial statements must be signed by the appropriate borrower official and submitted within 60 days of your fiscal year end.
- c. **Quarterly Reports** – Quarterly Income and Expense Statements will be required until the processing office waives this requirement. You may use Form RD 442-2, “Statement of Budget, Income and Equity,” or similar format to provide this information. The reports are to be signed by the appropriate borrower official and submitted within 30 days of each quarter’s end. The Agency will notify you in writing when quarterly reports are no longer required.

46. **Annual Budget and Projected Cash Flow** - Thirty days prior to the beginning of each fiscal year, you will be required to submit an annual budget and projected cash flow to this office. The budget must be signed by the appropriate borrower official. Form RD 442-2, “Statement of Budget, Income and Equity,” or similar format may be used.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system, as well as completing the annual budget.

47. **Graduation** - By accepting this loan, you are also agreeing to refinance (graduate) the unpaid loan balance in whole, or in part, upon request of the Government. If at any time the Agency determines you can obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms, you will be requested to refinance. Your ability to refinance will be assessed every other year for those loans that are five years old or older.

48. **Security/Operational Inspections** – The Agency will inspect the facility and conduct a review of your operations and records management system and conflict of interest policy every three years for the life of the loan. You must participate in these inspections and provide the required information.

49. **System for Award Management**. You will be required to maintain a Unique Entity ID (UEI) and maintain an active registration in the System for Award Management (SAM) database. Further information can be found at paragraph 33 of this letter.

50. **Risk and Resiliency Assessment/Emergency Response Plan (RRA/ERP)** – The RRA/ERP is further outlined under Section III of this letter. You will be required to submit a certification to the servicing office every five years that the RRA/ERP is current and covers all sites related to the facility. The RRA/ERP documents themselves are not submitted to the Agency. The RRA/ERP must address potential impacts from natural disasters and other emergency events. It

should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. Technical assistance is available in preparing these documents at no cost to you.

51. Insurance. – Insurance requirements are further outlined in Section IV of this letter. You will be required to maintain insurance on the facility and employees as previously described in this letter for the life of the loan.

52. Statutory and National Policy Requirements – As a recipient of Federal funding, you are required to comply with U.S. statutory and public policy requirements, including but not limited to:

- a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.
- b. **Civil Rights Act of 1964** – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.
- c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.
- d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally-assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, “Improving Access to Services by Persons with Limited English Proficiency” and further affirmed in the USDA Departmental Regulation 4330-005, “Prohibition Against National

Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA.”

- f. **Controlled Substances Act** - Even though state law may allow some activities, as a recipient of Federal funding, you are subject to the Controlled Substances Act. Specific questions about the Controlled Substances Act should be directed to the Servicing Official who will contact the Office of General Counsel, as appropriate.

53. Compliance Reviews and Data Collection – Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. You must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor your compliance with these requirements during regular compliance reviews.

The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36 CFR 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the security inspections described in this letter.

If beneficiaries (users) are required to complete an application or screening for the use of the facility or service that you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

SECTION VIII – REMEDIES FOR NON-COMPLIANCE

Non-compliance with the conditions in this letter or requirements of your security documents will be addressed under the provisions of Agency regulations, statutes, and other applicable policies.

We look forward to working with you to complete this project. If you have any questions, please contact Elizabeth Ybarra at (505) 761-4963 or by e-mail at elizabeth.ybarra@usda.gov.

Sincerely,

**ELIZABETH
YBARRA**

Digitally signed by ELIZABETH YBARRA
Date: 2024.08.02 15:59:09 -06'00'

Christine Griego by Elizabeth Ybarra Acting
Community Programs, Program Director

Attachments:

T or C_WSPI-2_Form RD 1942-46_Letter of Intent to Meet Conditions
T or C_WSPI-2_Form RD 1940-1_Request for Obligation of Funds_306(C)
T or C_WSPI-2_Form RD 1940-1_Request for Obligation of Funds_Loan

cc: USDA - Community Programs Director, Christine Griego
USDA - Community Programs Interim Engineer, Lam Ho
Angela Gonzales – City Manager – City of Truth or Consequences
Traci Alvarez – Asst. City Manager
Wilson & Company - Engineer

FORMS and BULLETINS:

Form AD-3031 "Assurance Regarding Felony Convictions or Tax Delinquent Status for Corporate Applicants" – Item 30

Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy" - Item 15

Form RD 440-22, "Promissory Note" – Item 6

Form RD 442-2, "Statement of Budget, Income and Equity" – Items 45 and 46

Form RD 442-3, "Balance Sheet" – Item 45

Form RD 442-7, "Operating Budget" – Item 20

Form RD 442-20, "Right-of-Way Easement" – Item 14

Form RD 442-21, "Right-of-Way Certificate" – Item 14

Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way" – Item 14

Form RD 1927-9, "Preliminary Title Opinion" – Item 14

Form RD 1927-10, "Final Title Opinion" – Item 28

Form RD 1940-1, "Request for Obligation of Funds" – Pages 1 and 2

Form RD 1942-8, "Resolution of Members or Stockholders" – Item 6

Form RD 1942-46, "Letter of Intent to Meet Conditions" – Page 2

Form RD 3550-28, "Authorization Agreement for Preauthorized Payments" – Items 32 and 33

Form UCC-1, "Financing Statement" – Item 6

Form UCC-1Ad, "UCC Financing Statement Addendum" – Item 6

SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form" – Item 24

RUS Bulletin 1780-7, "Legal Services Agreement" – Item 13

RUS Bulletin 1780-9, "Water Users Agreement" - Items 15 and 17

RUS Bulletin 1780-12, "Water and Waste System Grant Agreement" – Item 6

RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance" – Items 11 and 12

RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)" – Item 6

RUS Bulletin 1780-28, "Loan Resolution Security Agreement" – Item 6

Appendix A
(INSTRUCTIONS TO FIELD)

A. Reporting Total Compensation of Recipient Executives

In the rare instance in which all of the following apply, please contact your POB Specialist for language to include in the LOC:

1. The total Federal funding authorized to date under this award is \$30,000 or more;
2. In the preceding fiscal year, the applicant received—
 - (A) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
3. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

B. Subaward and Subrecipients

In the rare instance in which there is a subrecipient in the project, please contact your POB Specialist for language to include in the LOC:

Subrecipient means an entity that:

- i. Receives a subaward from the recipient under this award; and

- ii. Is accountable to the recipient for the use of the Federal funds provided by the subaward.
 - a. Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

Appendix B

Build America, Buy America Evidence Standards

Manufacturers

For each item to which BABAA applies (every item permanently installed on the project, except for aggregate and aggregate binding materials), a manufacturer's certification letter or other document demonstrating compliance is required. It must, at a minimum, identify the item being certified (short written description as well as part number, if applicable) and affirm that the item complies with BABAA. This document must be signed by an authorized company representative.

Architects and Engineers

Compliance with BABAA will be spelled out in agreements for services, construction contracts, and procurement contracts. Generally, the A/E contract should include, as a basic service, obtaining and maintaining all BABAA documentation (particularly manufacturers' certifications) during construction, which shall be transferred to the Owner upon completion of the project. The architect or engineer will need to certify to this action at the project's end.

Resident Project Representative / Resident Inspector

As part of their duties, Resident Project Representative/Resident Inspector should be instructed to verify items delivered to the site and installed are accompanied by documentation of compliance with BABAA. They should photograph items as appropriate. RPR/RI daily logs and photographs will become part of the construction record and can be used as supporting information during audits, providing evidence for items that are buried or otherwise inaccessible.

Contractors

Construction contract(s) must include a requirement to procure and install only items that comply with BABAA or are subject to an approved waiver. Contractors must provide manufacturers' certifications for all BABAA compliant items to the responsible party before a request for reimbursement to the Agency is made. At completion, the contractor will be required to certify that all items used on the contract complied with BABAA and that all manufacturers' certifications were provided.

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CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 28, 2025

Agenda Item #: C.5

SUBJECT: Discussion/Action – Resolution 49 24/25 Resolution of Members

DEPARTMENT: Community Development

DATE SUBMITTED: May 23, 2025

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

New document required by USDA. The Resolution is confirming the City Commission is authorized to take action necessary as it relates to USDA Funding awards. This Resolution will be for the WSPI-2 Project.

Recommendation:

Approve Resolution 49 24/25

Attachments:

- Resolution 49/24/25
-

Fiscal Impact (Finance): Yes

As noted on Resolution

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 5-28-25

RESOLUTION OF MEMBERS OR STOCKHOLDERS

City of Truth or Consequences

(Name of Association)

505 Sims Street Truth or Consequences, NM 87901-

(Address, including Zip Code)

RESOLVED, that the Governing Board of this Association be and it hereby is authorized and empowered to take all action necessary or appropriate —

1. To obtain for and on behalf of the Association through the United States Department of Agriculture (USDA) or any other Governmental agency:
 - (a) A loan in a sum not to exceed \$ \$2,673,000.00;
 - (b) A grant in a sum not to exceed \$ \$7,227,000.00 ;
to be advanced by the lender or grantor in one or more advances at such time or times as may be agreed upon.
2. In case of a loan or grant or both —
 - (a) For the execution of such application or applications (including exhibits, amendments and/or supplements thereto) as may be required;
 - (b) For the execution and delivery to the lender or grantor of all such written instruments as may be required in regard to or as evidence of such loan or grant; and
 - (c) In its judgment to carry out the terms of this resolution.
3. And in case of a loan —
 - (a) To obligate this Association for the repayment of the loan at such rates of interest and on such other terms and conditions as the Governing Board shall deem proper;
 - (b) To pledge, hypothecate, mortgage, convey, or assign property of this Association of any kind and in any amount now owned or hereafter acquired, as security for any or all obligations (past, present and/or future) of this Association to such lender; and
 - (c) From time to time to pay, extend, or renew any such obligations.

CERTIFICATION

I, the undersigned, as _____ of the above named Association, hereby
(Secretary) (Acting Secretary)
certify that said Association on the _____ day of _____, _____, had _____
(Number)
_____ ; that _____ of these
(members) (stockholders) or (shares of voting stock outstanding)
constituted a quorum; that _____ said members or stockholders or shares of voting stock were present at a meeting
of the members or stockholders duly called and held on the _____ day of _____, _____;
that the foregoing resolution was adopted at such meeting by the affirmative vote of _____ said members
or stockholders or shares of voting stock; and that said resolution has not been rescinded or amended in any way.

Dated this day _____ of _____, _____.

Secretary of City of Truth or Consequences



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 28, 2025

Agenda Item #: D.1

SUBJECT: Discussion/Action –Summary Plat Amendment Property Code 3022077326147

DEPARTMENT: Community Development

DATE SUBMITTED: May 23, 2025

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

Applicant wishes to amend the parcel. Public Hearing was held on 5-14-2025. No opponents or proponents. The P & Z Commission recommended approval.

Recommendation:

Review recommendation and render final determination

Attachments:

- P & Z Agenda Packet
- Draft P & Z Minutes

Fiscal Impact (Finance): N/A

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 5-28-25



CITY OF TRUTH OR CONSEQUENCES
PLANNING AND ZONING COMMISSION ACTION FORM
DATE: 5-14-2025

ITEM:

Discussion/Action – Alternate Summary Procedure – Summary Plat Property Code: 3022077326147

BACKGROUND:

The applicant wishes to amend his parcel to separate out a section of property. Public hearing notice was published and sent certified mail to all applicable property owners within 100ft. All required documents and fees have been submitted.

SUPPORT INFORMATION:

**Summary Plat
Parcel Location Map
Area Reference Map highlighted – NOT TO SCALE
Public Hearing Notice
Code References
Findings of Facts Checklist**

Name of Drafter: Traci Alvarez	: Assistant City Manager	
E-mail: talvarez@torcnm.org	Phone: 575-952-0565	

ALTERNATE SUMMARY PROCEDURE - SUMMARY PLAT
OF TRACT 1, 3, 6, AND TRACT 7 AS THE SAME IS SHOWN ON REPLAT FILED ON NOVEMBER
16, 2001 IN BOOK 1, PAGE 2776 IN THE SIERRA COUNTY CLERKS OFFICE, AND TRACT A AN
11.25 ACRE INGRAM FAMILY LIVING TRUST TRACT, RECEPTION No. 201101264, IN BOOK 117,
PAGE 4715 SIERRA COUNTY CLERKS OFFICE
SECTION 28, TOWNSHIP 13 SOUTH, RANGE 4 WEST, N.M.P.M.,
TRUTH OR CONSEQUENCES, SIERRA COUNTY, NEW MEXICO
75.11 ACRES±
FEBRUARY 2025

DESCRIPTION

THE SUMMARY REPLAT OF TRACT 1, 3, 6, AND TRACT 7 AS THE SAME IS SHOWN
ON REPLAT FILED ON NOVEMBER 16, 2001 IN BOOK 1, PAGE 2776 IN THE SIERRA
COUNTY CLERKS OFFICE, AND TRACT A AN 11.25 ACRE INGRAM FAMILY LIVING
TRUST TRACT, RECEPTION No. 201101264, IN BOOK 117, PAGE 4715 SIERRA
COUNTY CLERKS OFFICE HEREBY DEDICATES TRACT 1a, 3a, 6a, 7a, 10 AND
TRACT 1A1

ALL ACCESS EASEMENTS AND UTILITY EASEMENTS SHOWN HEREON ARE
GRANTED WITH THE FILING OF THIS PLAT. ALL RULES AND REGULATIONS OF
THE CITY OF TRUTH OR CONSEQUENCES AND SAID UTILITIES WILL APPLY TO
THESE EASEMENTS. ALL OTHER EASEMENTS SHOWN HEREON ARE GRANTED
FOR THE USE INDICATED. NO ENCROACHMENT THAT WILL INTERFERE WITH
THE USE OF EASEMENTS, AS SHOWN ON THIS PLAT, IS ALLOWED.

THE REPLAT HAS BEEN DEDICATED IN ACCORDANCE WITH THE
DESIRE(S) OF THE UNDERSIGNED OWNER(S) OF THE LAND SHOWN
HEREON.

THE MAJORITY OF THE AREA OF TRACT 10 LIES WITHIN C-1 ZONING. THE ACCESS
ENTRANCE ROAD AREA OF TRACT 10 WITHIN T-1 ZONING AND ANY REMAINING T-1
ZONING AREA WITHIN TRACT 10 TO BE EXCLUDED FROM T-1 ZONING AND JOINED
TO C-1 ZONING BY THE FILING OF THIS PLAT. TRACT 6A LIES WITHIN C-1 ZONING.
TRACT 6A TO BE EXCLUDED FROM T-1 ZONING AND JOINED TO C-1 BY THE FILING
OF THIS PLAT.

THE OWNER, INGRAM FAMILY TRUST B ACTING THROUGH _____ SETS ITS
HAND AND SEAL THIS ____ DAY OF _____, 2025

INGRAM FAMILY LIVING TRUST, TRUSTEE

STATE OF NEW MEXICO)
COUNTY OF _____)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS ____ DAY OF
_____, 2025 BY _____

MY COMMISSION EXPIRES _____

NOTARY PUBLIC

BASIS OF BEARINGS

BASIS OF BEARING FOR THIS SURVEY SHOWN HEREON IS NEW MEXICO STATE PLANE
COORDINATE SYSTEM GRID BEARINGS. DISTANCES AND COORDINATES ARE MODIFIED
(SURFACED) NEW MEXICO STATE PLANE COORDINATES, WEST ZONE 1303, NAD83,
NAVDSM, FROM A CONTROL POINT DETERMINED BY AN OPUS SOLUTION.

REFERENCE FRAME: MODIFIED NAD83(2011) (EPOCH 2010.0000)

ORIGIN OF SCALE: N= 765168.245 E= 289432.578 (N23°09'46.78" W) 07°15'37.41224")

GSD TO GROUND SCALE FACTOR: 1.0002695936

CONVERGENCE: 0° 16' 48.13"

ALL DISTANCES ARE GROUND DISTANCES, UNITS ARE U.S. SURVEY FEET

REFERENCES

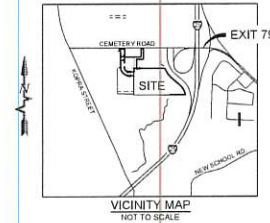
1. PLAT OF SURVEY BY RICHTER LAND SURVEYING, FILED 11/16/2001, BOOK 1, PAGE 2776, (SIERRA COUNTY)
2. SPECIAL WARRANTY DEED, FILED 05/11/2011, BOOK 117, PAGE 4711, (SIERRA COUNTY)
3. SPECIAL WARRANTY DEED, FILED 05/11/2011, BOOK 117, PAGE 4714, (SIERRA COUNTY)
4. WARRANTY DEED, FILED 05/11/2011, BOOK 117, PAGE 4715-4716, (SIERRA COUNTY)
5. WARRANTY DEED, FILED 05/11/2011, BOOK 117, PAGE 4717, (SIERRA COUNTY)

EASEMENT LINE TABLE

LINE #	BEARING	DISTANCE
L1	S49°13'30"W	15.00
L2	S89°22'00"W	86.00
L3	N0°04'22"W	162.15
L4	S40°00'00"W	126.62
L5	N00°33'30"E	108.58
L6	N20°04'10"W	381.70
L7	N00°23'17"E	11.89
L8	S00°37'54"E	388.74
L9	N00°23'17"E	27.84

EASEMENT CURVE TABLE

CURVE #	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	196.35	125.00	92°00'00"	N40°00'00"W	174.78



LEGEND

--- SECTION LINE
--- SUBJECT BOUNDARY
--- ADJACENT PROPERTY
--- EXISTING EASEMENT
--- NEW EASEMENT LINE
--- OVERHEAD ELECTRIC
--- EDGE OF DIRT ROAD

UTILITY POLE

--- DOWN GUY

☒ TELEPHONE PEDESTAL

☒ WATER METER

☒ WATER VALVE

⊗ WATER MANHOLE

⊗ SANITARY SEWER MANHOLE

○ FOUND 5/8" IRON ROD
(UNLESS OTHERWISE NOTED)

⊗ SET 1/2" IRON ROD WCAP "21204"

SIERRA COUNTY CLERK

PLAT NO. _____ RECEPTION NO. _____
STATE OF NEW MEXICO)
COUNTY OF SIERRA)

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR

RECORD ON THIS ____ DAY OF _____, 2025.

AT ____ O' CLOCK ____ M AND DULY RECORDED IN PLAT RECORD _____

PAGE(S) _____ IN THE RECORDS OF THE SIERRA COUNTY CLERK AND

EX OFFICIO RECORDER OF SIERRA COUNTY.

THE CITY OF TRUTH OR CONSEQUENCES DOES HEREBY ACKNOWLEDGE THE REPLAT OF
LOTS AS SHOWN ON THIS PLAT.

MAYOR _____

NOTES

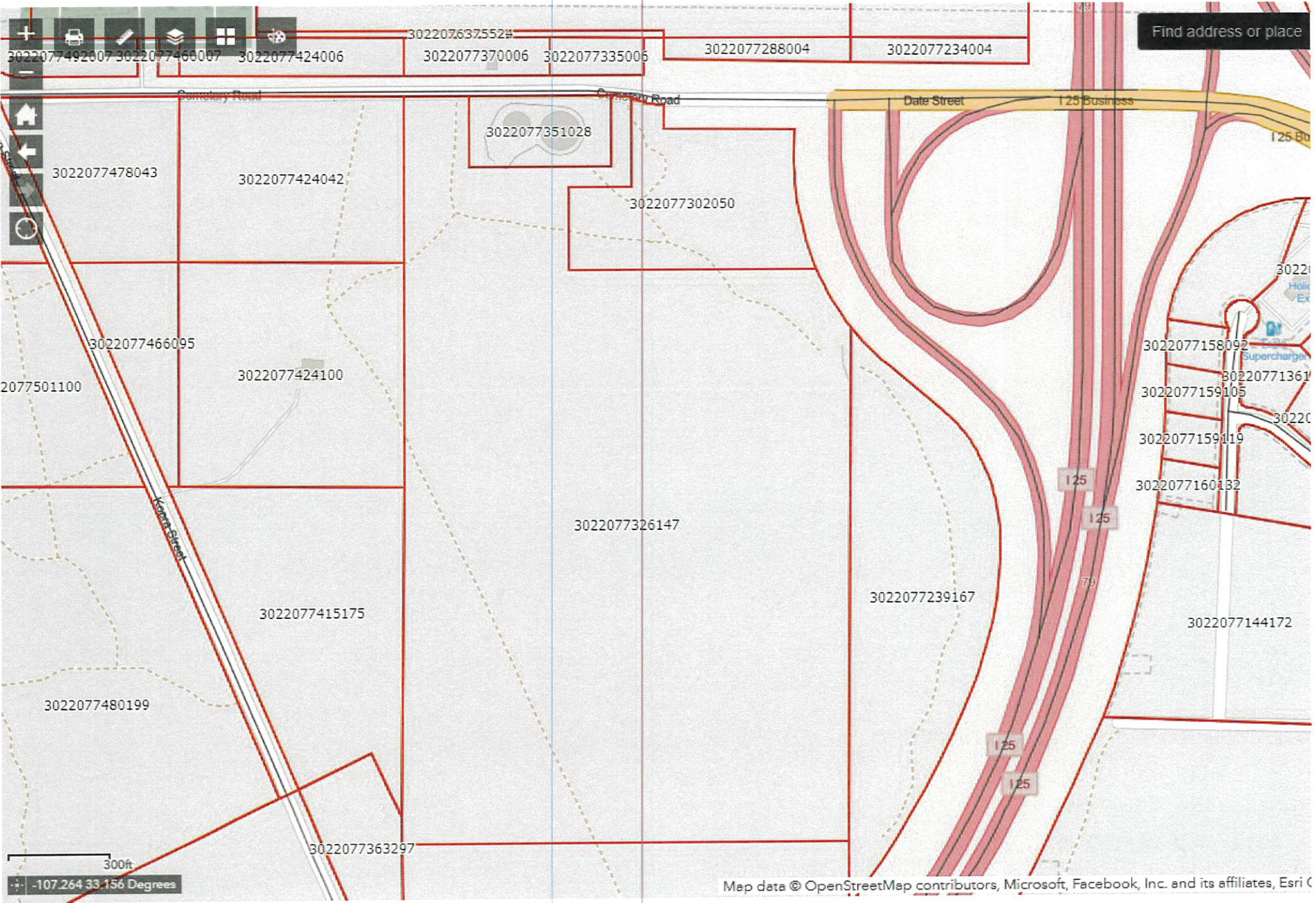
1. BEARINGS AND DISTANCES IN PARENTHESES ARE THE RECORD DIMENSIONS AS SHOWN ON
PLAT OF SURVEY FILED IN BOOK 1 PAGE 2776 ON NOVEMBER 16, 2001, SIERRA COUNTY CLERKS
OFFICE, NEW MEXICO.
2. SUBJECT PROPERTY LOCATED IN FLOOD ZONE "C" AREAS DETERMINED TO BE AREAS OF
500-YEAR FLOOD, AREAS OF 100-YEAR FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT
OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE, AND AREAS PROTECTED BY LEVEES
FROM 100-YEAR FLOOD ACCORDING TO THE FEMA MAP NO. 3500730595C EFFECTIVE DATE JULY
16, 1996.

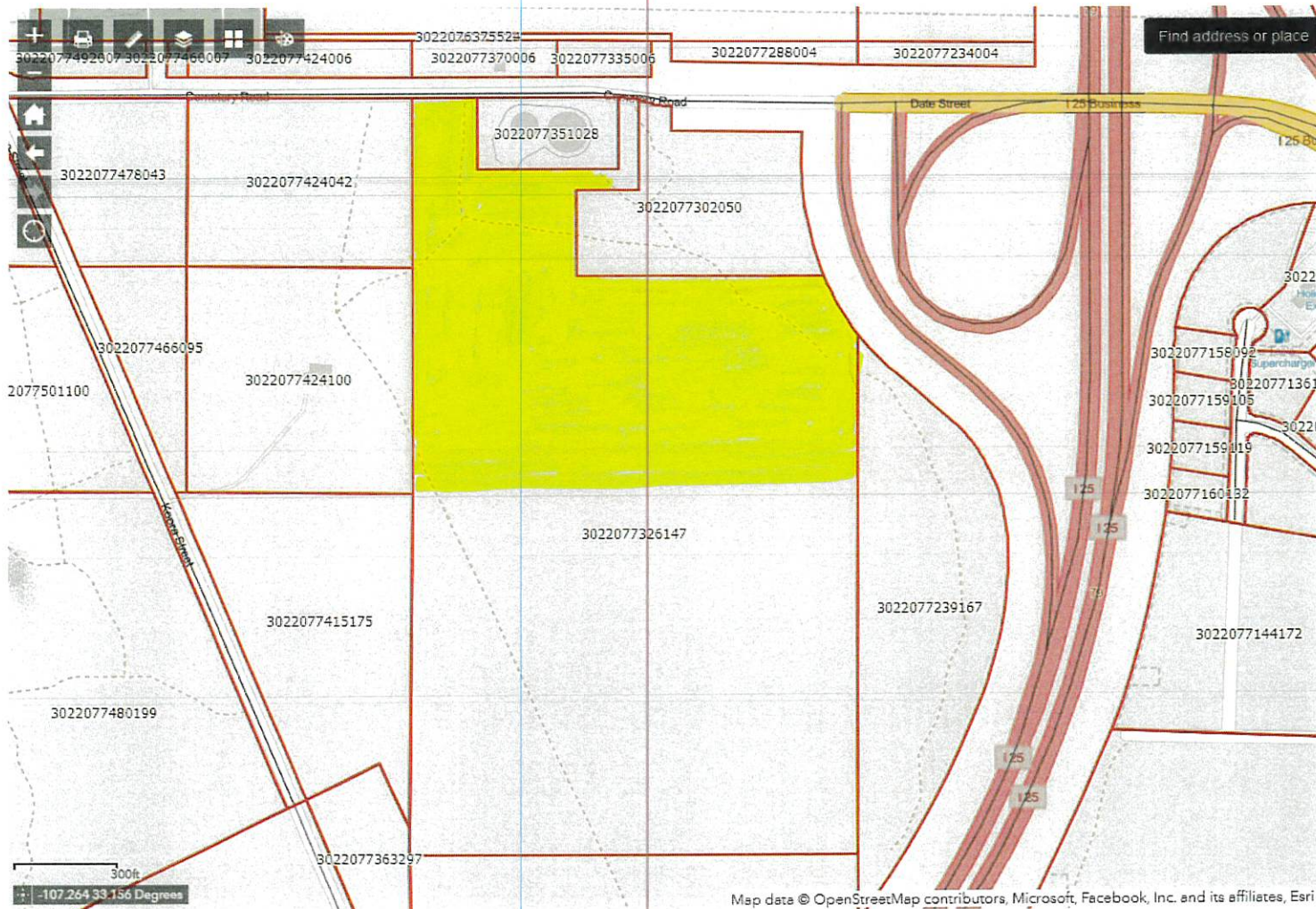
SURVEYOR'S CERTIFICATE

I, DARRYL D. COSTER, DO HEREBY CERTIFY THAT THIS SUBDIVISION PLAT AND THE ACTUAL
SURVEY ON THE GROUND UPON WHICH IT IS BASED WERE PERFORMED BY ME OR UNDER
MY DIRECT SUPERVISION, THAT I AM RESPONSIBLE FOR THIS SURVEY, THAT THIS SURVEY
MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO, AND THAT IT IS TRUE
AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DARRYL D. COSTER PS 21204 DATE _____

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*Rolf Hechler
Mayor*

*Amanda Forrister
Mayor Pro-Tem*

*Merry Jo Fahl
Commissioner*



*Destiny Mitchell
Commissioner*

*Ingo Hoepfner
Commissioner*

*Gary Whitehead
City Manager*

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

NOTICE OF PUBLIC HEARING

NOTICE is hereby given that the City of Truth or Consequences Planning & Zoning Commission will hold a Public Hearing during their regular scheduled meeting on Monday, May 12, 2025, to receive input regarding the following:

Public Hearing/Discussion/Action: Summary Plat Amendment - Alternate Summary Procedure on Property Code: 3022077326147.

The meeting will be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico starting at 4:00 p.m.

Please contact Traci Alvarez at (575) 952-0565 or by email at talvarez@torcnm.org should you have any questions regarding this Public Hearing.

The agenda for this meeting may be obtained on Friday, May 9, 2025, on the city website at www.torcnm.org; by contacting the City Clerk's Office at 575-894-6673; or by email to: torcclerk@torcnm.org.

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

Publish on the following date:

- Sentinel– Thursday, April 17, 2025

Sec. 11-2-2. - The Planning and Zoning Commission.

- A. *Purpose.* A Municipal Planning and Zoning Commission is hereby established for the purpose of interpretation of this Code, approving certain actions, receiving requests for modifications to this Code and re-zoning, and making recommendations to the City Commission concerning matters pertaining to zoning within the City.
- B. *Administrative review and interpretations.*
1. The Planning and Zoning Commission shall review an administrative action of the designated Zoning Administrator when it is alleged that there is an error in the order, requirement, determination, or refusal made by the designated Zoning Administrator and reverse, affirm, or modify the administrative action.
 2. The Commission shall interpret this Code when the designated Zoning Administrator is in doubt as to the exact meaning of the text.
 3. The Commission shall interpret the Official Planning and Zoning District Map in accordance with the standards set forth in the Comprehensive Planning and Zoning Code when the designated Zoning Administrator is uncertain as to the exact boundary of a District shown on the Official Planning and Zoning District Map.
- C. *Powers and duties.*
1. Recommend to the City Commission either approval, denial or modification of a request for annexation, special use permit, variance, subdivision, zoning, amendment of this Code, or any other land use consideration within the planning and zoning jurisdiction of the City.
 2. Grant final approval or denial of a home occupation or conditional use permit after public meeting, provided there is not an appeal to the City Commission within fifteen (15) days in accordance with Article 7 of this Code.
- D. ~~*Composition of the Planning and Zoning Commission.*~~ The Planning and Zoning Commission shall consist of five (5) members each to be appointed by a simple majority of the City Commission. Eligibility requirements for membership shall be established by the City Commission. Members shall serve staggered terms of two (2) years each. A recording secretary shall be provided to assist the Planning and Zoning Commission by the City. The recording secretary shall not be a member of the Planning and Zoning Commission and shall be only responsible for those duties requested by the Planning and Zoning Commission and approved by the City Manager.
- E. *Organization of the Planning and Zoning Commission.* The Planning and Zoning Commission shall elect a chairman, vice-chairman, and second vice-chairman in July of each year, or as required due to unforeseen vacancies. They shall serve for one (1) calendar year following their elections.
- F. *Voting.* A simple majority vote of a quorum of the Planning and Zoning Commission is required for approval of all Planning and Zoning Commission actions. A quorum requires at least three members of the Commission present.

In order for a vote to be valid on a particular issue, a quorum must actually vote regarding the measure. A member who abstains from voting on an issue is deemed to have not voted on the issue.

- G. *Findings of facts for recommendations and decisions.* In considering all requests, the Planning and Zoning Commission shall review applicable plans and determine whether the request will:
1. Impair an adequate supply of light and air to adjacent property;
 2. Unreasonably increase the traffic in public streets;
 3. Increase the danger of fire or endanger the public safety;
 4. Deter the orderly and phased growth and development of the community;
 5. Unreasonably impair established property values within the surrounding area;

6. In any other respect impair the public health, safety and general welfare of the City; or
7. Constitute a spot zone and therefore adversely affect adjacent property values.

All actions or recommendations by the Planning and Zoning Commission shall be based on Findings of Facts as to the impacts of the proposal, using the criteria listed in numbers 1 through 7, above. The Planning and Zoning Commission shall review each of the above listed factors and accord each factor the necessary weight on a case-by-case basis in making its determination.

- H. *Report to the City Commission.* The Planning and Zoning Commission shall provide written minutes, with recommendations as necessary, to the City Commission on all matters that are brought before the Commission. Such minutes shall include a statement of the findings of facts that were the basis of any decision or recommendation made by the Planning and Zoning Commission.

Sec. 15-15. - Alternate summary procedure.

A. *Approvals by Planning and Zoning Commission:* The Planning and Zoning Commission may approve or deny the following types of subdivisions:

1. A re-plat of a previously filed subdivision when:

- a. No more lots are created than exist in the area at the time of the submittal of the replat application; and,
- b. All lots to be created have direct, legal, unobstructed access to an existing City maintained street;
- c. All lots to be created have direct, unobstructed legal access to existing City water and wastewater lines;
- d. The subdivider files with the City a Letter of Credit for funds adequate to pay for connecting the lots to the City's water and wastewater lines, or, pays to the City the City's fees for connecting the lots to the City's water and wastewater lines;
- e. The new lots comply in all ways with the standards for lots contained within the City's Comprehensive Planning and Zoning Code;
- f. All new lots are laid out in a manner which allows utility service to be provided to the purchasers of said lots;
- g. All lots to be eliminated or created exist within the area of a single block of lots in a previously platted and filed subdivision; and,
- h. No vacation of street dedications or utility easements is proposed; or,
- i. Lots are to be eliminated.

2. The subdivision of previously unsubdivided land when:

- a. No more than two lots are created;
- b. Both lots to be created have direct, legal, unobstructed access to an existing City maintained and paved street with curb gutter and sidewalk;
- c. Both lots to be created have direct, unobstructed legal access to existing City water and wastewater lines;
- d. The subdivider files with the City a Letter of Credit for funds adequate to pay to connect both lots to the City's water and wastewater lines, or, pays to the City funds for connecting both lots to the City's water and wastewater lines;
- e. The new lots comply in all ways with the standards for lots contained within the City's Comprehensive Planning and Zoning Code;
- f. The new lots are laid out in a manner which allows utility service to be provided to the purchasers of said lots; and,
- g. No vacation of street dedications or utility easements is proposed.

B. *Limit on number of summary procedures:* The summary procedure shall be used only once on any one property, or within any group of contiguous or adjacent properties owned by a subdivider, unless the property has been master-planned, legally subdivided, and is zoned for industrial uses, and wherein the streets within those subdivisions have been dedicated to and accepted by the City. No subdivider who has received approval of a subdivision shall utilize the summary procedure to subsequently increase the number of lots within said subdivision.

C. *Elective pre-application procedure:*

1. Prior to filing a summary plat, the subdivider may submit a conceptual plan of the proposed subdivision to the City's Zoning Administrator. The conceptual plan shall provide enough

information for the Zoning Administrator to locate the proposed subdivision and to comprehend its scope and potential impacts. Neither a written application nor an application fee are required for submittal of a conceptual plan.

2. The City's Zoning Administrator shall place the proposed summary subdivision on the next possible agenda of the Planning and Zoning Commission for discussion, when the Planning and Zoning Commission shall consider the proposal with the subdivider or the subdivider's representative and shall indicate changes, if any, that will be required for the submittal process.

D. *Summary plat submittal requirements summary plat submittal requirements are:*

1. Application, signed by all property owners, including all parties having an equitable interest, trustees of an estate and all persons having a specific "power of attorney" in such land;
2. A record of any pending litigation or any final order entered by any court of law regarding the ownership of the subject property;
3. Application fee as established by the City;
4. Documentation from the Sierra County Assessor's Office that the current year's property taxes are paid and that no taxes are owed on the property;
5. A plat conforming to section 15-13.A of this Code; and,
6. Releases by the Public Utilities Advisory Board, and all utility companies which are proposed as providers for the subdivision.

E. *Submittal and review procedures:*

1. Incomplete submittals will not be accepted for review.
2. The subdivider shall submit all required materials to the City's Zoning Administrator.
3. The City's Zoning Administrator shall review all materials, and shall within three working days ~~from the date the application is determined to be complete, request opinions of applicable City departments, other governmental agencies, and utility companies for review, comments and recommendations. City departments shall have ten calendar days in which to review and respond in writing to any such request. Within three working days of receiving any written reports, comments or recommendations from any City department, governmental agency, or utility company, the Zoning Administrator shall make available to the subdivider a copy of such materials.~~
4. The Zoning Administrator shall have the right to require that the subdivider provide additional information or to make amendments to the plat and supporting information if the Zoning Administrator determines that the information originally submitted by the subdivider was incomplete, incorrect or invalid.
5. The subdivider shall have ten working days in which to make any corrections or additions required by the Zoning Administrator, or to request a postponement of action by the Zoning Administrator for up to 135 days.
6. If a subdivision application does not meet the requirements of this Code within 180 days of its original submittal, the Zoning Administrator shall summarily reject the application and notify the applicant in writing of the reasons for the rejection.
7. At such time as the subdivider meets the requirements of this Code, the subdivider shall provide the Zoning Administrator with a copy of the final plat.
8. At such time as receiving a submittal that meets all requirements of this Code, the Zoning Administrator shall recommend that the Planning and Zoning Commission approve the final plat by consent agenda action during its next regularly scheduled meeting, and the Planning and Zoning Commission shall approve the subdivision by consent agenda action during its next regularly scheduled meeting.

9. The subdivider shall file a signed copy of the final plat in the records of the County Clerk of Sierra County, and shall provide the City with one of the signed copies.
- F. *Divisions for the purpose of mortgage:* Divisions for purposes of mortgage are not allowed. If a property is to be mortgaged it must be done so in its entirety or properly subdivided as required in this chapter.

(Ord. No. 555, 5-23-06)

Sec. 15-17. - Amendment of plats.

- A. *Administrative amendment:* Any change that is required to correct an error in lettering, numbering or other minor detail on a filed plat which does not affect any material aspect of the subdivision will be considered a minor amendment. Administrative amendments may be processed and approved by the City's Zoning Administrator, who shall have the right to require review and approval by the Planning and Zoning. The City's Zoning Administrator shall insure that the corrections are noted on the original filed plat. The fee schedule for administrative amendments shall be as approved by the City of Truth or Consequences.
- B. *Minor amendment of plat:* Any proposed amendment that is greater than an administrative amendment which does not have the effect to significantly alter the impacts on utilities, drainage, or traffic, may be approved as an amendment by the Planning and Zoning Commission.
- C. *Major amendment of plat:* Any proposed correction or amendment of a filed plat that affects material aspects of the subdivision shall be considered by the Planning and Zoning Commission, with approval by the City Commission, the Planning and Zoning Commission shall determine if the subdivider may use the alternate summary procedure or if the subdivider shall be required to vacate a portion or all of the filed plat and follow the procedures appropriate for the approval of a new subdivision. The fee schedule for major amendments shall be as approved by the City of Truth or Consequences.

(Ord. No. 555, 5-23-06)

PLANNING AND ZONING COMMISSION

FINDINGS OF FACTS CHECKLIST

Request Date_____ Address_____

Findings of facts for recommendations and decisions.

In considering all requests, the Planning and Zoning Commission shall review applicable plans and determine whether the request will:

1. Impair an adequate supply of light and air to adjacent property;
2. Unreasonably increase the traffic in public streets;
3. Increase the danger of fire or endanger the public safety;
4. Deter the orderly and phased growth and development of the community;
5. Unreasonably impair established property values within the surrounding area;
6. In any other respect impair the public health, safety and general welfare of the City; or
7. Constitute a spot zone* and therefore adversely affect adjacent property values.

All actions or recommendations by the Planning and Zoning Commission shall be based on Findings of Facts as to the impacts of the proposal, using the criteria listed in numbers 1 through 7, above. The Planning and Zoning Commission shall review each of the above listed factors and accord each factor the necessary weight on a case-by-case basis in making its determination.

*Spot Zoning: The singling out of a lot or small area for a District change, which is out of harmony with the comprehensive plan and surrounding land to secure special benefits for a particular property owner without regard for the rights of adjacent landowners.

**CITY OF TRUTH OR CONSEQUENCES
PLANNING & ZONING COMMISSION
MINUTES
MONDAY, MAY 12, 2025**

REGULAR MEETING

Regular meeting of the Planning & Zoning Commission of the City of Truth or Consequences, New Mexico to be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, on Monday, May 12, 2025 at 4:00 p.m.

INTRODUCTION:

ROLL CALL:

Chris Sisney, Chairman
Susan Buhler, Vice Chairman
Esther Luchini, Member
Lisa Kent, Member
Molly Hammer, Member

ALSO PRESENT:

Gary Whitehead, City Manager
Traci Alvarez, Assistant City Manager
Angela Torres, City Clerk
Katy Martinez, Deputy Clerk

1. APPROVAL OF AGENDA:

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

2. APPROVAL OF MINUTES:

a) April 14, 2025.

Chairman Sisney made a motion to approve the minutes with the amendment noted by Chairman Sisney. Vice Chairman Buhler seconded the motion. Motion carried unanimously.

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

There were no comments from the public.

Deputy Clerk Martinez swore in the participants for the public hearings.

4. PUBLIC HEARINGS (5 Minute Rule Applies)

**a) Public Hearing/Discussion/Action: Summary Plat Amendment - Alternate
Summary Procedure on Property Code: 3022077326147.**

Assistant City Manager Alvarez: The purpose of this hearing is to review and discuss a request for a summary plat amendment at the property code as referenced on the agenda and for the board to make a motion to recommend approval or denial of the request. The property is located in the C1 zone. The request has been reviewed by city staff as well as the Sierra County Assessor's office. Per our code of ordinances chapter 15 the sub-division code section 15-15 alternate summary procedure that is included in your packet for reference. We have determined the following, all lots do have direct legal unobstructed access to an existing city-maintained street, all lots created have direct and unobstructed legal access to existing city water and wastewater lines. The subdivider will pay the city the fees for connecting the lots to the city's water and wastewater lines. The new lots do comply in all ways with the standards for lots contained with the city's comprehensive planning and zoning code. All the lots are laid out in a manner which allows utility service to be provided to the purchaser of said lots. In your packet there is a map with the approximate reference of the summary plat area. The area that we are looking at is the highlighted area it is approximate and not to scale for reference our cemetery is above it and the water tanks on the north end of town. We are looking at the entire parcel and the applicant is requesting to split that parcel.

Chairman Sisney: What is the variance that they are asking for?

Assistant City Manager Alvarez: They are not asking for a variance they are asking to amend their lot line its an alternate summary procedure we are not asking for any type of variance. They are asking to split the parcel. It's a large parcel and so they are asking to subdivide that parcel.

Chairman Sisney: Why do they need to come to us for that?

Assistant City Manager Alvarez: Because our municipal code states that is more than an administrative amendment. In your packet you have the section pertaining to the code 15-7

and it talks about amendments of plats. Any proposed amendment that is greater than an administrative amendment which an administrative amendment is defined up above. It has to go to the Planning and Zoning Commission. This one is more than an administrative amendment. The administrative amendment is a change that is required to correct an error in lettering, numbering or a minor detail. This is much more than just a correction so per the code it has to come to the Planning and Zoning Commission.

Chairman Sisney: Thank you for clarifying that.

Member Kent: If it was divided as the map shows with the highlighted area, how would they access the lower lot?

Assistant City Manager Alvarez: The properties around are owned by the same property owner so they can provide easement or access. I do believe down below there is a designated easement on one of the properties already on file at the accessors office. That is why we had a full review done by the county accessors as well.

Chairman Sisney: On the other map it shows a 2-track easement.

Member Hammer: If the same property owner owns those sections, they can provide themselves egress. In the future if they decided to sell those parcels is an issue with landlocking that piece?

Assistant City Manager Alvarez: No, because there is already a designated easement through those on file at the accessors office.

Vice-Chairman Buhler: What do they plan to do with the property? Do they have any plans?

Assistant City Manager Alvarez: There is some development plans. This is the area that potential the Love's Truck stop would be going. Although that isn't pertinent information for the request they have today.

Chairman Sisney opened the public hearing.

Proponents:

Barbara Peck: I'm here on behalf of the Ingram Family Trust and Love's Travel Stops. We are asking for the lot split that Assistant City Manager Alvarez described. Thank you for opportunity to present this to you and I'm here to answer any questions you might have.

Member Hammer: This specific meeting is not about an application for Love's Travel Stops right? We are not asking questions with regards to that?

Vice-Chairman Buhler: It's for the separation of the property.

Chairman Sisney: Nothing else will come before us.

Opponents:

There are no opponents.

Chairman Sisney closed the public hearing.

Member Kent made a motion to recommend approval to the City Commission for a Summary Plat Amendment - Alternate Summary Procedure on Property Code: 3022077326147.

Member Hammer seconded the motion. Roll call vote was taken. Motion carried unanimously.

b) Discussion/Update: Open Meetings Act.

City Manager Whitehead: It's good to be back with guys again. In my commitment to serve and understand where we are going one of the things I want to be active with is Planning and Zoning. ~~My intention is in the future is to not be present at all the meetings. My hope is that~~ Traci and I build a good report. We are already doing very well. She understands the path I want to be on. I want to help her and be supportive of the work she has done. She has been doing this a long time by herself and we are going to continue to find those common grounds and work with in those. The other part is to try and find a way to allow you guys to be an active board. The action you guys just took is an important part of our planning. You need to take a look at all the stuff that is important, you ask the right questions as far as egress, access and utilities. If all those things are in order your job should be simple. You have taken the public's view into consideration. But there are things with in our code that are going to require our attention and I want to give you guys the space to begin to feel like you confidently can start asking to do those things. Last month after I came, I did receive an email from Member Hammer and it had 3 members of the committee on that email chain and it was asking to have a work shop and be able to do it in a private setting so we could discuss some items which are all relevant. Except for all those things kind of violated the Open Meetings Act, number 1 as a committee you cannot have 3 of you on an email chain and have discussion. If that chain is forwarded then it becomes what we call a rolling quorum then the decision that you make could be subject to some potential challenges or potential lawsuit. Some can say that the committee made their decision without presenting it to the public and in an open forum. Generally, it doesn't mean that we are all going to jail but it would mean that the decision that committee might have made would have to be redone. I felt like we should revisit open meeting a little bit, have some discussion about that. Also talk about what my vision was for workshops. I have a few things to do every day and that's not an excuse for me not to

potentially give each one of you the time that you deserve. I want to meet with individually; I want to give you the time. Sometimes I won't be able to always just go as fast as potentially you want to go. I thought we should rebuild the platform for discussion here. How we could get to a targeted goal. Also, last month talked about tiny homes and maybe changing the code in R3 to go a little smaller. We are going to have to do changes in the code in a group. Every time we change the ordinance it opens that ordinance for a challenge it's the way the law is in New Mexico. In our city an ordinance can be challenged by a number of the residence bringing forth a petition. If we going to change the zoning ordinance a little bit we should do multiple things. That is the picture I want to give you. We should take a look over the course of the remainder of the year, look at a few things that are in the code that we really feel like if we did that then we would have a little better code. We word smith it here, we work it here, we come up with a strategy, we present it and then we get it on the city commissions agenda. Then the commission will decide to vote it up or down in an ordinance. Then for challenges we are challenged one time not 10 times. The last thing is I recognize how important each of your times are. I envisioned that we would do what we just did hear today, you would conduct the business of the planning and zoning and then the remaining part of the meeting you spend in a workshop where we could discuss things. Then individually I would like for you to form your own opinion, write your own position paper on how you think that code would go. That gives us a foundation. We can take them all put them together and come back and say this is what you as the committee individually thought about this and now we could make some decisions to move forward. That is how I would propose we use the workshop time. We start with business and then workshop. If the agenda is long and we can't do a workshop then we don't have one. Having said all that I would like to know what your thoughts are on those ideas.

Vice-Chairman Buhler: I think it's a good idea. We have approximately 40 minutes now that we would have to discuss something and share ideas on how the code could go for tiny homes. I know I brought some notes that I have. They are from Albuquerque it's their tiny home guidelines. It's important. California is the friendliest to tiny homes I found that out in my research.

Member Luchini: Would the topic change each time?

City Manager Whitehead: Yes. Also to have the board in protocol the chairman is really supposed to be driving the committee. I haven't read the whole code but the chairman has the ability to call a workshop. If you think we need a special meeting you have the ability to contact the clerk's office and have that scheduled. At the same time as the chairman, you have the ability to say you want to discuss certain items. You guys can individually talk about and decide what is the best items to discuss and have it put on the agenda so that the committee knows that you are going to have a workshop about the ideas. The committee can request of you individually. For us our role to be respectful to the committee is to work through the chairman. If the committee feels you are not doing a good enough job and they want to replace you then they would come to the clerks and say they wanted to do a reorganization of the chairman. I don't think that is the case here. We want to be respectful of you. I want to be respectful of your time to say you should have time with me monthly, every six weeks whatever it is you

should be able to come in and see me before the meeting and Traci as well to discuss what is going on and have us brief you on particular issues. So as the chair you are in a comfortable position to lead us down a good path. That is where the ideas would come from on the workshops.

City Clerk Torres: I would ask that if you guys want to do a workshop outside of the regular meeting give me a week notice because I do have to publish it and it has to be published 72 hours of the date.

Chairman Buhler: It's my understanding that if it affects the public it has to be open to the public. If it's like informational it could be without being recorded, like if it were like a training.

City Clerk Torres: If it was a training that would something different. If it's something that you guys are going to discuss that pertains to the city code or anything of that nature you would have to do it in an open meeting.

City Manager Whitehead: Hypothetically all 5 of you could go to a municipal league conference that was about planning and zoning committees. That is a public setting it's in the public, the municipal league has published it, it's open to the public. You just know your roles would be not to go sit in a corner all 5 of you and discuss city business. That is up to you to be honorable and ethical. But you could do training. However, if were having a meeting here just as general conversation the clerk has to post that meeting.

Member Hammer: As a member who do we send our workshop idea to? Do we send it the chairman and then he asks the clerk to put it on the agenda?

City Manager Whitehead: That would be proper protocol. That could also work through the clerk. You are not unlimited to the clerk; you could send it to them and ask them to get it to the chairman. That's a relationship it comes to the clerk. The chairman is getting several ideas from the all of you. Individually you could email the chairman. You just can't email all 5 of you and say here is what I want to talk about next week because the moment someone reply's now you have violated the open meetings act by starting a chain that can be construed as a rolling quorum. Individually you can contact the chair, it would be best if you contacted the chair and the clerk. Those are always great connects so the clerk knows everything you guys are communicating about. They clerk will then bring myself and Traci into as well.

Member Hammer: So, when are we having our next workshop about ADU and tiny homes? Do you still want feedback about that topic?

City Manager Whitehead: Absolutely, I would love feedback. Let's talk about how that should work. I envisioned that each of you would individually give me a position paper. You would each put your own spin on how you think the code would go. Then we could take all that information organize it and come back the next workshop. For example, today could have been the tiny homes and we would let you know what every one's thought where. We would come up with

something and you could decide if we should start drafting a code or not. Then we would do the same with the next subject. We would have the same protocol. We would have open dialog we discussed it, individually you gave us a position and then we developed ideas off of your ideas. We would come back to and let you know what we found or whatever the case may be. We are open to however you feel you want to have dialog back and forth, to help us come up with ideas.

Vice-Chairman Buhler: That works for me.

Member Kent: I think it's good to talk about and then we each write something up when we have time for more thought and then reconvene. It might take a couple meetings before we get anywhere.

Member Hammer: Manager Whitehead what is the potential dead line on receiving our information. I know you have deadlines of things you would like to get completed this year. I know this is a big one if we are going to put this in the ordinance change bucket.

City Manager Whitehead: Let's be fair to each other. We have not been down this road before. Maybe we set something towards the end of the year but again I would say my time line would be each meeting for the dialog to be complete. For example, last month we talked about tiny homes and we had received a position from all of you then this would have been the last meeting where we reopened it and discusses it then we move on from it. We go to the next subject. ~~We do that in a 30-day period. If it needs more than the chairman just lets us know we~~ are not done with that topic lets continue to discuss it. I think I want to lean on Traci. We definitely need Traci's input she has lived in the code a long time. I think you guys should allow her the opportunity to say that's how that was going for us over the last few years. I also think it's fair for her to decide when are we ready to present these ideas before the commission to change the ordinance. I'm not going to set the time, I'm going to set the pace, I'm going to challenge Traci to say let's bring the committee let's start working on this. I want to give her the ability to say I think we are ready to go to the commission.

Member Hammer: Are there other topics that would be beneficial for the board together and workshop about in our pipeline for the year besides tiny homes? Has anything else come up? I'm just thinking if we could maybe get a schedule together of maybe we want to talk about ADU's for the next 2 meeting and have a dead line for ourselves. Then whatever other topic and we can discuss that a later meeting. Just so we can see a road map of topics that we might be covering.

Member Luchini: I feel like the topics come up as needed. The meeting come up and then we know. We never though tiny home and small homes where an issue. Well, they were an issue one other time.

Member Hammer: Now it's just a hotter topic.

Member Luchini: For me I feel like for the tiny home if I had more advance notice of the topic before the meeting, I could research it more. I could have followed the newspaper and found out what the topics are going to be on the agenda other than just receiving it on Friday before the meeting on Monday. Does that make sense?

City Manager Whitehead: Yes.

Assistant City Manager Alvarez: If it's a public hearing we know with a certain amount of time in advance but there are times where we might not know something is going to be on the agenda until the last minute. That is typical even with our city commission. It's a working document right up until the deadline that Angela has to put it together and send it out.

Member Luchini: I understand that so why can't they be tabled for more discussion?

City Clerk Torres: If it's a public hearing I wouldn't recommend tabling because there are protocols, we have to go through. We have to do a publication; it takes 15 days. It would delay the applicant if you want to schedule for the next meeting. I would be cautious of that. There is also the cost of it.

Member Luchini: The tiny home issue that a month or 2 ago. We all had different ideas on what could or should be done compared to what the code was or isn't. But we ended up making a recommendation that day. Could we have tabled it for more discussion?

City Clerk Torres: For public hearings I wouldn't recommend tabling them because like I said what would happen is if you wanted to have it with that month, we would have to first see what is available. We would have to publish it again. We would have to pay for certified mail and publication again. That would just put them another 15 days out. We would still have to see when it could go to commission. It just delays the application. If it is something in your workshop if you wanted something ahead of time on the workshop that is more doable but public hearing I wouldn't recommend because of the process. I know it's hard to make a split

Vice-Chairman Buhler: I think it was brought up about the fire chief and possibly having an engineer look at some of these items like the tiny home that went in on Riverside that was approved for that lot size. It's in between 2 mobile homes. I think the fire chief should have to look something like that before it is approved by the city. If you go drive down there and look at it. I know when things are closer if you don't have the setbacks in some states you have to have a higher quality fire retardant type material you have to use. There are things that have to be done that may not be being done.

Assistant City Manager Alvarez: The only thing I would add on that one is I try to do my do diligent to make sure all departments are given the information and get back to me. In that situation the fire chief was semi non responsive. I had already done the public hearing notices. That is why when I presented it to you guys and I didn't have the fire chief the recommendation was to approve it pending the fire chief review and approval. Before it went to commission it

had his approval. He is not just sitting in an office and sometimes he is not super easy to get ahold of but prior to bringing these items to you I always make sure that they have gone out to the departments for their review. I figure there is plenty of time I have a 15-day publication notice surely 2 weeks is plenty of time to get all my information. I tell people if they are having a public hearing it takes 60 to 90 days to get all the way through the process. That is for me to be able to review get comments back, get the schedule, come to you guys, get the draft minutes and go to commission. That was a singular circumstance that I didn't have all the information.

Member Luchini: Are any of these issues public hearing issues on a immediate time line that they can't be tabled.

Assistant City Manager Alvarez: Sometimes yes. I do get people that come in and they have property under contract and didn't realize that with in their sale price that there is an issue or concern and something had to be changed. Sometimes no they can be told that they need to wait but if I have already published the public hearing. Paul is usually very responsive it just happens to be that he was available. There is usually plenty of time for me to get with water, sewer and electric and get their review as well as we have an engineer that over sees all the large development. I don't over see that and there are times I reach out for his guidance and approval just to make sure that there is nothing really weird about them.

City Manager Whitehead: I hear what you are saying and I think there is some relevance to that. We should be able to give with in 5 days of the meeting a completed packet. I don't think that is unreasonable. ~~I can push on Traci a little bit because hopefully I'm here to help her as well. I~~ hope there is a little relief in the office that she is not just juggling 20 things in the air. I think if we work together to kind set a good process and give her the space. I don't think unreasonable for Wednesday evening before the meeting for you to have a packet. In being able to commit to that the second piece would be you have to give Traci the confidence to say if she goes and does all the steps by the code she has checked everything down. We would want the zoning board to say those are statements of facts Traci has done the fact finding. Those are all statements of facts what are the concerns that we are not seeing or the public might be concerned with, what potentially are we missing that aren't covered in the statement of facts and that becomes relevant and then follow those protocols to have a good public hearing get to a yes or no vote and move on. I feel like we could figure out a way to make sure we are delivering that and giving you the ability to have enough information and enough time to understand it. Maybe we need to let you know when the applicant comes in. Maybe we need a better process to say when some one has applied for a summary plat review or a variance and its going to be coming to you in 90 days and it's your obligation to being studying what that is, what do our rules say, how do I get better. Maybe there is something that we can do to help both of the process.

Member Hammer: Thank you for bringing that up Esther I feel like us getting before the weekend we don't have a lot of time to research. I looked at this over the weekend and I thought maybe I should drive over there to check it out but I didn't have time. Once the packet and the public hearing is created and we are at the meeting is the understanding that Traci has

gone through the fact sheet and you have checked it and highlighted any potential issues or is this our job to look at this? I know you are doing a lot of do diligent, you are doing a lot of steps to even get to this point and we should trust that you are going through the right motions and the right protocol. Where are the roles and responsibility of what the board is supposed to do, I know we are suppose to ask some of these questions but have you done that already?

Assistant City Manager Alvarez: When I do my review, I consider the 7 findings of facts as well as multiple other items in the code. Does it meet lot size, does it meet dwelling, does it meet the setbacks if those are applicable. Yes, I do the reviews before bringing it to you guys but with that being said if I review something and it doesn't meet that. This is something Gary and I have been working on. I the past what I have been directed is I don't come to you and recommend for you to approve or recommend for you to deny. I am supposed to come and submit to you the facts and what I have found and then it is your guy's job to look at that findings of facts and determine weather or not it should be approved or denied based on those 7 findings and facts. The only other thing is I know we talked about open meetings act and you had made a comment about driving by which is fine. I know our attorney was here once. I think Angela can explain it better than me.

City Clerk Torres: In your packet is included the Rules of Procedure that was adopted. On the first page it goes over Ex Parte communication. In also gives you the guidelines where you can drive by the property but you can't contact the applicant directly it would be in violation if you did.

Member Hammer: If we did have a question, would we route through Traci?

City Clerk Torres: Yes. If you have any questions at any time, you can call the city managers off and ask to speak with Traci and can answer any kind of questions that you have on these items.

Assistant City Manager Alvarez: I know that you asked if there was any other topics besides AirBnb's. I don't know if maybe for our next meeting one of the items on the agenda could be a topic list. I do have some I have taken notes in my office where I get phone calls for stuff randomly. It might be only one thing. Other than tiny homes and AirBnB's there are other things. Off the top of my I know there are Yurts and shipping containers have become a big thing for dwelling units.

Member Hammer: As a member I would like to know those topics. Your ear is to the ground you are getting the input form the public. Like you are saying they are becoming bigger topics it would be nice for us to have some time to review or discuss.

Assistant City Manager Alvarez: Maybe at the next meeting we can discuss topics that we want to go over.

City Clerk Torres: I know the next item is set a date and time for the workshop instead of doing that do you guys want on the next agenda we will put the topic list and once you have items

that you want to discuss we can put that on the agenda a set a workshop at that time or do you have any other recommendations?

Member Hammer: I would like to talk about ADU/Tiny Homes in our work shop. Stay focused on that specific one. I would like to know what the topics are and then after we discussed doing the workshop on ADU's then we can pick our next topic.

Member Kent: I think we have to finish up the ADU's because we have already started it but it would be nice to see a list of what Traci gets the most calls about or things we have heard about and then we can prioritize them out.

City Clerk Torres: Do you want to have the workshop as it was discussed after the items on the agenda?

Member Kent: That seems reasonable. If we find that we are not having the time and we need and we have to come back to a new plan we can.

City Manager Whitehead: I would say exactly that. I would prefer the agenda have a workshop item on it every time and if we don't get to, we and it looks like we are getting busy and we don't have time to get to them then we could potentially call for a special meeting. Also again really supporting Traci in this effort and know she has worked the code. I like the fact that she wants to put together the list. Let's do that and work through that. I was going to suggest we get with her and get her ideas and ask her what are things in the code that she finds strange. It may not just be tiny homes there are a lot of things that potentially may need to be cleaned up. they may just need small fixes. I think it could both ways where you say we may need to get somethings out of the code because it's not relevant and now we need to go down this road because it is relevant. I think we need to work through that and give it time.

Vice-Chairman Buhler: Can you bring what you have Traci on tiny homes.

Assistant City Manager Alvarez: Yes.

Vice-Chairman Buhler: That would be good to see.

City Clerk Torres: On the workshop if you guys have something prior to or on the day we send out the draft agenda you can send it to us and will make sure it is distributed to everyone so that they can have it a head of time.

Member Kent: what do you mean?

Member Hammer: Like our position paper?

Member Kent: The position paper will probably be submitted before but like supporting documents. For example, I went and did research and I printed this out.

City Clerk Torres: Yes, stuff like that, if you want everyone to see it send it to us.

City Manager Whitehead: In your packet you have the open meetings act information. These are 2 good examples where you might find some documents that really talk about the issue that you found in some state or city and you want to send the code. You get that to the chair or to the clerk and now all of your handouts are provided so that everyone can read what you read that's the concept. The position paper would be on top of that. It would be the reasons one why you would like to see things happen. Then we start writing really good code, I think.

Vice-Chairman Buhler: We really don't have code for tiny homes.

Assistant City Manager Alvarez: We have minimum dwelling units that's it.

Member Luchini: That part of my point also why rush to make a recommendation if we feel like the code isn't up to standard.

City Manager Whitehead: Remember no action is still action.

Member Luchini: That's why I feel like we should if we could table things.

Vice-Chairman Buhler: That's kind of what has brought us here to this point, I think.

City Manager Whitehead: Let me just add if I'm watching your facial expression. Generally, when someone comes for a variance, you have a little bit of nervousness like what are we doing, what are we changing. I think it feels like if you said let's put tiny homes over here on the side and deal with it when it comes up. It's going to always keep coming up as a variance versus saying it's here its real, its really happening do we want to go down that road or do we not want to go down that road. I think that's ok we don't have to change everything. I don't think either of us are advocating but I don't think it's fair not to take in. If you say we want to look at these on a case-by-case basis so, be it, that's the way we will go. But when a variance comes look at it with open eyes and open mind to say we did it before are we doing the same thing. That is all I'm advocating for. We can't deny that you can buy a 390 square foot small manufactured house that is set down on the ground and complies with every code we have. It's for sale, it's for sale everywhere people can buy it, its affordable, it meets all the conditions except in our code to do you have to do a variance by 110 square feet. Is that where we want to be every time or do we want to say let's absorb that figure out and make it part of the code. Then Traci can just deal with it because its part of the code, we move on and it's no longer a variance. If you don't want it all if you felt like that wasn't the right thing and it should be 500 square feet. That's particular issue was a 500 square foot. We went down to 390 square feet. They could have bought the same house at 500 square feet.

Vice-Chairman Buhler: I think standards are important. I think we should try to move from that point of view with regards to tiny homes.

City Manager Whitehead: I'm going to echo Traci. The shipping container issue is real. People are moving them in there is shows all over showing you can buy them. We can't put our heads in the sand and say lets just hope it doesn't come to us. If people are going to take and put 2 shipping containers together and have 500 square feet and they take 4 of them and put them in the R3 zone that is a variance that can come to us. I don't know is it good or is it bad? The right person would make it look nice. The wrong person would not.

Member Kent: To follow up where we are at with these topics. We brought up tiny homes and ADU which is not exactly one in the same but could be. So going forward for next month are we saying we are going to come in and finish that conversation about these 2 things. You want position papers, thing together and weather we think yes, we should make a change to the code or no lets just do it case by case just so we can keep this particular topic moving. Which is sort of 2 topics but they kind of overlap.

City Manager Whitehead: I think we should stay on 1 topic follow it through. Let's see how we handle it, how does it feel, how does it work and did the system give us something. Let's try it and then we start diving into the other issues.

Member Hammer: If we are going to write up a position paper, who are we emailing it to prior to next months meeting?

City Clerk Torres: You can include Chris and myself or Chris and Katy.

City Manager Whitehead: When in doubt the clerk's office.

Vice-Chairman Buhler: Can we drop it off there also?

City Clerk Torres: Yes, you can.

Member Hammer: For clarification the next meeting its not new business it's just a workshop. We are not making and decisions at that time.

Vice Chairman Buhler: It will say something one the agenda.

Member Hammer: We have the regular agenda items then we are going to have some time at the end hopefully for the workshop to discuss our position papers in public but are we making a decision at that point or we are just having a workshop?

City Clerk Torres: You will have a public hearing at the next meeting. You will have your public hearing and then you will have a workshop after that. In the workshop you can talk about the tiny homes and the ADU's. During the workshop you won't take any action, you will just make a plan of what you are wanting to do and go over ideas.

Member Hammer: At what point do we make an official recommendation to Manager Whitehead and the commission.

City Clerk Torres: If at the next workshop you guys discuss everything and you feel like you have everything sorted out at the following meeting. We can put it on the agenda and you can make an official recommendation to the commission.

Member Kent: To City Manager Whiteheads point we want to stack up a few before we go to commission.

City Manager Whitehead: Out of that workshop what I would expect is we would have this kind of dialog back and forth. This is Traci's committee she is going to run the show. She would take all that feed back than she and I will work to try and find in that information what is a potential code change. How could we change the code based on all the feedback and potentially come back and present 2 or 3 ideas and at that point we could say we really think that is the right thing to do let's put it on their agenda with an action item. That's the way it would play out. First the workshop we are going to take in all your information. Then you will decide if it's a good idea or its not and if you want to move forward. Then Traci will need the time to go through and put it together and we may want to send it to the lawyer. It may come back the next meeting or we may stack then. We may say we have a good policy with this item lets go on to the next one. At some point with in the next year we would come back in front of you guys and present the recommendations for changes and you guys would vote on it. That is the structure I propose it go through.

Member Hammer: In that structure can Traci participate in the workshop? I feel like she has some very relevant information.

Assistant City Manager Alvarez: Yes, I'll be at the meetings.

City Manager Whitehead: I want her to participate more than me because she really knows a lot. I want to be supportive and I want to get a path for all of you to be on that is going to go somewhere and I can step back and let Traci do what she has always wanted to do.

Assistant City Manager Alvarez: There is no deadline on workshops. We have amended the code when we did the utility billing code. I will tell you that when we went to the utility advisory board we went through several workshop meetings so everyone can get their input. Don't think you have to have one workshop because ideas flow. You might think of something during the work shop and make a note. I may take 2 to 3 meetings before we have something.

Member Hammer: I just want to reiterate the goal is to send the clerk and the chairman our position papers about ADU's and tiny homes before the agenda the agenda cut off. Which will be when?

City Clerk Torres: Manager Whitehead you want the agendas out Wednesday before the meeting?

City Manager Whitehead: The agenda can still come along your time. Traci and I will try and figure out to at least get the information available.

Vice-Chairman Buhler: You can email it to us earlier.

City Manager Whitehead: Does that violate?

City Clerk Torres: Yes, I would rather have the entire packet out. We can get the agenda out the day we get the information. If we are going to get you the agenda packets on Wednesdays by that Monday prior we would need the information.

Member Hammer: Ok, and when is the next meeting?

Member Kent: The next meeting is June 9th so June 2nd is when you would need it?

City Clerk Torres: Yes.

City Manager Whitehead: Traci and I visited about the timing and what we would propose to you is and we will use the example of what we had today. When this subject was presented to Traci. We think what we would do is notify the clerk so that the members of the zoning committee can be made aware that an application has been made for some kind of issue with in the code. Weather it's a variance, a summary plat whatever it is. If it's going to come before the zoning board. We would at least notify you when we get that information. We won't provide you with the documents. You can come in and make an appointment with Traci. You can do whatever you feel like as a member to help yourself get ready but the clock would be ticking saying something is coming before us. Our commitment to you would be on Wednesday by 5 we would have an agenda packet to you. You would then assume if that packet is coming to you that Traci has done her due diligence and the information with in the packet is sufficient enough to be presented to the public and the zoning board for your consideration. Is that a fair process that we would try for you guys? It will come from the clerk's office. Traci will notify them and they will individually notify you guys.

Member Luchini: What is the latest some one can add to the agenda such as lot split?

City Clerk Torres: On items that are public hearings we have to do the 15-day notice so it would have to be 15 days prior to the meeting.

City Manager Whitehead: I can't imagine that we would but we should never get an item on day 17 before that is a lot split that is going to require that we contact the county and the fire chief. It not going to happen Traci would let them know it's a 60-day process. Traci needs the space and the time to do her due diligent. You should never anticipate that we put something

on the agenda last minute. Our obligation is when we bring it to you it's ready to go and we need time for that. That doesn't mean someone can't come in and say they want to add a workshop to the agenda that we can put on the agenda with in 72 hours of the posting but I can't imagine something that we would present to you that would come to us with in 72 hours. That is not the purpose of this committee.

City Clerk Torres: A public hearing is required so you have to have at least 15 days.

Assistant City Manager Alvarez: It might something simple as when we send out the public hearing notices. We can potentially email them to the board so it gives them a heads up of what is coming up.

Member Hammer: How many public hearings notices are active at any given point? Is there a back log?

City Manager Torres: It varies.

Member Hammer: Is there a place online where we can go and look them up. I don't mind the emails but if there is multiple, I would like to go in a click a link to see them.

City Manager Alvarez: We don't publish the public hearing notice are applicable to the property owners that it is going to affect with in a 100 to 300 feet depending on what is being done. The public notices aren't published until it goes into the agenda packet and the agenda packet is published. That would make for a really long public comment in some cases.

c) Discussion/Action: Set Date and Time for Workshop.

No Action Taken

5. REPORTS FROM THE BOARD:

No Reports

6. REPORTS FROM STAFF:

City Clerk Torres: I just have question. When you are doing the work shop do you want us to add the reports on the agenda? We can move them up on the agenda or we can remove them.

Chairman Sisney: We can leave them on there. They don't take long.

Member Hammer: Put the workshop last since that is more discussion.

7. ADJOURNMENT:

Chairman Sisney adjourned the meeting at 5:02 p.m.

PASSED AND APPROVED ON THIS 9th DAY OF JUNE, 2025.

Chris Sisney, Chairman
Planning & Zoning Board



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 28, 2025

Agenda Item #: D.2

SUBJECT: Discussion/Action – Accept recommendation of the Impact Fee Advisory Board for use of impact fee funds as allowed for the WSPI-1 Project

DEPARTMENT: Community Development

DATE SUBMITTED: May 23, 2025

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

Impact Fee Advisory Board has approved use of impact fee funds for the WSPI-1 project as allowed by the impact fee study.

Recommendation:

Accept Impact Fee Advisory Board Recommendation

Attachments:

- Draft Minutes from Impact Fee Advisory Board Meeting
- Impact Fee Collection Spreadsheet

Fiscal Impact (Finance): TBD

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 5-28-25

FUND TITLE	PAID	NOTES	
EFFLUENT WATER/W/WW IMPACT FEES	\$ 4,551.68		
IMPACT WW-DENNIS MURATI (POOLED)		\$ 1,803.38	acct close Study
IMPACT WW-JAMES LEWIS (POOLED)		\$ 1,803.29	acct close Study
IMPACT WW-NM VETERANS HOME (POOLED)		\$ 101,626.86	acct close Study
IMPACT WW-LEWIS & JANET KERN (POOLED)		\$ 2,704.84	acct close Study
IMPACT WW-ROBERT UNO MAKI (POOLED)	\$ 1,352.76		
IMPACT WW-ALEXANDER ANDRASSY (POOLED)	\$ 1,052.07		
IMPACT WW- WALTER PUCCI (POOLED)	\$ 2,705.92		
IMPACT WW - FIRST SAVINGS BANK (POOLED)	\$ 450.00		
IMPACT WW - MARCIA MOHR (POOLED)	\$ 600.00		
IMPACT WW - R&N APARTMENTS, LLC (POOLED)	\$ 5,410.94		
IMPACT WW - KARON MORGAN (POOLED)	\$ 300.00		
IMPACT WW - CIELO VISTA LLC (POOLED)	\$ 6,312.32		
IMPACT WW - WHITE SANDS FED CU (POOLED)	\$ 1,466.52		
IMPACT WW - DRAKE WEHRS (POOLED)		\$ 2,250.00	acct close Refunded
IMPACT WW - CIELO VISTA LLC 2022 (POOLED)	\$ 10,213.60		
IMPACT WW - AGNS CONST 601 WYONA (POOLED)	\$ 1,200.96		
IMPACT WW - AGNS CONST 528 WYONA (POOLED)	\$ 1,200.88		
IMPACT WW - AGNS CONST 607 WYONA (POOLED)	\$ 1,200.88		
IMPACT WW - OVERLAND ENGINEERING LLC (DOLLAR GEN) (POOLED)	\$ 1,050.69		
IMPACT WW - DILLWOOD LLC - 808 MAPLE (POOLED)	\$ 1,951.80		
IMPACT WW - RIVERBEND HOT SPRINGS LLC 101 AUSTIN ST	\$ 3,603.80		
IMPACT WW - DILLWOOD LLC - 700 CHARLES AVE (POOLED)	\$ 1,200.70		
IMPACT WW - VETERANS PROJECT- 992 S. BROADWAY	\$ 66,709.52		
IMPACT WW - 2350 VEATER	\$ 1,200.66		
IMPACT WW - 512 GRAY ST	\$ 1,200.36		
IMPACT WW - 1415 COLEMAN ST	\$ 900.00		
IMPACT WW - 401 HWY 181	\$ 225.00		
	\$ 116,061.06		

CITY OF TRUTH OR CONSEQUENCES
IMPACT FEE ADVISORY BOARD
MINUTES
MONDAY, MAY 19, 2025

SPECIAL MEETING

Special meeting of the Impact Fee Advisory Board of the City of Truth or Consequences, New Mexico to be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, on Monday, May 19, 2025 at 4:00pm.

CALL TO ORDER:

The meeting was called to order by Chairman Dornbusch

ROLL CALL:

Jeff Dornbusch, Chairman
Don Armijo, Vice-Chairman
Gil Avelar, Member
Chris Sisney, Member

ALSO PRESENT:

1. APPROVAL OF AGENDA:

Vice-Chairman Armijo made a to approve the agenda with the amendment to change 3b before 3a.
Member Avelar seconded the motion.
Motion carried unanimously.

2. APPROVAL OF MINUTES:

a. Regular meeting of Monday, January 22, 2024

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

3. COMMENTS FROM THE PUBLIC:

There were no comments from the public.

4. NEW BUSINESS:

a. Discussion/Action: Use of Impact Fees:

This item was moved after 4b.

b. Discussion/Update: Impact Fee Study:

Assistant City Manager Alvarez: If you recall back in January, we hired StanTech to do an update to our impact fee study. They have been doing a lot of deep diving and look everything over. We have had change over with in city management during that. In updating City Manager Whitehead and speaking with our attorney. Currently the study isn't that bad it covers a lot of the things we need to cover. What we would like is to update you guys and let you know that we are going to be looking at the land use and the capital improvements plan and potentially look at updating those to what we need. That will come back in front of you guys as well. I just wanted to give you an update on where we are with the study. I know it's been some time. We had talked about the potential of the study going beyond water and wastewater also composing streets, parks and things that where a past city managements vision. That became very difficult on the engineering side of things. It was an odd thing to have all in one. So, we brough it back to just the water and wastewater. We have updated City Manager Whitehead on the wording and the structure of things. It's really good for the city.

City Manager Whitehead: In meeting with the attorney to help me become versed in the impact fees. I wanted to know what we can use them for? How is does the process work? Traci had indicated that they had become a little cumbersome and some challenges. We had a really good presentation and in that her interpretation was that we were required to do and engineering study to redefine the impact fees. The lawyer really identified you have 2 options the board has to meet and we can reauthorize the same impact fees that we have if everything is in order provided that we do the land assumptions and we at least say we are building more assets and the impact fees have been used properly to increase the capacity that is the value of those. Or we can do a study and at the end of that meeting both Traci and I really felt like spending the money to do another impact fee would just not be in our best

interest. Why would we spend the dollars just to create something that is already kind of working. I don't really see that we are growing a lot at this time. I kind of set the motion to say let's stop the engineer, let's do the assumptions, let's just go forward where we are at and then understand that we are capable of taking the impact fees that we currently are monitoring. We can pull all those impact fees in and use them for our water system. That is clear, it's part of the process, it would be a simple action by you to accept and move on to the commission. That is where we are at to say no reason to spend money doing something we don't need. Get your permission, let's keep it and let's do the assumptions and let's move down the road.

Chairman Dornbush: I have to say good choice. You don't need any more studies on something that is so stagnant as the impact fees. It's not a dynamic situation usually.

Member Avelar: I agree with that assumption. No sense in spending money when we already have something in place.

Chairman Dornbush: The land use, I just quickly looked at the map. It seems that the only developable land is on the other side of the freeway up Kopra.

City Manager Whitehead: I think that is correct. I think that is the land that we spoke of. We didn't dig to a lot. We looked into what we were doing we felt like that was the right area. Keeping things what past commissions and managers had directed stay within that and give us more time to begin forward thinking on that issue.

Chairman Dornbush: I was driving up that way today and I was thinking where is the sewer lines? Are there sewer lines running up Kopra or is it just a water line going up to the cemetery?

Assistant City Manager Alvarez: Just water. They will be potentially putting in some sewer access or Love's truck stop will be putting in some sewer access potentially. We have not received final information on where they are going to tie in or how they are going to tie into sewer but that was one of the areas that was discussed.

Chairman Dornbush: Where is this purposed Love's Truck Stop going?

Assistant City Manager Alvarez: Behind the water tanks by the cemetery.

Chairman Dornbush: On the side of the hill.

Assistant City Manager Alvarez: Kind of directly behind where our water tanks are.

Chairman Dornbush: They going to clear those hills or something to make a parking lot because that's not a very big area?

City Manager Whithead: It looks like on the map it's a pretty good size track of land and its flatter then it looks. The tanks are on the highest point in that area. Their structure would surround the tanks. They would access off the main road both in and out.

Vice-Chairman Armijo: I believe there is sewer all the way up Kopra back towards the cemetery.

City Manager Whitehead: I did not examine it enough.

Vice-Chairman Armijo: If they do, they can tie in up towards the freeway and come down Gun Club Road its all down hill so it will be east to make it flow.

City Manager Whitehead: I know there is a sewer line that crosses the golf course and comes in that area. I don't know exactly how far that goes.

Vice-Chairman Armijo: I believe it continued off of that one.

Chairman Dornbush: Is that what we are looking for today is to use some of that impact fee money for the project or to set a fee for them?

Assistant City Manager Alvarez: For Loves no. None of this on the agenda has anything to do with Loves.

City Manager Whitehead: I think the 2 actions we would be looking for here today own would be to allow Stantech to continue doing the land use plan.

Assistant City Manager Alvarez: That is actually is an update. We will come back to the board once we get more information on the land use and the CIP. I'm just giving you an update on where we stand right now with the impact fee study and what direction we are going.

a. Discussion/Action: Use of Impact Fees:

Assistant City Manager Alvarez: In the conversations with the attorney that we have had in reviewing the wording with in the impact fee. It had always been the assumption that had been presented in the past that impact fees could only be used for new development that was going to expand the facilities weather it be the water facilities or the wastewater facilities. We though that was a pretty straight line but there is some gray area there. In discussions with the attorney, we found out that an expansion of a facility can be something as simple as when you take a 4-inch line and you make it to a 6- or 8-inch line. That is an allowable expansion. The action item we will be looking from the board today is going to be recommend approval to the commission for the city manager to allocate our existing impact fees that we have collected as we are allowed by the impact fee study.

City Manager Whitehead: The information was when you expand capacity that is the trigger for the impact fee. The impact fee is designed to increase capacity. Everywhere that we are taking 4-inch lines and making them 6- or 8-inch lines the attorney said that is absolutely is an allowable expense under the impact. We have about \$130,000 in impact fees sitting in the bank from 25 individual member in the community that have put those dollars there. They are sitting there waiting so what we would want to do is affectively sweep those accounts move those dollars. We are fixing to spend 50 million dollars in water projects so \$130,000 is not going to make much of a dent but we would then be able to say all those impact fees have been used to expand capacity. Then they wouldn't be sitting on the books for the time so the person who provided those funds can could come and say you didn't use those funds. We would just clean up the record get all those off the books use them for the water projects. At any time in the future while I'm here at least when we do impact fees it would be the same thing. Once we got it in. We would allocate it to the water project and it would be off the book so that we couldn't receive a claim that we didn't utilize the impact fees. We do have the 8 buildings that are happing on Morgan Street. In that particular area we are going to have to expand the sewer line. We tapped into the last man hole coming down Morgan if you are coming north to south. That is the last manhole on the north side and it goes up the street to the west and in goes in behind the mobile home park on the opposite side of the ditch and then it drops back in maybe 1,000 feet down. All those apartments that are being constructed we have to no access to give him additional sewer taps now. He has paid impact fees so we would take his potion and allocate it to building out a particular project in that area so that we could get his houses attached to sewer, water is no problem. What we would ask is that you would allow us to use impact fees partially for the water system improvements and partially for the construction on Morgan Street for the sewer line.

Chairman Dornbush: I think both of those are perfectly acceptable in my understanding of how its played.

Vice-Chairman Armijo made a motion to recommend approval for City Manager Whitehead to allocate existing Impact Fees collected as allowed by Impact Fee Study. Member Avelar seconded the motion.

Motion carried unanimously.

5. REPORTS FROM THE BOARD:

No Reports from the Board.

6. REPORTS FROM STAFF:

Assistant City Manager Alvarez: I just want to introduce Jocelyn Holguin she is our Finance Director.

7. ADJOURNMENT:

Vice-Chairman Armijo made a motion to adjourn the meeting. Member Avelar seconded the motion. Motion carried unanimously.

PASSED AND APPROVED this 21st day of September, 2020.

Jeff Dornbusch, Chairman
Impact Fee Advisory Board



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: May 28, 2025

Agenda Item #: D.3

SUBJECT: Discussion/Action – Accept recommendation of the Impact Fee Advisory Board for use of impact fee funds as allowed for Morgan St. Sewer Expansion

DEPARTMENT: Community Development

DATE SUBMITTED: May 23, 2025

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez Assistant City Manager

Summary/Background:

Impact Fee Advisory Board has approved use of impact fee funds for expansion of a sewer line as allowed by the impact fee study.

Recommendation:

Accept Impact Fee Advisory Board Recommendation

Attachments:

- Draft Minutes from Impact Fee Advisory Board Meeting – attached to previous impact fee item
- Impact Fee Collection Spreadsheet – attached to previous impact fee item

Fiscal Impact (Finance): TBD

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

Approved For Submittal By: ☐ Department Director

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

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 5-28-25

FUND TITLE	PAID	NOTES	
EFFLUENT WATER/W/WW IMPACT FEES	\$ 4,551.68		
IMPACT WW-DENNIS MURATI (POOLED)		\$ 1,803.38	acct close Study
IMPACT WW-JAMES LEWIS (POOLED)		\$ 1,803.29	acct close Study
IMPACT WW-NM VETERANS HOME (POOLED)		\$ 101,626.86	acct close Study
IMPACT WW-LEWIS & JANET KERN (POOLED)		\$ 2,704.84	acct close Study
IMPACT WW-ROBERT UNO MAKI (POOLED)	\$ 1,352.76		
IMPACT WW-ALEXANDER ANDRASSY (POOLED)	\$ 1,052.07		
IMPACT WW- WALTER PUCCI (POOLED)	\$ 2,705.92		
IMPACT WW - FIRST SAVINGS BANK (POOLED)	\$ 450.00		
IMPACT WW - MARCIA MOHR (POOLED)	\$ 600.00		
IMPACT WW - R&N APARTMENTS, LLC (POOLED)	\$ 5,410.94		
IMPACT WW - KARON MORGAN (POOLED)	\$ 300.00		
IMPACT WW - CIELO VISTA LLC (POOLED)	\$ 6,312.32		
IMPACT WW - WHITE SANDS FED CU (POOLED)	\$ 1,466.52		
IMPACT WW - DRAKE WEHRS (POOLED)		\$ 2,250.00	acct close Refunded
IMPACT WW - CIELO VISTA LLC 2022 (POOLED)	\$ 10,213.60		
IMPACT WW - AGNS CONST 601 WYONA (POOLED)	\$ 1,200.96		
IMPACT WW - AGNS CONST 528 WYONA (POOLED)	\$ 1,200.88		
IMPACT WW - AGNS CONST 607 WYONA (POOLED)	\$ 1,200.88		
IMPACT WW - OVERLAND ENGINEERING LLC (DOLLAR GEN) (POOLED)	\$ 1,050.69		
IMPACT WW - DILLWOOD LLC - 808 MAPLE (POOLED)	\$ 1,951.80		
IMPACT WW - RIVERBEND HOT SPRINGS LLC 101 AUSTIN ST	\$ 3,603.80		
IMPACT WW - DILLWOOD LLC - 700 CHARLES AVE (POOLED)	\$ 1,200.70		
IMPACT WW - VETERANS PROJECT- 992 S. BROADWAY	\$ 66,709.52		
IMPACT WW - 2350 VEATER	\$ 1,200.66		
IMPACT WW - 512 GRAY ST	\$ 1,200.36		
IMPACT WW - 1415 COLEMAN ST	\$ 900.00		
IMPACT WW - 401 HWY 181	\$ 225.00		
	\$ 116,061.06		